



Mandatory Retirement by Jodi L. Wyman

Should your employer be allowed to force your retirement at age 65?

There is no law in Canada that requires individuals to retire at age 65. Many employers however have policies which require retirement at age 65. These sorts of rules have been challenged in the Courts as discriminating on the basis of age, but the policies have been upheld as a reasonable limit on the equality rights of older people.

The issue of mandatory retirement is regulated by Human Rights legislation. Federally, the Human Rights Act does allow for mandatory retirement. In Manitoba however, for companies under provincial legislation, mandatory retirement has been declared discriminatory under the Human Rights legislation.

Manitoba's legislation does however indicate that in some cases mandatory retirement is not discriminatory. For example, age limits are a reasonable requirement for some specific occupations (for example airline pilots, fire

fighters, police officers, etc.). There is also an exception for university professors at the University of Manitoba and Winnipeg.

British Columbia, Saskatchewan, Nova Scotia, New Brunswick and Newfoundland and Labrador have not specifically prohibited mandatory retirement. Employees who are age 65 or older are not able to file a complaint for age discrimination if they are compelled to retire. This is also the case in Ontario, however on June 7, 2005 the Ontario Government introduced legislation to put an end to mandatory retirement in their province.

Historically, mandatory retirement was considered a benefit to employees and was an issue for which unions fought. Companies opposed it because they did not want to pay pensions for long periods of time.

Employees over 65 also tend to have higher insurance and disability costs. As well, if age is not the criteria for when a

person is compelled to retire, performance will be. This too will create a series of issues for employees.

The Supreme Court of Canada dealt with the issue in 1990, and agreed to uphold mandatory retirement policies in large part because they said older workers blocked the young from the work force.

It is questionable as to whether this is truly a serious concern given that the trend in Canada in recent years has been for employees to retire earlier. As well fertility rates have been dropping. Considering also the impact of the baby boomer population, and its mass exodus out of the workforce, there could in fact be a labour shortage in the future.

Now, life expectancy is increasing, and most Canadians are healthy and active at 65, and those who enjoy their jobs want to continue working. They argue that their experience is an asset to the workforce. It is certainly a difficult issue and one with which the Courts have not finished.