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PART ONE: HUMAN RESOURCES MANAGEMENT IN PERSPECTIVE

CHAPTER 2

THE CHANGING LEGAL EMPHASIS: COMPLIANCE AND IMPACT ON CANADIAN WORKPLACES

LEARNING OBJECTIVES

2.1 Explain how employment-related issues are governed in Canada.
2.2 Discuss at least five prohibited grounds for discrimination under human rights legislation.
2.3 Describe the requirements for reasonable accommodation.
2.4 Describe behaviour that could constitute harassment, and explain the employers' responsibilities regarding harassment.
2.5 Describe the purpose of employment equity programs.
2.6 Explain the role of minimums established in employment standards legislation and the enforcement process.
2.7 Identify how privacy legislation impacts employees.

CHAPTER SUMMARY

This chapter focuses on the legal environment in Canada. It discusses the multiple overlapping pieces of legislation that attempt to balance employee and employer rights when it comes to human rights and freedoms, employment equity, employment standards, and privacy.

The chapter discusses the requirement to take steps to protect employees from harassment and discrimination, in order to reduce legal liability. Specific exceptions that allow discrimination on prohibited grounds, based on bona fide occupational requirements, are covered, but so is the requirement to offer reasonable accommodation.

The chapter identifies the minimum terms and conditions contained in employment standards legislation and the complaint-based process for violations. Finally, in keeping with the continued growth of technology tools, the chapter discusses how the Personal Information Protection and Electronic Documents Act (PIPEDA) is used to oversee the collection, use, and disclosure of employees' personal information.

LECTURE OUTLINE

Where Are We Now . . .

The purpose of this chapter is to provide knowledge to deal more effectively with the legal environment and specific employment legislation questions on the job.

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I. THE LEGAL FRAMEWORK FOR EMPLOYMENT LAW IN CANADA

Learning Objective 2.1 Explain how employment-related issues are governed in Canada.

HR professionals are expected to provide guidance, training, programs, and policy developments that are legally defensible. Actions of supervisors and managers must also abide by legislated rules and regulations.

The primary objective of most employment legislation is to prevent employers from exploiting paid workers. But employees have the right to be protected from harmful business practices.

Teaching Tip: **Figure 2.1** The balancing act governments have in efforts to provide legislation that protects employees as well as employers. Discuss why it is important to make sure both sides are protected.

A. Hierarchy of Employment Legislation in Canada

Government sets the legislation. Interpretation can influence the workplace.

Stare decisis states that the decisions of a high court act as binding on lower court decisions in the same jurisdiction.

Precedent refers to how the decision or interpretation of a court of another jurisdiction can act as a persuasive authority regarding how legislation is to be interpreted and applied.

Levels of legislation:

Figure 2.2

1. **Constitutional law**, particularly the Charter of Right and Freedoms are fundamental rights guaranteed to all persons residing in Canada.
2. Provincial/Territorial **human rights codes** ensure that rights of every Canadian are protected and that persons are treated with equality and respect.
3. Employment specific legislation: **employment standards act**. Differences in standards depending on jurisdiction may results in policy or practice that is legal in one part of the country and illegal in another.
4. Other laws specifically regulate some areas of HRM: occupational health and safety, union relations, pensions, pay equity.
5. **Contract law** governs collective agreements and individual employment contracts.

B. Tort Law

The importance of tort law for organizations and specifically for HRM stems from the premise that organizations and employees commit acts that are considered breaking the law and must be dealt with accordingly.

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Tort law is primarily judge based law, where a victim is provided compensation for loss or damage in civil court. Often separated into *intentional* torts (assault, battery, trespass, intentional affliction of mental distress) and *unintentional* torts (negligence caused by carelessness).

Legally binding rules called **regulations** keep minor infractions out of the court systems.

Teaching Tip: **HR in the News** (LO 2.1). Use this occasion to discuss the rights of contract workers and the relationship between these workers and the employer.

C. Opposing Interpretations of Canadian Legislation:

1. Employees view the regulations as a statutory floor and expect to receive higher than the minimum requirements.

2. Employers prefer to view legislated guidelines as a contractual ceiling and align maximum commitment levels to the minimums established in the guidelines.

Teaching Tip: Discuss the implications of these two viewpoints from HRM perspective. How can HR balance the differences in interpretation of the legislation?

II. LEGISLATION PROTECTING THE GENERAL POPULATION

Learning Objective 2.2 Discuss at least five prohibited grounds for discrimination under human rights legislation.

Learning Objective 2.3 Describe the requirements for reasonable accommodation.

Learning Objective 2.4 Describe behaviour that could constitute harassment, and explain the employers' responsibilities regarding harassment.

A. The Charter of Rights and Freedoms

The Canadian Charter of Rights and Freedoms is enshrined in our Constitution. The Charter applies to the actions of all levels of government (federal, provincial, territorial, and municipal) and agencies under their jurisdictions. The Charter takes precedence over all other laws.

1. **Fundamental rights and freedoms** provided by the Charter (but not limited to these):
   - Freedom of conscience and religion.
   - Freedom of thought, belief, opinion, and expressions.
   - Freedom of peaceful asse4mbly.
   - Freedom of association.

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2. Additional Charter provisions which are important for HRM:
   - Multicultural heritage rights.
   - First Nations' rights
   - Minority language education rights.
   - Equality rights (Section 15 of the Charter)
     - Provides the basis for human rights legislations. It prohibits discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical ability.
   - The right to live and work anywhere in Canada.
   - The right to due process in criminal proceedings.
   - Right to democracy.

B. Human Rights Legislation

Every person in Canada is protected by human right legislation which prohibits intentional and unintentional discrimination in employment situations.

Broad in scope affecting almost all aspects of HRM in employment relationships.

Supersedes terms of any employment contract or collective agreement.

Teaching Tip: Discuss Figure 2.3, (LO 2.2). Ask students to consider why certain areas receive more human rights complaints than others.

C. Discrimination Defined

Central to human rights laws is the concept of discrimination. When someone is perceived to be acting in an unfair or prejudiced manner within the context of prohibited grounds it can be interpreted as discrimination.

Often discrimination focuses on the concept of **social identity**, which is how we define and see ourselves versus others. This may develop prejudices or stereotypes that can lead to discrimination.

Law prohibits unfair discrimination.

