Guideline 6: Employment Systems Review

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INTRODUCTION

This guideline is intended to provide clarification of the requirements of the *Employment Equity Act* related to conducting an Employment Systems Review (ESR). Separate guidelines address other issues related to the *Act*, including how to conduct a workforce analysis and how to develop an employment equity plan.

These 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*, as well as documents available from the Canadian Human Rights Commission (CHRC) relating to the audit process.

PART A: LEGAL FRAMEWORK

An Employment Systems Review (ESR) is an examination of human resource policies and practices for their impact on women, Aboriginal peoples, persons with disabilities and members of visible minorities. The review also includes an analysis of the reasonable accommodation of the special needs of designated group members to ensure their full participation in an employer's workforce.

The Employment Equity Act refers to reviewing human resource policies and practices in two places: Sections 5 and 9.

Section 5 of the *Employment Equity Act* states that employers must identify and eliminate barriers against persons in designated groups in their employment systems, policies and practices that are not authorized by law. Employers must institute positive policies and practices and make such reasonable accommodation to ensure equitable representation of designated group members in the employer's workforce.

See page 38 of this Guideline on Reasonable Accommodation.

Section 9 states that employers must review their employment systems, policies and practices in accordance with the *Regulations* to identify employment barriers against designated group members.

Sections 8, 9 and 10 of the *Regulations* that accompany the *Employment Equity Act* are more specific about when employers must undertake an ESR and what it should include.

Section 8 of the *Regulations* states that, in those occupational groups where a workforce analysis has identified underrepresentation, the employer shall conduct an ESR to determine whether any of the employment policies and practices are an employment barrier against persons in designated groups.

*See **Guideline 5: Workforce Analysis** to determine underrepresentation.*

The ESR needs to be done only for those occupational groups where underrepresentation occurs. For example, it may be that Aboriginal peoples are underrepresented in the "Middle and Other Managers" category. The employer would thus be obliged to examine all the human resource policies and practices that apply to the "Middle and Other Managers" category as they affect Aboriginal peoples.

The trigger for undertaking an ESR is the underrepresentation of designated groups within occupational groups found in the employer's workforce.

Some employers have only one set of human resource policies and practices that apply to all occupational groups within their workforce. In this case, all human resource policies and practices would need to be reviewed if underrepresentation occurred in one or more occupational groups. The review could include such items as a policy on advertising for recruitment or a company training policy which applies across the organization.

In other cases, employers have some human resource policies and practices that apply to all occupational groups and others that apply only to specific occupational groups. For instance, some employers have recruiting tests designed to test skills for a particular job. In this situation, when underrepresentation occurs in one or more occupational groups, both the policies and practices applicable to all occupational groups must be reviewed, as well as those that apply only to the groups where underrepresentation occurs. Selection policies and practices are often designed for specific occupational groups.

Although the law requires an ESR only for those occupational categories in which designated group members are underrepresented, it is a good idea to do one for all occupational groups, even for those where underrepresentation is not present. Some organizations find that comments from employees, employee surveys and internal complaint processes reveal information that indicate an ESR is needed even though no underrepresentation exists. Undertaking an ESR for all occupational groups will help to ensure that no policies or practices exist which could have negative consequences for designated group members.

It is a good idea to undertake an ESR for all occupational groups.

Section 9 of the *Regulations* states that the employer shall, in relation to each occupational group in which underrepresentation has been identified, review its employment systems, policies and practices with respect to

> (a) the recruitment, selection and hiring of employees;
>
> (b) the development and training of employees;
>
> (c) the promotion of employees;
>
> (d) the retention and termination of employees; and
>
> (e) the reasonable accommodation of the special needs of members of designated groups.

Reasonable accommodation means employers must take into account the uniqueness of each individual designated group member and undertake activities or adjust policies and practices so that no member of a designated group is unfairly prohibited from taking part fully in the workplace. Reasonable accommodation must take place up to undue hardship on the employer.

See page 38 of this Guideline for information on Reasonable Accommodation.

A systems analysis must be more than just a review of written policies and clearly prescribed practices. It must determine which informal practices may also be in use and how policies are actually applied.

A systems review must include a review of human resources policies and practices.

In the case mentioned previously of Aboriginal peoples who are underrepresented in the "Middle and Other Managers" category, the employer would be obliged to examine each of the preceding five areas with respect to Aboriginal peoples in that occupational category, examining both formal and informal procedures.

Section 9 of the *Regulations* also states that the ESR must be kept up to date by reviewing any new employment systems, policies and practices for their impact on designated group members.

Section 10 of the *Regulations* states that for employers which had already completed an ESR before the *Act* and *Regulations* came into force in October 1996, it is not necessary to redo the ESR if the results of a new review would likely be the same.

In making this decision, it is important to remember that knowledge of how employment policies and practices affect designated groups is continually expanding. Therefore, a periodic review of employment systems is helpful in eliminating barriers for designated group employees.

Other factors to consider in making the decision about whether to redo the ESR are:

- how long ago was the ESR undertaken?

- have there been many changes in the number of employees and their occupational profile?

- have there been many changes to human resource policies and practices?

- has representation changed substantially?

- have plans based on previous ESRs produced demonstrable results?

PART B: PRACTICAL APPLICATION

The ESR is an analytical tool that reveals human resource policies and practices that negatively impact on the full participation of women, Aboriginal peoples, persons with disabilities and members of visible minorities in the employer's workforce.

