

RETIREMENT DATE FOR MANDATORY RETIREMENT SET FOR DECEMBER 2006

By Paul H. F. Meier

On December 8, 2005 the *Ending Mandatory Retirement Statute Law Amendment Act* ("Bill 211") received Third Reading in the Ontario Legislature and is expected to receive Royal Assent shortly. The legislation will take effect one year later, providing employers with a one-year transition period.

The legislation's most important provision is the amendment of the definition of "age" in the Ontario *Human Rights Code* (the "*Code*"). The definition currently only applies to individuals 18 years or more and less than 65. As a result, employees can be forced to retire when they turn 65 without legal recourse. With the removal of the *Code*'s upper age limit, it will be illegal to force employees to retire merely because they are 65 or older.

Some important points are:

- Until the legislation comes into effect, the current rules regarding mandatory retirement remain in place and an employer may require employees to retire at 65 in accordance with the employer's established policies.
- After the passage of the one-year transition period, an employer could only enforce a mandatory retirement policy that is allowed under the *Code*, either under an explicit exception or as a *bona fide* occupational requirement. In order to demonstrate a *bona fide* occupational requirement, the employer would have to prove that it could not accommodate older employees without undue hardship. This is an extremely difficult test to meet. It will generally only be met by employers with legitimate safety concerns regarding the ability of older workers to perform the job.
- The government has stated that it is planning to change the regulations dealing with entitlement to **termination notice or termination pay** under the *Employment Standards Act, 2000* to make the entitlement apply to employees, regardless of their age, unless they are subject to a mandatory retirement policy permissible under the *Code*. The government states that it is not planning to change the **severance pay** exemption that applies in those cases where an employee receives an actuarially unreduced pension.
- Benefit plans will not be affected and accordingly the *status quo* with respect to disability plans, life insurance plans, and health benefit plans will be maintained. The provision of benefits to workers aged 65 and older will continue to be at the employer's discretion.
- The age-based provisions in the *Workplace Safety and Insurance Act, 1997* (WSIA) will be exempt from the prohibition against age discrimination in employment and in the provision of services. This will maintain the status quo by ceasing loss of earnings (LOE) benefits at age 65 for workers who were less than 63-years-old at the time of

injury. Workers aged 63 or more at the time of injury continue to be entitled to receive up to two years of LOE benefits.