



Employment and HIV/AIDS

Discrimination and Employment

A lot of people living with HIV experience discrimination in the workplace. The problem is that this kind of discrimination can be quite subtle, and people feel like there is nothing they can do about it. But there is something you can do. Here's what you need to know.



The Alberta *Human Rights, Citizenship and Multiculturalism Act* protects people from discrimination by employers. Based on certain qualities, like race or disability, employers cannot:

- 1) Refuse to hire people or dismiss them,
- 2) Discriminate against people while they are employed.

People are protected from discrimination based on any of the following qualities:

- Physical Disability
- Mental Disability
- Sexual Orientation
- Gender/ Gender Identity
- Source of Income
- Race
- Colour
- Ancestry
- Place of Origin
- Family Status
- Marital Status
- Religious Beliefs
- Age (not always covered)

These qualities are called “protected grounds for discrimination.”

If your employer refuses to hire you, fires you, pressures you to leave, harasses you or discriminates against you based on any of the grounds above, they may have broken the law. This means that you have the right to do something about it.

The information on this sheet is **not legal advice**. If you have specific legal questions you should talk to a lawyer.

HIV and Discrimination

HIV/AIDS is considered a **physical disability** according to the law.



The Alberta *Human Rights, Citizenship and Multiculturalism Act* says employers cannot discriminate against people on the basis of physical disability. This means that it is **against the law for your employer to discriminate against you on the basis of your HIV status**.

You do not actually have to be HIV positive in order to experience discrimination. The following people are all protected from discrimination based on physical disability:

- Symptomatic HIV+ people (have symptoms)
- Asymptomatic HIV+ people (do not have symptoms)
- People perceived to be HIV + but who are not
- HIV- people who associate with people who are HIV+

The Many Faces of Discrimination:

People living with HIV/AIDS sometimes belong to more than one group that is protected from discrimination. HIV affects a diverse group of people including:

- Aboriginal peoples
- Women
- Heterosexual people
- Transgendered and Transexual people
- Injection drug users,
- Men who have sex with men
- People who come from countries where HIV/AIDS is common (e.g. South Africa)

It is important to note that race, gender, sexual orientation and physical/mental disability (including alcohol and drug use) are all prohibited grounds for discrimination in employment. If you are discriminated against based on any of these grounds, you have the right to make a complaint.

What Counts as Discrimination?



In Hiring:

Job application forms or job interviews should not require you to give any information related to the protected grounds for discrimination unless that information is directly related to the requirements of the job. If an employer can show that something is a “bona fide occupational requirement” (a quality necessary to be able to do the job) then they could ask you questions about it. For example, if you apply for a peer counseling job working with people living with HIV, the employer could require that the person hired for the job was a person living with HIV and would be allowed to ask you about your HIV status. However, in most circumstances, a question about your HIV status during the hiring process would be inappropriate.

In general, during the hiring process an employer **should not ask for** any of the following, unless they can show that they need that information due to a “bona fide occupational requirement”:

- Medical information, including HIV status, other disabilities (including past or present alcohol or drug use), previous or present health problems, past compensation claims, past sick leave/ stress leave or what medications you are currently taking.
- Gender, marital/family status
- Sexual orientation
- Race, colour, ancestry
- Religious beliefs

Workplace Accommodation

Employers have a legal duty to “accommodate” the individual needs of employees who have disabilities. This means that they must make a special effort to provide people with disabilities with whatever they need to do their job. Examples of accommodation might include time off when they are too sick to work or lighter work duties if they are unable to do heavy work.

This is especially important for people living with HIV/AIDS because HIV/AIDS is considered to be a disability. If you get sick, your employer has a legal duty to accommodate your special needs.

Employers are required to take *reasonable* steps to accommodate someone with a disability. This means that, as long as the accommodation does not cause the employer “**undue hardship**”, the employer must work with the employee to accommodate their needs.

During the hiring process the employer **is allowed to:**

- Say that once you are chosen for the job, you will only be hired if you are able to pass a job-related medical exam. This exam may include both physical and psychological tests relevant to your job duties.

At this point, the employer cannot refuse to hire you due to your HIV status unless they can show that, based on your current health, you are unable to perform the job requirements or there is some specific reason that a person living with HIV *cannot* perform the job. It would be very difficult for an employer to prove that NOT having HIV was a bona fide occupational requirement.

