

You Raise the Issue

KEVIN FETH

Question: I am starting a new business and will have to hire a number of employees. What legal restrictions affect my choice of an employee?



Kevin Feth

There are certain restrictions on the wording of job advertisements and on your ability to choose who will be hired. Employers in Alberta must comply with the *Alberta Human Rights, Citizenship and Multiculturalism Act*. The *Act* prevents employers from publishing an advertisement that contains discriminatory specifications for prospective employees unless those specifications are legitimate and justifiable requirements for the position (i.e. bona fide occupational requirements). The *Act* states that an employer cannot refuse to employ a candidate on the grounds of race, religious beliefs, colour, gender (including sexual orientation), physical disability, mental disability, marital status, age, ancestry, place of origin, family status or source of income.

Employers hiring for a federally regulated business or an Indian Band must comply with the *Canadian Human Rights Act*. The grounds of discrimination under the *Canadian Human Rights Act* are slightly different than those under the *Alberta Act*, and include race, national or ethnic origin, colour, religion, age, sex (including pregnancy or child-birth), sexual orientation, marital status, family status, disability and criminal conviction for which a pardon has been granted. As with the *Alberta Act*, in the employment context, the *Canadian Human Rights Act* prohibits discriminatory job postings and also prohibits employers from refusing to employ individuals or from differentiating adversely in relation to an employee on the basis of any of the grounds of discrimination. The *Canadian Human Rights Act* also provides that hiring practices are not discriminatory if based on reasonable job requirements.

Question: Am I allowed to ask prospective employees for a criminal records check?

Employers may have a legitimate interest in whether prospective employees have been involved in criminal activity that could affect their ability to perform the work required. Alberta employers may ask potential employees to disclose their criminal records. In fact, the *Alberta Protection for Persons in Care Act* requires certain employers, including hospitals, nursing homes, senior's lodges and social care facilities, to obtain criminal records checks as part of the hiring process.

Usually, where employers are entitled to request criminal record checks, they restrict those requests to candidates to whom they intend to make an offer. A criminal record check can be obtained by the prospective employee from the local police or RCMP detachment for a small fee.

Employers in Alberta should also be aware that when prospective employees are asked to provide their criminal records, the criminal record will only show actual convictions; it will not show charges for which a person has not been convicted, nor will it show charges which are pending at the time of the request.

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Furthermore, people are only required to provide a positive response to a criminal record request where a criminal conviction has not been the subject of a pardon. If the prospective employee has been granted a pardon, no record of the conviction will be shown on a criminal record check and the candidate does not need to disclose the pardon or conviction.

Federally regulated employers are only permitted to inquire about criminal convictions for which no pardon has been granted. However, such employers may not refuse to employ, continue to employ, or treat differently an individual whose conviction has been pardoned.

DISCLAIMER this article should not be interpreted as providing legal advice. Consult your legal adviser before acting on any of the information contained in it. Questions, comments, suggestions and address updates are most appreciated and should be directed to:

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