



Special Programs

YOUR RIGHTS, YOUR OBLIGATIONS

Guidelines under *The Human Rights Code* on employment equity programs and special programs in services and housing.

Introduction

This guideline is the Manitoba Human Rights Commission's interpretation of the provisions of *The Human Rights Code* ("*The Code*") that relate to creating special programs in employment, housing or services and includes information on developing employment equity or affirmative action programs in particular.

It contains an overview of the rights and responsibilities in this area provided under *The Code* as well as information on what to consider before establishing a special program and how to effectively evaluate and monitor the program.

This guideline is subject to the specific language of *The Code* and to interpretations by adjudicators and the courts.

What is *The Human Rights Code*?

The Code is the provincial human rights law that protects individuals and groups in Manitoba from discrimination. It has special status over all other laws of the Province of Manitoba. It is administered by the Manitoba Human Rights Commission. *The Code* sets out a process for filing a human rights complaint.

What is discrimination under *The Code*?

Discrimination means treating an individual or group differently, to their disadvantage, on the basis of one of the protected characteristics listed in *The Code*, where there is no reasonable cause for the discrimination. *The Code* primarily deals with discrimination in the areas of employment, housing or services available to the public.

Discrimination specifically includes a failure to reasonably accommodate a special need that is based on a protected characteristic, such as disability. The Code also prohibits harassment on the basis of a protected characteristic, such as sex.

What are the protected grounds under *The Code*?

The Code prohibits unreasonable discrimination based on the following grounds, called "protected characteristics."

- Ancestry
- Nationality or national origin
- Ethnic background or origin
- Religion or creed, or religious belief, religious association or religious activity
- Age
- Sex, including gender-determined characteristics, such as pregnancy
- Gender-identity
- Sexual orientation
- Marital or family status
- Source of income
- Political belief, political association or political activity
- Physical or mental disability
- Social disadvantage

In addition to these listed characteristics, *The Code* prohibits discrimination that is based on other group stereotypes, rather than on individual merit.

In some cases, treating someone differently based on group stereotypes, rather than on individual merit, may also meet the definition of discrimination under *The Code*.

What are special programs?

Special programs are programs designed to give a preference to a group of individuals who share a protected characteristic, such as age, sex, disability or ancestry. These programs aim to lessen conditions of disadvantage in employment, housing or services for certain individuals.

Special programs in employment are called employment equity programs or affirmative action programs. An example of one of these programs is one which include a hiring preferences for individuals who are of Aboriginal ancestry or another racialized group, individuals with disabilities, or women.

An example of a special program in services is a rural bus transport program that provides rides to seniors and individuals with disabilities. An example of a special program in housing is a program that provides housing and support services to individuals living with mental disabilities.

Why are special programs permitted under *The Code*?

Special programs further the goal of equality of opportunity and try to address systemic discrimination. *The Code* acknowledges that some groups in society have faced historical disadvantage and continue to face barriers to equal participation in employment and equal access to housing and services.

Special programs try to directly address the needs of a particular group and to restore or establish equality of opportunity or access by providing that group with some degree of special consideration or preference.

What should I consider when designing a special program?

Employers and service providers are often hesitant to establish a special program because they believe it will somehow result in limiting the rights of others who don't belong to the group given preference by the program.

It is important to consider the following when designing a special program:

1. Collect and assess relevant information

Only collect information that you intend to use to ultimately reduce disadvantage or create opportunities for certain groups in your workplace, industry, or who access the services or housing you offer. Review and analyse the information to determine if you can identify any specific groups that may face barriers. For example, you may consider reviewing unemployment and labour force participation rates, occupational representation, and levels of income and education.

2. Define the designated group(s)

Clearly set out who is eligible to participate in your program. An unclear or vague definition can overly extend the program benefits beyond those intended to benefit, and lead to unreasonable restrictions on the rights or opportunities of others.

3. Determine the program objective

Identify what you are trying to achieve by implementing the program. Ensure the objective is to lessen specific disadvantage to the designated group(s) and that all activities related to the program are consistent with this objective.

4. Adopt a method of identification

Adopt an accurate means for identifying those eligible to participate in the program. Individuals who are members of the designated group(s) may voluntarily, self-declare, or you may assess the information you have gathered and identify the individuals yourself. If you choose to have individuals self-declare you may consider having them produce proof of membership in the designated group. In either case, clearly state the specific purpose for which the information is collected.

5. Develop an implementation plan

Develop a plan to implement the special program in a manner that recognizes and maintains the dignity and self-respect of the designated group(s).

