



LEVELLING THE FIELD

Developing a Special Program or Special Measure under the Canadian Human Rights Act or the Employment Equity Act



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Introduction

This guide sets out best practices for developing special programs under the Canadian Human Rights Act and special measures under the Employment Equity Act. It is intended for federally regulated employers and service providers.

The Canadian Human Rights Act refers to these practices as special programs. A special program is any plan, arrangement, rule, or policy designed to prevent, reduce or eliminate a disadvantage or representation gap experienced by any group of individuals related to one or more prohibited grounds of discrimination as defined in the Act. Special programs are intended to be a systemic response to eliminating or reducing historic or ongoing barriers like racism or sexism in employment and services.

The Employment Equity Act refers to these practices as special measures. A special measure is adopted in an employment situation to correct situations of underrepresentation in the workforce of individuals identifying as belonging to one of four designated groups: women, Indigenous peoples, people with disabilities, and racialized people¹.

Why adopt a special program or special measure?

Diversity is crucial to the equity and effectiveness of your organization, and yet the make-up of many organizations does not reflect the reality of Canada's demographics.

As a result of historical disadvantages and systemic discrimination, not all people have been equally able to access employment or services. This differential treatment in the workplace has often been the result of discrimination based on one or more prohibited grounds. Gaps in representation of certain groups continue to this day in many Canadian workplaces.

One way of addressing this reality in your organization is by adopting special programs or special measures. Adopting these in your organization not only helps address inequalities on a societal level, but also will encourage a healthier and more effective workplace overall. Organizations that intentionally value diversity and inclusion perform better than their non-diverse counterparts². Employees from a wide range of backgrounds bring unique perspectives that foster innovation and creativity. A diverse workforce also allows your organization to better understand the community that you serve. Adopting special programs and special measures is a useful step in building a diverse and innovative organization and society.

¹ It is important to note that the Employment Equity Act (EEA) uses specific language for the designated groups which are defined in the EEA, including "Aboriginal peoples," "visible minorities," and "persons with disabilities." The Commission is of the view that these are antiquated terms. This guide uses "Indigenous peoples," "racialized people," and "people with disabilities" instead.

² See more information here: <https://www.weforum.org/agenda/2019/04/business-case-for-diversity-in-the-workplace/>

While this guide focusses on special programs and special measures, it is worth noting that there are a variety of practices an employer or service provider can adopt to advance the equality of historically disadvantaged groups. Various positive management and hiring practices can be initiated to better meet the needs of a particular group or groups in overcoming barriers, while being open to all. An example would be a policy allowing for flexible work hours. Such a policy may be of direct benefit to parents raising children and to people with disabilities. At the same time, this policy would also benefit other employees who wish to work non-standard hours.

Further Advancing Equality in Canada

In 2018, the federal government introduced two pieces of proactive legislation intended to further advance equality for all people in Canada. The Accessible Canada Act requires federally regulated organizations to proactively identify, remove, and prevent accessibility barriers for people with disabilities. The Pay Equity Act puts the onus on employers within federal institutions to proactively ensure equal pay for work of equal value across their organization.

Core concepts and considerations

This guide is built on the following concepts. Understanding these concepts will help you in applying the steps outlined in the coming sections.

Substantive Equality

The concept of substantive equality is central to understanding the purpose of special programs and special measures. Substantive equality is most easily explained by comparing it to formal equality which means treating everyone the same. We now understand that doing this can perpetuate inequality for many reasons, including systemic discrimination. Substantive equality recognizes that mitigating the effects of historical disadvantage based on discrimination requires treating some people differently. This can include taking steps like implementing special programs or special measures to ensure historically disadvantaged groups have equal opportunities.

Intersectionality

Intersectionality is a concept that recognizes that different kinds of discrimination reinforce and influence each other. The different social categories a person belongs to, such as their race, class, gender, physical or mental ability, or sexual orientation, can shape the nature of the discrimination they face in their lives.

Kimberlé Crenshaw, the scholar who coined the term, describes this concept by explaining that a Black woman, who experiences both racism and sexism, experiences different racism than a Black man, and different sexism than a white woman, because her two identities intersect (hence intersectionality) and compound upon each other in the face of discrimination. She faces stereotyping and harassment that is exclusive to Black women.³

Applying an intersectional approach means taking into account that a person has more than one social category or identity, and that their experiences and lives are influenced by those other categories or identities.

It is important to acknowledge that discrimination on multiple intersecting grounds can have a different impact than if it is based on a single ground.

Gender-Based Analysis Plus (GBA Plus)

Gender-Based Analysis Plus (GBA Plus) is an intersectional analytical process developed by Women and Gender Equality Canada that asks employees who develop and implement policies, programs and initiatives to examine how people may experience these differently due to their unique identities. Integrating GBA Plus into the work of an organization helps the organization consider the effects their work or policies may have on different diverse groups.

³ Crenshaw, Kimberlé. "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics" available at <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1052&context=uclf>

The “Plus” refers to the many identities other than gender that may influence a person’s experience, including race, ethnicity, religion, age, and disability.

