

The Accessibility Advisory Council

Recommendations for an
Accessibility Employment Standard
for the Minister of Families

March 31, 2017

Introduction

The Accessibility Advisory Council of Manitoba (council) is pleased to provide the Minister of Families with its recommendations for an Accessibility Employment Standard pursuant to Section 9(1) of *The Accessibility for Manitobans Act* (AMA). This paper provides an overview of the process followed by the Council to develop the proposed employment standard and sets out its initial recommendations for the implementation of an effective employment standard.

More than 15 per cent of Manitobans have a disability. That number is expected to rise considerably over the next two decades as our population ages. While the number of Manitobans with disabilities increases, its representation within the workplace remains stalled.

In Manitoba, 43.6 per cent of the people between 15 and 64 years of age with disabilities are either unemployed or not in the labour force. This compares to a rate of 22.7 for Manitobans without a disability. This represents an almost twenty per cent gap in unemployment rates between those with and without disabilities (Statistic Canada, *Canadian Survey on Disability*, 2012).

This under-representation and underemployment of people with disabilities in Manitoba workforce represents a challenge to the future prosperity of Manitoba's economy. Implementing sustainable change through the introduction of an accessibility employment standard will benefit communities and businesses, and ultimately enhance the well-being of all Manitobans.

By removing barriers and implementing accessible employment practices, employers will have access to an underutilized segment of the population. In 2010, research indicated that reducing the unemployment rate among persons with disabilities in Manitoba by just one per cent could reduce the need for income assistance payments by more than \$6 million annually (*Disabilities Issues Office, Discussion Paper for Made in Manitoba Accessibility Legislation*, 2010).

Employment represents an area where long-standing barriers in the recruitment, selection and retention practices have disadvantaged persons with disabilities, resulting in their chronic under-representation in the workforce and labour market. The goal of the employment standard is to identify the steps that employers should take to remove barriers at all stages of employment for persons with disabilities.

The Accessibility for Manitobans Act and the Development of Standards

The AMA received Royal Assent and became law on December 5, 2013. The purpose of the legislation is to provide a clear and proactive process for the identification, prevention and removal of barriers that affect the full participation of more than 200,000 Manitobans with disabilities.

The AMA permits the development of accessibility standards in a number of areas including customer service, employment, information and communication, transportation

and the built environment. Customer service was the first accessibility standard established as a regulation. It came into force on November 1, 2015. Employment was identified as the next area of standard development.

Other jurisdictions also recognize the importance of accessibility legislation. In 2005, Ontario passed the *Accessibility for Ontarians with Disabilities Act* (AODA), which has served as a useful guide in developing accessibility standards in Manitoba. Similar steps are currently being considered by the province of Nova Scotia and the Government of Canada. The Honourable Carla Qualtrough, Federal Minister of Sport and Persons with Disabilities, has said that removing barriers will be crucial to reducing the high jobless rate among the country's disabled population.

The Process to Develop an Employment Standard

Under the AMA, the council may establish standard development committees with the expertise required to develop a particular standard. In October 2015, the council established a committee to begin the process of developing recommendations for a proposed employment standard.

The committee presented its recommendations to the council in March 2016. These recommendations were reviewed and refined by the council, and in November 2016, a discussion paper was released to the public setting out the Council's recommendations. Members of the public were invited to comment on the recommendations through written and oral submissions and through participation in public consultations.

On January 18, 2017, the council hosted a half-day public consultation. More than 200 people attended. The consultation was also webcast, allowing individuals unable to attend in person the opportunity to participate. The council received many helpful submissions from organizations such as:

- The University of Manitoba
- The Manitoba Human Rights Commission,
- The Manitoba Federation of Labour
- Red River Community College
- The Association of Manitoba Municipalities
- The City of Winnipeg
- Barrier-Free Manitoba

In addition to specific comments about the standard, participants indicated that there is a significant need for more tools and resources to help implement the proposed employment standard. Participants also stressed the need for better coordination among existing programs and resources to ensure effective results. These concerns have been noted and will help the successful implementation of the standard.