6. Evaluate procedures

Establish criteria to measure and evaluate the program's effectiveness. Conduct program evaluations often enough so that any adjustments can be made and you can determine whether you still need the program.

What are some specific factors to consider in the design and operation of a special program in employment?

In addition to the factors already discussed, consider the following to ensure the success of your special program:

1. Commitment

Demonstrate your commitment to the program through policy statements, promotional activities, allocation of resources, and delegation of authority and responsibility for implementation of the program. Ideally, a senior manager should be responsible for the program and there should be consultation with employee representatives.

2. Internal workforce analysis

Review the internal workforce analysis based on self-declaration or management identification, if available. It will identify the representation of employees who are members of designated groups in relation to all other employees. It may also identify representation within occupational groups or categories, as well as participation by salary levels, length of service, and employment status (for example, full-time or part-time).

3. **External workforce analysis**

Review an external workforce analysis, if available, that will identify areas in the labour pool where there is a concentration of members of a designated group and is important for developing long term goals. You can get this information from federal and provincial departments, or community agencies and educational institutions

4. **Goals and timetables**

Express the program's objectives in measurable criteria. Identify short and long term targets for each area being addressed in the program, such as participation in training, hiring, etc. Goals should be flexible in order to respond to organizational changes, and tied to reasonable timetables that take into account organizational growth and turnover of employees.

5. **Employment systems review**

Analyse all employment-related policies to help identify unnecessary employment barriers that adversely impact the designated group(s).

The analysis may provide any of the following information:

- procedures and requirements for recruitment, screening, selection and promotion;
- physical accessibility of facilities;
- policy and procedures regarding reasonable accommodation of special needs based on protected characteristics of members of the designated groups, such as disability;
- harassment prevention policies and procedures;
- training and development practices;
- disciplinary and administrative policies
- job descriptions, performance review system and uses;
- termination, layoff and recall practices; and
- wage and salary determination system.

In a unionized workplace, consultation with the union might be required by law.

What is the difference between an equal opportunity program and an employment equity program?

Equal opportunity programs try to identify and eliminate systemic discrimination in an organization's policies, practices and procedures, but do not ordinarily include remedial measures. For example, an employer might review its hiring and other employment policies and practices to identify any barriers that they present to women, persons with disabilities or members of racialized groups, but the employer would not take steps to ensure underrepresented groups are hired or promoted as part of that exercise.

Employment equity programs also try to eliminate barriers that underrepresented groups might encounter in employment, but also try to address or remedy any disadvantage caused by those barriers. For example, an employer might again review its hiring and other employment policies and practices, but the employer would then also establish a preference or give special consideration to certain groups in order to address the disadvantage they may face.

A typical employment equity program might include:

- an internal workforce audit to determine the representation of members of the designated groups under consideration;
- a review of available recruitment and labour pool potential;
- identification of short and long-term goals, as well as a monitoring system to assess progress; and
- development and adoption of special screening, selection and training opportunity policies.

For further information on pre-employment inquiries under The Code, please see the pre-employment inquiries guidelines.

What are some specific factors to consider in the design and operation of a special program in services or housing?

The factors listed above in relation to special programs can also be applied to special programs designed to reduce barriers or disadvantage experienced by certain groups in services such as education or health, or access to housing.

It is equally as important to ensure that you collect and analyse information about the industry or population that utilizes the service in order to identify the designated group(s) that may benefit from a special program.

For example, if you are considering implementing a preference in the provision of health services, you will need to analyse information about who utilizes the service and have those individuals self-declare their membership in the designated group(s) or identify their membership in some other way. Ensure that the individuals being asked to identify understand the purpose for which you are gathering the information by referring to the program objective. You may also consider statistical or other area-wide information or research in your analysis. Short and long term goals should be identified and a systems review scheduled to ensure success of the program.

What is the role of the Manitoba Human Rights Commission with respect to employment equity or other special programs?

Section 11 of *The Code* does not require that employers or service or housing providers adopt employment equity or other special programs. It does, however, state that special programs are not discriminatory, providing that they meet certain conditions. The Commission can provide assistance and advice with respect to establishing a special program.

Where there is a legal requirement to adopt and implement a special program, it must be designed to conform to *The Code* requirements. The Commission will provide design assistance upon request from either the adjudicator or the person responsible for implementation of a program. The Commission may also monitor the program if requested or required, reviewing documents as necessary.

If there is any conflict between these Guidelines and *The Human Rights Code*, *The Human Right Code* prevails.