

The Accessibility for Ontarians with Disabilities Act (AODA)



Table of Contents

Overview	3
Why Was the Accessibility for Ontarians with Disabilities Act Necessary?	4
AODA's Regulatory Process	5
How Does AODA Define Disability?	6
What Organizations Are Subject to AODA?	7
Key Requirements of AODA by Organization Type.....	8
Federally-Regulated Industries.....	12
Accessibility Compliance Reports	13
Accessibility Plans	13
Information and Communications Standards.....	14
Customer Service Standards.....	17
Employment Standards.....	18
Design of Public Spaces Standards	19
Industry-Specific Regulations.....	19
Penalties for Violating AODA	22
About Level Access	24

Overview

The *Accessibility for Ontarians with Disabilities Act* (“AODA”) is a 2005 provincial law designed to improve accessibility for Ontarians with disabilities to all public establishments by 2025. Building on earlier laws, AODA sets high standards in order to achieve its goal of an accessible Ontario.

Unlike many accessibility statutes, AODA applies to all organizations, both in the public sector and private sector, even those that have only a single employee. While some regulations only apply to larger organizations or to public sector organizations, all organizations subject to Ontario provincial regulation, regardless of size, need to be aware of AODA’s requirements.

Because AODA is focused on achieving accessibility on a broad scale, most of its provisions are focused on physical, rather than digital, accessibility. Digital accessibility is a major concern, however, especially in the Information and Communication Standards, which requires organizations to make information available in accessible formats and for websites and web content to comply with WCAG 2.0 standards. In addition, a number of other regulations reference content that must be made available to individuals with disabilities, typically through an organization’s website.

Regulations under AODA have been implemented slowly under a staggered timeline that takes into consideration the size and nature of an organization. As of June 30, 2021, however, most AODA regulations are in full effect. Businesses and non-profits with 50 or more employees, public sector organizations with 20 or more employees, and all public sector publishers, educational institutions, and municipalities in Ontario must ensure their public-facing website and web content, including web-based mobile applications, are accessible and meet WCAG 2.0 Level AA success criteria as of January 1, 2021. In addition, private sector organizations with 20 or more employees and all public sector organizations are now required to submit Accessibility Compliance Reports to the Government of Ontario to confirm they are meeting accessibility requirements under AODA.

This whitepaper will discuss:

- The background of AODA, including why it was needed in light of federal and provincial human rights laws;
- AODA’s regulatory process;
- Major AODA requirements organizations should be aware of;
- The procedures for submitting accessibility compliance reports and developing multiyear accessibility plans;
- Regulations governing digital accessibility and other rules that should be kept in mind when developing websites, web content, and mobile apps;
- Industry-specific rules about digital accessibility and web content; and
- The penalties for violating AODA requirements.

This whitepaper is for informational use only. While it outlines many of the rules set by AODA, it does not constitute legal advice. If you have questions about if or how AODA rules apply to your organization, consider talking to a lawyer admitted to the Law Society of Upper Canada.

Why Was the *Accessibility for Ontarians with Disabilities Act* Necessary?

Under the Canadian Constitution, most human rights laws—including laws protecting individuals with disabilities—fall under provincial, rather than federal, jurisdiction. While Section 15(1) of the *Charter of Rights and Freedoms* prohibits discrimination on the basis of mental or physical disability, it applies only to actions by the government and public institutions like hospitals and schools, not to actions by private individuals or organizations. In addition, the burden of proving a Charter violation can be high, as well as time-consuming.

The federal *Canadian Human Rights Act* (1977) goes much further to prohibit discrimination and discriminatory practices against persons with disabilities. Unlike the *Charter*, the *Canadian Human Rights Act* does extend to private individuals and corporations, but only if they fall under a limited list of federally-regulated industries, including banks, broadcasting, telecommunications, and air and railway transportation. (See below for more on federally-regulated industries.) The *Canadian Human Rights Act* does not extend, however, to other industries, to provincial or local governments, or to other organizations regulated by the provincial, rather than federal, governments.

At the provincial level, the Ontario Human Rights Code (“the Code”) prohibits discrimination on a number of factors, including disability, with respect to services, accommodations, and employment.

At the provincial level, the *Ontario Human Rights Code* (“the Code”) prohibits discrimination on a number of factors, including disability, with respect to services, accommodations, and employment. Complaints under the *Code* are heard by the Human Rights Tribunal of Ontario (“HRTO”); a separate Ontario Human Rights Commission investigates systemic discrimination and can intervene in cases before the HRTO. The *Code* does not, however, set out clear guidelines for what individuals, organizations, and government entities need to do to ensure accessibility. Ontarians with disabilities had a right not to be discriminated against, but it could be difficult to know exactly what that meant up front.

