



CANADIAN HUMAN RIGHTS COMMISSION  
COMMISSION CANADIENNE DES DROITS DE LA PERSONNE

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EMPLOYMENT  
SYSTEMS REVIEW

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Guide to the audit process

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Employment Equity

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DECEMBER 2002

## **Employment Equity Branch**

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other documents related to the  
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# EMPLOYMENT SYSTEMS REVIEW

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Guide to the audit process

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Employment Equity

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E M P L O Y M E N T  
S Y S T E M S  
R E V I E W

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G U I D E T O T H E  
A U D I T P R O C E S S

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# Purpose

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The purpose of this document is to inform employers and other interested parties about the Canadian Human Rights Commission's expectations when auditing the statutory requirement in the Employment Equity Act (Act) related to the Employment Systems Review (ESR). It is reproduced as a stand alone excerpt from the *Employment Equity Compliance Review Process and Reference Manual*, which guides the work of the Commission's compliance officers. The document outlines the legal framework and assessment factors related to the ESR, the general approach to be taken by employers as well as the key considerations involved in assessing compliance.

In the case of private sector employers, this document should be read in conjunction with Human Resources Development Canada's manual entitled *Guidelines to the Employment Equity Act*. This manual includes detailed information on all activities surrounding the employment systems review at Chapter 6. In the case of public sector employers, this document should be read in conjunction with the documents entitled *Treasury Board Secretariat Employment Systems Review, A Guide for the Federal Public Service* published in March 1998, and *Shared Responsibilities for Implementing the New Employment Equity Legislation*, also published by the Treasury Board Secretariat in June 1998.

The Employment Systems Review (ESR) requires an in-depth assessment of all employment systems, policies and practices and the manner in which these are implemented, in order to identify barriers to the full employment of under-represented designated groups by occupational group or category. The ESR must cover both formal and informal employment systems, policies and practices and also includes attitudes and behaviours.

The extent to which the information in this document applies to individual organizations will vary depending on the size, structure, and complexity of the workplace, as well as the degree of representation in an employer's workforce. While employers with sophisticated structures and support systems in place are expected to adhere closely to all processes, it is recognized that smaller organizations may not be in a position to conduct an ESR with the same degree of comprehensiveness. As directed in this document, compliance officers will apply discretion and reasoned judgement in assessing compliance with this statutory requirement. 🍁

## EMPLOYMENT SYSTEMS REVIEW COMPLIANCE CHECKLIST

Requirement	Act	Regulations	Key Audit Considerations
Employer must review its employment systems, policies, and practices to identify barriers to the employment of under-represented designated groups by occupational group.	5(a)	8	<p>Has the employer conducted a review of its employment systems, policies and practices for each designated group and occupational group where under-representation has been found?</p> <p>Are any of these policies and practices not authorized by law?</p>
	9(1)(b)	<p>Where, based on the workforce analysis, under-representation of persons in designated groups has been identified in any occupational group, the employer is required to conduct a review of its employment systems, policies and practice in order to determine whether any of those employment systems, policies and practices is a barrier against persons in designated groups.</p>	



## EMPLOYMENT SYSTEMS REVIEW COMPLIANCE CHECKLIST

<b>Requirement</b>	<b>Act</b>	<b>Regulations</b>	<b>Key Audit Considerations</b>
<p>Where under-representation has been found, the ESR should include a review of nine employment systems:</p> <ul style="list-style-type: none"> <li><input type="radio"/> recruitment</li> <li><input type="radio"/> selection</li> <li><input type="radio"/> hiring</li> <li><input type="radio"/> development</li> <li><input type="radio"/> training</li> <li><input type="radio"/> promotion</li> <li><input type="radio"/> retention</li> <li><input type="radio"/> termination</li> <li><input type="radio"/> accommodation</li> </ul>	<p>9(1)</p>	<p>For each occupational group where under-representation has been found, the employer is required to review its employment systems, policies, and practices with respect to:</p> <ul style="list-style-type: none"> <li>a) the recruitment, selection and hiring of employees;</li> <li>b) the development and training of employees;</li> <li>c) the promotion of employees;</li> <li>d) the retention and termination of employees;</li> <li>e) the reasonable accommodation of the special needs of designated group members.</li> </ul>	<p>Did the review include all employment policies and practices relating to:</p> <ul style="list-style-type: none"> <li>recruitment, selection, and hiring?</li> <li>development and training? promotion?</li> <li>retention and termination? accommodation?</li> </ul> <p>Did the review include policies and practices: covering the workplace as a whole, and those specific to each of the occupational groups where under-representation was identified?</p> <p>(Assessment Factor 3.1)</p>

