



Document 1: Overview of Employment Equity



Human Resources
Development Canada

Labour Program

Développement des
ressources humaines Canada

Programme du travail

Canada

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INTRODUCTION

This document is intended to provide background on the *Employment Equity Act* so that readers will understand its context. Separate guidelines address the methodology of implementing the *Act*.

Other documents to consult include the *Act* and *Regulations*, as well as documents available from the Canadian Human Rights Commission (CHRC) relating to the audit process.

THE PURPOSE OF THE *EMPLOYMENT EQUITY ACT*

Any examination of salaries, occupations, career patterns, unemployment and labour force participation rates indicates serious disparities between the labour force experiences of women, Aboriginal peoples, persons with disabilities and members of visible minorities and those of other working age individuals.

To address these disparities, the government passed into law the *Employment Equity Act* to ensure that no one is denied employment opportunities and benefits for reasons unrelated to ability. The *Act* states that this is achieved by correcting disadvantages in the workplace experienced by the four designated groups mentioned previously. It is also achieved by implementing the principle that employment equity means more than treating people in the same way but also requires special measures and the accommodation of differences.

The *Act* is designed so that the outcome of its implementation is an equitable representation of women, Aboriginal peoples, persons with disabilities and members of visible minorities in workplaces across Canada. Employers are expected through an analysis of their workforce and employment policies and practices to develop employment equity plans. The plans include the elimination of employment barriers and special measures to enhance employment opportunities for members of the four designated groups.

Employers Subject to the *Employment Equity Act*

The following organizations are subject to the *Employment Equity Act*:

- all federally regulated employers with 100 or more employees, including organizations in industries such as banking, communications, and international and interprovincial transportation.
- there are approximately 350 private sector employers and Crown corporations which represent 587,400 employees.
- all federal departments, representing approximately 220,000 employees; and
- other parts of the Public Service, including the Canadian Forces and the Royal Canadian Mounted Police as may be specified by order of the Governor in Council on the recommendation of the Treasury Board.

Steps in Implementing an Employment Equity Program

The following steps are required when implementing an effective employment equity program. The *Employment Equity Act*, the *Regulations* and the *Guidelines* provide explanations on how these steps are to be implemented.

The steps are as follows:

1. developing the organizational commitment and structure for an employment equity program. This includes getting the commitment of the chief executive officer, assigning responsibility for the program to a senior executive, making an announcement to all staff about the program, and appointing staff to undertake the administrative functions of the program;
2. developing a mechanism to consult and collaborate with employee representatives. This can be done through the establishment of an employment equity committee or by another means appropriate to the organization. Consultation and collaboration is an ongoing process, and is essential for an effective employment equity program.
3. conducting a workforce survey, that is, asking employees whether or not they are members of the designated groups;
4. undertaking a workforce analysis, that is, analyzing the representation of designated group members in the employer's workforce and comparing it to the representation in the appropriate segments or all of the Canadian workforce. This is done to determine if equitable representation exists within the employer's workforce;

5. undertaking an employment systems review, that is, examining all human resource policies and practices to determine if any barriers exist that prohibit the full participation of designated group members within the employer's workforce. This review includes examining policies and practices as they relate to the special needs of members of designated groups;
6. developing and implementing an employment equity plan to address the inequities discovered through the workforce analysis and employment systems review. The plan must include the following:
 - positive policies and practices to accelerate the integration of designated group members in employers' workforces;
 - elimination of employment barriers pinpointed during the employment systems review;
 - a timetable for implementation;
 - short term numerical goals; and
 - longer term goals; and
7. monitoring the implementation of the plan and reviewing and revising it as necessary.

Reasons for Employment Equity

Although the primary reasons for implementing employment equity programs is to improve the status of the designated group members in the labour force, it has become increasingly clear that employers benefit from having strong employment equity programs.

All employees, designated and non-designated group members, will receive benefits from properly implemented and maintained employment equity concepts and principles.

“As much as it (employment equity) is statistically justifiable, socially desirable and morally the right thing to do, it is also a fundamental necessity in today’s business world. Even a cursory examination of current market conditions makes it abundantly clear that Canadian companies must fully capitalize on this country’s greatest resource, its rich and diverse workforce, if they are to remain competitive in an increasingly global economy.”

