Cassels

Federally Regulated Entities Under Scrutiny for Non-Compliance with Accessibility Requirements

Michelle McKinnon

08/16/2024

The *Accessible Canada Act* and *Accessible Canada Regulations* came into force in 2019 and require federally regulated entities to, among other things, consult people with disabilities and publish Accessibility Plans. Accessibility Plans must include certain information, including information about barriers facing people with disabilities and solutions to address those barriers. Please refer to our previous bulletin for more details about the entities who are captured by the legislation and the specific accessibility requirements.

Federally regulated entities with more than 100 employees were required to publish their Accessibility Plans by June 1, 2023, and federally regulated entities with between 10 and 99 employees were required to publish their Accessibility Plans by June 1, 2024. Based on our engagement with the Office of the Accessibility Commissioner, it appears the Accessibility Commissioner has adopted the position that an "employee" for purposes of the legislation includes employees located outside of Canada as well. In other words, based on the Accessibility Commissioner's current interpretation of the legislation, a Canadian entity's worldwide employees are to be included and if it exceeds 10 employees, the Canadian entity must comply with the legislation. Our view is that this interpretation is flawed as Canadian legislation generally does not apply outside of Canada.

While many federally regulated entities have complied with the requirement to consult and publish an Accessibility Plan, many entities have not. Some entities have not complied on the understanding that the legislation does not apply to them because they employ fewer than 10 employees in Canada (but more than 10 worldwide). This has prompted the Accessibility Commissioner to issue non-compliance notices to entities who are currently not complying with the legislation. We are currently advising several employers who have received such notices.

The Accessibility Commissioner can issue financial penalties for non-compliance. The amount of the penalty will depend on the size of the entity and whether the non-compliance is considered "minor" or "serious". Penalties can go as high as $250,000 if issues of non-compliance are not addressed.

We should also note that entities engaged in transportation and telecommunications are subject to additional accessibility regulations that apply specifically to entities in those sectors. Legal advice should be obtained about those additional requirements to ensure that Accessibility Plans are fully compliant.

If you have any questions about whether this legislation applies to your organization or whether your

organization is currently compliant, please reach out to our Employment & Labour Group.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.