

## Bill 68 ends mandatory retirement in Ontario

On May 29, 2003, the provincial government tabled Bill 68, the *Mandatory Retirement Elimination Act, 2003*. If the Bill is enacted, it will effectively end blanket mandatory retirement programs in Ontario as of January 1, 2005.

The core element of the Bill is the re-definition of "age" in the *Human Rights Code*. Currently age, for the purposes of discrimination in employment, is defined as more than 18 years and less than 65. This has made it possible for employers to require that employees retire at age 65 without running afoul of the *Code*. The Bill would revise this provision by removing the ceiling of 65 years.

While the Bill would permit mandatory retirement in the case of employees required to retire under a collective agreement in effect on May 29, 2003, if the parties agree after that date to extend the life of the agreement, mandatory retirement would not be permissible during the extended period.

With this exception, if the Bill becomes law, employers and unions will no longer be able to implement policies that require automatic retirement at a particular age. While employers in some occupations may wish to argue that being less than a certain age is a *bona fide* occupational requirement (BFOR), this will be difficult to do on a blanket basis because they must show that they cannot accommodate an employee over that age without incurring undue hardship. And that would require that each affected employee be individually assessed.

As employees would still retain the right to retire with full pensions within one year of attaining age 65, it is likely that many would continue to make this choice. However, the end of mandatory retirement would likely also result in an increase in the number of employees remaining on the job at an advanced age. This would translate into increased requests for age-related accommodation and a greater need for employers to monitor employee performance before taking any decision to terminate an employee.

### In Our View

If Bill 68 becomes law, employers will have a number of issues to consider before January 1, 2005. These include an increased need for accommodation and performance monitoring, and revisions to age-based provisions in benefit plans. Our firm is ready to provide advice in preparation for the new legal framework for retirement in Ontario.

For further information, please contact [Jennifer Birrell](#) at (613) 940-2740.

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