

EMPLOYMENT EQUITY

A TOOL KIT FOR PSAC MEMBERS



Public Service Alliance of Canada
Alliance de la Fonction publique du Canada



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Produced by the **Public Service Alliance of Canada**
January 2012
Updated July 2018

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Ottawa, ON K2P 0P1

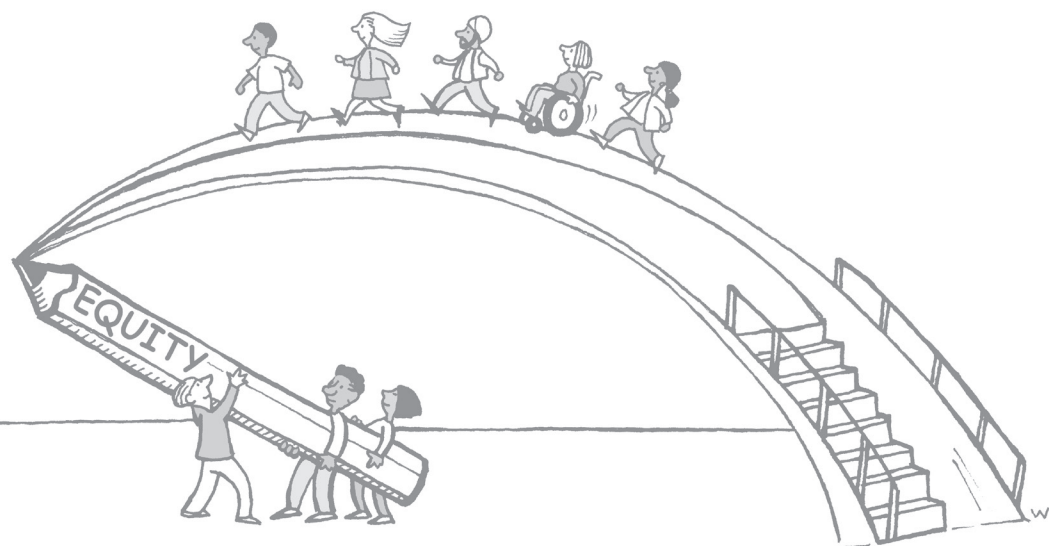
www.psaunion.ca

ISBN 978-1-896285-25-2

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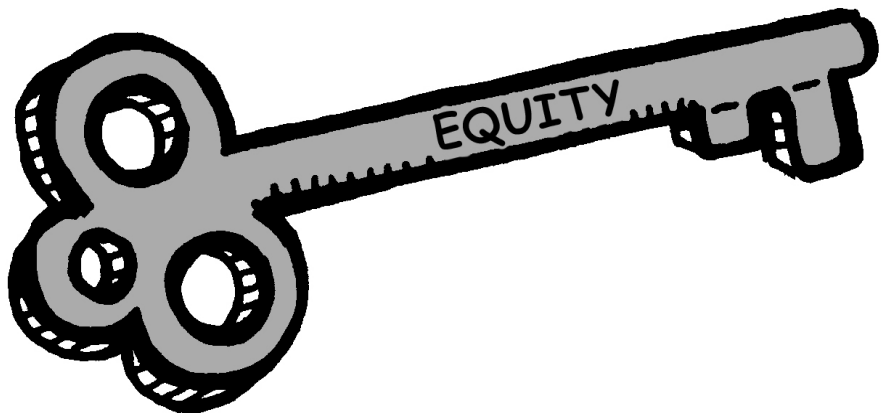
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EMPLOYMENT EQUITY: WHAT IS IT?

