

Accessibility for Ontarians with Disabilities Act: Integrated Accessibility Standards Regulation & Human Rights Code

Davis Group of Companies Accessibility Plan

INTRODUCTION

Throughout the last sixty years “disability rights” and accessibility for persons with disabilities have received increasing attention. Today, 15.5% of Ontario’s population, or 1.85 million people, live with a disability and this number will continue to grow as the population ages. Unfortunately, barriers to accessibility continue to exist in many areas key to daily living, including for example, access to goods and services, facilities, transportation, employment, information and physical spaces.

In Ontario, two important laws are aimed at improving accessibility and protecting the rights of people with disabilities: the *Accessibility for Ontarians with Disabilities Act* (“AODA”); and the *Human Rights Code* (“Code”). Though their goal is similar, the AODA and Code seek to achieve this goal through different means. The purpose of this training program is to teach participants how the AODA and Code work independently and together to promote accessibility for persons with disabilities.

It is important to understand that neither the AODA nor Code trumps the other. Each organization must comply with its obligations under the Code and the AODA. Where the two laws conflict, the legislation providing the greater level of accessibility shall prevail.

What is a disability?

“Disability” is defined identically under the AODA and Code, as follows:

- a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device;
- b) a condition of mental impairment or a developmental disability;
- c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language;
- d) a mental disorder; or

- e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*.

A few important things to note:

- This definition is not an exhaustive list of all of the conditions which may be found to be a disability.
- Whether a medical condition constitutes a disability under the AODA or the Code is a legal question the answer to which depends on whether the condition impairs or is perceived to impair a person's dignity or ability to fully participate in society or the workplace.
- A condition need not be permanent to be a disability. Rather, it is the level of impairment and its impact on the person, not the duration of the condition, which must be considered

What is the *Accessibility for Ontarians with Disabilities Act*?

The AODA was enacted in June 2005 but it did not begin to impact the private sector until January 1, 2012.

The purpose of the AODA is to improve accessibility across the province and make Ontario accessible to people with disabilities by the year 2025. To accomplish this goal the AODA requires organizations and their employees to take proactive steps to identify, prevent and, to the extent possible, eliminate barriers to accessibility.

These proactive steps are set out in "Accessibility Standards" which promote accessibility for people with disabilities in different areas key to daily living. The current Accessibility Standards are as follows:

1. Customer Service Standards

The Customer Service Standards were the first Accessibility Standards to come into force under the AODA. The Customer Service Standards require organizations to implement policies, practices and procedures aimed at ensuring every organization's goods and services are accessible to persons with a disability.

Private sector organizations were required to comply with the Customer Service Standards by January 1, 2012. Any person at Davis Groups of Companies ("Davis") who is responsible for providing goods and services to clients or the public has already been provided with training on the Customer Service Standards. If you have any questions about the Customer Service Standards training please contact Mike Davis.

2. Integrated Accessibility Standards

The Integrated Accessibility Standards ("IAS") were the second Accessibility Standards to come into force under the AODA. The IAS requires organizations to take proactive steps to improve accessibility in several key areas, including the following that apply to Davis:

- i. **General Accessibility** – Every organization is required to develop an Accessibility Policy and Accessibility Plan that confirms the organization’s commitment to accessibility and sets out how the organization will achieve compliance with the requirements of the IAS. Every organization is also required to provide employees with training on the requirements of the IAS and the Code as it relates to persons with disabilities.
- ii. **Information and Communication** – Every organization is required to take steps to ensure information and communications about the organization’s products, services and facilities are accessible to persons with disabilities.
- iii. **Employment** – Every organization is required to develop and implement policies that promote accessibility at every stage of the employment relationship.
- iv. **Design of Public Spaces** - Every organization is required to ensure that if and when the organization renovates or newly constructs certain types of public spaces (e.g., parking garage) the organization incorporate accessibility features.

Organizations are not required to meet all of the IAS at one time. Instead the requirements are being phased in gradually between 2012 and 2021.

