



BC'S OFFICE OF THE  
**HUMAN RIGHTS**  
COMMISSIONER

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## COVID-19 Frequently Asked Questions from BC's Office of the Human Rights Commissioner (BCOHR)

During the COVID-19 pandemic, questions about the rights and responsibilities of employers and employees, tenants and landlords and residential care providers such as seniors homes may arise. We have provided the following information to guide your understanding about human rights and responsibilities during this time.<sup>1</sup>

Bolded terms have definitions provided for them in a glossary at the end of this document.

*Disclaimer: This statement does not constitute legal advice. BC's Human Rights Commissioner encourages individuals and organizations to take universal precautions based on the most current advice from public health officials and to seek legal advice if necessary. The Commissioner continues to monitor the evolving situation and will update this statement on an ongoing basis as needed.*

### **RESOLVING INDIVIDUAL COMPLAINTS:**

Please note: the Commissioner does not adjudicate or resolve individual complaints. If you are looking to file a human rights complaint in relation to COVID-19, you can contact the Human Rights Tribunal to make a complaint through a special, faster process created to deal with COVID-19 related complaints. [Click here more information on this process.](#)

If you need assistance with your complaint, [contact the B.C. Human Rights Clinic here.](#)

### **1. Is it illegal for my employer to terminate me if I can't work because of COVID-19?**

- On March 23, 2020, the Government of British Columbia passed Bill 16, which changed the Employment Standards Act. Among other things, Bill 16 allows for job-protected leave without pay for employees in various circumstances relating to COVID-19, including where an employee is quarantined, in isolation, needs to be away from work to care for children because of day care or school closures or is impacted by COVID-19 related travel restrictions. These new measures are retroactive to January 27, 2020. For further [information see here](#) and the full text of the [bill here](#).

<sup>1</sup> This FAQ is modelled on the Ontario Human Rights Commission's Q&A. The BCOHRC gratefully acknowledges the Ontario Human Rights Commission's role in developing these questions and answers.



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- The B.C. Human Rights Code is another important law that protects your rights as an employee. Under the B.C. Human Rights Code, an employer may not discipline or terminate an employee who has been diagnosed with COVID-19 or is perceived to have COVID-19 (because, for example, they are exhibiting certain symptoms). Similarly, an employer may not discipline or terminate an employee if they are unable to come to work because medical or health officials have quarantined them or have advised them to self-isolate and stay home in connection with COVID-19.
- The federal government has called for all travellers entering Canada to self-isolate for 14 days upon returning, except for workers who are essential for the movement of goods and people. The list of essential services in [B.C. can be found here](#). All people in Canada should, as much as possible, stay home.
- In these circumstances, workplace policies that deal with **absenteeism** must not negatively affect employees.
- Employees who cannot work because of COVID-19 may also be entitled to sick leave benefits, disability leave benefits or other leave benefits that may be available from their employer or under the federal Employment Insurance (EI) program. Eligible workers with no paid-leave benefits or limited paid-leave benefits through their employers can apply for up to 15 weeks of EI benefits if they cannot work for medical reasons. The federal government has announced that it is eliminating the waiting period entirely for workers quarantined due to COVID-19. [Visit the Economic and Social Development Canada's website for more information.](#)
- For employees who are not eligible for EI (for instance, if a worker does not have the required number of hours worked in the 52 weeks prior to your application), both the federal and B.C. government have announced that they are offering emergency assistance to eligible individuals who have lost income as a result of COVID-19. For further information, see the federal government's [website](#) and the Province of British Columbia's [website](#).
- Employees also have other rights under the Employment Standards Act regarding termination (e.g. severance and notice of termination). Visit the B.C. Ministry of Labour [website](#) for more information. Employees may also have rights regarding termination under **common law**.