## EMPLOYMENT SYSTEMS REVIEW COMPLIANCE CHECKLIST

Requirement	Act	Regulations	Key Audit Considerations
Employer must review shares of hiring.	9(1)	<p>For each occupational group where under-representation has been found, the employer is required to review its employment systems, policies, and practices with respect to:</p> <ul style="list-style-type: none"> <li>a) the recruitment, selection and hiring of employees;</li> <li>e) the reasonable accommodation of the special needs of designated group members.</li> </ul>	<p>Where under-represented designated group members are receiving shares of hiring below external representation,</p> <ul style="list-style-type: none"> <li>a) did the review focus on recruitment, selection and hiring policies and practices, and to accommodation as it relates to these areas?</li> </ul> <p>(Assessment Factor 3.2)</p>
Employer must review shares of promotions and results must demonstrate whether clustering occurs.	9(1)	<p>For each occupational group where under-representation has been found, the employer is required to review its employment systems, policies, and practices with respect to:</p> <ul style="list-style-type: none"> <li>b) the development and training of employees;</li> <li>c) the promotion of employees;</li> <li>e) the reasonable accommodation of the special needs of designated group members.</li> </ul>	<p>Where under-represented designated group members are receiving shares of promotions below internal representation,</p> <ul style="list-style-type: none"> <li>a) did the review focus on development, training and promotion policies and practices, and to accommodation as it relates to these areas?</li> <li>b) did the review reveal clustering in lower levels of the examined occupational groups?</li> </ul> <p>(Assessment Factor 3.3)</p>

## EMPLOYMENT SYSTEMS REVIEW COMPLIANCE CHECKLIST

Requirement	Act	Regulations	Key Audit Considerations
Employer must review shares of terminations.	9(1)	<p>For each occupational group where under-representation has been found, the employer is required to review its employment systems, policies, and practices with respect to:</p> <p>d) the retention and termination of employees; and</p> <p>e) the reasonable accommodation of the special needs of designated group members.</p>	<p>Where under-represented designated group members have shares of terminations that exceed internal representation, did the review focus on:</p> <p>a) retention and termination policies and practices, and to accommodation as it relates to these areas? (Assessment Factor 3.4)</p>
The results of the review must be documented and provide a reasonable basis for corrective action to be included in the employment equity plan.	17	<p>11</p> <p>An employer shall establish and maintain the following records:</p> <p>g) a description of the activities undertaken by the employer in conducting its employment systems review.</p>	<p>Are the results of the systems review documented, and do they provide probable explanations for the under-representation found in each occupational group?  Have the explanations provided the employer with a reasonable basis to take corrective action?  (Assessment Factor 3.5)</p>
Every employer shall, in accordance with the Regulations, establish and maintain employment equity records in respect of the employer's workforce and the implementation of employment equity by the employer.	11		

## EMPLOYMENT SYSTEMS REVIEW COMPLIANCE CHECKLIST

Requirement	Act	Regulations	Key Audit Considerations
<p>All new employment systems, policies and practices must be reviewed as they are being implemented.</p>		<p>Where, following a review, new employment systems, policies or practices are implemented by the employer, the employer shall also review the new employment systems, policies and practices with respect to those matters.</p>	<p>Has the employer implemented any new employment systems, policies and practices since the review?</p> <p>Has the employer assessed the new policies and practices to ensure they do not constitute a barrier?</p> <p>(Assessment Factor 3.6)</p>
<p>When employers are not required to conduct a systems review.</p>	<p>10</p>	<p>An employer who, before the coming into force of these Regulations in October 1996, has conducted a review of its employment systems, policies and practices in relation to all or part of its workforce is not required to conduct another review with respect to the matters already reviewed if the results of the previous review are likely to be the same as the results that would be achieved by a review undertaken pursuant to subsection 9(1).</p>	<p>How long ago was the ESR undertaken?</p> <p>Did the previous ESR meet all legal requirements?</p> <p>Have there been many changes in the number of employees and their occupational profile since the last ESR?</p> <p>Have there been many changes to human resource policies and practices, and has the employer reviewed them as they were being introduced?</p> <p>Has the representation of designated groups improved substantially since the last ESR?</p> <p>Have plans based on previous ESRs produced demonstrable results?</p>

## 1. BACKGROUND

### 1.1 References

- *Employment Equity Act*, Section 5(a), 9(1)(b) and 17
- *Employment Equity Act Regulations*, Sections 8, 9(1), 9(2), 10 and 11
- Human Resources Development Canada Guidelines to the Employment Equity Act, Chapter 6
- Treasury Board Secretariat Employment Systems Review, A Guide for the Federal Public Service, March 1998
- Shared Responsibilities for implementing the new Employment Equity Legislation, Treasury Board Secretariat, June 1997
- CHRC publication: “*Bona Fide Occupational Requirement*”

### 1.2 Importance of the systems review

The ESR is possibly the most complicated step of all the statutory requirements. It is also the most powerful force for corporate culture change.

