

What is the AODA and how does it apply to the construction industry?

Leah Simon

July 3, 2013



There is a perception among many in the construction industry that the accessibility requirements under Ontario's *Accessibility for Ontarians with Disabilities Act* ("AODA") do not apply to this industry. The reason for this perception is not entirely clear. What is clear is that the perception is incorrect. Here's what construction industry members need to know...

Legal requirements

The AODA is provincial legislation aimed at making Ontario accessible to persons with disabilities by the year 2025. To accomplish this goal, the provincial government has enacted mandatory "Accessibility Standards" targeted at key areas of daily living including customer service, transportation, employment, information and

communication and the built environment.

The Accessibility Standards apply to every organization that provides goods, services or facilities to the public or **to other third parties** and that has at least one employee in Ontario.

While it is arguable most construction organizations do not provide goods, services or facilities directly to the general public, they commonly do provide goods and services to third parties. For example, a concrete forming company provides goods and services to a general contractor which in turn provides goods and services to a property developer or owner. Accordingly, the AODA will and does apply to most construction organizations.

Business Rationale

There are also good business reasons why the construction industry will want to become familiar with the requirements of the AODA.

Within the next several years, most organizations operating in Ontario will be required to ensure certain public spaces within and outside their premises are constructed in a manner that is accessible to persons with disabilities. This includes: (i) recreational trails and beach access routes, (ii) outdoor eating and play areas, (iii) exterior paths of travel (e.g., sidewalks, ramps, stairs), (iv) off and on street parking spaces and facilities and (v) service areas (e.g., waiting areas, service counters, etc.).

Construction organizations, to the extent they will be called upon to construct these public spaces, will therefore need to understand and be in a position to ensure their clients' construction projects are compliant with the AODA. More about this shortly.

Key Dates For Compliance

As of today's date, the *Accessibility Standards for Customer Service*, ("the Customer Service Standards") and the Integrated Accessibility Standards (the "Integrated Standards"), comprised of the Employment Standards, Transportation Standards, Information and Communication Standards and Design of Public Spaces Standards, are in force.

The Customer Service Standards

The Customer Service Standards require organizations to develop and implement policies, procedures and practices aimed at ensuring goods and services are provided in a manner that is accessible to persons with disabilities, and that employees are trained on how to provide accessible customer service. Specific accessibility issues identified in the Customer Service Standards must also be addressed including for example:

- The use of assistive devices by persons with disabilities to obtain, use or benefit from the organization's goods, services or facilities
- The use of service animals and support persons by persons with disabilities when accessing goods, services or facilities on the organizations premises.
- Providing notice of temporary disruptions to services or facilities used by persons with disabilities to access the organization's goods, services or facilities.

The private sector was required to have complied with the Customer Service Standards by **January 1, 2012** and organizations with 20 or more employees were required to have filed an online report with the government confirming compliance by **December 31, 2012**.

Meeting the AODA's compliance and filing deadlines is important because enforcement initiatives will in part be targeted at organizations that fail to file online compliance reports.

The Integrated Standards

The implementation of the Integrated Standards is taking a different course than the Customer Service Standards. Rather than requiring organizations to comply with all of the requirements of the Integrated Standards at once, accessibility requirements are being phased in over time, between 2011 and 2021.

In addition, not every organization to which the Integrated Standards apply is obligated to comply with every accessibility requirement within the broader Integrated Standards. The Integrated Standards separate organizations into different classifications. In the private sector there are: (i) organizations with 50 or more employees ("Large Organizations") and (ii) organizations with at least 1 but fewer than 50 employees ("Small Organizations"). The manner in which an organization is classified determines which accessibility requirements are applicable to the organization and the date upon which the organization will be required to comply.

There are two accessibility requirements under the Integrated Standards with which all organizations in the private sector were required to have complied as of January 1, 2012:

- Organizations were and continue to be required to provide emergency procedures, plans or public safety information that the organization makes available to the public in an accessible format or with appropriate communication supports (i.e. captioning, plain language), as soon as practicable, upon request.

- Organizations must provide individualized workplace emergency response information to employees who have a disability, if the disability is such that the individualized information is necessary and the employer is aware of the need for accommodation due to the employee's disability.

Will your organization be compliant on January 1, 2014?

Beyond the requirements and deadlines identified above, accessibility requirements under the Integrated Standards applicable to the construction industry are being phased in between January 1, 2014 and January 1, 2021.

Large Organizations are required to comply with the following accessibility requirements as of **January 1, 2014**:

- Develop, implement and maintain policies regarding what the organization will do to meet the requirements of the Integrated Standards and become more accessible.
- Develop a multi-year accessibility plan that addresses how the organization will (i) meet accessibility requirements under the Integrated Standards (ii) remove existing barriers to accessibility and (iii) prevent and remove future barriers to accessibility.
- Ensure new websites and web content on those sites and websites that undergo a significant refresh meet accessibility requirements set out in the Web Content Accessibility Guidelines (WCAG) 2.0 Level A.

Small Organizations will not be impacted by additional accessibility requirements as of January 1, 2014. However, as of **January 1, 2015**, Small Organizations will be required to have developed and implemented policies regarding what the organization will do to meet the requirements of the Integrated Standards and become more accessible. Unlike Large Organizations, Small Organizations need not put these policies in writing.

Accessibility of Public Spaces

As noted earlier, the Design of Public Spaces Standards is focused on removing barriers to accessibility in public spaces. As with the other requirements of the Integrated Standards, compliance deadlines depend on how the organization is classified. Large and Small Organizations will be required to comply when constructing or redeveloping public spaces covered by the legislation on or after **January 1, 2017** and **January 1, 2018** respectively. Earlier timelines apply to the Ontario government and some public sector organizations.

Bottom Line for the Construction Industry...

Whatever you may have heard or understood to the contrary, the AODA applies to and affects the construction industry. Whether because it's the law or simply good business, the time to become, or begin working to become, AODA compliant, is now.

Leah Simon is a lawyer with Sherrard Kuzz LLP, one of Canada's leading employment & labour law firms representing the interests of employers. Leah can be reached at 416.603.0700 (Main), 416.420.0738 (24 Hour) or by visiting www.sherrardkuzz.com.

The information contained in this article is provided for general information purposes only and does not constitute legal or other professional advice. Reading this article does not create a lawyer-client relationship. Readers are advised to seek specific legal advice from Sherrard Kuzz LLP (or other legal counsel) in relation to any decision or course of action contemplated.