Engagement

When developing a special program or special measure, engagement with those affected is crucial.

Many organizations incorporate “consultation” into their policy-development process, generally by inviting comments on a policy or program that has been developed.

Engagement is different because it involves the impacted group for the duration of the project, from initial brainstorming to drafting to implementation and beyond, in whatever capacity they are comfortable. This ongoing process allows the organization to develop lasting and meaningful relationships with the individuals who are most impacted by the initiative.

Unconscious bias

Acts of overt discrimination happen in a workplace. They are conscious and intentional acts – examples include hate speech, violence, or displaying a negative attitude towards a group or individual based on a prohibited ground.

More commonly though, discrimination occurs at an individual level due to unconscious bias and stereotypes. Unconscious biases are social stereotypes that we all hold about certain groups of people at an unconscious level, as part of our brain making sense of and categorizing our world. These biases influence how we treat and perceive others, and can lead to discriminatory behaviour on both an individual and systemic level.

Institutional and systemic discrimination

Discrimination can result from individual behaviour but also from the consequences of a discriminatory system. Institutional discrimination and systemic discrimination refer to the ways in which our institutions and organizations privilege some groups and perpetuate disadvantage for others. This behaviour is carried out through laws, policies, and practices, based on widespread conscious or unconscious discriminatory beliefs and historical practices that have upheld the privilege of certain groups. Systemic discrimination often appears neutral on the surface but has discriminatory effects on individuals based on one or more prohibited grounds.

By understanding institutional and systemic discrimination, we can come to see that discriminatory behaviour is often not overt or intentional – it is engrained in the system in ways that are often unnoticeable to those not impacted. Recognizing this is the first step to addressing discriminatory policies or practices in your own organization.

The Canadian Human Rights Act

The Canadian Human Rights Act (CHRA) was enacted in 1977. The purpose of the CHRA is to extend the laws in Canada to give effect to the principle that everyone should have an equal opportunity to live the lives they are able and wish to have, free from discrimination. It applies to all federally regulated institutions and activities, such as federal departments and agencies, banks, radio and television broadcasting, and air or rail transportation.

The CHRA prohibits discrimination in employment or services where it is based on one or more of thirteen grounds. Individuals and groups of individuals can file human rights complaints if they have a reasonable basis for believing that they have experienced such discrimination.

Discrimination complaints are screened and assessed by the Canadian Human Rights Commission (the Commission), which has a broad mandate to promote and protect human rights.

The Canadian Human Rights Act prohibits discrimination on the following grounds:

- Race
- National or ethnic origin
- Colour
- Religion
- Age
- Sex (including pregnancy)
- Sexual orientation
- Marital status
- Genetic characteristics
- Gender identity or expression
- Family status
- Disability
- Conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered

Discrimination can be based on more than one prohibited ground.

Section 16 of the CHRA allows federally regulated employers and service providers to develop and implement special programs designed to prevent, reduce or eliminate disadvantages experienced by groups of individuals for reasons related to one or more of the grounds of discrimination listed in the CHRA. The Canadian Human Rights Tribunal also has the power to order an organization to implement a special program to remedy discrimination, if it finds that discrimination has happened.

Special programs support the fundamental purpose of the CHRA by promoting equal opportunity for all people in Canada.

The Employment Equity Act

The Employment Equity Act (EEA) was enacted in 1995. The purpose of the EEA is to achieve equality of opportunity in federally-regulated workplaces by ensuring that people are not denied employment opportunities or benefits for discriminatory reasons, and by seeking to correct the conditions of disadvantage in employment experienced by members of four designated groups.

The EEA requires federally regulated employers with 100 or more employees to establish proactive employment practices, such as special measures in some cases, to address disadvantage and persistent gaps in representation of four designated groups in its workforce when compared with their representation in the population.

Employment Equity Act Designated Groups*

- Women
- People with disabilities
- Indigenous peoples
- Racialized people

*It is important to note that the EEA uses specific language for the designated groups which are defined in the EEA, including “Aboriginal peoples,” “visible minorities” and “persons with disabilities.” The Commission is of the view that these are antiquated terms. This guide uses “Indigenous peoples,” “racialized people” and “people with disabilities” instead.

Does the Canadian Human Rights Act apply to your organization?

The Canadian Human Rights Act is a federal law. It applies to all federally regulated employers and service providers. This includes:

- federal government departments, agencies and Crown corporations;
- First Nations governments and some other Indigenous organizations;
- airlines;
- chartered banks;
- television and radio stations;
- interprovincial communications and telephone companies;
- interprovincial transportation companies; and
- other federally regulated industries, like some mining companies.

Does the Employment Equity Act apply to your organization?

The Employment Equity Act is also a federal law. However, it only applies to federally regulated employers with 100 or more employees.

What if your organization is not federally regulated?

The provinces and territories regulate other businesses and service providers like almost all restaurants, and retail stores and many health services. They also have their own human rights laws.

Provincial and territorial human rights laws may also offer guidance for provincially or territorially regulated organizations wishing to develop a special program.