In 2001, the Ontario legislature attempted to remedy that by passing the *Ontarians with Disabilities Act* (“ODA”). Disability rights groups, however, broadly criticized ODA for not going far enough, with particular emphasis on the act’s failure to set mandatory accessibility standards, especially for the private sector. Even with ODA, it was still difficult for organizations to know what they needed to do to be accessible and Ontarians with disabilities were once again left without a means of enforcing their rights.

Finally, in 2005 the Ontario government introduced the *Accessibility for Ontarians with Disabilities Act* (“AODA”), which fills in many of the gaps from prior legislation. AODA’s goal is to improve accessibility for Ontarians with disabilities to all public establishments by 2025, and sets out specific mandates and high standards to achieve its goal of an accessible Ontario.

“Recognizing the history of discrimination against persons with disabilities in Ontario, the purpose of this Act is to benefit all Ontarians by,

(a) developing, implementing and enforcing accessibility standards in order to achieve accessibility for Ontarians with disabilities with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises on or before January 1, 2025; and

(b) providing for the involvement of persons with disabilities, of the Government of Ontario and of representatives of industries and of various sectors of the economy in the development of the accessibility standards.”

AODA has not solved everything, however. Even with specific regulations in force, Ontarians with disabilities may still face difficulty enforcing their rights, as AODA did not create a private right of action and the HRTO has thus far refused to consider AODA’s requirements in complaints brought under the Code.

AODA’s Regulatory Process

Unlike earlier provincial laws, AODA sets clear standards that are—or, in some cases, will be—binding on both governmental entities and private organizations. Most of these regulations come not from the AODA statute itself, however, but instead from the regulations adopted to implement it.

Under AODA, the Ontario Minister of Community and Social Services convened standards development committees to hear evidence and draft regulations in five broad categories:



Customer Service



Employment



Transportation



Design of Public Spaces



Information and Communications

Each of the committees included people with disabilities, industry representatives, and government officials. Beginning in 2007, at least 50% of each committee had to be made up of either individuals with disabilities or their representatives. In 2011, the committee standards were combined, along with a sixth set of general standards applicable to all organizations regardless of industry, into a single set of regulations, the *Integrated Accessibility Standards*. The *Integrated Accessibility Standards* have the force of law and must be followed by all organizations subject to Ontario provincial regulation.

How Does AODA Define Disability?

One of the goals of AODA was to ensure the statute covered a broad scope of disabilities, and was not limited to older preconceptions of what it meant to be disabled or handicapped, as was common with older laws. The statute sets out five broad categories of disability:

- › Physical disability caused by bodily injury, birth defect, or illness;
- › Mental or developmental disability;
- › Learning disability or dysfunction in understanding or using symbols or spoken language;
- › Mental disorder; or
- › An injury or disability (a “handicap”) for which benefits can be claimed under the *Workplace Safety and Insurance Act, 1997*.

The statute provides a number of examples of physical disabilities, including:









- Diabetes mellitus
- Epilepsy
- Brain injury
- Paralysis
- Amputation
- Lack of physical co-ordination
- Blindness or visual impediment
- Deafness or hearing impediment
- Muteness or speech impediment
- Physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device

This list is not exhaustive, however, and no specific examples are provided of non-physical disabilities. Because of this, organizations must be careful not to assume a disability is not covered simply because it is not listed or because it has not been raised in the past.

What Organizations Are Subject to AODA?

AODA applies to all public and private sector organizations with one or more employees, though requirements differ depending on the type and size of the organization.

Public sector organizations include a wide variety of government bodies, as well as independent organizations functioning in the broader public sector, including:

			
Government of Ontario	School & Library Boards	Municipal Governments	Other Organizations
			
Hospitals	Legislative Assembly	Public Transportation	Universities & Educational Organizations

Public sector organizations are generally subject to more stringent requirements than private sector organizations, with the Government and Legislative Assembly of Ontario subject to the strictest requirements under AODA. Public sector organizations with fewer than 50 employees (“small designated public sector organizations”) were initially granted additional time to comply with AODA requirements, but as of January 2016, the requirements for all public sector organizations are effectively the same regardless of size. For the most part, this white paper will not discuss the additional requirements that AODA imposes on the Legislative Assembly or Government of Ontario, and will instead focus on other public sector organizations.