The ESR pinpoints human resource polices and practices—whether formal or informal, written or understood—that need to be replaced, modified or expanded upon.

Human resource policies and practices, also referred to as employment systems, which unfairly exclude members of designated groups from taking part in an employer's workplace are known as systemic barriers. They usually result from a lack of awareness of their impact on designated group members.

Such systemic barriers can be subtle and therefore hard to detect. Even a policy or practice that was never designed to exclude the designated groups may result in systemic barriers.

Employment policies and practices which appear neutral and are applied equally may have a disparate effect on different groups. For example, the requirement for Canadian experience for some jobs may unfairly exclude some members of visible minorities who are recent immigrants, if Canadian experience is not mandatory to do the job. In this case, the requirement for Canadian experience is applied equally to all applicants, but the impact of the requirement is to limit the opportunities of some members of visible minorities who are qualified but who do not have the required Canadian experience. Such practices may not be related to job performance or business necessity.

In pinpointing human resource policies and practices that adversely impact designated group members, it often becomes apparent that they have a negative effect on others in the workforce as well. Thus, the ESR is a vehicle to create a workplace that is fair and equitable for everyone and benefits all employees.

Sometimes a human resource policy or practice that excludes or limits the full participation of designated group members may be required. For instance, a degree in geophysics may be a genuine requirement for a job in mining. Although fewer women might have the opportunity to apply for the job because only a small proportion may study geophysics, the job requirement is necessary for the business. Exclusion does takes place in this case, but it is not unfair.

In effect, systemic barriers exist when designated group members are unfairly hampered in their participation by the employment policy or practice so they may not reach the same level of achievement and may not be valued as highly as others. Eventually, this may affect their opportunities for developmental assignments, training, promotion or just being able to keep their job in a time of downsizing.

An ESR can pinpoint such examples of systemic barriers, and helps the employer determine where changes are needed to ensure that everyone is treated fairly.

However, employee behaviours are equally important in ensuring a fair and equitable workplace. No matter how fair an organization's policies may be, if individual managers do not apply them consistently and fairly, the organization will not be equally accessible to everyone. Attitudes are one factor in shaping behaviour, and the attitudes and behaviours of individual employees help form the organizational climate as a positive or negative experience for designated group members.

It is also important to note that an ESR benefits all employees. An ESR means ensuring employment policies and practices are fair for everyone. It identifies barriers that may affect anyone from fully participating in the workplace.

The key to detecting systemic barriers is to ask the following basic questions:

Does the human resource policy or practice in any way unfairly exclude or limit designated group members?

OR

Does the policy or practice benefit all employees?

The results from the ESR are used to determine which policies and practices need to be neutralized so that all qualified people can be recruited, promoted and retained. The ESR can also help to determine where positive policies and practices would further the integration of designated group members into the employer's workforce.

The Approach to Conducting an ESR

The goal of the ESR is to ensure equality for all employees by implementing neutral policies and practices.

The approach to use in conducting an ESR is to ask the following basic questions as each policy or practice is examined:

Does this policy or practice in any way unfairly exclude or limit designated group members?

OR

Does the policy or practice benefit all employees?

These basic questions can be subdivided into five specific criteria for determining if employment policies and practices comply with the law and employment equity goals:

1. Legality: Does the policy or practice conform to applicable human rights and employment laws? For example, do the policies conform to the appropriate labour and health and safety laws?

2. Adverse impact: Does the policy or practice have a disproportionately negative impact on any designated group?

For example, job postings on a bulletin board at "eye level" may restrict employees who use wheelchairs or who are visually impaired from applying. Or rigid scheduling of work hours may affect the ability of some employees to observe religious holidays.

In other cases, a job requirement, selection tool or related standard may exclude members of one or more of the designated groups (e.g. a writing test for people who do manual work). If the level of adverse impact found through statistical analysis in a policy or practice is likely to affect the representation within the occupational group, its job-relatedness should be examined.

3. Job-relatedness: Is the policy or practice reasonable and is it related to the job? Is the content of a job test "reasonable"; does it predict how well an employee will do on the job? Requirements that are job related are known as "bona fide occupational requirements."

For instance, is there a relationship between psychological tests and performance on the job? Or, is a Grade 12 certificate needed to work as a building cleaner?

If a policy, practice, standard or other requirement has an adverse impact, it is wise to remove or amend it unless it is essential for the safe and efficient operation of the organization. To demonstrate that the policy or practice is essential, there must be a demonstration that the requirement is consistent with the requirements of the job or predictive of performance.

Questions to ask of each human resource policy or practice:

- *Is it legal?*

- *Does it create adverse impact on designated groups?*

- *Is it related to the job?*

- *Can an accomodation be made?*

- *Is it applied consistently?*

4. Accommodation: If the policy or practice is determined to be job related, but tends to exclude designated group members, can an accommodation be made which would result in less or no adverse impact? It is important to remember that even if a job requirement is important to performing the job, accommodation must be made if possible.

5. Consistency: Is the policy or practice applied consistently?

For example, are only persons with disabilities required to undergo pre-employment medical or strength tests? Are developmental and training opportunities available only to managers and, conversely, never to clerical staff? Are only women asked about their availability to work overtime?

An employer may wish to treat the ESR as an effectiveness audit which will also pinpoint possible areas of inadequate results. The question to ask here is "Will the policy or practice be effective in reaching the intended goal?" If the ESR is positioned as an effectiveness audit, it can be an important link between improving employee management practices as a business objective and eliminating barriers for designated groups.

