THE ACCESSIBILITY FOR MANITOBANS ACT (C.C.S.M. c. A1.7)

Accessible Employment Standard Regulation

Regulation 70/2019 Registered April 5, 2019

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Definitions

1 The following definitions apply in this regulation.

"accessible format” means a format of information that is used to facilitate effective communication by or with a person disabled by a barrier, and includes large print, recorded audio, electronic formats and braille. (« format accessible »)

"applicant" means a person who applies for employment.

"communication support" means a support used to facilitate effective communication by or with a person disabled by a barrier, and includes sign language,

captioning and augmentative and alternative communication supports. (« support à la communication »)

"large employer" means an employer who in the case of a seasonal workplace, employs at least 50 employees to do work that is expected to continue for at least 90 days; and

(b) in the case of any other workplace, employs at least 50 employees. "service animal" means a service animal as defined in The Human Rights Code.

"support person" means, in relation to a person who is disabled by a barrier, a person who accompanies the person to

support the person obtaining, using or benefiting from a good or service provided by an organization; or

(b) assist the person in addressing his or her communication, mobility, personal care or medical needs.

Application and phase-in of obligations

2(1) The following organizations are subject to sections 3 to 14 at the following times:

(a) on the day that is one year after the coming into force of this regulation, a department of the government;

(b) on the day that is two years after the coming into force of this regulation,

a government agency as defined in section 1 of The Financial Administration Act,

(ii) a university and a college as defined in section 1 of The Advanced Education Administration Act,

(iii) a regional health authority established under The Regional Health Authorities Act,

(iv) The City of Winnipeg and a municipality that is a city, as listed in Schedule A of the Municipal Status and Boundaries Regulation,

Manitoba Regulation 567/88 R, and

(v) a school division and a school district established under The Public Schools Act;

(c)on the day that is three years after the coming into force of this regulation, any other organization subject to the Act that has one or more employees in Manitoba.

2(2) Each organization referred to in subsection (1) is subject to sections 15 (workplace emergency response) and 16 (workplace assistance)on the day that is one year after the coming into force of this regulation.

When accommodation is reasonable 3 For the purposes of this regulation, an accommodation is reasonable if it is required for an applicant to access the materials or activities used in the assessment or selection process and would not result in undue hardship to the employer; or

(b) is required for an employee to perform their employment responsibilities or access the benefits available to them, by virtue of their employment, and it would not result in undue hardship to the employer.

EMPLOYER'S GENERAL OBLIGATIONS

Employment to be accessible

4(1) An employer must establish and implement measures, policies and practices respecting employment to reasonably accommodate employees and applicants who are or may be disabled by one or more barriers in the workplace.

Requirements for public sector and large employers re documented policies

4(2) Large employers and employers listed in subsections 2(1)(a) and (b) must document the measures, policies and practices established under this regulation and make those documented policies

publicly available; and

(b) on request, available in an accessible format.

Recruiting employees

5(1) When recruiting employees, an employer must inform potential applicants of the availability of reasonable accommodations for those who may be disabled by a barrier in respect of the assessment or selection process; and

(b) applicants that, on request, reasonable accommodations may be available for those who may be disabled by a barrier in respect of the materials or activities used in the assessment or selection process.

5(2) When an applicant makes a request for accommodation under clause 5(1)(b), the employer must consult with the applicant to determine the reasonable accommodations for the barrier or barriers that are identified; and

(b) provide, or arrange for the provision of, those reasonable accommodations when carrying out the assessment or selection process.

Offering employment

6 When offering employment to a person, an employer must inform the selected applicant of the employer's measures, policies and practices for accommodating employees disabled by one or more barriers in the workplace.

Training

7(1) An employer must ensure that accommodation training is provided to persons within the employer's organization who are responsible for:

(a) recruiting, selecting or training employees;

(b)supervising, managing or coordinating employees;

(c) promoting, redeploying or terminating employees; or

(d) developing and implementing the employer's employment policies and practices.

7(2) Accommodation training must include instruction about how employment opportunities may be made accessible to persons disabled by barriers, to interact and communicate with persons disabled by barriers, and

(ii) to interact with persons disabled by barriers who use an assistive device or require the assistance of a support person or service animal; and

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

7(3) An employer must ensure that training is provided to a person as soon as reasonably practicable after the person is assigned the duties described in subsection (1); and

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

7(4) Large employers and employers listed in subsections 2(1)(a) and (b) must create and document an accommodation training policy, including a summary of the content of the training and when training is to be provided.

Performance management

8(1) An employer must ensure that any performance management process implemented in the workplace takes into account:

(a) that employees may be temporarily or permanently disabled by one or more barriers in the workplace;

(b) an employee's individualized accommodation plan under section 12, if any; and

(c) that the accommodations provided for a particular employee, if any, may not fully address a barrier that disables the employee.

8(2) In subsection (1), "performance management process" means any process used by an employer to manage the work of individual employees or to plan, monitor and review an employee's work objectives and overall contribution to the employer's organization.

Career development training and internal advancement

An employer who provides career development training or opportunities for internal advancement within the employer's organization must ensure that the process for recruiting, selecting, training, promoting or redeploying an employee takes into account:

(a) that employees may be temporarily or permanently disabled by one or more barriers in the workplace;

(b) an employee's individualized accommodation plan under section 12, if any; and

(c) that the accommodation provided for a particular employee, if any, may not fully address a barrier that disables the employee.

Keeping employees informed

10 An employer must provide each employee with information about:

(a) the employer's measures, policies and practices in respect of accommodating employees who are temporarily or permanently disabled by one or more barriers in the workplace; and

(b) any changes made to those measures, policies and practices.