The Appendix provides information about where to learn more about provincial or territorial special programs.

Special Programs and Special Measures

The CHRA and the EEA both outline practices that may be used to address historical disadvantages that have been experienced by certain individuals and groups. Such practices are a feature of human rights protection in both human rights legislation and in the Constitution of Canada, as well as in international law.

Special Programs under the Canadian Human Rights Act

The CHRA refers to these practices as special programs, plans or arrangements (special programs). Special programs are intended to be a systemic response to prevent anticipated disadvantages, or to eliminate or reduce historic or ongoing barriers in employment or services. The CHRA allows federally-regulated employers and service providers to develop and implement special programs where these are designed to prevent, reduce or eliminate disadvantages experienced by groups of individuals for reasons related to one or more grounds of discrimination (“target group”).

Special programs can be used in a wide range of contexts in employment and the provision of services. Examples include:

- An employment program meant to promote opportunity for people with intellectual disabilities.
- A policy giving a reduced rate on airline fares for members of a remote Inuit community.
- A mentorship and leadership training program for Black and Indigenous employees.

The organization responsible for a special program under the CHRA must be able to demonstrate that the program has been designed to benefit or improve the situation of a target group or groups. The design and implementation of the special program must reflect a genuine intent to prevent, reduce or eliminate an identified disadvantage.

A special program does not allow employers to terminate the employment of existing employees.

The Commission has discretion to give guidance on special programs, but a special program implemented under section 16 of the CHRA does not require Commission approval to be in effect.

Section 16 of the Canadian Human Rights Act

16(1) It is not a discriminatory practice for a person 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.

16(2) The Canadian Human Rights Commission, may (a) make general recommendations concerning desirable objectives for special programs, plans or arrangements referred to in subsection (1); and (b) on application, give such advice and assistance with respect to the adoption or carrying out of a special program, plan or arrangement referred to in subsection (1) as will serve to aid in the achievement of the objectives the program, plan or arrangement was designed to achieve. [...]

Special Measures under the Employment Equity Act

The EEA refers to these practices as special measures. Special measures have additional legal requirements and must be part of an employment equity plan. They are designed to address situations of underrepresentation of the four designated groups outlined in the EEA: women, Indigenous peoples, people with disabilities, and racialized people.

Special measures in employment equity plans can include things like:

- targeted recruitment;
- career development or training for designated group members;
- flexible work arrangements; and
- internal mentoring and networking.

Special measures implemented by an employer under the EEA must be designed to address a specific disadvantage outlined in the EEA. An employer must demonstrate disadvantage or the existence of persistent representation gaps using data gathered during the workforce analysis mandated by section 9 of the EEA. As part of this analysis, an employer is required to identify potential barriers to employment for designated group members in its workplace through a review of its employment systems, policies and practices. The elimination of these employment barriers forms the basis of its employment equity plan. An employer implementing a special measure under the EEA must be able to demonstrate a connection between the measure's design and the elimination of the potential employment barriers identified in order to improve employment equity in the employer's workforce. This requirement is codified in section 11 of the EEA, which requires an employer to ensure that its employment equity plan will result in "reasonable progress" towards implementing employment equity.

The design and implementation of the special measure should reflect a genuine intent to prevent, reduce or eliminate the underrepresentation of designated group members. If the special measure is audited, a superficial declaration that it will advance employment equity will not be enough. An employer should be able to point to tangible steps that have been taken, or will be taken, to achieve employment equity. This is emphasized in section 12(a) of the EEA, which requires an employer to take "all reasonable efforts" to put its employment equity plan into practice.

The Commission has a mandate to ensure employers comply with their duty to implement employment equity measures under the EEA.

Section 2 of the Employment Equity 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.

Differences between special programs and special measures

The following chart summarizes the differences between special programs and special measures.

	Special Programs under the Canadian Human Rights Act	Special Measures under the Employment Equity Act
Overview	Special programs refer to any plan, arrangement, rule, or policy designed to prevent, reduce or eliminate a disadvantage experienced by any group of individuals. Special programs are <u>voluntary</u> .	Special measures are similar to special programs but have additional legal requirements and must advance equality and address genuine disadvantage. Special measures must be part of an employment equity plan, which are <u>mandatory</u> for employers if any of the four designated groups are underrepresented in the employer's workforce.
Target group	Any group of individuals experiencing disadvantage related to one or more prohibited grounds of discrimination as defined in the Canadian Human Rights Act.	Members of at least one of the four designated groups outlined in the Employment Equity Act, if required by an employment equity plan.
Application	Apply to the provision of goods, services, facilities, accommodation or employment by a federally regulated body.	Apply only to employment. Special measures are <u>temporary</u> and should be in place until the representation gap has been corrected. Special measures must be proportional to the degree of underrepresentation or disadvantage.
Objective	To prevent, reduce or eliminate a disadvantage experienced by the target group based on one or more prohibited grounds of discrimination.	To correct underrepresentation of members of the four designated groups in employment equity occupational groups.
Reason for review by the Commission	In response to a proactive request by an employer or service provider, or to a complaint of discrimination.	In response to a proactive request by an employer in the context of an employment equity audit.

