

What is a B.F.O.R? (Bona Fide Occupational Requirement)

As an employer, you may lawfully discriminate, based on an otherwise prohibited ground, if you can prove legitimate business reasons. However, you must be able to demonstrate that the workplace rule, policy, standard or criteria relied upon is a "bona fide occupational requirement."

The Supreme Court of Canada has established a three-step test for determining that what seems like a discriminatory standard is instead a bona fide occupational requirement (BFOR). In order to prove that the standard is indeed a BFOR, the employer must demonstrate:

1. that the employer adopted the standard for a purpose rationally connected to the performance of the job;
2. that the employer adopted the particular standard in an honest and good faith belief that it was necessary to the fulfilment of that legitimate work-related purpose; and
3. that the standard is reasonably necessary to the accomplishment of that legitimate work-related purpose.

This approach is based on the need to develop standards that accommodate the potential contributions of all employees without imposing undue hardship on the employer. This is known as the employer's "duty to accommodate." Unless no accommodation is possible without imposing undue hardship, the standard at question is not a BFOR. Each step of this test is explored in further detail below.

STEP ONE – RATIONAL CONNECTION

The first step is intended to identify the general purpose of the standard at question and determine whether it is rationally connected to the performance of the job. The initial task is to determine what the standard is generally designed to achieve. For example, the ability to work safely and efficiently is a typical purpose at this stage, though there are many possible reasons that you might seek to impose a certain standard on your employees.

Essentially, at this stage in the test, you must ask yourself, "Why have I introduced this standard?" and, "What am I trying to achieve through the use of this standard?" The answer to these questions will illustrate the general purpose of the standard. Next, you must ask, "Is this purpose rationally connected to the performance of the job in question?"

STEP TWO - HONEST AND GOOD FAITH BELIEF

The employer must demonstrate that you honestly believed that adopting the particular standard was necessary to achieve your purpose. Furthermore, you

must prove that you adopted the standard with no intention of discriminating against the claimant.

STEP THREE – REASONABLY NECESSARY

The third and final hurdle is to demonstrate that the standard is reasonably necessary for you to accomplish your purpose. In order to do so, you must establish that you cannot accommodate the claimant and others negatively affected by the standard without experiencing undue hardship. Employers have a duty to accommodate a disabled employee to the point of undue hardship. A variety of factors may be considered in assessing when the point of undue hardship has been met, including, but not limited to, the financial cost of such accommodations, the disruption of operations, and any health and safety concerns.