

DEI & Employment Equity Laws – Know The Laws Of Your Province



Employment discrimination, or basing hiring and other job-related decisions on a person's race, religion, age, or other protected characteristics is illegal in all parts of Canada. While part of the same equal opportunity continuum, diversity, equity and inclusion (DEI) goes much further by mandating that employers not simply refrain from discriminating against but take active measures to improve the conditions of groups that have been historically disadvantaged in the workplace, including women, Indigenous people, the disabled, and members of visible minorities.

Critics of DEI contend that this favorable treatment, often referred to as affirmative action, is itself discrimination. And in the U.S. they have a strong point, at least from a legal perspective. However, as shown below, the human rights laws of every Canadian jurisdiction (except Prince Edward Island) contain language specifying that affirmative action programs are not discrimination banned by the Act. Result: Employers have a green light to implement DEI programs without getting prosecuted or sued for reverse discrimination.

But while not discriminating is a universal legal mandate, DEI remains mostly discretionary, with limited exceptions. The federal jurisdiction has the most extensive DEI, aka, "equity" laws requiring employers to take proactive measures to achieve DEI objectives; by contrast, there are no equity laws in Alberta, BC, Saskatchewan, or the 3 territories. The current breakdown:

- Employment equity laws apply to private and public sector workplaces: Federal.
- Employment equity laws apply to public but not private sector workplaces: Québec.
- Pay equity laws apply to public and private sector workplaces: Federal, Ontario, Québec.
- Pay equity laws apply to public but not public sector workplaces: Manitoba, New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island.

Here's a look at workplace DEI laws, such as they are, in all parts of the country.

FEDERAL

Employment Equity Act requires federally regulated employers to identify and eliminate employment barriers against and institute “positive policies and practices” and make reasonable accommodations to ensure that women, Aboriginal peoples, persons with disabilities, and members of visible minorities “achieve a degree of representation in each occupational group in the employer’s workforce that reflects their representation in the Canadian workforce, or segments of the Canadian workforce that are identifiable by qualification, eligibility, or geography and from which the employer may reasonably be expected to draw employees.

Canadian Multiculturalism Act declares the Government of Canada policy that all “federal institutions” must:

- a. Ensure that Canadians of all origins have an equal opportunity to obtain employment and advancement in those institutions.
- b. Promote policies, programs, and practices that enhance the ability of individuals and communities of all origins to contribute to the continuing evolution of Canada.
- c. Promote policies, programs and practices that enhance the understanding of and respect for the diversity of the members of Canadian society
- d. Collect statistical data to enable the development of policies, programs, and practices that are sensitive and responsive to the multicultural reality of Canada.
- e. Make appropriate use of the language skills and cultural understanding of individuals of all origins.
- f. Generally, carry on their activities in a manner that’s sensitive and responsive to the multicultural reality of Canada (Sec. 2).

Canadian Human Right Act specifies that it’s not a discriminatory practice “to adopt or carry out a special program, plan, or arrangement designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be based on or related to the prohibited grounds of discrimination, by improving opportunities respecting goods, services, facilities, accommodation, or employment in relation to that group” (Sec. 16(1)).

Pay Equity Act requires public and private sector federally regulated employers with 10 or more employees to establish pay equity committees to implement pay equity plans to identify and eliminate wage gaps between predominantly male and predominantly female job classes and take other proactive measures to ensure equal pay for work of equal value between men and women.

ALBERTA

Alberta Human Rights Act specifies that it’s not a violation to plan, advertise, adopt, or implement a policy, program, or activity that:

- a. Has as its objective the amelioration of the conditions of disadvantaged persons or classes of persons who are disadvantaged including those disadvantaged because of their race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status, or sexual orientation, and
- b. Achieves or is reasonably likely to achieve that objective (Sec. 10.1).

BRITISH COLUMBIA

Human Rights Code specifies that it's not a violation of the Code or discrimination to plan, advertise, adopt, or implement an employment equity program that:

- a. Has as its objective the amelioration of conditions of disadvantaged individuals or groups who are disadvantaged because of Indigenous identity, race, colour, ancestry, place of origin, physical or mental disability, sex, sexual orientation, or gender identity or expression, and
- b. Achieves or is reasonably likely to achieve that objective.

Employer may apply to BC Human Rights Commission for approval of any program or activity that has as its objective the amelioration of conditions of disadvantaged individuals or groups (Sec. 42).

MANITOBA

Human Rights Code specifies that it's not illegal discrimination to plan, advertise, adopt, or implement an affirmative action program or other special program that:

- a. Has as its objective the amelioration of conditions of disadvantaged individuals or groups, including those who are disadvantaged because of ancestry, including colour and perceived race, nationality or national origin, ethnic background or origin, religion or creed, or religious belief, religious association or religious activity, age, sex, including sex-determined characteristics or circumstances, such as pregnancy, the possibility of pregnancy, or circumstances related to pregnancy, gender identity, sexual orientation, marital or family status, source of income, political belief, political association or political activity, physical or mental disability or related characteristics or circumstances, including reliance on a service animal, a wheelchair, or any other remedial appliance or device or social disadvantage; and
- b. Achieves or is reasonably likely to achieve that objective (Sec. 11).

Pay Equity Act requires public sector (but not private sector) employers to take affirmative measures to ensure that there's no difference between wages of male and female employees performing work "of equal or comparable value".

NEW BRUNSWICK

Human Rights Act gives Human Rights Commission to "approve a program to be undertaken by any person designed to promote the welfare of any class of persons" (Sec. 14(1)).

Pay Equity Act requires public service (but not private sector) employers to take affirmative measures to ensure equality of wages between men and women in public service.