Teaching Tip: Workforce Diversity, (LO 2.2). This may be a good time to discuss the concept of gender identity and discrimination. Gender identity was added into the BC Human Rights Code in 2016.

1. Intentional discrimination:
   An employer cannot discriminate directly by deliberately refusing to hire, train, or promote and individual on any of the prohibited grounds.
   Subtle, indirect discrimination may be difficult to prove.

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Prohibited grounds:

- Differential or unequal treatment - Treating an individual differently in any aspect of terms and conditions of employment based on any of the prohibited grounds.
- Discrimination because of association - Denial of rights because of friendship or other relationship with a protected group member.

2. Unintentional discrimination:
   Also known as **constructive** or **systemic** discrimination, is the most difficult to detect and combat. Typically, it is embedded in policies and practices that appear neutral on the surface and that are implemented impartially, but have an adverse impact on specific groups of people for reasons that are not job related or required for the safe and efficient operation of the business

Teaching Tip: Discuss Figure 2.4 Examples of systemic discrimination. Students may question why some of these are classified as discrimination. Discuss legal implications of this kind of discrimination.

Teaching Tip: *Expert Opinion: Academic Viewpoint*, (LO 2.2). This might be a good point where class discussion on the topics presented here are discussed.

3. Permissible discrimination:
   A **bona fide occupational requirement (BFOR**) is a justifiable reason for discrimination due to business necessity, especially a health and safety issue. Discrimination via a BFOR is permitted when reasonable accommodation through adjustment of employment policies or practices is not feasible.

   The three criteria for assessing the legality of a BFOR, as established by the Meiorin case (Supreme Court of Canada, 1999) are:

   - The discriminatory policy/procedure was based on a legitimate, work-related purpose.
   - Decision makers/agents believed the requirement was necessary for the role.
   - It was impossible to accommodate employees who could not meet the requirement without undue hardship on the employer.

4. Reasonable accommodation:
   Adjustment of employment policies and practices that an employer may be expected to make so that no individual is denied benefits, disadvantaged in employment, or prevented from carrying out the essential components of a job because of grounds prohibited in human rights legislation. May involve scheduling adjustments or workstation redesign.

   Employers are expected to accommodate to the point of **undue hardship**, meaning that the financial cost of the accommodation, or health and safety risks to the individual or other employees would make accommodation impossible.

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D. Human Rights Case Examples

Discrimination based on disability is the most common human rights complaint claims. Focus on disability is not the presence of it, but the effects of the disability.

Inquiries to determine if discrimination has taken place set by the Supreme Court of Canada:

- Differential treatment due to distinction, exclusion, or preference.
- Condition or clause that is explicitly protected by legislation.
- Does the differential treatment discriminate by imposing a burden if withholding a benefit from a person?

1. Duty to accommodate:
   General principles for accommodating persons to eliminate discrimination on basis of protected grounds:

   - Provide equal access to employment based on removal of physical, attitudinal, and systemic barriers.
   - If discrimination exists, the company must demonstrate individualized attempts to accommodate the disability to the point of undue hardship. Often accommodation can be made easily and at minimal cost.
   - Accommodations are unique, numerous, part of a process, and a matter of degree to they require the most appropriate action to the point of undue hardship. An accommodation can be considered appropriate if it results in equal opportunity, benefits and privileges others experience.

2. Harassment:
   Unwelcome behaviour that demeans, humiliates, or embarrasses a person and that a reasonable person should have known would be unwelcome.

   Examples of harassment, Figure 2.6. Includes, but is not limited to:

   - Physical or verbal attempts to humiliate or offend a person.
   - Attempts to threaten or intimidate person.
   - Unwelcome remarks or jokes about a person's demographics (e.g. race, religion, sex, age, disability etc.).
   - Unnecessary physical contact with a person (e.g. touching, patting, pinching).

   Bullying: repeated and deliberate incidents of negative behaviour that cumulatively undermine a person's self-image.

   - More pervasive and prevalent in workplaces than physical violence.

   Harassment and bullying are included in *occupational health and safety legislation*.

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3. Employer responsibility:
   - Responsible for providing a safe and healthy working environment; includes protection from harassment.
   - If harassment occurs and employer is aware or ought to have been aware, they can be charged as well as the alleged harasser.

4. Sexual harassment:
   Offensive or humiliating behaviour that is related to a person's sex, as well as behaviour of a sexual nature that creates an intimidating, unwelcome, hostile, or offensive work environment, or that could reasonably be thought to put sexual conditions on a person's job or employment opportunities.

   - **Sexual coercion** involves harassment of a sexual nature that results in some direct consequence to the worker's employment status or some gain in or loss of tangible job benefits.
     – Typically involves a supervisor using control over employment, pay, performance appraisal, or promotion to gain sexual favours.

   - **Sexual annoyance** is conduct that is hostile, intimidating, or offensive but has no direct link to tangible job benefits.
     – Creates a "poisoned work environment".

5. Harassment policies:
   To reduce liability, employers should establish harassment policies, communicate these to all employees, enforce the policies, and take an active role in maintaining a working environment that is free of harassment.

   Harassment policies should include:

   - Policy statement that clarifies commitment to a safe and respectful work environment and that harassment is against the law.
   - Information for victims on identifying and defining harassment.
   - Employees' rights and responsibilities including respecting others, speaking up, and reporting harassment.
   - Employer's and managers' responsibilities in being aware and putting stop to harassment.
   - Policy procedures: what do to, investigation guidelines, remedies and correcting action guidelines.
   - Penalties for retaliation.
   - Guidelines for appeals.
   - Alternative options.
   - How the policy is monitored and adjusted.

Race and colour:
- Discrimination is illegal in every Canadian jurisdiction.

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Religion:
- Canada is a multicultural society and discrimination on the basis of religion can take many forms; such as denying time to pray or prohibiting clothing recognized as religiously required (e.g. hijab, or turban).

Sexual orientation:
- Prohibited in all jurisdictions in Canada.

Age:
- Evidence is rarely available to support the position that age is an accurate indicator of a person's ability to perform a particular type of work.

E. Human Rights Enforcement

Responsibility of the human rights commission in each jurisdiction. Claims are first heard ty by the human rights tribunal which primarily provides a speedy and accessible process to help parties to resolve the conflict through mediation.

