

**THE INTEGRATED ACCESSIBILITY STANDARD: NEW LEGISLATIVE REQUIREMENTS  
UNDER THE *ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT***

Recently, the Ontario government released the Integrated Accessibility Standard (the “Regulation”), which was enacted by way of a regulation under the *Accessibility for Ontarians with Disabilities Act* (the “AODA”). The Regulation (Ontario Regulation 191/11) integrates three of the four remaining accessibility standards to be addressed under the AODA: transportation, employment and information and communications. The Regulation came into force on July 1, 2011.

**Background**

Ontario passed the AODA in 2005 in order to make Ontario more accessible to people with disabilities by 2025 in several areas, including customer service, transportation, information and communications and employment. The AODA provides that the government will enact regulations under the AODA to establish each of the accessibility standards.

Ontario Regulation 429/07, the “Customer Service Standard”, was the first standard released. It came into force on January 1, 2008. The Customer Service Standard applies to “every designated public sector organization and to every other person or organization that provides goods or services to members of the public or other third parties and that has at least one employee in Ontario”. “Designated public sector” organizations were required to comply with Customer Service Standard by January 1, 2010. Private sector and non-profit organizations must comply by January 1, 2012.

The Ontario government decided to streamline three of the four remaining accessibility standards (including the employment standard) into the Regulation in order to simplify implementation and compliance for businesses. After undergoing several rounds of public consultation, the final Standard was released on June 3, 2011. It came into force on July 1, 2011.

**The Integrated Accessibility Standard**

The Regulation establishes the accessibility standards for information and communications, employment, and transportation. The Regulation applies to “every designated public sector organization and to every other person or organization that provides goods, services or facilities to the public or other third parties and that has at least one employee in Ontario”. The compliance requirements and deadlines vary based on the size of the organization and whether or not the organization is in the public sector or private sector. A large organization is defined as having 50 or more employees, whereas a small organization is defined as having at least one but fewer than 50 employees. Earlier compliance dates and more rigorous standards apply to the public sector than to larger private sector organizations. Smaller private sector organizations are provided with later compliance dates and are exempt from many requirements. Please find below an outline of the most significant requirements of the Regulation.

## **General Standards**

Part I of the Regulation outlines the “general standards” which are applicable to most organizations to which the Regulation applies. Section 3 requires that every obligated organization establish and implement accessibility policies that govern how the organization achieves or will achieve accessibility through meeting its requirement referred to in the Regulation. Compliance with this section is required by January 1, 2013 for large public sector organizations, January 1, 2014 for small public sector organizations and large private sector organizations, and January 1, 2015 for small private sector organizations.

### *Accessibility Plan*

Section 4 of the Regulation requires public sector and large private sector organizations to establish, implement and maintain an accessibility plan to outline a strategy to prevent and remove barriers to accessibility. The Regulation requires organizations to post the accessibility plan on their websites.

### *Self-Service Kiosks*

Section 6 of the Regulation requires that public sector organizations shall incorporate accessibility features when designing, procuring or acquiring self-service kiosks. This requirement is less stringent on private sector organizations as the Regulation only requires that such organizations “shall have regard to the accessibility for persons with disabilities when designing, procuring or acquiring self-service kiosks”.

### *Human Rights Training*

Section 7 of the Regulation provides that every obligated organization shall ensure that training is provided on the requirements of the accessibility standards and the Ontario *Human Rights Code* as it pertains to persons with disabilities. The training must be provided to all employees and volunteers, all persons who participate in developing the organization’s policies, and all other persons who provide goods, services or facilities on behalf of the organization. The Regulation does not provide guidance on the extent of human rights training required. However, this provision may be the most arduous requirement in the Regulation, given the breadth of human rights training that is potentially required. Compliance with this section is required by January 1, 2014 for large designated public sector organizations, January 1, 2015 for small designated public sector organizations and large private sector organizations, and January 1, 2016 for small private sector organizations.

## **Information and Communications Standards**

The Information and Communications Standards are outlined at Part II of the Regulation, and generally require that communications be available in accessible formats.

### *Accessible Formats & Communication Supports*

Section 12 of the Regulation provides that every obligated organization shall, upon request, provide or arrange for the provision of accessible formats and communication supports for persons with disabilities in a timely manner that takes into account the person’s accessibility needs due to disability and at a cost that is no more than the regular cost charged to other persons. Compliance with this section is required by January 1, 2015 for large designated public

sector organizations, January 1, 2016 for small public sector organizations and large private sector organizations, and January 1, 2017 for small private sector organizations.

#### *Emergency Plan & Procedure*

Section 13 of the Regulation provides that all obligated organizations must prepare emergency procedures plans or public safety information by January 1, 2012. The emergency procedure must be available in an accessible format or with appropriate communication as soon as practicable, upon request.

#### *Accessible Websites*

Section 14 of the Regulation provides that public sector and large organizations will be required to make their internet websites and web content conform with the “World Wide Web Consortium Web Content Accessibility Guidelines (WCAG) 2.0, at Level AA”. This could include, for instance, requiring video content to contain captioning or transcripts, although notably compliance with this provision is not required until 2021.

#### *Educational Materials in Accessible Formats When Requested*

Section 15 of the Regulation applies to school boards, educational and training institutions (including schools, colleges and private schools), and requires that such organizations provide educational or training resources in an accessible format “if notification of need is given”. Section 16 of the Regulation similarly applies to school boards, educational and training institutes and provides that such organizations must provide educators with accessibility awareness training related to accessible program or course delivery and instruction. There are also similar provisions applicable to producers of educational or training material, libraries of educational and training institutions and public libraries. Compliance is required by January 1, 2013 for large public and private sector organizations, and January 1, 2015 for small public and private sector organizations.

