

Legislation

Human Rights in the Workplace - Personal Protective Equipment

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How do human rights relate to the workplace?

The Canadian Human Rights Act and similar legislation are in force in Canada and in each province and territory to protect specific rights and freedoms and allow individuals to be able to participate in society to the fullest extent possible.

Please see the OSH Answers "[Human Rights in the Workplace](#)" document for more information.

NOTE: Always seek legal advice before making decisions based on human rights. CCOHS is not a regulatory authority. This document is advisory only and may not apply to every situation. Evaluate the specific circumstances for your organization in your jurisdiction, and seek the advice of legal professionals with knowledge of human rights as applied to the workplace.

How does wearing personal protective equipment relate to human rights?

There may be situations where protected human rights appear to be in conflict with safe work practices, particularly the use of personal protective equipment.

When developing the personal protective equipment (PPE) policy or program, always consider protected human rights and any necessary appropriate accommodation. Grounds for accommodation should be considered during the risk assessment process, rather than taking a reactive approach to worker complaints. Accommodations should be planned and implemented, with relevant worker participation, before exposing the workers to hazards requiring the protection of PPE. One example occurs when religious grounds require a head covering, such as a turban. This headcover may interfere with the protection provided by a hard hat. Another example may include the religious practice of wearing a face covering or having facial hair, which may interfere with the seal of a respirator.

How does the employer determine if PPE is required?

Employers must complete a hazard identification and risk assessment to determine the appropriate control measures needed in the workplace. Control measures are based on the [hierarchy of controls](#).

In the example where there is a risk of head injury, the following control measures may be implemented in order of priority:

Elimination: Remove the hazard that poses the risk of head injury.

Engineering: Install guards or barriers to prevent workers from being exposed to head injury hazards. For example, if loads are being lifted by a crane, install a barrier to block off the area within the swing radius of the boom and load. Another example is the installation of toeboards which reduce the likelihood of small objects (such as tools) being dropped from an overhead platform, or the installation of a safety net to catch falling debris.

Administrative: Develop a policy or procedure that guides safe work. For example, a PPE policy that restricts those workers who are not wearing a hard hat from performing tasks where there is a risk of head injury.

PPE: Determine if the requirement for a hardhat is a bona fide occupational requirement. Are alternate types of protective equipment available that provide equal or better protection?

Does the PPE policy or program need to be applied to all workers?

The PPE identified as a control measure in a risk assessment should only apply to those workers exposed to the actual hazard. For example, port workers may be exposed to overhead moving loads and would, therefore, need suitable hard hats. Workers present only in locations where there are no overhead loads may not need head injury protection.

How could an employer accommodate a worker when PPE is needed?

Employers have a duty to accommodate workers. For example, this duty can mean adjusting the work so that PPE is not required (such as moving the job to a location where there is no risk of head injury). The level of accommodation is expected up to the point of undue hardship. For example, building a new work zone to eliminate the risk of head injury might be prohibitively expensive, and would cause undue hardship on the employer.

Limitations to a worker's human rights can apply when PPE is a bona fide occupational requirement. For example, in a job that must take place in an area where the risk of head injury exists, and where no other control measures adequately control the risks, the wearing of hard hats may be a bona fide occupational requirement.

Please see the OSH Answers [Human Rights in Canada](#) for another example (laboratory worker requiring a respirator).

Can a worker refuse or be exempted from wearing PPE?

Employers are responsible for ensuring the health and safety of workers. When appropriate, employers must provide suitable PPE to workers to fulfill this responsibility. As part of the internal responsibility system, workers must make use of PPE, if deemed necessary by a risk assessment.

Workers in Canada have the [right to refuse](#) unsafe work, but this does not necessarily translate to the right to refuse to wear PPE. A worker may refuse to work if the PPE does not provide adequate protection, making the work unsafe.

When workers have concerns, these concerns should be brought to the attention of the supervisor, employer, health and safety committee or representative, or the union, if present. If the concern is not resolved, the [jurisdictional regulator](#) can be contacted.

Can an employer choose not to hire someone who refuses or is unable to wear PPE?

It is generally not acceptable to discriminate during the hiring process. Employers should hire using a fair process that focuses on each candidate's ability to perform the essential job duties. An employer can ask what is necessary to make the hiring selection based on the candidate's ability to perform the essential job duties and evaluate on the basis of skills and merit. It **may** be appropriate to inquire about protected grounds to assess if the candidate meets a bona fide occupational requirement.

For example, the employer cannot deny a Sikh candidate an interview based on the **assumption** that all Sikhs will refuse to wear hard hats.

Note that bona fide occupational requirements must be directly related to the job and not additional duties. For example, having a truck driver walk through a hard hat zone to perform office tasks between trips may not be an appropriate cause.

Can an employer terminate a worker who refuses to wear PPE?

If an individual agrees to comply with a bona fide occupational requirement during the hiring process but refuses to comply with the same requirement while employed, the employer may choose to explore options for accommodation. When accommodation causes undue hardship and reasonable alternatives do not exist, the employer may not be able to retain the services of the worker (especially relevant when there is a reasonable risk that the worker may be harmed on the job).

On occasion, a new hazard may be identified which creates a new requirement for PPE. Given that the hazard did not exist or was unknown at the time of hiring, accommodation must be considered.

An employer cannot mandate the wearing of PPE when it is not a bona fide occupational requirement.

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