

Accessibility for Ontarians with Disabilities Act: What Employers Need to Know Now

Jessica Young

The *Accessibility for Ontarians with Disabilities Act, 2005* (the "Act") was enacted in 2005 with the objective of improving accessibility for all Ontarians by 2025. To achieve this, the government has focused on creating accessibility standards in five key areas: customer service, employment, information and communication, built environment and transportation. The accessibility standards are being developed by committees through a process of public consultation. To date, only the Customer Service Standard has been adopted.

The Customer Service Standard has applied to most public sector organizations since January 1, 2010. On January 1, 2012 it will apply to every other person or organization that has at least one employee and which provides goods or services to members of the public or third parties in Ontario.

"Third parties" is not defined in the Act or the Customer Service Standard. However, as suggested by the Government of Ontario's publication *Guide: Accessibility Standards for Customer Service, Ontario Regulation 429/07* (the "Guide"), it likely will include suppliers, wholesalers, consultants and any other person, business or organization that goods or services are provided to.

In other words, just about every business operating in Ontario must comply with the Customer Service Standards by January 1, 2012, and there are significant financial penalties for non-compliance.

The following is an outline of the key Customer Service Standards that need to be complied with by January 1, 2012.

Accessibility for Ontarians with Disabilities Act: Customer Service Standard - Comprehensive Training Seminar

Breakfast Briefing:
June 9, 2011, 9:00 a.m. – 11:00 a.m.
Sheraton Toronto Airport

For more information or to register:
www.sbhlawyers.com/events.php, Call: 416-862-1616, or Email: info@sbhlawyers.com

There's an OH&S Inspector at the Door!

Half Day Seminar:
May 5, 2011, 9:00 a.m. – 12:00 p.m.
Sheraton Toronto Airport

For more information or to register:
www.sbhlawyers.com/events.php, Call: 416-862-1616, or Email: info@sbhlawyers.com

Establish Policies, Practices and Procedures

Service providers must establish or revise policies, practices and procedures with respect to providing goods and services to people with disabilities. Reasonable efforts must be made to ensure that the policies, practices and procedures:

- Provide equal opportunity to people with disabilities to obtain, use or benefit from the goods or services;
- Respect the dignity and independence of persons with disabilities;
- Provide for the integration of the provision of goods and services. Goods and services must be provided in the same place and in the same or similar way to people with disabilities as they are to other customers. If integration is not possible, an alternative measure should be established either on a temporary or permanent basis;
- Provide for the use of assistive devices by people with disabilities to obtain, use or benefit from the goods or services; and
- Take into account a person's disability when communicating with that person.

Use of Service Animals and Support Persons

A disabled person must be allowed to enter the areas of the premises open to the public or third parties with a guide dog or other service animal unless the animal is not permitted on the premises by law. If the service animal is excluded by law, arrangements must be made to enable the disabled person to obtain, use or benefit from the goods or services.

If the person with disabilities is accompanied by a support person, both persons must be able to enter the premises together and the disabled person should not be prevented from accessing the support person at any time. If it is necessary to protect the health and safety of the person with a disability, the service provider may require him or her to be accompanied by a support person. Any admission fee for access to the premises by the support person must be communicated in advance.

If the organization is not providing goods or services at a premises that they own or operate then these requirements do not apply.

Effective Use of Non-Competition, Non-Solicitation and Confidentiality Agreements

**One Hour Webinar:
May 16, 2011, 11:30 a.m. – 12:30 p.m.**

**For more information or to register:
www.sbhlawyers.com/events.php, Call: 416-
862-1616, or Email: info@sbhlawyers.com**

Notice of Temporary Disruptions

Notice must be given of temporary disruptions in facilities or services used by people with disabilities. The notice must include the reason for the disruption, when it is likely to be resolved and a description of any alternatives facilities or services available. Notice should be posted in a conspicuous place on the premises, on the service provider's website or through any other reasonable method in the circumstances.

