FTR Now

AODA Update: Final Proposed Employment Accessibility Standard Released

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Employers and human resources practitioners in Ontario need to know about the latest development under the *Accessibility for Ontarians with Disabilities Act, 2005* ("*AODA*"). The Ontario government just released the Final Proposed Employment Accessibility Standard ("Final Proposed Standard"), which, if adopted as law in its current form, will broadly impact the employment practices of nearly all employers in Ontario, whether small or large, public, private or not-for-profit, and covers all aspects of the employment life cycle from recruitment to termination.

We strongly encourage employers to review and understand these proposed changes in order to start planning for when the Final Proposed Standard becomes the law.

BACKGROUND

As you may be aware, the purpose of the *AODA* is to break down the barriers that prevent or limit persons with disabilities from participating in a variety of activities in Ontario – from employment, receipt of goods and services, transportation, the built environment and information and communication – through the enactment of accessibility standards that will be enforceable as law. The *AODA* complements the requirements under the *Human Rights Code* and other laws that protect disabled persons from discrimination or harassment, and is intended to have organizations take proactive measures to address accessibility issues.

THE "INITIAL" PROPOSED EMPLOYMENT ACCESSIBILITY STANDARD

On March 19, 2009, we published an *FTR Now* entitled, "Transforming Human Resources Practices Under the Proposed *AODA* Employment Accessibility Standard". That *FTR Now* reviewed the then newly-released Initial Proposed Employment Accessibility Standard. Following a public review period, the Initial Standard was revised, and has now been submitted to the Minister of Community and Social Services for her review and approval. The Minister will review the Final Proposed Standard and ultimately develop a regulation under the *AODA* which will give the standard, or some version of it, the force of law (as is implied by this statement, the Minister has the power to further amend the Final Proposed Standard, so there may yet be changes before it becomes law).

CLASSES OF OBLIGATED ORGANIZATION RE-CONFIGURED

The Final Proposed Standard applies to public, private and not-for-profit organizations in Ontario that provide paid employment to at least 1 employee.

Private sector and designated public sector employers in Ontario have been separated into different classes based generally on the size of their workforce. Each class will have their own compliance timelines for each requirement ranging anywhere from 1 to 5 years from when the Standard becomes the law. The classes are as follows:

- Private sector organizations with 1-49 employees
- Private sector organizations with 50-200 employees
- Private sector organizations with 201 or more employees
- Designated public sector organizations with 1-49 employees
- Designated public sector organizations with 50 or more employees

- Ontario Public Service (OPS)

With the exception of small private sector organizations with less than 50 employees, all requirements of the Final Proposed Standard will apply to all employers. Small private sector organizations with less than 50 employees are exempt from several requirements, and generally have longer compliance timelines. In the text that follows, the phrase, “most classes of employers”, will generally mean all classes of employers except for the class of small private sector organizations with less than 50 employees.

ACCESSIBLE EMPLOYMENT POLICY STATEMENT AND SUPPORTING POLICIES REQUIRED

Under the Final Proposed Standard, all employers will be required to adopt or develop and maintain a policy statement which includes the following commitments:

- identify, remove and prevent barriers throughout the employment life cycle;
- develop inclusive employment systems and procedures;
- support persons with disabilities with accommodations during recruitment, assessment, selection and hiring stages;
- provide individualized accommodations to support employees with disabilities;
- respect the privacy of information related to the accommodation of potential and existing employees;
- provide alternate formats and other related communication supports and services upon request; and
- provide disability awareness training to employees.

Most classes of employers will also be required to adopt or develop, document and maintain policies that support each of the commitments set out in the policy statement.

EMPLOYERS TO PROVIDE DISABILITY AWARENESS TRAINING TO EMPLOYEES

All employers will be required to provide disability awareness training to employees related to the creation of an inclusive workplace.

Most classes of employers will be responsible for providing additional training to employees “based on areas of responsibility” in the following areas:

- accessible employment policies and procedures;
- what accommodations can be made;
- how to support disability disclosure;
- how to identify accommodations;
- how to develop an individual accommodation plan; and
- skills and strategies for supporting employees with disabilities.

The Final Proposed Standard does not specify exactly which employees are to receive this additional training, and employers may have some flexibility in determining who within their organization is to receive this additional training.

NEW REQUIREMENTS IN RECRUITMENT, ASSESSMENT, SELECTION AND HIRING

Recruitment practices will change as employers will be required to meet the specific requirements described below.

(A) PROVIDING ACCOMMODATION TO POTENTIAL EMPLOYEES

Employers will be required to inform all applicants that accommodation will be provided to applicants with disabilities to enable their participation in the recruitment, assessment, selection and hiring stages. In addition, most classes of employers will be required to adopt or develop, document and maintain a procedure to ensure that applicants with disabilities are provided with accommodation to enable their participation in the recruitment, assessment, selection and hiring stages.

(B) JOB INFORMATION

Whether for internal or external recruitment, all employers will be required to provide information upon request on the essential duties of the job for which the recruitment is being undertaken. Most classes of employers will also have to document the essential duties of the job.

