



**Epilepsy Association of Calgary and the Edmonton Epilepsy Association present:**

# **Epilepsy & Employment**

**With:**

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# INTRODUCTION

**Epilepsy Association of Edmonton: "Epilepsy is a seizure of the brain that is characterized by recurrent seizures."**

**Epilepsy Association of Calgary: "Epilepsy is a word that is still associated with stigma, misinformation, and fear."**

**While the stigma is real, studies and statistics show that for employees with epilepsy, accident and absenteeism rates are lower, and performance and productivity are equal to or greater, as measured against employees who do not have epilepsy.**



# TOPICS TO BE DISCUSSED TODAY\*

**\*Note that we invite questions after each topic is discussed.**

**A. Privacy rights**

**B. Benefits (including group benefits) of employment**

**C. Occupational Health and Safety in the workplace**

**D. Human Rights: hiring, firing and the duty to accommodate.**

**At the end of this presentation, we note some additional references.**



# PRIVACY RIGHTS

Alberta employees have a qualified right to information privacy under the *Personal Information & Protection Act (PIPA)*. Similar rights and obligations are found under the *Freedom of Information & Privacy Act* for government employees, and the *Personal Information Protection and Electronic Documents Act* for federally regulated employees.

Two key definitions in PIPA:

- Personal information: information about an identifiable individual.
- Personal employee information: personal information of an employee (potential/current/former) that is "reasonably required" for the purposes of establishing/managing/terminating employment (including volunteer work).

General rule — collection, use and disclosure of personal information must always be both reasonable and necessary

General rule — employees must consent to the collection, use and disclosure of personal information (there are exceptions), unless it is "personal employee information".

Your health information is personal information and may or may not be personal employee information.

Individuals have the right to see what personal information an organization has collected about them, correct errors in that information, and bring a complaint under PIPA for an unauthorized collection/use/disclosure of information.



# BENEFITS OF EMPLOYMENT

In Alberta, employers do not have to provide employees with group benefits.

An employer can't discriminate (based on disability) in the provision of group benefits.

But, group insurance carriers can if such distinctions are based on reasonable and bona fide grounds.

How this may affect an employee with epilepsy:

- waiting periods at the outset of coverage;
- pre-existing disability exclusions;
- benefits terminate on last day of employment.

Consider rolling over life/disability insurance into a private plan following employment ceasing.

Workers Compensation (WCB) – not all employers/businesses are required to have WCB. WCB will compensate a worker for epilepsy if caused by a workplace head injury. WCB will compensate a worker for other injuries if such injuries result from a seizure while at work.



# OCCUPATIONAL HEALTH AND SAFETY

**All employers have an obligation to maintain a safe workplace. Employers are not expected to hire a person whose disability increases the probability of health or safety hazards to themselves or others.**

**All workers have an obligation to perform their job safely.**

**All workers have a right to refuse unsafe work, and to work free from harassment and bullying. Harassment and bullying are recognized as "workplace hazards". Such rights are protected under the OHS legislation.**



# HUMAN RIGHTS

*Alberta Human Rights Act and Canadian Human Rights Act – disability is a protected ground:*

- **Alberta – the definition of "disability" specifically includes epilepsy.**
- **Canada – disability is not defined, but clear that epilepsy is a disability within the meaning of that term in the *Canadian Human Rights Act*.**

**Who human rights legislation protects:**

- **Applicants for an employment position.**
- **Employees.**



**a. Sections 7 and 8 of the *Alberta Human Rights Act*.**

**Sections 7 and 8 of the *Alberta Human Rights Act* are the key sections:**

**7(1) No employer shall**

- (a) refuse to employ or refuse to continue to employ any person, or**
- (b) discriminate against any person with regard to employment or any term or condition of employment,**

**because of the ... physical disability ... of that person...**

**8(1) No person shall use or circulate any form of application for employment or publish any advertisement in connection with employment or prospective employment or make any written or oral inquiry of an applicant**

- (a) that expresses either directly or indirectly any limitation, specification or preference indicating discrimination on the basis of the ... physical disability ... of that person ..., or**
- (b) that requires an applicant to furnish any information concerning ... physical disability ...**



**b. Discrimination**

**Defined simply "discrimination" is treating an employee or applicant differently, intentionally or unintentionally, because of a ground (including disability) that is protected under human rights legislation. "Systemic discrimination" is a pattern of behavior, policies or practices that are part of an organization, and may create disadvantage for those with certain protected human rights characteristics.**