Training for Staff

Staff must be trained to provide goods and services to persons with disabilities. Only staff who deal with members of the public or third parties and persons who participate in the development of policies, practices and procedures must be given this training. For the purposes of this requirement, "staff" includes employees, volunteers, and agents. Since "staff" includes third parties that act on the service provider's behalf, the term likely also includes contractors.

The training must include instructions on the following:

1. How to interact and communicate with persons with various types of disabilities.
2. How to interact with persons with disabilities who use an assistive device or require the assistance of a guide dog or other service animal or the assistance of a support person.
3. How to use equipment or devices available on the service provider's premises or otherwise provided by the service provider that may help with the provision of goods or services to a person with a disability.
4. What to do if a person with a particular type of disability is having difficulty accessing the service provider's goods or services.

This training must be given to staff as soon as is practicable and must be provided on an ongoing basis, for instance, where there are changes made to the service provider's policies, practices and procedures.

Every service provider with 20 or more employees must keep a record of the training provided under this requirement, including the dates that the training was provided and the number of people who received the training (even if fewer than 20 required training).

Feedback Process

Every service provider must also provide the public with a feedback process to evaluate the manner in which people with disabilities are accommodated, including the actions to be taken when a complaint is received. The feedback process must allow people to provide responses in

a variety of ways including in person, by telephone, in writing, by email, on disk or another appropriate method.

Access to Documents by the Public

Organizations that have at least 20 employees in Ontario must prepare a written copy of the policies, practices and procedures. These documents must be made available to the public and notice must be given that a copy will be available to any person upon request. This requirement is satisfied by posting this information at a conspicuous place on the premises or on the service provider's website. The document must be provided in an accessible format that takes into account the disability of a person who may request it.

Annual Accessibility Report

An accessibility report must be filed annually and must be made available to the public. Service providers with fewer than 20 employees are exempt from this requirement. The accessibility report must contain a statement certifying that all the information that is required to be provided under the Act has been provided and that the information is accurate. This certification must be signed by a director, senior officer or other person with authority to bind the organization. If the report is not prepared by an organization, the report must be signed by the person preparing the report.

Penalties for Non-Compliance

Non-compliance with the Customer Service Standard could lead to significant financial penalties. The service provider may be required to pay an administrative penalty and could also be guilty of an offence.

A service provider may face an administrative penalty if it fails to file an accessibility report or is not complying with any other part of the Customer Service Standard. The fines associated with an administrative penalty are contained in a regulation not yet in force; but the draft provides a preview of what to expect. A corporation could face a penalty of up to \$100,000.00, while an individual or an unincorporated organization could face a penalty of up to \$50,000.00.

Penalties will be determined based on the following criteria (1) the severity of the impact of the contravention, (2) the contravention history of the person or organization and (3) whether the person or organization is a corporation, an individual or an unincorporated organization.

In addition, a service provider could be guilty of an offence under the Act, for: (1) providing false or misleading information, (2) failing to comply with an order, (3) interfering with an investigation by an inspector and (4) intimidating, coercing or discriminating against a person who has sought enforcement of the Act or who is providing information or cooperating with an investigation by an inspector.

Each non-incorporated person guilty of an offence may face a fine of up to \$50,000.00 per day or each part day that the offence occurs or continues to occur. Each corporation guilty of an

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offence may face a fine of up to \$100,000.00 per day or part day that the offence continues to occur. In addition, individual directors and officers have a duty to take reasonable care to prevent the corporation from committing an offence and are liable for up to \$50,000 per day or half day that the offences continue to occur.

What to Watch for in the Future

The proposed Integrated Accessibility Standards is a regulation that contains three of the remaining standards: employment, transportation, and information and communication. The public review period ran from February 1 to March 18, 2011 and the regulation is now under final review by the Minister of Community and Social Services. The Minister has 90 days to review the standard and the government anticipates that the Integrated Accessibility Standards regulation will be enacted this year. The remaining standard, the built environment standard, has also gone through the public consultation process and has been submitted to the Ministry of Community and Social Services for final review.

We will keep you updated on how these standards will affect your business and the timelines for compliance.

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