

## FTR Now

# The Federal Contractors Program: What Employers Need to Know

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While human rights legislation in all Canadian jurisdictions prohibits discriminatory hiring practices, only the federal government has legislation, the *Employment Equity Act*, which requires employers to engage in a review of their employment and hiring practices to ensure the diversity of their workforces. The *Employment Equity Act*, however, only applies to that subset of employers in Canada which are federally regulated (e.g. banks, inter-provincial trucking companies, airlines and so on).

Since 1986, the federal government has maintained a program, known as the Federal Contractors Program, which expands the reach of employment equity to provincially regulated companies. Any company which does business with, or is interested in doing business with, the federal government must be aware of the program and its requirements.

Recent amendments to the *Employment Equity Act*, included in the recent omnibus budget bill passed by the federal legislature, has renewed focus on the Federal Contractors Program. In this *FTR Now* we explain the program and its requirements.

## WHAT IS THE FEDERAL CONTRACTORS PROGRAM?

The Federal Contractors Program (“FCP”) was established by the federal government in 1986 to promote employment equity within non-federally regulated employers. While it is related to the federal *Employment Equity Act*, the program is not established by that *Act*.

All organizations, including offshore and foreign organizations, which have 100 or more employees in Canada and which hold a contract with the federal government valued at over \$200,000 (inclusive of taxes), are required by the FCP to create and implement an employment equity plan in their organization. Failure to do so results in a prohibition from bidding for contracts valued at greater than \$25,000.

The ultimate goal of the FCP is to ensure that the representation rates within the organization of four designated groups (aboriginals, women, individuals with disabilities, and visible minorities) are reflective of the diversity found in Canada’s workforce generally.

## WHAT DOES THE FEDERAL CONTRACTORS PROGRAM REQUIRE

## ORGANIZATIONS TO DO?

Employers which are bidding on a federal contract valued at over \$200,000, which are not already a part of the FCP, are asked to sign a Certificate of Commitment signalling their intention to implement employment equity in their workplaces.

The FCP outlines twelve steps that organizations must take in order to be in compliance with it. The end result of the twelve steps is the creation and implementation of an employment equity plan. The first three steps (adopting accountability mechanisms and assigning a senior official for employment equity, communicating to employees regarding employment equity and consultation and collaboration with bargaining agents and/or employee representatives), while important, are not particularly onerous. The most significant requirements of the FCP are contained in steps four through ten, which require the following:

*Step Four:* Collect information about the organization's entire workforce. The collection is conducted through a voluntary self-identification questionnaire which invites each employee to identify as one or more of the following designated groups: aboriginal, disabled, female, or a visible minority.

*Step Five:* Conduct an analysis of the workforce information to determine the extent to which the representation of each designated group within each occupational group in the organization matches the external availability of members from each designated group for each occupational group. Any difference between the internal numbers and the external numbers is a gap that has to be addressed.

*Step Six:* For each gap, the organization must review its formal and informal employment systems to determine whether these systems create barriers for members of the designated groups.

*Step Seven:* Create short and long term goals based on the review of the employment systems in order to eliminate or decrease the gaps in representation located.

*Step Eight:* Adopt measures designed to remove the barriers located in the employment systems for designated group members.

*Step Nine:* Adopt positive measures to eliminate or decrease the gaps in representation identified, such as temporary hiring initiatives targeting specific, highly under-represented, designated group members.

*Step Ten:* Adopt monitoring procedures in order to evaluate the impact of the measures adopted and whether the short and long term goals are being met.

While the FCP does not require an organization to eliminate all representation gaps found in its

workforce, Step Eleven requires the employer to show that it has made reasonable efforts to eliminate representation gaps, and that it is making reasonable progress in the elimination of those gaps.

The process is not a one-time requirement. Step Twelve of the FCP mandates that organizations which are part of the FCP must review and revise their employment equity plans once every three years.

## **HOW DOES HUMAN RESOURCES SKILLS AND DEVELOPMENT CANADA ENSURE COMPLIANCE WITH THE FEDERAL CONTRACTORS PROGRAM?**

HRSDC employs labour program workplace equity officers who conduct compliance reviews of organizations. Each employer is to be reviewed for compliance within two years of entering the FCP. After that initial review, each organization is randomly chosen for a compliance review, with priority given to those organizations which have not been reviewed for five years.

## **WHAT ARE THE CONSEQUENCES FOR FAILING TO ABIDE BY THE FEDERAL CONTRACTORS PROGRAM REQUIREMENTS?**

Failure to abide by the requirements of the FCP results in a prohibition from bidding on federal government contracts valued at more than \$25,000. The prohibition remains in place until the organization can demonstrate that it is in compliance with the FCP.

A finding of non-compliance is an administrative decision, made by employees of HRSDC, and is not proceeded by adjudication. Organizations are entitled to appeal to the Minister of Labour for a reconsideration of a finding of non-compliance; however, the success rate of such appeals is unknown.

## **ARE THERE ANY NEW DEVELOPMENTS WITH REGARDS TO THE FEDERAL CONTRACTORS PROGRAM ON THE HORIZON?**

The *Employment Equity Act* has recently been amended to delete the legislative obligation that the FCP requirements be equivalent to the requirements under the *Employment Equity Act* itself. This opens the door for the Minister of Labour to make changes to the process discussed above.

Currently there are no signals from the Minister of Labour that the FCP is undergoing review or revision. Further, there was no indication from the Minister of Labour that the amendment to the *Employment Equity Act* was made to decrease, curtail, or limit the application and requirements of the FCP.

For further information on the Federal Contractors Program please contact P. Adrian Di Lullo at 416.864.7469 or your [regular Hicks Morley lawyer.](#)

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