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AODA "Accessibility Standards": Onerous New Accommodation Obligations for Ontario Employers

On June 3, 2011 the Ontario government released the so-called *Integrated Accessibility Regulation* under the *Accessibility for Ontarians with Disabilities Act* (the "AODA"), which was first enacted in 2005. This new Regulation is the second regulation to release standards under the AODA, and has ostensibly undergone two rounds of public consultation.

In theory, the new Regulation is supposed to address some of the concerns identified by small and medium sized businesses, by limiting some of the standards and staging their implementation (See our February eBlast for more information on the customer service standards).

The new Regulation establishes accessibility standards in three areas: employment information and communications, and transportation.

The standards will require employers to make significant investments in employee training, website technology and accessibility. When in force, organizations that do not comply could be subject to orders and penalties ranging from \$500 to \$15,000 per day for non-compliance.

Many of the employment-related standards set out in the *Integrated Accessibility Regulation* are not new – in principle at least. Under the *Human Rights Code*, Ontario employers already must accommodate disabled employees up to the point of undue hardship. However, unlike the Code, the standards under the AODA explicitly require employers to formalize a *proactive approach*, and to substantiate their efforts through *detailed reporting*.

DEADLINES FOR COMPLIANCE

Unlike the Customer Service standard, the *Integrated Accessibility Regulation* phases in the deadlines for compliance. This phased-in approach partially responds to objections that the timelines in previous drafts were unrealistic and would require concentrated investment in tough economic times.

Deadlines vary widely depending on the specific duty in question, as well as the type and size of employer, ranging from July 1, 2011 for repairs to non-functioning accessibility equipment under the transportation standards, to as late as 2021 for certain requirements under the information and communications standard.

The compliance timeframes for most of the employment-related standards are:

- January 1, 2014 – large (50 + employees) designated public sector organizations
- January 1, 2015 – small (less than 50 employees) designated public sector organizations

- January 1, 2016 – large (50 + employees) private and not-for-profit organizations
- January 1, 2017 – small (less than 50 employees) private and not-for-profit organizations

Small employers (i.e., less than 50 employees) are exempt from many of the Regulation's requirements. This threshold contrasts with the customer service standards, which identifies small organizations as those with 1 to 19 employees. The higher threshold is supposed to respond to the objection from the small business community that the standards would create an undue burden on them.

GENERAL ACCESSIBILITY STANDARDS

Most organizations will be required to:

- Develop, implement and maintain accessibility policies
- Establish, implement, maintain, document and post on their website a multi-year accessibility plan (to be reviewed and updated every five years)
- Consider accessibility when designing, procuring or acquiring self-serve kiosks
- Provide training to staff on the Human Rights Code relating to persons with disabilities

EMPLOYMENT-RELATED ACCESSIBILITY STANDARDS

Most employers will be required to:

- Notify employees and the public of the accommodations available to applicants with disabilities during recruitment and hiring processes
- Inform employees of accessibility policies used to support employees with disabilities
- On request, provide or arrange to provide accessible formats and communication supports for employees with disabilities
- Provide individualized workplace emergency response information to disabled employees (if necessary)
- Establish a written process for the development of documented individual accommodation plans for disabled employees
- Develop, implement and document a return to work process for employees who require disability-related accommodations

Employers also must consider accessibility needs of their disabled employees and develop individual accommodation plans when conducting performance reviews, considering employees for career development and advancement, and during any employee redeployment process.

INFORMATION AND COMMUNICATION ACCESSIBILITY STANDARDS

The information and communication standards have produced some concern among employers, who may be required to invest in new technologies. Most organizations will be required to:

- Ensure that persons with disabilities can provide feedback
- On request, provide or arrange for accessible formats and communication supports for persons with disabilities
- Make Internet websites and web content conform to the Web Content Accessibility Guidelines (WCAG) 2.0, initially at Level A and increasing to Level AA (see <http://www.w3.org/TR/WCAG20/> for details)

Additional requirements apply to specific organizations, such as i) organizations that prepare emergency procedures, plans or public safety information that is available to the public, ii) school boards and other educational or training institutions, iii) producers of training or education textbooks, iv) libraries of educational and training institutions, and v) public libraries.

TRANSPORTATION STANDARDS

Conventional, specialized and other transportation service providers — which offer their services to the public, such as taxicabs, buses, school buses, ferries and trains — will be required adopt numerous accessibility standards. For example, organizations will be required to provide equal fares for all customers, audible pre-boarding and on-board announcements, and courtesy seating for person with disabilities.

CONCLUSION

Employers should act early given the scope of the requirements and the need to invest in technology and other infrastructure. We will continue to keep you informed as the remaining standard – the built environment – is finalized. Contact your Heenan Blaikie lawyer for more information on the requirements that apply to your business. ■



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Labour & Employment in the News

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