



a workplace for all

**Bargaining Equality**

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**Discrimination**

**Equality-seeking groups** have historically been subjected to discrimination in employment. Before employment discrimination was against the law, employers routinely refused to promote women into better paying and more secure positions. They fired pregnant women and lesbian, gay, bisexual and transgender (LGBT) people, and refused to hire Aboriginal people, persons of colour and persons with disabilities. While equality-seeking groups are still discriminated against in many workplaces, we now have the tools to fight back. These tools include the collective agreement and human rights law.

Discrimination affects everyone. Fighting it is important because a discrimination-free workplace benefits all workers. A discrimination-free workplace:

- has less staff turnover,
- is more productive, and
- is less likely to have incidents of harassment and violence.

A workplace that is prone to discrimination poisons the work environment and is a major cause of worker stress, illness and even accidents. Discrimination weakens the union and threatens our solidarity. We cannot afford to be divided when employers are attacking our members' jobs through privatization and contracting out. Locals need to be strong at the bargaining table to secure better wages and working conditions for all members.

Most provincial human rights legislation prohibits discrimination in employment on the basis of disability, gender, race, religion, sex, and sexual orientation, to name but a few of the protected grounds (for a list that applies to your jurisdiction, check your provincial human rights code). A majority of CUPE collective agreements also contain protections against discrimination. "No discrimination" clauses give the union the right to challenge discrimination through grievance/arbitration, which are faster processes compared to filing a human rights complaint.

CUPE locals have negotiated "no discrimination" clauses that refer to the prohibited grounds listed in human rights legislation. CUPE collective agreements also list specific grounds for discrimination that are not explicitly included in legislation. This latter tactic allows the collective agreement to negotiate "beyond the law" to prohibit discrimination on the basis of transsexual transition status, gender identity, HIV/AIDS, and a criminal record unrelated to the job (or for which a pardon has been granted).

The best way to make sure members have maximum protection against discrimination is to bargain both. We need to make sure our collective agreements require compliance with human rights legislation, and that they include not-yet-listed grounds of discrimination.

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**Resources:**

*Pride in CUPE*, workshop.

*Stop Harassment: A Guide for CUPE Locals*, CUPE, booklet.

*Saying No to Harassment*, CUPE, workshop.

*Code of Practice on HIV/AIDS and the World of Work*, International Labour Office (ILO).

*Out to Work: Lesbian, Gay, Bisexual, Transgender and Transsexual Youth and Work*, Supporting Our Youth, booklet.

## Fighting Discrimination

- Does your agreement have a non-discrimination clause? Is it up to date?
- Does it cover all the grounds listed under human rights legislation?
- Does it provide protections from discrimination on grounds not covered under most human rights legislation such as gender identity, transsexual transition status, HIV/AIDS, and criminal record unrelated to the job (or for which a pardon has been granted)?
- Does the definition of “spouse” include same-sex partners?
- Does the definition of “family” include same-sex couples and their children?
- Is there a gender-specific dress code that discriminates against transgender members?
- Is it clear that discrimination is prohibited and will not be tolerated?
- Does it address situations of discrimination by management, co-workers, the public, and users of the services CUPE members provide?
- Is counselling or the services of an Employee Assistance Program available to members who have experienced discrimination?
- Are educationals aimed at combatting discrimination available to members and management?

## LANGUAGE

### ***CUPE Local 4150 and the Nova Scotia Health Organizations***

#### Article 4 – No Discrimination

4.01 The Employer and the Union agree that all Employees will be protected against discrimination respecting their human rights and employment in all matters including age, race, colour, religion, creed, sex, sexual orientation, pregnancy, physical disability, mental disability, illness or disease, ethnic, national or aboriginal origin, family status, marital status, source of income, political belief, affiliation or activity, membership in a professional association, business or trade association, employers' organization or Employees' organization, physical appearance, residence, or the association with others similarly protected, or any other prohibition of the *Human Rights Act of Nova Scotia*.

### ***CUPE 3906 (Unit 1) and McMaster University (Letter of Understanding)***

The University agrees that Acquired Immune Deficiency Syndrome (AIDS), AIDS related illnesses, AIDS Related Complex (ARC), Positive Immune Deficiency Virus (HIV+) are disabilities and fall under the purview of the Ontario Human Rights Code.

### ***CUPE Local 3903 and York University***

#### Article 4 – Discrimination and Harassment

4.01 The Employer and the Union agree that there shall be no discrimination, interference, restriction, harassment or coercion, including no mandatory blood or urine tests, including but not limited to as these relate to Acquired Immune Deficiency Syndrome (AIDS), AIDS-related illness, AIDS-Related-Complex, or positive immune deficiency test, and including no genetic screening for specific medical disabilities or pregnancy, exercised or practised with respect to any member of the bargaining unit in any matter concerning the application of the provisions of this Agreement by reason of race, creed, colour, age, sex, marital status, parental status, number of dependents, nationality, ancestry, place of origin, native language (subject to Article 12.02.1), disability or disabilities (subject to Article 12.02.1), Acquired Immune Deficiency Syndrome (AIDS), or AIDS-related illness, or AIDS-Related-Complex, or positive immune deficiency test (virus HIV) (subject to Article 12.02.1), political or religious

affiliations or orientations, academic affiliations or orientations (subject to the exercise of academic freedom as set out in Article 14.01), record of offences (except where such a record is a reasonable and bona fide ground for discrimination because of the nature of the employment), sexual orientation, transsexual transition status, gender expression, and gender identity, nor by reason of her membership or non-membership or lawful activity or lack of activity in the Union, or the exercise of any of the rights under this Agreement. The Employer undertakes that no York University student who is or has been employed in Unit 2 shall be penalized in her student status for the exercise of any of her rights under this Collective Agreement or by reason of her membership or non-membership or lawful activity or lack of activity in the Union.

### ***CUPE 3908, Unit 1 and Trent University***

#### **Policy on Acquired Immune Deficiency Syndrome**

Trent University will not tolerate discrimination against any visitor, student, faculty or staff member who has AIDS or who tests positively for the HIV antibody. At the same time, the University expects and will require infected persons to conduct themselves in a responsible manner.

Infected students are encouraged to continue their studies as long as they are physically and mentally able to do so. In a similar fashion, infected faculty or staff members are encouraged to perform their regular duties as long as their health permits. All cases related to the AIDS virus on campus will be handled in a confidential manner, with strict "need-to-know" restrictions for access to the information. There will be no mandatory testing or screening of students, faculty, or staff for HIV infection (including AIDS).

The University will continue to develop educational programs about AIDS for students and employees. In this way the community will be informed and misunderstandings as to the spread of the disease will be minimized. In addition, these educational programs will emphasize prevention to encourage individuals to avoid high-risk activities and thereby reduce the chance of infection.