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# THE ACCESSIBILITY FOR MANITOBANS ACT

## Accessible Employment Standard Regulation - DRAFT

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### Definitions

1 The following definitions apply in this regulation.

**"accessible format"** means a format of information that is used to facilitate effective communication by or with a person disabled by a barrier, and includes large print, recorded audio, electronic formats and braille. (« format accessible »)

**"communication support"** means a support used to facilitate effective communication by or with a person disabled by a barrier, and includes sign language, captioning and augmentative and alternative communication supports. (« support à la communication »)

**"employment information"** means information an employee needs to perform the employee's job that is generally made available by the employer to employees in the workplace. (« renseignement sur l'emploi »)

**"public sector organization"** means

(a) a government agency as defined in section 1 of *The Financial Administration Act*;

(b) a university and a college as defined in section 1 of *The Advanced Education Administration Act*;

(c) a regional health authority established under *The Regional Health Authorities Act*;

(d) The City of Winnipeg and a municipality that is a city, as listed in Schedule A of the *Municipal Status and Boundaries Regulation*, Manitoba Regulation 567/88 R; and

(e) a school division and a school district established under *The Public Schools Act*. (« organisation du secteur public »)

### Employers who are subject to this standard

2 For a provision listed in the first column of the following Table, the employer listed opposite in the second column must comply with the provision on or before the anniversary of the coming into force of this regulation listed opposite in the third column.

Provision	Employer	Compliance Date
Sections 3 to 15	Government department	1 <sup>st</sup> Anniversary
	Public sector organization	2 <sup>nd</sup> Anniversary
	All other employers	3 <sup>rd</sup> Anniversary
Sections 16 to 17	All employers	1 <sup>st</sup> Anniversary

**When is accommodation reasonable**

**3** Under this standard, an accommodation is reasonable if it

- (a) is reasonably required for an employee to
  - (i) perform the employee's employment responsibilities, or
  - (ii) access the facilities and benefits available to employees by virtue of their employment; and
- (b) would not result in undue hardship to the employer.

**EMPLOYER'S GENERAL OBLIGATIONS**

**Employment to be accessible**

**4** An employer must, in developing, implementing and updating its employment policies and practices, seek to reasonably meet the needs of employees and applicants who are or may be disabled by one or more barriers in the workplace.

**Recruiting employees**

**5(1)** When recruiting employees, an employer must inform

- (a) potential applicants of the availability of reasonable accommodations in the assessment or selection process for those who may be disabled by a barrier; and
- (b) those who participate in the employer's assessment or selection process that, on request, reasonable accommodations may be available in respect of the facilities, materials or activities used in the process.

**5(2)** On a participant's request, the employer must

(a) consult with the participant to determine the reasonable accommodations for the barrier or barriers that are identified; and

(b) provide, or arrange for the provision of, those reasonable accommodations when carrying out the assessment or selection process.

### **Offering employment**

**6** When offering employment to a person, an employer must inform the person of the employer's policies for accommodating employees disabled by one or more barriers in the workplace.

### **Return to work process**

**7(1)** An employer must develop and implement a policy respecting the return to work of employees who

(a) have been absent from work due to a disability; and

(b) require reasonable accommodation in respect of one or more barriers that disable the employees on returning to work.

**7(2)** The return to work policy must include a statement of the process the employer will follow in determining the accommodations necessary to facilitate the return to work of employees who have been absent due to being disabled by a barrier.

**7(3)** For certainty, the provisions of *The Workers Compensation Act* prevail over this section.

### **Training for staff**

**8(1)** An employer must ensure that persons within the employer's organization who are responsible for the following have or are given accommodation training:

(a) recruiting, selecting or training employees;

(b) supervising, managing or coordinating the work of employees;

(c) promoting, retaining or redeploying employees;

(d) developing and implementing the employer's employment policies and practices.

**8(2)** Accommodation training must include

(a) instruction about how

(i) employment opportunities may be made accessible to persons disabled by barriers,

(ii) to interact and communicate with persons disabled by barriers, and

(iii) to interact with persons disabled by barriers who use an assistive device or require the assistance of a support person or service animal; and

(b) a review of *The Human Rights Code*, *The Accessibility for Manitobans Act* and this regulation.

**8(3)** An employer must ensure that

(a) the required training is provided to an applicable person as soon as reasonably practicable after the person assumes or is assigned the duties described in subsection (1); and

(b) on-going training is provided in connection with changes to the employer's measures, policies and practices respecting accessible employment.

**8(4)** An employer who employs 20 or more employees in Manitoba must include in its policies respecting accommodation training a summary of the content of the training and when training is to be provided.

### **Performance management**

**9(1)** An employer must ensure that any performance management process implemented in the workplace reflects that

(a) employees may be temporarily or permanently disabled by one or more barriers in the workplace; and

(b) the accommodation or accommodations provided for a particular employee, if any, may not fully address a barrier that disables the employee.