Private sector organizations are also divided by size, with organizations with 50 or more employees (“large organizations”) subject to more stringent regulations than those with 49 or fewer employees (“small organizations”). In addition, private sector organizations with fewer than 20 employees are exempt from the requirement to submit accessibility compliance reports to the Accessibility Directorate of Ontario (“Accessibility Directorate”). As with public sector organizations, small organizations were also given additional time to comply with AODA requirements, but as of January 2017, most regulations have been phased in regardless of organization size.

Key Requirements of AODA by Organization Type

Public Sector Organizations

Public sector organizations must:

- File an Accessibility Compliance Report by December 31 of every odd-numbered year
 - The next Accessibility Compliance Report deadline is December 31, 2021
- Create accessibility policies and a multi-year plan
 - Tell employees and customers about the policies
 - Post the multi-year plan on the organization's website in an accessible format
- Make employment practices accessible
 - Hiring and career development opportunities must be accessible
 - Document processes for developing individual accommodation plans and return-to-work plans
- Provide accessible customer service
 - Train staff and volunteers to serve customers of all abilities and on how accessibility requirements apply to their job duties
 - Keep a written record of training
 - Welcome service animals and support persons
 - Create accessible ways for people to provide feedback
 - Put an accessibility policy in place so employees, volunteers, and customers can know what to expect
- Make new websites and new web content accessible
 - As of January 1, 2021, all public-facing websites, web content, and web-based applications must conform to WCAG 2.0 Level AA success criteria
- Make public information available in accessible formats when asked
- Make it easy for people with disabilities to provide feedback, e.g., through surveys or comment cards
- Provide accessible emergency and public safety information upon request
- Provide accessible emergency information to staff as soon as requested or as soon as organization becomes aware the employee may need an accommodation in an emergency
- Buy goods, services, or facilities that are accessible to people with disabilities
 - Where possible, include accessible design, criteria, and features when making purchases
 - When not possible, explain why
- Include accessibility features when purchasing or designing self-service kiosks
- Provide accessible transportation services (if applicable)

- Make new or redeveloped public spaces accessible, including:
 - Recreational trails and beach access routes
 - Outdoor public use eating areas
 - Outdoor play spaces
 - Public outdoor paths of travel
 - On- and off-street parking areas
 - Service counters
 - Fixed waiting lines
 - Waiting areas with fixed seating

Private Sector Organizations and Non-Profits (*with 50+ Employees*)

Private sector organizations and Non-profits with 50+ employees must:

- File an Accessibility Compliance Report by December 31 of every third year
 - The next Accessibility Compliance Report deadline is December 31, 2023
- Create accessibility policies and a multi-year plan
 - Tell employees and customers about the policies
 - Post the multi-year plan on the organization's website in an accessible format
- Make employment practices accessible
 - Hiring and career development opportunities must be accessible
 - Document processes for developing individual accommodation plans and return-to-work plans
- Provide accessible customer service
 - Train staff and volunteers to serve customers of all abilities and on how accessibility requirements apply to their job duties
 - Keep a written record of training
 - Welcome service animals and support persons
 - Create accessible ways for people to provide feedback
 - Put an accessibility policy in place so employees, volunteers, and customers can know what to expect
- Make new websites and new web content accessible
 - As of January 1, 2021, all public-facing websites, web content, and web-based applications must conform to WCAG 2.0 Level AA success criteria
- Make public information available in accessible formats when asked

- Make it easy for people with disabilities to provide feedback, e.g., through surveys or comment cards
- Provide accessible emergency and public safety information upon request
- Provide accessible emergency information to staff as soon as requested or as soon as organization becomes aware the employee may need an accommodation in an emergency
- Consider accessibility when purchasing or designing self-service kiosks
- Make new or redeveloped public spaces accessible, including:
 - Recreational trails and beach access routes
 - Outdoor public use eating areas
 - Outdoor play spaces
 - Public outdoor paths of travel
 - Parking lots
 - Service counters
 - Fixed waiting lines
 - Waiting areas with fixed seating

Private Sector Organizations and Non-Profits *(with 24-49 Employees)*

Private sector organizations and Non-profits with 24-49 employees must:

- File an Accessibility Compliance Report by December 31 of every third year
 - The next Accessibility Compliance Report deadline is December 31, 2023
- Create accessibility policies and a multi-year plan
 - Tell employees and customers about the policies
 - Post the multi-year plan on the organization's website in an accessible format
- Make employment practices accessible
 - Hiring and career development opportunities must be accessible
- Provide accessible customer service
 - Train staff and volunteers to serve customers of all abilities and on how accessibility requirements apply to their job duties
 - Keep a written record of training
 - Welcome service animals and support persons
 - Create accessible ways for people to provide feedback
 - Put an accessibility policy in place so employees, volunteers, and customers can know what to expect

