

THE END OF MANDATORY RETIREMENT

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On January 1, 2008, amendments to the British Columbia *Human Rights Code* (the “Code”) came into force. A significant amendment to this statute is the amended definition of “age”. Previously, the Code defined “age” as “19 years or more and less than 65 years”. However, effective January 1, 2008, the age cap has been removed and age is now defined by the Code as “an age of 19 years or more”.

From an employment law perspective, this amended definition of age has far-reaching and immediate consequences for employers and their employees in British Columbia, as it effectively abolishes mandatory retirement in our province.

Traditionally, it was lawful for employers to implement mandatory retirement policies which required their employees to retire upon reaching the age of 65. Although mandatory retirement was age discrimination in its purest form, it was rationalized on the basis that it offered employers a means to “free up” space to encourage recruitment of younger workers, and to replace costly and inefficient older employees with more affordable and productive personnel.

However, with the amended definition of age under the Code, employees are now protected from age discrimination, even if they are 65 years of age or older. It follows that unless employers can establish that age is a *bona fide* occupational requirement, mandatory retirement is no longer lawful.

The likely driving force for this change to the Code is the aging of our province’s population. With the “baby boomer” generation approaching traditional retirement age, the average age of workers in British Columbia is rising. Increasingly, a higher percentage of these older workers either wish, or have no alternative but, to keep working past age 65. Further, there is an overall labour shortage in British Columbia and many employers now realize that older people – including those over age 65 – are a source of badly needed skilled labour. Along with other factors, these social shifts in demographics and attitudes made the traditional definition of age under the Code impractical and undesirable, and ultimately precipitated the amended definition of age under the Code.

Given that all employees are now protected by the Code from age discrimination, employers can expect that many of their most senior employees will desire to keep working beyond age 65. Employers should be prepared for the higher costs associated with the retention of older employees, as these employees generally command the highest salaries and benefits. Perhaps the most onerous responsibility for employers is their duty to accommodate disabilities under human rights legislation. With our province’s aging workforce, employers can expect to encounter a higher frequency of cases of physical and mental disabilities among their employees. Employers should consider removing duties from the job descriptions of their ailing older workers in order to accommodate their disabilities, since imposing mandatory retirement on these employees upon them reaching age 65 is no longer an option.

It is important to note that employees of federally regulated businesses, such as banks and airlines, are not subject to the Code and, therefore, are not affected by the changes to the Code. However, for the majority of employers and employees in British Columbia, the end of mandatory retirement has occurred.