

DISCRIMINATION IN EMPLOYMENT BASED ON NATIONALITY OR PLACE OF ORIGIN

Promoting and protecting individual dignity and equal rights -that's the goal of *The Saskatchewan Human Rights Code*. It's the job of the Saskatchewan Human Rights Commission to discourage and eliminate discrimination against everyone under provincial jurisdiction.

Under sections 16 and 19 of the *Code*, discrimination is prohibited in employment with regard to job application forms, job interviews, and recruitment advertisements related, to employment. This guide can help employers and human resource professionals determine which questions are okay to ask prospective employees and which are not. Although the list that follows is not exhaustive, it covers most questions.

Citizenship and Employment

Most employers know they can't refuse to hire someone because of their ancestry, but many don't know that *The Saskatchewan Human Rights Code* also stops employers from asking certain questions on application forms or in interviews that might allow them to eliminate candidates based on nationality or place of origin. After all, these questions won't help employers find the best candidates because they are not relevant to the job.

During the hiring process (recruitment advertisements, job application forms, and job interviews), potential employers are entitled to ask applicants if they are legally entitled to work in Canada but not about their specific citizenship status or where they were born. To be "legally entitled

to work in Canada" you must be a citizen, permanent resident, or hold a valid work permit or visa. Asking this question ensures the potential employer that the applicant is not applying for work illegally. A person must be legally entitled to work in Canada so the employer can make required deductions of income tax, employment insurance, Canadian Pension Plan or other required deductions.

DEFINITIONS

The following are immigration and employment terms used in Canada:

Canadian citizenship: is usually obtained by birth in Canada or birth abroad when at least one parent is Canadian. Citizenship can also be obtained by the process of naturalization.

Naturalization: refers to when a person acquires citizenship different from their citizenship at birth. To naturalize in Canada, you must be a permanent resident and have lived in Canada for at least three years of the past four years before applying for citizenship.

Permanent resident: formerly known as a "landed immigrant," this term refers to someone who is not a Canadian citizen but has been granted permission to live and work in Canada without a time limit on their stay. A permanent resident must live in Canada for 730 days out of every five years in order to maintain their permanent residency status. In the past, a permanent resident had to live two years in a row out of a five-year period. Now, the 730 days can be

accumulated in any manner during the five-year period and need not be consecutive.

A permanent resident has many of the same rights and responsibilities as a Canadian citizen but cannot vote in Canadian elections, run for elected office, hold a Canadian passport, or serve on a jury.

Inquiries before hiring:

During the hiring process, potential employers cannot ask questions related to:

- Birth place
- Nationality of ancestors, spouse or other relatives
- Canadian citizenship
- Permanent resident status
- Naturalization Requests for proof of Canadian citizenship, or a Social Insurance Number (SIN), which may contain information about an applicant's place of origin or citizenship status
- "Canadian experience" for a particular job which is indirect preferential treatment based on nationality or place of origin
- Membership in organizations which are identified by a prohibited ground of discrimination, such as an Anglo-Canadian organization
- The name and location of schools the applicant attended
- The candidate's mother-tongue
- Where or how a person learned another language
- The candidate's religion.

These questions are discriminatory based on nationality and/or place of origin, and/or religion.

Inquiries After Employment or Conditional Offer of Employment

Even though there are some questions employers should not be asking during interviews and on application forms, it is often okay to ask those things

once someone is an employee or has been offered a conditional offer of employment. These include asking:

- For proof of legal entitlement to work in Canada;
- For the employee's birth certificate or social insurance number;
- About religion to determine when of absence may be required for the observance of religious holidays.

Applying for Federal or Provincial Government Jobs

The Government of Canada can give preference to Canadian citizens in order to enhance the meaning of citizenship as a unifying symbol for Canadians and to encourage permanent residents to naturalize. The Government of Saskatchewan does not have a citizenship preference for provincial jobs and merely asks if applicants are legally entitled to work in Canada.

Employment Agencies

Employment agencies are subject to the *Code*, as well. If they screen someone out on the basis of nationality or place of origin, they could have a human rights complaint brought against them. That's also true if they ask questions that are prohibited during the hiring process.

The Complaint Process

If you think someone has discriminated against you, you may make a complaint to the Commission. Our fact sheet, "How to File a Complaint," describes the complaint process. Please note that you must make a complaint within one year of becoming aware of the discrimination.