

BE CODE SMART

The best way to protect yourself from discrimination and from complaints is to know and respect **The Saskatchewan Human Rights Code.**



SASKATCHEWAN
HUMAN RIGHTS
COMMISSION

A Guide to Application Forms & Interviews

for Employers and
Job Applicants

The Saskatchewan Human Rights Code

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.

It's against the law to discriminate in the workplace on the basis of:

- religion
- creed
- marital status
- family status (parent-child relationship)
- sex (includes pregnancy and sexual harassment)
- sexual orientation
- physical or mental disability
- age (18 and over)
- colour
- ancestry
- nationality
- place of origin
- race or perceived race
- receipt of public assistance

Everything related to employment is protected under the *Code*. Workplaces cannot discriminate in:

- wages
- benefits
- promotions
- day-to-day operations
- hiring and firing
- recruitment ads
- application forms
- interviews

The Hiring Process

Most employers know they cannot refuse to hire people because of their ancestry or marital status. But what many don't know is the *Code* also stops employers from asking certain questions on application forms or in interviews. This guide will help you sort out which questions are okay and which are not. The chart which follows is not an exhaustive list, but it will answer most of your questions. If you have others, call the Regina or Saskatoon office for more information.

The Best Person for the Job

The *Code* doesn't stop an employer from finding the best person for the job. But what employers can't do is ask questions that allow them to eliminate candidates based on stereotypical notions. For example, some people still think pregnant women shouldn't be working, even if they can do the job. Others may not want to hire someone with diabetes or epilepsy, even though they might be the best candidate.

That's why the *Code* prohibits employers from asking questions where the information might influence the selection process in a discriminatory way. Those questions can't be asked on application forms or during job interviews. Prohibited questions won't help employers find the best candidates because they are not relevant to the job.

When it's Okay to Ask

Even though there are some questions employers should not ask during interviews and on application forms, it's often okay to ask those things once someone is hired. For example, employers can't ask an applicant whether she's married, but once hired, that information will likely be needed for administrative purposes.



Inquiries Before Hiring	Don't Ask	May Ask
1. Address	Don't ask about foreign addresses which would indicate national origin.	May ask about current and previous addresses in Canada and how long applicant stayed there.
2. Birthplace, nationality, ancestry, place of origin	Don't ask about birthplace or national origin - that includes asking about the national origin of relatives or asking for a birth certificate or baptismal certificate.	After hiring, may ask for birth certificate.
3. Photographs	Before hiring, don't ask for photo.	After hiring, may ask for photos if needed.
4. Religion	Before hiring, don't ask anything that would identify religious affiliation - that includes asking for a pastor's recommendation or reference.	After hiring, may ask about religion to determine when leave-of-absence may be required for the observance of religious holidays.
5. Citizenship	Don't ask about an applicant's citizenship status; it would reveal applicant's nationality, ancestry or place of origin - that includes questions about proof of citizenship or the date citizenship was received.	May ask if applicant is legally entitled to work in Canada.
6. Education	Don't ask about religious or ethnic affiliation of educational institutions.	May ask about schools where education was obtained and about foreign language skills.
7. Relatives	Before hiring, don't ask questions that would require someone to reveal their marital or family status.	After hiring, may ask for a contact name in case of emergency.
8. Organization		May ask about clubs and organizations that would reveal a person's affiliation based on ancestry, sexual orientation, disability, etc., as long as applicants are told: "You may decline to list organizations which would indicate your religion, ancestry, etc."
9. Work schedule		May ask applicants whether they are able to work the required schedule. If they cannot because of religious practices or family needs, the employer must determine if accommodation is possible.
10. Sex	On the application form, don't ask about the sex of an applicant.	



Inquiries Before Hiring

Don't Ask

May Ask

11. Age	Before hiring, don't ask for any record (like birth certificate) or other information that would reveal the applicant's age.	May ask if the applicant is younger than the minimum age required by employment law.
12. Marital status	Don't ask whether an applicant is single, married, remarried, engaged, divorced, separated, widowed or living common-law. Don't ask a woman for her birth name.	You can't ask about an applicant's marital status, but if the job requires it, you can ask if the applicant is willing to travel or be transferred.
13. Family status	Don't ask about the number of children or dependents, about child-care arrangements or whether applicants are pregnant, breastfeeding, using birth control or planning to have children.	May ask if applicants are able to work the required schedule. If they can't because of family needs, the employer must try to accommodate.
14. Disability	Don't ask about disabilities or health problems except as set out in the adjacent column. Don't ask if the applicant has ever had previous work injuries or made a claim for Workers' Compensation.	You may ask the following questions: i) Do you have a disability which will affect your ability to perform any of the functions of the job for which you have applied? If the above answer is yes, ask: ii) What functions can you not perform and what accommodations could be made which would allow you to do the work adequately?
15. Height and weight	Don't ask about height and weight unless it can be shown the criteria used is essential to the performance of the job.	
16. Sexual orientation	Don't ask about applicant's sexual orientation.	
17. Receipt of Public Assistance	Don't ask if applicant is receiving assistance under The Saskatchewan Assistance Act (welfare) or The Saskatchewan Income Plan Act.	
18. Due to inconsistencies in case law from other provinces, the legality of drug testing is complex and unclear in Saskatchewan. There are many factors to consider when deciding whether to conduct drug testing. Your organization may wish to obtain legal advice. See also the Drug & Alcohol Testing Guidelines on our website.		



Can Employers Ask About Disabilities?

Employers need to know whether applicants can do the job safely and efficiently. However, it's easy to make assumptions about what people with disabilities are able to do. The best way to guard against that is to ask only these two questions:

1. Do you have a disability that will interfere with your ability to perform the job for which you have applied?

If yes, the employer must ask:

2. What functions can you not perform and what accommodations could be made which would allow you to do the work adequately?

Employers are not allowed to ask about the nature or severity of a disability.

What is Accommodation?

An employer must assist people with special needs - that's called accommodation. Accommodation is required unless it would cause undue hardship for the employer. Two examples of accommodation:

- employers may have to rearrange work schedules for employees who cannot work Saturdays because of religion
- employers may have to provide technical aids so persons with disabilities can participate in their workplace

Can Employers ask for a Medical?

Before employment, a medical examination is not allowed. Employers can't ask questions about an applicant's medical history either.

After employment (or offer of employment), there are times when a medical examination is allowed but those circumstances are very limited. If certain abilities are needed to do a job, then a medical or other test can be done to ensure applicants meet the required standard. Employers are also required to give the same test to everyone who is offered the job.

What About Drug Tests?

During hiring:

Testing identifies persons with disabilities and targets them for discriminatory treatment. Therefore, in most situations it will not be allowed under the *Code*.

During employment:

Testing has to achieve a purpose rationally connected to the work, such as preventing impairment in safety sensitive situations. Testing will only be acceptable in exceptional circumstances. Please see our Drug & Alcohol Testing Guidelines on our website.

Your organization may wish to obtain legal advice in regard to drug testing.

Employment Agencies

Employment agencies are subject to the *Code* as well. For example, if they screen someone out based on pregnancy, ancestry, family status or any of the other categories protected by the *Code*, 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.

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