While the first two steps of the employment equity process, the workforce survey and data analysis, are the data aspect of the process, the systems review can be considered the qualitative side of employment equity. By the time the employer conducts an ESR, the workforce survey and analysis will have shown designated group members’ representation and gaps at all levels of the organization. The ESR then looks for the causes of any gaps in representation by reviewing all employment systems. It is the process through which employers will learn what needs to be changed and how to change it, in order to ensure an equitable workplace free of all employment barriers.

How best to describe the ESR in one sentence? It is a review of all systems, policies and practices, both formal and informal, and the manner in which these are implemented, including attitudes and behaviours which may be ingrained in the workplace culture, in order to identify barriers to the full employment of under-represented designated groups by occupational group. A thorough ESR will always involve consultation with employee and union representatives.

The acid test for a successful ESR is whether the organization can answer confidently what barriers or circumstances were identified that reasonably explain the gaps in equitable representation, for each occupational group where under-representation has been found. A good ESR requires a strong knowledge of the organization's human resource operations as well as a commitment of sufficient time and resources. It will position the organization to identify ways by which to eliminate barriers, accommodate the needs of employees, institute positive policies, practices and special measures to remedy the effects of past discrimination, and set hiring and promotion goals to achieve equal representation, all of which must be specified in the employment equity plan.

The outcome will provide equal opportunities for designated groups to be hired and compete for positions, by ensuring that only non-discriminatory systems, policies and practices are in use. The key measure of success is the organization's ability to increase the internal representation of designated group members to the level of their external representation.

## 2. LEGAL FRAMEWORK

The Employment Systems Review is referenced in Sections 5(a), 9(1)(b) and 17 of the *Act*, and Sections 8, 9(1), 9(2), 10 and 11 of the *Regulations*. Where different wording and processes apply to private and public sector organizations, these are noted separately.

- 2.1 Which systems the review must examine: private sector context**
- A systems review must examine those nine employment mentioned in the *Regulations*, for every sector context occupational category and every designated group where the workforce analysis has indicated under-representation. Regulation 9(1) states these as follows:
- the recruitment, selection, and hiring of employees;
  - the development and training of employees;
  - the promotion of employees;
  - the retention, termination of employees; and
  - the reasonable accommodation of the special needs of members of designated groups.
- 2.2 Which systems the review must examine: public service context**
- Treasury Board Secretariat guidelines refer to employment systems in the public service as follows:
- recruitment
  - selection
  - hiring or appointments
  - assignments
  - deployments and transfers
  - training and development
  - promotion
  - retention
  - termination of employment, and
  - reasonable accommodation of the special needs of persons in designated groups.
- 2.3 Keeping the ESR up-to-date**
- Section 9(2) of the *Regulations* requires employers to review any *new* employment systems, policies and practices as they are introduced, to ensure that they do not constitute a barrier to the employment of designated group members.
- 2.4 When employers not required to do an ESR**
- Section 10 of the *Regulations* states that employers who had already completed an ESR before the *Act* and *Regulations* came into force in October 1996, should not be required to redo the ESR if the results of a new review would likely be the same.

Factors to consider when assessing the employer's need to conduct a new employment systems review would include the following:

- how long ago was the ESR undertaken?
- did the previous ESR meet all legal requirements?
- have there been many changes in the number of employees and their occupational profile since the last ESR?
- have there been many changes to human resource policies and practices, and has the employer reviewed them as they were being introduced?
- has the representation of designated groups improved substantially since the last ESR?
- have plans based on previous ESRs produced demonstrable results?

## **2.5 Documenting results**

Section 17 of the *Act* and 11(g) of the *Regulations* require employers to maintain employment equity records on the implementation of employment equity, including documenting the results of the employment systems review.

These results must provide probable explanations for the under-representation found in each occupational group and the explanations should provide the employer with a reasonable basis to take corrective actions.

## **3. ASSESSMENT FACTORS**

There are six assessment factors related to the statutory requirement to conduct an Employment Systems Review.

This section focuses on the approach employers should use when fulfilling the requirements of each assessment factor related to the ESR. This will assist compliance review officers when assessing whether or not the analysis completed by the employer is likely to have identified all important barriers which may contribute to any under-representation.



This information applies equally to the private sector and the public service. In the latter case, however, employers are encouraged to consult the Treasury Board Secretariat publication entitled, *Employment Systems Review, A Guide for the Federal Public Service*, published in March 1998.

### 3.1 REVIEWING POLICIES AND PRACTICES

#### *Assessment Factors:*

- **Did the review include all employment policies and practices relating to recruitment, selection and hiring; development and training; promotion; retention and termination; and accommodation?**
- **Did the review include policies and practices covering the workplace as a whole, and those specific to each of the occupational groups where under-representation was identified?**

#### **3.1.1 Reviewing policies and practices**

*HRDC Guidelines 6, Part C*

*In the Public Service*

As a result of the workforce analysis, the employer will have identified all the specific occupational groups where under-representation exists for designated group members.

