

POLICY STATEMENT

COVID-19 Pandemic

Statement drafted March 19 and updated March 24, 2020.



BC'S OFFICE OF THE
HUMAN RIGHTS
COMMISSIONER

Message from BC's Human Rights Commissioner

Human rights are never more important than in times of crisis. It is precisely when human rights are the hardest to fulfill that they are the most important. It is in these challenging times that it becomes critical for us all to know our human rights, to understand the scope of our protections in B.C. and to place human rights at the centre of our decision making.

In alignment with the [United Nations High Commissioner for Human Rights](#), I urge British Columbians to keep human rights principles at the core of our response to the coronavirus (COVID-19) pandemic¹. That said, I recognize that in this critical time human rights and civil liberties must be balanced against the safety and health of the public. Any decision that limits human rights and civil liberties must be evidence-based, proportionate to the public health risk, temporary and transparent.

Our human rights are protected – and our responsibilities outlined – by B.C.'s Human Rights Code, the Canadian Charter of Rights and Freedoms and international human rights treaties. This statement is intended to provide guidance to employers, landlords, service providers and each of us as individuals about how to ensure that human rights are protected and balanced against urgent public health priorities.

Sincerely,



Kasari Govender

BC's Human Rights Commissioner



¹ We are also grateful to the Ontario Human Rights Commission for sharing their [policy statement](#). This statement was a useful guide and example of good practice in developing this statement.

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.

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Whose rights are at stake?

In the face of a pandemic, what we do as individuals, families, organizations and communities will have a profound impact on the greater good. All of us are in this together.

However, some of us are more vulnerable than others to the virus, some of our decisions have more impact on the wellbeing of others and some of us have fewer barriers than others to following public health advice. Like any other decisions, we need to be aware of how bias, stereotyping and systems of inequality contribute to the impact of our public health decisions.

Like any other context, we must be vigilant about how racism, economic inequalities and classism, ableism, ageism and misogyny may all be factors in how people are treated and how people experience the 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 or marginalized groups they employ, house or serve. These groups include immuno-compromised people, older people living alone or in institutions, Indigenous and racialized peoples, people with disabilities, women and gender diverse people and low-income communities.

Many of these marginalized 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, comprehensive health care, sick leave, child care, transportation and employment insurance, which may impact their ability to socially distance themselves or self-isolate. Many marginalized people are more likely to be reliant on public services for income, housing and optimal health. Indigenous peoples and racialized people also have higher incidences of chronic conditions, such as hypertension, diabetes, heart disease and more.



How does human rights law apply to the COVID-19 pandemic?

Under the B.C. Human Rights Code, discrimination on the basis of disability is prohibited, except where duty bearers such as employers, landlords and service providers have a reasonable justification for doing so that amounts to undue hardship (discussed below).

In this time of rapidly changing circumstances, neither the Human Rights Tribunal nor the courts have had time to weigh in on whether COVID-19 amounts to a disability. However, in my view as BC’s Human Rights Commissioner, it does. The seriousness of this illness – and the potential stigma that attaches to it – make it more akin to the legal protections that apply to HIV than to the common cold. Therefore, discrimination on the basis of someone having (or appearing to have) COVID-19, is prohibited under the Code except where the duty bearer can justify such treatment (for example, to prohibit or diminish the transmission of the virus).

Discrimination on the basis of race, colour, ancestry or place of origin is also prohibited. This means that duty bearers cannot discriminate against someone on the basis of whether a person comes from (or appears to come from) a COVID-19 hotspot such as China or Italy. COVID-19 is not isolated to people of any particular ethnic origin, place of origin or race. However, restrictions based on where an individual recently travelled may be reasonable and not discriminatory, as per guidance from public health officials.

In addition, discrimination on the basis of family status is prohibited. During this time of school closures and child care cancellations, duty bearers may be required to accommodate parents so that they can care for their children. The additional child care burden imposed through these public health measures are likely to disproportionately affect women, particularly single mothers.

