

ENDING MANDATORY RETIREMENT IN ONTARIO

The McGuinty government has introduced legislation that would, if passed, end mandatory retirement and give Ontario workers the right to choose when they want to retire. The government plan would achieve this objective without undermining early retirement rights or existing 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 can force workers aged 65 or older to retire.

Our Society

Like many other countries, Canada has an aging 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. In 2001, 11.8 per cent of the Canadian population aged 65 to 69 was employed. While there is a trend towards early retirement, more than 20 per cent of workers aged 45 and up plan to retire after age 65 or not at all.

As well, 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 lifestyles, circumstances and priorities, and allow those who wish to continue to work past age 65 to do so.

Other Jurisdictions

There are national and international trends that support workers continuing to work beyond the traditional retirement age of 65. Ontario is not the first jurisdiction in Canada to move in this direction. A number of provinces and territories including Manitoba, Quebec, and Yukon do not allow mandatory retirement. A number of countries, including the USA, Australia and New Zealand, have ended mandatory retirement.

Workforce Impact

Experiences in other jurisdictions indicate that ending mandatory retirement has had little impact on the labour market. In Ontario, only about 4,000 people a year are expected to take advantage of the change. That is 0.06 per cent of the total 6.6 million Ontario workforce as it stood in 2003. Meanwhile, a trend toward early retirement in some segments of the workforce continues. Ending mandatory retirement is all about providing more individual choice.

“Bona Fide Occupational Requirements”

A “bona fide occupational requirement” (BFOR) is an employment requirement or qualification that is necessary for the performance of essential job duties.

Due to the nature of some jobs, an employee may be required to stop working at a specified age such as 65 or even younger. In such cases, the employer must show that:

- An age-based job requirement or qualification is a BFOR
- The employee does not meet the job requirement or qualification
- 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 released the paper, *Time for Action: Advancing Human Rights for Older Ontarians*. In it, the commission asserted that mandatory retirement policies undermine the dignity and sense of self-worth of older workers.

The commission 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 he or she has to leave the workforce.

Public Consultations

The government held public consultations in a variety of locations across Ontario in September 2004. Led by Kevin Flynn, Parliamentary Assistant to the Minister of Labour, the sessions heard from 100 individuals and 50 groups and organizations. Meetings were also held with 17 stakeholder and expert groups. Among written submissions received was one from the Ontario Human Rights Commission.

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