On the Job:

Once you have been hired, your employer cannot discriminate against you based on any of the protected grounds for discrimination. This means that while you are employed, your employer or coworkers should not do any of the following unless they have a valid, non-discriminatory reason:

- Refuse you a job promotion or training opportunity
- Fire you, lay you off, pressure you to resign or reduce your hours.
- Harass you verbally or physically (including jokes, derogatory statements, threats, inappropriate touching, or unwelcome invitations or requests)
- Post signs or images that are offensive
- Fail to accommodate your disability (e.g. give you time off to go to the doctor, or to stay home sick)



For example, if an employee needs to take time off work because they have had a bad reaction to some medications, an employer should allow them to take time off without losing their job. In this case, an employer may need to pay other employees overtime to cover for an absent employee or to hire a temporary employee to replace the absent worker. Depending on a variety of factors, like the size of the company and the length of time this accommodation was needed, this may or may not be enough to cause the employer “undue hardship.”

Alternatively, an employer and employee could agree that when the employee returned to work the employee could work a few extra hours each day, without being paid overtime, to make up for the missed time. By working together, employers and employees can find solutions that work for both of them. For more information on how to get accommodation, see the next section.

Getting Workplace Accommodation



The most important things to know about getting accommodation are:

- You need to let your employer know that you need accommodation. It is best to do this in writing. Keep a copy for your files.
- Your employer has a right to ask for a doctor's opinion.
- You do not need to disclose your HIV status to get accommodation. A note from your doctor explaining that you have a "health issue" or a "disability" that requires accommodation should be enough.

- You should explain what kind of accommodation you need (e.g. time off work, less heavy lifting, breaks at a different time of day).
- You should indicate how long you think you will need to be accommodated.
- You should cooperate to find the best way to accommodate your needs.

For more information on accommodation the Alberta Human Rights and Citizenship Commission interpretive bulletin "Duty to Accommodate" available at www.albertahumanrights.ab.ca

Discrimination in Action



One problem with discrimination in employment is that it is not always obvious. While in the past open discrimination was common, today it would be very unusual for an employer to say "I'm firing you because you are HIV positive." Instead, employers often seem like they are not discriminating, and they may not even realize that they are acting in a discriminatory way. Here are some examples people living with HIV have shared with us:

Story #1:

"It's just like when the employer found out [your HIV status] he'd send you on time off and then say sorry, we don't have any work right now, don't bother coming back right now. They don't say, 'you have HIV we don't want you there.' Nobody is that silly. Even the last job I was on, they knew I was taking all kinds of pills, and as far as I disclosed to them it was diabetes, but they probably didn't want some pill popper [working for them]...I think the fact that you're taking all those pills makes them wonder...I'm sure as far as direct discrimination there really isn't anything there. I ask for a record of employment and they say shortage of work, but they hired two new guys."

The person living with HIV who told us this story noticed that several times, when he disclosed his HIV status, or when his employer has been aware that he is taking medication, he has been laid off and told there is "no work." As a temporary labourer, it is easy for his employers to let him go between jobs. But, when the employer hires new workers, it seems like the reason he was let go wasn't really the shortage of work.

In this case, it doesn't matter whether the employer let him go due to his HIV or due to him taking medications, in either case the employers actions could amount to discrimination on the basis of a disability. Alberta human rights law says that discriminating against someone because of their disability is illegal. In this case, the person could file a complaint with his employer, or with the Alberta Human Rights and Citizenship Commission.

Story #2:

"I'm afraid to go out and get a job because they're going to ask why I haven't been working. I haven't been working since 1990. And most places, if you go to get a job, you have to fill out those insurance claims and you've got to disclaim that you're HIV on a lot of them"

The person living with HIV who told us this story, had tried to apply for a job in the service industry. When he looked at the application, he realized that it asked him for information about his health, including a question about his HIV status. This is a discriminatory business practice because an employer is **not allowed** to ask for that information unless they can prove that there is a job-related reason for needing to know that information. In the case of a job serving customers in a small store, there is no job-related reason for asking for that information.

If the job requires certain physical requirements, the employer is allowed to ask the person they want to hire to have a job-related medical exam. This exam should only be to make sure that the employee will be able to perform the job requirements. In most cases, a person being HIV positive would not prevent them from fulfilling the requirements of a job.