There are limits to how far duty bearers such as employers, housing providers or service providers have to go to accommodate the needs of employees, tenants or clients. They have to take every step possible to address the needs of those who require accommodation, unless taking those steps would amount to “undue hardship” for the duty bearer.

Undue hardship 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 inordinately expensive. Duty bearers can claim undue hardship as the reason why certain policies or practices need to stay in place, even though they may have a negative effect on the people they serve. They will need to provide “sufficient and objective” evidence to prove undue hardship in the context of a human rights complaint.²

Employers and housing and service providers should ensure any restrictions on employees, tenants, and clients are consistent with the most recent advice from public health officials and are justified for health and safety reasons. The surest means to guard against inequality and injustice during the pandemic is to ensure that all of our actions are evidence-based.

² See the BC Human Rights Tribunal or the Canadian Human Rights Commission for more information.

What should employers do?

- Employers cannot make hiring, discipline or firing decisions on the basis of whether a person has or appears to have COVID-19. However, it is not discriminatory to lay off employees if there is no work for them to do because of the impacts of COVID-19.
- Employers are required to accommodate a person who may have COVID-19, which means taking all necessary precautions to stop the spread of the virus in the workplace unless doing so would amount to undue hardship. Precautions may include providing for flexible work-from-home arrangements, delaying start times for new employees or providing sick leave.
- 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 public health officials have quarantined them or have advised them to self-isolate and stay home in connection with COVID-19.
- Employers cannot make hiring, discipline or firing decisions on the basis of whether a person comes from (or appears to come from) a COVID-19 hotspot such as China or Italy.
- Employers must also accommodate employees who are considered particularly vulnerable to the virus, such as elderly or immuno-compromised people. This means taking all necessary precautions to stop the spread of the virus in the workplace (such as extra cleaning) unless doing so would amount to undue hardship. It also means that they must provide flexible work arrangements to allow vulnerable workers to work from home or from safe spaces, unless doing so would amount to undue hardship.



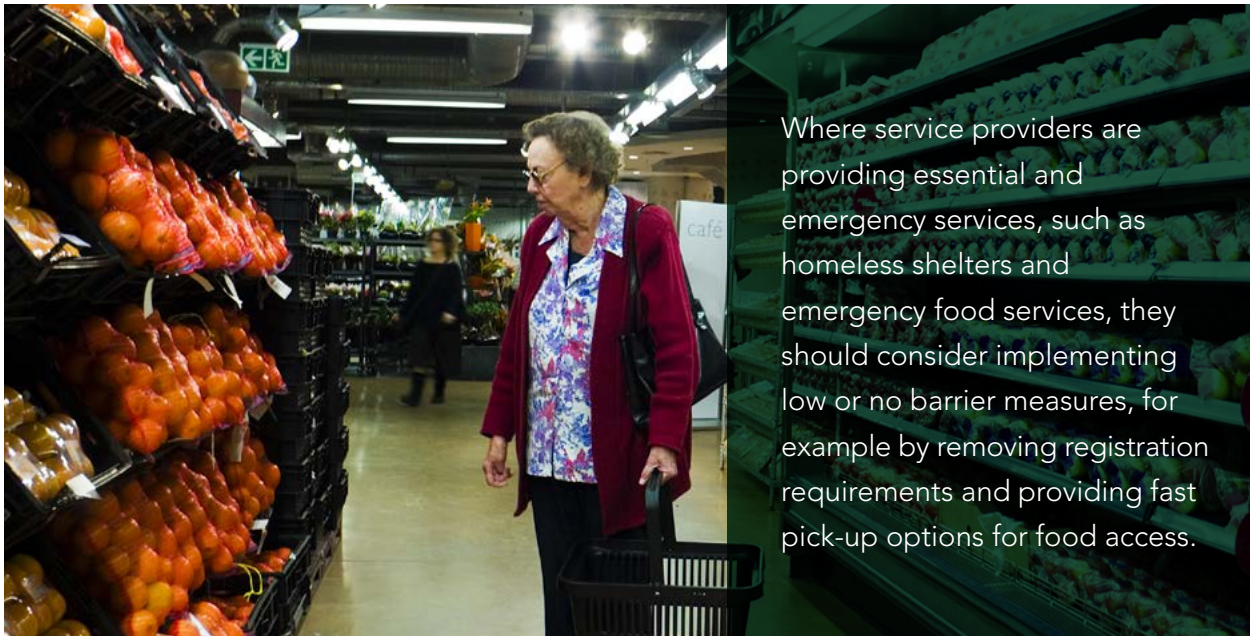


Employers with paid sick leave policies should apply them as needed here and, although not obligated to do so by law, employers without sick leave provisions should consider providing paid leave to all staff who are sick or have care giving responsibilities.