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**2. Can my employer lay me off if there is no work to do because of COVID-19? Does my employer still have to pay me?**

- The B.C. Human Rights Code does not require employers to pay employees if they are not working or if there is no work for them to do because of the impacts of COVID-19. It is not discrimination under the B.C. Human Rights Code if an employer needs to lay off employees because there is no work for them to do as a result of the impacts of COVID-19.
- The B.C. Employment Standards Act sets out rights and obligations regarding payment of wages, temporary layoffs, constructive dismissal and termination. Visit the B.C. Ministry of Labour [website](#) for more information.
- See response to Question 1 for information about accessing federal and provincial benefits in this situation.

**3. Can my employer refuse to let me work because of COVID-19?**

- Employers should ensure any restrictions on employees are consistent with up to date information from medical and [Public Health officials](#) and are justified for health and safety reasons.
- An employer should not send an individual employee home or ask them not to work because of concerns over COVID-19, unless the employer's concerns are reasonable and consistent with [information](#) from medical and Public Health officials.
- Employers also have obligations for workers' health and safety on the job under Part 3 of the Workers Compensation Act and the Occupational Health and Safety (OHS) Regulation. Visit Worksafe BC's [website](#) for further information.
- The right to be free from discrimination can be limited under the B.C. Human Rights Code (for example, where health and safety risks are serious and would amount to **undue hardship**).

**4. Does my employer have to accommodate me if I test positive or if I become sick because of COVID-19?**

- BC's Office of the Human Rights Commissioner's policy position is that COVID-19 is a form of disability under the law, as it is a medical condition or perceived medical condition that carries



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significant social stigma. Discrimination on the basis of disability is prohibited under the B.C. Human Rights Code.

- Employers have a **duty to accommodate** employees under the B.C. Human Rights Code in relation to COVID-19, unless it would amount to **undue hardship** based on cost or health and safety.
- Employers should also be sensitive to other factors such as any particular vulnerability an employee may have (for example, if they have a compromised immune system).
- On March 23, 2020, the Government of British Columbia passed Bill 16, which changed the Employment Standards Act. Among other things, Bill 16 allows for job-protected leave without pay for employees in various circumstances relating to COVID-19, including where an employee is quarantined, in isolation, needs to be away from work to care for children because of day care or school closures or is impacted by COVID-19 related travel restrictions. These new measures are retroactive to January 27, 2020. For further [information see here](#) and the full text of the [bill here](#).

**5. Does my employer have to accommodate me if I need to stay home with my kids or an ill family member?**

- Human rights law in B.C. requires that an employer accommodate an employee's care-giving responsibilities to the point of **undue hardship** if the employee's terms and conditions of employment have changed and that change has resulted in a serious interference with a substantial parental or other family duty or obligation.
- This **duty to accommodate** may apply to situations where an employee is suddenly required to work from home (a change to a term or condition of employment) but is unlikely to apply to workers whose terms and conditions of employment have not changed but who no longer have child care available to them as a result of a daycare or school closure.
- Given these extraordinary times, however, the British Columbia government has amended the Employment Standards Act to provide leave without pay to employees who are unable to work because of a need to care for a child as a result of a daycare or school closure. This means that if you need to take leave for these reasons, your employer cannot fire you for being absent



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from work. The amendments are retroactive to January 27, 2020. For further [information see here](#) and the full text of the [bill here](#).

**6. Do I need to get a medical note to support my request for accommodation?**

- On March 23, 2020, the Government of British Columbia passed Bill 16, the Employment Standards Amendment Act (No. 2) 2020 which provides that an employee will not be required to provide a medical note if they need to take a leave related to COVID-19.
- An employer is, however, entitled to ask an employee for reasonably sufficient proof that one of the circumstances set out in the bill giving rise to job protected leave exists.
- 'Reasonably sufficient proof' is a concept that is not yet clearly defined in the law.