What is the *Human Rights Code*?

The AODA is new legislation. However, for many years prior to the AODA, people with disabilities have been protected under the Code which prohibits discrimination on the basis of several grounds, including “disability”.

The Code imposes a duty on every organization to accommodate an individual who by reason of disability may not have equal access to goods, services or facilities, or who requires such accommodation to fulfill the obligations of the employment relationship.

However, this duty to accommodate is not without limits. The Code recognizes that the right of an employee to be free from discrimination in the workplace must be balanced with the employer’s right to conduct its business in a safe and economical manner. Accordingly, an employer will not have breached its duty to accommodate under the Code if to do so would result in “undue hardship” to the employer. What constitutes “undue hardship” is fact-specific to the particular employer.

What will you learn from this training program?

As an employee of Davis you have an important role to play in ensuring Davis meets its obligations under the IAS and the Code and that its business prioritizes accessibility for persons with disabilities. In this training program you will learn about (i) Davis’s obligations under the AODA and the Code, (ii) what Davis is doing to meet those obligations and (iii) what you as an employee are required to do to promote accessibility for persons with disabilities.

You are required to read this training program. If you have any questions don't hesitate to ask Mike Davis. When you are confident you understand the information provided in this training program you are required to sign and date the acknowledgment on the last page.

I. IAS – GENERAL ACCESSIBILITY

Davis has established a **policy** that documents its commitment to improving accessibility for people with disabilities in a timely manner by meeting the requirements of the IAS (the “Accessibility Policy”). Davis has also created an accessibility **plan** which describes in more detail, how it will meet the requirements of the IAS (the “Accessibility Plan”).

As explained above, the requirements of the IAS are being phased in over time between 2012 and 2021. The Accessibility Plan provides a roadmap for Davis to follow during this transition period. The Accessibility Plan identifies:

- i. Each accessibility requirement.
- ii. What Davis will do to meet it.
- iii. Who within the organization is responsible for taking the steps necessary to meet the requirement.
- iv. The date by which the requirement will be met.

The Accessibility Plan will be updated at least once every five (5) years.

Davis's Accessibility Policy and Plan are posted on its website at:
<http://www.davisgroup.net/accessibility.html>. Please take some time to review these documents.

What are *your* responsibilities?

A copy of Davis's Accessibility Policy and Plan must be provided to any person who asks to see either or both of them. If you receive such a request direct the individual to Davis's website but also ask whether he or she would like a printed version of the documents.

Occasionally, you may be asked to provide the Accessibility Policy or Plan in an Accessible Format for a person with a disability. The term “Accessible Format” means a format that is an alternative to standard print and is accessible to persons with disabilities. This may include large print, Braille, and audio electronic formats such as a DVD or CD.

If you receive a request to provide the accessibility policy or plan in an Accessible Format you should:

- i. Ask the person what format would be accessible for them. If you can provide the documents in the requested format easily (*e.g.*, by enlarging the print) you may provide the document in that format.

- ii. If the requested format cannot be easily provided or you are unsure about how to respond to the person's request you should ask for the person's contact information and tell them that somebody from Davis will contact them about their request shortly. You must then refer the person's request to Mike Davis.

II. ACCESSIBILITY OF INFORMATION AND COMMUNICATION

Both the IAS and the Code require every organization to make information and communications about the organization's goods, services and facilities accessible to a person with a disability upon request. For example:

- A person who is blind may not be able to read a marketing brochure about the services offered by an organization.
- A person with a hearing disability may not be able to follow an instructional video about how to use a product.
- A person with a cognitive disability may have difficulty reading and/or understanding a pricing model.

IAS – INFORMATION AND COMMUNICATION STANDARDS

Under the IAS, the following terms have the following meanings:

- **Accessible Formats** – refers to formats that are an alternative to standard print and are accessible to people with disabilities. Accessible formats may include large print, Braille, and audio electronic formats such as DVDs, CDs.
- **Communication Supports** – refers to supports that individuals with disabilities may need to access information. Some examples include plain language formats, sign language, as well as reading out loud, captioning, or using written notes to communicate.