The ESR may be treated as an effectiveness audit.

Steps in Conducting an ESR

Conducting an ESR involves the following seven steps:

1. Involve the organization's employment equity committee, if one exists, in conducting the ESR. The committee may need some training from outside experts on how to undertake an ESR. It is particularly important that designated group members have the opportunity to provide input because they have first-hand experience on how human resource policies and practices can affect them. If a standing committee on employment equity does not exist, a group representing a cross section of employees could be established to conduct this process.

Many other people in the organization can be helpful in doing an ESR - human resource specialists, line managers and union representatives. Unions can play a critical role as part of the team in identifying practices that are barriers to employment equity. In unionized settings, employees will often speak to their union representative about employment practices. If a senior manager is not already part of your employment equity committee, it is helpful to have such a person to ensure that the recommendations have an advocate from senior management. The ESR should be carefully planned and coordinated to ensure its effectiveness and efficiency.

The committee also needs the full support of the entire senior management team. It may be a good idea for senior managers to communicate to all employees that an ESR is taking place. The communication could state that senior management looks forward to the results and hopes all employees will cooperate with the review. This communication could be signed by both senior management and union officials.

*See **Guideline 3: Consultation and Collaboration.***

Steps in Conducting on ESR

1. *Involve a cross section of employees.*

2. *Determine where underrepresentation exists.*

3. *Determine which human resource policies and practices need to be examined.*

4. *Conduct a statistical analysis & determine adverse impact of human resource policies and practices.*

5. *Examine how human resource policies may have created adverse impact on designated group members.*

6. *Examine how human resource practices may have created adverse impact on designated group members.*

7. *Write report with findings.*

2. Determine in which occupational groups underrepresentation exists for designated group members by examining the workforce analysis. This will pinpoint the occupational groups for which an ESR is necessary. Where an employer has many employees in a single occupation (such as computer analysts), it is important to examine these jobs individually and not just the broad-based occupational categories.

*See **Guideline 5: Workforce Analysis**.*

3. Determine which human resource policies and practices apply to these occupational groups where underrepresentation occurs. This process may be relatively complex since formal policies and formal and informal practices and procedures as well as how they are implemented must be identified. This includes developing an inventory of all documentation that can affect the employment relationship. The process may reveal documents being used in individual branches that were developed by the branches, corporate documents that are policy but not being used, corporate policies that are selectively applied, and corporate documents that have been phased out but are still being used. In addition, this phase will reveal practices that are used but not documented.

4. Examine statistically which employment policies and practices create an adverse impact on designated group members. For instance, in the area of recruitment, compare the number of Aboriginal applicants to their representation in the external labour force for particular occupational groups in which they are underrepresented. Are they applying at an appropriate rate? Or, in the area of promotion, compare the percentage of promotions awarded to designated group members in the underrepresented occupational groups to their representation in the feeder groups. This examination may provide clues as to where unfair exclusion exists.

Statistical analysis may be inappropriate for occupational groups in which very small numbers work. In this case, statistical analysis may be more appropriately done on an organization-wide basis or by rolling up two or three related occupational groups for analytical purposes.

Sometimes statistical analysis does not reveal that an employer's employment policy or practice has resulted in underrepresentation of designated groups. However, external data or various studies may indicate that such a policy or practice probably has a negative effect on a particular designated group. It is wise to eliminate or adapt the policy or practice to eliminate any possible negative impact in such a situation.

5. Examine how each of the human resource policies may have created adverse impact on designated group members. Policies are formal procedures that a company requires its employees to follow, and normally are written in a policy manual. Designated group input to this examination is crucial to understand how a seemingly neutral policy can exclude designated group employees from fully participating in the workforce. Anyone involved should be familiar with barrier issues.

6. Examine how each of the human resource practices may have created adverse impact on designated group members. They are also actions that occur as a result of a common understanding or perhaps on a random basis by individual employees. Examine practices by interviewing designated group members and other employees, supervisors and managers; undertaking statistical analysis; talking to human resource staff and union representatives; and reading procedural manuals. These interviews should be clearly designed to elicit experiences and observations, not attitudes and opinions. Interviewers should be competent to assess and interpret experiences and observations for their potential to have adverse impact.

7. Write the report outlining where barriers exist for members of each of the designated groups and recommendations to eliminate them. These recommendations become part of the employment equity plan and should be shared with all employees.

Keeping the ESR Up to Date

Once an organization has completed the ESR, it must be kept up to date. Every time a new human resource policy or practice is proposed, it is good idea to review it for employment equity considerations (i.e. its impact on designated group members). Some organizations do this by having those responsible for employment equity sign any human resource proposal before it receives final approval from senior management. Other organizations pre-test policies with designated group members by using focus groups and other testing methods. Policies and practices need to be monitored regardless to ensure that they fit the changing market and organizational requirements.

An ESR must be kept up to date.

In addition, because of yearly fluctuations in the data, new underrepresented occupational groups may emerge which would dictate an ESR. Thus, an ESR is dynamic, ongoing and could be updated as part of annual monitoring.

PART C: A CLOSE EXAMINATION OF EMPLOYMENT SYSTEMS

Recruitment, Selection and Hiring

Hiring encompasses issues related to the creation of the employer/employee relationship. In order to hire, recruitment and selection must take place. These processes must be fair and unbiased which will help to ensure that members of designated groups are recruited and selected at a rate at least equivalent to their representation in the appropriate external workforce.

