

CANADIAN
HUMAN RIGHTS
COMMISSION

COMMISSION
CANADIENNE DES
DROITS DE LA PERSONNE

Framework for Compliance Audits Under the *Employment Equity Act*



Equality of opportunity

***Audit Process and Statutory
Requirements***

December 2010

Canada

Employment Equity

Vision:

The purpose of the Employment Equity Act is to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and members of visible minorities.

Did you know ?

The proportion of women who have completed some form of post-secondary education continues to be greater than that of men.
2006 Census: Educational Portrait of Canada, Statistics Canada.

In the coming years, more Aboriginal people will be entering the workforce than ever before. This growing population will constitute an important pool of recruits to supplement shortages in the labour market.
Perspectives on Labour and Income, Statistics Canada.

Employers who have made accommodations for employees with disabilities reported that this allowed the company to retain a qualified employee, increased the worker's productivity and eliminated the cost of training a new employee.

Job Accommodation Network

Canada's visible minority population has attained higher levels of education than the general population.
Immigrants' Education and Required Job Skills, Statistics Canada.



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Overview of the Employment Equity Compliance Program

All individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have, free from discrimination.

To this end, the Commission's compliance program takes into account employers' challenges, acknowledges progress, encourages success and facilitates the creation of a human rights culture by helping employers achieve employment equity objectives, and see the benefits of having greater representation.

The approach is tailored to employers based on employment equity results (EE results) achieved. If an employer is found to be:

- A more successful EE employer (i.e. with better overall EE results in comparison with its own sector of having a good overall representation in three out of four designated groups), the assessment will focus only on results achieved;
- A less successful employer (i.e. with lower overall EE results than its own sector), the assessment will focus on all nine statutory requirements as well as on results achieved.

The approach also invites employers to move beyond legislative requirements by taking into account the ongoing growth in workforce availability of designated groups and by using the Commission's Human Rights Maturity Model to help create a positive work environment respectful of human rights (see Human Rights Maturity Model section).

Historical perspective

Parliament introduced the first *Employment Equity Act* in 1986 with the intent to achieve equality in the workplace and to increase the representation of members of designated groups who were historically under-represented. Employers covered by the legislation were to identify and eliminate barriers limiting the employment opportunities of visible minorities, women, Aboriginal peoples and persons with disabilities. In 1996, the Act was amended. The Commission was mandated to ensure compliance with the Act by conducting audits and Employment Equity Review Tribunals were established to hear employment equity cases.

The Act and its compliance program have had a positive impact on achieving equality in the workplace. The representation of all four designated groups has risen by almost 20% since 1992. This reduced the gap between overall representation and availability in the labour market by 50%.

However, Canada's evolving society has made the elimination of representation gaps more challenging. For example, the population of members of a visible minority has experienced consistent growth from 9.1% in 1992 to 15.3% in 2008. This has lessened the impact of the improvements achieved. As well, the increased use of automated technologies has reduced the need for clerical positions traditionally held by women. While progress has occurred, full equality has not yet been achieved for the designated groups, thus reinforcing the purpose of the Act and its compliance program.

For more information on the impact of the Act and its compliance program, please visit the Commission's website at:

http://www.chrc-ccdp.gc.ca/publications/eeprogram_programmeee/toc_tdm-en.asp



PROCESS FOR EMPLOYMENT EQUITY AUDITS

1. Framework

Purpose

This framework document summarizes the essential elements of the Canadian Human Rights Commission's Employment Equity Compliance Program as reflected in the Act. It outlines the Commission's approach to the planning of audit cycles, the selection of employers, the audit process and the steps related to potential enforcement measures. The document provides employers, trade association representatives, unions, as well as groups and individuals with information about the Commission's EE activities.

Roles and responsibilities under the *Employment Equity Act*

Federally regulated employers

It is the employer's responsibility to develop and implement an employment equity program, in consultation and collaboration with employee representatives.

Federally regulated employers are required to analyze their workforce and review their employment systems in order to develop an Employment Equity Plan. The EE plan is to be based on the employment barriers to designated groups and organized by employment equity occupational groups as identified in the Employment Systems Review. It is to include measures to address the barriers. Where under-representation exists for designated groups, employers are required to implement the EE plan that will lead to progress in increasing representation. It is the employer's obligation to monitor the implementation of the EE plan and the resulting employment equity progress achieved. Employers must also review their EE plans regularly and make revisions to ensure progress.

Public Service Commission

The Public Service Commission (PSC) develops public sector employment policies in the areas of staffing and recruitment and collects related data. The PSC's mandate also includes an oversight role for the proper application of the *Public Service Employment Act* by all federal departments and agencies.

