



Ontario and New Brunswick Announce End to Mandatory Retirement

Ontario and New Brunswick have both introduced bills concerning mandatory retirement. If these bills are passed, Ontario and New Brunswick would join Alberta, Manitoba, Quebec, Prince Edward Island, Northwest Territories, Nunavut, and the Yukon in viewing mandatory retirement based on age as discriminatory.

Ontario

The Ontario government introduced Bill 211 (the *Ending Mandatory Retirement Statute Law Amendment Act, 2005*) on June 7, 2005. If passed the changes put forth by the Bill will affect provincially regulated employers in Ontario, by ending mandatory retirement and giving employees the right to choose when they want to retire.

Current Ontario Human Rights Code:

Ontario's *Human Rights Code* prohibits discrimination on the basis of age. Currently, the *Code* defines age for employment purposes as being 18 years or older but less than age 65. This means that an employer can force employees age 65 or older to retire.

Bill 211 Changes:

If Bill 211 is passed, the *Code* will be amended to also protect employees age 65 or over from age discrimination in employment.

The changes would mean, among other things, that employees age 65 or over cannot be forced to retire based on age unless this is a "reasonable and bona fide occupational requirement".

For an occupational requirement to be reasonable and bona fide, the circumstances must be that the employer cannot accommodate the employee without undue hardship, considering such factors as costs and health and safety requirements. The employer will also need to establish that the requirement was adopted in good faith and that the requirement is necessary and rationally connected to the performance of the job.

The Bill 211 changes would also mean that collective agreements can not include mandatory retirement provisions based on age, unless there is a "reasonable and bona fide occupational requirement". Employers and unions would still be able to negotiate voluntary early retirement packages on the basis of age.

The changes put forth by Bill 211 would come into force one year after the date the bill receives Royal Assent.

Ontario also intends to change its regulations so that an employee whose employment is terminated at age 65 (or over) would be entitled to receive notice of termination or pay in lieu of notice in line with the requirements of Ontario's *Employment Standards Act, 2000*, unless the circumstances fall under a legislated exception.

Effect on Employee Benefits Plans:

The elimination of mandatory retirement will not affect any age 65 restrictions in employee benefits plans. The provincial government in announcing Bill 211 stated: "The status quo with respect to disability plans, life insurance plans, and health benefit plans would be maintained. The provision of benefits to workers aged 65 and older would continue to be at the employer's discretion."

Similarly, Bill 211 is not intended to affect access or entitlement to employer-sponsored pension plans and will not affect age-based provisions in the *Workplace Safety and Insurance Act, 1997*.

For more information about Bill 211, please check the Ontario Ministry of Labour website at:

http://www.gov.on.ca/lab/english/news/m_mr.html

New Brunswick

The New Brunswick government introduced Bill 62 (*An Act to Amend the Human Rights Act*) on June 2, 2005. If passed, the changes put forth by the Bill will affect New Brunswick provincially regulated employers by repealing an exception that allows mandatory retirement in certain circumstances.

Current New Brunswick Human Rights Act:

New Brunswick's *Human Rights Act* prohibits discrimination on the basis of age. However, the *Act* allows an employer to terminate employment at a specific age based on the terms of a "bona fide retirement or pension plan".

This means that an employer can force employees to retire at a specific age where the requirement is part of a bona fide retirement or pension plan.

Bill 62 Changes:

If Bill 62 is passed, the *Act* will be amended to remove this exception. This means employers will no longer be able to force employees to retire at a specific age based on the terms of a retirement or pension plan.

This change would come into force upon proclamation by New Brunswick. The provincial government has indicated that it will consult with private industry and labour groups before proclaiming the change.

New Brunswick employers will still be able to offer voluntary early retirement packages on the basis of age.

Effect on Employee Benefits Plans:

The elimination of mandatory retirement will not affect any valid age restrictions currently in employee benefits plans. The *Act* will continue to allow employers to discriminate on the basis of age in the terms of any "bona fide group or employee insurance plan".

For more information about Bill 62, please consult the New Brunswick Training and Development news release at:

<http://www.gnb.ca/cnb/news/ted/2005e0684te.htm>

For More Information:

Please contact your benefits advisor or Great-West representative.

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