Indigenous Employment Preferences Policies

Indigenous employment preferences policies are a type of special program designed to eliminate or reduce the disadvantage experienced by Indigenous peoples. Indigenous peoples include First Nations (status and non-status Indians), Métis and Inuit peoples.

The ongoing legacy of colonialism affects countless aspects of life throughout Canada, and employment is no exception. Indigenous people often face barriers in hiring and, when they are employed, can experience racism and prejudice in many different forms which makes the workplace intolerable. As such, Indigenous peoples are underrepresented in many organizations across the country. By adopting a special program or special measure, your organization can increase employment opportunities for Indigenous peoples and help bridge the representation gap.

Indigenous employment preferences policies provide employment-related advantages like preferential hiring or access to training programs for Indigenous applicants and employees. Organizations do not need to prove Indigenous peoples are disadvantaged within their organization to apply a preferential employment policy -- an Indigenous employment preferences policy automatically meets most of the criteria for a special measure, as it is widely understood that Indigenous peoples face ongoing systemic discrimination.

If an Indigenous employment preferences policy results in the exclusion of other Indigenous peoples, the organization responsible for the policy must be able to demonstrate that the eligibility requirements are justified by the policy's objective. In these situations, it is essential that the organization carefully design the eligibility requirements so as to not unnecessarily exclude people from the target group on the basis of a ground of discrimination.

An organization may wish to implement an Indigenous employment preferences policy in order to:

- support Indigenous self-determination and self-government;
- support the economic vitality of an Indigenous community;
- revitalize the use and knowledge of an Indigenous language;
- strengthen the knowledge and practice of an Indigenous culture;
- provide culturally appropriate services;
- support the use of Indigenous traditional knowledge;
- promote nation building;
- achieve adequate representation of Indigenous peoples in employment;
- remedy historical injustices; and
- remedy social or structural discrimination.

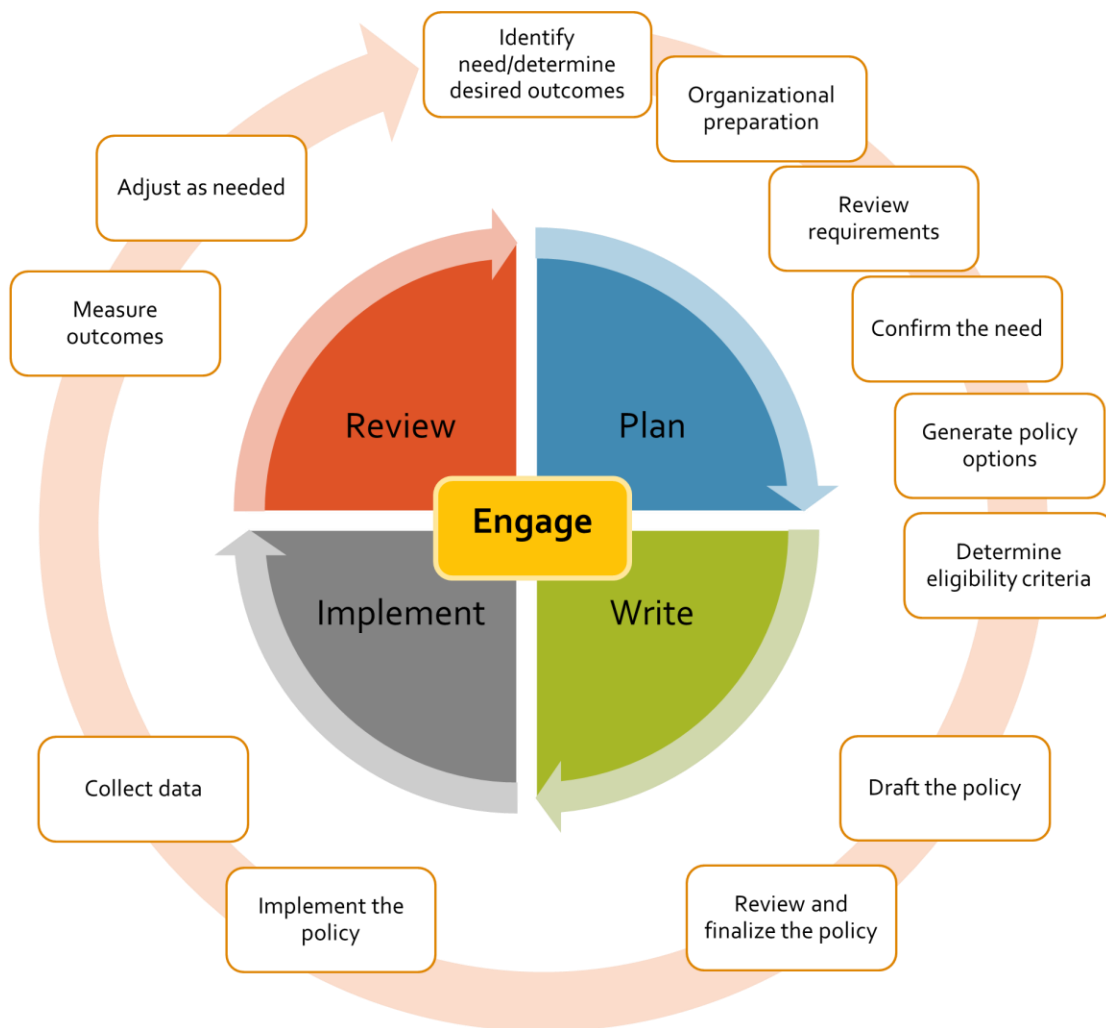
How to develop a Special Program or Special Measure Policy

