



# *Guideline 4: Collection of Workforce Information*



Human Resources  
Development Canada

Labour Program

Développement des  
ressources humaines Canada

Programme du travail

**Canada**

# TABLE OF CONTENTS

<b>INTRODUCTION.....</b>	<b>1</b>
<b>PART A: LEGAL FRAMEWORK.....</b>	<b>1</b>
Conducting A Workforce Survey.....	1
<i>Confidentiality.....</i>	<i>1</i>
<i>Self-Identification.....</i>	<i>1</i>
Workforce Survey Questionnaire.....	2
<i>Employees.....</i>	<i>3</i>
Previous Workforce Survey.....	3
Keeping Workforce Survey Results Up To Date.....	4
Other Relevant Requirements.....	4
<i>Informing employees.....</i>	<i>4</i>
<i>Consultation and collaboration.....</i>	<i>5</i>
<b>PART B: PRACTICAL APPLICATION.....</b>	<b>7</b>
Purpose Of The Requirement To Collect Workforce Information.....	7
Laying The Groundwork.....	8
Ensuring The Effectiveness Of The Survey.....	9
<i>Preliminary communications.....</i>	<i>9</i>
<i>Dealing with sensitive issues.....</i>	<i>11</i>
The Workforce Survey Questionnaire.....	12
<b>WORKFORCE SURVEY CHECKLIST.....</b>	<b>15</b>
<i>Key questions.....</i>	<i>17</i>
<i>Required statements.....</i>	<i>18</i>
<i>Self-identification in multiple categories allowed.....</i>	<i>18</i>
<i>Additional questions.....</i>	<i>19</i>
<i>Employee identifier.....</i>	<i>20</i>

---

**Collection of Workforce Information**

<i>No management identification</i> .....	20
<b>Designated Group Definitions</b> .....	<b>21</b>
<i>Aboriginal peoples</i> .....	21
<i>Persons with disabilities</i> .....	22
<i>Members of visible minorities</i> .....	24
<i>Sub-group data</i> .....	25
<b>Determining Employees To Be Surveyed</b> .....	<b>26</b>
<i>Information with questionnaire</i> .....	27
<b>Distributing The Questionnaire</b> .....	<b>29</b>
<i>Providing assistance</i> .....	31
<i>E-mail questionnaires</i> .....	32
<i>Mandatory return of questionnaire</i> .....	32
<i>Following-up</i> .....	32
<b>Keeping Information Up To Date</b> .....	<b>34</b>
<b>Applicant Data</b> .....	<b>34</b>
<b>The Grandparent Clause</b> .....	<b>35</b>
<b>Storage And Confidentiality</b> .....	<b>36</b>
<b>Problems With Workforce Survey Returns And Responses</b> .....	<b>38</b>
<b>PART C: INFORMATION DOCUMENTS</b> .....	<b>41</b>
<b>APPENDIX A</b> .....	<b>41</b>
<b>Determining An Employment Relationship</b> .....	<b>41</b>
<b>How To Determine Whether A Person Is An Employee</b> .....	<b>41</b>
<i>Step 1: Does an employee/employer relationship exist?</i> .....	41
<i>Deciding if a relationship exists: A few common questions</i> .....	41
<i>Step 2: Permanent part-time permanent full-time, or temporary employee?</i> .....	42

<b>APPENDIX B.....</b>	<b>45</b>
EMPLOYEE DEFINITIONS UNDER THE ACT.....	45
<b>APPENDIX C.....</b>	<b>47</b>
<b>APPENDIX D:.....</b>	<b>49</b>
<b>About Additional Questions.....</b>	<b>49</b>
What Are Additional Questions?.....	49
<i>Why would I ask additional questions?.....</i>	<i>49</i>
<i>Why would I ask employees to identify whether they are a member of a visible     minority subgroup?.....</i>	<i>49</i>
<i>Why would I ask questions on employment accommodation?.....</i>	<i>49</i>
What Other Questions Can I Ask?.....	49
<i>Type of disability.....</i>	<i>49</i>
<i>Affiliation to an aboriginal community.....</i>	<i>50</i>
<i>Other questions.....</i>	<i>50</i>
<b>APPENDIX E:.....</b>	<b>51</b>
SUGGESTED FORM FOR MONITORING RETURN OF QUESTIONNAIRES.....	51
<b>APPENDIX F.....</b>	<b>55</b>
DESIGNATED GROUP AND EXPLANATIONS.....	55
<b>APPENDIX G.....</b>	<b>57</b>
WORKFORCE SURVEY QUESTIONNAIRE.....	57

## INTRODUCTION

This Guideline is intended to help employers, employee representatives, unions, designated group members, and other interested parties understand how to conduct an effective employment equity workforce survey which meets the legal requirements of the *Employment Equity Act* and *Regulations*.

Guidelines provide general direction and practical pointers which reflect best practices. They are not, however, a template: readers should consider the specific circumstances of their own organizations as they use the Guidelines. Other documents to consult include the *Act* and *Regulations*, and documents available from the Canadian Human Rights Commission (CHRC) relating to the audit process.

---

## PART A: LEGAL FRAMEWORK

### Conducting A Workforce Survey

All employers covered by the *Employment Equity Act* must collect information about the employer's workforce in order to determine the degree of the under-representation of persons in designated groups in each occupational group. [*Act*, s.9(1)(a)]

*Designated groups are women, Aboriginal peoples, persons with disabilities and members of visible minorities.*

This information must be collected by means of a workforce survey questionnaire which asks if the employee is a member of a visible minority; a person with a disability; or an aboriginal person. [*Reg.*, s. 3(1)]

*Information on gender must be obtained by means other than the workforce survey questionnaire such as personnel records.*

### **Confidentiality**

Information collected by an employer is confidential and can be used only for the purpose of implementing the employer's obligations under the *Act*. [*Act*, s. 9(3)]

### **Self-Identification**

Only those employees who identify themselves as a member of a designated group, or agree to be identified, may be counted. [*Act*, s. 9(2)]

*Employee self-identification is voluntary.*

## Workforce Survey Questionnaire

An employer must provide a workforce survey questionnaire to each employee. The questionnaire must include questions that ask if the employee is a member of a visible minority, a person with a disability, or an aboriginal person. [Reg., s. 3(1)]

The questionnaire must contain the definitions “members of visible minorities”, “persons with disabilities” and “aboriginal peoples” set out in section 3 of the *Act* or a description of these terms consistent with the definitions. [Reg., s. 3(2)]

Questions and definitions in the form set out in Schedule IV of the *Regulations* will be considered to meet the requirements of the law. However, employers are not required to use that particular form for the questions. [Reg., s. 3(3)]

The questionnaire may include additional questions relating to employment equity. [Reg., s. 3(5)] These questions could include, for example, visible minority subgroups, accommodation needs of persons with disabilities, or special training needs for members of designated groups.

An employer can require that each employee return the questionnaire whether it is filled in or not. [Reg., s. 3(7)]

Employers shall ensure that there is a means of identifying on the questionnaire, the employee who returns it. [Reg., s. 4)]

*The use of questionnaires with pre-printed employee identification numbers is advised. See “Employee identifier”, page 18, for further information.*

The questionnaire itself must indicate that:

- responses are voluntary; [Reg., s. 3(6)(a)] and
- information collected is confidential and will only be disclosed or used by the employer for carrying out its obligations under the *Act*. [Reg., s. 3(6)(b)]

The questionnaire or accompanying notice must indicate that a person may be a member of more than one designated group; [Reg., s. 3(4)]

## **Employees**

Each employee must be provided with a workforce survey questionnaire. [Reg., s. 3(1)]

*“Employee” means a person who is employed by the employer, including those on short-term and long-term leaves of absence, but does not include a person employed on a temporary or casual basis for fewer than 12 weeks in a calendar year. [Reg., s. 1(2)(a)] See **Part C** of this **Guideline, Appendices A, B, and C**, for further information.*

## **Previous Workforce Survey**

It is not necessary to re-survey part or all of an employer’s workforce, if the previous survey meets the following criteria:

