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Proposed Employment Accessibility Standard

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Submitted to:

Standards Development Committee
Accessibility Directorate of Ontario
Outreach and Compliance Branch

About the Ontario Bar Association

The OBA consists of 18,000 lawyers from a broad range of sectors, including those working in private practice, government, non-governmental organizations and in-house counsel. Our members have, over the years, analyzed and provided comments to the Ontario government on numerous legislation and policy initiatives.

Employment Accessibility Standard

Feedback Submission From The Ontario Bar Association

(Where we have excerpted passages from the proposed Standard, we have provided them in *italics*.)

“Employment” is an identified category in the Ontario *Human Rights Code*. Pursuant to s. 5 of the *Code*, anyone subject to its provisions is entitled to equal treatment with respect to employment without discrimination because of, among other categories, disability (s. 5). The Employment Accessibility Standard is an attempt to expand the availability of opportunities for employment for persons with disabilities.

The term “employee” does not appear to be defined and in the case of law and other professional firms would exclude partners and principals. We wonder if the term “persons” should be used instead

First of all, the Standard creates six categories of organizations, based on number of employees. Categories A-E pertain to private (profit and not-for-profit) organizations. Category F is the public sector.

Category A is for organizations that employ one to five employees. Restricting our comment to law firms, we question whether it is realistic or even fair to require such very small firms to have to fully comply with the Standard. The demands of the standard for these firms may be cumbersome and for some prohibitive. We are curious about the rationale for establishing a category with such a small number of employees. In our view, employers/firms with fewer than a total complement of nine persons will be significantly challenged to adhere to and comply with this particular Regulation. We question whether the Class A should be one to nine employees/persons. We also question whether Class B should be split into two sizes: 10-29, and 30-49 persons.

Our view is that consideration should be given to having the following Clauses apply to B Class firms/organizations/companies:

- 4.1.2** *Organizations shall develop, adopt, document and maintain a procedure to ensure that accommodation shall be provided to applicants with disabilities to enable their participation in the recruitment, assessment, selection and hiring stages of the employment life cycle.*

4.2.2 *For recruitment purposes, organizations shall document the essential duties for vacant jobs.*

4.4 *Assessment and selection requirements.*
When assessing and selecting job applicants, organizations shall:

...

b) Ensure that accommodations allow for assessment against the essential duties of the job.

4.5 *Hiring requirements.*

5.1 *Providing individual accommodation plans for employees.*
When requested, organizations shall provide individual accommodation plans for employees.

Organizations shall develop, adopt, document and maintain procedures for:

- a) how an accommodation may be requested;*
- b) how requester shall be consulted;*
- c) how privacy of plan information shall be managed and protected;*
- d) how plans are to be reviewed and modified.*

Organizations shall communicate plan procedure to all employees.

5.2.2 *Organizations shall maintain documented employee orientation.*

5.5 *Return to work (Non-WSIB) requirements.*

5.6 *Redeployment requirements.*
Where organizations have redeployment procedures, these shall apply to employees with disabilities, include assessment of individual accommodation plans and consultation with employee or their representative.

5.7 *Separation and termination requirements.*

5.8.2 *Organizations shall develop, adopt, document and maintain a procedure to make emergency and public safety information available to employees with disabilities using formats or methods compliant with the Accessible Information and Communications standard. Emergency and public safety information shall include, but not be limited to...*

6 *Indicators of progress*

Organizations shall identify indicators or progress towards accessible employment and collect data that measures performance against selected indicators.

Category F is the public sector, and specifically identifies the broader public sector for the first time in a draft standard. By “broader” public sector, the draft identifies: municipalities, universities, colleges, school boards and hospitals. In our view, most of the public sector already has many of the identified policies and procedures in place.

With respect to the requirement for a Policy Statement (**Article 3.2**), the Standard suggests a presumption that every employer who advertises a position will have to *anticipate* a response from a candidate with a disability. So, all job advertisements and postings must be accessible, and must be forwarded to those institutions which cater to placements of persons with disabilities. What about identifiable exempted categories (firefighters, other occupations where “ability” is a *bona fide* occupational requirement?) We do not see any exemptions to the Standard.

3.2 (Committee Comments) *The Committee encourages the Government to provide obligated organizations with materials or tools to support implementation.*

Later in the document (in the Costing Report), the Accessibility Directorate identifies itself as the logical arm of government that will prepare material for distribution to employers. We would like to see an explicit commitment from the Directorate, or a more forceful demand that the central government (Ministry of Government Services?) be responsible for creating and disseminating this material. The Ontario Labour Relations Board, for one, has been contacted by a private vendor to sell us product and training relating to the Customer Service Standard. We would like to see the government specifically responsible for creating and disseminating the necessary tools for compliance. Also, we submit that the Committee should encourage the government to provide funding to assist employers with compliance. The standard does not specify what organization will be responsible for enforcing the requirements of the Standard. This needs to be clarified.

3.2(e): While some accommodation only involves equipment used by one worker such as a computer or telephone, other accommodation will necessarily affect co-workers and even the physical lay-out of a workplace? How can privacy of information be respected in the latter situation? Often when a workplace develops an individual accommodation plan—particularly a small workplace with, for example, four employees— this will necessarily have to involve all of its employees in creating the plan. Accommodation plans cannot be developed in a vacuum. Privacy will have to be compromised.