**7. Schools are closed and childcare services are shutting down because of COVID-19. I can't afford other daycare or time off work to stay home with my kids. Does my employer have to help me? What financial assistance options do I have?**

- The B.C. Human Rights Code does not require employers to provide additional financial assistance to employees who are impacted by COVID-19.
- However, the British Columbia government has announced that it is offering emergency assistance to eligible individuals who have lost income as a result of COVID-19. For further information, see the Province of British Columbia's [website here](#).
- The federal government has announced financial measures to directly support individuals and businesses. See more [information here](#).

**8. Can my employer insist that I work despite the current situation with COVID-19?**

- Employers are entitled to expect that employees will continue to perform their work unless there is a legitimate reason why they cannot. An example of a legitimate reason can include situations where it may not be safe for the employee to be at work.
- In these circumstances, the employer should explore alternative options for how the employee may still continue to perform productive work for the employer (for example, by working from home, working alternate hours or other flexible options).



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- For more information, please visit the [WorkSafeBC site here](#).

**9. Can I refuse to work if I think my workplace is unsafe because of COVID-19?**

- Employees and employers have rights and obligations under Part 3 of the Workers Compensation Act and the Occupational Health and Safety Regulation for workers' health and safety on the job. The Act and Regulation give workers the right to refuse work that they believe is unsafe for them or another worker. [Visit WorksafeBC's website for more information.](#)

**10. Can my employer make me do a medical test for COVID-19 like take my temperature as a condition for working?**

- BC's Office of the Human Rights Commissioner's policy position is that medical assessments or self-assessments to verify or determine an employee's fitness to perform job duties may be permissible in these circumstances. However, employers should only seek information from medical testing that is reasonably necessary to the employee's fitness to perform on the job and or the employer's duty to protect the health and safety of workers on the job in accordance with occupational health and safety requirements. [Visit WorksafeBC's website for more information.](#)

**11. I am a contract worker. Do I have the same rights as employees under the B.C. Human Rights Code related to COVID-19?**

- The right to be free from discrimination in employment under the B.C. Human Rights Code includes full-time and part-time work, volunteer work, student internships, special employment programs, probationary employment and temporary or contract work.
- The definition of "employee" in the B.C. Human Rights Code is interpreted broadly enough to include contractors, even if they would not be considered "employees" for the purposes of other legislation.



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**12. I am a tenant who is not working because of COVID-19. What protections exist, if any, if I can't pay the rent? Can I opt out of my rental agreement if COVID-19 impacts persist?**

- Negative treatment of tenants who have, or are perceived to have, COVID-19, for reasons unrelated to public health and safety, could be discriminatory and prohibited under the B.C. Human Rights Code.
- The Government of British Columbia has announced that they will be providing a new rental supplement for those facing financial hardship as a result of COVID-19. For further information, see [the Province of British Columbia's website here.](#)
- The B.C. government has also [banned most evictions during this time](#), except in exceptional cases where health and safety issues or undue property damage are a reasonable risk. Further, no annual rent increases are allowed during the state of emergency.
- These measures will not be in place for April 1 so landlords should consider allowing tenants to pay their rent late.
- The government of British Columbia has also announced that it is offering emergency income assistance to eligible individuals who have lost income as a result of COVID-19. For support with other costs, BC Hydro and ICBC offer deferral of monthly bill payments. For further information, see the [Province of British Columbia's website here.](#)

**13. Can residential institutions related to child welfare, youth justice, criminal justice, long-term care, retirement homes, etc. impose restrictions such as limiting individuals from visiting their loved ones?**

- Residential facilities disproportionately house people who identify with protected grounds under the B.C. Human Rights Code, including Indigenous and racialized people, people with disabilities and addictions, elderly people, children and youth and other vulnerable groups.
- Under the B.C. Human Rights Code, these individuals have a right to be free from discrimination. Under the Canadian Charter of Rights and Freedoms, these individuals have further rights to privacy; liberty and security of the person; the right to be free from arbitrary detention; and cruel and inhuman treatment, subject to reasonable limits.