The Council sincerely appreciates the wide range of feedback and comments provided by the public. It has carefully considered all responses and has incorporated many of them into its recommendations.

Recommended Employment Standard - Setting the Context

The purpose of the Accessibility for Manitobans Act is to remove barriers and achieve greater accessibility for all Manitobans. The employment standard identifies the specific steps that employers must take to accomplish this purpose.

The proposed employment standard requires employers to remove barriers at all stages of the employment process including recruitment, hiring, training, promotions, transfers, and retention strategies.

All employers in Manitoba are required to comply with the provisions of the Manitoba Human Rights Code. This standard in no way limits or alters that requirement. Rather the standard identifies the specific steps that employers must take to ensure that they are in compliance with the Code and that they are not discriminating on the basis of disability.

The employment standard is based on the human rights concept of reasonable accommodation. Human rights law has identified this concept as an important tool for removing and preventing barriers to equality.

The Proposed Accessibility Employment Standard

1. Definitions

“accessible formats” may include, but are not limited to, large print, recorded audio and electronic formats, Braille and other formats usable by persons with disabilities;

“communication supports” may include, but are not limited to, captioning, alternative and augmentative communication supports, plain language, sign language and other supports that facilitate effective communications;

“reasonable accommodation” includes any reasonable adjustments or changes made to job duties, workplace policies and practices or the work environment that enables an individual disabled by barriers to apply for a job, perform job functions or enjoy equal access to benefits available to other employees, and can include the provision of accessible formats and communication supports. Situations in which a requested accommodation will not be considered to be reasonable accommodation include where the accommodation would create an “undue hardship” as defined in human rights law. An accommodation may be considered unreasonable for the following reasons:

- Health and safety risks
- Financial costs of accommodation
- Legitimate operational requirements
- Interchangeability of employees and facilities
- Disruption to collective agreements
- Impact on employees and service users
- Impact on other protected rights

2. Scope and Interpretation

2. (1) The requirements in this standard apply to organizations set out in Section 3,

(a) with respect to paid employees, and

(b) does not apply in respect to volunteers and other non-paid individuals.

Comment: The Council received many comments in the public forum encouraging the Scope and Interpretation section to include volunteers. After much deliberation, the council determined that the standard should only apply to paid employees. It is not easy or practical to overlay the same rules for volunteers as are applicable to employees. Most organizations do not recruit and retain volunteers using the same structured processes as found in employment. It is much more informal.

The proposed employment standard contains many sections that are very descriptive and meant to apply to an employee-employer relationship, rather than to volunteers who may participate in an annual campaign or special event. A number of larger organizations, such as hospitals, have volunteering positions that are more defined and directed to a particular activity. As a good business practice, employers are encouraged to apply the standard to unpaid staff and volunteers.

3. Schedule

3. (1) Except as otherwise noted, the accessibility standard for employment shall apply to the following organizations within these timelines:

- The Government of Manitoba one year after the standard becomes a regulation;
- Every public sector or government agency, as described in The Financial Administration Act, two years after the standard becomes a regulation; and,
- All private and non-profit organizations three years after the standard becomes a regulation.

Comment: The timelines proposed for the employment standard are the same as those set out in customer service standard, which came into force on November 1, 2015. The dates for compliance would ensure that the Government of Manitoba demonstrate strong leadership in meeting the requirements. It would also provide the Government with sufficient time to promote a clear understanding to all other obligated parties and the general public about the strengths of more accessible employment practices and the substantial economic benefits derived from developing a more accessible workplace.

(2) All employers are subject to Section 14 one year after the standard becomes a regulation.

4. Establishment of accessibility policies

- 4.(1)** Every organization shall develop, implement, and maintain policies governing how the organization achieves or will achieve accessibility through meeting its requirements referred to in this standard.

