



## **LDAO Response to 2018 Review of the Employment Standards Initial Recommendations Report**

**May 2018**

The Learning Disabilities Association of Ontario (LDAO) and its community-based chapters represent the interests of persons with learning disabilities (LDs) throughout Ontario.

Persons with learning disabilities, of all ages, represent the **largest disability group** in Ontario. Learning disabilities influence all areas of a person's life, including education, mental health, employment success, and in some cases contact with the justice system. However, with the right accommodations and supports, many persons with LDs can become among the most creative and productive members of society.

The executive director of our LDA Sudbury chapter was on the original Employment Standard Development Committee, and LDA Ontario submitted feedback to the original draft standard.

While there are many positive features of the Employment Standard, gaps still exist in making employment accessible to persons with disabilities, including learning disabilities (LDs). Individuals with LDs encounter barriers at all stages of the employment process. Since LDs are an invisible disability, and there are still misconceptions and stigma about LDs, individuals are often reluctant to self-identify in the application process. Many worry that their abilities will be underestimated due to widespread misunderstanding of learning disabilities.

### **Recommendations not included in the current review**

#### **1. Description of job duties**

An important factor in successful employment for individuals with LDs is a good fit between their areas of strength and the job requirements. Individuals with LDs need to know what the specific job duties are in order to know if the job is a good fit with their strengths and skills, and whether they will need accommodations.

The original proposed Employment Standard, under *Recruitment, assessment or selection process*, stated “When recruiting, both internally and externally, organizations shall, upon request, provide information about the essential duties of the job. (*Employment proposed standard 4.2.1*)”.

**LDAO recommends** that a requirement for employers to provide a detailed description of job duties be added to the current Employment standard under:

*23. Recruitment, assessment or selection process*

#### **2. Employment training**

Individuals with LDs may require accommodations in job training at several stages of the employment process, e.g during initial training for the job skills, when job requirements change due to workplace restructuring or technology updates, and when new responsibilities are taken on through career development or advancement. It is when job requirements change that many individuals with LDs run into difficulties. New training may be required and new accommodations may need to be negotiated.

**LDAO recommends** adding a specific reference to “job training which takes into account the accessibility needs of employees with disabilities” to the following sections of the Employment Standard:

*28. Documented individual accommodation plans and*

*31. Career development and advancement*

For example, “An employer that provides employment training to its employees shall take into account the accessibility needs of its employees with disabilities as well as any individual accommodation plans, when providing employment training to its employees with disabilities.”

This important area needs to be specifically mentioned and not left up to the interpretation of employers.

### **Recommendations from the current review**

#### **1. Improved Clarity with the Ontario Human Rights Code**

The Committee recommends that the government and the Ontario Human Rights Commission review and strengthen guidelines and clarification for employers with regard to the differences between the Ontario Human Rights Code and the AODA’s accessible Employment Standards.

**LDAO supports** this recommendation for clarity, with a reminder of the supremacy of obligations under the Ontario Human Rights Code.

#### **2. Scope and Interpretation**

The Committee is recommending a definition of “employee” should be added to the AODA or IASR and be consistently applied throughout. This definition should be consistent with the intent and purpose of the AODA and should be based on the employer–employee relationship.

**LDAO recommends** that the definition of “employee” be aligned with the definition in the Ontario Human Rights Code.

#### **3. Recruitment General**

The Committee is recommending that, in order to fully inform job applicants, Section 22, notice of availability of accommodations throughout recruitment by employers, should be expanded to include notice of availability of accommodation during employment.

**LDAO agrees** with this recommendation.

#### **4. Recruitment, assessment or selection process**

When job applicants are individually selected to participate in an assessment or selection process, employers are required to notify job applicants that accommodations are available upon request in relation to the material or process to be used, after consultation with the applicant.

The Committee is recommending that guidelines and best practices be developed by government on how to make the recruitment, assessment and selection processes and materials inclusive by design as some employers may need additional resources on how to approach the conversation.

**LDAO agrees** with the development of guidelines and best practices, in consultation with persons with disabilities and their representative organizations. However, the availability of these resources should not supplant consultation with the applicant. Applicants often know what accommodations best fit their needs.

**LDAO recommends** that a requirement for employers to provide a detailed description of job duties be added to this section.

#### **5. Notice to Successful Applicants**

When making offers of employment, employers are to notify the successful applicant of its policies for accommodating employees with disabilities.

The Committee is recommending that the government should review, strengthen and better promote guidelines and best practices to clarify requirements under Sections 23 and 24 as employees may be uncomfortable in disclosing and employers unfamiliar again with how to approach the conversation.

**LDAO supports** the development of guidelines for approaching the issue of disclosure, in consultation with persons with disabilities and their representative organizations. LDAO, for example, has materials addressing disclosure addressed to employees, and to employers.

#### **6. Workplace Emergency Response Information**

Section 27 of the accessible Employment Standards makes references to “individualized” emergency response information. The desired outcome of Section 27 is to ensure accessible emergency response information is available to all employees with disabilities in accessible formats, upon request.

The Committee is recommending that the word “individualized” be removed from Section 27. The SDC believes the use of the word “individualized” may result in obligated organizations unnecessarily developing individualized emergency response plans when all that is needed is information in accessible formats. The Committee believes planning is already captured in Section 28 individual accommodation plans.

**LDAO does not agree** with removing the word “individualized”. Emergency response information is not simply a matter of having general instructions in an accessible format. Specific plans need to be developed to meet the needs of each employee with a disability. Emergency

response plans may impact life and death situations, so inclusion in individual accommodation plans is not sufficient.

## 7. Individual Accommodation Plans

The Committee is recommending that the government should be responsible for a centralized portal for updated resources for individualized accommodation plan processes. The Committee believes the tools and resources that exist are not easy to find and use out-dated language.

**LDAO supports** the creation of a centralized portal for updated resources for individualized accommodation processes, as long as this is used as part of the consultation process with the employee.

**LDAO recommends** adding a specific reference to “job training which takes into account the accessibility needs of employees with disabilities” under areas that should be covered in an individual accommodation plan, as well as in the listing of areas covered under *Career development and advancement*.

## 8. Return to Work

Section 29 of the accessible Employment Standards requires every employer, other than small organizations, to develop and have in place a return to work process for its employees who have been absent from work due to a disability and require disability-related accommodations in order to return to work.

The Committee recommends that the government should monitor the implementation of Section 29, including any gaps and challenges to inform the next review of the accessible Employment Standards. The Committee believes the return to work processes under other legislation are constantly evolving, so more information, research and public feedback may be required.

**LDAO supports** ongoing monitoring of the implementation process for **all** sections of the Employment Standard, with results used to develop updated guidelines, in addition to informing the next review.

Thank you for the opportunity to respond to the initial recommendations of the Employment Standards review. Since there is no specific representation for persons with learning disabilities, the largest disability group, in the Employment Standard Development Committee, LDAO trusts that our recommendations will be closely examined. Please feel free to contact Lawrence Barns ([lawrence@LDAO.ca](mailto:lawrence@LDAO.ca)) or Diane Wagner ([dianew@LDAO.ca](mailto:dianew@LDAO.ca)) to discuss our concerns further.