

## Not compliant with AODA? Ignore compliance audit notice at your peril

Quoting Sherrard Kuzz LLP  
Written by Jennifer Brown  
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**The Ontario government is cracking down on companies that haven't complied with requirements under the Accessibility for Ontarians with Disabilities Act.**

Some labour and employment lawyers say they are receiving calls from clients who have been notified they are going to be audited by the Ministry of Economic Development Trade and Employment because they didn't know about the legislation and failed to file a compliance report by December 2012.



“Some industries who don't have a public-facing element, who don't provide goods and services to the public in say manufacturing or construction, didn't realize the customer service standard still has an application to them,” says Leah Simon of Sherrard Kuzz LLP. Those who haven't “need to comply now.”

“The government is appearing to crack down on it now,” says Simon. “It's important legislation and you don't want to be the company whose employees don't provide accessible customer service and it ends up being publicized, which could really hurt your company.”

Jan. 1, 2012 was the first deadline under AODA to affect the private sector. However, the private sector has been slow to comply.

As of November 2013, approximately 36,000 or 70 per cent of Ontario's private sector organizations had failed to file the compliance report required under the AODA's customer service standard. The provincial government has come under increasing pressure from disability rights advocates to aggressively enforce the legislation.

In the fall of 2013, the government began sending enforcement letters to non-compliant organizations. To date approximately 2,500 such letters have been sent and approximately 2,000 recipients have filed their compliance report. The remaining 500 are now being issued compliance orders requiring them to file their report within 30 days or face a fine of between \$500 and \$2,000.

In addition, the government has announced its intention to conduct 1,700 compliance audits in 2014 to assess whether organizations are implementing AODA-mandated policies as they relate to the provision of goods and services to persons with disabilities.

“I’ve spent time on the government’s accessibility web site and while it may fit the requirements of their accessibility legislation it’s not particularly easy to use or intuitive, so if you’re trying to navigate it without the assistance I can see someone giving up pretty quickly,” says Laurie Jessome, a partner with Cassels Brock & Blackwell LLP.

The biggest pushback Jessome has seen is from clients who think customer service means the traditional idea of someone coming to a business and purchasing goods or a service.

“They don’t appreciate that the legislation has a much broader definition of that,” she says. “Any interactions you have with third parties — a buyer, or if you’re an industry association you have clients. It would help if people understood that customer means anyone to whom you provide services.”

Jessome’s advice? Calm down and don’t ignore the audit letter. The best strategy is to engage with the government or legal counsel if you’re having trouble.

“I’m a little concerned the ministry is going to start making examples of people,” she says. “They are getting some negative press about the failure to really enforce accessibility promises that they’ve made. I wouldn’t want to be the company that ignores the compliance audit. Call them and say you’re having trouble; that’s what they are there for, it’s not just an enforcement branch.”

Jonathan Dye, of Filion Wakely Thorup Angeletti, says any time there is a change in legislation there are always some companies who “learn about it late or don’t pay attention to the timelines involved and so that’s why some are late picking up on this.”

Since AODA was entirely new legislation the government knew it was creating additional work for companies. For large organizations it’s something they’ve prepared for but smaller ones might have not been as aware of the requirements.

“The big companies probably have lawyers who have been telling them this is coming and they’re used to having to deal with compliance issues all the time so they got their policies done and implemented. The compliance reports are unusual. In the employment aspect of things it’s rare you have to send something into the government to say ‘Yes, we’re complying,’” he says. “It’s unusual that step is there.”

Mayo Moran, the outgoing dean of law at the University of Toronto, has been appointed to review the overall effectiveness of AODA. Public consultations will take place between March 18 and April 22, and written submissions will be accepted until June 1.

The review is specifically targeting the customer service standard.

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