

## LABOR AND EMPLOYMENT

### AODA REPORTING

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#### The Accessibility for Ontarians with Disabilities Act

The *Accessibility for Ontarians with Disabilities Act, 2005* (the "Act") was enacted in 2005. The Act recognizes "the history of discrimination against persons with disabilities in Ontario" and has, as its primary purpose, benefiting all Ontarians by "developing, implementing and enforcing standards to achieve accessibility for Ontarians with disabilities with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises".

The Act provides the authority and framework for the creation of the Standards, which are implemented as regulations to the Act and must be complied with by those to whom each of the Standards applies. At present, the five Standards are customer service (the "Customer Service Standard"), information and communications (the "Information and Communications Standard"), employment (the "Employment Standard"), transportation (the "Transportation Standard"), and built environment (the "Built Environment Standard"). Of the five, only the Customer Service Standard is in full force.

Pursuant to the Act, each of the Standards must:

*"set out measures, policies, practices or other requirements for the identification and removal of barriers with respect to goods, services, facilities, accommodation, employment, buildings, structures, premises or such other things as may be prescribed, and for the prevention of the erection of such barriers".*

A 'barrier' is defined in the Act as:

*"anything that prevents a person with a disability from fully participating in all aspects of society because of his or her disability, including a physical barrier, an architectural barrier, an information or communications barrier, an attitudinal barrier, a technological barrier, a policy or a practice".*

The definition of 'disability' in the Act is very broad and not limited to physical disabilities. The Act defines 'disability' as:

*"(a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,  
(b) a condition of mental impairment or a developmental disability,  
(c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,*

*(d) a mental disorder, or  
(e) an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997".*

The Act "applies to every person or organization in the public and private sectors of the Province of Ontario". Each Standard contains specific applicability criteria.

Aside from compliance with the Standards, the Act also requires that a certified accessibility report, containing information prescribed by each Standard and in a form set by the Minister of Community and Social Services, is filed annually, or at such other times as specified by a director. The additional obligation to provide information relating to the compliance of a person or organization with the Standards arises upon request by a director.

Note that the Standards are required to be reviewed at least every five years. Such reviews may result in additional requirements.

#### The Customer Service Standard

The Customer Service Standard took effect with respect to the public sector on January 1, 2010 and the private sector on January 1, 2012. The Standard concerns the provision of goods and services in a manner that accommodates persons with disabilities. It applies to every person or organization (public or private, including not for profit) that (1) has at least one employee in Ontario; and (2) provides goods or services directly to the public or to a third party. The application to third parties covers other businesses, the government, or other organizations. This, for example, includes a manufacturer, wholesaler or a training firm hired by an organization.

As a general overview, the Customer Service Standard requires that every provider of goods and services to which the Customer Service Standard applies must:

1. establish policies, practices and procedures governing the provision of its goods and services to persons with disabilities;
2. use reasonable efforts to ensure that the policies, practices and procedures are consistent with the principles of independence, dignity, integration and equality of opportunity;
3. ensure that the policies deal with the use of assistive devices by persons with disabilities in obtaining, using or benefiting from the provider's goods or services, and include the availability, if any, of other measures that enable a person with a disability to obtain, use, or benefit from the provider's goods or services;
4. communicate with a person with a disability in a manner that takes into account the person's disability;
5. if a person with a disability is accompanied by a guide dog or other service animal, ensure that the person is permitted to be accompanied by the animal in the public areas of the provider. If the service animal is excluded by law from the premises, the provider shall ensure that other measures are available to enable the person with a disability to obtain, use or benefit from the provider's goods or services;

6. if a person with a disability is accompanied by a support person, ensure that the person is permitted to be accompanied by the support person;
7. where admission fees are charged, provide advance notice of any fees that must be paid by a support person;
8. provide notice to the public when facilities or services that persons with disabilities rely on to obtain, use or benefit from a provider's goods or services are temporarily disrupted. Notice must include information about the reason for the disruption, its anticipated duration, and a description of any alternative facilities or services that are available;
9. train every person that interacts with the public or other third parties on behalf of the provider on topics outlined in the Customer Service Standard;
10. train every person that participates in the development of the provider's policies, practices and procedures governing the provision of goods or services to members of the public or other third parties on topics outlined in the Customer Service Standard; and
11. establish a process for receiving and responding to feedback about the manner in which goods or services are provided to persons with disabilities by the provider. Make the information about the feedback process readily available to the public.