Accessible Formats and Communication Supports

By **January 1, 2016** every organization is required, upon request, to provide in an Accessible Format or with Communication Supports, information or communications it makes available about its goods, services or facilities. This must be done in a timely manner and at no additional cost to the person making the request.

For example, Davis ordinarily provides clients with price lists and product specific marketing information. This information is generally provided in hard copy or electronically in a pdf format. These formats may not be accessible to a client who, due to a disability, uses an electronic screen reader to read information. In this circumstance Davis would be required to consult with the client to determine how the information can be made accessible for them. In this circumstance an Accessible Format may be providing the information in a word document so

that it can be read by a screen reader or the client may prefer a Communication Support (e.g. an employee of Davis explains the pricing or marketing information to the client verbally).

Note: the requirements of the Information and Communication Standards do not apply to the following types of information:

- a) Products and product labels.
- b) Information or communication that it is not technically feasible to convert to an Accessible Format.
- c) Information that the organization does not control directly or indirectly through a contractual relationship.

If information or communication cannot be converted as described in point b), the organization must provide an explanation to the requesting person as to why the information or communication is unconvertible and a summary of the unconvertible information or communication.

Accessible Websites and Web Content

In today's world, many people get information about an organization's goods, services or facilities from the organization's website. For this reason, by **January 1, 2014**, the IAS requires every organization to begin working towards creating an accessible website and web content in accordance with international accessibility standards called the Web Content Accessibility Guidelines 2.0. This is an important obligation because an inaccessible website can be a complete barrier to a person with a disability.

For example, a person who is blind may use a screen reader to navigate a website. A screen reader will provide the individual with an audio explanation of the content on the website. However, unless graphics on a website are coded correctly a screen reader will be unable to identify and explain the graphic being displayed.

To comply with the obligation to create an accessible website Davis is ensuring any significant changes or updates to its website incorporate the accessibility features mandated by the IAS. By **January 1, 2021** Davis's entire website will be accessible.

Accessible Feedback Procedures

By **January 1, 2015** every organization is required to ensure that any process the organization has for receiving and responding to feedback from clients, members of the public or employees is accessible to persons with disabilities. In order to do this the organization must arrange for the provision of Accessible Formats or Communication Supports upon request.

Davis does not have formal procedures for accepting or responding to feedback from clients, the public and employees. However, whenever feedback is offered or solicited by Davis or where Davis is responding to feedback it will endeavour to accommodate any person who, due to a disability, requires Accessible Format or with Communication Supports in order to make Davis' feedback procedures accessible.

THE CODE – ACCOMMODATING REQUESTS FOR ACCESSIBLE INFORMATION AND MORE

Under the Code every organization has an obligation to ensure that information and communications about the goods, services and facilities offered are accessible to persons with disabilities. This obligation is described as a *duty to accommodate a request for information in an accessible format up to the point of undue hardship*.

While the obligations under the Code and IAS are described differently, they are substantively very similar. Just like under the IAS, under the Code Davis would accommodate a client by providing information or communications in an Accessible Format or with Communication Supports.

However, the obligation to provide accessible goods, services and facilities is broader under the Code than it is under the IAS and it includes more than simply accommodating requests to provide information and communications in an Accessible Format or with Communication Supports. Under the Code an organization must accommodate, up to the point of undue hardship, any person who due to a disability, cannot or is having difficulty accessing an organization's goods and services.

For example Davis meets in-person with clients to discuss its products and services. These meetings happen at various different locations including at conferences and trade shows, at the client's premises and at Davis' premises. A client with a physical disability who uses a mobility device (e.g. scooter or wheelchair) could have difficulty meeting with a Davis employee at a premises that is not accessible (e.g. does not have an elevator, has stairs at the entrance to the building and no ramp alternative).

