

Employment: Releases, severance agreements and human rights law



Alberta Human Rights
and Citizenship Commission

INFORMATION SHEET

An employee can make a human rights complaint to the Alberta Human Rights and Citizenship Commission if they believe an employer has discriminated against them. The Commission will review the complaint to determine if it is acceptable under Alberta's human rights law, the *Human Rights, Citizenship and Multiculturalism Act*.

Discrimination under the *Act* occurs when an individual is treated differently from others because of a personal characteristic that the *Act* protects. The *Act* protects people from discrimination based on the following personal characteristics: physical disability, mental disability, race, colour, ancestry, place of origin, religious belief, gender, age, family status, marital status, and source of income. The Supreme Court of Canada has also read sexual orientation into the *Act*, so it is a protected characteristic too. For more information about protection under the *Act*, see the Commission's information sheet *Protected Areas and Grounds*.

What happens if there is a severance agreement and an employee signs a release?

Employees sometimes sign releases as part of severance agreements with their employers. A release relieves an employer of their obligation or responsibility to an employee. It can be a clause in the severance agreement or a separate document altogether.

Even if an employee signs a release, they may still have the right to make a human rights complaint. They can make a human rights complaint to the Alberta Human Rights and Citizenship Commission if:

1. they believe their employer has discriminated against them under the *Act*, **and**
2. they believe the release that they signed is not valid.

A release is not in itself considered to be discriminatory, so an employee cannot make a human rights complaint simply because they have signed a release or been asked to sign a release. They can only make a complaint if they believe the employer discriminated against them under the *Act*, and they believe the release is not valid. If the employee believes the agreement is valid, then the employee cannot make a human rights complaint.

Complaint process when there is a release

When there is a severance agreement that includes a release, the human rights complaint process differs from the usual process. The Alberta Court of Queen's Bench has ruled that if there are reasonable questions about the validity of a signed release, the chief commissioner will appoint a panel to determine if the release is valid, that is, if it is legally binding and enforceable. The chief commissioner must take this step before the usual human rights complaint process can take place.

The employee must explain to the panel why they believe the release is not valid. Both the employee and the employer may provide written submissions or oral evidence at the panel hearing.

Questions about releases

A human rights panel may ask questions to determine if a release is valid, including:


1. How is the release worded?
2. Was the settlement substantially unfair?
3. Was there undue influence that forced the employee to sign the release or severance agreement?
4. Did the employee receive independent legal advice before signing the release?
5. Did the employee experience duress? (That is, did the employee experience unlawful pressure to act against their will? Feelings of stress and unhappiness are not enough to prove duress.)
6. Did the parties signing the release know about the human rights complaint process?
7. Did the employee lack the mental capacity to make a good decision about the release?
8. Was there any other reason that would make the release invalid?

If the release is valid

The panel may find that the release is valid. In this case, the panel must dismiss the complaint because the Commission has no jurisdiction.

If the release is not valid

The panel may find that the release is not valid. In this case, the panel will return the complaint to the director of the Commission. The complaint will then proceed through the complaint process set up under Alberta's

Human Rights, Citizenship and Multiculturalism Act. For more information on the complaint process, see the Commission's information sheet *The Complaint Process*. 

Contact the Commission

For more information, please contact the **Alberta Human Rights and Citizenship Commission**. We are an independent commission of the Government of Alberta. Our mandate is to foster equality and reduce discrimination. We provide public information and education programs, and help Albertans resolve human rights complaints.

Northern Regional Office

800 Standard Life Centre
10405 Jasper Avenue
Edmonton, Alberta T5J 4R7
(780) 427-7661 Confidential Inquiry Line
(780) 427-6013 Fax

Southern Regional Office

Suite 310, 525 – 11 Avenue SW
Calgary, Alberta T2R 0C9
(403) 297-6571 Confidential Inquiry Line
(403) 297-6567 Fax

To call toll-free within Alberta, dial 310-0000 and then enter the area code and phone number.

For province-wide free access from a cellular phone, enter *310 (for Rogers-AT&T) or #310 (for Telus).

TTY service for persons who are deaf or hard of hearing

(780) 427-1597 Edmonton
(403) 297-5639 Calgary
1-800-232-7215 Toll-free within Alberta

E-mail humanrights@gov.ab.ca

Web site www.albertahumanrights.ab.ca

Please note: A complaint must be made to the Alberta Human Rights and Citizenship Commission within one year after the alleged incident.

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