

Insight

IN-DEPTH DISCUSSION

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Canada: New Employer Compliance Obligations under the Accessibility for Ontarians with Disabilities Act, 2005 Take Effect January 1, 2016

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A number of employment requirements set forth under the Integrated Accessibility Standards ("IAS") will become effective on January 1, 2016. This will be the latest phase of the staggered implementation of the IAS regulations that were enacted under the *Accessibility for Ontarians with Disabilities Act, 2005* (the "AODA"). Through the AODA, Ontario has enacted laws and standards to improve accessibility for people with disabilities, with the stated goal of having the province be fully accessible for people with disabilities by 2025. The IAS requirements – which are phased based on the size and type of the organization – can help Ontario employers make accessibility a regular part of recruiting, hiring, and supporting employees with disabilities.

The IAS employment standards that take effect on January 1, 2016 are summarized below:

Small organizations (private sector and non-profit organizations with 1-49 employees)

Training

Employers must provide training on the IAS and the *Human Rights Code* to employees, volunteers, anyone involved in developing policies for the organization, and anyone who provides goods, services, or facilities on behalf of the organization.

Employers must also train all of their employees and volunteers on the accessibility requirements that apply to their job duties and the organization.

Feedback Processes

Employers must ensure the existing processes for receiving and responding to feedback from employees and the public are accessible to persons with disabilities. Employers must make it easy for people with disabilities to provide feedback when they are asked for it (e.g., over the telephone, by e-mail, surveys, comment cards, etc.).

Large organizations (private sector and non-profit organizations with 50 or more employees)

While large organizations were required to implement the above Training and Feedback Processes by January 1, 2015, the following new requirements come into force on January 1, 2016 for these employers.

Recruitment

During the hiring process, employers must notify job applicants that the company will accommodate the needs of people with disabilities. For example, employers can do so by including the information in the job posting or posting the information on their website.

If an applicant or a successful candidate requests an accommodation, the employer is required to engage in a cooperative process to assess the candidate's accessibility needs and arrange a suitable accommodation.

Successful applicants should be notified of the company's processes to support accessibility. Employers may do so in person, by e-mail, by phone, or by including the information in the successful applicant's offer letter.

Support Policies

Employers are required to notify their staff of the company's processes to support employees with disabilities. Employers may use a number of different tools, including newsletters, e-mails, memos, company website, bulletin boards, staff meetings, and one-on-one conversations. An employer must also notify all staff whenever the employer makes any changes to its accessibility policies.

Accessible Formats and Communication Supports

When an employee with a disability asks, employers are required to make workplace information accessible. Workplace information includes any information that employees require to perform their jobs, as well as general information that is available to employees in the workplace, such as bulletins about company policies and health and safety information. Employers should consult with their employees with disabilities to identify what is required. The format must meet the needs of the employee and may include communication supports, such as a screen reader or large print.

Accommodation Plans

Employers must create a written process for developing and documenting individual accommodation plans for employees with disabilities. In doing so, employers must:

- Assess an employee's accommodation needs and involve the employee in the development of the accommodation plan.
- Include how and when the organization will provide the employee with their personalized accommodation plan.
- Advise the employee if the organization cannot approve a request for an accommodation plan.
- Include in the plan the steps the employer will take to protect the privacy of the employee's personal information.
- Provide the accommodation plan to the employee in an accessible format.

In the individual accommodation plans, the employer should outline the substantive accommodations it will provide, how the employer will help the employees stay safe in an emergency, and the process for reviewing and updating the accommodation plans.

Support for Return to Work

Similar to the requirement for creating individual accommodation plans for employees with disabilities, employers are also required to document their processes for developing accommodation plans for employees who have been absent from work due to a disability and require accommodations in order to return to work. Employers must document their processes for developing return to work plans, including the steps the employer will take to facilitate the employee's return to work.

Performance Management

Employers must take into account the accessibility needs of employees with disabilities, as well as any individual accommodation plans, when addressing performance management, career development/advancement, and re-deployment. This may include the following:

- Reviewing accommodation plans to understand an employee's needs and whether adjustments are required to help the employee succeed.
- Providing feedback, coaching, and performance management documents in an accessible manner.
- Helping employees with disabilities learn new skills or take on more responsibilities.

Penalties

The above requirements, as described for small and large organizations, respectively, must be in place by January 1, 2016. Many of the above requirements for large organizations, with the exception of documenting accommodation and return-to-work plans, will come into force for small organizations (1-49 employees) on January 1, 2017. Failure to comply with the IAS requirements can lead to administrative monetary penalties and prosecutions. Penalties range from \$200.00 to \$2,000.00 per day for individuals or unincorporated organizations, and from \$500.00 to \$15,000.00 per day for corporations. Under the legislation, the Accessibility Directorate of Ontario has the power to conduct inspections, make director's orders, and enforce penalties.