

## Bill 211 would end mandatory retirement in Ontario

On June 7, 2005, the provincial government tabled Bill 211, the Ending Mandatory Retirement Statute Law Amendment Act, 2005. If the Bill is enacted, it will effectively end blanket mandatory retirement programs in Ontario one year after the date on which it receives Royal Assent.

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.

### *BONA FIDE OCCUPATIONAL REQUIREMENT*

One year after the Bill becomes law, collective agreements would no longer be permitted to include provisions requiring mandatory retirement. There is no exemption for existing collective agreements. An exception to the prohibition is made when mandatory retirement would be allowed under the *Human Rights Code* as a "bona fide occupational requirement" (BFOR). To meet this test, employers would have to demonstrate that:

- the age-based job requirement or qualification is a BFOR;
- the employee does not meet the job requirement or qualification; and
- the employee could not be accommodated without causing undue hardship to the employer.

However, it may be difficult to meet the test of reasonable accommodation to the point of undue hardship test on a blanket basis because human rights law requires that each affected employee be individually assessed.

Despite the ban on mandatory retirement, employers would still be able to negotiate early retirement packages.

### *EMPLOYMENT STANDARDS ACT, 2000*

The government indicates that, with the elimination of mandatory retirement, all eligible employees, regardless of age, would be entitled to receive notice of termination or pay in lieu of notice under the *Employment Standards Act, 2000 (ESA)* when their employment is ended by the employer. However, employees who continue to be subject to a mandatory retirement policy or practice that is permitted under the *Human Rights Code* as a BFOR would not be entitled to such notice. The restrictions currently found in the *ESA* against age-based discrimination in the provision of benefits would remain in place.

## *WORKPLACE SAFETY AND INSURANCE ACT, 1997*

Entitlements under the *Workplace Safety and Insurance Act, 1997* would not change. Injured workers aged 63 or more at the time of injury would continue to be able to receive loss of earning benefits for up to two years. Workers injured at an age younger than 63 would cease to receive loss of earning benefits at age 65. As is the case now, an employer would not be obliged to re-employ an injured worker over the age of 65.

### **In Our View**

The government has indicated that the provision of benefits to workers aged 65 and older would continue to be at the employer's discretion. However it is unclear whether the withholding of benefits to older workers could risk attracting successful human rights complaints. Certainly, employers will face an increased need for accommodation and performance monitoring if the Bill becomes law. Our firm is ready to provide advice in preparation for the new legal framework for retirement in Ontario.

For further information, please contact [Lynn Harnden](#) at (613) 940-2731.

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