



Document 2: Compliance



Human Resources
Development Canada

Labour Program

Développement des
ressources humaines Canada

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INTRODUCTION

The *Employment Equity Act* provides for two enforcement procedures. The Canadian Human Rights Commission (CHRC) is responsible for the enforcement of all employer obligations under the *Act*, with the exception of the annual reporting requirements which fall under the responsibility of the Minister of Labour.

COMPLIANCE

Employer obligations are set out in Part I of the *Employment Equity Act*.

Compliance procedures are the subject of Parts II and III of the *Act*.

Part II of the *Act*, entitled “Compliance” (sections 22 - 34), relates to audits by the Canadian Human Rights Commission and hearings by the Employment Equity Review Tribunal.

Part III, entitled “Assessment of Monetary Penalties” (sections 35 - 40), relates to compliance procedures for private sector reporting obligations.

Canadian Human Rights Commission (CHRC)

The *Employment Equity Act* gives the CHRC the mandate to conduct audits of both private and public sector employers with respect to sections 5, 9 to 15 and 17 of the *Act*. These include the following employer obligations:

- implementing employment equity;
- collecting workforce information;
- conducting a workforce analysis;

- reviewing employment systems, policies and practices;
- preparing an employment equity plan containing specified elements;
- making all reasonable efforts to implement the employment equity plan (the plan);
- monitoring the plan’s implementation;
- reviewing and revising the plan;
- consulting with employee representatives; and
- establishing and maintaining employment equity records.

Thus, the CHRC is responsible for ensuring compliance with employer obligations under the *Act* with the exception of reporting obligations which remain the responsibility of the Minister of Labour.

It should be noted that the *Act* requires that the Commission, in fulfilling its mandate, be guided by a policy of “persuasion and negotiation” in remedying situations of non-compliance. Directions and applications for orders are to be used only as a last resort.

The *Act* also contains a number of safeguards to ensure fairness. For example:

- Information obtained during the course of an employment equity audit cannot be used in connection with any other legal proceedings, including a complaint under the *Canadian Human Rights Act*

Any person serving as a human rights investigator under the *Canadian Human Rights Act* can not be designated as a compliance officer in a case involving the same employer.

Finding of non-compliance

During an audit, where a compliance officer finds an employer to be in non-compliance with respect to any of the matters listed in section 25(1) of the *Act*, the officer must attempt to remedy the situation by negotiating an acceptable written undertaking by the employer. If such an undertaking cannot be obtained or was breached by the employer, the CHRC has the power to issue a direction requiring the employer to take remedial actions.

Directions by the CHRC are subject to a number of important limitations. For example, no direction can be issued which, would:

- cause the employer undue hardship;
- impose a quota; or
- require the employer to hire or promote persons who are not qualified for the job.

Section 25(1) of the *Act* is important because it sets out those situations of non-compliance where a direction by the Commission could be issued, or where subsequently an order by the Tribunal could be made. Employers are therefore advised to review this section carefully.

Employment Equity Review Tribunals

The *Act* provides for the establishment of an Employment Equity Review Tribunal which can conduct hearings at the request of either the CHRC or the employer. Any employer who has received a direction may request a hearing to have the direction reviewed.

The Tribunal upon reviewing the direction can confirm or rescind the direction or make an order to remedy the non-compliance.

A Tribunal order can be registered in Federal Court and enforced as a court order.

The CHRC cannot give a direction nor can the Tribunal make an order that would:

- cause undue hardship on an employer;
- require an employer to hire or promote unqualified persons;
- require an employer to create new positions in its workforce; and
- impose a quota.

REPORTING VIOLATIONS

Under the 1986 *Employment Equity Act*, failure to report as required could result in a prosecution in criminal court. This was replaced in the new legislation by a system of administrative monetary penalties.

As set out in Part III of the new *Act*, private sector employers can be subject to a penalty for the following reporting violations:

- failure to file an employment equity report without a reasonable excuse;
- failure to include required information in the report without a reasonable excuse; and
- knowingly filing a report containing false or misleading information.

The Minister of Labour can issue a notice of assessment of a monetary penalty to the employer within two years of becoming aware of any violation. The notice must identify the violation and specify the amount of the penalty.

An employer must comply with the notice or contest the assessment within thirty days after receiving the notice.

The *Act* provides for a maximum penalty of \$10,000.00 for a single violation and \$50,000 for repeated or continued violations.