(Continued on page 4)

Discrimination in Action

Story #2 continued:

If someone asks for your HIV status on a work application form, you could just not fill out that part of the form. If they ask why you haven't filled it out, you could explain that, if they hire you, you will provide whatever job-related medical information they need. If you no longer want the job, you could tell them that it is an illegal business practice to ask for non-job related medical information on an application form, or you could file a human rights complaint against them. You could also send AIDS Calgary a copy of the application form and ask us to inform the employer that their application form violates Alberta's human rights law.

It is important to not that once you have been hired for a job, you may have to disclose your HIV status to your company's insurance company. If this is the case, be sure to ask them who will have access to that information and to remind them that they should keep that information confidential.

What to do when you face discrimination:

What should you do when you experience discrimination in the workplace?

1) Discrimination? Ask yourself: am I being discriminated against on the basis of one of the protected grounds of discrimination (i.e. disability, race etc.).

2) Speak with the Discriminator, Request a Meeting with someone Higher Up, or Write a Letter of Complaint: If you are able to work out the problem informally, it may be faster and better for everyone involved. For example, you may want to talk directly to the person who is discriminating against you because they may not even realize that they are treating you unfairly. Or you may want to talk to someone higher up, because once your employer knows that you are having problems with a coworker or a supervisor, they may be willing to deal with it. You could also send your employer a letter of complaint. If you need some support in this process, be sure to ask for help. You can contact your local AIDS service organization.

3) Keep Records: If you think you are being discriminated against, it is a good idea to start keeping records. Write down all of the events, conversations or situations that make you think you have been, or are being, discriminated against. Make sure you include who was involved, what happened, and when each event happened (date and time). Gather anything that will support your story— documents, memos, names of people who witnessed events, performance reviews, e-mail print outs etc.

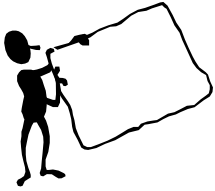
4) Ask Questions: If you have questions, talk to somebody. If you have a Union Representative, contact them and ask for information and support. You can also contact the Alberta Human Rights and Citizenship Commission or your local AIDS serving organization to ask questions and get support. See Alberta's Human Rights website at www.albertahumanrights.ab.ca

5) Identify the Complaints Process: Find out if there is a complaints process at your workplace or through your union. Check your employee handbook, collective agreement, or talk to someone in the human resources department to find out what the complaints process is. If there is no process, or if you are unable to find out what that process is, you can write a letter of complaint to whoever you think is the best person to talk to. This may be your supervisor, the manager of your department, someone in the human resources department or someone higher up. If you think it is appropriate, send a copy of this letter to the CEO or President of the company. Make sure you do everything in writing, and ask that they reply in writing within a certain period of time. Make sure you keep a copy of the letter for your files and that you put a date on everything that you send.

6) File a Human Rights Complaint or a Civil Lawsuit: If writing letters or filing a complaint with your employer is unsuccessful, there are other options. You can file a human rights complaint with the Alberta Human Rights and Citizenship Commission, or you can launch a civil lawsuit. For more information on this see the following pages of this Fact Sheet or read Fact Sheet #8 Filing a Human Rights Complaint.



Lodging an Official Complaint



The first thing you should do is try filing a complaint using the complaints process provided by your employer or your union. If this is unsuccessful, you may need to lodge an official complaint. You have three options:

- 1) Human Rights Complaint
- 2) Civil Lawsuit
- 3) Labour Standards Complaint

Human Rights Complaint:

You can file a complaint with the Alberta Human Rights and Citizenship Commission if a potential employer **refuses to hire** you based on a protected ground for discrimination, if your employer **discriminates against you** in the workplace or if your employer fails to accommodate your individual needs in the workplace.

Filing a complaint is **free**. You have **twelve months** to file a complaint after the last event you think was discriminatory. Resolving a complaint may take anywhere between **one month and more than a year**, depending on how long it takes to go through the process.

For more information on steps of filing a Human Rights Complaint please see Fact Sheet #8

It is important to note that even if the human rights commission finds that only **10%** of your dismissal or mistreatment was due to discrimination, that **still amounts to discrimination**.

People often worry that if they file a complaint, it will be **their word against the word of their employer**. It is important to try to collect any proof you can that discrimination has occurred. But, even if you cannot find much proof, you should still file a complaint. The investigators at the commission will consider what you and your employer have to say and **if your version of events is more credible, they may find in your favour despite the lack of concrete evidence**.