Human Resources and Skills Development Canada

Human Resources and Skills Development Canada (HRSDC) administers the *Employment Equity Act*, provides advice and training to private sector employers, and ensures they submit their respective annual report as required by the Act. HRSDC also develops national workforce availability estimates, consolidates private sector annual reports, tables the overall results to Parliament and conducts compliance audits for private sector federal contractors.

Office of the Chief Human Resources Officer of the Treasury Board Secretariat

The Office of the Chief Human Resources Officer of the Treasury Board Secretariat (OCHRO) maintains an employment equity self-identification databank for public sector employers. OCHRO calculates the representation and availability rates for each department and agency in the federal public sector. Finally, it also consolidates public sector employment equity reports and tables an overall annual report on employment equity to Parliament.

Canadian Human Rights Commission

Among other responsibilities, the Canadian Human Rights Commission conducts compliance audits of federally regulated private sector employers, Crown corporations and federal public sector organizations to ensure compliance with the *Employment Equity Act*.

Unions

Unions are to collaborate in the preparation, implementation and revision of the employer's employment equity plan. They can also help minimize the adverse impact of certain seniority clauses in collective agreements that affect members of designated groups by collaborating with the employer to address issues.

Under the Act, consultation and collaboration between employers and unions are not considered forms of co-management and final responsibility for compliance rests with the employer. For more information, please visit HRSDC "Guideline 3: Consultation and Collaboration" at:

<http://www.hrsdc.gc.ca/eng/lp/lo/lsw/we/legislation/guidelines/gdln3.shtml>

Statutory requirements

Under section 22 of the Act, the Commission can conduct a compliance audit of the following nine statutory requirements:

1. Collection of workforce information
2. Workforce analysis
3. Review of employment systems, policies and practices
4. Employment equity plan
5. Implementation and monitoring of employment equity plan
6. Periodic review and revision of employment equity plan
7. Information about employment equity
8. Consultation and collaboration
9. Employment equity records

For more information on the above statutory requirements, please consult HRSDC's *Guidelines for the Employment Equity Act and Regulations* at:

http://www.hrsdc.gc.ca/eng/labour/equality/employment_equity/tools/guidelines/index.shtml

Confidentiality

Section 34 of the *Employment Equity Act* requires that information gathered during compliance audits be treated as confidential. However, the Commission is also subject to the disclosure requirements of the *Access to Information Act*, which takes precedence over the stipulations of the *Employment Equity Act*.

Under the *Access to Information Act*, some third-party information can be protected from release. This includes information of a financial or commercial nature, information that could result in material financial loss or gain, prejudice the competitive position, or interfere with contractual or other negotiations of third parties. As well, under the *Privacy Act*, information of a personal nature can be protected from public release.

Upon receiving a request under the *Access to Information Act*, the Commission may be required to release any documents on file which do not contain personal information, trade secrets or other confidential business information. The Commission will advise the employer that a request under this Act has been received, and the organization will be given the opportunity to submit reasons why material should or should not be released.

Section 34 of the *Employment Equity Act* also prohibits the use of information obtained by the Commission as a result of compliance audits in any proceedings under any other act, including the *Canadian Human Rights Act*, without the written consent of the employer or the individual from whom it has been obtained.

Human Rights Maturity Model

The Commission is in the process of implementing the Human Rights Maturity Model, which is designed to help employers create a self-sustaining human rights culture in the workplace. It leads employers through a step-by-step process toward integrating human rights into all aspects of the corporate infrastructure. Organizations will be able to self-assess and improve their level of human rights maturity in several areas, including dispute resolution, employment equity, accommodation and anti-harassment, and policy reviews.

For additional information on the Human Rights Maturity Model, please visit the Commission's website at: http://www.chrc-ccdp.gc.ca/hrmm_mmdp/default-en.aspx

2. Strategic Planning of Audits

Federally regulated employers

The *Employment Equity Act* currently applies to over 500 federally regulated private-sector organizations and Crown corporations with over 700,000 employees, and to all federal departments and agencies with approximately 300,000 employees.

Results and risk-based audit selection process

The Commission has adopted a results and risk-based approach for its audit selection process. In selecting employers to be audited, the Commission takes into account the following elements:

- potential impact on employment equity results by focusing primarily on employers with more than 500 employees, which covers 90% of all federally regulated employees;
- for private sector employers, the representation of designated groups and the compliance level assessment from HRSDC's Annual Report Compliance index; and
- for federal public sector employers, the actual representation of designated groups of each department and agency.

Additional random audits will be included in the process to cover all federally regulated employers.

Targets

The Commission aims to complete a minimum of 40 audits per year. In addition, the Commission monitors private sector employers annually through a review of the annual reports they submit to Human Resources and Skills Development Canada. The Commission also monitors public sector organizations annually through annual reports submitted to the Office of the Chief Human Resources Officer.