**9(2)** In subsection (1), "**performance management**" means the processes used by an employer to manage the work of individual employees or to plan, monitor and review an employee's work objectives and overall contribution to the employer's organization.

### **Career development training and internal advancement**

**10** An employer who provides career development training or opportunities for internal advancement within the employer's organization must ensure that the training and decision-making process related to advancement opportunities take into account that

(a) employees may be temporarily or permanently disabled by one or more barriers in the workplace; and

(b) the accommodation or accommodations provided for a particular employee, if any, may not fully address a barrier that disables the employee.

### **Keeping employees informed**

**11** An employer must inform its employees of

- (a) the employer's policies in respect of accommodating employees who are temporarily or permanently disabled by one or more barriers in the workplace; and
- (b) any changes made to those policies.

### **Publication of policies**

**12** An employer who employs 20 or more employees in Manitoba must document the employer's policies required under this standard and make those documented policies

- (a) publicly available; and
- (b) on request, available in an accessible format.

## EMPLOYER'S OBLIGATIONS RE INDIVIDUAL EMPLOYEES

### **Individual accommodation plans**

**13(1)** An employer must, on request of an employee who is temporarily or permanently disabled by one or more barriers in the workplace, develop and implement an individualized accommodation plan for the employee.

**13(2)** An individualized accommodation plan must document

- (a) any information regarding accessible formats and communication supports to be used in providing employment information to the employee, as provided for in section 15;
- (b) any workplace emergency response information provided to the employee under section 16; and
- (c) any other reasonable accommodation or accommodations the employer is to make or provide to address a barrier that disables the employee and the manner and timing within which the accommodation is to be made.

**13(3)** An employee must, in good faith, cooperate in the development and implementation of the employee's individualized accommodation plan.

**13(4)** An employer must ensure that an employee's individualized accommodation plan is reviewed, and updated if required, when the employee's workspace is relocated or responsibilities are changed.

## **Policies re individualized accommodation plans**

**14(1)** An employer with 20 or more employees in Manitoba must develop and implement a policy respecting individualized accommodation plans for employees who are temporarily or permanently disabled by one or more barriers in the workplace.

**14(2)** The policy must include the following statements:

- (a) a statement of how an employee can request that the employer prepare an individualized accommodation plan for the employee;
- (b) a statement that both the employee and the possible accommodations will be assessed on an individual basis;
- (c) a statement respecting the employer's ability to request an evaluation of the employee's being disabled by a barrier in the workplace to assist the employer in determining if accommodation is reasonably required;
- (d) a statement that any evaluation requested by the employer is to be done at the employer's expense by an independent medical professional or other expert in the area of workplace accommodations for persons disabled by barriers;
- (e) a statement that the employee can request the following persons to assist in the development of the plan on the employee's behalf:
  - (i) a representative of the employee's bargaining agent, if the employee is represented by a bargaining agent,
  - (ii) if the person is not represented by a bargaining agent, a person who is knowledgeable in the area of workplace accommodations for persons disabled by barriers;
- (f) a statement of the frequency within which an employee's plan will be reviewed and updated, and that a plan will be updated earlier on the employee's request;
- (g) a statement that, on request of the employee, the employer must provide a copy of a plan to an employee in an accessible format;
- (h) a statement of the circumstances in which the employer may deny an employee's request for an individual accommodation plan, and a statement that the employer must provide the employee written reasons for why the request was denied;
- (i) a statement that the employee's personal information and personal health information is to be appropriately protected at all times and a statement of the steps to be taken to protect that information.

## **Employment information**

**15** On request of an employee who is temporarily or permanently disabled by one or more barriers in the workplace, an employer must

- (a) consult with the employee to identify the accessible formats or the communication supports needed to be used when providing employment information to the employee; and
- (b) ensure that those identified accessible formats or communication supports are used when providing employment information to the employee.

## **Workplace emergency response information**

**16(1)** An employer must provide an employee who is temporarily or permanently disabled by one or more barriers in the workplace with appropriate information on how to respond to an emergency in the workplace if the employer is aware that, in the event of such an emergency, the employee may face any special risks or challenges due to the barrier.

**16(2)** The workplace emergency response information must be individualized to the employee's particular barrier or barriers and the physical nature of the employee's work space.

**16(3)** An employer must comply with this section as soon as reasonably practicable after becoming aware that the employee may need assistance in the event of a workplace emergency due to the employee being disabled by a barrier.

**16(4)** An employer must review the information provided to an employee under this section each time

- (a) the employee is moved to a different work space; or
- (b) the employer reviews the employer's general emergency response plans.

## **Information provider for purpose of assistance**

**17** If an employee who receives information under section 16 will require the assistance of another person in the event of a workplace emergency, the employer may, with the employee's consent, provide the necessary information to the person designated by the employer to provide assistance to the employee.