The recruitment process is designed to attract a representative group of qualified job applicants to fill available employment opportunities.

The focus of the recruitment system review is to determine whether the applicable policies and practices encourage or discourage qualified designated group members from applying for employment opportunities within an organization.

Employers may recruit from within their existing workforce through promotions and transfers, or externally through newspaper advertising, employment agencies and other methods.

Employers who do not have a representative workforce often say it is because designated group members do not apply for jobs. However, designated group members may lack access to employment opportunities because of the recruitment methods being used.

Sometimes designated group members are inadvertently screened out of the recruitment process.

For example, word-of-mouth recruiting may inadvertently perpetuate the exclusion of designated group members from being hired. People tend to have friends and relatives like themselves, so it is less likely they will be in contact with members outside their own socioeconomic and racial/ethnic group. On the other hand, word-of-mouth recruiting works well when extended to all groups in the community.

The recruitment method is a major factor in determining the final outcome of the recruitment process. In other words, recruitment methods or practices dictate the makeup of the pool of job applicants. For example, years of exclusion of persons with significant disabilities from many workforces mean that many standard approaches to recruitment do not reach qualified workers in this group.

To ensure that designated group members know about job opportunities, go where they are and make sure they are included in your invitation.

The following section provides examples of how some recruitment policies and practices may exclude designated group members. Each organization, through its own review, will discover what policies and practices exclude or limit designated group members in its workplace.

Internal Recruitment Issues

Seniority and other next-in-line approaches

- An organization that uses only internal candidates for job vacancies is likely to perpetuate underrepresentation if there are very few designated group members currently working in the organization.

- Designated group members are often the people who are the most recent entrants to the labour force and therefore have little seniority. Under the *Employment Equity Act,* employers must consult with employee representatives on seniority issues to determine if they create an adverse impact on the employment of designated group members and to find ways to minimize it.

See **Guideline 3: Consultation and Collaboration.**

In-house advertising

- Employers are not always aware of the qualifications of all their staff, and therefore may wish not to restrict those who can apply to fill a vacancy. Employers should also keep in mind that limiting individuals who can apply by their classification or level in the organization may screen out many qualified employees. Appointing individuals to positions without advertising the jobs can restrict the access of designated group members to senior levels in the organization. Employers may wish to post job vacancies on bulletin boards and in other relevant communication vehicles, such as e-mail, so all those who qualify may apply. Alternate formats such as Braille should be considered when appropriate. Reviewing job posters helps to ensure that they accurately emphasize the qualifications and duties most central to the job.

Limiting individuals who can apply by their classification or level in the organization may screen out many qualified employees.

Succession planning systems

- Succession plans are helpful to organizations in planning their future human resource needs, but can exclude designated group members if they are not consciously included in the plan.

Assignments and acting positions

- Increasingly, special assignments and acting positions are stepping stones to permanent promotions. It is crucial, therefore, that access to these opportunities is equitable. During the ESR, employers should examine their policies on how individuals gain access to such opportunities because they are often the result of informal appointments by individual managers. It can be helpful to compare the percentage of designated groups members who receive such positions to the percentage of all employees.

Having proactive policies and practices on training in place will help to ensure that designated group members can take advantage of special assignments when they occur.

External Recruitment Issues

Word-of-mouth referrals

- People tend to tell friends about job vacancies that occur within their organizations. This can result in duplicating the racial/ethnic and ability/disability makeup of current employees as people are likely to have friends and relatives from similar cultural and economic backgrounds. Supplementing this practice with other external recruitment methods, such as use of employment agencies, community groups and advertising, can help to ensure that all groups of people have every opportunity to apply for available jobs.

Word-of-mouth referrals can work both for and against designated group members.

Walk-ins

- Relying on "walk-ins" as a means of recruitment can restrict an employer's applicant pool to those who know about the organization. This could have a negative effect on designated group members if they are unaware of the employer's existence, or if they believe, even incorrectly, that there are no opportunities for their group. The employer may need to widen the applicant pool by using other methods of recruitment. In addition, organizations may be located in a neighbourhood that does not reflect the entire city or province in which they are based.

Training on cross-cultural issues and human rights legislation may need to be provided for front-line staff to ensure they will treat all job-seekers appropriately.

Referrals from employment centres and agencies, executive search firms, professional associations, education and training institutions

- Human resource referral agencies are not always aware of an organization's employment equity goals and interest in interviewing designated group members. They may need to be reminded so that qualified individuals from the designated groups are referred and not screened out.

- Agencies representing designated group members, schools and universities can be useful sources of qualified designated group members. Organizations may need to contact these bodies on a regular basis, as well as professional associations, education and training institutions to widen the pool of qualified applicants.

Advertising

- Employers may need to examine their advertising, and their publications available to the public, to ensure they are inclusive of designated group members.

- Employers should examine if designated group members are reading their advertising. If not, they may need to advertise in publications read by designated group members to ensure they are aware of available jobs.

Depicting designated group members in stereotypical ways can adversely affect their participation rate. On job advertisements, slogans such as "Applications are welcomed from everyone, including women, Aboriginal peoples, persons with disabilities and members of visible minorities" can be helpful.

- Organizations may find their advertisements are not attracting responses from the designated groups. One way of finding out is to ask on the applicant form where the individual heard about the job opening. Perhaps the perception of designated group members is that they are not welcome in the organization, although this may be far from the truth. In this case, the organization may wish to advertise that it is interested in having designated group members apply for positions.