- the previous survey asked if the employee was a member of a visible minority, a person with a disability, or an aboriginal person; [Reg., s. 3(8)(a)]
- the previous survey used questions and was conducted in a manner that achieved results that are likely to be as accurate as the results that would be achieved by using the workforce survey required by the *Regulations*; [Reg., s. 3(8)(b)]
- responses to the previous survey were voluntary; [Reg., s. 3(8)(c)] and
- the previous survey results have been kept up to date. [Reg., s. 3(8)(d)]

## Keeping Workforce Survey Results Up To Date

All employers are responsible for keeping the survey results up to date by providing a questionnaire to:

- all new employees hired after the date of the original survey; [Reg., s. 5(a)(i)]
- all employees who indicate that they wish to change any information previously submitted on a questionnaire; [Reg., s. 5(a)(ii)]; and
- any employee who requests it. [Reg., s. 5(a)(iii)]

The employer shall also make necessary adjustments to the survey results to take into account:

- any responses as a result of the above; [Reg., s. 5(b)] or
- members of designated groups who have been terminated. [Reg., s. 5(c)]

Employers must retain a **sample copy** of the workforce survey questionnaire that was provided to employees for two years after the period covered by the employment equity plan to which the survey relates. [Reg., s. 11(e) and s. 12(2)]

## Other Relevant Requirements

### ***Informing employees***

Employers are required to inform employees about the purpose of employment equity as well as other matters (employment equity measures the employer has undertaken or is planning to undertake, and progress achieved). [Act, s. 14] It would be useful to provide employees with information about the purpose of employment equity and the related survey prior to the survey in question.

See **Guideline 2: Communications** on section 14 requirements.



### ***Consultation and collaboration***

Employers are required to consult with employee representatives (including bargaining agents) on specific matters, namely the preparation, implementation and revision of the employment equity plan, as well as the assistance employee representatives could provide to the employer in implementing employment equity and in communicating with employees on matters relating to employment equity. [Act, s.15(1)] Assistance from employee representatives in communicating with employees would be particularly useful in connection with the workforce survey. The law does not stipulate how this consultation requirement must be fulfilled.

See ***Guideline 3: Consultation and Collaboration*** for further information.



## **PART B: PRACTICAL APPLICATION**

---

### **Purpose Of The Requirement To Collect Workforce Information**

The implementation of employment equity depends upon the identification of areas in an organization where employment barriers to designated group members may exist. A workforce survey is undertaken to provide a clear profile of designated group representation in the employer's workforce. The results of the workforce survey are used for determining where under-representation of designated groups exists and hence where one might expect to find barriers. An analysis of the workforce survey results is undertaken by comparing the actual representation of designated group members in each occupational group in the employer's workforce (internal representation) with the representation that would normally be expected, taking into account qualifications, eligibility, and geographic location (external representation estimates).

It is important that the employer have reliable and accurate survey results, which allow the employer to determine the number of employees belonging to each of the designated groups. Information on internal representation of designated group members is essential for:

- identifying occupational groups where designated group members are underrepresented;
- identifying barriers that contribute to under-representation;
- developing measures to improve the representation of designated group members; and
- setting short term numerical goals and long term goals as required under the *Act* in the development of an employment equity plan.

*For further information see **Guideline 7: Employment Equity Plan.***

## **Laying The Groundwork**

The groundwork for the workforce survey should be laid well in advance of the actual survey. In addition, fundamental questions about confidentiality need to be considered.

For example, the following questions about the workforce survey should be considered well ahead of time:

- Who will be responsible for co-ordinating the survey process?
- Who will distribute the questionnaires?
- Who will answer questions that arise?
- Who will ensure the right assistance is provided?
- Who will collect or receive the questionnaires?
- Who will open the questionnaires?
- Who will track returns and monitor responses?
- Who will do the follow-up that is necessary?
- How will the information collected from the questionnaires be recorded?
- What record management system will be used to store and maintain employees' records?
- If using a computerized system, who will enter the data?
- Who will determine results?
- Who will be the custodian of the data?

When answering these questions, employers should keep in mind that only those individuals responsible for carrying out the employer's obligations under the *Act* should see the completed questionnaires, unless the employee has consented to wider disclosure.

- The issue of confidentiality should also be considered at an early stage. Employers should establish clear guidelines ahead of time indicating:
- who has access to the information employees give on the questionnaire; and
- who can use it and how, and for what purposes.

## **Ensuring The Effectiveness Of The Survey**

A key factor in ensuring a successful and effective workforce survey is commitment to the process by senior management.

*Senior management commitment is vital to the success of employment equity.*

An effective workforce survey is one in which:

- employees and unions understand the purpose of the survey and what the results will be used for;
- all, or at least the vast majority of, employees complete and return the self-identification questionnaire; and
- respondents provide accurate self-identification information.

*Please note that under section 3 (7) of the Regulations, an employer can require that the questionnaire be returned.*

There are several ways of encouraging such results, as set out below.

### ***Preliminary communications***

To begin with, an organization should prepare the groundwork for the workforce survey by disseminating general information on the purposes of employment equity and the steps involved in its implementation.

See **Guideline 2: Communications** for further information and practical examples.

A survey is likely to be more successful if employees are already familiar with the kinds of questions being asked on the questionnaire before it is actually distributed. They should already have a good idea of the kinds of answers they will give to these questions before they receive the questionnaire. This means that preliminary communications are of paramount importance.

Information about employment equity and the survey process can be disseminated, for example, through employer and union newsletters, special information sessions, E-mail or inserts in pay envelopes.

*Evidence indicates that group information sessions provide the best results.*

This information should be aimed, in particular, at addressing the myth that employment equity means giving preferential treatment to unqualified members of designated groups. This myth and others are referenced in section 6 of the *Act*, which clearly provides, for example, that employment equity does not require employers to hire or promote unqualified persons.

The information material should:

- confirm senior management's commitment to employment equity;
- reassure employees that the central objectives of employment equity are to ensure fair hiring and promotion procedures and to provide a workplace environment that is respectful and accommodating of all employees' needs;
- point out that special initiatives targeted to members of the designated groups may be undertaken where there is clear evidence that members of these groups are significantly under-represented in an occupational category; and
- indicate that these special initiatives are temporary in order to address an existing problem. When the problem is corrected, the special initiatives will normally be phased out.

In addition the information package could:

- briefly note the background to employment equity – evidence of the systemic disadvantage faced by members of the four designated groups; and
- state that goals and timetables are part of employment equity planning, and are used to measure progress; and
- explain that goals are flexible targets, like other business goals.

*Factors to be considered in setting numerical goals are set out in section 10(2) of the Act.*

For example, unlike quotas, goals are based on rational considerations, including job qualifications, degree of underrepresentation of designated group members as well as availability of qualified persons in designated groups, and anticipated growth, reduction or turnover in the employer's workforce. An important distinction is that goals do not automatically result in penalties if they are not met.

### ***Dealing with sensitive issues***

Employers may also wish to address in their preliminary information package or in information sessions certain sensitive issues related to employment equity which often are the subject of misunderstanding. Some employees, for example, may feel uncomfortable with particular definitions or questions on the survey questionnaire; or they may be reluctant to self-identify because they do not want to be perceived as having been hired or promoted solely because of their status as a member of a designated group. They want to be judged solely on ability to do the job.

In that case, the best strategy is usually to deal with these issues in a forthright manner, in advance. This is where communication efforts and information sessions can be of great value in effectively dispelling some of these concerns

To overcome such feelings, an understanding of the purpose of employment equity is essential, as well as an understanding of the rationale behind the definitions of the designated groups. Employees need to understand clearly that employment equity and merit are not mutually exclusive. Employment equity is in fact a commitment to merit, as reflected in the title of the report prepared by the Parliamentary Committee which studied Bill C-64, the new *Employment Equity Act* (Report of the Standing Committee on Human Rights and Disabled Persons, *Employment Equity: A Commitment to Merit* tabled June, 1995.)

*The section in this Guideline entitled “Designated Group Definitions” on page 18 contains information about the underlying rationales behind these definitions*

Employers may find that addressing these sensitive issues in a forthright manner will ultimately raise the level of awareness generally in their organization.

