

Training on the Ontario Human Rights Code and the Accessibility for Ontarians with Disabilities Act

Part 1. Introduction

Welcome to Working Together: training on the Ontario Human Rights Code and the Accessibility for Ontarians with Disabilities Act. We'll show you how the Code applies to people with disabilities.

We'll call the Ontario Human Rights Code "the Code", the Accessibility for Ontarians with Disabilities Act "the AODA" and the Integrated Accessibility Standards Regulation "the IASR". They are all laws you must follow.

This module describes your organization's rights and responsibilities under the Code and the AODA standards, as well as how they work together. The IASR under the AODA requires training about the Code and how it helps people with disabilities. This module provides that training.

The Code has primacy. This means that Ontario laws (with a few exceptions) have to follow the Code. Its goal is to provide for equal rights so as to create a climate of respect where everyone feels part of the community and can contribute fully. The Code says people with disabilities must be free from discrimination where they work, live, and receive services, and their needs must be accommodated.

The goal of the AODA is for Ontario to be accessible by 2025, by removing and preventing barriers so that people with disabilities can participate more fully in communities.

As part of the AODA, the Government of Ontario is developing and enforcing mandatory province-wide accessibility standards in key areas of daily life. The first regulation under the AODA was the customer service standard. The next three standards -Information and Communications, Employment and Transportation -are contained in one regulation called the Integrated Accessibility Standards Regulation or IASR for short.

The Code and the AODA work together in various ways to promote equality and accessibility.

The Code has primacy. It overrides the AODA and other provincial laws when there is a conflict. In fact, the AODA states that if there's a conflict between it and any other Act or regulation, the law offering the higher level of accessibility comes first.

The Code and the AODA are both provincial laws, and both use the same definition of disability. They don't apply to the federal government and federally-regulated organizations like banks, airlines, and interprovincial transportation companies -these are covered by the Canadian Human Rights Act.

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While the Code and the AODA work together, they have some important differences. Under the Code, when a person with a disability needs accommodation, there is a duty to accommodate. This means organizations may need to provide an individualized response to an accommodation request. The Code applies to all Ontario organizations regardless of type and size. This includes "owner-operator" organizations without employees. It also covers volunteers and unpaid workers.

The AODA sets accessibility standards that organizations must meet. The human rights principles of the Code help to inform and guide how AODA standards are to be met. The AODA standards apply to all organizations (public, private, and not-for-profit) with one or more employees in Ontario. Requirements depend on an organization's type and size.

The AODA standards don't limit or replace the requirements of the Code or any other law. Meeting AODA standards doesn't guarantee that an organization has met Code requirements or that the organization won't receive human rights complaints, but it may lower the risk of complaints.

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Part 2. The Code

The Code offers protection of rights, equal opportunity, and freedom from discrimination. It applies to jobs, housing, and services, and states that employers, landlords, and service providers must accommodate people with disabilities to the point of undue hardship.

Employers must accommodate employees when they cannot perform all of the duties of the job because of their disabilities. For example, suppose an employee with low vision has a job requiring her to work on a computer. Accommodating her needs might include supplying appropriate computer technology.

Accommodation means not denying people jobs or services in the first place if they can be accommodated to the point of undue hardship. Changes to an organization's policies and practices or staff training so that discrimination doesn't recur may be required.

The Code is not meant to punish. When discrimination happens, the goal is to fix the situation to provide equal opportunity for the person with a disability. The Code promotes educating and working with organizations to make changes that prevent discrimination and harassment.

Many people think of disabilities as noticeable physical disabilities — such as someone using a wheelchair. But not all disabilities are visible and you can't always tell who has a disability.

In the Code, disabilities can include physical limitations, mental health, cognitive or intellectual development, learning, hearing, or vision. They also can include epilepsy, substance addictions, environmental sensitivities, and workplace injuries.

The Code protects people from discrimination and harassment because of past, present, or perceived disabilities.

Disability itself is not a barrier, but barriers exist that can exclude people with disabilities. These include physical barriers, information and communication barriers, systemic barriers, or attitudinal barriers.

Barriers to accessibility prevent people with disabilities from fully taking part in the social and economic life of our communities.

Physical barriers include things like providing steps but no ramps or elevators.

Information and communication barriers can make it difficult for people to receive or give information, such as using unclear language or print that's too small.

Systemic barriers can result from stereotypes or established practices, such as inflexible work hours that don't coordinate with para-transit bus schedules.

And attitude can be the biggest barrier. Ableism is a tendency to see people with disabilities as less worthy, underestimating their potential, or excluding them from decisions that affect them.

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Organizations should try to identify and remove barriers before problems arise instead of waiting to answer individual accommodation requests or complaints.

You can also avoid creating barriers altogether through inclusive planning and design. For example, when setting up a new web-site, design it for people who have sight and hearing disabilities.

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Part 3. Understanding the Duty to Accommodate

Accommodating the individual needs of people with disabilities is a legal duty under the Code. This allows people to benefit equally and take part fully in the workplace, housing, and other services. The most appropriate accommodation is the one that best meets the individual needs of the person with a disability. You are only exempt if it would cause undue hardship — a very high test.

There is no set formula for accommodation. Some accommodations can benefit many people, but what works for one person may not work for others. You must consider individual needs each time a person asks to be accommodated. Many accommodations can be made easily and inexpensively. But if it's not possible to put the best solution in place, or if doing so results in undue hardship, you still have the duty to take the next-best steps. Examples of accommodation include:

- Providing printed material in alternative formats such as electronic files, large print or Braille.
- Providing sign language interpreters or real-time captioning for people who are deaf or hard of hearing.
- Offering flexible work hours or break times.
- Modifying job duties, retraining, or offering alternative work.
- Installing automatic door openers and accessible washrooms. Accommodation doesn't have to be provided if it causes undue hardship. Undue hardship is the legal limit of the duty to accommodate. It refers to situations where severe negative effects outweigh the benefit of providing accommodation.