- Make public information available in accessible formats when asked
- Make it easy for people with disabilities to provide feedback, e.g., through surveys or comment cards
- Provide accessible emergency and public safety information upon request
- Provide accessible emergency information to staff as soon as requested or as soon as organization becomes aware the employee may need an accommodation in an emergency
- Consider accessibility when purchasing or designing self-service kiosks
- Make new or redeveloped public spaces accessible, including:
 - Recreational trails and beach access routes
 - Parking lots
 - Service counters
 - Fixed waiting lines
 - Waiting areas with fixed seating

Private Sector Organizations and Non-Profits *(with 19 or Fewer Employees)*

Private sector organizations and Non-profits with 19 or fewer employees must:

- Create accessibility policies and a multi-year plan
 - Tell employees and customers about the policies
 - Post the multi-year plan on the organization's website in an accessible format
- Make employment practices accessible
 - Hiring and career development opportunities must be accessible
- Provide accessible customer service
 - Train staff and volunteers to serve customers of all abilities and on how accessibility requirements apply to their job duties
 - Keep a written record of training
 - Welcome service animals and support persons
 - Create accessible ways for people to provide feedback
 - Put an accessibility policy in place so employees, volunteers, and customers can know what to expect
- Make public information available in accessible formats when asked
- Make it easy for people with disabilities to provide feedback, e.g., through surveys or comment cards
- Provide accessible emergency and public safety information upon request

- Provide accessible emergency information to staff as soon as requested or as soon as organization becomes aware the employee may need an accommodation in an emergency
- Consider accessibility when purchasing or designing self-service kiosks
- Make new or redeveloped public spaces accessible, including:
 - Recreational trails and beach access routes
 - Parking lots
 - Service counters
 - Fixed waiting lines
 - Waiting areas with fixed seating

Federally-Regulated Industries

Although AODA applies to all organizations with at least one employee subject to regulation by the province of Ontario, an exception does exist for organizations in federally-regulated industries. These organizations are instead subject to federal accessibility laws and regulations rather than provincial laws like AODA.

Federally-regulated industries include:

- › Banks
- › Marine shipping, ferry, and port services
- › Air transportation, including airports, aerodromes, and airlines
- › Railway and road transportation that involves crossing provincial or international borders
- › Canals, pipelines, tunnels, and bridges (crossing provincial borders)
- › Telephone, telegraph, and cable systems
- › Radio and television broadcasting
- › Grain elevators, feed and seed mills
- › Uranium mining and processing
- › Businesses dealing with the protection of fisheries as a natural resource
- › Many First Nation activities
- › Most federal Crown corporations
- › Private businesses necessary to the operation of a federal act

But, the mere fact that some of an organization's business falls into one of these silos does not mean it is exempt from all AODA regulations. AODA may apply where an organization also provides provincially-regulated services, as when a bank sells insurance or offers wealth management products, for instance.

If you have questions about whether AODA would apply to your organization, consult a lawyer.

Accessibility Compliance Reports

One of the center stones of AODA is the requirement that all public sector organizations, as well as all private sector organizations with 20 or more employees, file regular accessibility compliance reports with the Accessibility Directorate. The accessibility compliance report certifies that the organization is in compliance with AODA.

All public sector organizations, regardless of size, are required to file reports by December 31 of each odd-numbered year. The next round of accessibility compliance reports are due by December 31, 2021.

Private sector organizations with 20 or more employees are required to file reports every three years. The December 31, 2020 reporting deadline was extended to June, 30, 2021, and the next round of reports will be due December 31, 2023. The reporting requirements are lessened for organizations with fewer than 50 employees, however; these small organizations may submit a shorter report limited only to AODA's Customer Service Standards.

The Accessibility Directorate takes failure to file an accessibility compliance report very seriously, as self-reporting plays a critical part in the Accessibility Directorate's ability to ensure organizations are in compliance with the law. The Accessibility Directorate has brought a number of cases against organizations for failing to submit reports, and while fines have thus far been fairly low, penalties can increase if there are repeat violations or if the investigation unveils other significant AODA violations.

Accessibility Plans

In addition to filing periodic accessibility compliance reports with the Accessibility Directorate, public sector organizations and large (50+ employee) private sector organizations are also required to prepare and maintain multi-year accessibility plans outlining the organization's strategies to prevent and remove barriers for people with disabilities and plan for meeting accessibility requirements under AODA.