The Treasury Board Secretariat document entitled *Shared Responsibilities for Implementing the New Employment Equity Legislation* indicates that, where there is under-representation of designated group members, employers must review related employment systems, policies and practices in order to identify barriers not permitted by law. It clarifies that TBS, PSC and departments or agencies will each review employment systems, *i.e.*, policies and practices, under their respective administrations. In addition, the Treasury Board Secretariat recommends that the review be carried out in relation to the four designated groups, even if one designated group is not currently under-represented.

The ESR must examine those nine employment systems mentioned in the *Regulations*, interpreted in the private sector and the Treasury Board Secretariat Guide as follows:

<b>Private sector</b>	<b>Public Service</b>
Occupational group	Occupational category
Recruitment	Recruitment
Selection	Selection
Hiring	Hiring or appointments
Development	Assignments, deployments and transfers
Training	Training and development
Promotion	Promotion
Retention	Retention
Termination	Termination of employment
Accommodation	Accommodation

Where these policies may contribute to the under-representation of designated group members, they must be reviewed in order to identify any employment barriers which may have an adverse impact on their employment opportunities. This includes:

- policies and practices covering the workplace as a whole which may contribute to under-representation found in an occupational group; and
- policies and practices specific only to an occupational group with under-representation.

**3.1.2 Has the employer completed the following steps:**

The appropriate audit procedure would be to determine whether or not the employer has completed the following steps involved in an ESR. Each is discussed in detail below.

*Step One:* Has the employer identified all specific occupational groups where under-representation exists for designated group members?

*Step Two:* For each occupational group with under-representation, has the employer made a concerted effort to identify all key policies, procedures and practices, both formal and informal, whether written or not, as well as attitudes and working conditions, which may affect a designated group's equitable representation?

*Step Three:* Has the employer clearly determined and documented which employment systems may have an adverse impact on the designated group under-represented in each occupational group?

*Step Four:* Has the employer assessed whether or not those systems which do constitute a barrier can be defended as valid requirements, keeping in mind an employer's overriding duty to accommodate?

***Step One: is the ESR based on reliable data?***

The ESR must be based on an acceptable workforce survey and a reasonable workforce analysis. As a result of the workforce analysis, the employer must have identified all the specific occupational groups where under-representation exists for designated group members, and recognized that an ESR is required for each of these occupational groups.

***Step Two: does the ESR cover all policies and practices?***

*HRDC Guideline 6, page 5*

For each occupational group with under-representation, the employer must first identify *all* generic and specific systems, policies and practices which might have contributed to the under-representation. The important first question which should be asked is not "do we do this?" based on a checklist of possible barriers. Rather, it should be "how do we actually recruit, promote, and so on for this occupational group?".

The *Regulations* are clear in outlining the nine employment systems which must be included. However, the challenge for an employer is to look beyond formal policies in an attempt to detect informal practices which unfairly exclude the participation of designated group members in the workforce.

Whether formal or informal, these systemic barriers can be subtle and hard to detect, and they usually result from a lack of awareness of their impact on designated group members. An ESR should pinpoint such examples of systemic barriers, and help employers determine where changes are needed to ensure that everyone is treated fairly.

Some issues to look for in assessing this requirement include the following:

*Formal and informal practices?*

*Did the employer identify not only formal, written policies and procedures but also those which are informal?*

A systems review 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 those not committed to print in the human resource management manual.

Often, informal practices do not follow written policies. There may be procedures based on traditional practices that routinely occur on an *ad hoc* basis, or as a result of a “common understanding” based on the preferences of individual employees of the organization. Very often, these practices represent substantial barriers since they tend not to be recognized by the organization. They are best detected through consultations with union and employee representatives, climate surveys and focus group discussions.

In the case of the Public Service, the Treasury Board Secretariat Guide describes these as “evolving from historical practices or assumptions of convenience (for instance, staffing primarily through personal networks or favoured campuses) and invariably exclude designated group members or place them at an unreasonable disadvantage in accessing job opportunities. Many barriers may be unintentional and hidden in the way the employment system works. Many arise from the almost invisible and seemingly neutral practices entrenched in

day to day operations; for example, things as simple as information about competitions and application forms being available only in centralized or difficult to access locations, or not in the regions.”

*How are they implemented?*

*Did the employer review how practices and policies are actually implemented?*

Equally important are how practices are followed, and how policies and procedures are actually implemented. For example, a policy may require that all job interviews be carefully structured with questions, responses and a point rating system determined prior to the actual interview. However, the common practice may be to simply write down the questions, and decide on the grading system after the interviews, allowing for considerable subjectivity on the part of those doing the hiring. Also important are how procedures are applied. For example, are skills assessed for some candidates but not all candidates? If a test is not consistently applied in all cases, it cannot be said to be essential for selecting the best candidate.