What is employment equity? Answers to Key Questions

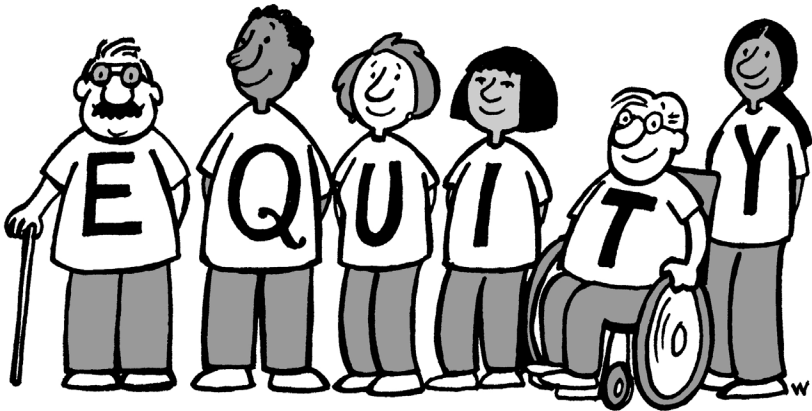


- **WHAT is it?:** A program of proactive, positive measures designed to: 1) increase the representation of people from the four “designated groups” in the workplace to a level that reflects their availability in the labour market; and 2) to identify and eliminate artificial barriers in the workplace that prevent designated group members from accessing jobs, promotions, training, etc..
- **WHO is covered?** The designated groups are: women, Aboriginal peoples, racialized people, and people with disabilities. These are groups that have historically faced disadvantage, and who continue to face disproportionate levels of unemployment, underemployment, and barriers in the workplace.

- **WHY?** It's about changing workplace culture and hiring practices so that members of these groups get jobs they are qualified to do and they can fully contribute to the workplace. Employment equity recognizes that women, Aboriginal peoples, racialized people, and people with disabilities are often held back – not because they lack ability – but because of things that are unrelated to their ability. Things like racism, discrimination, bias, stereotypes, assumptions, and systems that were not designed inclusively.
- **WHERE does it apply?** The federal Employment Equity Act covers all federally regulated public and private workplaces with more than 100 employees. This includes federal government departments and agencies, federal museums and other separate agencies, crown corporations, airlines, banks, telecommunications companies, and inter-provincial transportation companies. It also covers businesses or organizations that have large contracts with the federal government (\$200,000 or more with over 100 employees). In provincial and territorial workplaces, such as school, hospitals, municipalities, and others, employment equity is not specifically mandated under law but it can be put into place by employers voluntarily (it is specifically permitted under human rights laws).
- **HOW does it work?** An employer must analyze its workforce, its policies and practices, and put into place an employment equity plan that sets out measures to address barriers and under-representation of designated groups. More information is included in the document "Employment Equity: How Does it Work?"

What else is important to know about employment equity?

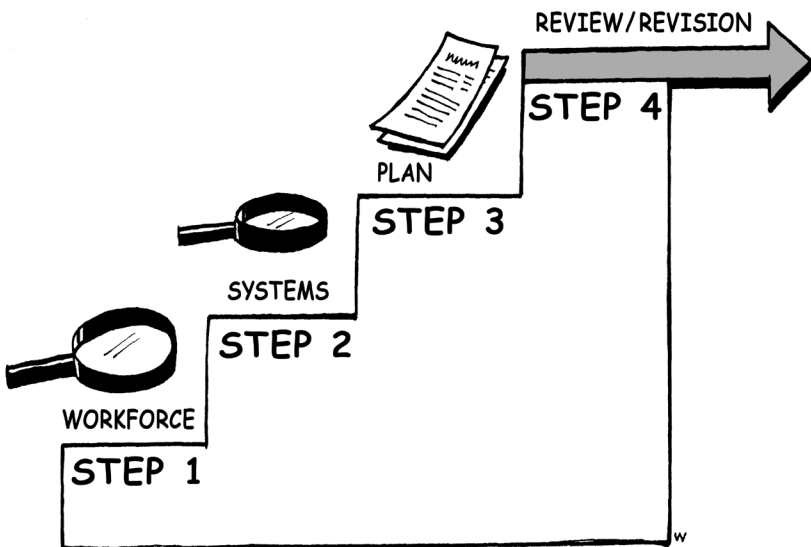
EMPLOYMENT



- It's about ensuring equal opportunity for all, by ensuring that hiring and promotion should be free from biases, favouritism, and prejudice, and that all workers should be recognized for their skills and abilities.
- It's about recognizing that discrimination is not always obvious and outright: sometimes it is embedded in our systems, practices, and policies. Employment equity is a proactive way of addressing **systemic** discrimination in the workplace.
- Note that although gay, lesbian, bisexual and trans workers also face employment barriers and discrimination in the workplace, they are not currently included under employment equity legislation. There is a need for more data and information on this group of workers (for example in the Census) in order to determine whether and/or how they should be included as a "designated group".

EMPLOYMENT EQUITY: HOW DOES IT WORK?

Implementing employment equity involves some basic steps:



STEP 1: Workforce Analysis:

- Organizations examine their workforce to see if it reflects the diversity in the labour market.
- If the workforce's make up does not reflect the external labour market, the organization must take steps to increase representation of the four designated groups.

