

Pocket Guide to
**EMPLOYMENT
EQUITY**



THE PROFESSIONAL INSTITUTE OF
THE PUBLIC SERVICE OF CANADA



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FONCTION PUBLIQUE DU CANADA

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Pocket Guide to Employment Equity

OTHER USEFUL DOCUMENTS

Guide for Members

Membership Benefits pamphlet

Your Union at Your Service (CD-ROM)

Professional Institute By-Laws and Regulations

Professional Institute Policy Manual

Manual for Elected Officials

Pocket Guide for Elected Officials

Steward Manual

Pocket Guide for Stewards

Mentorship Guide for Stewards

Pocket Guide on Consultation

Pocket Guide on Occupational Safety and Health

Pocket Guide on Harassment

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Introduction

In Canada in the 1970s and 1980s, unions, women's groups and other concerned organisations were putting pressure on the federal and provincial governments for them to address inequities and barriers preventing many Canadians from having access to employment.

Responding to these pressures and to the need to adapt to a fast evolving labour market, in 1986 the Canadian government adopted the *Employment Equity Act* (EEA), with the purpose of encouraging federally regulated private sector employers of one hundred or more employees to improve the employment situation of four groups of people under-represented at work. These four groups are: women, aboriginal people, people with disabilities, and members of visible minorities.

While it rapidly became obvious that voluntary measures were not yielding results, the federal government was also under pressure to apply to its own workforce the changes it sought from the private sector. It is in that context that, in 1995, a review of the EEA was undertaken and, on October 24, 1996, Bill C-64 a bill to replace the 1986 federal EEA, was proclaimed. One of the more significant changes brought about by the new Act was that it now covered the federal public service. The new EEA also saw a reinforcement of the obligations imposed on employers. Overall, the EEA adopted in 1996 applies to approximately 600 employers employing about one million Canadian workers - or 6 % of the Canadian workforce.

The purpose of the Act is to achieve equality in the workplace so employment opportunities are not denied for reasons unrelated to ability, and to correct disadvantages in employment experienced by women, aboriginal people, people with disabilities and members of visible minorities. It calls for positive measures to actively promote a more representative public service as well as facilitating efforts to close the representational gaps for the above-noted target

groups. Under the Act, employers are required to analyse their workforce, review employment systems, policies and practices to identify and eliminate barriers, review policies and programs to correct under-representation and provide reasonable accommodation.

The Canadian Human Rights Commission (CHRC) is responsible for the enforcement of the Act. It is mandated to carry audits to ensure that employers are in compliance with the law and are pursuing the implementation of their employment equity plans. Although the CHRC primarily uses dialogue and persuasion as means of getting employers to commit to Employment Equity, it can also request that they sign written undertakings. The CHRC is also empowered to prosecute non-complying employers by referring their case before the Employment Equity Review Tribunal created under the EEA.

For the core federal public sector, the EEA considers the Treasury Board and the Public Service Commission, each acting within the scope of their powers, as responsible for carrying out the obligations of an employer. The PSC is responsible for ensuring that the appointment system is bias and barrier-free and ensuring the accommodation of persons in the appointment process.

The Canada Public Service Agency (CPSA - formerly known as the Public Service Human Resource Management Agency of Canada) acts as the employer's administrative agency and is responsible for the government's overall policy on employment equity. It is also responsible for developing resources planning and accountability frameworks to achieve the Act's goals. Every year it publishes a *Report on Employment Equity in the Federal Public Service* which is tabled before Parliament.



What is Employment Equity?

According to the *Canadian Human Rights Act*, “all individuals should have equal opportunity with other individuals, to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offense for which a pardon has been granted.” (Section 2 - Purpose)

The *Employment Equity Act* aims at eliminating systemic discrimination against designated group members and accommodate diversity. Four groups are specifically targeted by this legislation:

- Aboriginal people: includes Status Indians, Non-Status Indians, Inuit or Métis
- Visible minorities: people who, because of their race or colour, form visible minorities in Canada. These include Blacks, Chinese, Japanese, Koreans, Filipinos, South Asians (Indo-Pakistani), Visible Minority West Asians or North Africans, South East Asians (Burmese, Cambodian, Laotian, Thai, Vietnamese, etc.), Oceanic (Melanesian, Micronesian, Polynesian), Visible Minority Latin Americans or any combination of the above visible minority groups
- People with disabilities: people who, for the purpose of employment, may be considered disadvantaged, consider themselves or believe that a potential employer would likely consider them disadvantaged by reason of any persistent physical, mental, psychiatric, learning or sensory impairment
- Women

Traditionally, these four groups of people have been seriously under-represented in the workplace. The legislation aims towards the achievement of equality so that no person should be denied employment opportunities or benefits for reasons unrelated to ability.