Alberta Human Rights and Citizenship Commission

Suite 310, 525 – 11 Avenue SW

Calgary, Alberta T2R 0C9

Confidential Inquiry Line (403) 297-6571

Toll-free 310-0000 then (403) 297-6571

TTY service in Calgary (403) 297-5639

TTY Toll-free within Alberta 1-800-232-7215

Filing a Civil Lawsuit:

You can file a civil lawsuit if you feel like you have been **wrongfully dismissed** or if you want to sue someone for **harassment**. Through this process you may be able to collect lost wages or monetary damages for pain and suffering.



There may be a **time limit** on how long after an incident you can sue. You should consult with a lawyer to find out the time limit for your specific complaint.

Filing a case in civil court is **not free**. There are costs associated with lawyers, court filing fees, witness fees and you will not be reimbursed for wages lost while you attend your court hearing. Before you decide to sue, you should think about whether it will cost you more than you stand to gain. Also, when you sue, if you win, these costs will usually be paid for through your court settlement. But, **if you lose, you may be required to cover the other person's court costs**.

Also, if you launch a civil lawsuit, you will have to prove that you have been harassed or wrongfully dismissed. This may involve providing documents or witnesses to support your claim. The proof required in a court case is likely greater than the proof required if you were to file a human rights complaint.

To talk to a lawyer:

Lawyer Referral Service (403) 228-1722

Prerecorded legal information, provide the names of 3 lawyers you can call for advice. The first 1/2 hour is free.

Calgary Legal Guidance (403) 234-9266

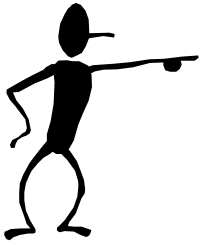
Provide free legal advice at their evening legal clinic.

If you are **thinking of filing a civil lawsuit**, have a look at this **booklet** produced by the Alberta Court Services:

Commencing a Claim in Provincial Court Civil Division and Getting and Collecting your Judgment in Alberta.

Available at www.albertacourts.ab.ca

Lodging a Complaint (continued)



Alberta Employment Standards Complaint:

Alberta's Employment Standards Code regulates the **minimum standards** that apply to employees and employers. For example, the Code regulates minimum wages, payment of earnings, the number of hours you can work legally in a day/week, rules for overtime, vacations and holidays, and rules about the termination of employment (e.g. giving two weeks notice).

If you are discriminated against by your employer, there is a chance that they might **fire you from your job without giving you the proper notice or pay**. If this happens, you can file a written complaint with the Alberta Employment Standards. For people who have been working between three months and 2 years at a job, employers must give either one week's notice or one week's worth of wages. If you have been working longer than two years at a job, you are entitled to more notice or wages. You must file your complaint within six months of being fired. For information about Employment Standards or how to file a complaint contact:

Alberta Human Resources and Employment Information Centre:

Toll-free by dialing **310-000**, then **780-427-3731**.

Deaf/ Hard of hearing TDD/TDY call 1-800-232-7215.

Counselors are available from 8:15 am to 4:30 pm Monday to Friday.

Recorded messages on core employment standards are available 24 hours a day.

Employment Standards, Calgary Office

Main Floor, Elveden Centre

717 – 7 Avenue SW

Calgary, AB T2P 0Z3

Phone: (403) 297-5846

Community Resources

AIDS Calgary

A human rights worker is available to answer questions and to assist with filing complaints.

Suite 200, 1509 Centre Street South

Calgary AB T2G 2E6

Phone (403) 508-2500

www.aidscalgary.org



Southern Alberta Clinic

#213 906-8 Ave. SW

Calgary AB T2P 1H9

Phone: 403 234-2399

www.crha-health.ab.ca/clin/sac/sac.htm

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Further Reading

This fact sheet was adapted in part from the following sources:

Human Rights Information Sheets. Alberta Human Rights and Citizenship Commission June 2002.

www.albertahumanrights.ab.ca

Duty to Accommodate. Alberta Human Rights and Citizenship Commission www.albertahumanrights.ab.ca

Commencing a Claim in Provincial Court Civil Division and Getting and Collecting your Judgment in Alberta. Alberta Court Services. www.albretacourts.ab.ca

Employment Standards Fact Sheets. Alberta Human Resources and Employment. www.gov.ab.ca/hre/employmentstandards

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