



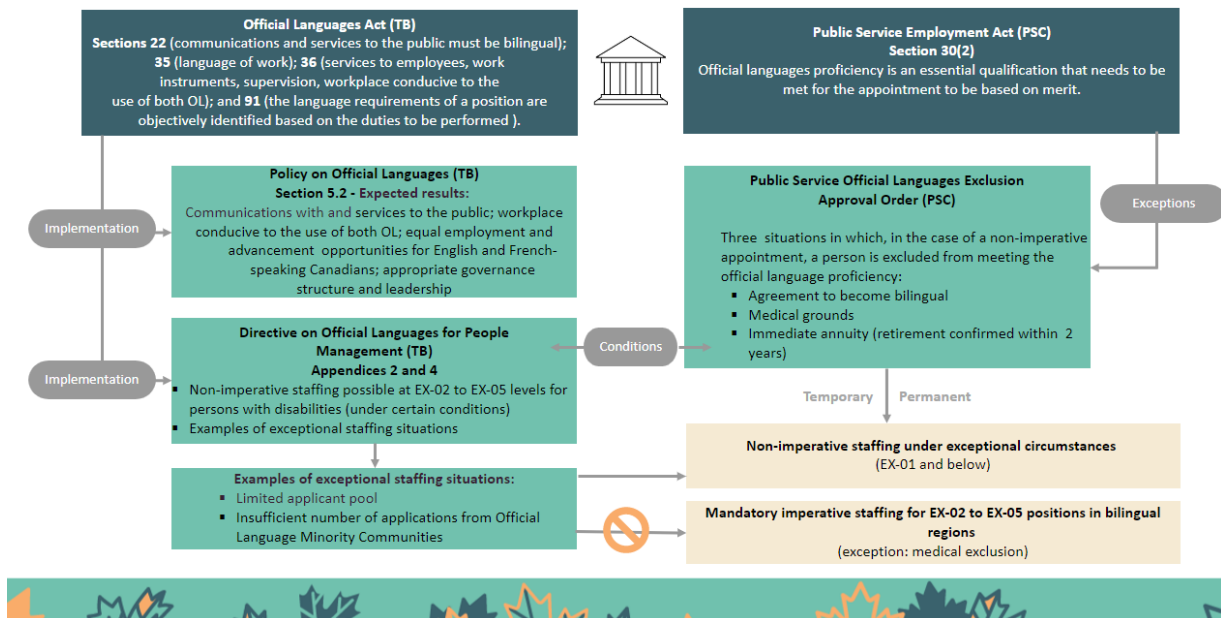
Frequently asked questions: non-imperative staffing

Introduction

The *Public Service Employment Act* (Section 30(2)) states that official languages proficiency is an essential qualification that needs to be met for the appointment to be based on merit.

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, 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: Legislative and policy framework



[View the infographic online](#)

Everything you need to know about the application of non-imperative staffing and the obligations it imposes on federal institutions.

Questions and answers

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1- What is non-imperative staffing?

Non-imperative staffing is a staffing method for bilingual positions that allows the consideration of applicants who meet all essential qualifications except the second language proficiency requirement. The [Public Service Official Languages Exclusion Approval Order](#) and the [Public Service Official Languages Appointment Regulations](#) specify the circumstances, in the context of a non-imperative appointment, where a person is excluded from the application of merit with respect to meeting the official language proficiency at the time of appointment.

2- Do the non-imperative staffing rules apply to institutions that are not subject to the *Public Service Employment Act*?

No. Appendix 2 (Staffing Rules) of the [Directive on Official Languages for People Management](#) applies only to institutions that are subject to the [Public Service Employment Act](#).

3- Which bilingual positions must be staffed imperatively? What are the exceptions?

Specific positions

Imperative staffing is mandatory when:

- a position is staffed for a limited period (non-imperative staffing applies only to indeterminate appointments - permanent positions);
- a position requires technical or specialized language skills;
- a bilingual position is essential to provide service to the public or to employees in both official languages.

Executive positions

Imperative staffing is mandatory:

- 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.

Exceptions

- Mandatory imperative staffing does not apply to external appointment processes ("open to the public") for indeterminate positions. Such positions may be staffed on an imperative or non-imperative basis and internal candidates are granted the same privileges as external candidates.
- EX-02s to EX-05s (or their equivalents) can be staffed on a non-imperative basis if the candidate has previously obtained an exclusion for medical reasons and has the exclusion granted by the Public Service Commission for the specific appointment.

4- What qualifies as an exceptional staffing situation?

The following are 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.

It is important to document and be prepared to justify all non-imperative appointments in the event of an official languages complaint or grievance.

