

Legislation Concerning the Hiring and Retention of People with Barriers to Employment: A Guide for Employers

“The Employment Equity Act”

The federal Employment Equity Act is intended to achieve equality in the workplace, so that no one is denied employment for reasons unrelated to ability, and to thereby correct the disadvantages in employment experienced by women, aboriginal people, people with disabilities, and members of visible minorities. The act is based on the principle that employment equity means more than treating persons the same way; it also requires special measures and the accommodation of difference.

Definitions

designated groups: women, aboriginal people, people with disabilities, and members of visible minorities.

persons with disabilities: persons with long-term or reoccurring physical, mental, sensory, psychiatric or learning impairments who consider themselves to be disadvantaged in employment by reason of that impairment; persons who believe the employer is likely to consider them disadvantaged.

The Employment Equity Act is applied through two parallel federal employment equity programs:

- The **Legislated Employment Equity Program (LEEP)** applies to all federally regulated employers (including the armed forces and the RCMP) with more than 100 employees. Every year, they must submit employment equity reports showing the representation of the designated groups within their workforce, the identification of barriers to employment opportunities in their business for these groups, and actions taken to increase representation where required.
- The **Federal Contractors Program (FCP)** applies to provincially regulated employers with 100 or more employees who have secured a federal goods or services contract of \$200,000 or more (not including construction contracts or contracts for the purchase or lease of property). They are required to certify in writing their commitment to employment equity as a condition of bidding on large federal contracts.

Hiring and retaining people with barriers to employment

The Employment Equity Act helps to ensure that employers under federal jurisdiction actively work to facilitate the hiring and retention of people with certain employment barriers. Like the human rights legislation, this act requires accommodation for people within the designated groups. An advantage of this legislation is the ability to monitor employers' actions and to determine what progress is being made through annual reports.

However, the impact of employment equity legislation on the hiring and retention of people with barriers to employment is limited by a number of factors:

- The range of designated groups is small (less than those under human rights legislation).
- Employers are not obligated to create new jobs. Labour Market Dialogues Project does not necessarily expect employers to create jobs, but does promote the tip of creating a \$500 per month job for people on disability assistance.
- Construction companies under federal contract are not under any employment equity obligation. This creates a large gap in BC's Capital Region, where construction is a fast-growing industry
- The numerical representation for employment equity is not based on the working age population of the designated groups but on the percentage of the designated groups' population with the education level required for employment opportunities or the number already existing within the specified employment sector. This results in a smaller numerical representation of designated groups required by organizations under the Act and prevents more long term and substantial efforts to increase opportunities amongst the designated groups populations.
- There is no provincial equivalent to the Employment Equity Act, resulting in a limited number of employers affected.

Unions

Unions are obligated to uphold human rights legislation by representing the needs of employed individuals related to protected grounds and ensuring that employers fulfill their duty to accommodate.

However, the impact of unions on the hiring and retention of people with employment barriers is limited by a number of factors:

- Union representation is only available once an individual is hired as an employee. There is no direct assistance in the hiring process.
- The legislated responsibility of the union to uphold and defend these rights is limited to the protected grounds or designated groups identified in the legislation.
- The success of union representation in facilitating accommodation is dependent upon the knowledge and dedication of the union representatives in supporting union members. Unions that are more employer focused or that lack organizational or membership dedication reduce the likelihood of employees negotiating scheduling or job changes with the employer to help remove potential barriers.
- The extent of an employer's creativity and flexibility in accommodating the needs of employees with barriers that are not legislated is dependent on the contents of the particular union's constitution and the collective agreement with the employer. Collective agreements are based on the needs put forth by members of the union and therefore may not reflect the needs of people with barriers who were not represented at the time the agreement was drafted.

Background: The Labour Market Dialogues

The Labour Market Dialogues is a project of the Community Council, designed to explore ways in which employers in the Capital Region can be better supported in hiring and retaining people who are experiencing barriers to employment.

Phase 1 of the project, which took place in 2006, involved more than 110 interviews with employers, employees and potential employees and representatives from community service agencies. Participants identified more than 1,700 barriers to employment, 1,000 existing supports for people facing barriers, and 200 ideas for addressing the gaps.

The issues identified in Phase 1 were used to design Phase 2 of the project, which took place between March 2007 and February 2008. A group of 30 employers, service providers and other members of the community, including people with barriers to employment, chose two strategies for hiring and retaining people with barriers to employment that could most benefit both employers and employees: helping employers support people in transition to employment and offering flexible schedules. The Labour Market Dialogues then undertook three outreach activities built around these two strategies, to engage employers.

Phase 3 builds on the work of Phases 1 and 2, identifying and communicating positive and innovative practices used by local employers in successfully hiring and retaining people who have transition and scheduling barriers to employment.

Defining *barriers to employment*

In the Labour Market Dialogues project, *barriers to employment* means issues that present people with obstacles to finding and keeping work. Barriers include (but are not limited to):

- being homeless
- having substance abuse issues
- having mental and physical health problems
- having a low level of life skills
- having a criminal record
- lacking work history
- being a sex worker
- having a history of violence and abuse
- being new to Canada
- not speaking English
- being a single parent
- discrimination
- illiteracy
- poverty.

Most people experiencing barriers in one of these areas also experience barriers in at least one other area.

About this guide

Over the course of the Labour Market Dialogues, it has become clear that employers need information about the various provincial and federal laws that can affect their efforts to increase the hiring and retention of employees who face barriers to employment. The Community Council has produced *Legislation Affecting the Hiring and Retention of People with Barriers to Employment: A Guide for Employers* to help meet this need.

The guide provides basic information about five provincial and federal laws, whom they apply to, and their implications for more inclusive hiring and retention practices. The five laws are shown in the table below, along with their jurisdiction (federal or provincial), purpose, and the agency or program that is responsible for ensuring compliance. There is also a brief section on the role of unions.

A list of websites is provided at the back of the full version of this guide (see www.communitycouncil.ca/activities.php#lmd), in case you need more information about the legislation or the agencies associated with it.

Legislation	Jurisdiction	Purpose	Compliance
Human Rights Code	Provincial	Protection from discrimination	B.C. Human Rights Tribunal
Canadian Human Rights Act	Federal	Protection from discrimination	Canadian Human Rights Tribunal
Employment Standards Act	Provincial	Establishes minimum working standards	Employment Standards Branch
Canadian Labour Code	Federal	Establishes minimum working standards	HRSDC Labour Program
Employment Equity Act	Federal	Ensures employment equity through removal of barriers and numerical representation for designated groups	Legislated Employment Equity Program (LEEP) and Federal Contractors Program (FCP)

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