STEP 2: Employment Systems Review:

- Organizations also examine their “employment systems” – policies and practices relating to hiring, promotion, training, career development, retention, etc – to determine if there are barriers in place and to then address those barriers

STEP 3: Employment Equity Plan:

- Organizations must then prepare an employment equity plan which addresses both the numbers (the representation rates) and the practices (the barriers identified from the systems review). The employment equity plan will include short term and long term goals (not quotas) for workplace representation from each designated group, measures that will be taken to address barriers, and measures for accommodation.

STEP 4: Review and Revision:

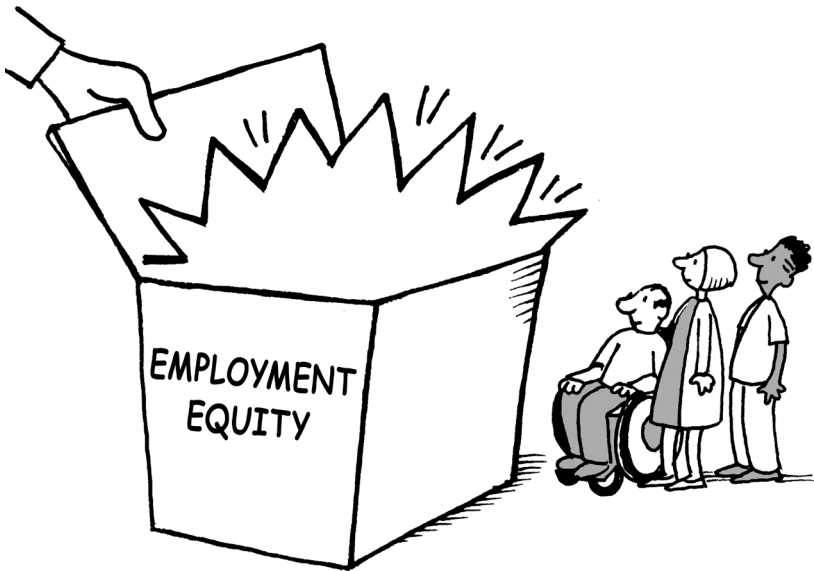
- Employment equity plans are usually 1 to 3 year plans that must be reviewed and revised periodically. Once the previous plan is expired, another analysis will be done of the organization’s progress and another plan created, and so on.

ONGOING REQUIREMENTS:

Throughout all of their work on implementing employment equity, the employer must **communicate** with employees and engage in **consultation and collaboration** with workplace unions and employees from the designated groups.

EMPLOYMENT EQUITY: SOME FACTS AND FIGURES

Did you know...?



- Currently, racialized people (“visible minorities”) represent about 22% of the Canadian population. Statistics Canada projects that by the year 2031 that number will increase to 30%.
- As of March 2016, racialized people represented only 14.5% of federal public service employees, and only 9.4% of public service Executives.

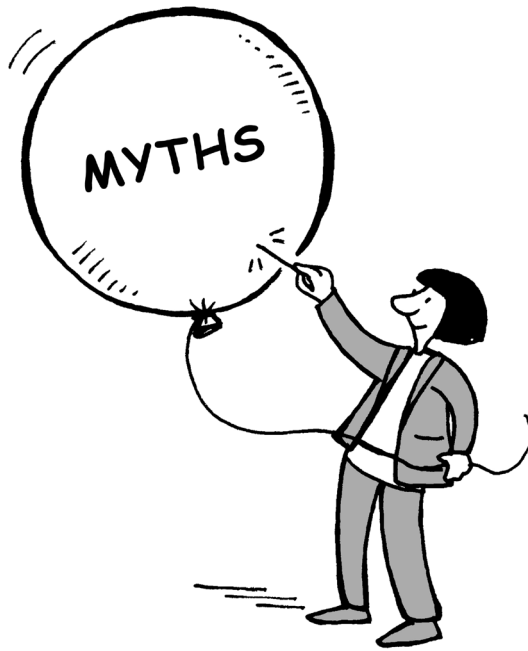
- In 2015-16 only 3.3% of new hires into the federal public service were people with disabilities, as compared to their workforce availability of 4.4%.
- People with disabilities represented only 3.3% of workers in the federal private sector as of 2016.
- In the 2017 Public Service Employee Survey, 37% of employees with disabilities reported that they had experienced harassment in the workplace.
- Although women make up about 54% of all employees in the federal public service, they are mostly employed in Administrative Support, where they represent almost 80% of workers. In the Technical category, women represent only 25% of the workforce.
- In the federal private sector, women continue to be under-represented in most job categories (as of 2016).
- In 2016, Aboriginal workers only represented 2.3% of workers in the federal private sector, despite having an availability rate of 3.5%.
- Aboriginal workers in the public service are twice as likely as non-Aboriginal workers to be in seasonal jobs.

