The Clock Is Ticking On AODA Compliance

Many private sector employers have received email reminders from the Ministry of Economic Development, Employment and Infrastructure to file an Accessibility Report by December 31, 2014. Even if you have not received an email reminder, you may have heard advertisements on the radio regarding this compliance deadline. The Ontario Government is taking extra steps to ensure that employers are aware of this upcoming reporting obligation, and we anticipate that it will be more active with respect to compliance measures for those organizations who fail to file Accessibility Reports.

Many employers are already familiar with the Accessibility for Ontarians with Disabilities Act, 2005 (the "AODA") and the Accessibility Standards that have been developed. The first standard was the Customer Service Standard. Shortly thereafter the Integrated Accessibility Standard was enacted which contains the remaining accessibility standards. Under the AODA, there are rolling deadlines for the various requirements under the Accessibility Standards. This has caused confusion for a number of employers.

Private sector employers will be required to file an Accessibility Report every three years. The Accessibility Report is a self-reporting compliance mechanism. It is important that organizations are compliant with the applicable AODA requirements as non-compliance will need to be disclosed on the Accessibility Report. Like filing and paying your taxes, failing to file an Accessibility Report and failing to be compliant are each separately unlawful.

Requirements for Private Sector Organizations with 50 or more employees

Below are the requirements under the Integrated Accessibility Standard that private sector organizations with over 50 employees in Ontario have had to be compliant with since January 1, 2014 (keep in mind that "employee" includes full time, part time, temporary and contract workers, and may also include individuals characterized as "independent contractors" depending on the circumstances):

- **Accessibility Policy:** Organizations must create an Accessibility Policy pertaining to their obligations under the Integrated Accessibility Standard. This policy is in addition to the Customer Service Standard Policy, as that policy only addressed the requirements under the Customer Service Standard.
- **Accessibility Plan:** Organizations must craft an Accessibility Plan which outlines how they intend to meet the requirements under the Integrated Accessibility Standard. The plan must be reviewed every 5 years. Since the compliance deadlines for the requirements under this standard are staggered,

this is a useful tool to keep your organization on track.

- **Self-Serve Kiosks:** Organizations that have self-serve kiosks must have regard for accessibility features when designing, procuring or acquiring any self-serve kiosks. Organizations are not required to replace existing kiosks. This requirement only applies where new kiosks are being .procured or acquired.
- **Web Accessibility:** Organizations launching a new website or are making changes to an existing website must meet the accessibility criteria in the WCAG 2.0 Level A (please click here to access the WCAG). With respect to existing websites, this applies where the existing website is undergoing a "significant refresh". Unfortunately this term is not defined in the legislation. Organizations should seek legal advice if they are making any website changes in the coming year in order to determine whether they must be compliant. From a customer service standpoint, a more accessible website will open up your organization to a wider audience and should be encouraged even if this requirement does not yet apply. By January 1, 2021, all websites and web content, regardless of whether it is new, must be compliant with the WCAG 2.0 Level AA (except for success criteria 1.2.4 pertaining to live captioning and success criteria 1.2.5 pertaining to pre-recorded audio descriptions).

In addition to the requirements above, some employers may not be aware of pre-existing obligations under the Integrated Accessibility Standard including the requirements to prepare individualized emergency response information for employees with disabilities where necessary and to ensure that any emergency procedures or public safety information is made available in an accessible format upon request.

By January 1, 2015, large private sector organizations have additional obligations with respect to training and feedback. These organizations must ensure that all employees, volunteers, persons who assist in developing the organization's policies and all third parties that provide goods and services on the organization's behalf have been provided with training on the requirements under the Integrated Accessibility Standard and the *Human Rights Code* as it pertains to people with disabilities. In addition, large private sector employers must also ensure that any feedback processes in place are accessible to people with disabilities by providing for accessible formats and communication supports upon request.

Employers that are unaware of these obligations should take steps in order to be compliant. We have assisted employers in various sectors in achieving compliance through the preparation of tailored AODA policies and training programs.

Enforcement of the AODA has had a slow start. However, some employers who failed to file the first Accessibility Report pertaining to the Customer Service Standard requirements were issued administrative penalties. In addition, as we blogged previously, the License Appeals Tribunal, which is the tribunal with jurisdiction over the AODA, has rendered four AODA compliance decisions. Although the fines in those cases may not have been significant, it signals a shift toward increased AODA enforcement.

In order to avoid penalties, we urge organizations to make AODA compliance a priority and to ensure that an Accessibility Report is filed before the December 31st deadline. As with all compliance and due diligence, a top-down, leadership level approach is necessary to establish due diligence and the right organization-wide motivation.

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Article by Jessica Young