- Employers may also need to accommodate employees with increased child care obligations due to the pandemic. Protections related to family status may require employers to take all actions short of undue hardship to accommodate family care giving responsibilities where an employee is unable to cover the necessary care through other means. Accommodations may include allowing for flexible work hours, working from home or taking paid leave time. The same may be true for employees who are required to care for sick family members at home.
- Employers should not require sick notes from employees during this time. Unnecessarily visiting medical offices increases further risk of exposure for everyone, especially the most vulnerable among us and places an unnecessary additional burden on health care providers.
- Employers with paid sick leave policies should apply them as needed here and, although not obligated to do so by law, employers without sick leave provisions should consider providing paid leave to all staff who are sick or have care giving responsibilities.
- Employers should also consider providing security of employment and/or paid leave to those staff who are unable to work due to workplace closures. The individual economic impacts of the virus will be most felt by those who are already most economically marginalized, such as those working in low wage, hourly-wage, contract, benefit-free and otherwise precarious jobs. The virus is likely to strand many low wage workers in poverty. Employers— particularly large businesses and public entities — can be proactive in protecting vulnerable workers from the brunt impact of this public health crisis.
- Employers are entitled to expect that employees will continue to perform their work unless they have a legitimate reason for why they cannot, including current public health guidance to socially distance or self-isolate. If an employee is required to self-isolate, the employer is required to explore alternative options for how the employee may still continue to perform productive work for the employer (for example, telework) unless the employee is unable to work due to illness.

What should service providers do?