In such a circumstance and where Davis is aware the client has such a disability, accommodation would be ensuring the client is advised of the barriers to accessibility at the meeting premises and asked whether they wish to move the meeting to a different location. If the client would like to move the meeting, accommodation would be finding another meeting location that serves the client's needs.

What are *your* responsibilities?

In some circumstances you are Davis's first point of contact with clients and the public. For this reason Davis is relying on you to make sure information and communications about its goods, services and facilities and its feedback procedures are accessible to persons with disabilities.

Davis requires all of its employees to immediately begin responding to requests for accessible information and communications in accordance with the procedure below:

- i. Ask the person what format would be accessible for them. If you can provide the documents in the requested format easily (e.g., by enlarging the print) you may provide the document in that format.

- ii. If the requested format cannot be easily provided or you are unsure about how to respond to the person's request you should ask for the person's contact information and tell them that somebody from Davis will contact them about their request shortly. You must then refer the person's request to Mike Davis.

In addition to the above, you are also responsible for notifying Mike Davis if you become aware that a client or member of the public is unable to, or is having difficulty accessing our goods or services because of a disability. In such a circumstance an appropriate member of Davis' management team will determine how the individual may be accommodated. However, the management team can only meet this obligation if they are aware of the individual's need. For this reason, Davis is relying on every employee to understand the obligation to accommodate and to make the appropriate notification whenever the need for accommodation arises.

I. ACCESSIBILITY IN EMPLOYMENT

Both the IAS and the Code require every organization to take steps to accommodate and promote accessibility for employees with disabilities at all stages of the employment relationship including at the hiring stage, during employment (*e.g.*, when implementing performance management, career development, *etc.*) and at the point of termination. However, as with the accessibility of information and communications, the IAS and the Code achieve these goals in different ways. Below you will learn about the requirements of both pieces of legislation and your rights and duties as an employee under each.

IAS – EMPLOYMENT STANDARDS

Individual Emergency Response Information

With one exception, the requirements under the Employment Standards of the IAS do not come into force until **January 1, 2016**. These future requirements are explained in the sections below. The one exception relates to the provision of individual emergency response information to employees who, due to a disability, require this information in order to respond safely in an emergency.

Every workplace has its own emergency procedures. For example, a workplace situated in an office tower will have procedures that dictate how employees are to respond to the activation of the building's alarm system. While many employees will be able to follow these emergency procedures without difficulty, some may be unable to do so due to a disability. For example an employee with a heart condition may not be able to exit the building by climbing down the emergency staircase.

A temporary disability may also necessitate the development of individual emergency response information. For example, an employee who has broken a leg may require assistance responding to an emergency until the employee's leg has healed.

Once the need for individual emergency response information is known by the organization, it is the responsibility of the employee, the employee's supervisor/manager to work together to

develop the individual emergency response information. In circumstances where the employee will require assistance from a co-worker to respond in an emergency, the co-worker may be advised of the employee's particular needs but only with the employee's consent.

Individual emergency response information must be updated when (i) the employee's needs change, (ii) the employee moves to a different location in the workplace and (iii) emergency procedures are updated.

What are *your* responsibilities?

Employees

You are responsible for notifying your Manager/Supervisor if you have a disability, whether permanent or temporary, and may need help responding in an emergency situation. You are not required to disclose details of your medical condition or disability, only the kind of help you may need. Davis will then work with you to develop individualized emergency response information to help ensure your safety in an emergency situation.

Managers/Supervisors

Individuals responsible for the supervision and management of employees have additional responsibilities. If you are concerned that an employee you supervise may have difficulty responding safely in an emergency you must notify Mike Davis of this concern.

Notification about Supports and Accommodation

Recruitment, Assessment and Selection

By **January 1, 2016**, every organization is required to notify employees and the public about the availability of accommodation for applicants with disabilities during the recruitment, assessment and selection process. Once an applicant is selected for individual assessment, they must again be notified that accommodation is available upon request in relation to the materials or processes to be used. If an applicant requests accommodation, the Davis must consult with the applicant and provide or arrange for the provision of a suitable accommodation in a manner that takes into account the applicant's accessibility needs due to disability.