## **The Workforce Survey Questionnaire**

The survey of the internal workforce must be in the form of a confidential self-identification questionnaire. Responses to the questionnaire are entirely voluntary: no one can be forced to self-identify, although employers may require all employees to return their questionnaire, leaving it blank if they so choose.

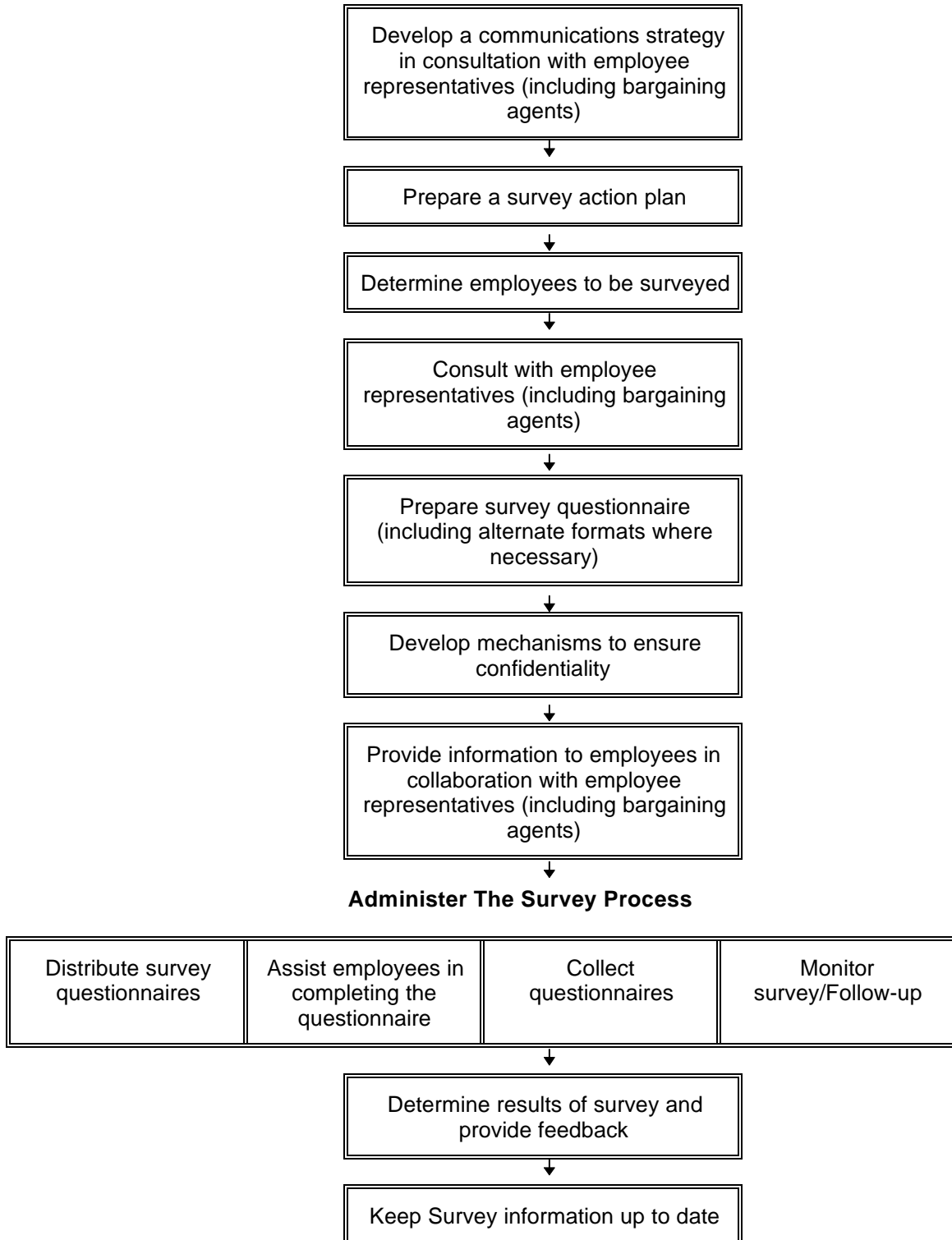
Questionnaires may be in paper form, distributed and collected by hand and/or mail; or in electronic form, distributed and collected through an e-mail or intranet system. Whichever format is used, the employer must be able to:

- ensure all employees receive a questionnaire;
- ensure that employees' self-identification information remains confidential; and
- make available questionnaires in alternate formats for employees who require them or ensure that designated persons, who will have access to the questionnaire information, are available to provide confidential assistance.

*Examples of alternate format include: audiocassette, large print, computer diskette; and/or Braille for visually impaired employees.*



## STEPS OF A WORKFORCE SURVEY





## WORKFORCE SURVEY CHECKLIST

- ▢ Is there a clear policy, supported by senior management, on employment equity?
- ▢ Have all employees, employee representatives and unions been made aware of the policy, and of the benefits of employment equity?
- ▢ Have communication and survey strategies been developed which ensures that employees, employee representatives and unions are informed about the objectives of the survey?
- ▢ Have employee representatives been consulted?
- ▢ Is a joint labour-management committee structure in place? Have committee members been consulted regarding assistance that they may provide in the process? (Please refer to section 15(1)(a) of the *Act*.)
- ▢ Are the questions used on the questionnaire in conformity with the *Act* and *Regulations*?
- ▢ Does the questionnaire clearly indicate that responses to the questions are voluntary?
- ▢ Does the questionnaire clearly indicate that information collected is confidential and will only be used by or be disclosed to other persons within the employer's organization in order for the employer to carry out its obligations under the *Act*?
- ▢ Does the questionnaire, or an accompanying notice, clearly indicate that a person may be a member of more than one designated group?
- ▢ Is there an employee identifier on the questionnaire to avoid anonymous responses?
- ▢ Have the benefits of self-identification as a designated group member been clearly communicated?

- ▯ Has the organization identified individuals who are responsible for collecting and recording the survey information?
- ▯ Has the name and telephone number of a contact person been included on the survey, in case respondents have questions or require further clarification?
- ▯ Is the survey questionnaire available in alternate languages and format?
- ▯ Has a process been developed to identify and follow up on non-returns?
- ▯ Has confidentiality been ensured?
- ▯ Has a process been developed to share the results with employees, employee representatives and unions?

## Key questions

The questionnaire must ask employees whether they are Aboriginal persons, persons with disabilities, or members of a visible minority. There is no requirement to ask whether a person is a man or a woman. The representation of female employees can be easily calculated using existing personnel records: there is no difficulty with respect to the availability, accuracy, or confidentiality of information on employee gender. The same is not true, however, for members of the other three designated groups.

Although it is not required, employers may choose to include a question on gender, thereby making the survey process inclusive for all employees.

*Please refer to the section below on **Page 17 “Additional Questions”** for further information about including gender questions.*

If the questions on the questionnaire are identical to or substantially the same as those set out in Schedule IV of the *Regulations*, the questionnaire will be deemed to meet the requirements of the law.

*The workforce survey questions prescribed in Schedule IV of the Act are reproduced in **Part C** of this **Guideline**.*

However, employers may wish to develop other versions of these questions for use on their self-identification questionnaire, with the goal of being “user-friendly” and adapting the questionnaire to their own particular workforce. Any such variation of the core questions must contain descriptions of the designated groups that are consistent with the definitions set out in section 3 of the *Act*.

A common variation on the questions provided in Schedule IV would give examples for each designated group, to enable employees to understand if they belong in that group.

*For further information, please refer to **page 19** in this **Guideline** on “**Designated Group Definitions**”*

Employers who do develop other versions of the questions set out in Schedule IV of the *Regulations* should review their draft questionnaires with employee representatives, an internal Employment Equity Committee, or Workplace Equity Officers at HRDC's regional offices to ensure they are acceptable before finalizing them. Ultimately, however, findings of compliance rest with the Canadian Human Rights Commission.