Three factors are used to determine undue hardship:

- **One:** Costs. Renovating an older building to make it accessible may be too costly for a small business. If the business must reduce staff or hours to provide the accommodation, then it may be able to claim undue hardship.
- **Two:** Are there external funding sources, such as grants or tax breaks, to reduce the accommodation costs?
- **And Three:** Health and safety considerations. For example, there may be undue hardship if the accommodation violates occupational health and safety regulations. Employers must try to keep all workers safe and still accommodate the needs of the worker with a disability. If a significant risk remains for others, it will be undue hardship. If a significant risk remains only for the worker with a disability, they might have the right to accept the risk. The courts have set a very high standard of proof. You must provide clear evidence if you are claiming undue hardship. Employers have a duty to accommodate the employee as fully and as promptly as possible in his or her job. Modifying job duties might be appropriate in some cases. If accommodation in the original job isn't possible or would cause undue hardship, consider other available jobs or re-training opportunities that could accommodate the employee in another job. You may be held liable if your organization fails to take steps over time to accommodate employee needs.

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Everyone involved must take part in the accommodation process. Sometimes outside experts can help too.

If you need an accommodation:

- Tell your employer, union, landlord, or service provider about any needs related to your disability and your job duties, tenancy, or the services being provided.
- Provide supporting information about your disability-related needs, including medical or other expert opinions where required.
- Get involved in seeking accommodation solutions to the best of your ability.

An employer, union, landlord, or service provider must:

- Accept requests for accommodation in good faith.
- Act promptly, even if it means creating a temporary solution before a long-term one can be put in place.
- Ask only for information needed to provide the accommodation. For example, you may need to know that someone with vision loss is unable to read printed material, but not how or why she lost her vision.
- Actively seek appropriate accommodation solutions and ask for expert help if needed.
- Cooperate with other parties where necessary.
- Respect the dignity and privacy of the person asking for accommodation, and make sure the accommodation process doesn't lead to reprisals against that person.
- Cover the costs of accommodations, such as any needed medical or other expert opinions or documents, to the point of undue hardship.

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Part 4. Applying Human Rights Principles

Organizations should follow human rights principles and Code obligations when implementing the AODA standards. Keep these points in mind:

- Don't create new barriers: Don't make changes to facilities, services, goods, technology, or procedures that reinforce or create new barriers.
- Design inclusively: Make choices that work for as many people as possible, especially those with disabilities, while meeting individual needs.
- Favour integration over segregation: Usually the best accommodations allow people with disabilities to participate in similar ways with everyone else.
- Equal outcomes sometimes require different treatment: Different or separate accommodations may be necessary to help people do their jobs or access services.
- Involve those who need accommodations in exploring solutions: They often know what works best for them. Make sure the process and solutions meet the individuals' needs and promote privacy, dignity, and respect. And, spread out accessibility costs: People with disabilities should not face extra costs for accommodations they need to do their job or receive a service. Accessibility should be factored in as part of the overall cost of doing business.

The Code and AODA accessibility standards are laws that work together to promote equality and accessibility in Ontario. Under the Code, employers must consider disability-related accommodation requests and provide timely accommodation, from recruiting and hiring through to retirement or dismissal.

The Employment Standard of the Integrated Accessibility Standards Regulation builds on these requirements. Organizations must set up processes to address employee accommodation needs at all stages of their employment. Except for small organizations, employers must have a written process to document an employee's accommodation needs in an individual accommodation plan. This important step helps ensure that all the necessary people are involved, the right steps are taken and the best possible solutions are considered and put in place.

The Information and Communications Standard and the Transportation Standard of the IASR also complement the Code's duty-to-accommodate requirement. As you implement the accessibility standards, please keep in mind the Code principles and requirements you've learned in this training.

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Part 5. Compliance and Enforcement

Understanding and applying human rights principles may help avoid potential human rights complaints and litigation.

Ontario has three organizations in the human rights system: The Ontario Human Rights Commission, the Human Rights Tribunal of Ontario, and the Human Rights Legal Support Centre:

- The Human Rights Commission provides policies, guidelines and other information on Code grounds, including disability and the duty to accommodate.
- The Human Rights Tribunal hears discrimination claims (called applications) on any Code ground. This includes claims from individuals who believe an organization or person has failed to accommodate disability-related needs.
- The Human Rights Legal Support Centre helps people through the human rights process, such as completing an application or claim to the Tribunal.

Individuals cannot file accessibility complaints under the AODA. But in cases of non-compliance, the Directorate can enforce standards through mechanisms set under the law. Meanwhile, the Accessibility Directorate works with organizations having trouble meeting the standards in order to bring them into compliance.

Today, you've learned how the Ontario Human Rights Code applies to people with disabilities and about your legal duty to accommodate. Let's recap some key learning points.

- The Code and the AODA are laws that work together.
- The Code protects every person's right to equal opportunities and to be free from discrimination.
- The Code has primacy, which means that Ontario laws (with a few exceptions) have to follow the Code.
- The Code states there is a legal duty to accommodate people with disabilities. If the accommodation was not made, and would not have caused undue hardship, a claim of discrimination can be made to the Human Rights Tribunal of Ontario.

You also learned how the AODA accessibility standards complement the Code to promote equality and accessibility in Ontario. The AODA uses the same definition of disability as the Code. If the two conflict, then the Code prevails.

Applying human rights principles and Code obligations may help in meeting the AODA standards. The AODA standards do not replace or limit the Code or any other law.