NEWFOUNDLAND & LABRADOR

Human Rights Act gives Human Rights Commission authority to "approve a program to be undertaken by any person designed to promote the welfare of any class of persons" (Sec. 14(1)).

Pay Equity & Transparency Act requires public sector (but not private sector) employers to take affirmative measures to ensure equality of wages for equivalent work regardless of gender.

NOVA SCOTIA

Human Rights Act specifies that it doesn't ban a law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or classes of individuals including those who are disadvantaged because of age, race, colour, religion, creed, sex, sexual orientation, gender identity, gender expression, physical disability or mental disability, an irrational fear of contracting an illness or disease, ethnic, national or aboriginal origin, family status, marital status, source of income, political belief, affiliation, or association with another individual(s) having any of the above characteristics (Sec. 6(i)).

Pay Equity Act requires employers and employees in the public sector to bargain in good faith with respect to achievement of pay equity between males and females but provides no penalties for violations and doesn't apply to the private sector.

NORTHWEST TERRITORIES

Human Rights Act specifies that it doesn't ban any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups, including those who are disadvantaged because of race, colour, ancestry, nationality, ethnic origin, place of origin, creed, religion, age, disability, sex, sexual orientation, gender identity or expression, marital status, family status, family affiliation, political belief, political association, social condition, and a conviction that's subject to a pardon or record suspension (Sec. 67(1)).

NUNAVUT

Human Rights Act specifies that it doesn't ban any law, program or activity that has as its objective the amelioration of conditions of disadvantaged individuals or groups, including those who are disadvantaged because of race, colour, ancestry, ethnic origin, citizenship, place of origin, creed, religion, age, disability, sex, sexual orientation, gender identity, gender expression, marital status, family status, pregnancy, lawful source of income and a conviction for which a pardon has been granted, and that achieves or is likely to achieve that objective (Sec. 7(2)).

ONTARIO

Human Rights Code specifies that the right of protection against discrimination under Part I of the Code isn't infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I and allows for employers to apply to the Human Rights Commission for approval of such special programs (Sec. 14).

Pay Equity Act requires **public and private sector** employers with 10 or more employees to implement pay equity plans and take other proactive measures to ensure equal pay between men and women based on numbers of employees.

PRINCE EDWARD ISLAND

Human Rights Act doesn't specifically allow for or address affirmative action and preferential treatment programs.

Pay Equity Act requiring employers to take proactive steps to promote equal pay between men and women in the public sector hasn't been fully implemented and doesn't apply to the private sector.

QUÉBEC

Charter of Human Rights & Freedom specifies that an affirmative action program to remedy the situation of persons belonging to groups discriminated against in employment is not discriminatory and that an equal access employment program is deemed not to discriminate on the basis of race, colour, gender, or ethnic origin if it's established in compliance with the *Equal Access to Employment in Public Bodies Act*.

Equal Access to Employment in Public Bodies Act requires public bodies that employ 100 or more persons for a continuous period of 6 months in each of 2 consecutive years to take proactive measures to provide equal access to employment to remedy the situation experienced by persons belonging to certain groups discriminated against in employment, namely women, handicapped persons, aboriginal peoples, members of visible minorities because of their race or skin colour, and persons whose mother tongue is neither French nor English and who belong to a group other than the aboriginal peoples group or the visible minorities group.

Pay Equity Act requires **public and private sector** employers with 10 or more employees to implement pay equity plans and take other proactive measures to ensure equal pay between men and women based on numbers of employees.

SASKATCHEWAN

Saskatchewan Human Rights Act specifies that it's not a violation for a person to adopt or implement a reasonable and justifiable measure:

- a. That's designed to prevent disadvantages likely to be suffered by, or to eliminate or reduce disadvantages suffered by, any group of individuals if those disadvantages would be or are based on or related to religion, creed, marital status, family status, sex, sexual orientation, disability, age, colour, ancestry, nationality, place of origin, race or perceived race, receipt of public assistance or gender identity; and
- b. That achieves or is reasonably likely to achieve that objective (Sec. 56(1)).

Human Rights Commission may, upon the application of any person or its own initiative, approve or order any program designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be or are based on or

related to the race, creed, religion, colour, sex, gender identity, sexual orientation, family status, marital status, disability, age, nationality, ancestry, or place of origin of members of that group, or the receipt of public assistance by members of that group, by improving opportunities respecting services, facilities, accommodation, employment, or education in relation to that group or the receipt of public assistance by members of that group (Sec. 55(1)).

YUKON TERRITORY

Human Rights Act specifies that special programs and affirmative action programs are not discrimination:

- a. Special programs are programs designed to prevent disadvantages that are likely to be suffered by any group on the basis of ancestry, including colour and race, national origin, ethnic or linguistic background or origin, religion or creed, or religious belief, religious association, or religious activity, age, sex, including pregnancy, and pregnancy related conditions, gender identity or gender expression, sexual orientation, physical or mental disability, criminal charges or criminal record, political belief, political association, or political activity, marital or family status, source of income, or actual or presumed association with other individuals or groups whose identity or membership is determined by any of the above grounds.
- b. Affirmative action programs are those designed to reduce disadvantages resulting from discrimination suffered by a group on the basis of ancestry, including colour and race, national origin, ethnic or linguistic background or origin, religion or creed, or religious belief, religious association, or religious activity, age, sex, including pregnancy, and pregnancy related conditions, gender identity or gender expression, sexual orientation, physical or mental disability, criminal charges or criminal record, political belief, political association, or political activity, marital or family status, source of income, or actual or presumed association with other individuals or groups whose identity or membership is determined by any of the above grounds (Sec. 13).