1. Employer's obligations:
   - Demonstrate awareness of the issues of discrimination or harassment.
   - Fulfil post-complain actions: assess seriousness of the complaint, launch an investigation, focus on employee welfare and take action.
   - Resolve the complaint by demonstrating reasonable resolution and communication.

2. Remedies:
   - **Systemic** remedies: forward-looking solutions to discrimination that require respondents to take positive steps to ensure compliance with legislation.
   - **Restitutional** remedies: monetary compensation to put the complainant back to the position they would be in if the event had not occurred (includes compensation for injury to dignity and self-respect).
     – The most common reason for restitutional remedies is compensation for lost wages; can also include general damages, expenses, and pain and humiliation.

III. LEGISLATION SPECIFIC TO THE WORKPLACE

Learning Objective 2.5 Describe the purpose of employment equity programs.

Learning Objective 2.6 Explain the role of minimums established in employment standards legislation and the enforcement process.

Learning Objective 2.7 Identify how privacy legislation impacts employees.

The Charter of Rights and Freedoms legalizes **employment equity** initiatives, which go beyond human rights laws in that they are proactive programs developed by employers to remedy past discrimination or prevent future discrimination. Human rights laws focus on

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prohibiting various kinds of discrimination; however, over time it became obvious that there were certain groups for whom this complaint-based, reactive approach was insufficient.

Employment equity legislation is intended to remove employment barriers and promote equality for the members of the four designated groups: women, Indigenous people, persons with disabilities, and visible minorities.

Occupational segregation refers to the existence of certain occupations that have traditionally been male dominated and others that have been female dominated.

Glass ceiling is an invisible barrier, caused by attitudinal or organizational bias that limits the advancement opportunities of qualified designated group members.

Employment equity programs are designed to identify and correct existing discrimination, redress past discrimination, and achieve a balanced representation of designated group members in the organization.

A. The Plight of the Four Designated Groups

1. Women:
   - In 2015, women accounted for 48 percent of the employed workforce.
   - Two thirds were working in what might be called traditional occupations for women.
   - Under-represented in traditional male occupations.
   - Legislation on equal pay for equal work specifies that an employer cannot pay male and female employees differently if they are performing the same or substantially similar work.

2. Aboriginal People:
   - Account for 4.3 percent of Canada's total population.
   - Most Indigenous employees in the workforce are in low-skilled, low-paid jobs.

3. People with disabilities:
   - Legislation includes both physical and mental disabilities in legal definition.
   - Significantly lower employment rates than those without disabilities.

4. Visible minorities:
   - Defined in the federal Employment Equity Act as "persons, other than Indigenous peoples, who are non-Caucasian in race or non-white in colour."
   - Also designated as "visible minorities" and "immigrants."
     - Immigrants are not necessarily visible minorities.
   - Typically unable to obtain employment that takes full advantage of their knowledge, skills and abilities (**KSAs**).
   - Underemployment means being employed in a job that does not fully utilize one's KSAs.

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B. Employment/Labour Standards Legislation

1. Employment (labour) standards legislation covers all employers and most employees in Canada, both unionized and non-unionized.

Employment standards acts (**ESA**/**LSA**) set minimum terms and conditions for workplaces, which can be exceeded by employers, but which cannot be waived by employers or employees.

- Pertains to issues such as wages, paid holidays/vacations, maternity/parental or adoption leave, bereavement leave, compassionate care leave, termination notice and overtime.
- Set maximum number of hours of work permitted per day or week, and overtime pay.

  In the case of an employment contract/collective bargaining agreement that exceeds the ESA, the principle of greater benefit will apply i.e. employers cannot revert back to the ESA.

2. Enforcement of ESA/LSAs:

- Governed by federal, provincial, or territorial employment standards acts.
- Requires filing of formal written or electronic complaint to the appropriate authorities.
- Once a claim is filed with the ministry of labour, complainant is required to give up rights to sue in civil court.
- Strict limitation periods for filing.
- General maximum claim limit for unpaid wages.
- Challenging for organizations that operate in multiple jurisdiction.

C. Respecting Employee Privacy

Today's employers are grappling with the problem of how to balance employee privacy rights with their need to monitor the use of technology-related tools in the workplace. Employers must maintain the ability to effectively manage their employees and prevent liability to the company, which can be held legally liable for the actions of its employees

- The Personal Information Protection and Electronic Documents Act (PIPEDA) governs collection, use, and disclosure of personal information across Canada, including employers' collection and dissemination of personal information about employees.
- Employers must obtain consent from employees whenever personal information is collected, used, or disclosed.
- Electronic monitoring of employees is permitted in certain circumstances; especially if the employer has a written policy in place.

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Video Surveillance:

- To prevent employee theft and vandalism and to monitor productivity.
- Employees must be made aware of the surveillance.
- Courts assess whether the surveillance is reasonable or could other means be used.

Teaching Tips; Break up the material and shift to active learning by incorporating mini-discussions based on the Discussion Boxes and using provincial human rights websites to look at current trends and cases. Ask students to bring in/share related news stories and/or experiences. Many students know someone who has experienced discrimination, despite legislation.

DISCUSSION BOXES

HR IN THE NEWS: DO CONTRACT WORKERS GET THE SAME ENTITLEMENTS AS EMPLOYEES? (LO 2.1)

This case revolves around the nature of the employer-employee relationship. When workers are shifted from employees to independent contractors, the relationship changes. How do courts view situations where employees have been full-time employees and are suddenly shifted to an independent contractor status?

WORKFORCE DIVERSITY: GENDER IDENTITY IN THE BC HUMAN RIGHTS CODE (LO 2.2)

BC government has amended the BC Human Rights Code to include “gender identity or expression” as a ground protected from discrimination. Employers must remove systemic biases that create barriers for employees based on their gender identity.

EXPERT OPINION: ACADEMIC VIEWPOINT (LO 2.2)

Centers around treatment of women in the workplace. Students should read and discuss the three questions.

HR IN THE NEWS: RECRUITER PAYS FOR SERIES OF ABUSIVE TEXTS TO APPLICANT (LO 2.2)

An applicant was denied employment by a manager who sent several texts to the applicant claiming “freedom of speech”. The Human Rights Tribunal disagreed and found that the texts included multiple violations of the Human Right Act.

HR IN THE NEWS: WORKERS FIRED AFTER PRIVACY BREACH (LO 2.7)

Employees who hold positions in which we would expect ethical and professional behaviour can engage in privacy breaches. Employers must maintain active vigilance and investigate access to secure information.