Comment: A policy is a formal organizational rule to guide decisions and achieve outcomes. Organizations must establish accessibility policies describing what they do, or intend to do, to meet the requirements of the standard. Organizations have the flexibility to create accessibility policies that best fit their organizational culture and business practices.

If an organization has existing written policies, accessibility requirements may be integrated into these existing documents for consistency purposes. For example, an organization may already have in place a human resources policy on recruitment. Instead of developing a separate policy on accessible recruitment, principles of accessibility can be incorporated into existing policies. Once accessibility policies have been developed and implemented, they must be maintained. Policies are living documents and should be reviewed and updated to reflect the current practices of an organization.

- (2)** All employers with 20 or more employees shall

- (a)** prepare one or more documents describing the policies it developed under this standard; and
- (b)** make the documents publicly available and, on request, provide them in an accessible format.

Comment: The proposed standard applies to all organizations, regardless of size. The difference is that larger organizations will be required to formally document policies.

Public sector organizations, as well as private and not-for-profit organizations with 20 or more employees must make their employment accessibility policies available to the public. Organizations may post information about their accessibility employment policies on their premises, on their website or through other reasonable methods so that the public is aware the information is available.

Similar to the Customer Service Standard, the proposed Accessibility Standard for Employment establishes 20 or more employees as the benchmark requiring employers to document accessibility policies. Organizations with 20 or more employees are more likely to have formalized management structures, including human resource policies and practices.

According to Statistics Canada, there are more than 40,000 employers in Manitoba. Of those, more than 6,000 or close to 15 per cent of employers would have 20 or more employees. The Council supports 20 or more employees serving as the threshold employers are required to meet the documentation requirements proposed in the standard.

(3) In developing, implementing and maintaining its policies, an organization must proactively identify, prevent and remove barriers to accessible employment as part of its planning processes.

Comment: The purpose of The AMA is to provide a clear and proactive process for the identification, prevention and removal of barriers that prevent persons with disabilities from full participation. This process extends into all areas governed by accessibility standards under the AMA, including employment. Human rights law imposes the legal obligation on employers to proactively identify and remove existing workplace barriers, and to prevent the creation of new ones. This provision is building on jurisprudence established by the courts and enables the workplace environment and employment processes to be created in a more accessible manner.

(4) In fulfilling the requirements of this Standard, organizations must comply with the purposes and principles of the Act and its obligations to remove employment barriers for persons disabled by barriers — including the obligation to provide reasonable accommodation — under *The Human Rights Code*.

Comment: In many instances, achieving the removal of barriers and the fulfillment of equality for persons with disabilities requires additional proactive measures. Under human rights law, both employers and service-providers alike have a duty to remove barriers by providing reasonable accommodation.

The accommodation process is based on the responsibility, shared by all parties, to have meaningful dialogue about accommodation, and to work together respectfully towards accommodation solutions. Everyone involved should engage in the process, by sharing information, consulting with professionals as needed and working towards providing the employee with a solution that allows the individual to operate in the workplace on an equal level as others.

Although the employer and employee both have responsibilities in the accommodation process, the duty to accommodate is the employer's. This is because *The Human Rights Code* imposes an obligation on the employer to provide a discrimination-free work environment. *The Human Rights Code* requires organizations to accommodate people with disabilities to the point of undue hardship. Individuals whose specific needs are not met by standards established under the legislation will still be able to file a complaint with the Manitoba Human Rights Commission.

5. Recruitment, general

5. (1) During the recruitment processes, employers shall notify their employees and the public about their policies on reasonable accommodation for applicants disabled by barriers.

Comment: It makes good sense for organizations to reach out to a range of applicants, including those with disabilities. By notifying potential internal and external applicants about the availability of accommodations, employers invite persons with disabilities to participate in the recruitment process. People with disabilities may experience difficulty

accessing job postings, and may be uncertain about how an employer will react when faced with a candidate with a disability. Employers, in turn, often lack awareness and knowledge about persons with disabilities.