*Attitudes and behaviours?*

*Has the employer reviewed attitudes and behaviours?*

An employer who has only conducted a desk audit of the human resources manual may run the risk of missing significant barriers. This will particularly be the case where negative attitudes, corporate culture, stereotypes and group preferences can come to play an important role in outcomes of staffing actions.

As stated in the HRDC Guideline Manual, page 6, 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.

The Health Canada & National Capital Alliance on Race Relations Tribunal decision is a good example of a workplace where attitudinal behaviours were at the root of many barriers for visible minority employees.

***Step Three:***  
**does the ESR**  
**determine the**  
**presence of**  
**an adverse**  
**impact?**

Has the employer clearly determined which employment systems have an adverse impact on the designated groups under-represented in each occupational group?

There are three basic ways by which an employer may have determined the presence of an adverse impact.

*Formal employee tracking system*

If the employer has captured formal data on different steps in the staffing and other human resource management processes, it may be possible to clearly determine whether or not there is an adverse impact. For example, test results may indicate that women are less successful than men, or Aboriginal people apply at an appropriate level but are more likely to be screened out prior to an interview or at the interview itself.

It should be noted that this type of statistical analysis may be inappropriate for those occupational groups in which very small numbers exist. In such cases, statistical analyses may be more appropriately undertaken on an organization-wide basis or by combining two or three related occupational groups for analysis.

*Demographic and social data*

The employer may not have tracking data specific to its organization, but other sources of data may exist. For example, educational data may indicate that requiring certain credentials will adversely affect one or more groups. Research may exist which indicates that a group tends to score lower when certain types of selection tools are used.

### *Employee input*

In some cases, data may not exist to support a finding of adverse impact but it is still possible to draw sound conclusions. Often the most useful tool is input directly from designated group employees who may help identify unintended outcomes from apparently neutral systems and practices which have a negative impact on their employment opportunities. For example:

- Selection tools premised on aggressive, forceful behaviour may tend to exclude certain cultures where such behaviour is not considered appropriate.
- Strict requirements for random shift or overtime work may adversely affect women who continue to bear primary responsibility for child care.
- Members of visible minority groups may have to seek out developmental opportunities while others are approached directly for special assignments, thereby restricting their chances at promotions.
- By interviewing both female and male managers in the Public Service, one study concluded that women were assessed more stringently during annual appraisals.

Even more common perhaps is the identification of barriers due to attitudinal and unequal treatment. Sometimes, a commonly held belief among designated group employees — even when completely unfounded — that an organization is biased will result in their not seeking advancement or employment opportunities into the company.

Because they have first-hand knowledge of how human resource policies and practices can affect them, employee input is crucial in understanding how a seemingly neutral policy can exclude designated group employees from fully participating in the workforce. Union representatives familiar with the operation of the employment systems and practices are also good sources of information.

**Step Four:**  
**Is the  
practice valid?**

*HRDC Guideline 6,*  
*page 8*

When a system, policy or practice is found to have an adverse impact, the employer is required to determine whether or not it is *valid*, that is:

- whether or not it is necessary for the safe and efficient operation of the business or organization; and
- there is no reasonable accommodation possible short of undue hardship.

It must be emphasized, however, that the Supreme Court has decreed that a *bona fide* occupational requirement cannot be claimed if an accommodation is possible.

**3.1.3 Claiming a  
Bona Fide  
Occupational  
Requirement  
(BFOR)**

In these cases, it is incumbent on the employer to provide the compliance officer with documentation, including an external opinion, in support of its contention that this practice is a *bona fide* occupational requirement. This is discussed below in subsection 4.4.

Claiming a BFOR may be particularly difficult to do when there is:

- first, a blanket application to all jobs without consideration to accommodation;
- second, no intent to regularly test employees once they have been hired; and
- third, many current employees with satisfactory employment records could not pass the test if it was applied to them.

**3.1.4 Determining  
factors in  
validating  
a practice**

In determining whether a practice is a barrier or is a valid requirement, some of the questions which may be posed include the following:

*Is the practice legal?*

Some practices or policies clearly do not conform to human rights or other laws. Overt or covert preferences which intentionally exclude — unless protected by a



BFOR — are not valid. Thus, where the adverse affect is the result of personal or corporate preference, attitude, harassment, a hostile working environment or culture, the system or practice will have to be addressed quickly.

*Is the practice applied consistently?*

If a policy, practice or standard is applied inconsistently, particularly in regards to a specific group, it is unlikely to meet the validity test.