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- BC's Office of the Human Rights Commissioner and relevant human rights laws recognize the importance of balancing individuals' rights to **non-discrimination** and **civil liberties** with public health and safety, including the need to address evidence-based risks associated with COVID-19. Restrictions such as limiting individuals from visiting their loved ones may be justified for health and safety reasons, particularly if such restrictions are based on up to date information from medical and Public Health officials. However, there may be instances where certain individuals may require accommodations, which could include increased access to phones or Skype for contact with loved ones. Visit the government of British Columbia's [webpage](#) on COVID-19 for the latest information about supports and restrictions on visitor and other access to government-run or regulated residential facilities.

**Glossary:**

<b>Ableism, ageism, classism, misogyny, racism</b>	attitudes in society that devalue and limit the potential of persons based on disabilities, age, socio-economic status, gender, and race. People in these groups are assumed to be less worthy of respect and consideration, less able to contribute and take part and of less value than other people. These can be conscious or unconscious and are embedded in institutions, systems or the broader culture of a society.
<b>Absenteeism policies</b>	workplace guidelines that outline vacations, leaves and acceptable reasons why an employee might be late for or miss work.
<b>Barrier</b>	anything that prevents a person from fully taking part in all aspects of society. There are many types of barriers – some examples are physical structures, poverty or lack of access to computers.
<b>Common law</b>	the part of Canadian law that from judicial precedent established through court decisions rather than statutes or legislation.
<b>Disproportionate impacts</b>	situations where one group is more negatively affected than another by a particular law, policy, or practice.
<b>Duty bearer</b>	persons or organizations with particular obligations or responsibility to respect, uphold and obey human rights laws. For example, under the B.C.



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	Human Rights Code, duty bearers include employers, landlords and service providers.
<b>Duty to accommodate</b>	When rules, policies, practices, physical space and systems have a negative impact on an individual or group protected under the B.C. Human Rights Code they could be seen as discriminatory. Persons or organizations are responsible to modify (duty to accommodate) these rules, practices, systems, etc. unless it would create undue hardship to do so. Protected grounds under the B.C. Human Rights Code can be <a href="#">found here</a> .
<b>Economic inequalities</b>	situation where living conditions between different groups in society are vastly different. It means that there is an unequal distribution of social and economic benefits including income, housing and access to food. It is often associated with classism.
<b>Evidence-based</b>	information that is gathered from research conducted with review by fellow scientists or specialists (peer-review), clear and stated methods, evaluation and repeated studies that give the same outcome.
<b>Human rights</b>	Human Rights      universal rights based on simply being human for example, the right to equality.
	Civil Liberties      Rights and freedoms of individuals that protect them against the actions of the state or country for example, freedom of association.
	B.C. Human Rights Code      provincial legislation that identifies, prohibits and remedies discriminatory treatment. The discrimination is limited to areas such as employment, the provision of services, and tenancy.
	Canadian Charter of      the part of the Canadian constitution that outlines the rights of all people in Canada.



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	Rights and Freedoms
	International Human Rights Treaties agreements amongst countries that define and uphold universal human rights.
<b>Immuno-compromised people</b>	refers to people whose natural disease-fighting system (immune system) has been interrupted, disrupted or damaged. Immuno-compromised people are more likely to catch contagious illnesses and have limited capacity to fight even common diseases.
<b>Pandemic</b>	A pandemic is the worldwide spread of a disease. The World Health Organization labelled COVID-19 a pandemic on 11 March 2020.
<b>Social distance and self-isolation</b>	in the case of COVID-19, social distancing is a process that suggests safe limits for the amount of space between people in public areas. Self-isolation is the voluntary act of limiting the amount of time spent in public spaces. This is a tool that can be used to minimize the spread of diseases.
<b>Undue hardship</b>	depends on the circumstances of each case but may be found to occur if, for example, the accommodation would create health and safety risks for others or would be overly expensive.