

LABOUR AND EMPLOYMENT NEWSLETTER



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LEGISLATIVE UPDATE

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The Ontario Legislature recently passed two workplace-related statutes, the *Accessibility for Ontarians with Disabilities Act, 2005* and the *Smoke-Free Ontario Act*. A brief overview of each statute is discussed below.

Accessibility for Ontarians with Disabilities Act

The *Accessibility for Ontarians with Disabilities Act, 2005* ("Accessibility Act") received Royal Assent on June 13, 2005 and is now law. The Accessibility Act applies to individuals and organizations in the private and public sectors that: The Accessibility for Ontarians with Disabilities Act, 2005 ("Accessibility Act") received Royal Assent on June 13, 2005 and is now law. The Accessibility Act applies to individuals and organizations in the private and public sectors that:

- a) provides goods, services or facilities;
- b) employs persons in Ontario;
- c) offers accommodation;
- d) owns or occupies a building, structure or premises; or
- e) is engaged in a prescribed business, activity or undertaking or meets such other requirements as may be prescribed.

It promotes an accessible workplace for persons with various disabilities including physical, sensory, developmental and learning, as well as mental disorders. The Accessibility Act aims to develop, implement, and enforce accessibility standards with respect to goods, services, accommodations, facilities, buildings, and employment. The explicit inclusion of private sector employer's represents a significant change in the law. The Accessibility Act's sister statute, the *Ontarians with Disabilities Act, 2001*, only applied to specified public sector organizations and employers.

Standards development committees composed of individuals with disabilities, industry and sector representatives, representatives of the provincial government, and others will develop accessibility standards for each sector. Once these standards are established and adopted by the provincial government as regulations, all individuals and organizations governed by the Accessibility Act will be required to comply within the prescribed timelines. The particular timelines for standards implementation will vary from sector to sector but will be subject to a five year phase-in period. The government aims to create an accessible province within 20 years. Examples of possible new standards are:

- accessible pedestrian routes and entrances into buildings;
- automatic doors at entrances;
- lower counter heights at cash registers to accommodate wheelchairs;
- accessible washroom facilities;
- adaptive technology in the workplace;
- large print menus in restaurants for the visually impaired, and;
- staff training with respect to serving customers with learning disabilities.

Until the new standards are established as regulations, government Ministries and various public sector organizations must continue to comply with the *Ontarians with Disabilities Act, 2001*.

When passed, organizations affected by the Act will be required to file periodic accessibility reports, and will be subject to spot audits to ensure the as-yet proposed standards are being met. Monetary penalties, in amounts yet to be determined, will be imposed for non-compliance.

With an aging population, 20 per cent of Ontarians are likely to have a disability in 20 years. This reality will significantly impact how employers deal with disabled employees and disabled customers.

Smoke-Free Ontario Act

On June 8, 2005, the Ontario government passed the *Smoke-Free Ontario Act*, which will prohibit smoking in all workplaces and indoor public spaces in the province by May 31, 2006.

The *Smoke-Free Ontario Act* ("Smoke-Free Act"), which replaces the *Smoking in the Workplace Act*, prohibits smoking in any "enclosed workplace". An enclosed workplace is defined to include buildings, structures and vehicles, which would mean employees would be prohibited from smoking in company vehicles. "Designated smoking areas", which were permitted under the former legislation, will also be prohibited. The Smoke-Free Act does permit smoking in designated rooms in hotels where certain requirements are satisfied.

The Smoke-Free Act also provides specific rules for home health care providers including the right to request a person to stop smoking in his or her presence while she or he is providing health care services and, under certain circumstances, the right to leave without providing services where that person refuses to stop.

Under the new legislation, employers will be responsible for ensuring that there is strict compliance with the Smoke-Free Act, both from employees and those entering the workplace. Furthermore, the Smoke-Free Act requires employers to provide notice to each employee of smoking prohibitions, to post no-smoking signs throughout an enclosed workplace, ensure that there are no ashtrays in an enclosed workplace (other than in a vehicle in which the manufacturer has installed an ashtray), and to ensure employees who are not in compliance with the Smoke-Free Act do not remain in the workplace.

The Smoke-Free Act also seeks to protect an employee from reprisals for complying or seeking compliance with the legislation. Specifically, an employer is prohibited from dismissing, threatening to dismiss, disciplining, suspending, threatening, intimidating, coercing or penalizing an employee.

The Smoke-Free Act is a part of the government's plan to improve overall health care in the province. "This new law is fair and balanced and creates a level playing field for all businesses by replacing a patchwork of municipal by-laws that regulate smoking in public places and workplaces," said George Smitherman, the Minister of Health and Long-Term Care.

The Smoke-Free Act takes effect May 31, 2006.

Please contact a member of Miller Thomson's Labour and Employment Group to discuss how the above legislation might affect your workplace and business.

ABOUT THE AUTHOR:

Michael Conradi is a member of our Labour and Employment Group. He provides legal services and advice to a wide range of clients in the private and public sectors.

Our Labour and Employment Practice Group is dedicated to providing comprehensive and integrated legal services, and advises management in all aspects of labour relations and employment law. For more information about our Group, visit our website at www.millerthomson.com or contact:

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