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

*Is the practice necessary for the safe and efficient operation of the organization?*

The policy or practice must be related to the job, and accomplish a clear predictive or evaluative function. In other words, to demonstrate that the policy or practice is essential, there must be a demonstration that the requirement is consistent with the demands of the job.

For example, if an in-basket exercise is used to evaluate candidates for a middle management position, can it be shown that performance scores on the exercise correlate strongly with performance on the job?

*Is accommodation possible?*

As decreed by the Supreme Court, an employer may not justify a system or practice with adverse impact if it can be shown that a reasonable accommodation is possible.

For example, a word of mouth recruitment system may be shown to be valid in terms of providing a highly productive workforce even though it tends to exclude

disproportionately those groups of individuals not already part of the workforce. Targeted recruitment carried out in tandem with word of mouth, however, may accommodate the affected group of individuals without creating undue hardship.

*Has an alternative system been considered?*

If there is an alternative system or practice with less or no adverse impact, the original system cannot be found to be valid. For example, specific task-related strength tests may have less adverse impact on women than standard dead weight lifting tests.

**3.1.5 ESR in a public service context**

In its paper on Shared Responsibilities, the Treasury Board Secretariat states that TBS, PSC and departments or agencies will each review employment systems under their respective administrations.

Because departments bear primary responsibility for fulfilling their obligations under the *Act*, the Commission must have confidence that individual departments understand the problems in their workforce, do a meaningful systems review and remove barriers where necessary.

It is not acceptable for a public service organization to claim that it cannot act on a specific problem because of certain governing practices from central agencies. Compliance review officers should not accept that a practice is necessarily barrier-free because it is a central agency policy.

Similarly, responsibility for barriers cannot be shifted to the Public Service Commission or the Treasury Board Secretariat.

For example, where departments have suggested that the PSC has failed to refer sufficient designated group candidates and this lies outside the responsibility of the department, compliance officers cannot accept this as a resolution of the situation. The same is true for non-

delegated responsibilities such as the employment of senior management. One may accept such an explanation as an identified barrier if the evidence is there, but not as a justification. In these cases, it is incumbent on the department and the central agency involved to rectify the situation.

### **3.2 SHARES OF HIRING**

*Assessment Factor:*

- **Where under-represented designated group members are receiving shares of hiring below external representation, did the review focus on recruitment, selection and hiring policies and practices, and to accommodation as it relates to these areas?**

### **3.3 SHARES OF PROMOTION**

- **Where under-represented designated group members are receiving shares of promotions below internal representation, did the review focus on development, training and promotion policies and practices, and to accommodation as it relates to these areas; and did the review reveal clustering in lower levels of the examined occupational groups?**

### **3.4 SHARES OF TERMINATION**

- **Where under-represented designated group members have shares of terminations that exceed internal representation, did the review focus on retention and termination policies and practices, and to accommodation as it relates to these areas?**

#### **3.4.1 Focusing the ESR**

The results of the workforce analysis which identifies gaps in representation are the main ingredients which should drive the employment systems review. In order to obtain good results, it is important for employers to focus on shares of hiring, promotion and termination, as these relate directly to eight of the nine employment systems mentioned above. The ninth, accommodation, must be factored into every aspect of the employment systems review.

**3.4.2 Accommodation** The requirement for accommodation obligates employers to adjust policies and practices so that no member of a designated group is unfairly prohibited from taking full part in the workplace. The Supreme Court has decreed that accommodation must take place to the point of undue hardship for the employer.

**3.4.3 Examine shares of hiring, promotions and terminations** Findings with respect to shares of hirings, promotions and termination will reveal the following areas where the systems review should focus:

<i>Hiring</i>	If lower than external representation	Look at recruitment selection, hiring and accommodation
.....		
<i>Promotion</i>	If lower than internal representation	Look at development, training, promotion and accommodation
.....		
<i>Termination</i>	If higher than internal representation	Look at retention, termination and accommodation

***Hirings***

*HRDC Guideline 6, Part C, p. 15*

If the shares of hiring of designated group members are lower than external representation, the review should focus on *recruitment, selection and hiring* practices. These could include issues such as:

- data on the number of designated group members who applied for positions, the number who were screened in, how many were interviewed and how many were subsequently hired;
- seniority and other next-in-line approaches;
- advertising, referrals, outreach activities;
- succession planning systems;
- physical accessibility of buildings.

***Promotions***

*HRDC Guideline 6, Part C, p. 25*

If the shares of promotions are lower than internal representation, then the review should examine *development, training and promotion* activities. This part of the review should also have determined whether

or not designated group members are clustered in the lower levels of the occupational groups which have been examined.

Issues for review could include:

- the use of acting appointments and lateral moves;
- access to training and development opportunities;
- the criteria for the identification of high flyers;
- career counselling, mentoring activities;
- performance evaluation system.