In this section, the term “special program” refers to special programs under the Canadian Human Rights Act and “special measures” refers to actions to be taken under the Employment Equity Act. “Policy” refers to both special programs and special measures.

If you are reading this, it is likely that your organization has identified the need for a special program or special measure based on one or more prohibited grounds or designated groups. The following steps can help you design and implement a policy in a way that respects people’s human rights.

Four stages make up the process of developing a special program or special measure: planning, writing, implementing and reviewing.

It is important to note that one policy alone will not eliminate discrimination in your organization. Meaningful work towards equality is ongoing and requires dedication. Implementing the policies outlined in this guide should be a continuous process, as illustrated below.



Central Priority: Engage

Throughout this process, it is vital that you engage with a variety of stakeholders, and in particular those individuals who the policy will affect the most. Talking to the people who could be impacted by the policy helps create a complete and accurate picture of the targeted disadvantage. It helps explain how the policy affects your stakeholders. Engaging stakeholders can also increase support for the policy, collect baseline data for future evaluation, and ensure that the policy is well-designed.

If the policy is addressing discrimination faced by current employees or service recipients, their insights are imperative. If they are comfortable participating, concentrating on the lived experiences and meeting the needs of these employees or service recipients is the first step to improving your workplace. These employees or service recipients should be offered the chance to contribute in whatever way they are comfortable.

If there are no members of the target group in your organization, or members of the target group are not willing or able to participate, you will have to engage with individuals and groups external to your organization.

Advertise the policy development process early to connect with people who will be impacted by it. Ask the opinions of people that will be affected by the policy, especially people in vulnerable circumstances. Make it as easy as possible for people to provide their views. Some people in vulnerable circumstances may find it difficult to be heard. Eliminate any barrier that may prevent someone from taking part in the discussion. It may be necessary to consult relevant experts to identify barriers that may exist and how to remove them.

Engagement should be intersectional whenever possible. One member of the target group does not speak for the group as a whole, as no two people have the same lived experience. By engaging multiple people from the target group, you will hear diverse opinions on the policy and its potential effects on different communities within the group.

Example: A First Nations school board wants to design a special program to give hiring preference to Indigenous people from the communities it serves. A working group is created and tasked with developing the policy.

The working group starts by meeting with the communities that the school board serves. It makes special efforts to speak with elders and youth because there may be more barriers for these two groups to take part in the discussions. To include the elders, the working group provides transportation to community meetings and holds some meetings in local seniors' residences. The working group also conducts focus groups at local schools, to include the views of local youth.

Stage 1: Plan

Identify the need and determine desired outcomes

The identification of the need for a special program or special measure may come from a legislative requirement (for example, under the EEA), an internal evaluation, or internal or external feedback. Once there is a clear understanding of the disadvantage and discrimination that needs to be addressed, it is necessary to determine the desired outcomes or objectives for the policy. Clearly defining the objective will make it easier to determine the eligibility requirements and how the policy will affect issues like the promotion or retention of employees. It will also help your organization know if the policy is having the desired effect.

Organizational preparation

Employers or service providers should identify a person within the organization to lead the project. If nobody has existing expertise on developing special programs or special measures, the organization can train someone to take on this role. Organizing a small working group to discuss issues and provide advice as the policy development process moves forward can also be helpful. As mentioned above, members of the target group should be invited to participate in the working group whenever possible.

It is important for the organization's leadership to support the person leading the project throughout the development and implementation of the policy. This means leadership of the organization speaking publicly in support of the special program or special measure. It also requires executives to actively participate in decision-making related to the policy when needed.

Example: A federal government department determines that there is a need to increase the representation of racialized people. The Deputy Minister of the department announces that a working group will develop a special measure to take action on this issue. At an event for all staff, she announces that this is a priority for the department and an Associate Deputy Minister has been appointed to lead the project.

Review the requirements

Special programs and special measures must both meet the following criteria:

1. The purpose must be to prevent, reduce, or eliminate disadvantage.
2. The targeted disadvantage must be based on a ground of discrimination/designated group.
3. A special program must improve the targeted group's opportunities for employment, or access to accommodation, facilities, goods or services. A special measure must address the area of underrepresentation of the designated group in order to increase its representation in the employer's workforce.