- More than half of recent immigrants to Canada have university degrees, versus only 28% of the Canadian-born population. The unemployment rate for university-educated recent immigrants is 4 times that of university-educated Canadian born.
- In 2015, the unemployment rate for the working-age Aboriginal population was almost twice the rate for other Canadians of the same age (11% versus 5.7%).



Sources: Statistics Canada (various sources); Treasury Board Secretariat, Employment Equity in the Public Service of Canada; Employment and Social Development Canada, Employment Equity Act: Annual Report; Public Service Employee Survey 2017

EMPLOYMENT EQUITY MYTH-BUSTING



Myth #1: Employment equity is all about quotas

Facts: Employment equity does not involve setting hiring “quotas”, which are fixed numerical requirements for hiring. What it does do is require employers to analyze their workforce, and to set their own numerical goals based on the composition of the labour force as a whole, and a number of other factors. They then must put in place measures that will allow them to make progress on those goals over time.

Employment equity also requires employers to take other steps to achieve a more equal workplace, including making their policies and practices more inclusive and removing discriminatory barriers.

Myth #2: Employment equity means hiring unqualified people

Facts: Employment equity does not impact on the employer's ability to set qualifications for a job and require that all applicants meet those qualifications, as long as they are bona fide. The federal *Employment Equity Act* and the *Public Service Employment Act* both reflect this reality and recognize that qualifications and merit are concepts that incorporate employment equity rather than conflict with it.

Employment equity is about removing barriers in hiring practices to ensure that otherwise qualified designated group members are not denied jobs based on factors unrelated to their ability.

Myth #3: Employment equity is "reverse discrimination"

Facts: The purpose of employment equity is to remove longstanding barriers to employment and career advancement for historically disadvantaged groups – Aboriginal peoples, women, people with disabilities, and racialized people. And it is about correcting injustices, both past and present, including racism and discrimination, which have prevented members of designated groups from accessing the same employment opportunities as others.

The Charter of Rights and Freedoms and human rights laws recognize employment equity measures are necessary to create a more just society. Therefore, special measures may be put into place in order to correct longstanding injustices. The purpose of these measures is to equalize opportunities in the workplace, not to discriminate against one group or another.

Myth #4: Because of employment equity, there are no more job opportunities for white able-bodied men.

Facts: Employment equity is about ensuring opportunities for all, not taking away opportunities from anyone. It is to ensure that jobs are allocated fairly and equitably. Employment equity measures do not mean that all new jobs are designated for equity group members – it simply means that they must have access to their fair share of job opportunities. The goal is to achieve a workforce that is representative of our diverse society, at all levels.

Myth #5: With changing demographics, employment equity will just happen over time, we don't need to intervene. The market can take care of things without government intervention.

Facts: We know that discrimination exists and that barriers continue for women, Aboriginal peoples, racialized people, and people with disabilities. These barriers will not disappear without intervention. To quote Justice Rosalie Abella: "If we do not act positively to remove barriers, we wait indefinitely for them to be removed. This would mean that we are prepared in the interim to tolerate prejudice and discrimination. ...It is in the act of remedying the inequity that we show our commitment to equality."

OTHER MYTHS

A BRIEF HISTORY OF EMPLOYMENT EQUITY IN CANADA



Mid 1970s Canada's major unions, including the Canadian Labour Congress, Canadian Union of Public Employees, the Public Service Alliance of Canada and others begin their work on workplace equality through Affirmative Action.

1977 Parliament adopts the *Canadian Human Rights Act*, which prohibits discrimination in employment on a number of enumerated grounds. Most provinces also have comprehensive human rights legislation by this time.

1978 The federal government launches a voluntary Affirmative Action Program aimed at private industry

1982 The *Canadian Charter of Rights and Freedoms* is enacted.

1983

The federal government introduces the Federal Affirmative Action Program which focuses on increasing the representation of women, Aboriginal Persons and persons with disabilities in the federal public sector. These voluntary affirmative action programs did not bring about significant changes in employment opportunities for disadvantaged group members.

The Royal Commission on Equality in Employment is established. The Commission was instructed to “explore the most efficient, effective and equitable means of promoting equality in employment” for the four designated groups: women, Aboriginal peoples, persons with disabilities, and visible minority persons.