### **Required statements**

The *Regulations* require that the questionnaire indicate to employees that :

- responses are voluntary [*Reg.*, s. 3(6)(a)]; and
- the information collected will be kept confidential and will only be used by or disclosed to other people in the organization for the purposes of complying with the *Act*. [*Reg.*, s. 3(6)(b)]

The questionnaire itself or an accompanying notice (normally stapled to the questionnaire if it is in paper form) must indicate that employees are free to self-identify as members of more than one designated group. [*Reg.*, s. 3(4)]

*For example, a person may self-identify as an Aboriginal person and a person with a disability.*

### **Self-identification in multiple categories allowed**

Where appropriate, employees may identify themselves as belonging to more than one designated group. This is justified by the fact that each designated group faces particular kinds of employment barriers. A person who belongs to more than one of these groups is likely to experience multiple barriers (for example a man of African descent with a disability; or an Aboriginal woman).

*In theory, a person could even belong to all four designated groups, although this would occur very rarely.*

It is possible for a person of mixed ancestry, both Aboriginal and visible minority, to self-identify as both a member of a visible minority and an Aboriginal person.

The definition of “members of visible minorities” in section 3 of the *Act*, refers to “persons, other than aboriginal peoples...” This, however, should not be taken to mean that a person of mixed heritage could not self-identify in both groups, Aboriginal and visible minority. The language of the *Act* is intended simply to delineate two separate groups which might otherwise be considered as a single group.

Aboriginal persons who do not have a visible minority heritage **should not** identify as a “member of a visible minority”. Such individuals should self-identify only as “aboriginal persons”

There *is* a relatively small group of people who have both Aboriginal and visible minority heritage – for example, Cree and Black, or Inuit and Japanese – and they should be given the opportunity to fully self-identify. Therefore, employers may wish to provide instructions indicating that such individuals – and such individuals only – can self-identify as both Aboriginal and members of a visible minority.

### ***Additional questions***

The questionnaire can include other questions, provided they are related to employment equity. Two such “extra” questions are particularly common:

*Refer to **Part C, Appendix D, page 44** of this **Guideline** for further additional questions*

1. **Man/Woman** The questionnaire can give employees the opportunity to indicate whether they are men or women. One advantage of such a question is that it allows every employee to check off at least one box, making the self-identification process more inclusive.

*Please note that if the employer does include a gender question, however, the number of women for the purposes of the annual employment equity report and the workforce analysis must still be taken from personnel records, to ensure the highest degree of accuracy.*

2. **Consent:** A useful additional question is a “consent” question, asking employees if they agree to have their self-identification responses provided to managers and used for the purposes of special initiatives and implementing employment equity within the company. Designated group employees responding positively to this question can then be contacted directly if, for example, an advisory committee for their group is established, or if a

*Please refer to the section on “**Information With Questionnaire**,” **page 25** in this **Guideline**, for additional information about a consent question.*

special training program intended to address the under-representation of their group in a specific occupation is launched. It is certainly worth considering inclusion of a question of this sort, as special initiatives may be more successful if designated group employees can be directly approached – something which, given confidentiality requirements, cannot be normally done without express prior consent.

Some employers provide a space for comments by employees on the survey. This may be a way for employers to gauge reactions of employees, spot potential areas of misinformation, and consider strategies to address problems.

### ***Employee identifier***

Workforce survey questionnaires must provide a way to identify which employees provided the responses. Questionnaires without employee identifiers would create difficulties with respect to accuracy of the survey data and would make impossible the longer-term tracking of essential information, such as promotion and termination. The confidentiality of self-identification responses, after all, is legally guaranteed

*All workforce survey questionnaires must provide a method to identify employees.*

As an alternative to using the employee's name, an employee identification number or code can be used. However, the social insurance number should not be used. It is recommended that the questionnaire have the employee's name, number, or code already filled in before it is distributed. This facilitates following up on the missing forms.

### ***No management identification***

It is possible to include in the final count employees who explicitly agree to be identified by the employer as members of a designated group; that is, consent to completion of their questionnaire by another employee or supervisor according to the employee's instructions. However, it is important to emphasize that this does not mean that management identification or any form of management pressure on



employees is acceptable.

## ***Designated Group Definitions***

Definitions of “aboriginal peoples,” “persons with disabilities,” and “members of visible minorities,” are provided in the sample questions (Schedule IV of the *Regulations*) attached to this Guideline.

Since self-identification is a voluntary and confidential process, employers must ultimately trust the employees’ interpretation of the definitions with which they are provided. However, to help employees understand the intent of the definitions, organizations should provide further clarification by distributing explanatory information and illustrative examples prior to, or simultaneously with, the distribution of questionnaires.

The definitions of the designated groups contained in the *Act* therefore are intended to provide guidance to employees, who must decide if they see themselves as fitting into one of the categories. Ultimately, however, it is the employee’s right to decide how they choose to define themselves. It would therefore not be correct to say that someone is in fact a person with a disability, even though that person does not consider him/herself as fitting into that particular category. In other words, a person is only a member of a designated group if he/she chooses to identify him/herself as belonging to that group. The definitions and examples provided on the questionnaire therefore are intended only as a guide for employees.

### ***Aboriginal peoples***

With respect to Aboriginal peoples, the definition indicates that this group includes people of Indian, Inuit, or Métis descent. Since Aboriginal peoples are historically- and culturally-defined, there is no “blood” or racial criterion as such for self-identification as Aboriginal. However, this does not mean that it is acceptable for individuals to check off “aboriginal peoples” simply because they were born in Canada.

*“Indian” includes people of North American Indian ancestry, whether or not they live on a reserve, and whether or not they are registered.*

Only those Aboriginal persons who come from

*Reference to cross-border*

Canada and the United States should identify themselves as belonging to this designated group. In this way the survey results will be comparable to Statistics Canada census data, which are based on a question asking whether the person is a North American Indian, Métis, or Inuit. Other Aboriginal peoples, such as those from Mexico, Central and South America, Australia or elsewhere, should identify themselves as members of visible minorities.

*reserves was omitted. It raises some fuzzy issues of extra-territorial jurisdiction, and there is no need to include it.*

Examples may be given along with this question in order to clarify who is included. Employers are also free to ask employees to indicate their community or First Nations affiliation in responding to this question.

### **Persons with disabilities**

With respect to persons with disabilities, the definition stipulates that, for the purposes of self-identification, a disability is an impairment which is:

*Please refer to **Part C, Appendix F, page 48** of this **Guideline** for a list of examples of persons with disabilities.*

- “long-term or recurring,” and
- in the employee’s view, results in disadvantage in employment or in a perception on the part of the employer (or potential employer) of disadvantage in employment.

Included under the definition are disabilities which have already been accommodated in the workplace. In other words, even if the immediate disadvantage has been reduced or eliminated because of accommodation by the employer, the employee should still self-identify for the purposes of employment equity. Otherwise, the employer’s statistics on persons with disabilities will not accurately reflect their presence in the workforce just because the needs of these individuals have been accommodated. However, the principle of self-identification remains paramount. Employers may not include such individuals who have received accommodations in their statistics unless such persons voluntarily self-identify as persons with disabilities.

The definition covers physical, mental, sensory, psychiatric, and learning impairments. In other words, any persistent or recurring condition – visible or

*hidden* -- that places limitations on the individual which may contribute to disadvantages in employment counts as a disability for the purposes of employment equity. This includes not only the more obvious disabilities related to mobility, sight, and hearing, but also conditions such as epilepsy, chronic pain, or dyslexia which are generally unseen but may have profound effects on a person's employment prospects.

Not every physical impairment, even if long-term or recurring, will count as a "disability" for the purpose of the definition. If an employee does not believe that he/she is disadvantaged in employment because of the impairment, or does not believe that the employer (or potential employer) would perceive that he/she is disadvantaged, then the employee should not self-identify as a member of this designated group.

Relatively minor conditions which are experienced by a large segment of the population, and which do not result in disadvantage in employment, are not normally considered disabilities for the purposes of employment equity. The most common examples of such conditions are limited lower back pain and poor eyesight which can be corrected with glasses.