### **Employment Accessibility Standards**

The Employment Accessibility Standards are outlined at Part III of the Regulation. This standard applies only with respect to employees, and does not apply to volunteers or other non-paid individuals. Compliance with the Employment Accessibility Standards is generally required by January 1, 2014 for large designated public sector organizations, January 1, 2015 for small designated public sector organizations, January 1, 2016 for large private sector organizations and January 1, 2017 for small private sector organizations, although there are a few sections that require earlier compliance dates as specified below.

#### *Recruitment Processes*

Section 22 of the Regulation provides that every employer shall notify its employees and the public about the availability of accommodation for an applicant with disabilities in its recruitment processes. Section 23 provides that an employer shall notify job applicants when they are selected to participate in an assessment or testing that accommodations are available upon request, and employers will be required to make suitable accommodation.

### *Employer Policies and Information in Accessible Formats*

Section 25 of the Regulation requires that employers inform their employees of its policies to support employees with disabilities, including policies on the provision of job accommodations that take into account an employee's accessibility needs due to disability. Employers shall provide such information "as soon as practicable" after an employee begins his or her employment, and shall provide updated information whenever there is a change in the policy.

Section 26 provides that every employer shall consult with employees to provide or arrange for the provision of accessible formats and communications support for information required for jobs or generally available in the workplace. This could foreseeably include providing communications in Braille or in audio format.

### *Individualized Emergency Response Plans When Required*

Section 27 provides that every employer shall provide individualized workplace emergency response information to employees who have a disability, if the disability requires such and the employer is aware of the need for accommodation due to the employee's disability. This may include providing specific emergency exit procedures that are accessible for persons with physical disabilities. Compliance with this requirement is effective for all employers on or before January 1, 2012.

### *Accommodation Plans*

Section 28 requires that employers (other than small organizations) develop and implement a written process for the development of documented individual accommodation plans for employees with disabilities. This section specifically provides several elements that must be included in the process, including for instance: the manner in which an employee requesting accommodation can participate in the development of the individual accommodation plan; the means by which the employee is assessed on an individual basis; and the steps taken to protect the privacy of the employee's personal information.

### *Return to Work Plans*

Section 29 provides that every employer (other than small organizations) develop, implement and document a return to work process. This section may impose a further administrative burden on employers by requiring extra paperwork. Nonetheless, human rights legislation already requires that employers accommodate disabled employees in their return to work to the point of undue hardship.

### *Career Development & Advancement*

Section 31 provides that employers who provide career development and advancement to their employees shall take into account the accessibility needs of their employees with disabilities as well as any individual accommodation plans.

### *Redeployment*

Section 32 addresses redeployment, which is defined as the reassignment of employees to other departments or jobs within the organization, as an alternative to layoff, when a particular job or department has been eliminated by the organization. This section provides that an employer who uses redeployment must similarly consider the needs of employees with disabilities as well as individual accommodation plans when redeploying employees with disabilities.

A review of the above sections indicates that employers must be aware of their obligations under the Regulation, as some (including drafting an emergency plan) will be required as early as January 1, 2012. Other measures may not be required for another few years. However, it is important that employers take note of the legislated time frames in order to ensure compliance. Many of the requirements of this standard will increase administrative work for employers, as they must maintain policies, plans and documentation to remain compliant. Beyond the extra administrative burden, the overall substance of the requirements was already required by the Ontario *Human Rights Code*, that is, employers were already required to accommodate employees with disabilities, at least to the point of undue hardship.

### **Transportation Standards**

The Transportation Standards are outlined at Part IV of the Regulation and will only be addressed briefly in this article. The Transportation Standards strive to make transportation services accessible, including: buses, motor coaches, trains, streetcars, subway taxis and ferries. A few of the Transportation Standards requirements become effective as soon as July 1, 2011, including equal customer fares. Other requirements (including the requirements for courtesy seating and on-board announcements) will become effective over the next few years.

### **Compliance**

The Compliance provisions are outlined at Part V of the Regulation and provide that the director under the *AODA* shall determine the amount of any administrative penalty prescribed for breaching the *AODA*. Section 83 provides that the fines for breaching the *AODA* can be up to \$50,000.00 in the case of an individual or unincorporated organization, and up to \$100,000.00 in the case of a corporation. Although the maximum fines appear to be hefty, these amounts represent the highest amount that can be fined for breaching the *AODA*, suggesting that such amounts would only be fined in the most extreme circumstance. In the event an organization appeals a fine, the Regulation designates the "Licence Appeal Tribunal" to hear and determine the appeal.

### **Conclusion**

As can likely be appreciated from this review, the Regulation may be administratively onerous for many organizations. Regardless of the current state of an organization's accommodation policies and procedures, employers will need to spend a fair amount of time and effort to review existing policies, and to develop and formalize policies and procedures to comply with the Regulation. Before working on policies, employers should identify which provisions of the Regulation are applicable to their particular organization based on the size and characteristics of the organization to ensure all compliance deadlines are met over the next few years.

We would be happy to assist in providing assistance with respect to the application of the Regulation to your organization.

For more information, contact Deborah Hudson at (416) 408-3221, or your regular lawyer at the firm.

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