

Ontario Human Rights Commission

Special Programs in Hiring

Under the *Code*, all organizations are prohibited from treating people unfairly because of *Code* grounds, must remove barriers that cause discrimination, and must stop it when it occurs.

Organizations can also choose to develop “special programs” to help disadvantaged groups improve their situation. The *Code* and the Canadian *Charter of Rights and Freedoms* ^[1] both recognize the importance of addressing historical disadvantage by protecting special programs to help marginalized groups. The Supreme Court of Canada has also recognized the need to protect “programs” established by legislation that are designed to address the conditions of a disadvantaged group.^[2]

The *Code* allows for programs designed to help people who experience hardship, economic disadvantage, inequality or discrimination. The *Code* also protects these programs from attack by people who do not experience the same disadvantage. This guide describes the use of special programs, clarifies when they are allowed, and provides practical information on how they could be designed.

The Ontario Human Rights Commission (OHRC) encourages the development and use of special programs as effective ways to achieve substantive equality by helping reduce discrimination, or addressing historical prejudice.

Organizations do not need permission from the OHRC to develop a special program. This means that special programs can be put in place without delay. This guide is designed to help you develop effective special programs:

What the Code says

Under Section 14 of the *Code*, it is not discrimination to put in place a program if it is designed to:

- Relieve hardship or economic disadvantage
- Help disadvantaged people or groups to achieve, or try to achieve, equal opportunity or
- Help eliminate discrimination

A program must satisfy at least one of these points to be considered a special program under the *Code*.

Reference link:

<http://www.ohrc.on.ca/en/your-guide-special-programs-and-human-rights-code>

Special program guidelines checklist

Program rationale

- The target group or groups intended to benefit under the program are defined
- The problem experienced by the target group is defined
- The defined problem is related to hardship, economic disadvantage, discrimination or achieving equal opportunity for the target group
- There is evidence of the problem
- Program goals have been identified
- The benefits provided by the program are designed to help fix the defined problem and meet the goals
- The program has been designed to help disadvantaged groups beyond the organization's duty to accommodate people under the *Code*
- The proposed length of the program has been identified, if appropriate.

Eligibility requirements

- Specific eligibility criteria for people who can benefit from the program have been defined
- Each eligibility requirement, especially those based on prohibited grounds, relates directly to the rationale of the program
- The eligibility criteria are not too broad (do not include groups not intended to benefit)
- The eligibility requirements are not too narrow (do not prevent persons the program was intended to benefit from qualifying)
- Criteria are directly related to the rationale of the program, regardless of any cost limitations
- The program does not discriminate against its participants either intentionally or unintentionally
- A way of advertising the eligibility criteria to relevant stakeholders has been set up.

Reference link:

<http://www.ohrc.on.ca/en/your-guide-special-programs-and-human-rights-code/special-program-guidelines-checklist>