

# Elimination of Mandatory Retirement in BC



## Introduction

### Supporting employment for older persons

The Coalition supports the principle of eliminating mandatory retirement in British Columbia provided the continuation of employment is mutually agreed upon by the employer and the employee.

Older persons who are capable and wish to continue their working careers should be allowed to do so provided they can meet the work requirements.

The Coalition clearly understands the benefits of this initiative. There are numerous successful examples among Coalition members where the employer and the employee have continued to work together well after the employee has reached the mandatory retirement age of 65.

In Alberta, Manitoba, Ontario, Prince Edward Island, the Yukon, the Northwest Territories and Nunavut, the practice of mandatory retirement at age 65 has been eliminated. When exploring mandatory retirement models from the other provinces, British Columbia should proceed cautiously to develop the best legislation possible.

Ontario is the latest province to drop the mandatory retirement provisions in their human rights legislation and there are some aspects of their new legislation that may address some of the concerns of small and medium-sized employers in BC. Since the legislation went into force in late 2006, the successes and challenges of Ontario's experience would be of interest to British Columbia.

The timing of BC legislation to eliminate mandatory retirement is fortuitous. The BC economy is booming but the province is aging. Between 1996 and 2036, the percentage of people in BC who are greater than 65 years of age will double from 12.2% to 24.8% of the population. The challenge of BC's labour and skills shortage could find some relief in the elimination of mandatory retirement.

Another challenge facing the BC workforce is the updating of skills. Employers, trade unions and the government will need to identify proactive solutions for skills updating of older employees if they are to remain competitive and productive in the work force. Otherwise, older workers could quickly fall short of the workplace requirements. Rather than looking forward to retiring on a positive note, older workers without skills training could run the risk of being forced out of employment.

## **Workplace provisions for older employees**

The Coalition of BC Businesses speaks on behalf of small and medium-sized businesses with regard to mandatory retirement provisions. In contrast to large employers, Coalition members lack the resources to make rapid and sophisticated changes toward the transition to an older workforce.

In this regard, the Coalition proposes several recommendations to mandatory retirement legislation that would accommodate small and medium-sized employers.

### **1. Minimum one year implementation period**

Many Coalition members have gracefully accommodated one or more employees who are approaching the mandatory retirement age of 65. Their reaction to what might happen if there is a short notice period prior to implementing these new provisions was one of grave concern. In their view, if there is an insufficient notice period prior to implementation, what is intended to be an act of humanitarianism could turn out to be a very negative experience. This could also escalate into a costly outcome should there be litigation or severance packages involved.

BC should consider Ontario's recent approach of providing one year's lead time for elimination of mandatory retirement. For Coalition members, a minimum notice period of one year would be preferred. During this period, there would also be an opportunity to learn from the Ontario experience. Of particular interest would be any litigation that might be forthcoming, particularly in the case of Charter challenges.

### **2. Group benefit plans should be left to employer's discretion**

There are some aspects of group benefit plans that are of concern. Specifically these include long and short term disability coverage and life insurance plans. With no upper limit on when an employee intends to retire, the cost of these plans may be difficult to calculate. It is important that the elimination of mandatory retirement does not increase the cost of employment to the employer.

In Ontario, the provision of benefits to workers aged 65 and older will be left to the discretion of the employer. Parallel legislation in British Columbia should be considered.

### **3. Containing costs from work-place injuries**

An additional concern is the potential for increased costs resulting from work-place injuries. Looking again to Ontario, the status quo is maintained by ceasing loss of earnings benefits at age 65 for workers who were less than 63-years-old at the time of injury. Workers aged 63 or older at the time of injury continue to be entitled to receive up to two years of loss of earnings benefits. Similar measures in British Columbia would provide greater cost certainty for small and medium-sized businesses.

#### **4. Interpreting bona fide occupational requirements (BFORs)**

While the Coalition supports the concept of BFORs, the reality of how they would be interpreted is of major concern to Coalition members. The determination of BFORs can be a highly technical process but it is far from a science and therefore is certainly open to interpretation. If challenged, litigation is an inevitable part of the process. Oversight for this would reside with the Human Rights Tribunal. Small and medium-sized businesses would find it very difficult to marshal the necessary resources to address such matters.

The Coalition recommends the introduction of standards that are “reasonably” related to the requirements for the occupation. Commonsense, not legal arguments, should prevail.

#### **5. Duty to accommodate aging employees**

The Coalition’s concerns around duty to accommodate are similar to those of BFORs. There is no objective yardstick for measuring “accommodation to the point of undue hardship”. Quite often, many employers agree to accommodate employees as they approach retirement at age 65. The prospect of having aging employees working for an indeterminate period of time could place unreasonable expectations and obligations on the employer to physically modify the workplace and equipment in order to accommodate a particular employee.

The implications of using the current criteria and processes for interpreting duty to accommodate are of concern. What is required is a reasonable and informed process to deal with what can be a sensitive situation.

## Summary of Recommendations

The Coalition recognizes that quantitatively the number of occurrences where employers would face undue hardship from the elimination of mandatory retirement would likely be quite small. Qualitatively, however, the implications could be of great concern to a particular small or medium-sized employer. To enhance the impact of mandatory retirement legislation on small and medium-sized businesses, the Coalition makes the following recommendations:

1. The BC government should proceed cautiously toward mandatory retirement taking into account the implications of such legislation on small and medium-sized businesses.
2. The matter of continued employment should be mutually agreed upon by the employer and the employee. In the event of disagreement, a mediation process should be structured to bring the parties to a common understanding.
3. Mandatory retirement legislation should not be retroactive.
4. There should be a “notice period” of at least one year prior to implementation. The Coalition supports a longer grace period for small and medium-sized employers.
5. The elimination of mandatory retirement should not increase the cost of employment to the employer.
6. Employers should be exempted from continuing group benefit plans after the age of 65. In particular, this applies to long and short term disability plans and life insurance plans. In addition, this should also clearly apply to employers whose employees are certified with a trade union.
7. With respect to WorkSafe BC, loss of earnings benefits for employees who were less than 63-years-old at the time of injury should cease at age 65. Workers aged 63 or older at the time of injury should continue to be entitled to receive up to two years of loss of earnings benefits.
8. Bona Fide Occupational Requirements should be replaced with criteria that are reasonably related to the requirements of the position.
9. Duty to accommodate requirements under the Human Rights Code should be modified such that there is reasonable accommodation that balances the needs of the employee with the financial and infrastructure resources available to the small and medium-sized employer.
10. There should be no exemptions for collective agreements in mandatory retirement provisions.

## About the Coalition of BC Businesses

The Coalition of BC Businesses was formed in 1992 to represent the voice of small and medium-sized businesses in the development of British Columbia's labour and employment policies.

The Coalition is made up of organizations that collectively represent over 50,000 small and medium-sized businesses active in all sectors of BC's diverse economy in communities throughout the province.

The Coalition's sole focus is the development of labour policies that will help foster a positive relationship between employers and employees and a climate for economic growth, opportunities and jobs.

### Coalition Member Associations

BC & Yukon Hotels' Association
BC Chamber of Commerce
BC Restaurant and Foodservices Association
BC Trucking Association
Building Owners & Managers Association
Building Supply Dealers Association
Canadian Council of Grocery Distributors
Canadian Home Builders' Association – BC
Canadian Restaurant and Foodservices Association
Council of Tourism Associations of BC
Independent Contractors and Businesses Association
Insurance Brokers Association of BC
New Car Dealers Association of BC
Retail Council of Canada
Retail BC
Vancouver Board of Trade
Western Silvicultural Contractors' Association