### ***Terminations***

*HRDC Guideline 6,  
Part C, p. 34*

If shares of terminations are higher than internal representation, the review should focus on *retention and termination* policies and practices. These could include:

- harassment complaints and disciplinary measures;
- information from exit interviews and climate surveys;
- health benefits and bonuses;
- criteria for lay-off and termination, and last hired, first fired policies.

## **3.5 DOCUMENTING RESULTS**

### ***Assessment Factors:***

- **Are the results of the systems review documented, and do they provide probable explanations for the under-representation found in each occupational group?**
- **Have the explanations provided the employer with a reasonable basis to take corrective action?**

### **3.5.1 Report of findings**

Section 17 of the *Act* and 11 of the *Regulations* require the employer to maintain appropriate records on the results of the employment systems review.

Based on the analysis of all relevant employment systems, policies and practices, the employer should have produced a report drawing conclusions to explain the under-representation found in each occupational

group. The report should outline where barriers exist for members of each of the designated groups and include recommendations to eliminate them. The Compliance Review Officer will be required to assess these findings and come to a conclusion on whether or not they provide a reasonable explanation of the under-representation.

If this assessment factor is met, the systems review will then provide the basis for corrective measures to be outlined in the employment equity plan.

### 3.6 REVIEWING NEW SYSTEMS

#### *Assessment Factors:*

- **Has the employer implemented any new employment systems, policies and practices since the review?**
- **Has the employer assessed the new policies and practices to ensure they do not constitute a barrier?**

#### **3.6.1 Reviewing new measures as they are introduced**

It is necessary to determine whether or not the employment systems review has been kept up-to-date.

Every new human resource policy and practice proposed after the ESR should be reviewed as they are developed and during implementation for their potential impact on designated groups.

Some organizations do this by having those responsible for employment equity sign a 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. The process used should normally ensure that the initial assessment is done prior to implementation with follow-up to evaluate the actual impact once the measures are in place.

Compliance officers should be satisfied that employers have appropriate measures in place to ensure that this requirement will continue to be met.

## 4. ASSESSING COMPLIANCE

### 4.1 **Materials for review**

The survey questionnaire will indicate whether or not:

- the organization believes it has examined both generic and occupational group specific policies and practices;
- the results provide an adequate explanation for the under-representation; and
- the employer has maintained an up-to-date review.

The employer is also asked to provide a copy of the analysis or summary report on the systems review and identification of barriers. If this documentation is provided, the compliance review officer should seek to determine if it deals with all the areas of under-representation and if the explanations appear reasonable.

The compliance review officer should not expect to receive a complete copy of the employer's human resource manuals and policies but should receive copies of the analysis done of relevant employment systems and practices.

Preferably, this will take the form of a summary report identifying the important findings for occupational groups where there is under-representation. In some cases, the employer may forward excerpts that pertain specifically to designated groups. If the compliance review officer deems it necessary to review or sample the recruitment manual, this would usually be done on-site as part of the verification phase.

### 4.2 **Sampling areas for in depth review**

Often, employment systems reviews will be extensive, covering a range of occupational groups as well as the four designated groups.

First, the compliance review officer should start by reviewing the full documentation to assess whether or not the employer appears to have addressed all of the occupational groups where the workforce analysis determined there was under-representation.

Second, in preparing for the verification phase of the audit, the compliance review officer should consider concentrating on a selected sample of occupational groups where under-representation has been determined.

**4.3 Key audit considerations**

In reviewing the material submitted by the employer, compliance officers will focus on the following key audit considerations:

*Based on sound data and analysis* Has the employer based the systems review on an acceptable survey and a reasonable workforce analysis?

*Sufficient resources* Has the employer committed the time and resources necessary to conduct an efficient, productive systems review?

*Covers all groups* Is the review based on each of the designated groups and occupational groups where under-representation exists?

*Hiring, Promotion, Termination* Does the review include an analysis of hiring, promotion and termination data which will help focus the work?

*Formal and informal policies, attitudes and behaviours* Has the employer made a concerted effort to review all areas specified in the *Regulations*, including policies, procedures and practices, both formal and informal, whether written or not, as well as attitudes, behaviours and working conditions?

*Barriers* Has the employer considered both physical and systemic barriers which may affect representation?

*Accommodation* Did the systems review fully take the requirement to accommodate into account?



*Consult with employees* Has the employer consulted with unions and employee representatives to determine how policies are implemented and how employees perceive things are done?

*Adverse impact* Has the employer clearly determined and documented which employment systems have an adverse impact on the designated groups under-represented in individual occupational groups?

*Valid requirement* Has the employer assessed whether or not those systems which do constitute a barrier can be defended as valid requirements, keeping in mind an employer's overriding duty to accommodate?

*Properly documented* Has the employer presented a thorough report outlining the identified causes of under-representation in each area where problems were identified?

