FTR Now

ESA and AODA Changes Employers Should Note

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Employers should be aware of recent changes related to the *Employment Standards Act, 2000* (ESA) – a new Hours of Work and Overtime Pay information sheet – and to the Customer Service accessibility standards under the *Accessibility for Ontarians with Disabilities Act, 2005* (AODA). These changes are discussed in this *FTR Now*.

ESA – New Hours Of Work Information Sheet

The ESA establishes a variety of rules related to hours of work, including setting limits on hours of work, and establishing minimum time-off requirements. As part of the regulation of hours of work, the ESA allows employers to enter into agreements with employees (or with trade unions or other associations that represent employees) permitting excess hours of work – i.e. hours in excess of the daily and weekly maximum hours of work.

For employers of non-unionized employees, there are three basic requirements that must be met for a valid excess hours of work agreement:

1. There must be a written agreement establishing the excess hours to be worked.
2. In the context of a weekly excess hours of work agreement, the employer must obtain the approval of the Director of Employment Standards.
3. The employer must provide each non-union employee with a copy of the most recent information sheet relating to hours of work and overtime pay published by the Ministry of Labour. The information sheet is to be provided to the employees before they sign the excess hours of work agreement, and the agreement must contain a statement that it has been provided.

Earlier this year, the Ministry updated the information sheet for the first time since 2005. The new information sheet is entitled “Information for Employees About Hours of Work and Overtime Pay”, and can be found on the Ministry’s website here:

https://www.labour.gov.on.ca/english/es/pubs/hours/infosheet.php

For employers who sign excess hours of work agreements with their non-union employees (daily or weekly), it is necessary to begin to provide the new information sheet to employees on a go-forward basis.

Some employers may have incorporated language into their existing excess hours of work agreements that specifically refer to the previous information sheet – for example, “You acknowledge that you have been provided with a copy of the most recent version of the Ontario Ministry of Labour information sheet published under s. 21.1 of the *Employment Standards Act, 2000*, dated March 1, 2005 and entitled “Information for Employees About Hours of Work and Overtime Pay.”

Employers who have used this type of specific language will need to amend their excess hours of work agreements, and could do so with a minor change to remove the reference to the 2005 date: “You acknowledge that you have been provided with a copy of the most recent version of the Ontario Ministry of Labour information sheet published under s. 21.1 of the *Employment Standards Act, 2000* entitled “Information for Employees About Hours of Work and Overtime Pay.”

AODA– expanded training requirements and other changes

On July 1, 2016, there will be changes coming to the accessibility standards under the AODA. Currently, the accessibility standards are contained in two separate regulations:

- Ontario Regulation 429/07 – Accessibility Standards for Customer Service; and
- Ontario Regulation 191/11 – Integrated Accessibility Standards (which addresses the areas of Information and Communication, Employment, Transportation and Design of Public Spaces).

Effective July 1st, the government will be combining these two regulations so that the Customer Service requirements will now be part of the Integrated Accessibility Standards. Coincident with that change, the government has made a number of changes to the requirements of the Customer Service standards to make them more closely align with the Integrated Accessibility standards.

The key changes can be summarized as follows:

- **Expanded Training Requirements** – Specialized training on customer service must now be provided to *all employees and volunteers* of a provider (previously, the training was required only for employees and volunteers who provide goods or services to the public or other third parties).
- **Service Animals** – There is an expanded list of regulated health professionals who can certify that an individual requires the animal for needs related to a disability (which is sufficient to make it a “service animal” for AODA purposes).
- **Support Persons** – The revised standards narrow the scope of when a person with a disability can be required to be accompanied by their support person to situations where there is a legitimate health and safety concern if the person is unaccompanied and where there are no reasonable alternatives available. Where a support person is required to accompany a person with a disability for health and safety reasons, the provider must waive any applicable admission fees for the support person.
- **Feedback Processes** – Customer Service specific feedback processes must now solicit feedback on the accessibility of the process itself and any alternate means provided for under that process.
- **Small Organizations and Documentation** – The revised regulations will redefine a “small organization” for the Customer Service standards as being one with at least one, but fewer than 50 employees. Previously, the upper threshold was set at 20 employees. This means that for employers with 20-49 employees, they will no longer need to document their accessible customer service policy or make it publicly available (note that the change in documentation requirements only applies to employers in the private or not-for-profit sectors, and not to designated public sector organizations). Note, however, that all employers with 20-49 employees will continue to be required to file compliance reports.

In addition to these changes, there were a number of other, less substantial, changes to better align the combined regulations. For example, the Customer Service standards now apply to providers of “goods, services *or facilities*”, which was likely implicit in the notion of a “service”, but is now explicitly set out in the standards.

All organizations will be affected by some or all of these pending changes to the AODA. You will want to review your AODA policies and practices to ensure that they incorporate the new requirements. For organizations that will be required to conduct additional training of employees and volunteers, you will want to ensure that the training is underway and, ideally, completed before your next compliance reporting deadline.

If you have any questions about these changes, please feel free to contact your regular Hicks Morley lawyer.

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