

GOVERNMENT OF CANADA ABOLISHES MANDATORY RETIREMENT

On December 15, 2011, Bill C-13: *Keeping Canada's Economy and Jobs Growing Act* received Royal Assent. Among other changes, the new legislation amends certain sections of the *Canadian Human Rights Act* and the *Canada Labour Code* to abolish mandatory employment for employees of federally regulated employers.

The new legislation, which was first tabled on October 4, 2010, repeals sections 9(2) and 15(1)(c) of the *Canadian Human Rights Act* to eliminate the mandatory retirement age for federally regulated employees unless there is a *bona fide* occupational requirement, and further repeals section 235(2)(b) of the *Canada Labour Code*, which is a provision that denies federally regulated employees the right to severance pay for involuntary termination if they are entitled to a pension.

These changes mean that employees in sectors such as banking, telecommunications and transport will be allowed to continue working beyond the age of 65.

All Canadian jurisdictions, with the exception of New Brunswick, have now abolished mandatory retirement, subject to some exceptions in some provinces for particular professions. For example, a recent law in Ontario will allow mandatory retirement at age 60 for the province's salaried firefighters.

The legislative changes follow on the heels of a long-running legal dispute between Air Canada and some of its pilots with respect to the airline's mandatory retirement policies. The case, which is ongoing, was returned to the Canadian Human Rights Tribunal for further consideration in February of 2011.

Most provincially regulated employers have already weathered the end of mandatory retirement, and federally regulated employers can expect to face similar challenges.

In addition to concerns about increased costs for health and pension benefits, employers may also have concerns about the increased cost of the duty to accommodate older workers. While it should not be assumed that older workers will require accommodation, the practical reality is that an aging workforce is more likely to require accommodation for vision loss, hearing loss, declining mobility and cognitive decline.

Many employers have historically considered mandatory retirement to be a cost-effective way of discharging older employees who are non-productive. If this option is no longer available, it will no longer be sufficient for employers to "wait it out." A performance-based termination can be rendered more complicated and costly by an allegation of age discrimination, and employers will be required to develop strategies to effectively manage the performance of older employees.

Federally regulated employers will also have to consider whether their existing hiring practices are discriminatory and consider what strategies they might employ to make their workplaces "senior friendly." The abolishment of mandatory retirement also requires a reconsideration of the

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proper balance between succession planning and retaining and attracting older workers to the workplace in order to maintain a workforce with the necessary experience and skills.

For further information, or to help you determine the impact of the legislative changes on your business, please contact Carla Nassar at 416-408-5523 or your regular lawyer at the firm.

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