

Commissions/ Tribunals and boards – enforce compliance with the law

Regulations: Legally enforceable rules developed by government agencies to ensure compliance with laws that the agency administers.

Main Areas of Legislation Affecting Human Resource Practices

1. Charter of Rights and Freedoms, 1982

- Provides fundamental rights to all Canadians
 - Freedom of Association (section 2; strike, bargaining collectively, picket)
 - Equity Rights (section 15)
- Supreme court has ultimate interpretation

Equality Rights

“Every individual is equal before the law and under the law and has the right to the equal protection and benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.”

- Everyone is equal
- Everyone has the right to equal protection & benefit of the law
- Cannot be discriminated on the basis of;
 - Race
 - National/ethnic origin
 - Colour
 - Religion
 - Sex
 - Age
 - Mental/physical disability
- The charter only applies to individuals dealing with federal & provincial governments and agencies under the jurisdiction.

Constitution: supreme law of Canada, any law that is inconsistent will have no force or effect.

2. Canadian Human Rights Acts, 1978

“...All individuals should have an opportunity equal 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 offence for which a pardon has been granted.”
(Section 2)

- Everyone has an equal opportunity to succeed in life
- Everyone has the right to be accommodated
 - Consistent with their duties and obligations as members of society, w/o being hindered or doing so by discriminatory practices.

Discriminatory Practices:

- Religion
- Age
- Sex
- Sexual orientation
- Marital status
- Family status
- Disability
- Conviction of an offence which pardon has been granted

Discrimination: Showing of partiality or prejudice in treatment, specific action or policies against the welfares of minority groups.

- It is not defined in the charter except for in Quebec.

Prohibited Grounds of Discrimination in Employment

Companies under federal jurisdiction;

- Federal dept. agencies, crown corporations
- TV, Radio, Banks, National Airlines
- Interprovincial communications, telephone companies, transportation companies
- Federally regulated industries
- First nation employees

Direct Discrimination:

- Intent to discriminate
- Employer adopts a practice or rule which *on its face* discriminates on a prohibited ground.

Bona Fide Occupational Qualification (BFOQ):

- When you discriminate because of a justified business reason, legitimate business requirement
- Must be imposed in (a);
 - Honest manner

- Good faith
- Based on belief that is linked to job performance
- Attempt to accommodate the situation must be made

Systematic Discrimination (indirect): discriminates with no intention to, but happens anyways.

- Excludes specific groups of people for reasons that;
 - Are not job related
 - Required for safety
 - Efficient business operations

Ex:

- Minimum height requirements (police officers)
- Culturally biased employment tests
- Word of mouth hiring
- Limited accessibility to buildings (stairs, not ramps)

Duty to Accommodate: Attempt to accommodate an employee in a protected area to the point of undue hardship.

- Meaning, accommodate an employee until it becomes a problem for the organization.

Undue Hardship: is not defined by the courts, but it is stated that relevant considerations would include;

- Financial cost
- Disruption of collective agreement
- Problems of morale of other employees
- Interchangeability (flexibility) of workforce and facilities
- Risk for workers and general public

Harassment: when a member of an organization subjects another member to one or more incidents that a, "reasonable person" ought to have known would be unwelcome and pertain to a protective classification in human rights.

Can be:

- Verbal
- Physical
- Deliberate
- Unsolicited
- Unwelcome

What is harassment?

- Verbal threats/abuse
- Leering/gestures
- Unwelcome remarks/jokes

- Derogatory remarks
- Unwelcome requests/invitations
- Assault
- Paternalism

Sexual Harassments Three Characteristics:

1. Unsolicited encounters by the complainant
 - Respondent knows they are unwelcome
2. Conduct must continue despite complainants protests
 - Or is it stops it must have led to negative employment consequences
3. Complainants cooperation must only be due to employment related threats/promises

Duty of Employer:

- The employer is responsible for any harassment that occurs in the workplace.
- It is the employer's duty to:
 - Make it clear that harassment will not be tolerated
 - Establish a harassment policy
 - Make sure every employee understands the policy and procedures for dealing with harassment;
 - Inform supervisors and managers of their responsibility to provide a harassment-free work environment;
 - Investigate and correct harassment problems as soon as they come to light, even if a formal complaint has not been received.