3. THE AUDIT PROCESS

Notification: initiating contact with the employer

Employers will be notified in writing that their organization may be subject to an employment equity audit and they are required to provide a copy of their most recent workforce analysis within two weeks.

Upon review of the employer's workforce analysis, the Commission will implement one of the following options:

- For a more successful EE employer, the Commission will produce a report (EE status reports) on the representation of the designated groups in the employer's workforce. This report will include quantitative data comparison with the employer's own sector of operations. It will highlight the employer's accomplishments and remaining challenges in terms of achieving adequate representation of the four designated groups.
- An employer with lower EE results will be subject to an audit pursuant to section 22 of the *Employment Equity Act*. Additional information will be requested through an audit questionnaire to assess the employer's compliance with the nine main statutory requirements.

Audit questionnaire: evaluation of compliance status

The employer will be given up to 60 calendar days to complete and submit the audit questionnaire and supporting documentation. While this work is the responsibility of the employer, the Commission will be available to respond to questions. Both the questionnaire and supporting evidence form the basis on which the organization's performance will be assessed against each of the requirements of the Act.

This includes a comparative analysis of the employer's workforce profile with labour market availability estimates; an assessment of the work completed on the review of the organization's employment systems; and an examination of the organization's employment equity plan, including progress on the representation of the four designated groups over a defined period.

Further analysis will focus on the most significant areas of concern. This often means testing or sampling only specific areas to verify the appropriateness of the analysis completed.

Verification: validation of the information obtained

On-site visits and interviews are an important component of the audit process and are conducted to validate findings. The Commission will inform the employer of its logistical needs in advance (workspace, access to computer, security pass). The time, date and duration of the on-site visit will be confirmed with the employer.

Special measures, good faith efforts, employees' knowledge of employment equity, workplace climate, and unwritten policies and practices are all intangibles that are best measured through on-site assessments. Duration of on-site visits depend on the size and structure of the organization and the extent of its employment equity plan. Visits can include regional and field offices for large geographically dispersed organizations. Additional documentation may be requested during the on-site visit.

Confidential and anonymous interviews may be conducted with managers, union representatives and other employees. They will be organized in advance to minimize disruption to the employees' work. A "walk-around" may be requested to observe the employer's operations directly, speak to employees informally, and assess the physical accessibility of the premises. The employer may designate a staff person to accompany the Commission's representative during the walk-around.

The employer will be debriefed on the Commission's findings during the on-site visit or by telephone, depending on circumstances. The debriefing will highlight major findings, both positive and negative, in relation to the legislative requirements and may initiate discussions on undertakings, as required.

Reporting: issuing an employment equity report

The employment equity report provides a synopsis of the employer's current employment equity profile, acknowledges the employer's overall context, identifies specific accomplishments and challenges, and conveys the Commission's employment equity expectations. The employment equity report will be approved by the Commission before being sent to the employer.

Undertakings: employers to redress areas of non-compliance

An undertaking is an agreement negotiated between the Commission and an employer who is found to be in non-compliance with the legislative obligations. The proposed undertakings should result in the fulfilment of the statutory requirements and address the specific areas of non-compliance identified in the audit report. If the employer contests the findings, additional documentation to support the employer's position is required.

Employers are provided a maximum of four months to complete the undertakings and submit an implementation report. Once the undertakings are fulfilled, the Commission will provide a subsequent employment equity report to the employer.

If the undertakings are unfulfilled, the Commission may consider other actions, including enforcement by issuing a direction.

Enforcement of the Act: ensuring compliance by issuing a direction

As a last resort, the Commission may issue a direction in three instances:

- The employer has failed to cooperate with an audit, as provided under section 26(1) of the Act.
- The Commission has identified an instance of non-compliance and has been unsuccessful in negotiating an appropriate undertaking with the employer as provided under section 25(2) of the Act.
- The employer has breached an undertaking as provided under section 25(3) of the Act.

Before a direction is issued, the organization will be provided with a copy of the request for a direction by registered mail and given 30 days to convey its response in writing. The Commission will consider the request for a direction along with the employer's response when deciding whether to issue a direction or adopt another course of action. The employer will be duly informed of the Commission's decision.

If a direction is issued under sections 25(2) or (3), the employer may request a review of the direction within 60 days. If a direction is issued under section 26(1) for lack of collaboration, the employer will have 30 days to request a review.

If an employer does not abide by a direction, the Commission can refer the case to the Employment Equity Review Tribunal to obtain an order confirming the direction. The Tribunal's order can be enforced as an order of the Federal Court.

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