Creating an accessible recruitment process will not only benefit people with disabilities, but all those interested in applying. Employers interested in benefiting from the talents of candidates with disabilities are encouraged to contact community organizations and agencies that can offer assistance on reaching these candidates.

6. Recruitment, assessment

- 6. (1)** When a candidate has been selected to participate in an assessment process, the employer shall notify the candidate that reasonable accommodations are available upon request in relation to the assessment process.
- (2)** When a candidate requests an accommodation, the employer shall consult with the candidate to identify accessibility needs and provide reasonable accommodation.

Comment: Communicating clearly and publicly about the availability of accommodations in the recruitment process sends a powerful message that candidacy from persons with disabilities is welcome. Employers are required to notify applicants who have been selected to participate in a recruitment, assessment or selection process that, where required, reasonable accommodations are available on request.

This requirement recognizes that recruitment practices vary from employer to employer and could include interviews, presentations or written assignments. If an applicant with a disability requests accommodations during the recruitment process, employers must provide reasonable accommodations. Reasonable accommodation means that an employer consults with the applicant with a disability to take into account the individual's needs so that the accommodations during recruitment are effective.

7. Notice to successful candidates

- 7. (1)** Employers shall, when making offers of employment, notify successful candidates of their policies for providing reasonable accommodations to employees disabled by barriers.

Comment: When employers make offers of employment, they must notify the successful applicants of their policies for providing reasonable accommodation. Employers may notify applicants about these policies through a variety of means, whether by telephone, in person, via email or including the policies in the offer letter. This requirement applies to all successful applicants. Its purpose is to ensure they know the employer's reasonable accommodation policies when making career decisions.

8. Informing employees of reasonable accommodations

- 8. (1)** Employers shall inform their employees of all policies used to reasonably accommodate employees disabled by barriers.
- (2)** Employers shall provide the information required under this section to new employees as soon as practicable after they begin their employment.
- (3)** Employers shall provide updated information to their employees whenever there is a change to existing policies on the provision of reasonable accommodation to employees.

9. Accessible formats and communication supports for employee

- 9. (1)** At an employee's request, the employer shall consult with the employee to provide or arrange for the provision of accessible formats and communication supports for:
 - (a)** information that is needed in order to perform the employee's job; and,
 - (b)** information that is generally available to employees in the workplace.

Comment: Not all accessible formats or communication supports are helpful to all persons who have disabilities. The accommodation need is as individual as the person. Once the employer and the employee have determined what the needs are, then the organization must work out how to accommodate the person. This requirement gives the employer the flexibility to decide on the most appropriate accessible formats or communication supports for the employee.

This requirement applies to information that employees with disabilities need to perform their jobs effectively, as well as information that is generally available in a workplace, such as company letters, bulletins about company policies and fact sheets on health and safety information for workers.

10. Documented individual accommodation plans

Employers of an organization with 20 or more employees shall have in place documented individual accommodation plans for the provision of reasonable accommodation for employees with disabilities.

- 10. (1)** In developing documented individual accommodation plans, employers shall:
 - (a)** Ask the employee requesting accommodations to participate in the development of the documented individual accommodation plan.
 - (b)** Assess the accessibility needs of the employee on an individual basis.
 - (c)** Where required, arrange for an evaluation by an outside expert, at no cost to the employee, to assist the employer in determining if and how reasonable

accommodation can be achieved in accordance with the principle of undue hardship as prescribed by human rights law.

- (d) Ensure that the employee's requested representative from their bargaining agent or other representative have the opportunity to participate in the development of the accommodation plan.
 - (e) Ensure a process is established to protect the privacy of the employee's personal information.
- (2) Documented individual accommodation plans shall be reviewed and updated as determined necessary by the employer or requested by the employee.
- (3) Where an individual accommodation plan is denied by the employer, the employer must provide documented reasons for the denial to the employee.
- (4) Documented individual accommodation plans shall be provided in an accessible format where requested by an employee.