How can employment equity be achieved?

Unfortunately, achieving employment equity is much more difficult to achieve than it appears. Employment equity means more than treating everybody the same. It means accommodating differences to allow all people the same chances based on their ability to do the work.

Employment equity does not mean giving jobs to unqualified people. It means removing the barriers that prevent people who could do the jobs from performing them.

Employers should be made aware that the merit principle is at the core of employment equity and that staffing actions should be established in a manner that eliminates barriers to the employment of the aforementioned groups.

This in no way implies that an employer should hire or promote unqualified persons, it simply means that based on equal merit, successful candidates should first be selected from those four categories.

Employees are encouraged to self-identify as designated in one of the four above-mentioned categories. However, for reasons ranging from privacy concerns, to the perception that they are not being assessed on the basis of merit, to the fact that they consider themselves Canadians, some members of the designated groups are hesitant to self-identify and/or do not see the importance or the need to do so.



While the process may appear fairly simple in some instances (staffing of women, Aboriginal people and visible minorities), it can become complicated in others (staffing of people with disabilities where accommodation must be provided). Thus, most employers have instituted policies on Duty to Accommodate.

What is an Employment Equity Plan?

Under the *Employment Equity Act*, employers must prepare an employment equity plan. This plan must specify the policies and practices that must be put in place and employers must make all reasonable efforts to implement their plan.

Every employer covered by the *Employment Equity Act* shall conduct an analysis of its workforce to determine the degree of under-representation of persons in the four designated categories in each occupational groups. Only those individuals who have self-identified will be counted as members of those designated groups. Every employer will then conduct a review of its employment policies and practices to identify employment barriers.

An Employment Equity Plan must specify positive measures to be implemented in the short term (1-3 years) for the hiring, training, promotion and retention of members of the designated groups to correct under-representation and measures to eliminate barriers. It must contain timetables for the implementation of those measures. Where under-representation is identified, the plan must contain numerical goals to attain in the hiring and promotion of members in the targeted groups. The plan should also contain long-term goals (more than 3 years) to increase representation and determine the strategy to attain this objective.

A good Employment Equity plan should include the following:

- goals that apply to all 4 targeted groups
- promotion and encouragement of self-identification
- promotion and participation in various Employment Equity events

- unique events
- diverse selection boards
- diversity training
- Employment Equity/diversity orientation for new employees
- participation from unions
- sharing of best practices
- diversity calendars
- cross-training
- apprenticeship programs
- awareness training

It should **not** include:

- things that apply to all employees
- harassment awareness sessions

It should also include:

- Aboriginal people:
 - awareness training
 - partnerships with aboriginal organizations
 - aboriginal student bridging
 - outreach programs
- Persons with disabilities
 - accommodation and awareness training
 - technical aid training
 - accessibility tools
 - sensitivity training
 - promotions/development
 - wellness fairs
 - developmental assignments
- Visible minorities
 - language training
 - acting developmental assignments
- Women
 - ways to reduce gaps
 - different advertising mechanisms
 - mentoring
 - retention



What is duty to accommodate?

According to the *Canadian Human Rights Act*, the duty to accommodate involves eliminating or changing rules, policies, practices and behaviours that discriminate against persons based on a group characteristic such as race, national or ethnic origin, colour, religion, age, sex (including pregnancy), sexual orientation, marital status, family status and disability. Although the duty to accommodate is most often applied in situations involving persons with disabilities, other examples of accommodation include modifying a work schedule to accommodate religious beliefs or modifying hours of work to accommodate family care responsibilities. Courts have ruled that employers must make reasonable efforts to modify shift schedules or allow special religious leave up to undue hardship.

Under the *Canadian Human Rights Act*, all federally regulated employers and the federal public sector must accommodate these individuals.

Furthermore, the *Employment Equity Act* requires reasonable accommodation of employment equity group members and that employers identify and remove any such barriers to ensure full participation.

What is considered a disability?

According to the Canadian Human Rights Commission, disability for the purpose of accommodation is defined as a physical or mental condition that is both

- permanent, ongoing, episodic or of some persistence, and
- a substantial or significant limit on that person's ability to carry out some of life's important functions or activities, such as employment.

Disabilities include both visible disabilities, such as the need for wheelchairs, and invisible disabilities, such as cognitive, behavioural or learning disabilities.

While employers may describe disabilities in various or different manners, the Treasury Board of Canada has identified and recognized the following:

- blindness or other severe visual impairment
- deafness or other severe hearing impairment
- mobility
- chronic pain
- environmental sensitivities
- addictions
- learning disabilities
- speech impairment
- chronic conditions such as diabetes
- psychiatric disabilities
- developmental disabilities
- other permanent or temporary conditions that cause pain or limit or restrict activities



What can the employer do?