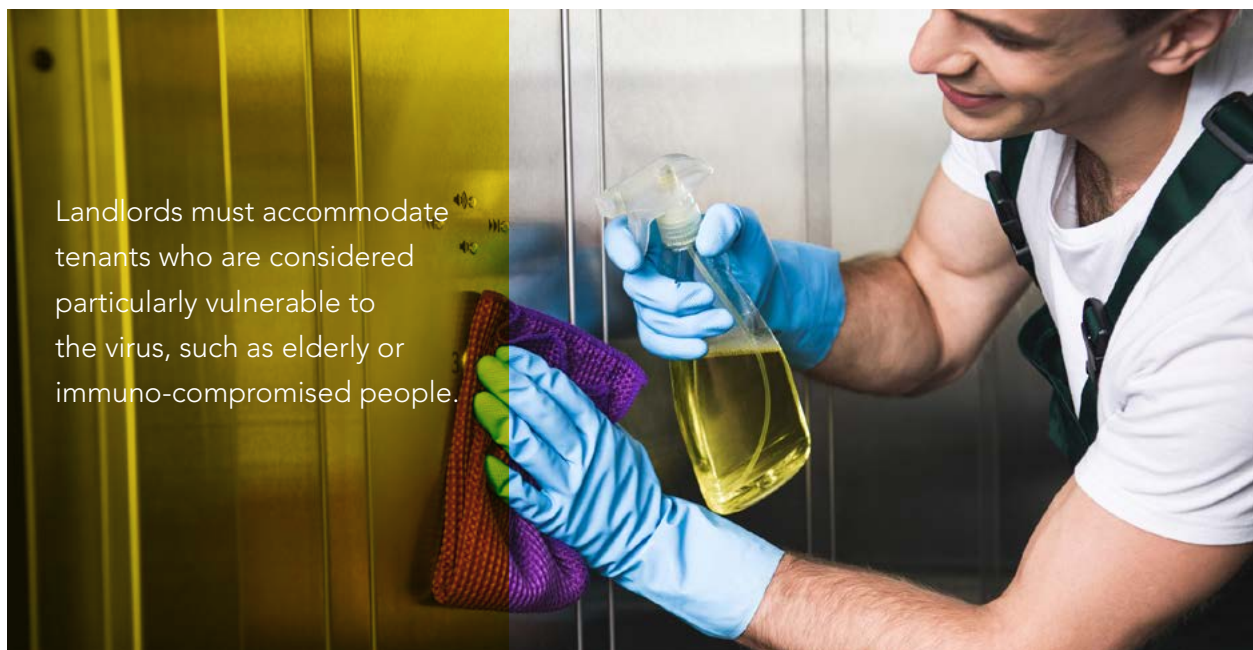
- Service providers cannot turn away someone seeking assistance or services because that person appears to have COVID-19, unless it is necessary to keep themselves or others virus-free and there is no way (short of undue hardship) to do so otherwise. Service providers should explore alternative ways to provide service in these circumstances, such as by phone or online or from a safe distance away. Service providers must take an evidence-based approach to assessing the risk to themselves or others. This is particularly important for providers of essential services, such as pharmacies, grocery stores, violence prevention services, homeless shelters, emergency food services, health care, income assistance services and others.
- Service providers cannot turn away someone seeking assistance or services because that person comes from (or appears to come from) a COVID-19 hotspot such as China or Italy.
- Service providers must accommodate those seeking assistance or services who are considered particularly vulnerable to the virus, such as elderly or immuno-compromised people. This means taking all necessary precautions to stop the spread of the virus in the physical space (such as extra cleaning) unless doing so would amount to an undue hardship.
- Service providers such as grocery stores and pharmacies should consider creating times for vulnerable people such as the elderly and immuno-compromised to shop after cleaning measures have been taken and without the presence of other customers.
- Where service providers are providing essential and emergency services, such as homeless shelters and emergency food services, they should consider implementing low or no barrier measures, for example by removing registration requirements and providing fast pick-up options for food access.



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What should housing providers do?

- Housing providers include condo corporations, landlords of rental apartments and operators of residential institutional facilities like long-term care and retirement homes.
- Landlords cannot turn away an applicant, harass a tenant, or evict someone because that person has or appears to have COVID-19. They are required to accommodate a person who has or appears to have COVID-19, which means taking all necessary precautions to stop the spread of the virus in shared living spaces (such as extra cleaning of door knobs and elevators) unless doing so would amount to an undue hardship.
- Landlords cannot turn away an applicant, harass a tenant, or evict someone because they come from (or appear to come from) a COVID-19 hotspot such as China or Italy.
- Landlords must accommodate tenants who are considered particularly vulnerable to the virus, such as elderly or immuno-compromised people. This means taking all necessary precautions to stop the spread of the virus in shared living spaces (such as extra cleaning of hallways and elevators) unless doing so would amount to an undue hardship.³
- Although not obligated to do so by law, landlords should consider delaying all evictions due to non-payment of rent during this time to avoid disproportionate impacts on those most marginalized by economic inequality and disability. Housing insecurity and homelessness will leave people without safe places to self-isolate or socially distance themselves, which will ultimately increase the risk to public health. Landlords should consider granting rent waivers or rent deferrals.



Landlords must accommodate tenants who are considered particularly vulnerable to the virus, such as elderly or immuno-compromised people.

³ This does not apply if a person is renting or seeking to rent a space that is occupied by another person who is to share the use of any sleeping, bathroom or cooking facilities in the space, such as roommates sharing an apartment.

What can governments do?

Public health officials are working tirelessly to keep us safe, and other arms of government are creating new policies and funding initiatives to address the severe social impact of the virus. For up to date information on these initiatives, please visit the [federal government](#), [B.C. government websites](#) and [guidance for Indigenous communities](#).

In keeping with our watchdog function, we are closely monitoring the human rights impacts of government decision making during this time. Government employers, service providers, and housing providers are under the same obligations as outlined above. We are making recommendations and working with government actors to ensure that decisions are rooted in human rights principles and do not unduly infringe upon the rights of British Columbians. We will post our recommendations to government actors on our website as they are developed.