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KEY TERMS

Bona fide occupational requirement (BFOR) - A justifiable reason for discrimination based on business necessity (that is, required for the safe and efficient operation of the organization) or a requirement that can be clearly defended as intrinsically required by the tasks an employee is expected to perform. (LO 2.3)

Charter of Rights and Freedoms - Federal law enacted in 1982 that guarantees fundamental freedoms to all Canadians. (LO 2.1)

Differential or unequal treatment - Treating an individual differently in any aspect of terms and conditions of employment based on any of the prohibited grounds. (LO 2.1)

Discrimination - As used in the context of human rights in employment, a distinction, exclusion, or preference, based on one of the prohibited grounds, that has the effect of nullifying or impairing the right of a person to full and equal recognition and exercise of his or her human rights and freedoms. (LO 2.1)

Discrimination because of association - Denial of rights because of friendship or other relationship with a protected group member. (LO 2.1)

Employment equity program - A detailed plan designed to identify and correct existing discrimination, redress past discrimination, and achieve a balanced representation of designated group members in the organization. (LO 2.5)

Employment (labour) standards legislation - Laws present in every Canadian jurisdiction that establishes minimum employee entitlements and a limit on the maximum number of hours of work permitted per day and/or per week. (LO 2.6)

Equal pay for equal work - An employer cannot pay male and female employees differently if they are performing the same or substantially similar work. (LO 2.5)

Equality rights - Section 15 of the Charter of Rights and Freedoms, which guarantees the right to equal protection and equal benefit of the law without discrimination. (LO 2.1)

Glass ceiling - An invisible barrier, caused by attitudinal or organizational bias, which limits the advancement opportunities of qualified designated group members. (LO 2.5)

Harassment - Unwelcome behaviour that demeans, humiliates, or embarrasses a person, and which a reasonable person should have known would be unwelcome. (LO 2.4)

Human rights legislation - Jurisdictions' specific legislation that prohibits intentional and unintentional discrimination in employment situations and in the delivery of goods and services (LO 2.1)
KSAs - Knowledge, skills, and abilities. (LO 2.5)

Occupational segregation - The existence of certain occupations that have traditionally been male-dominated and others that have been female-dominated. (LO 2.5)

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Personal Information Protection and Electronic Documents Act (PIPEDA) - Governs the collection, use, and disclosure of personal information across Canada, including employers' collection and dissemination of personal information about employees. (LO 2.7)

Precedent - The decision or interpretation of a court of another jurisdiction can act as a persuasive authority regarding how legislation is to be interpreted and applied in other jurisdictions. (LO 2.1)

Reasonable accommodation - The adjustment of employment policies and practices that an employer may be expected to make so that no individual is denied benefits, disadvantaged in employment, or prevented from carrying out the essential components of a job because of grounds prohibited in human rights legislation. (LO 2.3)

Regulations - Legally binding rules established by the special regulatory bodies created to enforce compliance with the law and aid in its interpretation. (LO 2.1)

Restitutional remedies - Monetary compensation for the complainant to put him or her back to the position he or she would be in if the discrimination had not occurred (this includes compensation for injury to dignity and self-respect), and may include an apology letter. (LO 2.4)

Sexual annoyance - Sexually-related conduct that is hostile, intimidating, or offensive to the employee, but has no direct link to tangible job benefits or loss thereof. (LO 2.3)

Sexual coercion - Harassment of a sexual nature that results in some direct consequence to the worker's employment status or some gain in or loss of tangible job benefits. (LO 2.3)

Sexual harassment - Offensive or humiliating behaviour that is related to a person's sex, as well as behaviour of a sexual nature that creates an intimidating, unwelcome, hostile, or offensive work environment, or that could reasonably be thought to put sexual conditions on a person's job or employment opportunities. (LO 2.3)

Stare decisis - The decisions of a higher court can act as the binding authority on a lower court decisions within that same jurisdiction. (LO 2.1)

Systemic remedies - Forward-looking solutions to discrimination that require respondents to take positive steps to ensure compliance with legislation, both in respect to the current complaint and any future practices. (LO 2.4)

Tort law - Primarily judge-based law, whereby the precedent and jurisprudences set by one judge through his or her assessment of a case establishes how similar cases will be interpreted. (LO 2.1)

Underemployment - Being employed in a job that does not fully utilize one's knowledge, skills, and abilities (KSAs). (LO 2.5)

Undue hardship - The point to which employers are expected to accommodate under human rights legislative requirements. (LO 2.3)

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Unintentional/constructive/systemic discrimination - Discrimination that is embedded in policies and practices that appear neutral on the surface, and are implemented impartially, but have adverse impact on specific groups of people for reasons that are not job related or required for the safe and efficient operation of the business. (LO 2.2)

CASE INCIDENT: A New HR Professional's First Workplace Dilemma (LO 2.4)

1. **Do you agree with how Laura handled this situation? If so, why? If not, what would you have done differently?**

   Students should be encouraged to actively debate how Laura handled this situation. Given that she is new, should this be the first place to start with changes to the manual? Can she establish that it was the Director of Marketing who was responsible for the picture – maybe this was a prank by someone else? Given that she has only seen this once, is a single incident enough to justify action, or should she wait and see if there is a pattern of such behaviour and if other employees are also involved in this type of behaviour? What does "inappropriate" mean? Was this a picture of his girlfriend/wife/partner – does that matter? Is there an expectation of privacy in an office rather than in an open workspace?