- If organizations are receiving no applications from people who are visually impaired or who are deaf, they may need to find ways to make their advertisements accessible to persons with these types of disabilities. Alternate formats can be used, such as telephone job lines developed by organizations representing people who are blind and visually impaired. Or, you can approach organizations representing these groups.

Accessibility

Organizations should ensure that buildings are physically accessible to everyone. This includes bathrooms, party facilities, office space, file storage, entrance hallways and training facilities. If the building is not totally accessible, other arrangements can be made for persons with disabilities, until the building has been retrofitted.

Recruitment campaigns

- Organizations that are expanding or looking for specific skill sets often undertake extensive proactive recruitment campaigns. To ensure applications from designated group members, these campaigns could include visits to universities and high schools with a high representation of designated group members, community groups representing designated groups, and reserves.

Mergers and acquisitions

- A business transaction, such as the merger or acquisition of a new business, can result in a challenge to maintaining or increasing designated group representation. It is important to review any new policies and practices for their impact on designated group members.

Selection System Issues

Selection determines which candidates from a group of applicants are most likely to be successful in performing the job.

The focus of ESR on selection is to determine whether the applicable policies and practices unfairly screen out designated group members during the selection process.

Problems of unfair treatment often occur in both recruitment and selection systems.

If an organization is not clear exactly what criteria it will use to determine the best person for the job, non-job-related criteria often creep into the selection process. This situation can happen even when the criteria are clearly specified. An interviewer may choose a particular candidate because that person seems more "suitable" for the job than other candidates. Upon close examination, this may happen because the interviewer found the candidate "easy to talk to" or because they had interests in common, such as sports or even a favourite television program. Interviewers need to ask themselves if they are choosing a candidate strictly on job-related criteria.

The following examples show how some selection policies and practices may exclude designated group members. Each organization, through its own review, will discover what policies and practices exclude designated group members in its workplace.

Application forms

- Persons who are blind and visually impaired will not be able to fill out applications forms if they are not available in alternate formats such as Braille or large print. Another alternative is to collect this information at an interview.

- Applicants, who have been out of the labour force for a period of time, may have developed many skills in volunteer work. Application forms may need to be redesigned to allow this information to be included.

- Sometimes staff who screen applications penalize applicants for career gaps due to family responsibilities. Test for this and make adjustments as necessary.

Job requirements

- Undue emphasis on specific job skills and state-of-the-art knowledge can screen out those who have generic skills and the potential to learn.

- Inflated job requirements may screen out designated group members. Avoid this by determining minimum job-specific requirements and by eliminating any that are not. For instance, do not request that employees be available to travel if only a small portion of the time is spent travelling-this could cause many applicants not to apply when short trips could be arranged.

- Requirements for "Canadian" experience can screen out members of visible minority groups who have recently immigrated. Encourage job candidates to discuss work experience acquired in other countries.

- Specifying "desirable" personality traits can screen out designated group members. Desirable personality traits tend to reflect the values of the dominant culture. An example is asking for an "aggressive" individual. This could also be seen as a positive personality characteristic in men and a negative characteristic in women.

Essential duties and critical requirements should be reflected in job descriptions to ensure that qualified and competent people are hired.

Testing and simulations

- Tests can unfairly screen out designated group members if they are not demonstrably reliable predictors of future job performance and are bias free. All tests may need to be reviewed. Some tests designed to measure a person's ability to write may use inappropriate subjects, such as sports related to Canada. For instance, recent immigrants may know how to write English or French extremely well, but know little or nothing about hockey.

Interviews

- An all-white, all-male interviewing board may give the wrong impression to members of designated groups. By including designated group members on the interview team, when possible, the organization conveys a message to designated group job applicants that they are welcome and an accepted part of the organization.

Interviewers may need employment equity, human rights, cross-cultural awareness and interview training so they can effectively interview people from a variety of cultures.

- Sometimes, interviewers ask questions based on stereotypes of designated group members only, which can alienate these candidates. For instance, do not ask women about child-care arrangements. This question would not only fail in obtaining the necessary information (e.g. the availability of the candidate to work overtime,) but could also result in a human rights case. However, you may ask all applicants if they are available to work overtime or to travel as long as they are actual requirements of the job and an accurate estimate of the overtime and travelling is provided. Standardize all interviews and document responses to questions to indicate why a particular candidate was chosen.

Ask job interviewees, before they arrive for the interview if they need accommodation during the interview. This could include a sign language interpreter or providing tests in Braille.

- There is a variety of different models of job interviewing. It is useful to examine whatever model is being used for any adverse impact on designated group members and its relevance to the job. However, it is important that whichever model is used, a set of fair, equitable and predetermined questions is asked of all interviewees.

References

- Selection should include a standardized reference check and not include questions which might discriminate on a ground prohibited by the *Canadian Human Rights Act* (e.g. absentee record of a person who is disabled).

Letters of offer

- Sometimes organizations offer temporary positions to candidates before offering permanent positions. Offers of temporary and permanent jobs could be tracked to ensure that designated group members receive an equitable share of permanent jobs and that movement from one type of job to the other is fair.

Training and Development

Training and development improve an employee's performance in the current job and enable the employee to acquire the necessary skills and knowledge for future opportunities.

