

Employment: Releases, severance agreements and human rights law

INFORMATION SHEET

An employee can make a human rights complaint to the Alberta Human Rights 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 *Alberta Human Rights 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: race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation. 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 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

The Alberta Court of Queen's Bench has stated that the Alberta Human Rights Commission cannot follow its regular complaint process when an employee who has signed a release makes a human rights complaint.¹

¹ Chow [Re] 1999 ABQB 1026

After the Commission accepts the complaint and determines that there is a signed release, the Commission will contact both the employee (the complainant) and the employer (the respondent) to explain the process and collect their information. The Commission will ask the complainant to provide their reasons for believing that the release is not valid and enforceable. The Commission will also ask the respondent if they wish to comment on the validity of the release and the complainant's reasons for believing it is not valid.

The Commission Director then considers both the complainant's reasons and the respondent's comments to decide whether the complainant has made a reasonable objection to the release. If the Director decides that the complainant's objection is not reasonable, then the Director will dismiss the human rights complaint and the complainant may appeal the dismissal to the Chief of the Commission and Tribunals. If the Chief does not agree with the Director's dismissal, a tribunal may be appointed. If the Director decides that the complainant has made a reasonable objection, then the Director will ask the complainant whether they want their complaint to proceed to a human rights tribunal hearing to determine if the release is valid, that is, if it is legally binding and enforceable. Only a tribunal can make a decision about the validity of the release.

If the complainant wants to proceed to a tribunal hearing, then the Director will ask the Chief of the Commission and Tribunals to

appoint a tribunal. The complainant then will explain to the tribunal why they believe that the release is not valid. Both the complainant and respondent may provide written or verbal evidence about the release at the tribunal hearing, and may also use their own lawyer if they choose to do so.

Questions about releases

A human rights tribunal 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 tribunal may find that the release is valid. In this case, the tribunal must dismiss the complaint because the Commission has no jurisdiction.

If the release is not valid

The tribunal may find that the release is not valid. In this case, the tribunal will return the complaint to the Commission Director. The complaint will then proceed through the Commission's regular complaint process. In certain limited circumstances, the tribunal may not decide to return the complaint to the Director, but rather the tribunal will proceed to hear the substantive issue as to whether there has been a contravention of the *Act*.

Contact us

The Alberta Human Rights Commission is 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.

**Hours of operation: 8:15 a.m. to 4:30 p.m.
Monday to Friday (holidays excluded)**

Northern Regional Office (Edmonton)
800 – 10405 Jasper Avenue NW
Edmonton, Alberta T5J 4R7
780-427-7661 Confidential Inquiry Line
780-427-6013 Fax

Southern Regional Office (Calgary)
200 J.J. Bowlen Building
620 – 7 Avenue SW
Calgary, Alberta T2P 0Y8
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.

TTY service for persons who are deaf or hard of hearing
1-800-232-7215 Toll-free within Alberta

Email: humanrights@gov.ab.ca
Website: albertahumanrights.ab.ca

Please note: The Commission must receive your completed complaint form or letter within one year after the alleged contravention of the *Alberta Human Rights Act*. The one-year period starts the day after the date on which the alleged contravention of the *Act* occurred. For help calculating the one-year period, contact the Commission.

The Commission will make this publication available in accessible formats upon request for people with disabilities who do not read conventional print.