2. **Is it important for this company to have such a policy in place? If so, how can the employment (labour) standards act in your province/territory help in drafting a policy on appropriate computer use?**

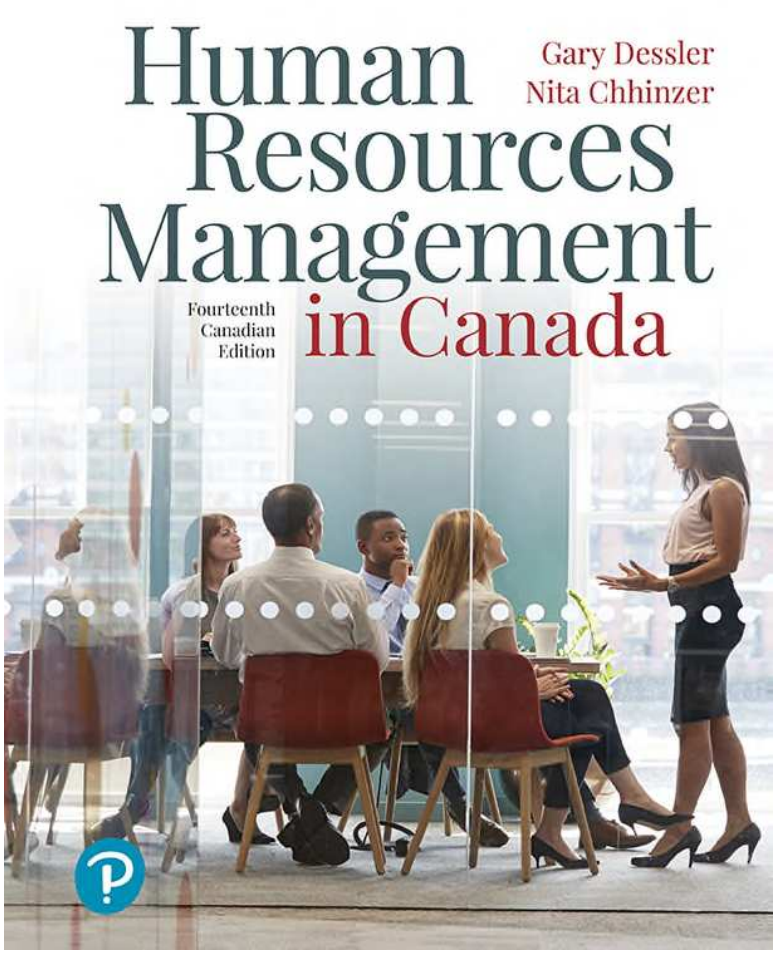
   The Supreme Court has made it clear that it is part of an employer's responsibility to provide a safe and healthy working environment, and that includes psychological safety. The legal framework for employment that regulates the employment standards act or common law imposes specific requirements on management policies, procedures and practices. Many organizations have moved beyond legal compliance and have begun to initiate and promote workplace initiatives such as appropriate computer use.

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Human Resources Management in Canada

Fourteenth Canadian Edition



Chapter 2

The Changing Legal Emphasis Compliance and Impact on Canadian Workplaces

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Learning Objectives (1 of 2)

2.1 Explain how employment-related issues are governed in Canada.

2.2 Discuss at least five prohibited grounds for discrimination under human rights legislation.

2.3 Describe the requirements for reasonable accommodation.

2.4 Describe behaviour that could constitute harassment, and explain the employers' responsibilities regarding harassment.

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Learning Objectives (2 of 2)

2.5 Describe the purpose of employment equity programs.

2.6 Explain the role of minimums established in employment standards legislation and the enforcement process.

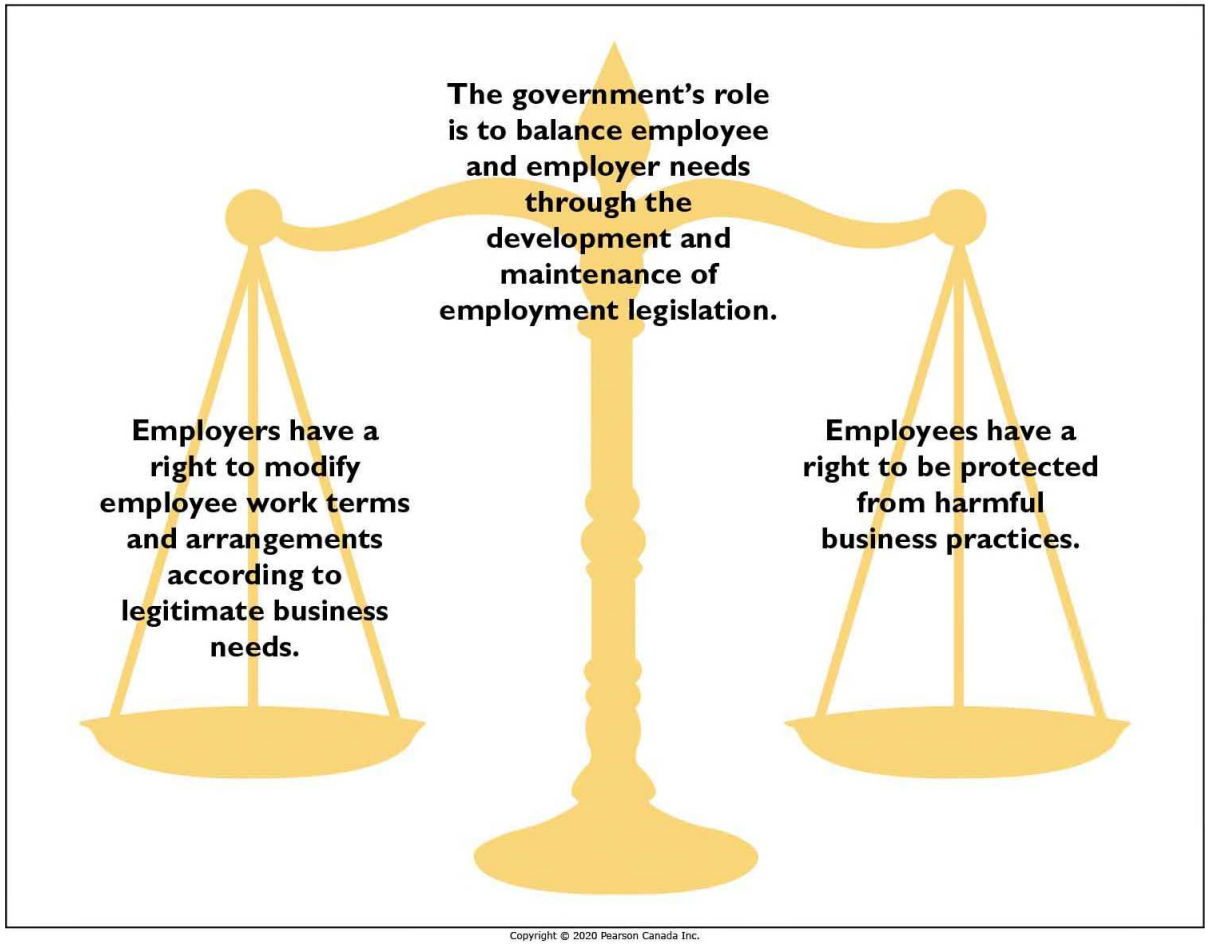
2.7 Identify how privacy legislation impacts employees.