1984

Royal Commission Report (“Abella report”) is released, which introduces the term “employment equity” and contains a number of recommendations, including the need for implementing mandatory employment equity laws.

1985

Visible minorities are added to the groups covered by the federal government’s Affirmative Action Program.

Section 15 of the *Charter of Rights and Freedoms* comes into effect, further strengthening the idea of workplace equality. This “Equality Rights” section contains protection against discrimination and makes a provision for special programs whose purpose is the “amelioration of conditions of disadvantaged persons or groups” (employment equity programs).

- 1986** The federal *Employment Equity Act* is passed. This Act does not initially apply to the federal public service, but only to federally-regulated private sector companies and crown corporations.
- 1988** The National Employment Equity Network is created by a coalition of equality-seeking groups. The mandate of this coalition is to lobby to the federal government to make the employment equity program more effective.
- 1993** The Ontario *Employment Equity Act* is passed covering provincially regulated public and private sector workplaces.
- The *Nunavut Land Claims Agreement* is formalized. Article 23 of the Agreement, Inuit Employment within Government, provides that “each government organization shall prepare an Inuit employment plan to increase and maintain the employment of Inuit at a representative level.”
- 1995** The *Ontario Employment Equity Act* is repealed by the Conservative government.
- 1995** Parliament adopts a revised federal *Employment Equity Act*, which applies to the federal Public Service.
- 1996** Settlement agreements are signed between the federal government, the assembly of Manitoba Chiefs and the Canadian Human Rights Commission. The settlement provides for measures to increase the representation and retention of Aboriginal Persons in the federal public service.

- 1997** In *National Capital Alliance on Race Relations vs. Health Canada*, the Canadian Human Rights Tribunal orders a series of permanent and temporary measures to eliminate discriminatory employment barriers against visible minorities and to redress the effects of past discrimination.
- 2000** The Embracing Change Initiative is launched in the federal public service, which includes a 20% hiring goal for racialized people, becoming the first such voluntary measure by an employer. The initiative includes funding for employment equity initiatives to increase the representation of racialized workers.
- 2001** Quebec enacts employment equity legislation by implementing *An Act respecting equal access to employment in public bodies* and amending the Quebec Charter of human rights and freedoms.
- 2004** The Senate Standing Committee on Human Rights begins studying “issues of alleged discrimination in the hiring and promotion practices of the federal public service and the extent to which targets to achieve employment equity for minority groups were being met”. The Committee begins hearings and calls several witnesses to testify about employment equity in the public service.
- 2006** The new *Public Service Employment Act* is implemented, which contains provisions regarding employment equity in the staffing process in the federal public service.
- 2007** The Senate Standing Committee on Human Rights delivers its first report, entitled “Employment Equity in the Federal Public Service – Not There Yet”, which finds that not enough progress is being made, and contains a number of recommendations for improving the representation of the four designated groups.

June 2010 After more in-depth study of the issue, the Senate Standing Committee releases its second report, “Reflecting the Changing Face of Canada: Employment Equity in the Federal Public Service”. This second report is more critical of the failure of the federal public service to achieve employment equity after 15 years under the Act, and makes 13 detailed recommendations.

2010 Harper Conservatives cancel the mandatory long form census and replace it with the voluntary National Household Survey, which creates problems for employment equity data collection.

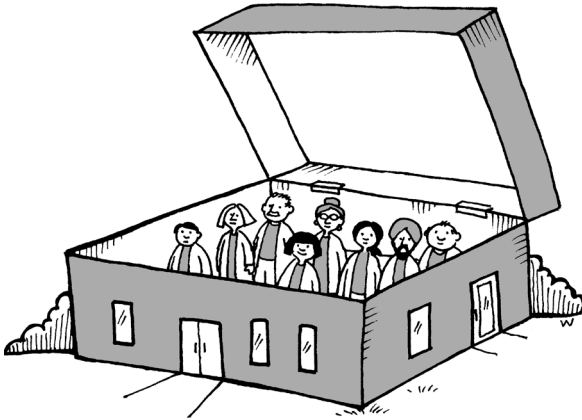
2012 The federal government budget implementation legislation removes all legal requirements for employment equity for federal contractors, leaving it up to the Minister to determine the requirements

2013 The federal government announces changes to the Federal Contractors Program, reducing the number of employers covered and reducing the requirements of the program.

2016 Trudeau Liberals restore the mandatory long form census and introduces the Canadian Survey on Disability to collect data on persons with disabilities.

