



FACT SHEET

Pregnancy in the Workplace

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Human Rights Code

Protected characteristics

The **Human Rights Code** forbids discrimination based only on certain personal characteristics. Sometimes these are called “protected characteristics” or “grounds of discrimination”.¹

Sex is a protected personal characteristic. Sex includes being a man, woman, inter-sexed or transgender. It also includes pregnancy, breast-feeding and sexual harassment.

Duty to Accommodate

Employers and others have a duty not to discriminate regarding employment. This includes a duty to take all reasonable steps to avoid a negative effect based on a personal characteristic.

The duty to accommodate is part of a defence. It refers to steps a person must take to treat

¹ Retrieved from: <http://www.bchrt.bc.ca/human-rights-duties/characteristics.htm>

someone equally. It requires a person to take all reasonable steps. This means all steps to the point of undue hardship.

For example, a person cannot do part of their job due to a disability. The employer must change the job or take other steps to allow the person to do their job, unless this would cause the employer too much hardship.

Undue hardship is reached when the steps are too difficult or expensive. This includes proving:

- What the respondent did to explore options to find a reasonable result
- Why further steps were not reasonable or practical (would result in [undue hardship](#))
- The respondent's basis for concluding that it could not accommodate the complainant without giving up the legitimate job-related purpose or incurring undue hardship

Proof that a respondent reasonably accommodated a complainant's disability may also require the respondent to show that it took any necessary steps to inform itself of the nature of the complainant's medical condition, prognosis, and capabilities (including limitations or restrictions) for work.

It is not enough to point to some hardship and say no more could be done. A respondent must prove undue hardship by giving [evidence](#) about the effect that the accommodation would have on the respondent.

For example, if a respondent relies on excessive cost, it must prove both the cost of the requested accommodation, and how this cost would result in undue hardship to it given its financial situation. It is not enough to rely on the high cost of accommodation without showing that the respondent cannot reasonably afford it.

Factors an employer may rely on to establish undue hardship include:

- Financial cost
- Morale of other employees
- Interchangeability of the work force and facilities
- Size of the employer's operation

A complainant must participate in the search for accommodation. The respondent may establish a justification defence (BFOR) if it proves that it was taking all reasonable and practical steps but the process failed because the complainant did not reasonably participate, or that it offered reasonable accommodation but the complainant rejected the offer.

“Employer obligations go *beyond* avoiding specific discriminatory acts. Employers must implement sound workplace policies that afford accommodation. This means that employers must make bona fide attempts to adapt the workplace and/or duties so that pregnant women can retain their positions.

As every woman experiences pregnancy differently, the form of accommodation adopted must be suitable to the individual's circumstances. When an employee is pregnant, the employer must investigate what kind of accommodations might suit the individual's needs. This might include transferring an employee to a different shift schedule when requested, altering the employee's duties, or paid leave.

Accommodation may ultimately prove impossible, but all options must be seriously considered and weighed before a determination is made that accommodation is not possible. The accommodation measure that is adopted should be the one that affects the employee's position in the workplace the *least*.²

² Retrieved from: <https://thinkhumanrights.ca/education-and-resources/guidelines/guidelines-for-accommodation-of-pregnancy-in-the-workplace/>

Workers Compensation Board/WorkSafeBC

General Duties of Employers³

115 (1) Every employer must

(a) ensure the health and safety of

(i) all workers working for that employer, and

(ii) any other workers present at a workplace at which that employer's work is being carried out, and

(b) comply with this Part, the regulations and any applicable orders.

(2) Without limiting subsection (1), an employer must

(a) remedy any workplace conditions that are hazardous to the health or safety of the employer's workers,

(b) ensure that the employer's workers

(i) are made aware of all known or reasonably foreseeable health or safety hazards to which they are likely to be exposed by their work,

(ii) comply with this Part, the regulations and any applicable orders, and

(iii) are made aware of their rights and duties under this Part and the regulations,

(c) establish occupational health and safety policies and programs in accordance with the regulations,

(d) provide and maintain in good condition protective equipment, devices and clothing as required by regulation and ensure that these are used by the employer's workers,

(e) provide to the employer's workers the information, instruction, training and supervision necessary to ensure the health and safety of those workers in carrying out their work and to ensure the health and safety of other workers at the workplace,

(f) make a copy of this Act and the regulations readily available for review by the employer's workers and, at each workplace where workers of the employer are regularly employed, post and keep posted a notice advising where the copy is available for review,

(g) consult and cooperate with the joint committees and worker health and safety representatives for workplaces of the employer, and

³ Workers Compensation Act. Retrieved from:

http://www.bclaws.ca/civix/document/id/complete/statreg/96492_03#section115

(h) cooperate with the Board, officers of the Board and any other person carrying out a duty under this Part or the regulations.

Protective Policy Regarding Reproductive Toxin/Sensitizer

5.58 Protective policy⁴

(1) At any worksite where a worker is exposed to a substance which is identified in section 5.57(1) as an ACGIH reproductive toxin or an ACGIH sensitizer, the employer must develop policy and procedures appropriate to the risk, which may include protective reassignment.

(2) The policy and procedures required by subsection (1) must

(a) inform workers about the reproductive toxin and identify ways to minimize exposure to the toxin for a worker who has advised the employer of pregnancy or intent to conceive a child, and

(b) identify ways to eliminate or minimize exposure to a sensitizer for a worker who is or may be sensitized to that substance.

Protective policy⁵

The policy and procedures may include protective reassignment, meaning that a worker may be relocated from a high-risk to a low-risk work area, based on the risk assessment carried out for the exposure potential.

"Exposure" or routes of exposure in this section include inhalation, ingestion, and skin absorption. The policy and procedures must be appropriate to the level of risk. Since exposure levels to substances exhibiting reproductive and sensitization toxic effects must be kept as low as reasonably achievable, [section 5.57\(2\)](#) of the *Regulation* requires that an exposure control plan be implemented. For example, at a given level of exposure in the workplace, the risk may be minimal. In this case, a policy that informs workers about the material and its reproductive toxicity or sensitizing capability may be all that is required. For further guidance, contact WorkSafeBC.

Refusal of Unsafe Work

If the above arguments prove unsuccessful with an employer, a woman can also choose to refuse the unsafe work, which triggers a process that may include the WCB adjudicating the matter. Workers are protected from retaliation for refusing unsafe work. The [refusal of unsafe work is a process](#), which begins with notifying the employer.

⁴Occupational Health and Safety Regulation. Retrieved from: <https://www.worksafebc.com/en/law-policy/occupational-health-safety/searchable-ohs-regulation/ohs-regulation/part-05-chemical-and-biological-substances#SectionNumber:5.58>

⁵ OHSR Guideline. Retrieved from: <https://www.worksafebc.com/en/law-policy/occupational-health-safety/searchable-ohs-regulation/ohs-guidelines/guidelines-part-05#SectionNumber:G5.58>