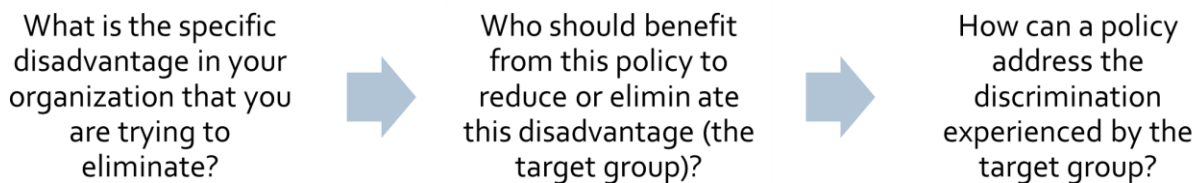
4. It should be reasonably connected to the objective of promoting diversity and inclusion or directly connected to the area(s) of underrepresentation of designated group members in the employment equity occupational group(s).
5. It may exclude other disadvantaged groups if the exclusion advances the policy's objective, but it must not displace an incumbent in a position.

In addition to the five criteria listed above, special measures under the EEA must:

1. Be developed, implemented and revised in collaboration with employee representatives, including unions.
2. Be clearly communicated to employees and candidates for employment.
3. Be short term or temporary in nature.
4. Be regularly monitored.
5. Be reviewed and, if necessary, revised.

Confirm the need

At this point, you should have a general idea of the disadvantage you want to address or the group you want to target with the policy. However, it is still necessary to do research to confirm the need. Research can help you answer important questions such as:



Gather more information about the disadvantage and how it affects the group you want to target. Be specific about the disadvantage you want to reduce or eliminate, because it will be the guiding principle for the policy.

In some cases, the organization responsible for a special program will not need to prove that the special program's target group experiences disadvantage because of general acknowledgement by the courts and/or the Commission that the disadvantage exists. For example, both the Commission and the courts have acknowledged the systemic discrimination and disadvantage that is often experienced by certain groups like Indigenous peoples, women, people with disabilities, and racialized people.

In other cases, the organization responsible for the special program will need to prove the existence of the disadvantage. This could involve using existing data (e.g. Census data, labour market availability estimates, academic studies, etc.) or conducting focus groups or surveys among the intended target group. Evidence demonstrating the existence of disadvantage must be objective. It cannot be subjective, or based on personal or anecdotal impressions.

Research could include data from Statistics Canada, reports on the effects of a particular disadvantage on potential target groups, or outreach to members of the group you are targeting. Data from a workforce analysis, as required under section 9 of the EEA, can be helpful in demonstrating existing and persisting disadvantage or representation gaps when researching a

potential special measure. Research how labour and employment law relates to the issue being addressed in the policy (see Appendix for a list of related federal legislation).

Gather information on existing policies from many sources. Review examples, policy samples, and templates from non-governmental organizations, human rights commissions, the United Nations, or other organizations. It is also important to remember to engage the target group throughout this process.

Generate policy options

Once you have identified the desired outcomes of the special program or special measure and have completed the research, develop some policy options to meet your objective. You may want to do this by brainstorming ideas with your working group and/or engagement team. They may make unconventional suggestions that better meet the needs of the target group and the desired outcomes. You should be able to link the benefits of each policy option to the needs of the target group. Each policy option should be considered with a GBA Plus lens (as explained in the Core concepts and considerations section) throughout the entire policy development process.

Analyze each policy option:

- How could the policy reduce or eliminate the disadvantage you have identified?
- Are the benefits of each policy option tailored to meet the policy's objective?
- Is the range of benefits provided by any of the policy options too broad or too narrow?
- Is the program proportionate to the objective?
- What are the expected practical results of each policy option?
- Are there foreseeable risks or negative effects associated with any of the policy options that would cause further harm to the target group? How could these risks be mitigated?

Analyze all the policy options and choose the most reasonable option to reach your objective in the least discriminatory way. Estimate the costs of developing and implementing the preferred policy option.

Determine the policy's eligibility criteria

Next, get even more specific about who the policy is meant to benefit. Who is it for and how will it help? The policy's eligibility requirements should link to the disadvantage you want to address. Restrictive eligibility requirements that are not tied to preventing, reducing, or eliminating the targeted disadvantage could lead to a human rights complaint.

When setting eligibility requirements of a special program or special measure consider the following questions:

- What eligibility criteria will most effectively meet the policy's objective?
- Will the eligibility requirements achieve the policy's objective?
- Are the eligibility requirements inclusive of the target group overall?

- Does the policy use an intersectional approach? Is it inclusive of people who are a part of the target group who experience intersectional discrimination on other grounds?
- Are there less discriminatory requirements that would still achieve the policy's objective?

Select eligibility requirements that meet the policy's objective in the least discriminatory way. For example, avoid the unnecessary exclusion of people who may experience discrimination based on more than one ground of discrimination by applying an intersectional lens. For example, if the special program aims to increase women's representation in the workplace, consider how it could impact women from different backgrounds, such as single mothers or trans women.

If the eligibility requirements you plan to use are overly restrictive, consider changing them to be more inclusive while still meeting the policy's objective.

