
Striking a Balance:

Reconciling an Employer's Competing Obligations Between ITAR/EAR Compliance and Canadian Human Rights Laws

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Human Rights in Canada: Statutory Framework

- Federal and provincial human rights legislation
- Prohibits discrimination in employment on basis of specific prohibited grounds
- Applies to applicants for employment and existing employees
- Prohibited grounds include “race” “citizenship”, “national origin”, “place of origin”, “ethnic origin”, “nationality” and “ancestry”

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General Restrictions on Employers

- Employers restricted from making employment-related decisions on basis of prohibited grounds of discrimination
- Employers generally advised not to ask questions of applicants and existing employees based on prohibited grounds of discrimination

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Questions Regarding Citizenship

- In order to legally work in Canada, must be Canadian citizen, permanent resident or hold valid work permit
- Employers entitled to ask if applicant (or existing employee) is legally entitled to work in Canada, and to ask for proof of such entitlement
- Unlikely to provide sufficient information for employer to determine compliance with ITAR/EAR

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The Conflict

- Compliance with ITAR/EAR citizenship requirements *prima facie* discriminatory in Canada
- Requires Canadian employers to ask questions regarding nationalities of employees, and to restrict access to regulated technology based on citizenship
- Employers may have no choice but to ask questions regarding citizenship
- BUT, cannot discriminate based on citizenship, and must accommodate to point of undue hardship

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Our Experience Thus Far

- Several human rights complaints filed
- Administrative process for enforcement of human rights in Canada
- No reported decisions to date, all settlements
- Lessons drawn from Canadian experience with U.S. drug-testing laws

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Striking a Balance

- Carefully review export agreements, ITAR/EAR to determine what, if any exemptions apply before asking question re: citizenship or nationality
- Only ask for information necessary to make decision, identify specific purpose for asking question
- If applicant/employee prohibited from accessing regulated technology, consider what accommodation available

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