This is not to say that back pain or poor eyesight should never be considered a disability, of course. The determining factor would be severity of the condition. The question is one of degree.

If a long-term or recurring impairment -- either physical, mental, sensory, psychiatric or learning -- does not result in disadvantage in employment, or in a perception of disadvantage by an employer, then it should not be considered a disability for the purposes of the *Act*

In each case, it is the employee who must make the determination. However, it is essential that employees must be made to understand that minor conditions, such as the wearing of eyeglasses and limited lower back pain, do not normally constitute a disability for the purposes of the *Employment Equity Act*

The preliminary communications process is a good place to make this point.

It is important to remember that employment equity does not require employers to employ individuals with disabilities which prevent them from doing their jobs effectively. The external representation estimates with which internal representation are compared take into account the qualifications necessary to perform the work in question, as well as eligibility and geography. So the benchmark for comparison already takes into account the basic requirements of the occupation.

### ***Members of visible minorities***

With respect to members of visible minorities, the definition speaks of those who are “non-Caucasian in race or non-white in colour.” (Due to their status as First Nation people, Aboriginal peoples are specifically excluded from the definition.) Essentially the same definition was used in the 1986 *Employment Equity Regulations* (now replaced by the new *Regulations*). Employers therefore have been using this definition for some time.

This definition is not based on place of birth, citizenship or religion. Some members of visible minorities were born in Canada, others were foreign-borne; some are citizens others have a landed immigrant status; and they all have different religious affiliations.

This group includes individuals of non-white or non-Caucasian origin from Europe, Australia and New Zealand, South America, Africa or any other part of the world. It does not include persons of Portuguese, Spanish, Greek, Italian, or Ukrainian descent, or other ethnic groups who are considered to be white or Caucasian in origin.

This definition has been the subject of much discussion. However, it is important to remember that the rationale for including “visible minorities” in the law is rather straightforward: *people who are visibly in a minority because of their skin colour or identifiable “racial” background may face various types of*

*employment barriers*. This does not mean that anyone believes “race” is a valid scientific category. (As some have pointed out, there is only one race, the human race.). Rather, it means that we recognize that belonging to a visible minority still has social implications, and that the creation of a truly integrated society must start with the efforts to identify and address these consequences in a direct and systematic manner.

An employer who so wishes is at liberty to develop a question which uses a description of “members of visible minorities” other than the definition provided in the *Act*. However, any such description must effectively reflect the rationale outlined above and must cover the population in question. As well, care should be taken to avoid confusion – in the past, members of ethnic European minorities have sometimes misconstrued “visible minority” as applying to them.

For clarity, an employer may list on the questionnaire the ethnocultural sub-groups which have been deemed -- for the purposes of calculating Census-based estimates of representation in external labour markets – to be comprised of members of visible minorities. Employees can then be asked if they fall into one of these groups.

*Please refer to **Part C, page 48**, for a list of sub-groups.*

### ***Sub-group data***

Some employers ask the employee to indicate which sub-group they belong to: what their specific disability is, or to which visible minority group they belong. Some employers choose to obtain sub-group information to pinpoint areas in need of attention or to assist employers in providing accommodation to employees. However, it is not required by the *Act* and *Regulations*.

## Determining Employees To Be Surveyed

The law requires that everyone employed by the employer for a period totaling 12 weeks or more during a calendar year (except for those listed below) be given a self-identification questionnaire once they have been hired. This includes part-time and temporary employees, even if their period of employment is broken up into small portions of a few days or weeks at a time, and even if the employer is not required to provide data on designated group representation among temporary employees because such employees constitute less than 20 per cent of its total workforce. It also includes employees on any form of long-term leave, including long-term disability leave.

It does **not**, however, include:

- students enrolled full-time in a secondary or post-secondary education institution employed during a school break, including co-op students employed for less than four months (one “work term”); or
- individuals working on contract with whom there is no legal employer-employee relationship (independent contractors).

Regarding independent contractors, it should be noted that only those persons who are **in fact** independent contractors are not considered to be employees, and are therefore not required to be surveyed. What the employment relationship is called by the parties is not the determining factor, however. The facts of each case must be examined in making the determination.

Therefore, employers may be required to include in the workforce survey “independent contractors,” or employees of “independent contractors,” if these persons are **in fact** employees of the employer conducting the survey.

*The twelve weeks need not be consecutive.*

*See **Part C, Information Document**, Appendices **A, B** and **C**, for further information on how to determine if an employer-employee relationship exists for the purpose of employment equity.*

As a practical matter, employers may choose to give self-identification questionnaires to everyone in their workforce, including students, at the time of hiring. Often an employer does not know when they hire a temporary employee whether the employee will be working for 12 weeks or more during that calendar year. Although employers may not count students for the purposes of employment equity reporting, they may well choose to include them in a survey.

*Maintaining employment equity information on temporary employees and students can provide employers with valuable information about the designated group composition of these employees who in the future might be contacted for longer term or permanent positions.*

The employer is cautioned, however, that the workforce analysis and the employer's annual employment equity report should be based only on legal requirements of the survey. Where employers voluntarily survey persons not required to be surveyed under the *Act*, that information should not be used for the purposes of the workforce analysis nor the annual report.

### ***Information with questionnaire***

The information and instructions included with the questionnaire itself can have a significant impact on response rates and accuracy.

Providing too much information at this stage can be counter-productive, as this makes completion of the questionnaire appear to be a complicated and time-consuming process. Therefore, it is important to implement communication activities, such as information sessions, well in advance of the survey.

However, at the time of the survey it can be a good idea to reiterate the fundamental purposes of employment equity, briefly explain the role of the self-identification questionnaire, and emphasize the importance of accurate responses for effective planning and implementation. Employers may also wish to indicate that employment equity is part of a larger business strategy to achieve an organization which is more competitive. .

Information provided with the questionnaire should:

- make clear to employees that they are free to change their responses at any time;
- clearly state that employees may self-identify as members of more than one designated group, if this information does not appear on the questionnaire itself; and
- state that responses are confidential and that information provided will only be used to help the organization implement employment equity;

If an employer uses a “consent” question asking employees if they agree to have their self-identification responses provided to managers, information with the questionnaire should also indicate that the workforce survey provides employees with two options for self identifying:

*Refer to “Additional questions” on page 17.*

1. employees may self-identify solely for statistical purposes, in which case the only people who will know how they responded to the questionnaire will be a select group of human resources and data entry personnel; or
2. employees may self-identify for statistical and for human resources and employment equity planning purposes, in which case managers in the organization may also have access to their responses for employment equity planning.

A key advantage of the second option is that it permits the organization to contact designated group employees directly when it requires their input or is planning to launch measures targeted to members of a particular group. However, there may be employees who hesitate to self-identify if they believe that their managers will be made aware of their responses. Thus, providing the first option is one way of maximizing the accuracy of the workforce survey results.



## **Distributing The Questionnaire**

Distribution strategies will vary depending on the size and circumstances of your organization.

It is recommended that the survey questionnaire be distributed with a number of support documents, including:

- a covering letter of support/endorsement from senior management and bargaining agent officials;
- the name and phone number of the person employees should contact for information or assistance;
- instructions on how to complete the questionnaire;
- definitions of designated groups; and
- a pre-addressed return envelope that employees can seal with their completed questionnaire.

Listed below are a few ideas to help in developing an easy, effective method of distributing the survey package:

- Set aside a specific time to distribute the workforce survey package. Some organizations have found that establishing a Census Day or Week helps focus communications and staff energies.
- Choose a time when most employees are available. Try to avoid holiday periods, or peak business periods.
- Set a deadline for the return of the questionnaire. Make sure it allows employees time to get help if required.

- Consider handing out the survey package to employees:
  - ⇒ during regular staff meetings or training sessions
  - ⇒ at special employment equity information sessions;
  - ⇒ through internal mail; or
  - ⇒ as part of your pay distribution system.
- Make sure employees have privacy when completing the questionnaire.
- Mail a survey package, which includes a stamped, self-addressed envelope, to those employees who are not centrally located or who are on extended leave. Consider including educational material in the survey package, including the name and telephone number of the designated contact person in the organization responsible for employment equity. You may need to check that the employee received the questionnaire, and understands both the reason for the survey and the questions being asked.
- Develop a distribution control sheet to track when each employee receives and returns the questionnaire. A Sample Distribution Control Sheet is included at the end of this guideline.

