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OHRC policy statement on the COVID-19 pandemic

March 13, 2020

Disclaimer: This statement does not constitute legal advice. The OHRC encourages individuals and organizations to take universal precautions based on the most current advice from Public Health officials. The OHRC continues to monitor the evolving situation and will update this statement on an ongoing basis as needed.

Overview

Following the lead of the United Nations High Commissioner for Human Rights, the Ontario Human Rights Commission (OHRC) urges Ontarians to keep human rights principles under Ontario's *Human Rights Code* (*Code*), the Canadian *Charter of Rights and Freedoms* (*Charter*) and relevant international human rights treaties at the centre of decision-making during the coronavirus (COVID-19)

pandemic.

Both public- and private-sector organizations must recognize their human rights obligations, and consider the potential disproportionate impacts of COVID-19 on the vulnerable groups they employ or serve. These vulnerable groups include Indigenous and racialized peoples, people with disabilities, older people living alone or in institutions, and low-income communities who have unequal access to health care, childcare and/or are often underemployed.

Many of these vulnerable groups are disproportionately in low-paying, hourly-wage, benefit-free and otherwise precarious jobs that make them unable to provide care or interrupt work. They are also more likely to have limited access to stable healthy housing, child care, transportation and employment insurance. Indigenous peoples and racialized people also have higher incidences of chronic conditions, such as hypertension, diabetes, heart disease, housing overcrowding and more.

At the same time, the OHRC and relevant human rights laws recognizes the importance of balancing people's right to non-discrimination and civil liberties with public health and safety, including the need to address evidence-based risks associated with COVID-19.

Discrimination and COVID-19

Discrimination including harassment against any persons or communities related to COVID-19 is prohibited when it involves a ground under the *Code*, in the areas of services, housing, employment, vocational associations and contracts.

The *Code* protects against discrimination based on 17 grounds, whether perceived or otherwise, including disability, ethnic origin, place of origin and race. The OHRC's policy position is that the *Code* ground of disability is engaged in relation to COVID-19 as it covers medical conditions or perceived medical conditions that carry significant social stigma.

COVID-19 is not isolated to people of any particular ethnic origin, place of origin or race. Some restrictions, such as a restriction based on where an individual recently travelled, may be reasonable and not discriminatory. However, depending on the circumstances, the *Code* grounds of place of origin, ethnic origin and race may trigger human rights obligations under the *Code*.

Employers and housing and service providers should ensure any restrictions are consistent with the most recent advice from medical and Public Health officials, and are justified for health and safety reasons.

The right to be free from discrimination can be limited under the *Code* (for example, where health and safety risks are serious and would amount to undue hardship). The *Charter* provides that civil, political and equality rights can be limited where reasonable limits prescribed by law can be demonstrably justified in a free and democratic society. International human rights law also recognizes that limitation of rights can sometimes be justified in limited circumstances.

Employment

The OHRC's policy position is that negative treatment of employees who have, or are perceived to have, COVID-19, for reasons unrelated to public health and safety, is discriminatory and prohibited under the *Code*. Employers have a duty to accommodate employees in relation to COVID-19, unless it would amount to undue hardship based on cost, or health and safety.

An employer should not send an individual employee home or ask them not to work because of concerns over COVID-19 unless the concerns are reasonable and consistent with the most recent advice from medical and Public Health officials. In unique circumstances, an employer might have other health and safety concerns that could amount to undue hardship. They would need to be able to show objective evidence to support such a claim.

Employer absenteeism policies must not negatively affect employees who cannot work in connection with COVID-19. An employer may not discipline or terminate an employee who is 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.

An employee who has care-giving responsibilities should be accommodated to the point of undue hardship, which might include staying home. These care-giving responsibilities which relate to the *Code* ground of family status could include situations where another family member is ill or in self-isolation, or where their child's school is closed due to COVID-19.

Employers should be sensitive to other factors such as any particular vulnerability an employee may have (for example, if they have a compromised immune system).

Employers should give employees flexible options, such as working remotely where feasible, as a good practice, and as an accommodation even if they are not currently sick but need to self-isolate or stay home due to other reasons related to COVID-19.

Consistent with the OHRC's Policy on ableism and discrimination based on disability and its Policy position on medical documentation to be provided when a disability-related accommodation request is made, employers should take requests for accommodation in good faith. Employers should be flexible and not overburden the health care system with requests for medical notes. Unnecessarily visiting medical offices increases further risk of exposure for everyone.

An employee who cannot work because of COVID-19 may be entitled to employee sick or disability leave and benefits offered by the employer or available under the Employment Standards Act or other government benefit programs.

At the same time, employers are entitled to expect that employees will continue to perform their work unless they have a legitimate reason why they cannot. If an employee is required to self-isolate for legitimate reasons, the employer is entitled to explore alternative options for how the employee may still continue to perform productive work for the employer (for example, telework). It is also not discriminatory to lay off employees if there is no work for them to do because of the impacts of COVID-19.

Employers may have other obligations (for example under the Occupational Health and Safety Act). The OHRC encourages employers to consult the Ontario Ministry of Labour, Training and Skills Development website for the most recent advice.

Services and housing

Individuals also have the right to be free from discrimination including harassment related to COVID-19 in services and housing based on grounds under the Code

Services include, among other things, education institutions, retail shops and malls and the hospitality industry including restaurants, bars, hotels and entertainment facilities. Housing providers include condo corporations, rental apartments and residential institutional facilities like long-term care and retirement homes.

Negative treatment of service recipients or residents who have, or are perceived to have, COVID-19, for reasons unrelated to public health and safety, could be discriminatory and prohibited under the Code. Organizations in these areas may also have a duty to accommodate persons in relation to COVID-19, unless it would amount to undue hardship based on cost or health and safety.

The OHRC encourages all service and housing providers to take universal precautions based on the most current advice from Public Health officials.

Government-run facilities

The government has a fiduciary obligation to protect the health and safety of individuals held in government-run facilities related to child welfare, youth justice, criminal justice, long-term care, etc. These facilities disproportionately house individuals protected from discrimination under the Code, including Indigenous and racialized people, people with disabilities and addictions, elderly people, children and youth, and other vulnerable groups.

The government must have clear emergency plans in place that adopt a Public Health and human rights-focused approach to addressing evidence-based risks associated with COVID-19 in government-run facilities. Individuals in these facilities also have the right to be free from discrimination including harassment related to COVID-19 in the provision of services on grounds under the Code.

Under the Charter, these individuals have a right to privacy, liberty and security of the person and the right to protection against discrimination, arbitrary detention, and cruel and inhuman treatment, subject to reasonable limits.

Economic, social and cultural rights

The OHRC notes that the UN High Commissioner for Human Rights has stated that Public Health measures that require self-isolation or “social distancing” will likely have a disproportionate and potentially devastating impact on economically-marginalized individuals.

We echo the United Nations’ call for governments to put in place measures to mitigate the impact on people's economic and social rights, including, for example, exploring providing a basic guaranteed income, creating temporary housing and supporting Indigenous communities to meet the unique needs of their citizens.

For more information

Ontario’s Ministry of Health is working with its partners in the health care system implementing a plan to monitor for, detect and, if needed, isolate any cases of COVID-19. People who want to learn more about COVID-19 can visit the ministry’s [web page](#).

See also the OHRC’s related January 28, 2020, [statement](#): OHRC urges respect for human rights during Coronavirus health event.

See also the OHRC’s [Policy](#) on ableism and discrimination based on disability.

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