

New Accessibility Duties For Federal Employers In Canada



From 31 December 2022, federal public sector employers in Canada will have new duties in relation to making workplaces accessible. These duties will extend to private sector employers in June 2023 and June 2024, with the timing dependent on number of employees.

On 13 December 2021, the Accessible Canada Regulations (SOR/2021-241) came into force. These Regulations set out obligations for federally regulated employers under the Accessible Canada Act (the 'Act'), including obligations to prepare and publish accessibility plans, descriptions of feedback processes, and progress reports. The Regulations also introduce monetary penalties to promote compliance with the Act.

Accessibility plans

The Act provides that accessibility plans must be published and updated every three years, in consultation with persons with disabilities. Accessibility plans must indicate the regulated entity's policies, programmes, and practices in relation to the identification and removal of accessibility barriers and the prevention of new barriers. Accessibility plans must be written in simple, clear and concise language. Employment and Social Development Canada has prepared a Module to provide guidance to employers regarding the creation of accessibility plans and provides best practices and

recommendations for accessibility plans.

Under the Regulations, accessibility plans must include the headings and content set out below.

General

This must outline how the public can communicate with the entity, namely the address of its places of business and a telephone number that is available to the public or an email address.

The Module also recommends the inclusion of: an executive summary of the accessibility plan; an accessibility statement; basic information about the entity; team or committee members' names (subject to applicable privacy restrictions) and/or any designated accessibility-related roles.

Areas identified in the Act (as required for certain sectors)

This section must address specific issues set out in the Act; e.g. employment; built environment; information and communication technologies (ICT); communication (non-ICT); procurement of goods, services and facilities; design and delivery of programs and services; and transportation.

The Module also recommends the inclusion of: actions the entity is taking (or has taken) to identify, remove and prevent barriers; descriptions of current levels of accessibility and accessibility goals; policies, programmes, practices and services the entity intends to change, how the entity plans to change, and the results expected from the change; accessibility achievements or milestones; training that has been provided or that is planned; and long-term plans for accessibility.

Consultations

These should explain how persons with disabilities were consulted in the preparation of the plan.

The Module also recommends the inclusion of details of: those consulted, including the number of participants, the range of disabilities included, etc.; what the entity consulted on (e.g. questions asked and answers received); when the consultation took place; how the entity consulted, including a description of the consultation process and activities; where the consultation took place; and the results of the consultation.

The Module further recommends that the following be included in accessibility plans:

- the entity's short-term and long-term accessibility goals;
- an explanation of what the entity is currently doing, plans to do, and hopes to achieve in improving accessibility;
- useful accessibility-related information for clients and employees;
- a description of the entity's approach to accessibility training; and
- a discussion of how accessibility fits into the entity's internal 'culture'.

Requirements for feedback processes

Regulated entities must establish a process for receiving and dealing with feedback from persons with disabilities regarding the implementation of their accessibility plans and the barriers encountered by employees and others dealing with the entity.

The Regulations require that entities ensure that their feedback processes provide an option for individuals to give feedback anonymously and in any manner that the regulated entity communicates with the public. Entities are required to acknowledge the receipt of any feedback that was not provided anonymously.

If feedback processes are updated, entities are required to publish a simple, clear and concise description of their updated process, and are required to notify the Accessibility Commissioner within 48 hours of publication, including a description of the feedback process and information on where the update can be found (e.g. web link or physical addresses of the businesses where the document is posted).

Requirements for progress reports

Regulated entities must prepare and publish progress reports, which update the public on the implementation of their accessibility plan. These reports must include information on the feedback received from persons with disabilities and how that feedback was taken into consideration. Entities must not only consult persons with disabilities every time they prepare a progress report but also include a description in the progress report of the manner in which the consultation occurred.

Under the Regulations, progress reports need to include the same headings as accessibility reports, as well as the following additional heading and content:

Feedback

The feedback received by the entity and how that feedback was taken into consideration.

Requirements for publication and notification

Regulated entities are required to notify the Accessibility Commissioner of the publication of all planning and reporting requirements (accessibility plans, progress reports, and descriptions of feedback processes) within 48 hours of publication. The notification must include information on where the plan, report, or description can be found (e.g. a

web link or physical address of the business where the document is posted).

Accessibility plans, progress reports and descriptions of feedback processes must be published on the main digital platform (e.g. a website or a Facebook page) that is owned, operated or controlled by the entity that it uses to communicate with the public, and in a manner that makes it accessible on the digital platform either through a hyperlink or directly on the home screen or homepage. All published plans, reports, and descriptions must be published in a format that is Level AA-compliant with the most recent version of the [Web Content Accessibility Guidelines \(WCAG\)](#).

If an entity does not have a digital platform, it must display printed copies of its plans, reports, and descriptions of feedback processes in each of its places of businesses, and must provide plans and reports to members of the public upon request.

The Regulations also require that, on request, plans and reports must be provided in print, large print, braille, audio format, and an electronic format that is compatible with adaptive technology and is intended to assist persons with disabilities.

For federal departments, agencies, Crown corporations and private sector entities with 100 or more employees, alternate formats of plans and reports (with the exception of braille and audio format) must be provided within 15 days of the request.

Smaller private sector entities with between ten and 99 employees are required to provide alternate formats of plans and reports (with the exception of braille and audio format) within 20 days of the request.

For braille and audio format, all entities have up to 45 days to provide those formats.

Compliance and enforcement

The Act provides for the appointment of an Accessibility Commissioner within the Canada Human Rights Commission (CHRC) who is responsible for proactive compliance and enforcement, and dealing with complaints. The Accessibility Commissioner has a range of enforcement tools to verify, promote, and enforce compliance with the Act and its Regulations, including the power to conduct inspections and issue orders and notices of violations, including with penalties, and enter into compliance agreements.

The Regulations classify violations of the Act as 'minor', 'serious', or 'very serious'. Each classification has a monetary penalty range, with penalties ranging from CAD 250 to CAD 250,000. The penalty amounts are calculated based on the following criteria:

- the classification of the violation (i.e. minor, serious, or very serious);
- the entity's five-year history of prior notices of violation with warning or penalty;
- a list of criteria used to determine the severity of the violation; and
- the size of the entity.

'Small business' is defined as a private sector entity with an average of fewer than 100 employees during the year that occurs before the entity is served with a notice of violation or, if the entity has been in operation for less than one year, on the day the notice is issued.

Timelines for compliance

The Regulations set out the following deadlines for when initial accessibility plans must be published:

- federal government departments, the Canadian Forces, agencies and Crown corporations by 31 December 2022;

- private sector entities with 100 or more employees by 1 June 2023; and
- private sector entities with between 10 and 99 employees by 1 June 2024.

Regulated entities are required to publish progress reports in the two calendar years following the publication of the initial accessibility plan, which must be updated every three years. Note that once an entity has published an accessibility plan, it must prepare and publish the two required progress reports in the two years that follow, even if the number of employees falls below ten in any subsequent year following the initial accessibility plan.

Document retention

Regulated entities are required to keep their published accessibility plans, descriptions of feedback processes and progress reports on their digital platform for six years from initial publication and to keep an archived electronic version of each on file for an additional year. If an entity does not use a digital platform, copies must be retained for seven years following initial publication. Entities are also required to keep a copy of any feedback received for seven years following receipt.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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