Many employees may be nervous about the self-identification process. They may be concerned about revealing information that is generally not known in their workplace. They may be worried that if they self identify they will jeopardize their present status or opportunities for advancement. Some may feel their work environment does not value diversity or that they have been hired or promoted because of their designated group membership, not for their qualifications.

For these reasons, it is absolutely essential that employees are assured that the survey information will be held in the strictest confidence. Employees need to know:

- to whom the questionnaire will be returned;
- who will open the questionnaire;
- who will have access to the information contained in the questionnaire;
- how the data will be stored; and
- how the data will be kept up to date.

### ***Providing assistance***

To help employees understand and complete the questionnaire, employers may consider the following activities:

- appointing advisers to help employees;
- conducting information meetings in consultation with employee representatives (including union representatives);
- establishing a hotline;
- asking employees what accommodation they need to complete the questionnaire; and
- using creative ways to communicate, such as posters and videos

The involvement of employee representatives (including bargaining agents) in the planning and implementation of these activities is likely to increase their effectiveness.

Once questionnaires have been distributed to and collected from all current staff, the employer must keep its data base up-to-date by providing a questionnaire to every new employee and to any employee who wants to change previously submitted information or who requests a new questionnaire.

In order to ensure accuracy, some employers choose to re-survey their entire workforce periodically. While this is not required under the *Act* so long as their survey results are up-to-date, it can sometimes be a beneficial strategy, particularly if the employer thinks that a greater response rate and more accurate and complete results can be obtained as a result of increased understanding of employment equity principles and objectives.

### ***E-mail questionnaires***

Where employees are accustomed to reading and responding to e-mail messages or using intranet systems, use of electronic questionnaires and reminders can be effective. Some individuals find it less burdensome to complete and return an electronic questionnaire rather than a paper questionnaire.

### ***Mandatory return of questionnaire***

A high return rate can also be ensured by requiring every employee to return the questionnaire, whether or not he or she chooses to complete it. This is specifically sanctioned by the *Regulations*. It may be useful to provide a deadline by which all forms must be returned, and implement follow-up procedures to track missing returns and encourage employees to submit them.

### ***Following-up***

Follow-up is essential to ensuring a good response rate on the workforce survey. There are two issues to be considered: failure to return the questionnaire, and inaccurate responses.

When the survey is returned, designated personnel who have access to the survey information may have reason to believe that some employees have declared their designated group status incorrectly.

For example, some individuals may honestly believe themselves to be a member of a visible minority because they are an immigrant.

If this occurs, employees may be approached and provided with further information on definitions of designated group members and the purpose of the workforce survey. These employees may then be asked if they wish to change their response. If they wish to change their response, they can then be invited to fill out another questionnaire.

Once an employee has returned a questionnaire, the principles of confidentiality and voluntary self-identification mean that only those designated personnel responsible for implementing employment equity within the organization should ever speak with employees about the responses provided (or not provided) on the workforce survey questionnaire. This need not be the case, however, where an employee has checked off an optional “consent” box provided on the questionnaire, indicating that the information may be provided to managers for human resources and employment equity planning purposes.

It should be noted that employees cannot be required to change their response and should only be approached if there are very good reasons for believing that they have self-identified incorrectly. If they state that they do not want to change their responses, this must be respected.

Employers should follow-up to ensure that employees who may have been absent during the distribution of the survey package receive it upon return to work. Follow-up should also take place with employees on long-term leave to ensure that they mail back the questionnaire.

## Keeping Information Up To Date

An employer's survey results must be kept up to date. This is done by:

- providing each new employee with a survey questionnaire, once they have been hired; and
- providing a survey questionnaire to any employee who requests it, or who wishes to change the previous response.

The aggregated survey results must be adjusted to take into account any changes which result from employees being hired, terminated, or from changing responses.

If an employer has kept its survey results up to date, there is no requirement to re-survey the workforce periodically. Employers may choose to re-survey voluntarily, however. As employees come to understand the purpose of employment equity and drop any fears or suspicions they may have had initially, the employer's response rate may improve in a subsequent survey.

## Applicant Data

Regarding new employees, it should be noted that the *Regulations* require that a survey questionnaire be given to an employee "when the employee begins employment". [Regs., s. 5(a)(i)] This means after they have been hired. Information obtained during the hiring process, therefore, is not sufficient to meet the legal requirements. Some employers include on their application forms a voluntary question about designated group status. However, in order to meet the requirements of the *Act* and *Regulations*, a survey form must be given to each new employee after they become an employee. Data obtained in this way will be more accurate, as a person who has already been hired may be less reluctant about making personal information known. As well, there is no incentive to falsely self-identify as a member of a designated group, hoping to receive some special consideration.

Employers are cautioned that if questions about designated group status are asked during the hiring process, it should be made clear that answers are voluntary. Employers should also indicate clearly the reason for asking these questions, i.e. for the purpose of implementing employment equity..

*Such questions are not required under the Employment Equity Act.*

## **The Grandparent Clause**

Employers who have conducted workforce surveys in the past may not need to conduct a new survey, if it is likely that the results of the previous survey were as accurate as the results of a new survey would be. In making this determination, it is necessary to consider both the questions posed and methods used to conduct the previous survey.

Generally speaking, a workforce survey that was in compliance with definitions in the old *Regulations* is likely to be in compliance with the new ones. This means that its results can be “grandparented” and there is no need to undertake a new workforce survey provided the following two conditions are met:

- previous self-identification responses were fully voluntary; and
- the employer has kept the results up-to-date by giving questionnaires to each new employee, and to any employee who wishes to change his or her responses or who asks for a new questionnaire.

When in doubt, it is always preferable to conduct a new workforce survey rather than rely on the results of an older survey which may not be accurate or up-to-date. After all, new surveys generally tend to be better surveys and as a result produce more accurate representation figures for employers. Moreover, without reliable data on the internal representation of designated group members, the organization will have difficulty designing and implementing an effective employment equity program.

## Storage And Confidentiality

A sample copy of the self-identification questionnaire and a record of each employee's self-identification responses must be kept on file. Employers are not required to retain individual questionnaires, although some employers may wish to do so, at least at first, as evidence of the response rate.

*Further details on record-keeping may be found in **Guideline 10: Record Keeping***

This information should not however be kept in the individual's personnel file.

The sample copy of the questionnaire must be held until at least two years after the plan to which it relates expires. It should be kept in mind that a workforce survey relates to every subsequent plan developed which is based on the results of that survey. As a practical matter, therefore, employers are advised to keep the sample copy of the questionnaire indefinitely.

The record of each employee's responses must be held until at least two years after the employee's employment with the organization is terminated.

The employer is required to ensure that the self-identification responses of individual employees are kept confidential. In other words, the only people who should know how any particular employee responded are those who need to know or those for whom the employee has given consent for the purposes of implementing employment equity. Normally, this would include the staff who directly handle the inputting of questionnaire responses. Unless employees have given permission for the use of their responses for purposes other than the calculation of aggregate statistics (for example, through a special check-off, as discussed above), no one else -- not even their direct superiors -- should be informed of how they self-identified.



Several fairly simple measures can help to ensure confidentiality:

- If paper questionnaires are used, they should be accompanied by sealable envelopes into which employees can place their completed questionnaires before returning them. In addition, collection can be carried out by designated staff or managers if there is any concern that envelopes will be opened or lost on the way to their destination.
- If electronic questionnaires are used, a method of encrypting responses can be considered. The e-mail account to which responses are forwarded should be a secure one, accessible only to designated personnel through the use of a password.
- Once responses are received by the appropriate office – most often that of a Human Resources or employment equity administrator – they should be stored in a secure location. When paper questionnaires are used, this will usually mean a separate, locked filing cabinet; where electronic questionnaires are used, it will usually mean a separate, password-protected electronic file. Responses should **never** be stored in the individual employee's personnel file.
- Finally, when self-identification responses are inputted into a data base, that data base should be kept separate from the more general Human Resources data base and, again, should only be accessible to specified staff through the use of a password.