Accessibility plans must be reviewed and updated at least every five years, and they must be posted on the organization's website and made available in accessible formats upon request.

Public sector organizations also face additional requirements. AODA requires public sector organizations to consult with persons with disabilities when preparing, reviewing, or updating their accessibility plans. In addition, public sector organizations are also required to prepare annual status reports on the progress toward implementing their accessibility plans. As with the plans themselves, these annual status reports must also be posted on the organization's website and be made available in accessible formats upon request.

AODA requires public sector organizations to consult with persons with disabilities when preparing, reviewing, or updating their accessibility plans.

Unlike accessibility compliance reports, there is no fixed schedule for when organizations need to review or update their accessibility plans. Because organizations must review and update their accessibility plans at least every five years, the deadline for the next review will be case-specific, depending on when the last plan was prepared.

Information and Communications Standards

Most of AODA's general regulations governing digital accessibility fall under the standards developed by the Information and Communications Committee. These regulations require that documents be made available in an accessible format.

Accessible Formats and Communication Supports

Since January 1, 2017, all organizations—both public and private sector, regardless of size—have been required, upon request, to provide documents in accessible formats and to provide communications supports for individuals with disabilities. Organizations must also take steps to notify the public of the availability of accessible format and communication supports.

Accessible formats include, but are not limited to:

- › Large print
- › Accessible audio formats
- › Text transcripts of visual and audio information
- › HTML
- › Microsoft Word
- › Braille

Communication supports includes, but is not limited to:

- › Reading the written information aloud to the person directly
- › Exchanging hand-written notes
- › Providing a note taker or communication assistant
- › Captioning or audio description
- › Assistive listening systems
- › Augmentative and alternative communication methods and strategies, such as the use of letter, word or picture boards, and devices that speak out
- › Sign language interpretation and intervenor services
- › Repeating, clarifying, or restating information


Websites and Web Content

Public sector organizations and private sector organizations with 50+ employees are also required to make their websites and web content (including mobile apps) accessible.

AODA expressly adopts the Web Content Accessibility Guidelines (“WCAG”) 2.0 framework. Since January 1, 2014, new web sites and web content must comply with WCAG 2.0 Level A, and are required to comply with WCAG 2.0 Level AA standards as of January 1, 2021

WCAG 2.0

WCAG 2.0 states that technology should be perceivable, operable, understandable, and robust:

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- **Perceivable:** The technology is able to be seen by a person with visual impairments (through a screen reader, screen magnifier, or other assistive technology), or heard by a person who is hard of hearing or deaf (through captions, written transcripts, etc.).
 - **Operable:** The technology can be operated by a user with a disability (such as a website that can be navigable by keyboard shortcuts for individuals unable to use a mouse).
 - **Understandable:** The technology can be operated by users with varying cognitive abilities.
 - **Robust:** The technology is compatible with current assistive technology and is prepared to upgrade for future iterations of assistive technology.

The WCAG 2.0 requirements are broken up into three levels:

1. **Level A:** This level defines the lowest or minimum level of accessibility. Many groups of users with disabilities will find it very difficult or impossible to access information in the document. Satisfying Level A criteria is currently required for all public sector organizations and private sector organizations with 50+ employees.
2. **Level AA:** This level defines a higher level of accessibility. One or more groups will find it difficult to access information in the document. Satisfying the Level AA success criteria will remove significant barriers to accessing web content. All public sector organizations and private sector organizations with 50+ employees must comply with Level AA criteria as of January 1, 2021.
3. **Level AAA:** This level defines the highest level of accessibility under WCAG 2.0. Satisfying these criteria will enhance the user experience for individuals with disabilities. Not all Level AAA success criteria can be addressed for all types of content. AODA does not require organizations to comply with Level AAA success criteria.

AODA Exceptions to WCAG 2.0

AODA regulations provide for exceptions to the WCAG 2.0 success criteria for:

- **Historical web content published before January 1, 2012:** Web content published before 2012 is generally exempted under AODA. Older web content may become covered by AODA, however, if it is later updated. The fact that a web page was originally created prior to 2012 does not exempt it from AODA if the page is regularly updated and maintained.
- **Web content controlled by a third party that is not subject to modification:** AODA covers only websites controlled by the organization itself, either directly or indirectly. Organizations have control over a web site if they are responsible for decisions about its appearance, functionality, and content. Organizations are not required to ensure that web content outside of their control complies with WCAG 2.0 standards.
- **Intranet sites:** AODA does not require an organization's internal intranet sites used to share information within the organization to comply with WCAG 2.0 standards. Information on the intranet site must, however, still be made available to employees in accessible formats.
- **Live video:** Organizations are not required to provide accessible captions for live video. Captions must be provided, however, if the video is maintained on the web site after the fact, in which case it would be treated as pre-recorded video.
- **Descriptive audio:** Similar to captions in live video, AODA regulations do not require video to include audio descriptions of visual details and action. Both live and pre-recorded video are currently exempt.
- **Unconvertible information:** Information that by its nature cannot be converted to an accessible format (such as detailed weather maps) is also exempt from the WCAG 2.0 standards, though the organization is required to provide an explanation, on request, of why the information is unconvertible and a summary of the information itself.
- **Situations where compliance is not practicable:** There is also a general exception for where meeting AODA requirements is "not practicable." In determining whether meeting a WCAG 2.0 standard is practicable, organizations may consider the availability of commercial software and tools, as well as whether it would have a significant impact on an implementation timeline planned before 2012.

Outside of these limited exceptions, however, organizations should already be compliant with WCAG 2.0 Level AA standards as of January 1, 2021.

Self-Service Kiosks

AODA's Information and Communications Standards also extend to self-service kiosks that allow members of the public to access products and services. Rules differ significantly, however, for public sector and private sector organizations.

Public sector organizations are required to incorporate accessibility features when designing, procuring, or acquiring self-service kiosks.

Private sector organizations, on the other hand, need only "have regard to the accessibility for persons with disabilities" when designing, procuring, or acquiring kiosks. They are not required to incorporate accessibility features into kiosks, so long as accessibility was considered during the process.

Customer Service Standards

AODA's Customer Service Standards establish rules for dealing with individuals with disabilities when providing goods, services, or facilities. Although the Customer Service Standards are not specifically focused on digital accessibility, they nonetheless have implications on how websites, web content, and mobile apps are designed and implemented.

Under AODA, all covered organizations are required to develop and implement policies regarding the provision of goods, services, or facilities to individuals with disabilities. These policies must ensure that:

- Goods, services, or facilities are provided in a way that respects the dignity and independence of people with disabilities;
- The provision of goods, services, or facilities to individuals with disabilities is integrated with the provision of these to others, unless an alternative is necessary;
- Individuals with disabilities are given an opportunity to take advantage of the goods, services, or facilities;
- The organization communicates with individuals with disabilities in a manner that takes into account their disability;
- Organizations account for the use of assistive devices by individuals with disabilities; and
- Organizations notify individuals to whom they provide goods, services, or facilities that policy documents are available on request. (Private sector organizations with fewer than 50 employees are exempt from this final requirement.)

Public sector organizations and private sector organizations with 50+ employees are also required to develop and post policies regarding:

- Support animals
- Support persons
- Temporary disruption of accessible services or facilities
- Training staff on how to interact with customers with disabilities and how to use accessible equipment
- Process for receiving feedback from individuals with disabilities

AODA allows these policies to be posted on an organization's website. Thinking about these requirements upfront when building a website or making a website accessible can save significant trouble down the line.

Employment Standards

AODA's Employment Standards establish rules for accommodating employees and applicants with disabilities. As of January 1, 2017, they are in effect for all covered organizations, including small private sector organizations. The rules do not extend, however, to volunteers or to other unpaid individuals.

Although the Employment Standards do not directly address digital accessibility, there are several aspects that should be kept in mind when developing a digital accessibility strategy or revamping an organization's website. As with the Customer Service Standards, it is easier to build in the Employment Standards' requirements upfront, than to have to resolve issues later on an ad hoc basis.

Under the Employment Standards, employers are required to:

- Provide notice to the general public about the availability of accommodations for applicants with disabilities during the recruitment process;
- Tell applicants selected to interview about available accommodations;
- Inform employees of policies used to support employees with disabilities, including the provision of job accommodations; and
- Provide information to employees with disabilities in accessible formats or provide communication supports where information is needed to perform one's job and the information is otherwise available to employees in the workplace.

(Note that the latter two requirements could cover intranet sites that are otherwise excluded from the Information and Communication Standards.)

it is easier to build in the Employment Standards' requirements upfront, than to have to resolve issues later on an ad hoc basis.

The Employment Standards also lay out several requirements that are largely unrelated to issues of digital accessibility and website development, including regulations regarding training and the development of policies for employees with disabilities. Consider consulting with a lawyer if you have questions about how these regulations might affect your organization.

Design of Public Spaces Standards

The Design of Public Spaces Standards are largely concerned with ensuring that physical spaces are accessible to individuals with disabilities. As such, they by and large do not raise digital accessibility issues.