For example, an individual with low vision may have difficulty seeing the questions on a written aptitude test. In such a circumstance, the organization would be required to consult with the individual to determine how they can be accommodated (*e.g.*, by providing the test in large print, or on a computer where the applicant could make use of screen reading technology).

New and Existing Employees

By **January 1, 2016**, every organization is required to notify new and existing employees of policies used to support its employees with disabilities, including, but not limited to, policies on the provision of job accommodations that take into account an employee's accessibility needs due to disability. Organizations must also provide updated information to its employees whenever there is a change to existing policies on the provision of job accommodations.

Accessible Formats and Communication Supports for Employees

By **January 1, 2016**, every organization is required to ensure that, upon request, Accessible Formats and Communication Supports are provided to an employee for (i) information that is needed in order to perform the employee's job and (ii) information that is generally available to employees in the workplace. Organizations are required to consult with the requesting employee to determine what accommodation would meet their needs in the circumstances.

For example, an employee with a hearing disability may not be able to benefit from an audio training video. In such circumstance, an appropriate accommodation may be providing a version of the video that includes closed captioning or a written version of the training material.

Individual Accommodation Plans and Return to Work Processes

Individual Accommodation Plans

By **January 1, 2016** every organization is required to have a written policy that describes how an individual accommodation plan will be developed for each employee who requires accommodation in his or her employment due to a disability. The policy must include the following considerations:

- a) The manner in which an employee requesting accommodation can participate in the development of the individual accommodation plan.
- b) The means by which the employee is assessed on an individual basis.
- c) The manner in which the employer can request an evaluation by an outside medical or other expert, at the employer's expense, to assist the employer in determining if accommodation can be achieved and, if so, how.
- d) The manner in which the employee can request the participation of a representative from his or her bargaining agent, where the employee is represented by a bargaining agent, or other representative from the workplace, where the employee is not represented by a bargaining agent, in the development of the accommodation plan.
- e) The steps taken to protect the privacy of the employee's personal information.
- f) The frequency with which the individual accommodation plan will be reviewed and updated and the manner in which it will be done.
- g) If an individual accommodation plan is denied, the manner in which the reasons for the denial will be provided to the employee.
- h) The means of providing the individual accommodation plan in a format that takes into account the employee's accessibility needs due to disability.

If requested, an individual accommodation plan must include any information regarding the provision of Accessible Formats and Communications Supports provided and if required, individualized workplace emergency response information. Individual accommodation plans must also identify any other accommodation that is to be provided.

Return to Work Processes

By **Januarys 1, 2016** every organization must develop and have in place a documented process that outlines the steps the organization will take to facilitate the return to work of an employee absent because a disability required them to be away from work. The return to work process must use a documented individual accommodation plan (described above) as part of the return to work process.

Career Development & Advancement, Performance Management and Redeployment

By **January 1, 2016** every organization is required take into account the accessibility needs of employees with disabilities, as well as individual accommodation plans when (i) providing career development or advance opportunities, (ii) using a performance management process and (iii) redeploying employees with disabilities.

In this context the following terms have the following meaning:

- i. **“Career development and advancement”** includes providing additional responsibilities within an employee’s current position and the movement of an employee from one job to another in an organization that may be higher in pay, provide greater responsibility or be at a higher level in the organization or any combination of them and, for both additional responsibilities and employee movement, is usually based on merit or seniority, or a combination of them.
- ii. **“Performance management”** means activities related to assessing and improving employee performance, productivity and effectiveness, with the goal of facilitating employee success.
- iii. **“Redeployment”** means the reassignment of employees to other departments or jobs within the organization as an alternative to layoff, when a particular job or department has been eliminated by the organization.

THE CODE – ACCOMMODATING EMPLOYEES WITH DISABILITIES

Similar to the Employment Standards under the IAS, the Code is concerned with the accommodation of employees with disabilities. However it differs from the Employment Standards in that it is less focussed on notification requirements and the procedural manner in which accommodation is accomplished and more focussed on substantive accommodation and the prohibition of discrimination on the basis of disability in employment.