An organization's training and development program may range from on-the-job training to educational leave with all tuition fees paid. While many organizations offer training and development opportunities, all employees may not have access to them.

Training and development are an extremely important part of an employee's career, because it influences competencies and upward mobility within an organization. As such, it is vital to review training policies and procedures for their impact on designated group members.

The following examples show how some training and development policies and practices may exclude designated group members. Each organization, through its own review, will discover what policies and practices exclude designated group members in the workplace.

Training and Development Issues

Policies

- Examine the overall corporate policy on training. If training is linked to seniority, job type and level, earnings, or next-in-line status, designated group members may be adversely affected.

Some training policies do not provide developmental training or sufficient resources for individuals in all types of work.

Participation rate of designated group members in training

- Sometimes designated group members do not participate in all training and development programs at the same rate as other employees. This could be a result of the jobs initially assigned to them. Employers may wish to keep records of designated group participation in training events to determine if training policies and procedures exclude designated group members.

- Women might be excluded from some types of training because of the assumption that they may be away from work for maternity and child-rearing leave. Employers need to ensure managers are not working under such an assumption when developing training plans for employees.

Dissemination of information

- Dissemination of information is crucial to the full participation of designated group members in training opportunities. Employers need to determine if training information is reaching all staff. Employees need to know how information on training and development is disseminated and how to apply.

All new recruits need to have the same introduction to the company's policies, rules of conduct, dress standards and introduction to appropriate personnel. Check if this is the case.

- Sometimes employees with disabilities do not have access to information because it is not in alternate format. Employers need to ensure that training materials are in alternate format, such as Braille or audio form.

- All new recruits need to have the same access to health and safety training that may be necessary for their job. Check if this is the case.

Training selection

- If selection for training is restricted solely to the discretion of supervisors, designated group members may be excluded. Employers may need to allow employees to nominate themselves for training.

- Criteria for taking training should not be inflated, otherwise designated group members may not apply.

Type of training

- Sometimes, training for employees at the lower level of the organization is given to enhance current job skills, not to prepare for different or more advanced jobs. More senior-level employees often have the option of taking courses to prepare them for promotion. This practice could adversely affect designated group members, if they are located at the lower levels of the organization. It can be useful to compare the kind of training extended to members of designated groups to the training given to senior staff.

- Employers need to support all employees, including designated group employees, to be marketable.

Trainers

- Sometimes, trainers themselves require instruction on the needs and issues of designated group members and on how to encourage them to participate during training sessions.

- It is important that trainers who are hired on contract are made aware of the organization's employment equity policies and cross-cultural issues in a training context.

- Material can contain gender and racial bias and may need to be reviewed to delete it.

Career counselling

- Employers may need to offer career counselling to all employees. It can be helpful to appoint designated group members as counsellors. Ensure that all counsellors are sensitive to designated group issues.

Location and time of training

- Some training sites may be inaccessible to some designated group members.

- Training should not coincide with major religious holidays of minority groups.

Consider the impact of out-of-town training and changing the locale to an in-town site. The training site should always be accessible to employees with disabilities.

Mentoring

- Informal mentoring of junior employees by more senior employees is a frequent form of training on the job. Because it is informal, designated group members can get left out if there are few or no designated groups members among senior staff. Informal mentoring often takes place between junior staff who are most like managers in terms of interests and personality because managers feel most comfortable with them. Informal mentoring can be helpful to designated group employees if there are designated group members among senior staff. Participation of designated group members at senior levels in mentoring programs should be encouraged to provide role models.

Designated group members should have equal access to mentoring, whether formal or informal.

Specialized diversity, equity and human rights training

- The culture of an organization can effectively "make or break" the success of a designated group employee in an organization.

- If managers are unaware of how to manage a diverse workforce, training could include interviewing techniques and the responsibility of managers for implementing employment equity within their area of responsibility. This training should be included as part of other management training instead of as a "stand-alone" package. This will encourage managers to see employment equity as part of the organization's culture and a goal similar to other business goals.

If it is determined that some employees are hostile to designated group members through a climate survey, the organization may wish to consider designated group awareness training and cross-cultural communication training for all employees.

Lateral moves

- Lateral moves in organizations help employees receive broad-based experience which makes them ready for promotions when they arise. Organizations may wish to track if designated group employees are taking advantage of such opportunities at the same rate as other employees.

Promotion

The promotion system is the process by which employees are chosen for more senior positions. A promotion system also helps employees define and acquire the skills and experience needed for promotion.

The following examples show how some promotion policies and practices may exclude designated group members. Each organization, through its own review, will discover what policies and practices exclude designated group members in its workplace.

Promotion Issues

Information dissemination about job opportunities

- Do not assume that the manager always knows the best person for the job. Other people may have qualifications unknown to him or her. One way of ensuring that all possible internal candidates are aware of available jobs is to post job opportunities throughout the organization.

Seniority or union restriction

- Seniority may be a barrier to designated group members if they are the last people to be hired, which is often the case. Consultation with unions on measures that may be taken to minimize the adverse impact is required by the *Employment Equity Act* Any changes to seniority found in the collective agreement must be the subject of negotiations.

  See Section 8 (3) of the Employment Equity Act.

- Some organizations restrict applications for jobs based on levels or salary ranges. In other cases, moving from one union to another within the same company affects seniority status. These issues may need to be examined for their impact on designated group members.

