

Affirmative Action in the Workplace

We at e2r Solutions® have pointed out the dangers of discrimination in the workplace on numerous occasions. Canadian employers are prohibited from engaging in discriminatory conduct on the basis of specified grounds including sex, disability, religion and all other enumerated grounds. Moreover, discrimination in the employment context often results in steep damages awards against employers, not to mention tarnished reputations.

What employers often do not know, however, is that certain forms of “positive” discrimination in the workplace are permissible in very specific and limited circumstances. Indeed, affirmative action employment initiatives that target disenfranchised groups, and which provide these groups with opportunities that would otherwise not exist or would be difficult to come by, are gaining in popularity across Canada.

In the federal context, the *Employment Equity Act* works to improve job opportunities for women, aboriginal peoples, members of visible minorities and those with disabilities, and requires that every employer implement policies and practices to ensure that their workforces are diverse.

Programs are also included at the provincial level. For example, in Ontario's *Human Rights Code*, employers are permitted to give preference to individuals based on race, ancestry, place of origin, colour, ethnic origin, creed, sex, age, marital status or disability so long as the preference is reasonable and made in good faith. British Columbia's *Human Rights Code* also provides for the planning, advertising, adoption and implementation of special employment equity programs that aim to improve the condition of individuals or groups disadvantaged based on such characteristics as race, colour, ancestry, place of origin, physical or mental disability and sex.

While affirmative action is permissible in Canada, employers must be cautious when implementing such initiatives. The human rights legislation of each jurisdiction outlines precisely which grounds affirmative action can target and employers must ensure compliance with applicable human rights legislation in this regard. Importantly, not all jurisdictions target the same grounds. Employers must also be very careful to ensure that they are not using affirmative action as a cloak for prohibited discriminatory practices.

Please contact e2r Solutions® if you require assistance with any human rights issues, including the implementation of affirmative action programs.