



University
of Windsor

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

Handbook And Learning Module

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Part 1 – Your Rights and Responsibilities under the Accessibility for Ontarians with Disabilities Act (AODA) and the Ontario Human Rights Code (the Code)

The AODA & the Code

This handbook was created to assist faculty, staff, volunteers, and 3rd party service providers with an understanding of how the AODA & the *Code* work together and to provide a better understanding of the University's duty to accommodate persons with disabilities.

Why Do You Need This Training?

In 2005, the Accessibility for Ontarians with Disabilities Act was passed by the provincial government. Under this Act, and the Integrated Accessibility Standards (IASR), Regulation 191/11, all university employees, volunteers and 3rd-party service providers must receive this training. Once you have read this booklet, you must complete [the quiz online](#) posted on the Office of Human Rights, Conflict Resolution and Mediation website.

The University's Rights and Responsibilities under the Code and the AODA Standards.

With respect to the various pieces of legislation that the University must follow, the *Code* has primacy. This means that other Ontario laws (with a few exceptions) have to follow the *Code*. The purpose of the *Code* is to provide for equal rights and foster a climate of respect where everyone feels part of the community and can contribute fully. The *Code* states that 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. This goal is to be achieved by removing and preventing barriers and helping to ensure 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 Accessible Customer Service Standard, which required mandatory training for all persons who work in Ontario. The next four standards that have been developed include: Information and Communications, Employment, Transportation, and Design of Public Spaces. These five standards are contained in one regulation called the Integrated Accessibility Standards Regulation (IASR).

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

Because 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

and the Accessible Canada Act. The *Code* also covers volunteers and unpaid workers.

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 that organizations may need to provide an individualized response to an accommodation request.

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 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 by identifying and removing barriers, or preventing them from the beginning.

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 who have a disability. According to the Ontario Human Rights Commission, the goal of accommodation is to ensure that an employee who is able to work can do so. For example, suppose an employee with low

vision has a job requiring them to work on a computer. Accommodating disability-related 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 may be required to policies and practices, or staff training, to ensure discrimination doesn't occur.

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.

Barriers

People with disabilities face barriers every day. These include physical barriers, information and communications 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 steps to access buildings, 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 accessible bus service schedules.
- Attitudinal barriers can be the biggest barrier. "Ableism" is the tendency to see people with disabilities as less worthy, underestimating their potential, or excluding them from decisions that affect them.

It is important 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, if you are adding content to a university website, ensure you understand how the information needs to be added in order for people who have sight and hearing disabilities to access the information. Or check the Accessible Event Checklist to ensure everyone takes part in the function.

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 participate fully in the workplace environment. The most appropriate accommodation is the one that best meets the individual needs of the person with a disability. The University is only exempt from accommodating an individual with a

disability if the accommodation would cause undue hardship.

Accommodations must be Individualized

Individual needs must be considered 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

It is important to note that because accommodations must be individualized, one employee having an accommodation plan in place does not set a precedent for other employees. For example, if due to a disability an employee requires flexible working hours or break times, this has no bearing on other employees who also have flexible working hours or break times.

Undue Hardship

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 benefits of providing accommodation.

Three factors are used to determine undue hardship:

1. **Costs.** In order for undue hardship to be reached based on costs, the cost must be prohibitive based on the resources of the entire University, not just a single unit or department.
2. **Are there external funding sources,** such as grants or tax breaks, to reduce the accommodation costs?
3. **Health and safety considerations.** For example, there may be undue hardship if the accommodation violates occupational health and safety regulations. The University strives 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. Clear evidence must be provided if undue hardship is being claimed. 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. The University may be held liable if it fails to take steps over time to accommodate employee needs. Everyone involved must take part in the accommodation process. Sometimes outside experts can help too.

If you need an accommodation:

- Tell your supervisor your needs related to your disability and job duties.
- 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.
- Co-operate with any experts whose assistance is required to manage the accommodation process.
- Meet agreed-upon performance and job standards once accommodation is provided.

The University 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.

Part 4: Applying Human Rights Principles

The University is responsible for following Human Rights principles and *Code* obligations when implementing the AODA Standards. Keep these points in mind:

- Design inclusively – make choices that work for as many people as possible, especially those with disabilities, while meeting individual needs.
- Favour integration over segregation.
- 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.
- Ensure that the process and solutions meet individuals' needs and promote privacy, dignity, and respect.
- Spread out accessibility costs. People with disabilities should not incur extra costs for accommodations they need to do their job. Accessibility should be factored in as part of the overall budget.
- Don't make changes to the facilities, services, goods, technology, or procedures that reinforce or create new barriers.

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

Sections of the IASR

The Employment Standard of the IASR deals with the following requirements:

- organizations must set up processes to address employees' accommodation needs at all stages of their employment
- organizations must have a written process to document an employee's accommodation needs and individual accommodation plan. This important step helps ensure that all of the necessary people are involved, the right steps are taken, and the best possible solutions are considered and put in place.

The Information and Communication Standard, the Transportation Standard, Customer Service and the Design of the Public Spaces standard of the IASR also complement the *Code's* duty to accommodate requirement.

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 Ministry for Seniors and Accessibility (MSAA) can enforce standards through mechanisms set under the law. Meanwhile, the MSAA works with organizations having trouble meeting the standards in order to bring them into compliance.

Members of the University Community, who feel that their rights protected under the Human Rights Code have been violated, may contact the University's Office of Human Rights, Conflict Resolution and Mediation (OHRCRM).

For more information about the OHRCRM and the complaint process, please visit: www.uwindsor.ca/ohrcrm.

Additional Resources

- The Accessibility for Ontarians with Disabilities Act, 2005: www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_05a11_e.htm
- Ministry for Seniors and Accessibility: www.ontario.ca/page/ministry-seniors-accessibility
- Integrated Accessibility Standards, Ontario Regulation 191/11: www.e-laws.gov.on.ca/html/regs/english/elaws_regs_110191_e.htm
- Ontario Human Rights Code, R.S.O. 1990: www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90h19_e.htm
- Ontario Human Rights Commission: www.ohrc.on.ca/en
- Ontario Human Rights Tribunal: www.hrto.ca
- OHRC: Policy & Guidelines on the Duty to Accommodate: www.ohrc.on.ca/pa/node/2461
- University of Windsor – Office of Human Rights, Conflict Resolution and Mediation: www.uwindsor.ca/ohrcrm
- University of Windsor Accessibility Policy, Guidelines and Procedures: <https://www.uwindsor.ca/ohrcrm/234/accessibility-accommodations>
- University of Windsor Human Rights Policy: www.uwindsor.ca/ohrcrm/242/human-rights