(C) RECRUITMENT

All employers will be required to “demonstrate how their external recruitment process enables candidates with disabilities to receive information about job vacancies”. It is unclear what “demonstrate” entails and to whom it must be demonstrated. Employers will also be required when posting employment opportunities to set out in the posting that individual accommodation will be provided to applicants who are selected for assessment.

(D) ASSESSMENT AND SELECTION

When using assessment and selection materials and processes, employers will be required to inform the applicants who have been selected for further consideration that the materials and processes are available upon request in accessible formats, communication supports and services. Employers must also ensure that such materials and processes assess the applicants based on the essential duties of the job.

(E) HIRING

When making written job offers, employers must inform the person receiving the offer about the employer’s individual accommodation procedures.

RETAINING DISABLED EMPLOYEES

Employers will also have specific requirements in relation to retaining existing employees, which is the Final Proposed Standard’s way of describing the ongoing employment relationship.

(A) INFORMING EMPLOYEES ABOUT ACCOMMODATION PLAN AND PROCESS

All employers will be required to inform employees about the accommodation procedure, from the request for accommodation to participation in the accommodation process.

Most classes of employers will also be required to adopt or develop, document and maintain a procedure for the establishment of individual accommodation plans for employees, to explain the following:

- how an accommodation may be requested;
- how individual employees requesting accommodation can participate in the development of an accommodation plan;
- how the privacy of accommodation plan information will be managed and protected;
- how individual accommodation plans will be reviewed and modified;
- how and when input will be considered from workplace, medical and/or other experts;
- the role of the bargaining agent; and
- how disputes related to individual accommodation plans may be resolved.

Where an employee has requested accommodation, most classes of employers will be required to provide individual accommodation plans to the employee and shall:

- assess and accommodate an employee on an individual basis;
- consider input from the employee requesting the accommodation and, as appropriate, from workplace, medical and/or other experts;
- detail the accommodations to be provided;
- detail timing for the provision of accommodations;
- include individualized emergency evacuation procedures if required; and
- describe the decision-making process used to develop or refine the plan.

(B) TRAINING FOR NEW JOB DUTIES

Most classes of employers will be required to provide, as soon as practicable, new employees with information on policies and procedures that support disabled employees and on how to request an accommodation.

All employers, however, must provide employees who have accommodation needs or plans with training on the essential job duties of the new job consistent with the employee's accommodation needs or plan.

(C) PERFORMANCE MANAGEMENT AND CAREER DEVELOPMENT AND ADVANCEMENT

All employers that conduct performance management or provide career development and advancement information must do so in a way that is consistent with individual accommodation needs or plans.

(D) RETURN TO WORK

Most classes of employers will need to adopt or develop, document and maintain a procedure to facilitate the return to work of employees absent due to a disability unrelated to a WSIB injury or illness.

(E) REDEPLOYMENT

All employers that provide redeployment for employees will need to ensure the procedure applies to employees with disabilities, takes into account their individual accommodation needs or plans, and that employers consult with the employee and his or her representative if requested.

(F) SEPARATION AND TERMINATION

When providing information on separation and termination, such as a notice of layoff, employers "shall have the means" to deliver accessible formats and other related communication supports and services upon request for such communication.

(G) EMERGENCY AND SAFETY INFORMATION

All employers will be required to explain emergency and safety information including information on alarm systems and emergency evacuation procedures to employees who have identified themselves as having a disability. This obligation is proposed to be in force within 1 year of the Final Proposed Standard coming into force.

Most classes of employers will also have to adopt, develop, document and maintain a procedure to communicate and disseminate such information to employees with disabilities as soon as practicable.

ACCESSIBLE INFORMATION AND COMMUNICATIONS

In addition to the requirements set out above, all employers “shall have the means” to provide a variety of employment-related information in accessible formats and other related communication supports and services, including:

- essential duties of vacant jobs;
- employment opportunity information;
- job advertisement or posting;
- application forms;
- job testing materials to qualified and selected applicants;
- job interview to qualified and selected applicants;
- job offer to those selected for offer;
- individual accommodation plans;
- employee orientation materials;
- performance management processes;
- career development and advancement opportunities;
- return to work procedure;
- redeployment procedure;
- separation or termination information; and
- emergency and safety information.

INDICATORS OF PROGRESS

Most classes of employers will be required to report on their performance on selected indicators of progress which will be used to assist in tracking progress toward accessible employment. The Final Proposed Standard does not prescribe the specific indicators, but does suggest that the Ontario government consider providing support materials in this regard.

CONCLUSION

As can be seen by this fairly lengthy summary of the Final Proposed Standard, the proposed changes will transform human resources practices by moving beyond the reactive complaints-based approach of the Ontario *Human Rights Code* to a more proactive approach. For additional information on the Final Proposed Standard, please visit the Ministry’s website:

http://www.mcss.gov.on.ca/mcss/english/pillars/accessibilityOntario/accesson/business/employment/

Hicks Morley has been following and reporting on developments under the *AODA* since its inception, and has a variety of *AODA*-related materials available in the FTR Now section of our website’s Resource Centre.

We will continue to monitor and report on developments of this and other proposed *AODA* standards. For further information, please contact Leola Pon (Toronto) at 416.864.7294 or Paul Broad (London) at 519.931.5604, or your regular Hicks Morley lawyer.

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