



The Accessibility for Manitobans Act (AMA)

**Discussion Paper on a
Proposed Accessibility Standard
For Employment**

Proposed by

The Accessibility Advisory Council

October 2016

Winnipeg MB

1. Introduction

The Accessibility Advisory Council (Council) is pleased to propose a draft accessibility standard on employment in accordance with *The Accessibility for Manitobans Act* (AMA). Under the AMA, the Council has the authority to appoint a committee to carry out the work of developing a proposed standard. In this regard, the standard was prepared by a committee of experts appointed and overseen by the Council. (See appendix 1 for a list of Committee and Council members.)

The Committee met several times between October 2015 and March 2016. The Committee began its work by considering the Ontario Employment Standard developed under the *Accessibility for Ontarians with Disabilities Act* (AODA). In addition, the Committee considered information such as:

- Current Manitoba programs and initiatives aimed at removing employment barriers;
- International initiatives such as the Americans with Disabilities Act; and,
- The Manitoba Human Rights Code and the concept of reasonable accommodation.

The Committee determined that reasonable accommodation should serve as the core principle of the proposed employment standard.

2. What Is Reasonable Accommodation?

Achieving the removal of barriers and the fulfillment of equality for persons with disabilities usually requires more than treating everyone the same. In many instances, it requires proactive action which is referred to as reasonable accommodation by human rights law. For example, an employer may have to provide sign language interpreters to enable a Deaf employee to participate effectively in staff meetings; or an employer may have to provide a blind employee with a computer that can read print information aloud.

Reasonable accommodation means that as much as possible employers must design employment procedures, policies and standards to reflect the needs of all workers. Employers are exempt from this requirement only where they can establish that the accommodation would create an undue hardship in the form of a significant safety risk, a significant disruption to business or a significant expenditure of funds.

3. Background

The AMA became law on December 5, 2013. The purpose of the AMA 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 strives to accomplish this goal by developing accessibility standards in the areas of customer service, employment, information and communication, transportation and the built environment. Each standard sets out specific requirements and responsibilities regarding the removal of barriers.

The first accessibility standard developed by the Council dealt with customer service which came into force November 1, 2015. The Government of Manitoba identified employment as the next priority area for standard development.

4. Purpose of Discussion Paper

The purpose of this discussion paper is to seek your comments, questions and feedback on the proposed employment standard. In your assessment of the proposed standard, you may wish to consider the following questions:

- Does the standard provide clear direction on how to remove employment barriers?
- Is the standard too broad?
- Is the standard too narrow?
- Are there items missing from the standard?
- Is the standard achievable?
- Will the standard make a difference?

Your opinion matters. Please share your recommendations on how to establish an effective made-in-Manitoba employment standard.

Please submit your comments and briefs to:

Disabilities Issues Office
630 - 240 Graham Avenue
Winnipeg MB R3C 0J7
Email: access@gov.mb.ca
Website: www.AccessibilityMB.ca
Phone: (204) 945-7613
Toll Free: 1-800-282-8069, Ext. 7613

Public consultations will be held:

Wednesday, January 18, 2017
1:00 – 4:00 p.m.
Main Floor, Royal ABC Ballroom
Viscount Gort Hotel
1670 Portage Avenue
Winnipeg MB R3J 0C9

Please send your comments by February 15, 2017, to ensure they are received prior to the preparation of the Council's recommendations. The Accessibility Advisory Council will be submitting a final report to the Minister of Families, Honourable Scott Fielding, by March 31, 2017.

The Discussion Paper and the public consultations are the first step in establishing the Accessibility Standard for Employment as a regulation. Appendix 2 provides a complete list of steps involved in the process.

Please let us know if you require this document an alternate format.

5. The Proposed Accessibility Standard for Employment

The language used to describe the requirements of the proposed accessibility standard for employment may not be the exact language used in the established regulation. The Minister of Families and the Accessibility Advisory Council will provide instructions on the intended meaning of all provisions within the standard to the Legislative drafters responsible for the preparation of the document in its final form.

1. Definitions

Summary: These are the proposed definitions of terms used in the standard.

“**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.

2. Scope and Interpretation

Summary: Employers have requirements under the proposed standard that apply to paid employees. This includes, but is not limited to, full-time, part-time, paid apprenticeships and seasonal employment.

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.
- (2) 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*.

3. Schedule

Summary: This section sets out the timeline regarding when the various sectors of employers must comply with the standard. However, there is an exception. All employers must engage in emergency planning one year after the standard comes into effect.