Performance evaluation

- If promotions are based on formal performance evaluations, undertake a statistical analysis to see if the percentage of designated group members receive the same proportion of excellent, good, fair and poor ratings as do others in the workforce. Measuring employees on the same basic criteria helps to eliminate bias against any one group. For instance, if clerical staff are valued for "following instructions well," while more senior staff are measured for "initiative," it may be difficult to determine which clerical staff would be good candidates for promotions.

- There are many different types of performance evaluations in use, and all need to be examined for possible adverse impact on designated groups. For instance, some performance evaluation systems have the employee rate him or herself and then negotiate with the manager as to what the documented rating should be. This may affect women who may have lower self-esteem than men.

- Upward feedback, team-based performance evaluations and evaluations that include an employee's community work need to be examined for how they may affect designated group members.

Access to funds for transfers

- Some organizations provide moving expenses only to people above a certain occupational level within the organization for company initiated moves including moves for jobs that have been won through a competitive process. This practice can adversely impact designated group members if they are clustered at the lower levels of the organization.

Succession planning

- Succession planning often depends on job rotations, secondments, special assignments and having the opportunity to act temporarily in more senior positions, when they are vacant for a period of time. Information on and access to these possibilities need to be available to everyone to ensure that designated group employees have an equal opportunity to benefit.

Succession plans can adversely impact designated group members if they are not consciously included.

Managerial accountability for promotions for designated group members

- Individual managers may exhibit bias within their area of responsibility. Statistical analysis reveals this bias. Managers need to be accountable for the rate of promotions and lateral transfers of designated group members within their area of responsibility. This can be done through managerial performance evaluations.

Blockages or bottlenecks in the upward movement of employees

- Sometimes "bottlenecks" occur, creating difficulty in upward mobility for staff. Organizations may have many positions at the clerical or other entry levels, a much smaller number immediately above the clerical positions, and a larger number of more senior positions. In effect, the small number of positions between the clerical and the senior positions creates a bottleneck for those seeking to gain a senior position.

An examination of the organizational chart reveals bottlenecks and can be remedied by "bridging" positions and lateral moves to appropriate jobs.

Dead-end jobs

- "Dead-end" jobs can create a problem for designated group members and others. For instance, can a bridge be made from a senior clerical position to a junior researcher position? If this cannot be done without further training, is this made clear to the incumbents and are mechanisms in place to help them receive further training?

Criteria to select employees

- If employees are not aware of criteria or other methods used to evaluate candidates for promotions, they may not be well prepared for job interviews or other methods used for evaluation. This information needs to be accessible to everyone.

Retention and Termination

Retention ensures that high-performing employees stay with an organization and that there is an overall low turnover employee rate.

Termination ends the employment of an employee or group of employees. Layoff and recall, disciplinary action, and firing are employer-initiated actions in response to such factors as a downturn in the economy, job obsolescence, poor employee performance or insubordination, restructuring and mergers of organizations.

Voluntary employee termination refers to employees leaving employment on their own volition for such reasons as the need to change jobs, better pay and benefits, better working conditions or career opportunities.

An ESR of retention and termination includes an examination of all policies and practices that affect these two areas, including the culture of an organization. A supportive and flexible culture will help reduce the turnover rate of designated group employees.

Mechanisms to Help Determine What Barriers May Exist for Designated Group Members

- Undertake exit interviews to determine the reasons why designated group employees and other employees are leaving and if their reasons for leaving are different from other employees. The questions need to be designed very carefully to ensure the information sought is elicited. Analyse the information on a statistical and qualitative basis. Sometimes the results of such exit interviews reveal that designated group employees are leaving for exactly the same reasons as other employees.

Exit interviews and climate surveys help to pinpoint why designated group members are leaving the organization.

- Undertake a climate survey of the organization. Ask respondents to identify themselves as designated group members if appropriate and compare the results of designated groups to other employees. The survey could include such questions as the perceived fairness of promotions and the performance evaluation system.

A climate survey will indicate whether designated group members as a group are as comfortable as other employees in the organization.

Retention Issues

The following examples illustrate how the application of human resource policies and practices may contribute to a high turnover of designated group members.

Harassment policies

- Sexual, racial, disability and other harassment can cause many designated group members to leave an organization. Developing anti-gender discrimination, anti-racism and anti-harassment policies can help to eliminate this problem. These policies should be well communicated and a mechanism to address complaints needs to exist and be available to all.

Dress

- Organizations need to be sensitive and flexible about allowing traditional clothing at work.

Family-related matters

- Balancing family and work is a difficulty many employees face. Providing a child-care or elder-care referral service or an on-site child care centre can help alleviate these problems. Policies which provide for leaves of absence for family-related matters and alternative work schedules are also helpful. These policies are becoming increasingly important as the population ages and as women's participation in the labour force increases.

Benefits

- Sometimes health insurance plans do not apply equally to persons with disabilities. They may need to be examined to ensure that they do not prevent anyone from getting or keeping a job and that they are fair in their coverage.

- Ensure that bonuses are fairly distributed among qualified employees.

Benefits should be extended to part-time employees.

Termination Issues

"Last hired, first fired"

- A last hired, first fired policy may adversely affect designated group members. They are often the newest recruits to the labour force. In situations where collective agreements exist, consultation with the appropriate union(s) must take place.

- Many organizations have a small group of core workers and many employees working on contract to work on an "as-needed" basis. Organizations need to examine the representation of designated group members among core and contract workers to determine if equal access to the core jobs exists for everyone.

