

CANADA

Charter of Rights and Freedom

The charter provides for a broad concept of equality. It prohibits discrimination and at the same time provides for affirmative action measures. It therefore confirms both a formal (elimination of unfair discrimination) and substantive notion of equality (affirmative action measures). The central objective of the section is to remedy inequality between groups as well as individuals.

One important feature of the Charter is that it emphasizes on the merit principle in the context of affirmative action. Canada has emphasized education and training designed to assist minorities and other persons in the designated groups in the attainment of skills and professional qualifications which will provide them with proper qualifications for jobs. In this way the problem of filling educational and occupational quotas with unqualified or under-qualified persons from the designated groups has been avoided.

Employment Equity Act (EEA)

The purpose of the EEA¹ is to ensure that no person is denied employment opportunities and benefits for reasons unrelated to ability. It requires employers to correct disadvantages in the workplace experienced by members of the four designated groups:

- women
- Aboriginal peoples
- persons with disabilities, and
- visible minorities.

In addition, employers must implement the principle that employment equity means more than treating people in the same way; it also requires special measures and the accommodation of differences.

The act requires that employers identify and eliminate employment barriers for designated group members that result from the employer's employment systems, policies and practices. The goal is to institute positive policies and practices and make reasonable accommodations so that the representation of persons in designated groups in the employer's workforce reflects their representation in the Canadian workforce.

The Canadian Human Rights Commission (CHRC) is mandated to conduct employment equity audits of employers and to assess employers' compliance with the obligations and requirements of the act. The act also requires the commission to monitor the performance of employers it has audited through annual reports submitted to Human Resources and Social Development Canada (regarding private sector employers) and to the Public Service Human Resources Management Agency of Canada (regarding public sector employers).

The commission is expected to audit employers covered by the EEA. Approximately 590 organizations in the federally regulated private sector and in the federal public service are presently covered by the EEA. The number of employers varies annually. Organizations that have never been audited are selected randomly for a preliminary assessment audit. Organizations that have previously been audited may be chosen for the progress assessment phase of the audit based on several possible criteria, including low representation, sector, size and geographic area, or because of a special focus to increase the representation of certain groups. Generally, there will be three to five years between audit phases.

The audit process has two phases, viz. preliminary assessment and progress assessment. The preliminary assessment phase consists of evaluating the employer's compliance with the nine statutory requirements of the act. The progress assessment phase consists of determining the progress made by the employer in continuing to meet the audit requirements assessed in the preliminary phase. The focus is on determining how effectively the employer has made reasonable progress toward implementing its Employment Equity Plan to reduce under-representation.

Assessments are made in part based on documentation provided by the employer and there may be an on-site visit by a compliance review officer. The commission representative may interview employees, employee representatives and managers as part of the process for the validation and assessment or analysis of the information provided.

The statutory requirements of the EEA are as follows:

- collection of workforce information
- analysis of the workforce to determine the degree of under-representation of designated group members

- review of employment systems, policies and practices
- preparation of an Employment Equity Plan
- implementation and monitoring of the plan
- periodic review and revision of the plan
- provision of information about employment equity to the workforce
- consultation with employee representatives, and
- establishment and maintenance of employment equity records.

An employment systems review is an in-depth assessment carried out by the employer of all employment systems, policies and practices and of the manner in which these are implemented, in order to identify barriers to the employment of designated group members. The review must cover both formal and informal employment systems, policies and practices and must also include attitudes and behavioural barriers that may be limiting the employment opportunities of designated group members. The review will usually include focus groups and/or interviews with employees, union representatives and managers.

The length of an audit can vary depending on the size of the company and individual circumstances. In general, an audit phase takes less than one year. Compliance is determined by the employer demonstrating to the satisfaction of the Commission that it has met the statutory requirements of the act. Compliance is achieved when all nine requirements have been met and the commission makes a finding of compliance. If one or more of the requirements are not met, then the employer is non-compliant.

Should an employer be found non-compliant during the preliminary or progress assessment phase, the compliance review officer will negotiate undertakings with the employer. The undertakings are meant to correct the deficiencies observed. The employer is provided with opportunities to remedy the deficiencies, but if the employer remains non-compliant, the commission may decide to issue a direction. Should the employer fail to comply with the commission's direction, further action may be taken. The commission may refer the employer to an employment equity review tribunal.

Human Resources and Social Development Canada

- Collects and distributes data on designated groups among employers subject to the EEA, through annual reports filed by employers

- Develops and delivers programmes to foster public understanding and recognition of the EEA
- Undertakes research related to the purpose of the EEA
- Develops and provides labour market availability data to employers
- Implements the Federal Contractors Programme

Office of the Chief Human Resources Officer (OCHRO) of the Treasury Board Secretariat

- Is responsible for employment equity in the public service of Canada
- Provides policy advice and guidance to departments and agencies on various matters including audits done by the CHRC
- Provides strategic support to departments and agencies
- Monitors and evaluates the implementation of employment equity initiatives as well as progress achieved

Canadian Human Rights Commission

- Performs employment equity compliance review audits of employers under federal jurisdiction
- Negotiates memorandum of understanding with employers and works jointly with employers to prevent discrimination

Endnote:

The Act is aimed at making the demographic characteristics of Canadian labour force to be representative of the demographic base of Canada. Its primary objective is to ensure that the Canadian workforce is an accurate reflection of the composition of the Canadian population given the availability of required skills.