3. Employment Equity

Goal:

- Intent is to remove employment barriers
- Promote equality of the four designated groups:
 - Women
 - Aboriginal peoples
 - Persons with disabilities
 - Members of visible minorities

Purpose of EE Act:

"...The purpose of this 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 by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences”

- achieve equality in workplace
- no person denied employment/benefits for reasons;
 - unrelated to ability

Duty of Employers is met by...

A.) Identifying and eliminating employment barriers against persons in designated groups, results from:

- that result from the employer's employment systems,
- policies and practices that are not authorized by law

B.) Instituting such positive policies and practices and making such reasonable accommodations as will ensure that persons in designated groups achieve a degree of representation in each occupational group in the employer's workforce that reflects their representation in:

- (i) the Canadian workforce, or
- (ii) those segments of the Canadian workforce that are;
 - identifiable by qualification
 - eligibility or geography
 - from which the employer may reasonably be expected to draw employees.

Requirements of Act

- Applies *primarily* to employers with 100 or more employees under federal jurisdiction
 - (also those seeking contracts...)
- Employers must develop annual plans setting out goals and timetables
 - must maintain plans for 3 years.
- Employers must submit annual reports detailing progress.
- Reports reviewed by Canadian Human Rights Commission.

Functional Impact:

Human Resource Plans must reflect organizations EE goals

Job descriptions must not contain unneeded requirements that exclude members of protected classes.

Recruiting must ensure that all types of applicants are sought without discriminating.

Selection of applicants must use screening devices that are job-relevant and non-discriminatory.

Training and developmental opportunities must be made available for workers without discrimination.

Performance appraisal must be free of biases that discriminate.

Compensation programs must be based on skills, performance, and/or seniority and should not discriminate.

Major Steps in Employment Equity Programs:

- Strong employer commitments
- Appoint high ranking director
- Publicize commitment
 - Internally
 - Externally
- Survey for *underutilization and concentration*
- Develop goals and timetables
- Design remedial, active, and preventative programs.
- Establish control systems and reporting procedures.

Underutilization: a condition that exists when a department or employer has a lesser proportion of members of a protected class than are found in the employer's labour market.

- Ex: a company has no female managers even though the labour market is 37% female.

Concentration: employer has a greater proportion of members of a protected class than are found in the employer's labour market.

- Ex: protected class members are concentrated in a few departments out of proportion with their presence in the labour market.

Glass Ceiling: invisible, but real obstructions to career advancement of women and people of visible minorities.

- Results in frustrations
- Career dissatisfaction
- Increased turnover
 - Can be caused by existing; values, norms and patterns.

Workplace Diversity

- Important human characteristics:
 - Age
 - Race
 - culture
- That influence employees values;
 - Values
 - Perceptions of others
 - Behaviour's
 - Interpretation of events

Core Dimensions

- Age
- ethnicity
- culture
- gender
- race
- religion
- sexual orientation
- mental and physical capabilities
- Have considerable impact on perceptions and behaviour.

Secondary Dimensions

- Education
- Status
- Language
- Income levels, etc.

Strategic Importance of Diversity Management

Changing Workforce

- aging population with more;
 - more women
 - visible minorities
- managing diversity is a necessity
 - not an option
- organizations need to effectively attract and retain wide range of employees

Importance of Human Capital

- knowledge workers are key to success
 - can't afford to lose good people.
- essential for success to have 100% effort and cooperation from everyone.

Diversity as a Competitive Advantage

- firms' customers are a heterogeneous group;
 - diverse workforce can better relate to customer base.

Increasing Role of Work Teams

- different ways of thinking may increase creativity, etc.

Paradigm Shift : fundamental change in way of doing something

Paradigm: shared mindset that reflects a fundamental way of thinking and understanding the world around us.

Comparisons:

Traditional

- Organizational success is linked to standardization
- Diversity is a cost
- Rules and policies are to be shaped by senior executives
- Emphasis on "masculine" values of competitiveness, aggressiveness, and individuality
- Change employee behaviours and attitudes to suit the organization's culture

New

- Success is linked to individual's contribution
- Diversity is a competitive advantage
- Rules and policies are to be shaped to satisfy the customer and the employee
- Recognition that "feminine" values of openness, flexibility, and relationship orientation are equally important for organizational success
- Modify organizational culture to suit the needs of the employees

Current Industry Practices