NOTES

EMPLOYMENT EQUITY AND STAFFING IN THE FEDERAL PUBLIC SERVICE



Staffing in the core Federal Public Service is governed by the *Public Service Employment Act** (PSEA), and also by policies and directives of the Public Service Commission. The legislation and policies set out different ways in which managers can implement employment equity in the staffing process in order to achieve their employment equity goals.

Employment Equity as part of the merit criteria

The PSEA defines merit. An appointment is made on the basis of merit when the person appointed meets the essential qualifications of the position. In addition, the deputy head may establish and apply any asset qualification, operational requirement or organizational need, currently or in the future in order to find the 'right fit' for the organization. The deputy head may also apply the current and future needs of the public service, identified by the employer and deemed to be relevant by the deputy head.

When employment equity considerations are part of a staffing competition, they must be included as one of the above criteria and therefore will be consistent with the definition of merit.

Employment equity, or being a member of one of the four designated groups, can be a criterion in a staffing process in the following ways:

- 1) it can be included as an asset qualification
- 2) it can be included as fulfilling an organizational need
- 3) it can be included as fulfilling a need of the public service

For example, where there is a need to hire a person who is familiar with Aboriginal culture and languages to provide service a particular Aboriginal community, the department can state that being an Aboriginal person would be considered an asset criteria or an organizational need. Or, where there is a significant under-representation of women in a particular occupational category, a department can list hiring women as an organizational need in accordance with their employment equity plan.

Employment equity as the area of selection

Another way in which employment equity can be part of the staffing process is through the “area of selection”. The area of selection defines who will be eligible to apply for a job. It can refer to a geographic area (for example, a job will only be open to people in the National Capital Region), organizational (a job will only be open to members of the same department), or occupational criteria (a job will only be open to members of a certain occupation), or employment equity (a job will only be open to members of one or more of the employment equity groups). However, according to Public Service Commission policy, a department can only limit the Area of Selection to an employment equity group where it is justified by the department’s employment equity plan. That means, there must be evidence of a significant gap in representation for that designated group (the representation of the group in the workplace or occupation is much lower than their representation in the external labour market).

Other ways in which employment equity can be integrated into the staffing process

An employment equity plan will set out a number of specific measures that an employer will take to increase representation of the designated groups. These can include specific measures to make the staffing process more open and accessible.

For example:

- making the area of selection as wide as possible to ensure that there will be a larger number of candidates from designated groups
- ensuring that the qualifications and requirements for the job actually reflect the work to be done, and not using criteria that create unnecessary barriers or that favour certain types of candidates
- ensuring that all parts of the process are accessible to people with disabilities (advertisements, websites, documents, interview formats etc)
- reviewing testing and interviewing processes to ensure that needs of individuals such as those with visual, hearing, or cognitive impairments, are accommodated
- ensuring that hiring boards are diverse and members are trained to recognize their own biases
- advertising jobs widely and using community newspapers or organizations to attract applicants from different communities
- reducing the use of casual and temporary hiring
- reducing the use of non-advertised appointments

The Union's Role

Legislation covering labour relations in the federal public sector prohibits unions from negotiating staffing issues at the bargaining table. While the union cannot bargain staffing, the employer does engage the unions in some consultation, in various forums, on staffing issues. PSAC is continuously challenging the employer to ensure fairness in staffing and a commitment to employment equity. Union representatives on consultation committees, including workplace employment equity committees, can also address concerns and provide input on employment equity in the staffing process at those consultation tables.

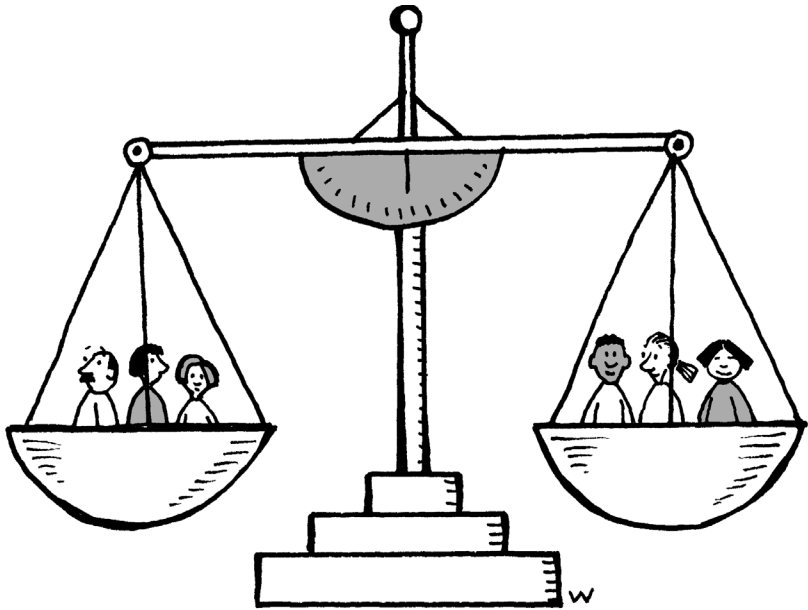
The PSAC supports employment equity and encourages the use of the tools provided in the Public Service Employment Act in order to increase the representation of the designated groups.