Disciplinary measures

- Establishing formal procedures when addressing disciplinary actions helps ensure that all disciplinary procedures are the same for everyone. Providing counselling to employees who are disciplined can also be helpful-however, the counsellors need to be sensitive to the needs of designated group employees.

Criteria for layoff and termination

- Layoff and termination decisions need to be based on clearly defined, job-related and objective criteria. Communication problems often account for difficulties between an employee and supervisor; these problems could be based on cultural-specific communication styles.

Communication

- Employees need equal access to information on the organization's policies and procedures respecting layoff, recall, disciplinary action and termination. This will help ensure designated group members and others are fully informed. It is important to examine both formal and informal communications. Often, the informal network is effective in communicating information, but members of designated groups can be excluded, which is an indication that formal forms of communication need to be improved.

Reasonable Accommodation

Reasonable accommodation ensures that the special needs of designated group members are met, allowing them to participate fully in an employer's workforce.

A series of Supreme Court decisions has made it clear that the duty to accommodate is an enforceable legal obligation. Four cases decided by the Supreme Court of Canada are of particular assistance in interpreting the duty to accommodate: *O'Malley v. Simpson Sears* (1986*), Alberta Human Rights Commission v. Central Alberta Dairy Pool* (1990), *Central Okanagan School District No. 23 v. Renaud* (1992*)* and *Commission scolaire régionale de Chambly v. Bergevin* (1994)*.* These cases can be found by referring to the *Canadian Human Rights Reporter.*

The duty to accommodate is not open-ended. Accommodation is required to the extent that it can be shown to be "reasonable" and in so far as it does not pose an "undue hardship." The Supreme Court has ruled that "reasonable" and "undue hardship" are different ways of expressing the same concept and are not separate criteria. Undue hardship can result from undue financial cost, disruption of operations, or major disruption of the collective agreement. However, the duty to accommodate prevails over private agreements such as collective agreements, unless disruption would result in a substantial departure from the normal operations. Under no circumstances is the "preference" of fellow employees or customers to be considered a reason for denying accommodation. For example, an employer cannot refuse to hire a deaf person because fellow employees would find it difficult to communicate with the person. Or, an employer does not have the right to terminate a member of a visible minority group because customers have complained that they do not want to be served by minority group members.

Reasonable Accommodation Issues

Reasonable accommodation policy

- Develop a policy on reasonable accommodation for the organization.

- Include in the policy:

  - the mechanism for requesting accommodation;
  - a consultation process with the individual requesting the accommodation;
  - a budget allocation and procedures to access these funds;
  - a statement of whom the policy covers. If most employees work in short-term contracts and are considered employees under the *Employment Equity Act*, it is important that the policy covers them to ensure they have the same opportunity to work in the organization as everyone else;
  - a mechanism to consult with unions on both the policy and individual accommodations, when necessary; and
  - a plan for making all office buildings, systems and processes barrier free.

This policy needs to be distributed to all employees and prospective employees to ensure they are aware of their right to ask for accommodation measures.

Financial considerations

- Phase in building design changes.

- Use special budgets or any external sources of funding that may exist in the community.

- Shift tasks between employees which can ensure the work is done and designated group employees are accommodated with minimum or no expense.

Pre-employment considerations

- Before a job interview, interviewees should be asked if they need any accommodation, such as a sign language interpreter or tests in Braille.

Accommodation issues relating to women

- Provide family-related leave for employees with family responsibilities such as child and elder-care.

- Implement a policy on part-time and flex-time work.

- Provide accommodation for pregnant women, if necessary. This may mean modifying their jobs during part or all of the pregnancy.

- Ensure off-site training or conferences are held within commuting distance so that employees with family responsibilities can return home at night if necessary.

Some employers provide a child or elder care-referral service.

Accommodation issues relating to Aboriginal peoples

- Examine leave policies to ensure that they take into account the Aboriginal concept of family and bereavement. Aunts, uncles and cousins can assume a much greater importance to many Aboriginal persons than they do for people belonging to other groups.

- Ensure that time off for voting includes the time necessary for many Aboriginal peoples to return to their reserves, which may be a long way from their place of work.

Accommodation issues relating to persons with disabilities

- Ensure that physical accessibility of the offices exists.

- Supply "readers" for blind employees and sign-language interpreters for deaf employees, if appropriate.

- Provide "work-at-home" programs, flex-time and part-time work.

- Adjust job tasks, if only some aspects of the job require physical dexterity.

- Take the following considerations into account when accommodating persons with disabilities:

  − dignity of the individual. For instance, a person with a disability would not generally be expected to enter a building through a rear entrance, when other clients or employees use the front door.

  − autonomy of the individual. For example, an automatic door opener is preferable to a call button to gain admittance to a building, unless security requires it for all employees.

  − dignity of risk. An individual should have the autonomy to assume an increased degree of risk commensurate with considerations such as the safety of others and overall efficiency. For example, a blind and mobility-impaired traveller may have a greater risk of death or accident when travelling by airplane. However, this risk by itself cannot justify denying services to a traveller with a disability.

Develop a policy on alternate means of communication (i.e. the use of Braille and cassettes).

Accommodation issues relating to visible minority groups

- Allow visible minority groups, and others, to observe the religious and cultural holidays associated with their faith.

- Allow for flexible dress to permit members of visible minority groups to wear traditional garb.

Dietary accommodations may need to be made for some members of visible minority groups and others in the cafeteria and at social functions where food is served.