In order to guard against system failures, all electronic records, accessible only to designated personnel, should be systematically backed-up on diskette. This diskette must also be locked up to ensure confidentiality.

## Problems With Workforce Survey Returns And Responses

If a large number of questionnaires are not returned on time, or if they are returned with one or more questions unanswered, or if there is reason to believe that a large number of employees may have answered the questions inappropriately, this may be indicative of a larger communication problem.

In such a situation, the law does not allow employers or designated personnel to pressure people into providing or correcting responses.

However employers can attempt to improve the self-identification process by holding information sessions or by providing information through news letters or E-mail to:

- explain the purpose and principles of employment equity;
- review the definitions of designated group members;
- explain the purpose of the workforce survey and the importance of filling in the questionnaire; and
- emphasize the protection of confidentiality.

Employers should not be penalized however for matters beyond their control. The *Act* provides that where a finding of non-compliance is based on apparent under-representation which the employer believes can be attributed to a low response rate or the failure of designated group members to self-identify, then the *Act* provides some recourse, provided the employer has made all reasonable efforts to implement employment equity. [See subsections 25 (1.1) - (1.3) of the *Act*.]

Where there is some evidence that workforce survey statistics do not reflect true designated group representation, the employer may use this evidence in response to a finding of non-compliance by a Canadian Human Rights Commission compliance officer.

Such evidence, for example, might include data on the provision of accommodations to employees with disabilities, or data on participation in special programs aimed at designated group members.

The evidence cannot come from simple management identification. In other words, it cannot include the specific identification of employees who, in the employer's opinion, failed to self-identify correctly. There would have to be other evidence which does not rely on identification of individual employees.

*For example, if an employer has approved designated parking spaces for **ten** employees with disabilities and only **three** employees have self-identified as persons with disabilities, this could constitute other such evidence.*

Where the compliance officer is satisfied that this evidence explains all or part of the finding of non-compliance and that the employer has made all reasonable efforts to implement employment equity, further enforcement measures will not normally be taken.



## PART C: INFORMATION DOCUMENTS

This section provides information on how to determine if an employee-employer relationship exists for the purpose of employment equity; administer the workforce survey process; and monitor the return of questionnaires.

### APPENDIX A

#### Determining An Employment Relationship

Determining the employment relationship is critical in knowing who must be included in the workforce survey, and how they must be reported on.

#### How To Determine Whether A Person Is An Employee

##### *Step 1: Does an employee/employer relationship exist?*

An employee is an individual who works for an employer and receives money or money's worth for doing that work.

In many cases, the employment relationship will be obvious and already determined. This is because employee status is relevant to other employment regulations, such as employment standards legislation and income taxes.

Where the employment relationship is not clear, a case-by-case assessment will be required.

##### **Established criteria**

The courts and administrative tribunals have developed criteria for assessing whether a person is in an

employment relationship.

For example, when an organization exercises control over:

- what work is to be done;
- the way in which it is to be done;
- the means to be employed in doing it; and
- the time, when and place where it is to be done,

the individual is likely to be regarded as being in an employee/employer relationship.

On the other hand, where the individual:

- has a chance of profit or a risk of loss; or
- is required to invest capital other than his or her own labour,

then the individual is more likely not to be in an employee/employer relationship.

##### ***Deciding if a relationship exists: A few common questions***

##### **Is a written contract required?**

A person is an employee regardless of whether the agreement between employer and employee is written or oral, express or implied.

**What about the location where an employee works?**

A person is an employee regardless of the location at which he or she performs the work or service. If the individual works at the employer's premises, at the premises of another employer, or at his or her own home, he or she may still be considered an employee.

**Step 2: Permanent part-time permanent full-time, or temporary employee?**

**Who is a permanent employee?**

The *Act* considers persons to be permanent employees if their employment is expected to continue for an indefinite period. Their employment is not temporary or time limited.

**What is the difference between permanent full-time and permanent part-time employees?**

Employers should follow their ordinary business practice in distinguishing between full-time and part-time employees. Employees who regularly work the standard number of hours set by the employer are considered to be full-time employees. Employees who work less than the standard number of hours set by the employer are considered to be part-time employees.

**What is a temporary employee?**

The *Act* considers an employee temporary if their employment is for a specified period of time of 12 weeks or more in a calendar year. (In other words, there would be a fixed starting and stopping date for the employment

relationship.) The 12 weeks do not have to be consecutive weeks, and the employment may be for any number of hours per week. Temporary employees include any term employees, and may include agency personnel or casual workers, who are employed for 12 weeks or more in a calendar year. Normally it would not include seasonal employees however. If an employee has a fixed stop date for the employment relationship, this is an indication that the person is a temporary (and not a permanent) employee.

**Who is a seasonal employee?**

A seasonal employee is one who is employed in a position that is filled for a specific period of time on a regular basis every year, usually due to the seasonal nature of the industry. Seasonal employees include those who perform their work on a full-time or part-time basis. Seasonal employees will normally be considered to be either permanent full-time or permanent part-time employees, due to the regularity of their employment.

**Is a term employee a temporary employee?**

A term employee is an employee, other than a permanent or seasonal employee, who is employed to work for a specific period of time. Term employees include those who perform such work on a full-time or part-time basis. If the term is for 12 weeks or more in any calendar year, the term employee would be considered a temporary employee.

**Is a person working on a contract of less than 12 weeks a temporary employee?**

Normally, a person hired to work fewer than 12 weeks in a calendar year is not considered an employee for the purposes of the *Act*. However, it is often difficult to know ahead of time how long certain employees hired on a casual or temporary basis will actually work during the year. Therefore, it is a good practice to survey all employees, even casual employees of fewer than 12 weeks, in the event they may actually end up working more than 12 weeks during the year.





## **APPENDIX B EMPLOYEE DEFINITIONS UNDER THE ACT (PRIVATE SECTOR EMPLOYERS ONLY)**

### **EMPLOYEE**

An employee is a person employed by an employer. It includes a permanent full-time employee, a permanent part-time employee, and a temporary employee employed for a total of 12 weeks or more. It does not include a person employed on a temporary or casual basis for fewer than twelve weeks in a calendar year nor does it include a student in full-time attendance at a secondary or post-secondary educational institution employed during a school break. [Reg., s. 1(2)]

### **CATEGORIES OF EMPLOYEES**

For reporting purposes, employees have to be categorized as permanent full-time, permanent part-time, or temporary.

#### **Permanent Full-time Employee**

A permanent full-time employee is a person employed for an indeterminate period to regularly work the standard number of hours fixed by the employer. [Reg., s. 1(1)]

#### **Permanent Part-time Employee**

A permanent part-time employee is a person employed to regularly work fewer than the standard number of hours fixed by the employer. [Reg., s. 1(1)]

#### **Temporary Employee**

A temporary employee is an employee employed on a temporary basis for any number of hours within a fixed period or periods totalling 12 weeks or more during a calendar year. This, however, does not include students employed during school break. [Reg., s. 1(1)]



## APPENDIX C

EMPLOYEE CATEGORIES	ARE THEY EMPLOYEES UNDER THE ACT	RESPONSE
<b>Managers, senior managers, corporate officers</b>	<b>YES</b>	There is no exception based on one's position within the organizational structure.
<b>Shareholders of corporations or members of the Board of Directors of corporations</b>	<b>MAYBE</b>	They would be considered to be an employee only if the individual, <u>apart from his or her role as a shareholder or member of the board of directors</u> , were an employee.
<b>Partners and sole proprietors</b>	<b>NO</b>	One cannot be an employee of oneself.
<b>Independent contractors</b>	<b>NO</b>	A consultant retained to perform a specific project is an example of an independent contractor. Each case should be assessed on an individual basis to see whether the person might actually be an employee. In making such an assessment, the factors set out on pages 38 to 40 should be considered – for example, does the contractor bear the risk of loss or chance of profit; or does the employer? It should be noted that this is a complex area of law, and the list of factors given is not exhaustive.
<b>Students</b>	<b>NO</b>	Co-op students for less than one “work term” (i.e. less than four months), summer students, or practicum placements from a local college or university, who are otherwise full-time students, are not considered employees for the purposes of the <i>Act</i> .