* Includes federal departments covered under Schedules I and IV of the Financial Administration Act. This includes the RCMP and Canada Border Services Agency. It does not include separate agencies such as Canada Revenue Agency, Parks Canada, Canadian Food Inspection Agency and not including other federally regulated workplaces that are covered under the Canada Labour Code.

CONSULTATION WITH UNIONS UNDER THE EMPLOYMENT EQUITY ACT

What Does the Legislation Say?



Section 15 of the Employment Equity Act states:

- (1) *Every employer shall consult with its employees' representatives [bargaining agents] by inviting the representatives to provide their views concerning*
 - (a) *the assistance that the representatives could provide to the employer to facilitate the implementation of employment equity in its workplace and the communication to its employees of matters relating to employment equity; and*

(b) *the preparation, implementation and revision of the employer's employment equity plan. ...*

(3) *Every employer and its employees' representatives [bargaining agents] shall collaborate in the preparation, implementation and revision of the employer's employment equity plan.*

What Does this Mean?

Employers must consult and collaborate with unions regarding employment equity. This must be meaningful consultation.

A document entitled *Consultation and Collaboration between Departments/Agencies and Bargaining Agents Under Section 15 of the Employment Equity Act* was prepared by a joint committee of both management and union representatives.

It defines **consultation** as follows: "It is an ongoing process of providing information to bargaining agents and seeking from them opinions, advice and information in order to better implement employment equity activities in an organization."

Collaboration, for departments/agencies, means "making reasonable efforts to enlist the support and assistance of bargaining agents at all stages of employment equity implementation. For unions, collaboration means making reasonable efforts to support and assist in initiatives taken to achieve employment equity in the workplace. "

Human Resources and Skills Development Canada, Labour Program,
Guideline 3: Consultation and Collaboration:

"Consultation and collaboration ensure that all workplace partners play an active role in the implementation of employment equity... Effective consultation and collaboration require the willing participation of all parties in the workplace. There must be a genuine desire to work cooperatively present on all sides."

“To be effective, consultation and collaboration necessitates an open dialogue and sharing of information between employer and employee representatives. This can usually be achieved through the establishment of a joint labour-management mechanism or committee to facilitate the planning and implementation of the employment equity plan.”

For a copy of this Guideline go to:

rhdcc-hrsdc.gc.ca/eng/lp/lo/lsw/ve/legislation/guidelines/gdln3.shtml

There should be involvement by union representatives at each stage of the employment equity process, including:

- the communication to employees of the commitment to implement employment equity in the workplace;
- the workforce survey;
- the employment systems review,
- the preparation of the employment equity plan;
- the implementation of the employment equity plan;
- the monitoring of progress in implementing the employment equity plan; and
- the review and revision of the employment equity plan.

The best mechanism for consultation is through a joint union-management employment equity committee. Union representatives should insist that the employer has such a specialized committee, at the national level, and in a large department/agency or workplace, there could be regional or even local sub-committees. If there is no employment equity committee in place, management must consult at other forums, such as joint union-management or labour-management consultation committees. If you are not aware of what mechanisms are in place for joint consultation, ask your union or the HR department at your organization to provide you with this information.

EMPLOYMENT EQUITY: A GLOSSARY OF COMMON TERMS

Aboriginal Peoples:

As defined in the *Employment Equity Act*, persons who are Indians (First Nations), Inuit or Métis.

Barrier:

Barriers, for the purpose of employment equity, are defined as formal or informal policies or practices (written or unwritten) that disproportionately restrict or exclude designated group members based on factors unrelated to the nature of work, merit, or safety. Barriers can be obvious and direct, or they can be imbedded in systems and may seem neutral on their face but have negative impacts on a particular group.

Discrimination:

A denial of rights or differential treatment of an individual or group based on a certain characteristic such as their age, race, national or ethnic origin, religion, sex, sexual orientation, family or marital status, or disability.