### **c. Applicants**

#### **The job application process:**

- **Can't be directly asked about a medical condition, prior benefit or disability claims, or state of health.**
- **Can't be indirectly asked.**
- **Can't be required to perform a medical examination.**
- **Post-offer medical examination is permissible if there is no other way of determining ability to perform key duties, and must relate to key duties.**

**In most circumstances, applicants are not obligated to volunteer health information.**



#### **d. Termination/Adverse Treatment**

**Terms of Employment and Adverse Treatment: an employer can't adversely (fail to promote, pay lesser salary, provide fewer opportunities) treat an employee because of a disability.**

**Disability in relation to employment is the most commonly cited ground in human rights complaints: The Alberta Human Rights Commission reported for 2021 - 22 that 70% of the complaints were in relation to employment practices (section 7), and 1% in relation to applications for employment (section 8). For the same period of time in Alberta, disability was the most cited ground (44%).**

**An individual who makes a human rights complaint has the onus to prove that they (i) have a characteristic protected by the legislation, (ii) experienced an adverse impact, and (iii) the protected characteristic was a factor in the adverse impact. Once prima facie discrimination is established, an employer may be able to justify its decision based on a BFOR.**



## Termination of Employment:

- **Employees can be terminated on a whim, but generally can't be terminated for a disability. It is a breach of the Alberta *Human Rights Act* if:**
  - **one of the many reasons for the termination is disability; or**
  - **disability is indirectly the reason (e.g. absenteeism, but such absenteeism is to attend medical appointments).**
- **Exceptions:**
  - **"just cause".**
  - **frustration (the employment relationship is incapable of performance) of the employment relationship.**
  - **employee has failed to cooperate in the accommodation process.**
  - **BOFR (employer's standard rationally connected to its purpose, honest/good faith, and impossible to accommodate without undue hardship).**



### **Duty to Accommodate:**

- **Employers have a positive duty to accommodate their employees' workplace limitations to the point of undue hardship. Employees are involved in such process, as are their health care professionals. All parties must be reasonable, and collaborate.**
- **The employer must (i) obtain an assessment (from the employee's doctor) of the workplace limitations, and (ii) once the limitations are known, the employer must make a reasonable effort to accommodate by modifying the job position, or finding a new position that fits the workplace limitations.**
- **The employee must inform the employer of the need for accommodation, provide medical information on the limitations (length of time and capabilities for alternative work), accept reasonable accommodation, and continue to work with the employer on the process.**
- **When epilepsy is the disability, common accommodations may be keeping the employee away from ladders, not operating motorized equipment, scheduling a steady shift, altering lighting, being flexible about how to work from home or make up time. As stated in a BC publication "Epilepsy and the Law": "Workplace accommodations for epilepsy are inexpensive, easy to make and require some creativity and flexibility".**
- **While an employee is required to provide information in the furtherance of accommodation, specific diagnosis are generally not required, and the employer must maintain privacy (only use as necessary).**



## Resources:

- [www.albertahumanrights.ab.ca](http://www.albertahumanrights.ab.ca) – excellent information sheets regarding human rights and employment, protected grounds, and accommodation.
- [www.oipc.ab.ca](http://www.oipc.ab.ca) – privacy legislation and resources from the Office of the Information and Privacy Commissioner of Alberta.
- [www.epilepsycalgary.com](http://www.epilepsycalgary.com) – for contact and program information, resources including epilepsy in the workplace, and to request an education session for a workplace.
- [www.edmontonepilepsy.org](http://www.edmontonepilepsy.org) – for contact and program information, and epilepsy information booklets (including resources for employers/employees).
- [www.bcepilepsy.com](http://www.bcepilepsy.com) – for detailed publication created by the Victoria Epilepsy & Parkinson's Centre titled "Epilepsy and the Law – what are the legal rights of a person with epilepsy in British Columbia?"
- [www.canlii.ca](http://www.canlii.ca) – human rights decisions (court and tribunal), free of charge.
- *Desson v. Royal Canadian Mounted Police, 2023 CHRT 1* – recent decision regarding a human rights complaint brought by an employee claiming discrimination (a failure of the RCMP's duty to accommodate) related to disability (epilepsy).