It is worth noting, however, that organizations must include plans for making public spaces accessible and procedures for dealing with temporary disruptions of accessible elements in their multi-year accessibility plans.

Consider consulting with a lawyer for more information about the Design of Public Spaces Standards.

Industry-Specific Regulations

In addition to general regulations applying to all organizations, AODA also includes a number of industry-specific regulations designed to make key sectors more accessible. These regulations largely apply to public sector organizations and industries such as education, though they may also be relevant to private sector organizations operating in these sectors.

Public Sector Procurement

Under AODA, public sector organizations are required to incorporate accessibility into their decisions when procuring goods, services, or facilities, except where it is not practicable. Organizations must also provide, upon request, explanations of why it was not practicable.

Transportation Service Providers

Although the Transportation Standards are not focused on digital accessibility, they should be kept in mind by organizations in the transportation sector when developing websites, web content, and mobile apps, in order to avoid potential problems later.

Under AODA, transportation service providers must:

- Make current information about accessibility equipment and features available to the public, in an accessible format, upon request;
- Communicate temporary route or service schedule changes to riders with disabilities in a way that takes their disabilities into account, and make alternate arrangements for their transportation; and
- Develop emergency policies that provide for the safety of riders with disabilities, and make these policies available in an accessible format upon request.

In addition, organizations offering specialized transportation services for riders with disabilities must also:

- Make application materials for specialized transportation services available in accessible formats;
- Communicate decisions about applications in accessible formats where applicable; and
- Provide an accessible method for making reservations for specialized transportation services.

For more information about other regulations affecting transportation service providers, consider consulting a lawyer.

Education

AODA's Information and Communications Standards have a number of Education sector-specific rules that raise significant digital accessibility issues. These regulations apply to school boards and to most public and private educational organizations that grant degrees, diplomas, or certificates.

Covered educational institutions must provide educational and training resources in an accessible format that takes into account the accessibility needs of the individual with disabilities. They can do this by either obtaining materials in an accessible or conversion-ready electronic format, where available, or by providing a comparable resource in an accessible or conversion-ready format, if the materials cannot be obtained in an accessible format.

Educational institutions are also required to make administrative records available to students in accessible formats, including student records, as well as information on program requirements, availability, and descriptions.

AODA further requires organizations that publish textbooks for educational institutions provide accessible or conversion-ready versions of textbooks, upon request.

AODA further requires organizations that publish textbooks for educational institutions provide accessible or conversion-ready versions of textbooks, upon request. By January 1, 2020. Other printed educational materials (such as course packets and other handouts) must also be provided in accessible or conversion-ready formats, upon request.

Because educational decisions are often highly decentralized, especially at the university level, covered organizations will need to be proactive to develop and implement plans to ensure all departments and faculty comply with AODA's requirements. Organizations should also be aware that just because their main website is WCAG 2.0 compliant does not mean that there are not problems elsewhere, for example on course websites hosted by third party services.

Libraries

Like educational organizations, libraries are also subject to additional rules under AODA's Information and Communications Standards.

Libraries associated with educational institutions must, upon request, provide, procure, or otherwise acquire accessible or conversion-ready versions of print materials, and, effective January 1, 2020, digital and multimedia resources. Special collections, archival materials, rare books, and donated materials, however, are exempt from this requirement.

Public library boards, on the other hand, must upon request provide access or arrange for the provision of access to accessible materials, where they exist. Public libraries must also upon request make information about the availability of accessible materials available to the public in an accessible format or with communication supports. Like educational libraries, public libraries are not required to provide accessible formats for special collections, archival materials, rare books, or donated materials.

In many cases, libraries will be able to comply with AODA requirements by obtaining accessible versions of materials through interlibrary loan. Educational libraries, however, may need to arrange for alternative solutions where accessible versions are not available.

Parks

The vast majority of regulations affecting parks and park systems are concerned with physical accessibility, such as the width of and material used when building trails.

There is, however, one requirement of note with potential digital accessibility implications: where a park website provides information about nature trails, it must also include information about accessibility features, such as the length of the trail, the type of surface, and the minimum and average width of the trail.

Penalties for Violating AODA

Legal challenges under AODA are brought directly by the Accessibility Directorate, which both investigates and issues initial orders regarding potential violations. Decisions may be appealed to the License Appeal Tribunal, which has the power to amend orders (e.g., to reduce or eliminate fines).

AODA does not, however, allow for private suits to enforce the statute's requirements. Because of this, individuals with disabilities lack the ability to sue organizations directly for violations of AODA. Instead, individuals may file complaints with the Accessibility Directorate or file a claim with the HRTO.