Employment Systems:

For employment equity purposes, the employment systems are: recruitment, selection, hiring, development and training, promotion, retention and termination, and accommodation

Employment Systems Review:

An examination of an employer's policies and practices governing the employment systems, in order to determine if there are barriers to members of the designated groups embedded in any of those policies or practices.

External Representation:

See "Workforce availability/labour market availability"

<i>Gap:</i>	Also referred to as the “degree of under-representation.” For employment equity purposes, this refers to a situation in which a designated group has a lower representation in the workplace than their representation in the labour market. The difference between the internal representation and the external representation, expressed as a negative number, is the gap.
<i>Goals:</i>	Numerical and non-numerical objectives that an organization plans to achieve within a specified period of time.
<i>Internal Representation:</i>	The percentage of employees in an organization that are from a designated group. Determined by dividing the number of designated group members by the total number of employees in an organization.
<i>Labour force:</i>	A term used by Statistics Canada which refers to Canadians who are in the labour market. Defined as the portion of the Canadian population 15 years of age and over who were employed, unemployed and actively looking for work, or on layoff and available for work.
<i>Persons with disabilities:</i>	<p>As defined in the Employment Equity Act, persons who have a long-term or recurring physical, mental, sensory, psychiatric or learning impairment and who:</p> <ul style="list-style-type: none"> a) consider themselves to be at a disadvantage in the workforce by reason of that impairment; or b) believe that an employer or potential employer is likely to consider them to be at a disadvantage because of that impairment. <p>This includes people whose functional limitations due to their impairment have been accommodated in their current jobs or workplaces.</p>

Positive policies and practices:

Initiatives that help create a respectful and responsive working environment for all employees, including designated group members, and that help attract increased numbers of individuals from under-represented designated groups into the organization's workforce. Positive policies and practices go beyond the mere elimination of barriers; they replace barriers with a favourable work environment that actively promotes a representative workforce.

Representative workforce:

An organization's workforce is representative when the representation of each designated group in each occupational group in the workforce reflects the availability of the designated groups in the labour market.

Self-identification:

A requirement, under the terms of the Employment Equity Act, for individuals to identify themselves to an organization, as a member of one or more designated groups. Self-identification is voluntary; the organization may only identify an employee as a member of a designated group with the express voluntary consent of the individual concerned. The organization must collect data on the representation and distribution of designated group members in its workforce in order to plan and implement its employment equity program.

Special measures:

Temporary measures, targeted at a specific designated group in a particular occupation (such as targeted recruitment or special training initiatives aimed primarily at correcting employment imbalances stemming from past discrimination, over a specified period of time). These measures are intended to expedite the recruitment, selection and promotion of qualified designated group members to achieve full representation.

<i>Under-representation:</i>	Occurs when the percentage of designated group employees in an workforce occupational group is less than their percentage availability in the labour market.
<i>Visible minorities:</i>	As defined in the Employment Equity Act, persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour.
<i>Workforce analysis:</i>	The assessment of an organization's internal workforce. The purpose of a workforce analysis is to determine whether or not the representation of the four designated groups in the organization is consistent with their external representation in the labour market.
<i>Workforce survey:</i>	To obtain information on the composition of an organization's workforce, a workforce survey is conducted. The organization must provide a self-identification questionnaire to all employees to determine the number of designated group members in each of the occupations throughout its workforce.
<i>Systemic Discrimination:</i>	The institutionalization of discrimination through policies and practices which may appear neutral on the surface but which have an exclusionary impact on particular groups, such that they are discriminated against, intentionally or unintentionally. This occurs in institutions and organizations where the policies, practices and procedures (e.g. job requirements, hiring practices, etc.) exclude and/or act as barriers to designated groups.
<i>Workforce availability/ labour market availability :</i>	Data for the designated groups compiled from the census and the survey on persons with disabilities, which provides the percentage of designated group members present in the Canadian labour force. This data is provided to employers according to geographic location and occupation.

LINKS AND FURTHER RECOMMENDED RESOURCES

PSAC Employment Equity

psacunion.ca/topics/employment-equity

Employment and Social Development Canada

– Employment Equity

canada.ca/en/employment-social-development.html

Joint Learning Program – Employment Equity Workshop

jlp-pam.ca/EmploymentEquity-EquiteEmploi-eng

Treasury Board Secretariat – Diversity and employment equity

canada.ca/en/treasury-board-secretariat.html



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