4.3.3 *When recruiting, information and contact details to be provided to organizations which provide employment services to persons with disabilities.*

Who is going to fund the employment services organizations to collect and disseminate job postings from **every employer in Ontario with 6+ employees**?!

This provision is very vague. For example, what does “organizations which provide employment services to persons with disabilities” mean? Does this mean all such organizations in the province, or only in the place the employer is located? Does it include organizations which provide services to both persons who are able-bodied and to those who are disabled?

Because this provision is vague, it will be difficult for employers to know whether they have met the requirement or not. This provision should be clarified to provide details about which of such organizations need to be contacted.

Does this requirement apply in every circumstance? If the employer advertises in media which is widely available such as newspapers and magazines does this still apply? If the employer advertises in a place which persons working in the field would know to check, such as, for example the Ontario Reports for legal positions and the JobMart for government employees, would this still apply? We submit that this should not apply to positions advertised in this way as employment services for persons with disabilities presumably would have access to newspapers and magazines in general circulation. Also, if such employment services are being provided to specialized groups such as lawyers or government employees, presumably they would already know where relevant jobs are advertised. The application of this provision should be clarified and there should be exemptions.

Does this requirement apply to job competitions restricted to existing workforce, or does it apply only to open competitions? Are the employment services in 4.3.3 generally involved only in open competitions? We submit that this should be clarified and that probably the need for assistance by persons with disabilities would only exist in open competitions as in restricted competitions they will already be in the workforce in issue.

What about employers who don't advertise or post jobs? Will this impose an obligation where there was none previously? Perhaps the provision should apply only to posted or advertised positions.

4.4 Assessment and Selection requirements

When assessing and selecting job applicants, organizations shall:

....

b) ensure that accommodations allow for assessment against the essential duties of the job.

The meaning is unclear here. Does this mean that the selection requirements should allow organizations to assess whether the person with the disability can perform the essential duties of the job? If so, this is what should be said. If not, this needs to be further clarified.

Consideration should be given to having this Clause apply to B Class firms/organizations/companies

5.1 *When requested, organizations shall provide individual accommodation plans for employees.*

Organizations shall develop, adopt, document and maintain procedures for:

- a) how an accommodation may be requested;*
- b) how requester shall be consulted;*
- c) how privacy of plan information shall be managed and protected;*
- d) how plans are to be reviewed and modified.*

Organizations shall communicate plan procedure to all employees.

How can this be accomplished given the privacy requirements? How can co-workers not know of the plan and procedure if they are part of the plan? If an employee needs accommodation, that may affect co-workers who will have to be apprised of the accommodation.

Organizations shall have a dispute resolution procedure for accommodation plans.

Individual accommodation plans shall:

- a) assess and accommodate individual employees;*
- b) consider input from workplace, medical or other experts;*
- c) detail the accommodations;*
- d) include individual emergency evacuation procedures;*
- e) include decision-making process used to develop the plan.*

Most of this must already be happening at those organizations where persons with disabilities are being accommodated. Employers with fewer than 10 employees will be hard-pressed to be able to accomplish this without outside assistance or support.

I don't think it is possible to expect an enumeration of more detailed or specific components for these plans. As the draft standard states, these plans must be individual and tailored to identified disabilities. The idea that an organization must develop, adopt, document and maintain such plans from recruitment onward is daunting.

There are extensive provisions in the *Workplace Safety and Insurance Act* (WSIA) covering return to work, rehabilitation (now labour market re-entry), accommodation and re-employment for persons with work injuries and diseases (see ss.40, 41 and 42 of WSIA). It is unclear how and why the requirements of this standard should apply to accidents covered by the WSIA, an area that has already been extensively regulated. This will add unnecessary cost and confusion. We submit that it should be clarified that these provisions do not apply to a workplace injury or disease to which WSIA applies.

5.2.2 *Organization shall document orientation records.*

Surely at this stage the disability has been identified and the necessary accommodations provided for, unless this is a requirement for every employee to be hired in the province in the future.

5.2.3 *New employees shall be given orientation re the organization and training on essential duties consistent with individual accommodation needs or plans.*

This is unclear. New hires normally receive orientation in a workplace (at the very least, a buddy or mentor). As for the training component, what does it entail: the new hire's duties *vis à vis* a co-worker with an accommodation plan? Whose essential duties are being spoken of?

5.6 *Where organizations have redeployment procedures, these shall apply to employees with disabilities, include assessment of individual accommodation plans and consultation with employee or their representative.*

This seems self-evident. On the other hand, the submissions concerning the *Workplace Safety and Insurance Act* (WSIA) under 5.1 also apply here.

5.7 *Separation and termination information shall be available in accessible formats or methods.*

Also seems self-evident.

5.8.1 *Emergency and public safety information must be available in accessible formats and methods and must include: WHMIS, health and safety procedures and systems, and emergency evacuation procedures. Compliance is immediate for public sector and within three months of passage into law for all others.*

Organizations must start working on making this material accessible **now** in order to meet the short compliance timeline. We recommend that the compliance standard be extended for public institutions to be the same as for other institutions.

6. *Organizations shall identify indicators or progress towards accessible employment and collect data that measures performance against selected indicators.*

No indicators are prescribed and we submit that it this is appropriate. Individual employers should have the discretion to develop indicators which are appropriate for their particular workplace. We strongly oppose the development of “quotas” for employment of persons with disabilities.