*--Hon. Sheila Finestone,
Secretary of State for
Multiculturalism and
Status of Women,
May 1995*

Business benefits

Larger markets:

Canadian senior executives are beginning to realize that to be profitable they need to expand their customer base, and one way of doing so is to tap into markets previously ignored. This means going abroad, for example into Asia, and recognizing that the customer base at home is rapidly changing as a result of changing demographics.

In a recent study by the Conference Board of Canada, 58 per cent of respondents to a survey indicated that they had taken advantage of Canada's ethnocultural diversity in expanding into international markets. Nearly two-thirds of these organizations felt they had benefited from these efforts. About half of the respondents indicated that they had found it necessary to meet the need of an increasingly ethnoculturally diverse customer base within Canada. The majority of these companies reported an increase in market share.

- “The biggest lesson is to understand that employment equity is a continuous process, that it must become part of the corporate culture and recognized for its positive contributions to the company's performance in terms of its business and financial success.”

WIC Western International Communications
Employment Equity Annual Report
1996

- “...In a time of belt tightening, the optimal use of resources is not just an asset but a question of survival. In this respect, employment equity becomes a powerful tool for management (and marketing) giving a strategic advantage to businesses that uphold its principles.”

Canadian National
Employment Equity Annual Report, 1996

Selected Costs and Benefits of Instituting a Diversity Management System	
<i>Reprinted with permission from "Measuring the Impact of Diversity", 1996, . The Canadian Institute of Chartered Accountants, Toronto, Canada</i>	
COSTS	BENEFITS
<ul style="list-style-type: none"> • cost of time to establish diversity policies and procedures • cost of developing and maintaining an inventory of organizational skills • cost of developing and maintaining internal communications vehicles on diversity • cost of developing appropriate evaluation and reward systems • cost of executing the policies, procedures, evaluations and reward systems • cost of training and education to entrench diversity values • cost of image building and public relations efforts related to diversity • cost of expanded benefits systems which acknowledge diverse needs • cost of preparing supplement to annual report 	<ul style="list-style-type: none"> • decreased dysfunctional turnover cost • decreased cost of absenteeism • increased productivity and efficiency of employees • decreased cost of poor quality goods and services • decreased cost of outside consultants • increased effectiveness and productivity of teams • decrease in legal and reputation costs of diversity-related employee grievances • increased organizational innovation • increased employee morale and job satisfaction • increased customer service and satisfaction • enhanced organizational reputation • increased long-run profitability and financial health

Larger Labour Pools:

By the year 2016, approximately, two thirds of the Canadian population aged 15 to 64 will be made up of designated group members. These people represent a great pool of skills and talents that employers cannot afford to overlook if they want to succeed in today's competitive, knowledge-based marketplace.

- “Progress in achieving workforce diversity and workplace equality goes hand-in-hand with success in the fiercely competitive financial services industry where the single most significant contributor to our capacity to differentiate ourselves in the eyes of the increasingly diverse customers demanding increasingly customized service is the quality of our employees - representative employees who understand our customers' business culture and personal priorities, and whose skills, knowledge and background are leveraged to the fullest extent possible.”

Bank of Montreal
Employment Equity Annual Report, 1995

Better Human Resource Policies and Practices:

Employment equity not only helps organizations deal with the changing demographics of Canadian society, but also leads to better management systems in the areas of recruitment, selection, promotion, hiring and an improved organization culture that benefits all employees.

This is particularly evident when reviewing human resources policies and practices for adverse impact on designated group members. Very often practices and policies have a negative impact on all employees, not just designated group members. These can be eliminated to the advantage of everyone. Measures designed to help one designated group may in fact help all employees in an organization. For instance, a day care centre set up to help female employees, will also help male employees who use the centre.

- “No employer can afford to ignore any available source of talent including designated groups such as women, visible minorities, Aboriginal peoples, and people with disabilities. In fact, by the year 2000, less than 20 per cent of the new entrants to the workforce will be white and male. Any organization which does not prepare itself to successfully manage and motivate a highly diverse workforce is likely to encounter a multitude of employee relations and other business issues.”

Sherran L. Slack,
Vice President, Human Resources,
Warner-Lambert Canada Inc.
1995

Good Public Relations:

Organizations will often receive good public relations if they implement employment equity. They will be seen as good corporate citizens and as attempting to redress some of the employment hardships faced by designated group members.