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The Legal Framework for Employment Law in Canada (1 of 5)

Figure 2.1 Government's Role in Balancing Employer and Employee Needs

SOURCE: Data from Chhinzer, N. (2013).



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The Legal Framework for Employment Law in Canada (2 of 5)

Hierarchy of Employment Legislation in Canada:

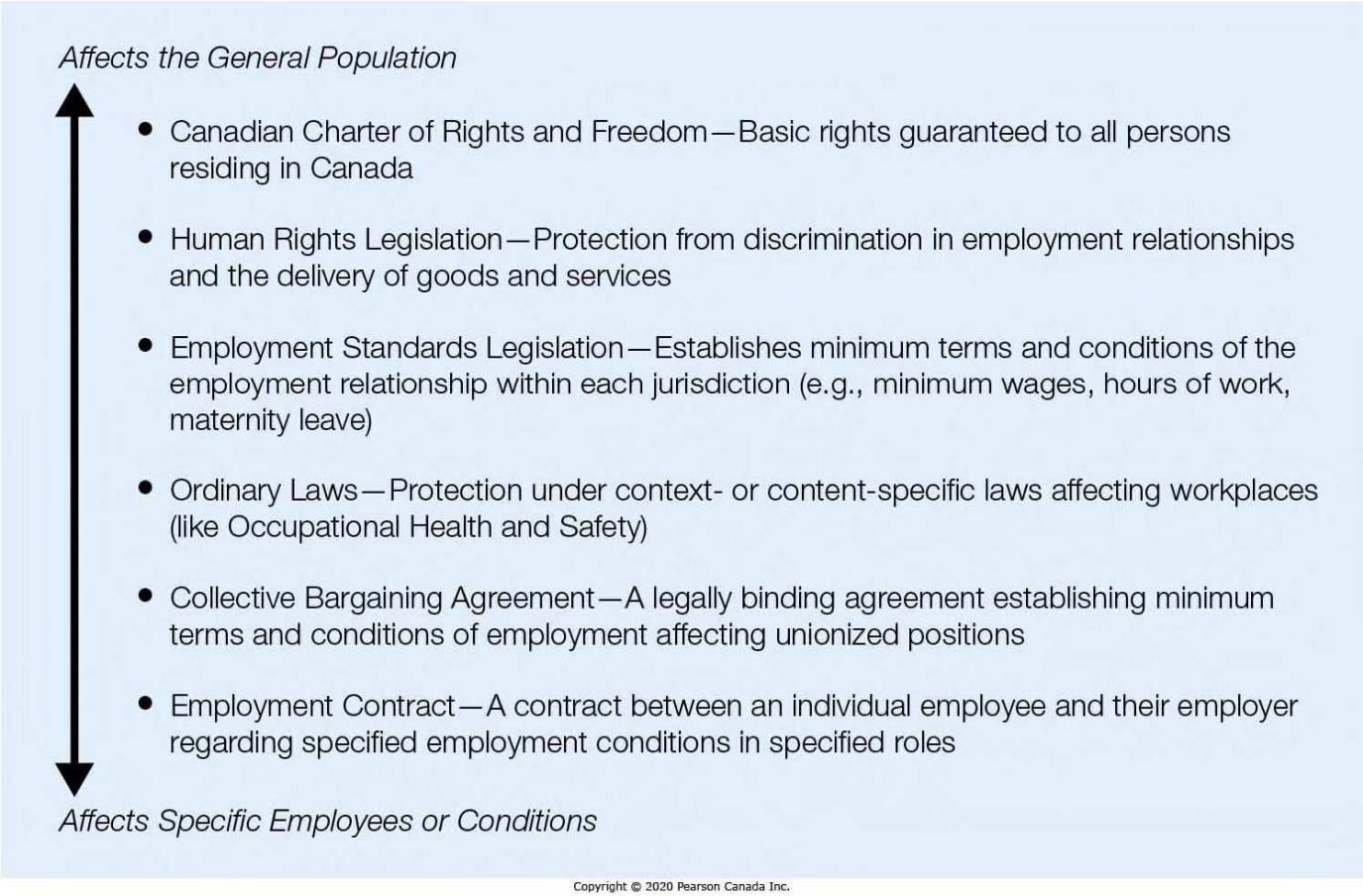
- Government sets legislation.
- Interpretation by jurisdiction can influence workplace.
  - Stare decisis – higher court decisions act as binding on lower courts in same jurisdiction.
  - Precedent – court decision can influence previous judgement in another jurisdiction.

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The Legal Framework for Employment Law in Canada (3 of 5)

Figure 2.2 Multiple Layers of Canadian Legislation Affecting Workplace Practices

SOURCE: Based on Chhinzer, 2011.



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The Legal Framework for Employment Law in Canada (4 of 5)

Tort Law:

- Important for HRM based on the premise that organizations and employees commit acts that are considered breaking the law.
- Primarily judge-based law.
- Victim is provided compensation.
- Categories of torts:
  - Intentional – assault, battery, trespass.
  - Unintentional – negligence caused by carelessness.

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The Legal Framework for Employment Law in Canada (5 of 5)

Opposing Interpretations of Legislation:

- Employees view regulations as a statutory floor and expect benefits higher than the minimum requirement.
- Employers view legislated guidelines as contractual ceiling and align maximum commitment levels to the minimum established by law.

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Legislation Protecting the General Population (1 of 18)

The Canadian Charter of Rights and Freedoms:

- Fundamental rights and freedoms:
  - Freedom of conscience and religion.
  - Freedom of thought, belief, expression and opinion.
  - Freedom of peaceful assembly.
  - Freedom of association.

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Legislation Protecting the General Population (2 of 18)

The Canadian Charter of Rights and Freedoms:

- Additional provisions important to HRM:
  - Multicultural heritage rights.
  - First Nations' rights.
  - Minority language education rights.
  - Equality rights.
  - Right to live and work anywhere in Canada.
  - Right to due process in criminal proceedings.
  - Right to democracy.