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 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.
- (2) All employers are subject to Section 12 one year after the standard becomes a regulation.

4. Recruitment, general

Summary: Employers must notify job applicants that reasonable accommodations for disabilities are provided during the recruitment process. This includes both internal and external applicants.

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

5. Recruitment, assessment

Summary: Employers must notify job applicants invited to interview that disability-related accommodations are provided on request, including for any presentations, written assignments, or other assessments. The employer should consult with the applicant about appropriate accommodations.

5. (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.

6. Notice to successful candidates

Summary: Employers must inform successful applicants of their employee accommodation policies. This will ensure new employees know the employer's accommodation policies.

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

7. Informing employees of reasonable accommodations

Summary: Employers must notify all new and existing employees of their policies, and any updates, for accommodating employees disabled by barriers. Employees can acquire disabilities at any point in their lives, so it is important that employers share this information with all employees.

7. (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.

8. Accessible formats and communication supports for employee

Summary: Employers, in consultation with their employee, must identify appropriate accommodations with employees affected by communication barriers. This includes information in accessible formats or other communication supports.

8. (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.

9. Documented individual accommodation plans

Summary: All employers should have a clear and consistent process in place for accommodating employees disabled by barriers. Organizations with 20 or more employees, must document the individual accommodation

plans. Employers must ask the employee requesting an accommodation to participate in the development of this plan. Employers and employees must review and update the plan as necessary.

9. (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) Allow an employee to request the participation of a representative from their bargaining agent or other representative 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 will 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.

10. Return to work process

Summary: Employers of an organization with 20 or more employees shall have in place a documented return to work process for employees who

have been absent from work due to a disability and require reasonable accommodation.

If an individual's illness or injury is covered by the return to work provisions of *The Workers Compensation Act*, then that Act's return to work process would apply.

10. (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 9.

(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.

11. Accommodation continuum

Summary: Employers must consider the accessibility needs of employees and ensure reasonable accommodation apply to all aspects of employment.

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

12. Workplace emergency response information

Summary: Employers must provide emergency response information to employees disabled by barriers and consult with them about how best to address their needs. This will ensure a plan and supports are in place in case of an emergency. Because lives may be affected, all employers are

asked to fulfill this requirement without delay; the general deadlines for compliance do not apply.

12. (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.

Appendix 1

The Accessibility Standard Development Committee for Employment (committee) was comprised of people with a thorough understanding of current employment practices in Manitoba and representatives of the sectors and organizations who may have obligations under the proposed Accessibility Standard for employment.

- Jim Baker, (Chairperson) Retired Executive Director, Manitoba Hotel Association
- Yvonne Peters, Chairperson, Accessibility Advisory Council
- Jesse Turner, University of Winnipeg
- Maureen Morrison, Manitoba Federation of Labour
- Alison Moist, City of Winnipeg
- Glen Coutts, Government of Manitoba, Growth, Enterprise and Trade
- Jamie Horyski, Great-West Life Assurance
- Kim Lanyon, Manitoba Hydro

Biographies of the committee members can be found at www.AccessibilityMB.ca

The Accessibility Advisory Council has the responsibility under the Act to make recommendations to the minister regarding the development of accessibility standards.

- Yvonne Peters, Chairperson, Disability Lawyer
- Jim Derksen, Vice-Chairperson, Disability Advocate
- Lanny McInnes, Retail Council of Canada
- Scott Jocelyn, Manitoba Hotel Association
- Jim Baker, Manitoba Hotel Association (Retired)
- Doug Momotiuk, Manitoba Deaf Association
- Jesse Turner, University of Winnipeg
- Ralph Groening, Association of Manitoba Municipalities
- Judy Redmond, City of Winnipeg
- Dave Schellenberg, Manitoba Council on Aging

Appendix 2

These are the next steps in development of the Accessibility Standard for Employment.

1. Following the consultation period, the Council will consider all comments and feedback and make revisions to the standard as considered appropriate.
2. Prepare recommendations for an employment standard to be submitted to the Minister.
3. The Minister may prepare a proposed employment standard.
4. The Minister must make the proposed employment standard and Council recommendations available to the public.
5. The public has 60 days to comment on the Minister's proposed employment standard after it is posted.
6. The Minister will consult with the Council on the comments received.
7. If the Minister considers revisions appropriate, the Minister will refer the standard to government lawyers for final drafting. The Minister then recommends it to the Lieutenant Governor in Council for implementation.