



The Future of Mandatory Retirement in Ontario

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On April 30th, 2003, the Government of Ontario, led by Premier Ernie Eves, announced the long anticipated abolishment of Mandatory Retirement at age 65. This decision followed the release, two years ago, of a report by the Ontario Human Rights Commission in June of 2001. The report made the following recommendation with respect to mandatory retirement:

That the (Human Rights) Code be amended to eliminate the blanket defence to mandatory retirement at age 65 and to extend protection against age discrimination to workers over 65. This could be done by removing the upper limit of 65 in the definition of "age" in section 10(1). Employers who wish to have age-based retirement policies will be required to demonstrate that the policy is based on bona fide occupational requirements. Laws and programs that require consequential adjustment should also be reviewed.

As the law stands today, Ontario is one of four remaining provinces in Canada (along with British Columbia, Saskatchewan and Newfoundland & Labrador) which restrict the definition of "age" to over 18 and under 65 in prohibiting age discrimination with respect to employment. This means that employers can require employees to retire at age 65 and employees cannot challenge this practice.

The human rights statutes of the remaining provinces and federal government do not restrict the definition of "age" in prohibiting age discrimination with respect to employment, but they permit various exceptions to the blanket prohibition.

Manitoba, Alberta and Prince Edward Island all prohibit age discrimination, and therefore mandatory retirement, unless the employer can establish a bona fide occupational requirement that prevents an employee from performing their work after a specific age. Mandatory retirement provisions have been upheld in the case of firefighters and police officers. In Alberta, for example, a policy requiring school bus drivers to retire at 65 was upheld by the Alberta Human Rights Commission. In determining whether a bona fide occupational requirement justifies a policy of mandatory retirement, specific reference should be made to the decisions of the provincial human rights commissions.



The Federal Government, New Brunswick and Nova Scotia, all permit some form of mandatory retirement beyond a bona fide occupational requirement. In Nova Scotia, for example, a bona fide plan, scheme or practice of mandatory retirement is permissible as long as it is applied uniformly to all employees, though an employer may be required to justify the practice should a complaint be received by the Human Rights Commission in Nova Scotia.

In Quebec, where mandatory retirement is prohibited, the Supplemental Pension Plans Act requires that a normal retirement age be stipulated in the pension plan. This is the age at which the employee may retire with an unreduced pension (may not be higher than 65). There is no requirement to provide for continuation of pension accrual after that age, but the plan may be more generous and provide for it. In any event, at retirement after the normal retirement age, the retiree must receive a pension at least equal to the pension he had accrued at his normal retirement age, actuarially increased to the date of the first payment of his pension plus the pension that may be purchased by the contributions he has made, if any, after his normal retirement age accumulated with interest.

From a pension plan design perspective, ending mandatory retirement in Ontario won't necessitate any immediate changes. Ontario pension legislation already requires continued accrual of pension benefits for employees who work beyond age 65. In addition, employees who work beyond age 65 will still have to start their pensions by the end of the calendar year they attain age 69, as required under Canadian income tax legislation. Some employers may wish to cap credited service, say at 35 years, to lessen the incentive to postpone retirement much beyond age 65.

In recent years, employers have more frequently been dealing with situations of early retirement rather than later retirement. However, with a potential labour shortage looming on the horizon, some employers may want to consider amending their pension plans to provide incentives for employees to continue working. This may take the form of reducing incentives to retire early or

encouraging partial or phased retirement. Both Alberta and Quebec have enacted legislation to allow companies to facilitate partial retirement through their pension plans. This may be a next logical step for Ontario. What is debatable, though, is whether employers are seeking to keep more workers past age 65 as opposed to retaining workers in the 45 to 65 age group.

In terms of employee benefits, this week's announcement could trigger some serious plan review and program changes. If more employees work beyond the age of 65, it will impact the overall risk and cost of programs, particularly life insurance. There may also be some push back on the termination of long term disability (LTD) coverage at age 65, which is the standard that currently prevails.

Employers will need to check whether or not benefit coverage automatically continues after 65, even if the employer has no post-retirement benefits. The underlying provincial health coverages change at age 65, so the liability assumed by a private benefit plan also changes, but does not become redundant. At present, there is sometimes a different rate structure over and under age 65 for health and dental insurance.

How the Government of Ontario chooses to prohibit mandatory retirement in that province remains to be seen. Certainly the recommendation of the Human Rights Commission favours prohibition similar to the legislation in Alberta, Manitoba and Prince Edward Island. The less stringent approach taken by the federal government, New Brunswick and Nova Scotia is also possible. The overall impact may not be all that great, however, as experience suggests most people do not wish work on a regular basis after 65. A Statistics Canada report in 1998 indicated that the median age of retirement in Canada, as a whole, was 60.8 compared to 58.4 in Quebec and 60.7 in Manitoba, two provinces that abolished mandatory retirement 20 years ago.

For further information, please contact us at info@morneausobeco.com.

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