



## Employment Law and First Nations

This resource guide highlights two foundational issues relating to employment in the First Nation context that can have significant consequences for employers and employees: (1) which jurisdiction applies and (2) the place of Human Rights law.

### Issue 1: Does federal or provincial law apply?

First Nations employers must determine whether their employees fall under federal (*Canada Labour Code*) or provincial (*Employment Standards*) legislation. This determination is not always clear, and the effect of a wrong-choice can invalidate an otherwise binding contract.

#### First Nations Governance

Where an *Indian Act* “band” is concerned, core governmental functions will usually fall under federal law. This means the *Canada Labour Code* applies to those employees (usually tasked with administering “band” operations).

The *Canada Labour Code* provides non-unionized workers with near-unionized levels of protection for their employment. When an employer terminates an employee without “just cause”, that termination is susceptible to being challenged under the *Code* as an unjust dismissal. Labour arbitrators may reinstate unjustly terminated employees or order a whole host of remedies not usually granted by law courts.

Employers contemplating terminating an employee should seek legal advice to avoid a challenge.

#### Non-Governance Operations

Operations that are not strictly related to the administration of a “band” are increasingly considered to fall under provincial legislative jurisdiction. This applies most clearly to on private enterprises, whether operated on or off reserve, but also to First Nation government-run or sponsored programming (such as government-industry relations offices), charitable organizations, or benefit associations.

#### Why it matters

The line between federal and provincial jurisdiction is often gray. Employers are advised to seek legal advice in order to ensure they are following the correct statutory requirements contracts void or unenforceable.

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**Issue 2: Does Human Rights Laws apply to First Nation employment matters?**  
Whether an operation is federal or provincial, human rights legislation will apply. For employers that are federally-regulated, the *Canadian Human Rights Act* governs. The Act prohibits discrimination in the provision of employment and public services.

While the *CHRA* does allow “affirmative action” hiring practices for First Nations employers, it prohibits discrimination between Indigenous groups. For example, a First Nation employer may be susceptible to a human rights complaint if it denies employment to a suitably qualified Indigenous person that is from a different First Nation. Similarly, discrimination against other Indigenous persons by a First Nation government may result in complaint.

### Have Questions?

This article is intended to provide general guidance and should not be taken as legal advice about any specific situation. JFK LLP seeks to provide advice on Indigenous employment issues tailored to the Nation, person, and situation at hand. Please feel free to contact our offices should an employment matter arise for you or your community.

The Aboriginal Financial Officers Association of Saskatchewan published a helpful presentation on provincial vs federal jurisdiction that is available [here](#).

The Canadian Human rights Commission publishes a helpful “Human Rights Handbook for First Nations” available [here](#).

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