**Non-Imperative Staffing Tool**

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| **Staffing of bilingual positions** |
| Generally, bilingual positions are staffed by candidates who meet the language requirements of the position at the time of appointment. This is called imperative staffing and is the standard for staffing all bilingual positions.In exceptional situations, however, a bilingual position may be staffed with a candidate who does not meet the language requirements of the position at the time of appointment. This is referred to as non-imperative staffing. |
| **Non-imperative staffing** |
| Non-imperative staffing is a staffing procedure for a bilingual position that allows the consideration of applicants who meet all essential qualifications except the requisite language skills.  |
| **Which bilingual positions cannot be staffed on a non-imperative basis?** |
| 1. **Specific positions*** a position staffed for a limited period; (non-imperative staffing applies only to indeterminate appointments - permanent positions);
* a position that requires technical or specialized language skills;
* a bilingual position that is essential to provide service to the public or to employees in both official languages.

2. **Executive positions**Imperative staffing is mandatory (no non-imperative staffing):* across Canada for Assistant Deputy Minister or equivalent positions;
* in bilingual regions, for all positions at the EX-02 to EX-05 level;
* in unilingual regions, for all EX-02 to EX-05 positions that include the supervision of employees located in a bilingual region and occupying bilingual positions or positions with different language requirements.

**Exception:** Mandatory imperative staffing does not apply to external ("open to the public") appointment processes for indeterminate positions. Such positions may be staffed on an imperative or non-imperative basis. |
| **What are the obligations of the deputy head when appointing a person who agrees to become bilingual?** |
| Once an institution decides (due to an exceptional staffing situation that the manager must document) to use non-imperative staffing under the conditions outlined in the [Public Service Official Languages Exclusion Approval Order](https://laws-lois.justice.gc.ca/eng/regulations/SI-2005-118/) relating to the candidate's agreement to become bilingual, it must meet the following terms set out in the [Public Service Official Languages Appointment Regulations](https://laws-lois.justice.gc.ca/eng/regulations/SOR-2005-347/page-1.html):1. Provide language training (2 years) for the candidate to reach the required level.
2. Appoint or transfer the person to another position if the person fails to achieve the level.
3. Extend the period by a maximum of two years if one of the following reasons arises:
4. exceptional operational requirements that were unforeseeable at the time of appointment;
5. exceptional personal circumstances that were unforeseeable at the time of appointment;
6. a physical, mental or learning impairment that hinders the acquisition of the other official language at the required level of proficiency;
7. inability to obtain language training at public expense.
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| **What qualifies as exceptional staffing situations?** |
| The following are some examples of situations where a bilingual position may be staffed with a candidate who does not meet the language requirements:* when the pool of potential bilingual candidates is very limited due to the highly specialized nature of the duties and knowledge required for a position;
* when the institution receives an insufficient number of applications from members of either official language community.
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| **Can the federal government's response to COVID-19 be used to justify a non-imperative appointment?** |
| Appendix 4 of the Directive on Official Languages for People Management does not explicitly define what could be an exceptional situation. It provides some examples that could help identify what an exceptional staffing action could be. It is up to the deputy head of each institution to determine, considering the mandate of his or her institution, which situations could be considered exceptional staffing situations in relation to the government's response to COVID 19. |
| **Can the federal government's response to COVID-19 be used to justify the extension of the agreement period to become bilingual?** |
| The Public Service Official Languages Appointment Regulations (PSOLAR) specify the circumstances under which the deputy head, or the sub-delegated person, may extend the 2-year commitment period for one or more periods not exceeding 2 years in total. The 2-year period may be extended for one of the following 4 reasons:1. exceptional operational requirements that were unforeseeable at the time of appointment;
2. exceptional personal circumstances that were unforeseeable at the time of appointment;
3. a physical, mental or learning impairment that hinders the learning of the other official language at the required level of proficiency;
4. the inability to obtain language training at the organization's expense.

In considering the impact that the measures taken by the government to respond to COVID-19 could have on second-language evaluation, on personal circumstances and on access to language training, the deputy head, or the subdelegated person, could state reasons 1, 2 and 4 for extending the agreement period to become bilingual. |
| **Some considerations** |
| 1. A non-imperative appointment does not exempt the institution from its obligations under the *Official Languages Act.* The federal institution must take measures to ensure that the bilingual duties or functions of the position are performed as long as the person occupying the position does not meet the language requirements of the position.
2. Capacity and objectivity: For term positions, it is necessary to objectively determine the language requirements of the position or to review them when staffing. This could result in unilingual English and unilingual French positions that would need to be combined in such a way as to have a capacity that meets your organization's official languages obligations.
3. The obligation to provide language training (2 years) for the candidate to attain the required level and the obligation to appoint or deploy the person to another position if the person is unable to attain the level, remain for the deputy head, despite the circumstances.

Before considering a non-imperative appointment, deputy heads must ensure that they have all the necessary resources to provide language training to the candidate and that they have a position in their organization to which they can transfer the person in the event that he or she does not attain the required level. This last point is particularly important when appointing a person to executive positions (EX-02 to EX-05) in a region designated bilingual for language of work purposes. |
| **For more information** |
| * [Directive on Official Languages for People Management](https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=26168)
* [Public Service Official Languages Exclusion Approval Order](https://laws-lois.justice.gc.ca/eng/regulations/SI-2005-118/)
* [Public Service Official Languages Appointment Regulations](https://laws-lois.justice.gc.ca/eng/regulations/SOR-2005-347/page-1.html)
* [The Public Service Official Languages Exclusion Approval Order and the Public Service Official Languages Appointment Regulations - Frequently Asked Questions](https://www.canada.ca/en/public-service-commission/services/public-service-hiring-guides/public-service-official-languages-exclusion-approval-order/new-psoleao-new-psolar-frequently-asked-questions.html)
* [Measures to increase Public Service Commission support to departments and agencies](https://www.canada.ca/en/public-service-commission/corporate/about-us/letters-heads-human-resources/measures-increase-public-service-commission-support-departments-agencies-20-05.html)
* [Questions and answers for human resources specialists: Coronavirus disease (COVID-19)](https://www.canada.ca/en/public-service-commission/information-human-resources-specialists/questions-answers-human-resources-specialists.html)
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