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Legislation Protecting the General Population (3 of 18)

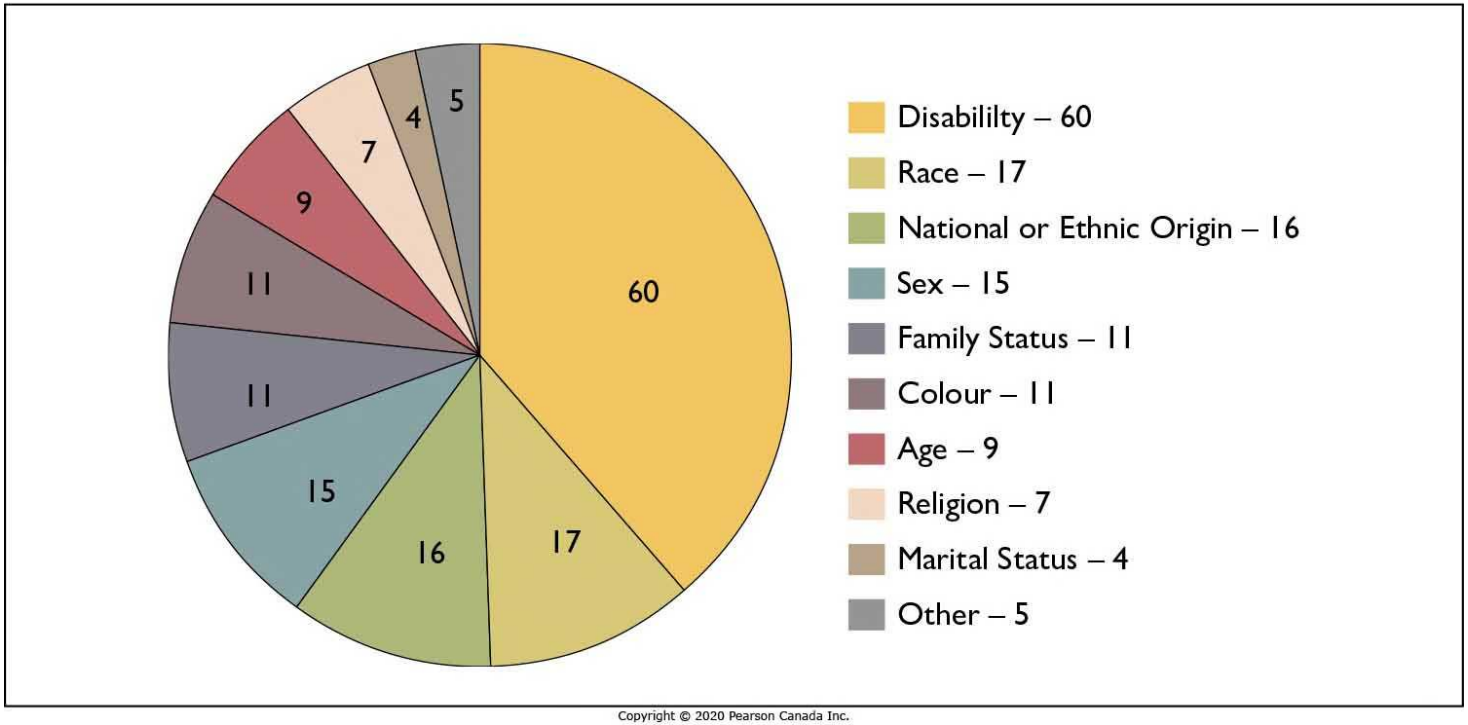
Human Rights Legislation:

- Jurisdictions specific legislation.
- Prohibits intentional and unintentional discrimination in employment situations.
- Also in the delivery of goods and services.
- Supersedes terms of any employment contract or collective agreement.

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Figure 2.3 Types of Complaints Received by the Canadian Human Rights Commission in 2016[4]



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SOURCE: Canadian Human Rights Commission Annual Report 2016, Minister of Public Works and Government Services 2017 Cat. No. HR1-4E-PDF ISSN 2560-6352, page 57, figure 9 https://www.chrc-ccdp.gc.ca/eng/ content/annual-report-2016, last accessed June 6, 2018

Legislation Protecting the General Population (5 of 18)

Discrimination Defined:

- When someone is perceived to be acting in an unfair or prejudiced manner within the context of prohibited grounds.
- Often focuses on the concept of social identity:
  - How we see ourselves vs others.
  - May develop prejudices or stereotypes.

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Intentional Discrimination

- Differential or unequal treatment in terms and conditions of employment based on any of the prohibited grounds.
- Denial of rights due to association with a protected group member.

Unintentional Discrimination

- Constructive or systemic discrimination.
- Most difficult to detect.
- Embedded in policies and practices that appear neutral.
- Have adverse impact on specific groups of people.

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Figure 2.4 Examples of Systemic Discrimination

SOURCE: Based on material provided by the Ontario Women's Directorate and the Canadian Human Rights Commission.

- Minimum height and weight requirements, which screen out disproportionate numbers of women and people from Asia, who tend to be shorter in stature.
- Internal hiring policies or word-of-mouth hiring in workplaces that have not embraced diversity.
- Limited accessibility to company premises, which poses a barrier to persons with mobility limitations.
- Culturally biased or non-job-related employment tests, which discriminate against specific groups.
- Job evaluation systems that are not gender-neutral; that is, they undervalue traditional female-dominated jobs.
- Promotions based exclusively on seniority or experience in firms that have a history of being white-male-dominated.
- Lack of a harassment policy or guidelines, or an organizational climate in which certain groups feel unwelcome and uncomfortable.

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Permissible Discrimination via Bona Fide Occupational Requirement (BFOR):

- Justifiable reason for discrimination.
- Based on business necessity.
- Criteria for assessing legality of BFOR:
  - Legitimate work related purpose.
  - Requirement is necessary for the role.
  - Causing undue hardship on the employer.

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Legislation Protecting the General Population (9 of 18)

Reasonable Accommodation:

- Adjustment of employment policies/practices so that no individual is denied benefits or is disadvantaged.
  - May involve scheduling adjustments or workstation redesign.
- Accommodate to the point of undue hardship:
  - Financial costs make accommodation impossible.
  - Health and safety risks to the individual or other employees prevent accommodation.

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Duty to Accommodate:

- Provide equal access to employment by removal of physical, attitudinal, and systemic barriers.
- Demonstrate attempts to accommodate to the point of undue hardship. Often done at minimal cost.
- Accommodation can be considered appropriate if it results in equal opportunity, benefits and privileges others experience.