<b>EMPLOYEE CATEGORIES</b>	<b>ARE THEY EMPLOYEES UNDER THE ACT</b>	<b>RESPONSE</b>
<b>Apprentices, learners and trainees</b>	<b>YES</b>	Individuals in an apprenticeship or training program who are not full-time students and who work for 12 weeks or more, may be full-time or part-time temporary or permanent employees, depending on the circumstances.
<b>Employees on leave of absence</b>	<b>YES</b>	Those who are on short-term or long-term disability, pregnancy or parental leave or other types of leaves of absence -- and keep their employee status while on leave (i.e., employer-employee relationship is maintained) -- are employees.

## APPENDIX D:

### About Additional Questions

Following are answers to some of the questions you may have about the use of additional questions.

#### What Are Additional Questions?

Additional questions are questions related to employment equity that employers may include in their workforce survey questionnaire. They are not required by legislation.

##### *Why would I ask additional questions?*

You may want to ask additional questions to obtain information that will help you in reviewing your employment policies and practices, and in developing your employment equity plan.

You may want to ask a question requesting the consent of the employee to use the information obtained from the questionnaire for other than strictly statistical employment equity purposes.

However, the desire for more information should always be balanced with the need for an easy-to-follow questionnaire. You may risk a low response rate to the survey if the questionnaire is too complex or too long for employees to complete. Often employees may be less likely to provide detailed information about disability or racial and ethnic origins, as there may be too high a level of discomfort associated with providing details of such a personal nature. For this reason, the gathering of subgroup

data has not been encouraged in the past.

##### *Why would I ask employees to identify whether they are a member of a visible minority subgroup?*

Some employers have found that subgroup information is important to identifying barriers that may be experienced by different visible minority subgroups. For example, racial stereotyping may affect the types of jobs for which members of different racial minority groups are hired.

##### *Why would I ask questions on employment accommodation?*

This question might help estimate the extent of the need to which employment accommodation — short of causing undue hardship — is required in your organization. It might also help you assign responsibility for delivering accommodation to the right person/area of your organization.

Such a question however is not essential to identifying the accommodation needs of employees with disabilities.

#### What Other Questions Can I Ask?

##### *Type of disability*

You might ask employees what type of disability they have. In some organizations, there may be differences in barriers experienced by persons with disabilities based on the type of disability. If this is the case, the information could help identify these barriers.

### ***Affiliation to an aboriginal community***

You might ask employees their affiliation to a particular First Nation or aboriginal community or reserve. This could assist in understanding the particular kinds of barriers that must be overcome and in developing positive policies to address the needs of aboriginal employees.

### ***Other questions***

Other questions related to employment equity are permitted in the questionnaire. For example, you could ask employees what expectations they may have concerning employment equity.

## **APPENDIX E:**

### **SUGGESTED FORM FOR MONITORING RETURN OF QUESTIONNAIRES**

A form set out on the next page may aid you in monitoring the distribution and return of workforce survey questionnaires. The following five steps are suggested to help with the monitoring process:

1. List all employees identified for employment equity purposes on the form.
2. Allocate each employee a number or identifier.
3. Insert the date the workforce survey questionnaire was distributed.
4. Insert the date each employee returned the questionnaire.
5. If a questionnaire is not returned, indicate what steps were taken.

Remember both the form and the workforce survey questionnaires must be stored in a secure location









## APPENDIX F DESIGNATED GROUP AND EXPLANATIONS

DESIGNATED GROUP AND EXPLANATIONS	SELF-IDENTIFICATION CATEGORIES	EXAMPLES
<b>WOMEN</b>	N/A	N/A
<p><b>PERSONS WITH DISABILITIES</b></p> <p>Convention 159 of the International Labour Organization states that persons with disabilities means every “individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognized physical or mental impairment.”</p> <p>Physical disabilities can be visible or non-visible and can include any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, muteness or speech impairment, or physical reliance on a guide dog, on a wheelchair or other appliances or devices.</p> <p>Learning, mental or psychiatric disabilities can include learning or comprehension incapacities which are significant and persistent but permit the individual so disabled to carry out duties and perform tasks in a reliable manner under a reasonable amount of supervision.</p>	<p>Any persistent degree of:</p> <ul style="list-style-type: none"> <li>• coordination/dexterity impairment</li> <li>• mobility impairment</li> <li>• non-visible physical impairment</li> <li>• deafness/hearing impairment</li> <li>• blindness/visual impairment</li> <li>• muteness/speech impairment</li>   <li>• developmental/mental impairment</li> <li>• psychiatric impairment</li>   <li>• learning impairment</li> <li>• other impairment</li> </ul>	<ul style="list-style-type: none"> <li>• cerebral palsy</li> <li>• paraplegia</li> <li>• hemophilia</li> <li>• hard of hearing, deafness</li> <li>• glaucoma</li> <li>• inability to generate or emit verbal messages, such as aphasia</li>   <li>• Down’s syndrome</li> <li>• a previous mental illness, or one which is under control, such as schizophrenia.</li>   <li>• dyslexia</li> </ul>
<b>Aboriginal Peoples</b>	<ul style="list-style-type: none"> <li>• Status Indian</li> <li>• Non-Status Indian</li> <li>• Inuit</li> <li>• Métis</li> </ul>	

**Collection of Workforce Information**

DESIGNATED GROUP AND EXPLANATIONS	SELF-IDENTIFICATION CATEGORIES	EXAMPLES
<p><b>VISIBLE MINORITIES IN CANADA<sup>1</sup></b></p>	<ul style="list-style-type: none"> <li>• Blacks</li>   <li>• Chinese</li> <li>• Japanese</li> <li>• Korean</li> <li>• Filipino</li>   <li>• Indo-Pakistani</li>   <li>• West Asian and Arab</li>   <li>• Southeast Asian</li>   <li>• Other</li> </ul>	<p>including Black Africans, West Indians, Canadians or Americans</p> <p>Bangladeshi, East Indian, Pakistan, Sri Lankan</p> <p>Afghani, Armenian, Egyptian, Iranian, Iraqi, Jordanian, Lebanese, Palestinian, Syrian, Turk</p> <p>Burmese, Cambodian/Kampuchean, Laotian, Malaysian, Thai, Vietnamese</p> <p>Others include:</p> <ul style="list-style-type: none"> <li>• Latin Americans</li> <li>• Indonesian or Pacific Islanders</li> </ul>

<sup>1</sup> Visible minority groups include persons who were born in either Canada or other countries.

## APPENDIX G

### WORKFORCE SURVEY QUESTIONNAIRE<sup>2</sup>

#### Aboriginal Peoples

1. For the purposes of employment equity, “aboriginal peoples” means persons who are Indian, Inuit or Métis.

Based on this definition, **are you an aboriginal person?**

Yes \_\_\_\_\_

No \_\_\_\_\_

#### Persons With Disabilities

2. For the purposes of employment equity, “persons with disabilities” means persons who have a long-term or recurring physical, mental, sensory, psychiatric or learning impairment and who:

(a) consider themselves to be disadvantaged in employment by reason of that impairment, or

(b) believe that an employer or potential employer is likely to consider them to be disadvantaged in employment by reason of that impairment, and includes persons whose functional limitations owing to their impairment have been accommodated in their current job or workplace.

Based on this definition, **are you a person with a disability?**

Yes \_\_\_\_\_

No \_\_\_\_\_

#### Members of Visible Minorities

3. For the purposes of employment equity, “members of visible minorities” means persons, other than aboriginal peoples, who are non-Caucasian in race or non-white in colour.

Based on this definition, **are you a member of a visible minority?**

Yes \_\_\_\_\_

No \_\_\_\_\_

---

<sup>2</sup> As set out in Schedule IV of the *Employment Equity Regulations*