*New systems reviewed* Does the employer have in place a process capable of vetting systems introduced in the future to ensure they too are not barriers to equitable representation?

**4.4 Where an employer claims a BFOR**

Where employers make a claim that a practice is a *bona fide* occupational requirement, the compliance officer will review the supporting documentation, including the organization's policy on accommodation, and make a determination of whether or not it accepts this validation.

If the organization has not provided supporting documentation, the compliance officer will seek a formal undertaking requiring it to do so. Refer to the paragraph entitled "Undertakings" at the end of this section for suggested wording in this respect.

Should the compliance officer approve the practice as legitimate, and it is later determined by a tribunal that it does not qualify as a BFOR, the organization will be required to revise its external availability estimates and its numerical hiring and promotion goals accordingly.

#### **4.5 Judging the thoroughness of the approach**

If the assessment of the workforce analysis indicates that the employer did not identify all areas of under-representation, careful attention should be paid to these groups. It may be necessary to require an undertaking if the audit of the workforce analysis found new areas of under-representation which have not subsequently been addressed as part of a systems review.

Compliance Review Officers will need to draw conclusions about the reasonableness of the work done. For example, if the employer reports that a significant gap was the result of a failure to have gender sensitive recruitment material without other barriers being identified, the analysis has probably not been very thorough and there is a good risk that other barriers have been missed.

Conversely, if an analysis identified a series of issues such as:

- problems with equitable recruitment,
- use of key, non-validated tests with an adverse impact, and
- traditional gender bias by managers doing the hiring, particularly when combined with loose interviewing procedures,

the compliance review officer might conclude that the analysis appears to be credible. A decision may be made to select this particular conclusion for verification during the on-site visit.

#### **4.6 Verifying conclusions**

When the assessment of the employer's systems review has been completed, the compliance officer should validate findings by interviewing employees such as employees' representatives (unionized and non-unionized), designated group employees, line managers and supervisors to see if they confirm conclusions reached.

#### **4.7 Determining compliance**

Determining an employer's compliance with this statutory requirement requires a judicious, reasoned approach. The ESR is the most complex requirement, and also the most important tool leading to the elimination of barriers.

Although all organizations should comply with all requirements and there is no leeway with respect to the application of legal obligations, the degree of sophistication which employers will apply to various elements of the review will vary with the size, structure, economic sector and environmental context of individual organizations.

Some organizations in strong economic sectors will have sophisticated structures and support systems in place. These organizations are expected to adhere closely to all requirements and to present a comprehensive report of findings.

Some employers may have completed a review of systems and practices covering the entire workforce, without concentrating on areas of under-representation as they may not have been properly identified through an acceptable workforce analysis. In cases such as these, the ESR will provide useful information, but the employer should be required to expand the review by concentrating on groups where under-representation was found.

Some small organizations in more difficult sectors may not be able to apply the same degree of sophistication to some elements of the ESR. Although areas of under-representation will have to be examined, the thoroughness with which this may have occurred, or the manner in which findings will have been documented may not bear the same quality standards as that of more sophisticated organizations. This is where the compliance officer will be expected to apply reasoned judgment and discretion.

Where deficiencies are minor, compliance officers may enable organizations to make the required changes during the course of the audit.

Provided the compliance officer is satisfied that:

- the employer completed and maintained up-to-date a review of all employment systems, policies and practices which have contributed to under-representation;
- the review will allow the employer to identify and remove most barriers as part of the organization's employment equity plan; and
- the resulting plan will permit reasonable progress to be made,

the organization should be found in compliance.

#### **4.8 Audit Review Committee**

The various compliance issues discussed above, and appropriate recommendations, will be presented to the audit supervisor and to the audit review committee for review and discussion. Following this, the compliance officer will make a final decision on the employer's compliance with this statutory requirement at the time of completing the compliance report.

#### **4.9 Undertakings**

Where an employer is not in compliance with any of the requirements related to the ESR, the *Act* requires:

*That (name of employer) develop an undertaking to:*

- complete an employment systems review of policies and practices with a view toward identifying potential barriers, both systemic and attitudinal. This must include both those which apply generally to the company's workforce and specifically to the occupational groups where the workforce analysis indicates there is under-representation. This review should provide

reasonable conclusions about the causes of under-representation and form the basis for the development and implementation of an effective employment equity plan. This examination must meet the standards established in Assessment Factors 3.1 to 3.5 listed in the Compliance Checklist.

- implement a system to ensure that all new systems, policies and practices will be reviewed for adverse affect and adjusted as appropriate as they are being implemented; and
- commit the resources necessary to complete the work in accordance with the agreed upon schedule for reaching compliance.

*Where a BFOR is claimed:*

- Where an employer claims a BFOR for any given occupation, this claim must be substantiated with supporting documentation to demonstrate that the requisites of the occupation are a bona fide occupational requirement. 🍁