5- Can a targeted staffing process for a designated equity group be considered an exceptional staffing situation?

Yes. If there is an insufficient number of applications from members of either official language community in a staffing process targeted to a designated group or groups under the [Employment Equity Act](#), non-imperative staffing is permitted.

However, consideration must be given to specific positions where imperative staffing is mandatory (see question 3).

6- Administrative measures must be used when staffing a position non-imperatively to ensure bilingual duties are carried out, including the effective delivery of bilingual services. What are administrative measures, who is responsible for determining these measures, and how?

Administrative measures are steps taken to ensure that official languages obligations are met when the incumbent of a position does not have the second official language competencies required for the position. Through administrative measures an institution ensures that all tasks and duties that would normally be carried out by the incumbent in the second official language are conducted in that language using other means. This includes, in particular, the right of employees to be supervised in the official language of their choice.

Examples of administrative measures are:

- Supervisory duties shared with a bilingual employee at the same level
- Collaboration with management/team members who have the required second official language competencies
- Efficient translation of documents or interpretation during meetings

The hiring manager/institution is responsible for determining the appropriate measures on a case-by-case basis, taking into consideration the unique functions and responsibilities of the

position to be staffed and always ensuring that the service offered is of equal quality in both official languages.

7- 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](#) regarding the exemption applied when a candidate agrees to become bilingual, it must meet the following terms set out in the [Public Service Official Languages Appointment Regulations](#):

- A. Provide language training (2 years) for the candidate to reach the required level.
- B. Appoint or transfer the person to another position if the person fails to achieve the level.
- C. Extend the training period by a maximum of two years if one of the following arises:
 - exceptional operational requirements that were unforeseeable at the time of appointment;
 - exceptional personal circumstances that were unforeseeable at the time of appointment;
 - a physical, mental or learning impairment that hinders the acquisition of the other official language at the required level of proficiency;
 - the inability to obtain language training at public expense.

For the other two exemptions, where the person is exempted for medical reasons or where the person is eligible for an immediate annuity, the deputy head must put in place administrative measures because the person does not meet the required official language proficiency. These measures remain in place for as long as the person remains in the position (refer to question 6).

8- In the case of a reclassification, where the position now requires a level of bilingualism, can a non-imperative appointment be made?

When a position is reclassified, the language requirements of the position are reviewed. Reclassifications are considered appointments and are subject to the [Public Service Employment Act](#).

If the position is occupied by an incumbent, and the linguistic profile of the position has been raised beyond the incumbent's Second Language Evaluation results, the second official language proficiency of the incumbent must be assessed to determine if the person meets the new linguistic profile of the position. If the person does not meet the new requirements, a non-imperative appointment could be made to give the person the opportunity to meet the new language requirements (i.e. language training).

If the position is vacant, every effort should be made to staff the position on an imperative basis before considering a non-imperative appointment.

A reclassification (including an increase in the language profile/new language requirements of the position) should not be confused with a change in language requirements or profile (not including a reclassification of the position). For information on changing the language requirements or profile, consult the [Directive on Official Languages for People Management](#) (Appendix 2).

9- What are the key considerations when choosing to staff a position non-imperatively?

- 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 (language training or medical exemption).
- 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 include determining the appropriate combination of English essential and French essential positions that will enable the organization to have the bilingual capacity required to meet its OL obligations.
- The deputy head is responsible for providing language training, and if required, with accommodations (2 years with a possibility of extension for a total of 4 years if one of the reasons indicated in the [Public Service Official Languages Appointment Regulations](#) [section 7] is met) for the candidate to attain the required level or for appointing or deploying the person to another position if the person is unable to attain the level, even in unforeseen 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 (including accommodation) and that they have a position in their organization to which they can transfer the candidate if they do not attain the required level. This is particularly important when appointing candidates to executive positions (EX-02 to EX-05) in a region designated bilingual for language of work purposes.

10- What policy instruments and resources should be consulted when considering a non-imperative staffing action?

Policy instruments

- [Directive on Official Languages for People Management](#)
- [Public Service Official Languages Exclusion Approval Order](#)

- [Public Service Official Languages Appointment Regulations](#)

Other resources

- [Official languages decision tree for staffing executive positions](#)
- [FAQ: Amendment to the Directive on Official Languages for People Management – *Persons with disabilities*](#)
- [FAQ: Public Service Official Languages Exclusion Approval Order and the Public Service Official Languages Appointment Regulations](#)
- [Questions and answers for human resources specialists: Coronavirus disease \(COVID-19\)](#)
- [Assessment of official languages in the appointment process](#)

Questions? Contact the [Official Languages Centre Excellence](#).