Filing a claim with the HRTO alleging a violation of the Code may not, however, be sufficient to remedy an AODA violation, as the HRTO has thus far declined to directly enforce AODA. In a 2012 decision, *Bishop v. Hamilton Entertainment and Convention Facilities, Inc.*, the Human Rights Tribunal held:

This Tribunal does not enforce the AODA. There is a statutory framework for Director's orders and administrative penalties set out in the AODA at sections 21 to 25.

Thus, while AODA violations might also qualify as violations of the Code, individuals are not able to point to AODA regulations in order to prove their case. This significantly increases the burden on individuals with disabilities to prove that they have been injured or that an accommodation should have been offered. As such, individuals with disabilities may find it most effectively to both file a claim with the HRTO and submit a complaint to the Accessibility Directorate requesting action.

When the Accessibility Directorate does bring a case, penalties can potentially be steep. At the top end, AODA allows for fines up to:

- \$100,000 per day for corporations
- \$50,000 per day for individuals and unincorporated organizations
- \$50,000 per day for directors and officers of a corporation or organization

That said, most organizations that fail to meet the requirements will not face the maximum penalties. Fines thus far have been substantially lower, but there is potential for much higher penalties for repeat offenders.

Because AODA is a provincial regulation rather than a federal criminal statute, penalties for violations are limited to monetary fines and administrative orders to correct violations.

In assessing fines, the Accessibility Directorate uses a tiered penalty structure, considering both the impact of the violation and the history of prior violations, and determining whether each is minor, moderate, or major. These are then cross-referenced to determine a suitable fine.

Impact of Violation

A violation is:

- Minor where it involved contravention of an administrative requirement;
- Moderate where it involved contravention of a requirement for organizational preparedness; or
- Major where it involved contravention of a priority requirement, such as where it poses a health or safety risk to a person with disabilities

All reported cases appealed to the License Appeal Tribunal have centered on organizations failing to submit their accessibility compliance reports. Although the Accessibility Directorate initially argued that failing to submit an accessibility compliance report was a major violation because the reports are the Accessibility Directorate's primary means of monitoring compliance with AODA, the License Appeal Tribunal has consistently held that this failure was instead a minor violation because the reports were an administrative requirement.

History of Prior Violations

A history of prior violations is:

- Minor where there was no more than one prior violation within the prior two reporting cycles;
- Moderate where there were 2-5 prior violations within the prior two reporting cycles; or
- Major where there were 6 or more prior violations in the prior two reporting cycles.

Determining Fines

Once both the impact and history of violations have been determined, these are cross referenced against one of the following charts.

Fines for Corporations

	Major Impact	Moderate Impact	Minor Impact
Major History	\$15,000	\$10,000	\$5,000
Moderate History	\$10,000	\$5,000	\$2,500
Minor History	\$2,000	\$1,000	\$500

Fines for Individuals or Unincorporated Organizations

	Major Impact	Moderate Impact	Minor Impact
Major History	\$2,000	\$1,000	\$500
Moderate History	\$1,000	\$500	\$250
Minor History	\$500	\$250	\$200

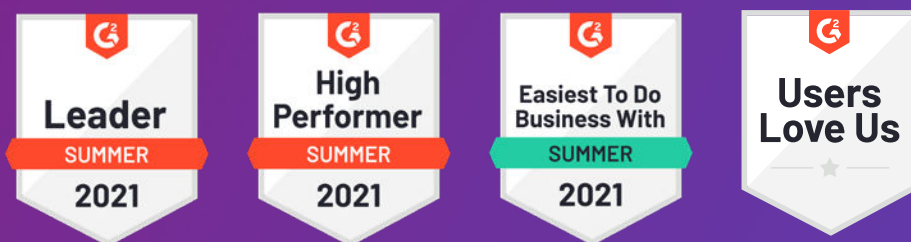
After an order has been issued, organizations have 30 days to request to have the order reviewed by another director of the Accessibility Directorate, and, as noted above, may ultimately appeal to the License Appeal Tribunal.

About Level Access

Level Access has supported the accessibility initiatives of more than 2000 organizations from Fortune 500 enterprises to public sector and government agencies, educational institutions, and private sector businesses of all sizes. Our industry-leading software, consulting, and training solutions provide the full 360-degree coverage needed to ensure accessible and compliant websites, mobile apps, software, and other technology, while protecting against legal risk.

Our ultimate goal is to create a world where digital systems can be made readily accessible to users with disabilities—so digital technology can become a profound, empowering force in their lives.

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