What can we all do?

Each person has a responsibility to treat each other with dignity and respect. While private interactions between individuals are not covered by existing human rights law, this moment of crisis raises the fundamental question of who we want to be as a society. Are we a community of people who respect each other's rights and fulfil our responsibilities in relation to one another or not? Human rights are only as meaningful as our commitment to them in times of stress and crisis.

If we see human rights as a public good of fundamental importance, then we must recognize our mutual responsibility to keep each other safe. If a healthy young person chooses to go out while sick, this puts people already at high risk – for example, seniors and those who are immuno-compromised – at even greater risk of contracting the virus and of facing reduced medical system capacity when they need it most. If people hoard food and supplies and resell at higher prices, they are taking advantage of those most vulnerable to the virus and those most economically marginalized who are in need of those food and supplies.

This is a critical time to re-commit to principles of human rights, and to treat each other with the empathy and compassion with which we each want to be treated.

These are the moments that define us.

We want to hear from you about how your human rights are being impacted as health and safety measures unfold over the next weeks. Please follow this [link to a short survey](#) to tell us how your human rights are being affected by COVID-19.

Definitions

Ableism, ageism, classism, misogyny, racism

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.

Absenteeism policies

Workplace guidelines that outline vacations, leaves and acceptable reasons why an employee might be late for or miss work.

Barrier

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.

Disproportionate impacts

Situations where one group is more negatively affected than another by a law, policy or practice

Duty bearer

Persons or groups with an obligation or responsibility to respect, uphold and conform to human rights laws. For example, under the Human Rights Code, duty bearers include employers, landlords, and service providers.

Duty to accommodate

When rules, policies, practices, physical space and systems have a negative impact on a protected individual or group 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.

Economic inequalities

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 food.

Evidence-based

information that is gathered from research conducted with peer-review, clear methods, evaluation and repeated studies that give the same outcome.

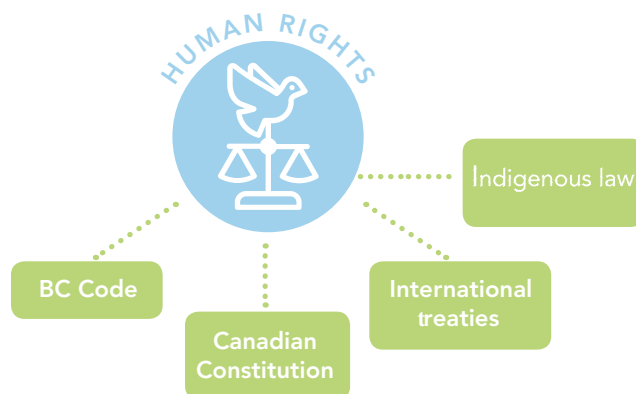
Human rights

Human Rights Universal rights based on simply being human. For example, the right to equality.

Civil Liberties Rights of individuals that protect them against the actions of the state or country. For example, the right to protest.

Definitions

Human rights	<p>B.C. Human Rights Code Provincial legislation enacted to identify, prohibit and remedy discriminatory treatment in certain defined areas such as employment, provision of services, and tenancy.</p> <hr/> <p>Canadian Charter of Rights and Freedoms The part of the Canadian constitution that outlines the rights of all Canadians.</p> <hr/> <p>International human rights treaties Agreements amongst countries that define and uphold universal human rights.</p>
Immuno-compromised people	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.
Protections	Human rights laws protect individuals or groups from discrimination as defined in the legislation. See the B.C. Human Rights Code for human rights protections in B.C.
Social distance and self-isolation	In the case of COVID-19, it is a process that defines safe limits for the amount of space between people in public locations to reduce possibility of transmitting a disease. Self-isolation is the voluntary act of limiting the amount of time spent in public. This is a tool that can be used to minimize the spread of disease.
Undue hardship	This is specific to the circumstances of each case but undue hardship may be established if, for example, the accommodation would create health and safety risks for others or would be overly expensive.





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