Comment: The extent to which an employee with a disability will face a workplace challenge depends on a variety of factors, including the nature and severity of the disability, the nature of the work, and the work environment. Employers must be aware of these potential challenges and establish a process that promotes equal participation and career success for people with disabilities in their organizations.

Under *The Human Rights Code* (Manitoba), employers are already required to accommodate the needs of employees with disabilities to the point of undue hardship. As a result, many employees may already have similar processes in place and can build on them to meet this requirement.

Individual accommodation plans are a formal way of recording and reviewing the work-related accommodations that an employer will provide to an employee with a disability. Accommodation plans are living documents that are regularly reviewed so that they remain effective and up-to-date. It is crucial that the information employers may collect to develop individual accommodation plans is private.

11. Return to work process

All employers shall have in place a return to work process for employees who have been absent from work due to a disability and require reasonable accommodation.

11. (1) The return to work process shall:

- (a) outline the steps the employer shall take to facilitate the return to work of employees who were absent because of their disability; and,
- (b) use documented individual accommodation plans in accordance with Section 10.

- (2)** The return to work process referenced in this section does not replace or override any other return to work process created by or under any other statute.

Comment: One of the options being considered was to harmonize the Return to Work section of the proposed employment standard with *The Workers Compensation Act* (WCB). Under the WCB legislation, the obligation to re-employ only applies to employees with at least 12 months of continual full or part-time employment with organizations that employ 25 or more employees. This was considered too restrictive.

According to human rights law, all employers, regardless of size, are obligated to provide reasonable accommodation to those employees who have been absent from the workplace due to a disability and who are ready to return to work. In most cases, accommodation is simple and affordable. With flexibility and good communication, providing reasonable accommodation may not be a complicated or costly matter. However, situations may arise where providing accommodation is not feasible for safety or cost related reasons.

Providing reasonable accommodation means accommodating those needs to the point at which the employer cannot accommodate those needs without experiencing undue hardship. Having a back to work policy based on reasonable accommodation is a proactive way to further the principles of human rights legislation and possibly avoid complaints of discrimination.

12. Training

12. (1) An employer shall ensure that every person who is responsible for developing, supervising, managing, and/or coordinating employment practices and procedures such as recruitment, hiring, training, advancement, receive training on reasonable accommodation and the provision of accessible employment opportunities to persons with disabilities.

Comment: Training for the accessible employment standard is focused on those individuals directly involved in developing an organization's employment policies and procedures as well as those individuals responsible for ensuring these practices are properly applied in the workplace. The council believes a broader scope of training, encompassing all employees in an organization, would be better realized when additional standards are established and greater public awareness to promote the Act has been undertaken.

(2) The training must include

(a) Instruction about

- (i)** how to interact and communicate with persons with disabilities
- (ii)** how to interact with persons with disabilities who use an assistive device or require the assistance of a support person or service animal

(b) a review of *The Human Rights Code*, *The Accessibility for Manitobans Act* and this regulation.

(3) An employer must ensure that

(a) training is provided to a person as soon as reasonably practicable

(b) on-going training is provided in connection with changes to the employer's measures, policies and practices respecting providing accessible employment practises.

13. Accommodation Applies to All Aspects of Employment

13. (1) Employers shall take into account the individual accommodation plans and the accessibility needs of their employees in all aspects of employment including performance management, career development and advancement, redeployment and any other performance related processes that employers use to retain employees.

Comment: Best practice organizations actively encourage employees to stay with them by providing guidance on current performance as well as opportunities for development. An individual with a disability, like any other employee, requires both performance management and career development opportunities to grow and feel valued as a contributing member of an organization. If organizations use the processes listed in this section, the proposed standard requires that employers take into account the accessibility needs of employees with disabilities.

14. Workplace emergency response information

14. (1) Employers shall provide individualized workplace emergency response information to employees who require reasonable accommodation as soon as practicable.