For providers to which the Act applies and which have at least twenty employees, the provider must also

12. prepare documents describing the policies, practices and procedures required under the Customer Service Standard and provide the documents to any person upon request;
13. prepare documents, and provide them to any person upon request, that
  - a. concern service animals and support persons;
  - b. set out the steps to be taken in connection with a temporary disruption; and
  - c. describe the provider's feedback process;
14. notify customers that documents required under the Customer Service Standard are available upon request;
15. when giving documents required under the Customer Service Standard, provide the information in a format that takes into account the person's disability;
16. prepare a document that describes the provider's training policy, including a summary of the contents of the training and details of when the training is to be provided; and
17. keep records of the training provided, including the dates on which the training is provided and the number of individuals to whom it is provided.

All of these requirements, which are elaborated on in the Customer Service Standard, should have been complied with as of January 1, 2012.

### The Other Standards

O. Reg. 191/11, the Integrated Accessibility Standards, contains all of the Standards except for the Customer Service Standard and the part of the Built Environment Standard, which is still under development and will include amendments to the Ontario Building Code.

With respect to the private sector, most of these provisions are not yet applicable. Currently, all employers must provide individualized workplace emergency response information to employees who have a disability if the disability is such that the individualized information is necessary and the employer is aware of the need for accommodation. In addition, all organizations under the *Integrated Accessibility Standard* that make emergency procedures, plans or public safety information available to the public must, upon request, provide such information in an accessible format.

With some exceptions, the remaining provisions in the Standards (other than the Customer Service Standard and the Built Environment Standard) will periodically take effect in the private sector starting on January 1, 2014 for large organizations (50 or more employees) and January 1, 2015 for small organizations.

### December 31, 2012 Reporting Deadline

Every provider of goods or services to which the Customer Service Standard applies, aside from a designated public sector organization, must file an annual accessibility report if the provider has twenty or more employees. The deadline for filing the first report was **December 31, 2012**. In determining the number of employees a provider has, all full-time, part-time, seasonal and contract employees must be included, and all volunteers, independent contractors, sole proprietors and the partners in a partnership are excluded.

To report, a provider answers fifteen yes or no questions concerning compliance with the Standard. A statement certifying that all required information has been provided and is accurate must be included in the report. This statement must be signed by a director, senior officer or other person with authority to bind the organization. The accessibility report is then submitted online.

See the "How to complete your Accessibility Compliance Report" guide for more information, including the questions to be answered and the process for registration of an account with One-key. A copy of the questions has also been attached to this Client Alert. The guide can be found at [http://www.mcsc.gov.on.ca/documents/en/mcsc/accessibility/ACR\\_reporting\\_guide.pdf](http://www.mcsc.gov.on.ca/documents/en/mcsc/accessibility/ACR_reporting_guide.pdf).

Following the coming into force of section 86.1 of O. Reg. 191/11 on January 1, 2013, and subject to exemptions or agreements with the Ministry of Community and Social Services (the "Ministry"), private sector organizations with less than fifty employees will not be required to file an accessibility report for either the Customer Service Standard or any of the Integrated Service Standards after the initial report due on December 31, 2012. Subject to the same exceptions, after the initial report due on December 31, 2012, large organizations (fifty employees or more) will be required to file an accessibility report regarding the Standards by December 31, 2014 and then again every three years.

### Penalties for Noncompliance with the Act

Non-compliance can result in monetary administrative penalties and, upon conviction in court, significant fines. The website of the Ministry states,

*"Our first goal is always to help organizations meet their accessibility requirements. We are here to help you meet your commitments with educational tools and templates that will make it easier for you to understand what you need to do and how to do it.*

*For organizations that persist in not meeting their obligations, the government has the power to conduct inspections, assign monetary penalties and prosecute through the courts."*

Though this may suggest a policy of leniency for inadvertent non-compliance, this statement is not law and offers no guarantee on the course of action that the Ministry will take against a person or organization that does not comply with the Act or the Standards. The Ministry can determine compliance by conducting inspections under the Act.

For noncompliance with a Standard, the requirement to file an accessibility report, or the requirement to provide additional information, a director has the power to simply order compliance. In addition to, or in the alternative, a director may also order a monetary administrative penalty in accordance with the regulations. The director is to consider the severity of the impact of the contravention and the contravention history of the person or organization and use a schedule to determine the range. The regulation provides considerations for making a determination under these two factors. For individuals and unincorporated associations, the penalty ranges from \$200 to \$2,000. In severe cases a director can impose the penalty on a daily basis up to a maximum of \$50,000. For corporations, the penalty ranges from \$500 to \$15,000, and in severe cases a director can impose the penalty on a daily basis up to a maximum of \$100,000. Note that the Act requires a notice to be issued to the offending person or organization prior to making an order. This allows the person or organization to make written submissions in response, though this does not prevent a director from then making an order.

