

ENDING MANDATORY RETIREMENT IN ONTARIO

The McGuinty Government is committed to ending mandatory retirement and giving Ontario workers the right to choose when they want to retire. However, the government wants to achieve this objective without undermining early retirement rights or existing entitlements to benefit and pension plans.

Mandatory Retirement in Ontario

The Ontario Human Rights Code (“Code”) prohibits discrimination in employment on the basis of “age.” For the purpose of employment, the Code defines “age” as being 18 years and older, but less than 65. As a result, workplace policies, procedures and collective agreements can force workers aged 65 or older to retire.

Our Society

Like many other countries, Canada has an ageing population. People are living longer, staying healthier and remaining independent past age 65. Many want to continue to be active and productive in their individual pursuits, including paid employment and community involvement. According to Statistics Canada, the number of Canadians aged 65 and over is expected to double from nearly four million in 2000 to almost eight million by 2028.

As well, specific groups, such as recent immigrants and women, may be disadvantaged by the current mandatory retirement policies.

- Immigrants often enter the Ontario workforce later in their careers. As a result, they may have to work longer to ensure their financial security later in life.
- Many women temporarily withdraw from the workforce for family or other reasons. As a result, they may lack adequate funds to retire and would like to continue in paid employment past age 65.

Ending mandatory retirement would allow workers to choose when they want to retire based on their own lifestyles, circumstances and priorities and protect the rights of those who continue to work past age 65.

Other Canadian Jurisdictions

There are increasing national and international trends that support workers continuing to work beyond the traditional retirement age of 65. Ontario is not the first province in Canada to move in this direction. A number of provinces and territories including Manitoba, Quebec, Alberta, Yukon and Prince Edward Island do not allow mandatory retirement, except in limited circumstances.

Bona Fide Occupational Requirements

A *bona fide* occupational requirement (“BFOR”) is an employment requirement or qualification that is necessary for safe, efficient and reliable performance of essential job duties.

Due to the nature of some jobs, an employee may be required to stop working before age 65. In such cases, the employer must show that:

- a 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.

Ontario Human Rights Commission

In June 2001, the Ontario Human Rights Commission (“OHRC”) released the paper, *Time for Action: Advancing Human Rights for Older Ontarians*. In it, the OHRC asserted that mandatory retirement policies undermine the dignity and sense of self-worth of older workers.

The OHRC called for a change of the definition of age in the Code to end mandatory retirement. This change would mean that a person’s age could not be used to determine when they have to leave the workforce.

Mandatory Retirement Consultations

The McGuinty Government supports the Ontario Human Rights Commission’s recommendation to end mandatory retirement. The government is moving to make retirement a matter of personal choice for each individual.

On August 18, 2004, the government released a consultation paper on mandatory retirement in Ontario. Public consultations and special meetings with experts will be held across the province in September. Among other things, the paper asks Ontarians to consider:

- Would ending mandatory retirement reduce skills shortages in areas such as nursing, teaching and skilled trades?
- Would ending mandatory retirement affect pensions and other benefits?
- What impact would ending mandatory retirement have on recent entrants to the workforce, or those who take time away from it?

Anyone interested in making a presentation at the consultation sessions may contact the Ministry of Labour toll-free at 1-866-400-8355. Participants who require special accommodations should inform the ministry of their needs when they register.

Written submissions may be submitted on or before September 30, 2004 by:

Fax: 416-314-5855; Attention: Mandatory Retirement Project
Mail: Mandatory Retirement Project Discussion Paper, 400 University Avenue, 12th
Floor, Toronto, Ontario, M7A 1T7
Email: mandatoryretirement@mol.gov.on.ca

The consultation paper is available on the Ministry of Labour website at www.gov.on.ca/lab/.

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Contact:
Peter Fitzpatrick
Minister's Office
416-326-7710

Belinda Sutton
Ministry of Labour
416-326-7405

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