(a) An employer shall consult with the employee requiring reasonable accommodation in the development of a workplace emergency plan. The plan shall include the names of those persons who have agreed to provide assistance to the employee during a workplace emergency.

(2) Employers shall review the individualized workplace emergency response information:

(a) when the employee moves to a different location in the organization;

(b) when the employee's overall accommodation needs or individual accommodation plan is reviewed; and,

(c) when the employer reviews its general emergency response policies.

(3) Notwithstanding the established dates set out in Section 3, employers shall meet the requirements of this section one year after the standard comes into force.

Comment: Employers are required to prepare for emergency situations by providing employees with disabilities with individualized workplace emergency response information. This will help employees with disabilities, and the employers they work for, to prepare for a range of potential emergencies, including fire, power outages, severe weather, natural disasters, and security incidents.

It is important that employers recognize how an individual's disability, as well as the physical nature of the workplace, may create unique challenges in emergency situations. For example, an employee with a hearing disability may not hear an alarm and may need to be notified by other means, such as visual alarm with flashing lights. Or an employee with a visual disability may not be able to identify the escape routes, or obstructions to the escape routes. For these reasons and others, employers should consult with employees who have disabilities, so that the individualized workplace emergency response information meets the employees' needs.

Conclusion

Measured against almost any established social criteria, persons with disabilities are amongst the most disadvantaged of any segment of the population. They generally have high unemployment rates, lower-levels of post-secondary education, lower levels of housing and higher cases of social isolation.

Accessibility legislation recognizes that physical, attitudinal and systemic barriers prevent Manitobans with disabilities from going places, using services and finding and securing employment. The effects are detrimental; compromising the physical and mental health of persons with disabilities, while also placing an additional strain on an already over-burdened health care system and provincially funded social services.

Canadian census data confirms the strong links among disability, unemployment and poverty. Disability can contribute to unemployment and poverty, and poverty can lead to disability:

- The unemployment rate among working-age persons with disabilities (15 to 64 years of age) is considerably higher than that of Manitobans without disabilities.
- When employed, persons with disabilities are more likely to be in short-term and part-time employment, self-employment and in the informal economy.
- In Manitoba, as in other Canadian provinces. The Employment and Income Assistance (EIA) program is becoming a dominant source of income for working-age persons with disabilities.
- Between 2000 and 2009, the low-income rate for all Manitobans decreased by 10 per cent, while the low-income rate for persons with disabilities increased by 21 per cent.

The best way out of poverty is meaningful and stable employment. Research has shown that with real work for real pay, persons with disabilities are less likely to live in poverty, and are less likely to be reliant on public funds to support them. Yet, persons

with disabilities continue to be less likely to be employed than persons without disabilities.

The proposed employment standard will provide greater opportunities for persons with disabilities by requiring employers to establish accessibility across all stages of the employment life cycle; from recruitment to selection and retention. By introducing policies that promote a more inclusive work environment, employers can find the skilled, loyal and available workers they require from an underutilized segment of the population.

The Manitoba marketplace is becoming more diverse. Organizations should reflect the customers they serve to better understand them and fill their needs. It is estimated that the income controlled by persons with disabilities and those at risk of a disability (those aged 55 and above) in Canada will be \$536 billion in 2031. Their impact on the Canadian economy increases significantly when taking into consideration their friends and families, who are also likely to go to businesses that are inclusive of customers with disabilities. This is an opportunity Manitoba businesses cannot afford to miss.

The council has considered all the submissions received to date. The input we have received through submissions and consultations has informed and improved the proposed employment standard initially posted in November, 2016. The council appreciates the time and effort made by all the individuals and organizations who shared their thoughts.

The council would like to thank the Minister for Families, Honourable Scott Fielding, for the opportunity to serve the government with this important initiative. The employment standard supports what hundreds of reports previously published have already told us; creating greater employment opportunities for persons with disabilities benefits businesses and communities as a whole.