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Legislation Protecting the General Population (11 of 18)

Harassment:

- Unwelcome behaviour that demeans, humiliates or embarrasses a person and that a reasonable person should have known would be unwelcome.

Figure 2.6 Examples of Harassment

SOURCE: *Canadian Human Rights Commission, Your Guide to Understanding the Canadian Human Rights Act – Page1, https://www.chrc-ccdp.gc.ca/eng/content/your-guide-understanding-canadian-human-rights-act-page1, last accessed June 8, 2018*

Harassment includes (but is not limited to):

- Physically or verbally attempts to humiliate or offend a person.
- Attempts to threaten or intimidate a person.
- Making what "ought to be known" as unwelcoming remarks or jokes about a persons demographics (e.g., race, religion, sex, age, disability, etc.).
- Making unnecessary physical contact with a person (e.g., touching, patting, and pinching).

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Harassment:

- Employer Responsibility:
  - Provide safe and healthy work environment which includes protection from harassment.
  - Employers should be aware of harassment as they can be charges as well as the alleged harasser.
  - Includes harassment by clients or customers.

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Harassment:

- Sexual Harassment:
  - Offensive or humiliating behaviour that is related to a person's sex, as well as behaviour of a sexual nature that creates an intimidating, unwelcome, hostile, or offensive work environment or that could reasonably be thought to put sexual conditions on a person's job or employment opportunities.
  - Sexual coercion – using control over employment, pay, performance appraisal, or promotion to gain sexual favours.
  - Sexual annoyance – conduct that is hostile, intimidating, or offensive but has no direct link to tangible job benefits.

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Harassment:

- Harassment Policies:
  - Clarifies commitment to safe and respectful work environment.
  - States that harassment is against the law.
  - Information for victims to identifying harassment.
  - Employees' rights and responsibilities in reporting harassment.
  - Employers' and managers' responsibilities.

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Harassment:

- Harassment Policies:
  - Procedures on what to do.
  - Penalties for retaliations.
  - Guidelines for appeals.
  - Alternative options.
  - How the policy is monitored and adjusted.

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Human Rights Cases and Discrimination:

- Race and Colour:
  - Illegal in every jurisdiction in Canada.
- Religion:
  - Takes many forms in our multicultural society.
  - Denying time to pray or to prohibit clothing recognized as religiously required.
    - For example hijab or turban.
    - Consider if it is a bona fide occupational requirement.

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Human Rights Cases and Discrimination:

- Sexual Orientation:
  - Prohibited in all jurisdictions.
  - Laws define “common-law partners” to include both same-sex and opposite-sex couples.
- Age:
  - Evidence does not support the belief that age is an accurate indicator of a person's ability to perform a job.

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Legislation Protecting the General Population (18 of 18)

Human Rights Enforcement:

- Human rights tribunal provides speedy and accessible process to help parties.
- Employer has duty to investigate claims of discrimination.
  - Have an antidiscrimination/antiharassment policy.
  - Assess every complaint and launch an investigation.
  - Demonstrate reasonable resolution and communication.
- Systemic remedy – ensure compliance with legislation.
- Restitutional remedy – monetary compensation.

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Legislation Specific to the Workplace
(1 of 7)

Employment Equity Initiatives:

- Based on the Charter of Rights and Freedoms.
- Occupational segregation refers to the existence of certain occupations that have traditionally been male dominated and others that have been female dominated.
- Glass ceiling is considered to be the invisible barrier, caused by attitudinal or organizational bias that limits the advancement opportunities of qualified designated group members.

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Legislation Specific to the Workplace
(2 of 7)

Employment Equity Legislation:

- Intended to remove employment barriers and promote equality.
- Employers under *federal jurisdiction* must prepare a plan with specific goals to achieve better representation of designated group members at all levels of the organization.
- Employment equity program is a detailed plan designed to identify and correct existing discrimination, redress past discrimination, and achieve a balanced representation of designated group members in the organization.

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Legislation Specific to the Workplace
(3 of 7)

Plight of the Four Designated Groups:

- Women:

  Account for 48 percent of workforce (2015).

  Underrepresented in traditionally male occupations.

  Equal pay for equal work specifies that an employer cannot pay male and female employees differently if they are performing the same or substantially similar work.

  Pay differences based on merit, productivity or seniority are permitted.

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Legislation Specific to the Workplace
(4 of 7)

Plight of the Four Designated Groups::

- Aboriginal People:
  - Mostly in low-skill, low-paid jobs.
- People with Disabilities:
  - Includes both mental and physical disabilities.
  - Lower employment rates.
- Visible Minorities:
  - Other than non-Caucasian – immigrants are not necessarily visible minorities.
  - Knowledge, skills, and abilities not fully utilized.

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Legislation Specific to the Workplace
(5 of 7)

Employment/Labour Standards Legislation:

- Federal and provincial/territorial versions.
- Present in every Canadian jurisdiction.
- Establish minimum employee entitlements.
- Set a limit on maximum number of hours of work permitted per day or week.
- Employment contracts may exceed minimums.
- Principle of greater benefit applies.

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Legislation Specific to the Workplace
(6 of 7)

Enforcement of Employment Standards Act:

- Complaints filed with Ministry of Labour or counterpart.
- Filed complaint is settled through the Ministry, not civil court.
- Limitation periods for filing.
- Maximum claim limit for unpaid wages.

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Legislation Specific to the Workplace
(7 of 7)

Respecting Employee Privacy:

- Employer has right to prevent liability to the company:
  - Eliminate time wasted on personal matters.
  - Prevent abuse of company resources.
- Employees have right to:
  - Control information about themselves.
  - Freedom from interference in their personal life.

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Respecting Employee Privacy (1 of 2)

Respecting Employee Privacy:

- Personal Information Protection and Electronic Documents Act (PIPEDA):
  - Law governs collection, use, and disclosure of personal information.
  - Employers must get consent from employees when information is collected.
  - Electronic monitor of employees is permitted.
    - Employers should have written policy.

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Respecting Employee Privacy (2 of 2)

Respecting Employee Privacy:

- Video Surveillance:
  - Monitor productivity.
  - Prevent employee theft and vandalism.
  - Employees must be made aware.
  - Not advised if reasonable alternatives exist.

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