

Compliance with the Employment Standard under the *Accessibility for Ontarians with Disabilities Act*

Jessica Young

The Integrated Accessibility Standards regulation (the "Integrated Regulation"), which was enacted on July 1, 2011, is the second regulation under the *Accessibility for Ontarians with Disabilities Act* (the "Act"). It includes the Employment Standard, the Information and Communication Standard¹ and the Transportation Standard.²

An employer's obligations under the Employment Standard only apply with respect to employees. The Employment Standard does not apply to volunteers or other non-paid individuals. However, "employee" is not defined in the Act or the regulations. There is a large and varied body of caselaw regarding who is an "employee," and who is an "independent contractor." Employers should seek legal advice to determine whether the Employment Standard applies to any individuals falling into this murky area.

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General Requirements during Recruitment and Employment

Employers must comply with the following general requirements during the recruitment process and during the employment relationship:

¹ The Information and Communication Standard requires organizations to provide accessible information and communication to people with disabilities which include: providing people with disabilities with accessible formats, communication supports and accessible web content. Educational and training institutions have additional obligations under this standard. We will give you more information about this standard in an upcoming SBH Update.

² The purpose of the Transportation Standard is to enhance public transit accessibility for people with disabilities. The Transportation Standard applies to all public transportation organizations within Ontario. There are also requirements for school transportation and taxi cabs.

- Employers must notify their employees and the public about the availability of accommodation for applicants with disabilities in the recruitment process;
- Employers are required to notify job candidates that are chosen to participate in the selection process that accommodations are made upon request. If accommodation is requested by the candidate, the employer must consult the candidate and arrange for suitable accommodation;
- Every successful applicant must be informed of the employer's policies for accommodating employees with disabilities when the offer of employment is made;
- Employees must be informed of the employer's policies for accommodating employees with disabilities, including policies on the provision of job accommodations, and any changes made to these policies. This information must be given to new employees as soon as practicable after their employment begins.

Accessible Formats and Communication Supports

Employers must provide accessible formats and communication supports for employees with disabilities with respect to (i) information needed in order to perform the employee's job, and (ii) information generally available to employees in the workplace. The employer must consult with the employee with a disability when determining the suitability of an accessible format or communication support.

Employer must also meet the requirements in the Information and Communication Standard regarding accessible formats and communication supports when satisfying this requirement, to the extent that it is applicable . Under the Information and Communication Standard, organization must, upon request, provide accessible formats in a timely manner and at no additional cost to the person with the disability. The organization must consult the person making the request when determining the suitability of an accessible format or communication support.

Emergency Response Information

Employers must provide individualized workplace emergency response information for employees with a disability, if necessary. Employers must comply with this requirement as soon as practicable after becoming aware of the employee's disability. If the employee requires assistance, with the employee's consent, the employer must provide information to a person designated by the employer to provide assistance to the employee with a disability.

Reviews must be made of the individual emergency response information (i) when the employee moves to a different location, (ii) when the employee's overall accommodations needs or plans are reviewed and (iii) when the employer reviews its general emergency response policies.

Documented Individual Accommodation Plans

Employers must develop a written process for providing individual accommodation to employees with disabilities. The Integrated Regulation sets out a list of eight requirements that need to be satisfied when developing individual accommodation plans. Private sector businesses with fewer than 50 employees in Ontario are exempt from this requirement.

The process for developing the documented individual accommodation plans must include the following:

- (1) The manner in which an employee requesting accommodation can participate in the development of the individual accommodation plan.
- (2) The means by which the employee is assessed on an individual basis.
- (3) The manner in which the employer can request an evaluation by an outside medical or other expert, at the employer's expense, to assist the employer in determining if accommodation can be achieved and, if so, how accommodation can be achieved.
- (4) The manner in which the employee can request the participation of a representative from their bargaining agent, where the employee is represented by a bargaining agent, or other representative from the workplace, where the employee is not represented by a bargaining agent, in the development of the accommodation plan.
- (5) The steps taken to protect the privacy of the employee's personal information.
- (6) The frequency with which the individual accommodation plan will be reviewed and updated and the manner in which it will be done.
- (7) If an individual accommodation plan is denied, the manner in which the reasons for the denial will be provided to the employee.
- (8) The means of providing the individual accommodation plan in a format that takes into account the employee's accessibility needs due to disability.

In addition, the individual accommodation plans must, if requested, include any information regarding accessible formats and communication supports provided by the employer. It must also include individual emergency response information, if required, and identify any other accommodation that is to be provided.

Return to Work, Performance Management, Career Development and Re-Deployment Processes

Employers must have a documented return to work process for employees with disabilities. The return to work process should outline the steps that will be taken to facilitate the return to work of the employee with a disability and must be individualized. Private sector businesses with fewer than 50 employees in Ontario are exempt from this requirement.

Employers that have a performance management system, career development and advancement program or redeployment policies must take into account employees with disabilities accessibility needs and their individual accommodation plans when implementing these systems, programs or policies.

Timeline for Compliance

The timeline for compliance with these requirements varies depending on the type and the size of the organization. The dates for compliance are as follows:

- All employers must comply with the emergency response sections by January 1, 2012;
- The government of Ontario and the Legislative Assembly must comply by January 1, 2013;
- Public sector organizations with 50 or more employees must comply by January 1, 2014, while all other public sector organizations must comply by January 1, 2015;
- Private sector organizations with 50 or more employees must comply by January 1, 2016, while all other private sector organizations must comply by January 1, 2017.

Accessibility Plan, Accessibility Report, Policies and Training Requirements

In addition to the specific requirements under the Employment Standard, employers are required to establish and maintain policies governing how they will meet the requirements in the standard. As mentioned in our Update, *Accessibility for Ontarians with Disabilities Act: How the Integrated Accessibility Standards Will Affect You*, organizations, except private sector organizations with less than 50 employees, are required to prepare and post an accessibility plan on their website. These organizations will also have to file an annual accessibility report.

Organizations are required to develop, implement and maintain policies to govern how they will meet the requirements under the Integrated Regulation. All organizations, except private sector organizations with fewer than 50 employees, must include a statement in their policies respecting their organization's commitment to meeting the accessibility needs of people with disabilities in a timely manner.

Organizations must also train all employees, volunteers, persons involved in developing the organization's policies, and all other persons who provide goods, services or facilities on behalf

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of the organization on the three accessibility standards contained in the Integrated Regulation³ and on the *Human Rights Code*. The training on the *Human Rights Code* is limited to the provisions that pertain to people with disabilities.

The training must be completed by January 1, 2015 for all large private sector organizations, January 1, 2016 for all small private sector organizations, January 1, 2014 for all large designated public sector organizations, January 1, 2015 for all small designated public sector organizations and January 1, 2013 for the Government of Ontario and the Legislative Assembly.

Although many of the requirements under the Employment Standard do not need to be complied with for a couple of years, employers should be aware now of the obligations that this standard imposes and should start putting compliant policies and practices in place. As mentioned above, employers need to have individualized workplace emergency response plans in place for employees with disabilities by January 1, 2012.

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³ Common sense and the definition of “obligated organization” in the regulation suggest strongly that there is no obligation to train personnel on standards that don’t apply to the organization. However, the language of the Integrated Regulation is unclear in that respect.