Example: A First Nation community decides to develop an Indigenous employment preferences policy. The policy gives hiring preference to community members. The First Nation wants to use band membership as a hiring requirement. However, in some situations where band membership is linked to status under the Indian Act, this might exclude community members with female ancestors who lost status due to discriminatory rules that treated men and women differently.

The First Nation drafts an Indigenous employment preference policy giving hiring preference to band members, but adds the following:

"This policy cannot exclude persons who are not eligible for membership because their First Nations ancestry is traced through a female ancestor who lost status due to discrimination in the Indian Act."

Stage 2: Write

Draft the policy

Write a draft policy using the information contained in this section as a guide to organize your policy. Draft any policy procedures at the same time. Procedures outline how an organization will carry out its policy.

Consider including the following information in your policy:

Policy Statement: The policy statement outlines the purpose of the policy and may set out the legal obligations of the organization.

Policy Application or Scope: You should explain who and what is impacted by the policy, when the policy will apply, and when it will become effective. Consider:

- What aspects of the organization will be affected by this policy (e.g. hiring, promotion, priority services, housing placements, etc.)?
- What activities are covered by this policy?
- How will this policy interact with other organizational policies?

Definitions: This section explains any important terms and phrases used in the policy. This is especially important if they have a specific legal meaning.

Eligibility Requirements: This section should identify what is required or expected from the people the policy is meant to help. Consider:

- Who is the target group?
- How will individuals in the target group be identified, if applicable?
- How will the policy use an intersectional approach to consider the diversity of experiences within the target group?
- What values, principles or approaches does the policy follow?

Responsibilities and Expectations: This section identifies the people, or groups, who have a specific role in implementing the policy. It explains their roles and responsibilities, and any necessary training they may require. This could include, for example:

- Senior Leadership (the employer and/or service provider);
- Managers and supervisors;
- The policy's target group, including employees and job candidates;
- Employee representatives (e.g. Unions); and
- Clients or customers, community members and/or members of the public.

Outline of how the Process Works: Designate people to manage and oversee the policy on a day-to-day basis. Explain how the policy will be used, implemented, or carried out. This section would:

- Identify timelines for decisions or actions under the policy;
- Reference and link to any required forms or templates;
- Provide examples of situations that highlight how the procedures work; and

- Provide examples of best practices, and what behaviours might go against the policy.

Privacy and Confidentiality: This section should provide information regarding how the records associated with this policy will be kept and who will be authorized to view them.

Review and Enquiries: The section should indicate that policies be reviewed and updated on a regular basis. It should also provide a way for people to voice their input or concerns about the application of the policy. A contact person should be identified should someone wish to do so or have any questions.

Review and finalize the policy

Your next step is to engage with a diverse group of stakeholders, including those who will be most affected by the policy to hear their views on the draft. When developing, implementing or revising a special measure as part of the organization's employment equity plan, employers must involve current employees and union representatives.

Adjust the policy based on the input you received from relevant stakeholders. Consider having a lawyer review the policy for any potential legal issues. The final policy should be in plain language and be translated into any languages that are required.

Example: A communications company's employment equity audit finds that people with disabilities are underrepresented in its staff. The company decides to develop a special measure to recruit people with disabilities.

The company assigns someone from its human resources department to study the issue. They need to identify barriers to equal participation and design an employment equity plan. The HR person conducts focus groups with employees of the target group, reads academic studies and seeks input from peoples with disabilities living in the communities where they have offices. It also contacts a number of groups representing people with disabilities. As part of the process, the company shares its draft policy for recruiting people with disabilities.

Stakeholders comment that one of the main obstacles for people with disabilities is insufficient support for them to work from home or other flexible work arrangements. These options had not been considered in the draft policy.

As a result, the company changes its policy to support flexible work arrangements, including teleworking.

Stage 3: Implement

Implement the policy

It is important for all employees, job applicants, and customers to be aware of the way that your special program or special measure will affect them.

Post the finalized policy in public areas such as on the organization's website, social media pages, on bulletin boards, and in employee orientation manuals, or as part of your employment equity plan if it is related to a special measure. Provide training on the policy to employees and, in particular, those who will be tasked with implementing or following it.

If the policy is about hiring, mention it in all job postings and direct job applicants to the policy. In some cases, you may want to take extra steps to reach out and encourage qualified target-group members to apply for job postings.

Example: An airline's annual workforce analysis finds that Black women are significantly underrepresented in its workforce. The company decides to develop a special program to recruit Black women.

The airline researches the issue, conducts focus groups and reaches out to other airlines to learn from their experiences. The airline seeks input from Black women and contacts a number of groups representing Black women.

The airline finds one factor that contributes to the underrepresentation of Black women in its workforce is a narrow geographical focus when recruiting. To improve employment opportunities for Black women, the airline creates partnerships with career offices at a greater number of post-secondary institutions across the country. This ensures that Black female students are aware of the airline's special program that gives hiring preference to Black women.

Collect data

As soon as the policy is in use, start collecting data related to its measurable outcomes. Keep track of the policy's results (e.g. number of target-group members hired, trained, or otherwise benefiting from the special program or special measure). Gather feedback from those using the policy and those impacted by it. This will help monitor and evaluate the policy.