- “Diversity has traditionally been considered the domain of politicians and social engineers who have looked to legal and regulatory solutions to ensure workplace diversity...such legislated solutions have often been viewed by organizations as a threat to their autonomy and as such an added cost of regulatory compliance. But organizational attitudes are changing as more companies learn how diversity as a key intellectual asset can help ensure long-term organizational health and survival. Valuing and managing diversity can increase the organization’s long-term wealth by, for example, creating value added customer and client relationships and providing products and services that are the ‘best in the world’...”

Reprinted with permission from
“Measuring the Impact of Diversity, 1996”
The Canadian Institute of Chartered Accountants
Toronto, Canada

Social justice benefits

All the data indicates that designated group members experience particular difficulties in the labour force. Employment equity is designed to address these difficulties and allow designated group members to take their rightful place in the Canadian labour force.

- “If we do not act positively to remove barriers, we wait indefinitely for them to be removed. This would mean that we are prepared in the interim to tolerate prejudice and discrimination. By not acting, we unfairly ignore how inherently invalid these exclusionary distinctions are, and we signal our acceptance as a society that stereotypical attitudes assigned to designated group members are appropriate justifications for their disproportionate disadvantages. No exigency, economical or political can justify the knowing perpetuation of inequality in Canada. If we fail to rectify it we guarantee its survival. It is probable that absolute equality is unattainable. But even if absolute equality is unattainable, no civilized society worthy of the description can afford not to struggle for its achievement. We may not be able to achieve absolute equality, but we can certainly reduce inequality.”

Judge Rosalie Silberman Abella
Royal Commission Report
“Equality in Employment”, 1984.

Legal Benefits

Organizations are required by law to implement employment equity. If employers fail to file an annual report with Human Resources Development Canada, they may face a monetary penalty. In addition, the Canadian Human Rights Commission has the authority to ensure employers are complying with the law. The Commission may negotiate undertakings and issue directions and orders to employers who are not meeting their obligations under the *Employment Equity Act*. Employment Equity Tribunals can make orders which are similar to orders of a federal court.

Employment equity is a pro-active program designed to eliminate discrimination from the workplace. As such it can help to reduce individual cases of discrimination.

History of Employment Equity

The *Employment Equity Act* is a statute that has emerged from 30 years of experience with anti-discrimination programs.

Employment equity started out in Canada as a small experiment in eliminating workplace discrimination through a voluntary approach for a few interested employers. From this, it has changed over the years to mandatory programs which include almost all federally regulated employers with 100 or more employees, the federal public service and provincially regulated employers which have goods and services contracts with the federal government worth \$200,000 or more.

Initially, exclusion of certain groups from employment and in promotions was seen as a human relations problem - the result of bias or malice. To eradicate this type of conduct from the workplace, human rights legislation was enacted from the 1940s to the 1970s by both federal and provincial governments. By the mid-1970s however, questions were being raised about the overall effectiveness of these individual complaint-based statutes in combating broad-based employment disadvantages which continued to be experienced by certain groups.

It became apparent that exclusion could result not only from conscious bias, but also from unintentional practices or systems. Even a seemingly neutral employment policy or practice could have an adverse impact on the opportunities of certain groups of individuals.

Even a seemingly neutral employment policy or practice can have an adverse impact on the opportunities of certain groups of individuals.

The concept of “equality” took on a new form. No longer was it enough to treat everyone the same, regardless of differences. Equality, to be assured, has to recognize and accommodate for these differences. This concept was part of the basis for employment equity as it began to emerge in Canada.

In 1978, the federal government launched a voluntary affirmative action program aimed at private industry and federal contractors. Crown corporations were included in the following year. These voluntary programs were delivered from Employment and Immigration Canada which is now part of Human Resources Development Canada. Departmental consultants were hired across the country to work with employers to help them develop affirmative action programs. By 1983, affirmative action programs were extended to all departments of the federal public service.

At this time the program was directed at women, Aboriginal peoples and persons with disabilities. Members of visible minorities were included in 1985.