Return to work process

11(1) An employer must establish and implement a policy respecting the return to work of employees who:

(a) have been absent from work due to a disability; and

(b) require reasonable accommodation in respect of one or more barriers that disable the employees on returning to work.

11(2) The return to work policy must include a description of the process the employer will follow in determining the accommodations necessary to facilitate the return to work of employees who have been absent due to a disability.

11(3) For certainty, the provisions of The Workers Compensation Act prevail over this section.

EMPLOYER'S OBLIGATIONS RE INDIVIDUAL EMPLOYEES

Individualized accommodation plans

12(1) An employer must, on request of an employee who is temporarily or permanently disabled by one or more barriers in the workplace, develop and implement an individualized accommodation plan for the employee.

12(2) An individualized accommodation plan must document:

(a) any accessible formats and communication supports to be used in providing information to the employee, as provided for in section 14;

(b) any workplace emergency response information the employer is to provide to the employee under section 15; and

(c) any other reasonable accommodation the employer is to make to address any barriers that disable the employee and the manner and timing within which the accommodation is to be made.

12(3) An employee must, in good faith, cooperate in the establishment and implementation of the employee's individualized accommodation plan, including:

(a)by providing any relevant information that may assist the employer in the assessment of the accommodation request, including any medical reports or reports by other practitioners in the area of workplace accommodations for persons disabled by barriers;

(b) by complying with the accommodation plan and performing their work in accordance with the accommodation plan;

(c) by providing feedback to the employer with respect t o t he requirements of the accommodation plan;

(d) by participating in and cooperating with accommodation efforts on an on-going basis, including communicating with the employer if modifications to the accommodation plan are requested or if accommodation is no longer required;

(e) by participating in an evaluation of the employee, requested by the employer, to assist the employer in determining what reasonable accommodation is required.

12(4) An employer must review, and update if required, an employee's individualiz ed accommodation plan:

(a)when the employee's workspace is modified or relocated;

(b) when the employee's responsibilities are changed; or

(c) when the employer becomes aware that there are any other changes that impact the accommodation required. Additional requirements for public sector and large employers re individualized accommodation policies

13(1) Large employers and employers listed in subsections 2(1)(a) and (b) must establish and implement a policy respecting individualized accommodation plans for employees who are temporarily or permanently disabled by one or more barriers in the workplace.

13(2) The policy must provide:

(a)for how an employee can request that the employer prepare an individualized accommodation plan for the employee;

(b) that both the employee and the possible accommodations will be assessed on an individual basis;

(c) that the employer may request an evaluation of an employee, done by an independent regulated health professional or other practitioner in the area of workplace accommodations for persons disabled by barriers, to assist the employer in determining if reasonable accommodation is required, and that any such evaluation will be at the employer's expense;

(d) that the employee can request the following persons to assist in the development of the plan on the employee's behalf:

if the employee is represented by a bargaining agent, a representative of the employee's bargaining agent or a person who is knowledgeable in the area of workplace accommodations for persons disabled by barriers,

(ii) if the employee is not represented by a bargaining agent, a person who is knowledgeable in the area of workplace accommodations for persons disabled by barriers;

(e) for the frequency within which an employee's plan will be reviewed and updated, and that a plan will be reviewed and updated earlier on the employee's request;

(f) that, on request of the employee, the employer must provide a copy of a plan to the employee in an accessible format;

(g) for the circumstances in which the employer may deny an employee's request for an individual accommodation plan, and that the employer must provide the employee written reasons for why the request was denied;

(h) that the employee's personal information and personal health information is to be appropriately protected at all times and state the steps to be taken to protect that information.

Communication of information

14 On the request of an employee who is temporarily or permanently disabled by one or more barriers in the workplace, an employer must

(a)consult with the employee to identify the accessible formats or the communication supports needed to be used when providing information to the employee; and

(b) ensure that those identified accessible formats or communication supports are used when providing information to the employee.

Workplace emergency response information

15(1) An employer must provide an employee who is temporarily or permanently disabled by one or more barriers in the workplace with appropriate information on how to respond to an emergency in the workplace if the employer is aware that, in the event of such an emergency, the employee may face special risks or challenges due to being disabled by the barrier.

15(2) The workplace emergency response information must be specific to the employee's particular barrier or barriers and the physical nature of the employee's work space.

15(3) An employer must comply with this section as soon as reasonably practicable after becoming aware that the employee may need assistance in the event of a workplace emergency due to the employee being disabled by a barrier.

15(4) An employer must review the information provided to an employee under this section each time:

(a) the employee is moved to a different workspace;

(b) the employee's workspace is modified; or

(c) the employer reviews the employer's general emergency response plans and makes changes that would affect the employee's response to an emergency in the workplace.

Designated assistance person may be provided employee information

If an employee who receives information under section 15 requires the assistance of another person in the event of a workplace emergency, the employer may, with the employee's consent, provide the necessary information to the person designated by the employer to provide assistance to the employee.

Privacy obligations

17 An organization to whom this regulation applies must protect the privacy and confidentiality of the personal information and personal health information provided by employees for the purposes of this regulation, and may only collect, use and disclose information as required for the purposes of this regulation, unless the employee consents to the use or disclosure. This requirement is in addition to any requirements of The Freedom of Information and Protection of Privacy Act and The Personal Health Information Act, where applicable.

Coming into force

18 This regulation comes into force on May 1, 2019, or the day it is registered under The Statutes and Regulations Act, whichever is later.