Stage 4: Review

Measure outcomes

Review the policy's measurable outcomes to assess the progress made towards achieving the policy's objectives and timelines. Monitoring and evaluating the effectiveness of the policy allows you to know whether the policy is having the desired result. It can also help improve the policy and show that the organization is accountable to its employees or clients. A special measure must be monitored regularly by at least one employee assigned to review the policy.

Adjust the policy as needed

Evaluating the policy might reveal problems or highlight areas that could be improved. Make adjustments to the policy as necessary to ensure that your organization achieves its identified employment or service objectives.

Example: A federal organization is mandated to help female university students find work in the engineering sector. It launches a special program that provides funding to engineering companies to subsidize the hiring of female university students in the summer.

The program targets women between the ages of 18 and 30 who are enrolled full-time in a postsecondary engineering program. However, after five years, the organization has received several complaints from female students older than 30 who wish to benefit from the program.

The organization compiles census data and consults academic research. It finds that older female students suffer from the same obstacles in finding work as those between 18 and 30. In response, the organization drops the age requirement from its program and allows all female students who are enrolled full-time in an engineering program to join the work experience program.

Appendix: Additional Information Resources

Federal Legislation

- Canadian Human Rights Act, online: <https://laws-lois.justice.gc.ca/eng/acts/h-6/>
- Employment Equity Act, online: <https://laws-lois.justice.gc.ca/eng/acts/e-5.401/>
- Pay Equity Act, online: <https://laws-lois.justice.gc.ca/eng/acts/P-4.2/page-1.html>
- Accessible Canada Act, online: <https://laws-lois.justice.gc.ca/eng/acts/A-0.6/>
- Canada Labour Code, online: <https://laws-lois.justice.gc.ca/eng/acts/L-2/>

International Conventions supporting Special Programs

- UN Committee on the Elimination of Discrimination Against Women, General recommendation No. 25 on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures, (2004) online: <https://refworld.org/docid/453882a7e0.html>
- UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, United Nations, Treaty Series, vol 1249, p 3, article 4, online: <https://ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>
- UN General Assembly, *International Convention on the Elimination of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol 660, p 195, articles 1(4), 2(2), 4, online: <http://ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>
- UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: resolution/adopted by the General Assembly, 2 October 2007, A/RES/61/295, article 21, online: https://un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf
- UN General Assembly, Convention on the Rights of Persons with Disabilities, resolution/adopted by the General Assembly, 24 January 2007, A/RES/61/106, online: <https://un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

Provincial and Territorial Information

- Alberta Human Rights Commission, “Human Rights Guides”, online: https://albertahumanrights.ab.ca/publications/bulletins_sheets_booklets/bulletins/Pages/interpretive_bulletins.aspx
- BC Human Rights Tribunal, “Special Programs”, online: <https://bchumanrights.ca/human-rights/special-programs/>
- Commission des droits de la personne et des droits de la jeunesse, “Les programmes d'accès à l'égalité”, online: <http://cdpdj.gc.ca/fr/droits-de-la-personne/responsabilites-employeurs/pae/Pages/default.aspx> [French only].
- Manitoba Human Rights Commission, “Special Programs”, online: <http://manitobahumanrights.ca/v1/education-resources/resources/special-programs.html>
- New Brunswick Human Rights Commission, “Guidelines”, online: <http://www2.gnb.ca/content/gnb/en/departments/nbhrc/resources/guidelines.html>
- Newfoundland and Labrador Human Rights Commission, “Guidelines”, online: <https://thinkhumanrights.ca/education-and-resources/guidelines/>

- Northwest Territories Human Rights Commission, “Human Rights and Employment”, online: <http://nwthumanrights.ca/wp-content/uploads/2015/08/Employment-Guide-WEB.pdf>
- Nova Scotia Human Rights Commission, “Policy Review”, online: <https://humanrights.novascotia.ca/education-training/policy-review>
- Nunavut Human Rights Tribunal, “Resources”, online: <http://nhrt.ca/english/resources>
- Ontario Human Rights Commission, “Your Guide to Special Programs and the Human Rights Code”, online: http://ohrc.on.ca/sites/default/files/Your%20guide%20to%20Special%20programs%20and%20the%20Human%20Rights%20Code_2013.pdf
- Ontario Human Rights Commission, “Special Programs and the Human Rights Code: A Self-Help Guide”, online: http://ohrc.on.ca/sites/default/files/special%20programs%20and%20the%20ontario%20human%20rights%20code_a%20self-help%20guide.pdf
- Prince Edward Island Human Rights Commission, “Workplace Rights: A Guide to the PEI Human Rights Act for Employers and Employees”, online: <http://gov.pe.ca/photos/sites/humanrights/file/Workplace%20Rights-english-web.pdf>
- Saskatchewan Human Rights Commission, “Policy on Equity Programs”, online: <http://saskatchewanhumanrights.ca/equity-site/policy-on-equity-programs>
- Yukon Human Rights Commission, “Resources”, online: <https://yukonhumanrights.ca/public-education/>