To accommodate employees, the employer must identify and remove all barriers to employment, career development and promotion, unless doing so would create undue hardship. They must design all systems (e.g. computer equipment), processes (e.g. selection process), facilities (e.g. building access) as well as the organizational culture and work environment accordingly. Rather than dealing with situations on a case-by-case approach, employers have the obligation of setting up the workplaces in such a way that these problems do not exist in the first place.

What must the disabled employees do?

Employees are required to inform potential employers or supervisors of their specific employment related needs. They must collaborate with the employer in finding the most appropriate means to accommodate them and inform the employer when special equipment is no longer required.

What is a request for accommodation?

A request for accommodation does not have to be made in writing, but it must be clear and specific. The employer may request supporting documentation from the attending physician.

Once the request is received, the employer must determine what type of accommodation is required. If this is not clear, they should consult experts in the field or the attending physician to get the appropriate information and provide the accommodation.

What are examples of accommodation?

- Converting printed materials to alternative media (i.e. braille, large print, etc.) or reader services for visually impaired employees
- Ensuring environment is scent-free for people who are scent-sensitive
- Offering telecommunication teletype (TTY) numbers for hearing-impaired employees
- Allowing an attendant to accompany a person with special physical/mental disabilities
- Allowing an employee to work from an alternate worksite or providing flexible work arrangements (i.e. telework, task modifications, etc.)
- Providing work space and furnishings appropriate to the disability
- Providing interpreters for deaf and hearing-impaired employees
- Adapting training programs to the needs of disabled employees
- Adapting work schedules to accommodate family responsibilities
- Adapting work schedules to accommodate religious obligations.

Employees who consider that their right to be reasonably accommodated was not respected may envisage filing a grievance under the “No Discrimination” clause of their collective agreement. Since the coming into force of the *Public Service Labour Relations Act* in April 2005, Treasury Board employees can use the grievance route to claim discrimination based on one of the illicit grounds of discrimination defined by the *Canadian Human Rights Act*.



What can PIPSC do?

The *Employment Equity Act* stipulates that consultation and collaboration between employers and unions is mandatory. The employers must provide information to bargaining agents, seek their opinion and advice in order to better implement employment equity activities in their organization. Areas covered by this consultation are communication to employees of matters relating to employment equity, preparation, implementation and revision of employment equity plans and implementation of employment equity.

Employee representatives (from a union) must participate in consultation, collaborate in the preparation, implementation and revision of the employment equity plan.

Public service-wide employment equity issues will be dealt with at the National Joint Council where PIPSC has a seat. The Canada Public Service Agency (CPSA) stated that while issues of national scope (department/agency wide) can be dealt with through national union-management consultation, in light of the complexity of the issue, it recommends that employers create separate national Employment Equity Consultation Committees supported by regional and local level committees.

The Institute needs a stronger voice!

If you are currently sitting on an Employment Equity Committee or know the name of the person sitting on such a committee as a PIPSC representative, be it at the local, regional or national level, please advise the Institute Steward Coordinator so our database can be updated.

We also strongly recommend that all PIPSC members sitting on such committees attend the Employment Equity and Human Rights training sessions offered by the Institute. The PIPSC training calendar is posted on the Steward page of the PIPSC Web site.

The Institute requires that members sitting on Employment Equity and Human Rights committees be stewards. Under the new steward system which came into place on April 1, 2007, members who become stewards can now work only within specific areas. In other words, a steward could choose to work only in the field of Employment Equity or Human Rights and join the PIPSC network of human rights steward activists. These stewards would not be required to deal with member representation and do grievances or similar representational services. However, they would have to take the Institute basic steward training which will provide them with a basic understanding of the Institute structure and its position on various topics.

Members interested in sitting on Employment Equity or Human Rights Committees should contact the PIPSC Steward Coordinator or their regional office for more information.

Minutes of all Employment Equity Committee meetings should be sent to the Institute (via the Steward Coordinator) for posting to the appropriate departmental page on the PIPSC Web site.

Conclusion

Employment Equity is important. Ideally, the Institute should have representatives on all Employment Equity committees at all levels. Find out who the PIPSC representatives are on your national committee. Find out if there are committees at the regional and local levels. If there are committees, find out who the PIPSC representatives are and advise the PIPSC Steward Coordinator of their names. If there is no committee, ask management to set one up; volunteer to sit on it or try to find someone who would be interested in doing this.

Employment Equity is important to all of us who live in a free, democratic, multicultural society. Let's do our part.