Failure to comply with an order made by a director or a tribunal designated under the Act, such as a compliance order or payment of an administrative penalty; furnishing false or misleading information in an accessibility report or to a director; obstructing an investigation under the Act; or intimidating, coercing, penalizing or discriminating against a person because the person sought to enforce the Act, cooperated with inspectors or, provided information under the Act is an offence under the Act. A person found guilty of an offence can be fined up to \$50,000 for each day or part of a day on which the offence occurred or continues to occur. For corporations the amount is \$100,000 for each day or part of a day.

Every officer and director must also be aware that failure to take all reasonable care to prevent the corporation they act for from committing an offence described in the preceding paragraph is guilty of an offence and on conviction is liable for a maximum fine of \$50,000 for each day or part of a day on which the offence occurs or continues to occur.

If you have not yet filed an accessibility report for 2012 we recommend you do so now. Compliance with all applicable requirements in the Standards is also advised. Please contact us if you or your organization

have any questions or require assistance with respect to the *Accessibility for Ontarians with Disabilities Act* or any of the Standards.

#### Accessibility Report Questions – Customer Service Standard

1. Does your organization have policies, practices and procedures on providing goods or services to people with disabilities? (Yes/No)
2. Does your organization use reasonable efforts to ensure that these policies are consistent with the principles of independence, dignity, integration and equality of opportunity? (Yes/No)
3. Do your organization's policies address the use of assistive devices by people with disabilities to access your organization's goods or services, or any available alternative measures that enable them to do so? (Yes/No)
4. Do your organization's policies, practices and procedures require your organization to take a person's disability into account when communicating with the person? (Yes/No)
5. Do members of the public or other third parties have access to premises that your organization owns or operates? (Yes/No)  
\*If your answer is No, skip to question 9 below. (Do not answer questions 6, 7 and 8.)
6. Does your organization permit people with disabilities to keep their service animals with them on the parts of your premises that are open to the public or other third parties, except where the animal is excluded by law, and is this included in your policies, practices and procedures? (Yes/No)
7. If a service animal is excluded by law from your premises, does your organization ensure that alternate measures are available to enable the person to access your goods or services? (Yes/No)
8. Does your organization permit people with disabilities to enter the parts of your premises that are open to the public or other third parties with their support person, and provide notice of any fee charged for the support person, and is this included in your policies, practices and procedures? (Yes/No)
9. Does your organization post a notice at a conspicuous place on your premises, on your website, or by another reasonable method, of any temporary disruption in facilities or services that people with disabilities usually use to access your organization's goods or services, including the reason, duration and any alternatives available? (Yes/No)
10. Has your organization established and documented a process to receive and respond to feedback on how its goods or services are provided to people with disabilities, including actions that your organization will take when a complaint is received? (Yes/No)
11. Does your organization make information about its feedback process readily available to the public, including how feedback

may be provided (e.g. in person, by telephone, in writing, by email, on diskette or otherwise)? (Yes/No)

12. Does your organization ensure that the following people receive training about providing your goods or services to people with disabilities: every person who deals with the public or other third parties on behalf of your organization, and every person who participates in developing your organization's policies, practices and procedures on providing goods or services? (Yes/No)
13. Does this training include your organization's current policies, practices and procedures required under the Customer Service Standard and all the topics listed in section 6(2) of the standard? (Yes/No)
14. Does your organization have a written training policy that includes a summary of the contents of the training (per question 11 above) and details of when the training is to be provided, and does your organization keep records of the dates that training was provided and how many people were trained? (Yes/No)
15. Does your organization post a notice at a conspicuous place on your premises, on your website, or by another reasonable method, that the documents required by the Customer Service Standard are available upon request, and do you provide those documents in a format that takes a person's disability into account? (Yes/No)

*This Client Alert is published by Dickinson Wright LLP to inform our clients and friends of important developments in the field of labor and employment law. The content is informational only and does not constitute legal or professional advice. We encourage you to consult a Dickinson Wright attorney if you have specific questions or concerns relating to any of the topics covered in here.*

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