The legal basis for these programs was the *Canadian Human Rights Act*. Section 16.1 of the *Act* states that "it is not a discriminatory practice for a person to adopt or carry out a special plan or arrangement designed to prevent disadvantages . . . or to eliminate or reduce disadvantages that are suffered by any group of individuals when those disadvantages would be or are based on or related to the race, national or ethnic origin, colour, religion, age, sex, marital status, family status or disability of members of that group, by improving opportunities respecting goods . . . or employment in relation to that group". This section of the *Canadian Human Rights Act* is still the cornerstone of employment equity programs today. In 1982, the *Canadian Charter of Rights and Freedoms* constitutionally affirmed the right to equality in employment.

The Canadian Human Rights Act and the Employment Equity Act provide the legal basis for special programs for designated group members.

Although some progress was being made in the public service and with private sector employers

which were voluntarily implementing what was then called affirmative action, the status of the designated groups in the labour force continued to be poor. So in 1983, the federal government created a Royal Commission whose mandate was to study equal employment opportunities. This commission was chaired by Judge Rosalie Abella and it tabled its report *Equality in Employment* in November 1984. The report proved to be a watershed for employment equity in Canada.

In response to the Abella Report, the government announced three major initiatives:

- The *Employment Equity Act* came into force on August 13, 1986. It made employment equity mandatory for federally regulated companies with 100 or more employees.
- The second initiative announced was the Federal Contractors Program for employment equity which covered companies with 100 employees or more that submit bids or tender for federal contracts to deliver goods or services valued at \$200,000 or more. These employers must certify their commitment to implement employment equity initiatives in order to be included on the list of suppliers and as a condition of their contract. There are approximately 750 employers with federal contracts covering almost one million employees.
- The third initiative was an employment equity policy covering the entire public service, because the public service was not subject to the *Employment Equity Act*.

Given the innovative nature of the program, the *Employment Equity Act* stipulated that a parliamentary review committee should be established five years after implementing the *Act* to assess its impact. The committee, chaired by MP Alan Redway, noted in its 1992 report essentially the same thing Abella had noted eight years earlier - that is, designated group members were not making as much progress in the labour force as they should.

Although the government of the day did not respond to the Redway Report before a federal election in 1993, the new government took action when it came to power. The data on the status of designated groups demonstrated to the new government of the need for strong legislative action on behalf of women and minorities. While the data demonstrated that women and members of visible minority groups were making some progress in the workforce covered by the 1986 *Employment Equity Act*, the labour force situation for Aboriginal peoples and persons with disabilities was changing only slightly.

Legislation was necessary to speed up the integration of designated group members in the labour force.

So, although the *Act* was having some impact, it was felt progress could be faster.

As a result of these data, the report of the parliamentary review committee and increasing pressure by well-organized advocacy groups, the government responded by developing new and improved legislation, the result of which was the *Employment Equity Act* of 1995, which came into force in 1996.

Differences between the 1986 *Employment Equity Act* and the 1995 *Employment Equity Act*

The purpose of employment equity remains the same in both the 1986 *Act* and the 1995 *Act*. The 1986 *Act* painted employment equity in broad brush strokes and the 1995 *Act* is more detailed in its approach.

The 1995 *Act* is much more specific than the 1986 *Act* in specifying employer obligations.

The most significant change for most employers is that the new *Act* clearly provides the Canadian Human Rights Commission with the mandate to conduct on-site compliance reviews in order to monitor compliance. It also allows for the establishment of Employment Equity Review Tribunals to hear employment equity cases.

The *Act* also establishes that seniority rights for layoff and recall and workforce adjustment measures are deemed not to be employment barriers for the purposes of the *Employment Equity Act*.

The 1995 *Act* also ensures that equivalent program requirements exist for those employers that are subject to the *Act* and those that are subject to the Federal Contractors Program.

The 1995 *Employment Equity Act* also dispels some of the myths that surround employment equity. It states that the obligation to implement employment equity should not be construed as requiring an employer to take measures which would:

- cause undue hardship on the employer;
- require the promotion or hiring of unqualified individuals;

- contradict the merit principle in the public sector;
or
- require the creation of new positions in the employer's workforce.

The 1995 *Act* clarifies that implementing employment equity does not require quotas.

The federal public service is included in the *Act* and so is subject to the equivalent program requirements as private sector employers. Although the public service was required, before the 1995 *Act* was passed, to implement employment equity as legislated in the *Financial Administration Act*, many private sector employers, designated group members and unions wanted the public sector to be subject to the same legislation they were. This issue was perceived as a matter of fairness.