Under the Code an employer has a duty to accommodate an employee’s disability up to the point of undue hardship. The duty to accommodate imposes a positive obligation on an employer to adapt a workplace, a job description or a general employment requirement, so as to afford an employee an equal opportunity to perform a job for which he or she is qualified but which, without accommodation, he or she would be unable to perform because of a disability.

However, the duty to accommodate is not limitless. The Code recognizes that the right of an employee to be free from discrimination in the workplace must be balanced with the employer's right to conduct its business in a safe and economical manner. Accordingly, an employer will not have breached its duty to accommodate under the Code if it cannot do so without incurring "undue hardship". In determining whether undue hardship exists, the Code requires a consideration of the cost of the accommodation, any outside sources of funding that may facilitate the accommodation, and any health and safety requirements that may affect the accommodation.

Consider the following example:

An employee diagnosed with depression may, due to their disability, be unable to attend work regularly and may even require an extended leave of absence from work. While in most circumstances an employee who fails to attend work regularly would be subject to termination, where the sporadic attendance is caused by a disability the employer will have a duty to accommodate.

In this circumstance the duty to accommodate may include refraining from disciplining the employee for sporadic attendance while the employee seeks treatment, providing unpaid time off of work to seek treatment and/or hiring a temporary employee to perform the absent employee's duties until the employee is able to return to work.

However, if after a period of accommodation the opinion of a medical professional(s) is that due to the disability, the employee will never be able to attend work regularly in the future, the employer may have reached the point of undue hardship where continued accommodation is no longer legally required. At this point, the employer may be justified in terminating the employment relationship even though it is not the employee's fault they are not able to attend work regularly.

What are *your* responsibilities?

Employees

Davis is in the process of creating the policies required under the Employment Standards of the IAS and setting up the protocols to make the required notifications about the availability of accommodation both at the hiring stage and during employment. However, as an employee you also have obligations under the Employment Standards and under the Code. Specifically, if due to a disability, you require accommodation in the workplace you are required to help Davis facilitate that accommodation by taking the following steps:

- a) You must notify your supervisor/manager or the human resources about the need for accommodation.
- b) You must provide detailed information about the nature of your medical needs. This obligation includes having your medical professional answer any questions Davis may have about the nature of your medical needs in a timely fashion.

- c) You must work with Davis to develop an appropriate accommodation plan and attempt to work within any accommodation plan that is provided so long as it adheres to the medical restrictions as determined by your medical professional. It is important to note that an employee is not entitled to perfect accommodation or the accommodation of their choosing, but rather an accommodation that meets the employee's medical needs.
- d) You must provide updated medical information if your medical needs change or if requested by Davis. If you are absent from work on an approved medical leave of absence you must maintain regular contact with Davis and continue to provide updated medical information throughout the duration of your leave.

It is very important that you comply with the above obligations if you have a disability that requires accommodation in the workplace as the failure to do so may result in Davis not being able to accommodate you.

Managers/Supervisors

Managers and supervisors have responsibilities in addition to those described above. As a manager or a supervisor you are responsible for responding appropriately to an employee who may require accommodation by reason of disability. Responding appropriately means notifying Mike Davis if an employee you become aware of an employee who, due to a disability, may require accommodation in the workplace. In such a circumstance an appropriate member of the management team will facilitate the accommodation process but we cannot do so if we are not aware of the employee's need.

II. ACCESSIBILITY OF PUBLIC SPACES

After **January 1, 2017**, the new construction or redevelopment of certain public spaces must comply with specifications designed to increase the accessibility of these public spaces for persons with disabilities. The only such requirements which could in the future apply to Davis would relate to the redevelopment of its waiting area and/or service counter. If Davis redevelops such spaces at some time in the future it will do so in accordance with the requirements of the Design of Public Spaces Standards.