

# Frequently Asked Questions about Benefits & Services for Older Workers and the Impact of Bill 211 (the elimination of mandatory retirement)

## INTRODUCTION

On December 12, 2005, the Ontario Government passed legislation (Bill 211) which will amend the Ontario *Human Rights Code* (the Code) and eliminate mandatory retirement at age 65, giving Ontario workers the right to choose when they want to retire. This amendment is effective December 12, 2006.

In addition to the Code, Bill 211 amended the current *Workplace Safety and Insurance Act, 1997* (WSIA), as of December 12, 2005, to state that the WSIA and prior legislations, regulations, policies or decisions, **are exempt** from the change to the Code.

Since 1990, the WSIA and the prior *Workers' Compensation Act* have contained provisions governing the payment of WSIB benefits based on a worker's age at the time of injury as well as the conversion from one type of WSIB benefit to another (i.e., Loss of Earnings benefit to Loss of Retirement Income benefit) when a worker turns age 65.

**Impact to Workers:** There is no impact to the provision of or entitlement to WSIB benefits or services to workers as a result of the elimination of the mandatory retirement age. In accordance with the WSIA, wage loss benefits for most workers will end at age 65 and be replaced with loss of retirement income benefits. The WSIA also contains provisions for the payment of benefits for workers age 63 or older at the time of injury and these will continue to apply. The wage loss benefits for these older workers, including those working past the age of 65, may still be paid for up to 2 years after the injury. [For example, a worker injured at 70 years of age may be paid up to 72 years of age.]

**Impact to Employers:** There is no impact to employers' obligations and responsibilities under the WSIA. Employers must continue to report and pay WSIB premiums for workers who are 65 years or older in the same manner as for other workers who are less than 65 years of age. The WSIB's claims experience with workplace injuries and illnesses sustained by workers age 65 or older represents less than 1% of claims filed each year. This may increase with the elimination of mandatory retirement since some older workers may exercise their choice to remain employed longer which could result in some additional injuries. The total cost of these injuries would be affected by the two year limit placed on wage loss benefits for workers injured at age 65 or older.

The following questions and answers provide additional information regarding benefits and services provided by the WSIB to workers age 63 or older at the time of the injury\*, as well as the corresponding impacts on the employer's premiums and experience rating.

(\*for the purposes of this document injury also means occupational disease)

# Frequently Asked Questions about Benefits & Services for Older Workers and the Impact of Bill 211 (the elimination of mandatory retirement)

## 1. Will ending mandatory retirement affect WSIB benefits and services?

No. The current *Workplace Safety and Insurance Act, 1997* (WSIA) and the prior *Workers' Compensation Act*, are exempt from the change to the Ontario *Human Rights Code* which removes mandatory retirement at age 65.

## 2. What wage loss benefits are older workers entitled to?

### Loss of earnings (LOE) benefits (accidents after January 1, 1998)

- will still end at age 65 for workers who were less than 63-years-old at the time of injury
- may still be paid to workers aged 63 or older at the time of injury for up to two years after the date of injury.

### Future Economic Loss (FEL) (accidents from January 2, 1990 to December 31, 1997)

- will still end at age 65 for workers who were less than 64-years-old at the time of injury
- workers who are 64 years of age or older at the time of injury are not entitled to FEL benefits, however, they may be entitled to temporary total disability benefits so long as temporary total disability continues.

### Temporary Disability Benefits (Accidents prior to 1990)

- temporary total or temporary partial disability benefits may be paid for periods where a worker is disabled from working and, in cases where a Permanent Disability (PD) pension has been awarded, when the worker is considered to be below the assessed PD level.

## 3. What "pension" benefits are older workers entitled to?

### Loss of Retirement Income (LRI) benefit (for accidents on or after January 2, 1990)

- LRI benefit is not available to workers who are 64 or older at the time of injury.

### Non-Economic Loss (NEL) benefit (accidents on or after January 2, 1990)

- if the injury leads to a permanent impairment the worker may be entitled to a NEL benefit.

### Permanent Disability (PD) benefit (accidents prior to January 2, 1990)

- if the injury leads to a permanent disability the worker may be entitled to a PD pension and certain supplementary benefits.

## 4. What other benefits are older workers entitled to?

Health Care - entitlement to health care benefits (as they relate to the injury) continues past the age of 65, regardless of accident date. Entitlement is possible throughout the worker's lifetime if the injury results in a permanent impairment/disability.

## 5. Are employers and workers still required to participate in early and safe return to work? (WSIA s.40)

The WSIA requires that the employer and the worker co-operate in the early and safe return to work of the worker. There is no age limitation on this requirement.

## 6. Does the employer still have an obligation to re-employ older workers? (WSIA s.41)

The WSIA stipulates that an employer's obligation to re-employ ends on the date the worker reaches age 65. This provision will continue to apply.

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**7. Are older workers entitled to Labour Market Re-entry (LMR)?**

Entitlement to an LMR plan is determined on a case-by-case basis. Generally, LMR plans are not considered to be appropriate for workers age 63 or older. However, when deciding whether an LMR plan is appropriate, an LMR assessment may be conducted. An LMR assessment guides the WSIB decision maker in determining if a worker would benefit from an LMR plan.

**8. Does an employer have to maintain employment benefits for older workers when they are injured?**

Yes. The employer must maintain any contributions they were making to the worker's employment benefits (health care, life insurance, pension benefits) for 1 year after the injury, when the worker is absent from work due to the injury, regardless of the worker's age. Also, the worker needs to continue to pay their contribution for employment benefits, if any, for 1 year after the injury, while they are absent from work.

**9. If a worker who is 63 or older is injured, can the worker sue the employer for further benefits once LOE ends, after 2 years or less?**

No. The WSIB system is based on a no-fault collective liability system. In an historic compromise, workers gave up the right to sue their employer for their work-related injuries, in exchange for a guaranteed level of compensation. Employers, for their part, receive protection from lawsuits in exchange for financing the program. This no-fault status does not change due to the worker's age or once the worker's benefits end.

**10. Is an employer's obligation to report and pay premiums affected in any way for workers who are 63 years or older?**

No. An employer's reporting and payment obligations are not affected for older workers. Employers must continue to report and pay WSIB premiums for workers who are 63 years or older in the same manner as for other workers who are less than 63 years of age.

**11. Will an employer's experience rating be affected in any way if the employer employs workers who are 63 years or older?**

No. An employer's experience rating will not be affected if the employer has workers who are 63 years or older. The WSIB's three experience rating programs (NEER, CAD-7, and MAP) consider the accident costs for all workers regardless of age, which appear on the employer's accident cost statement.