

End to Mandatory Retirement in Ontario - December 12, 2006

By Marcel Faggioni

Mandatory retirement in Ontario will come to an end December 12, 2006. The *Ending Mandatory Retirement Statute Law Amendment Act, 2005*, otherwise known as Bill 211, received royal assent on December 12, 2005, setting off the one-year "countdown" until the new legislation takes effect. On December 12, 2006, employers across Ontario will no longer be able to enforce blanket mandatory retirement policies.

Bill 211 has effectively redefined the term "age" in the *Ontario Human Rights Code*. Currently the term "age", for the purposes of discrimination in employment, is defined as more than 18 years and less than 65 years. The *Human Rights Code* definition enabled Ontario employers to require that employees retire at age 65 without offending the discrimination provisions contained in the *Code*. Bill 211 effectively amends this provision with the removal of the 65 years age cap.

According to the Ontario Minister to Labour, namely the Honourable Steve Peters, Bill 211 represents "...another step to modernize working conditions for the people of Ontario." He further added that: "Mandatory retirement is a discriminatory practice that makes no sense in a time when we're all living longer, healthier more active lives. Ending it is the right thing to do."

The *Ending Mandatory Retirement Statute Law Amendment Act, 2005*, was approved by the legislative assembly in an overwhelming 60-5 vote on December 8, 2005. The bill was given royal assent by Lieutenant Governor James Bartleman on December 12, 2005. The law only takes effect on December 12, 2006 in order to provide sufficient time for employers to amend their human resources policies and procedures.

In another statement made by the Minister of Labour, he argues that this legislation is necessary since "People are healthier and living longer, so it is unfair to insist that they stop working simply because they turn 65." He goes on to add that: "Ending mandatory retirement allows workers to decide when to retire based on lifestyle, circumstance and priorities."

Since its introduction, Bill 211 has undergone some changes and amendments. These amendments to the Bill were meant to appease some of the concerns expressed by employers regarding the potential escalating benefits and pension costs. Accordingly, the Bill has been clarified to provide that, if an employee benefit, pension, superannuation or group insurance plan meets the statutory requirements of the *Employment Standards Act, 2000 (ESA)*, that plan will not breach the prohibition on age-based discrimination in the *Code*. Under the current *ESA*, employers are prohibited from discriminating on the basis of age when they provide benefits to employees aged 18 to 64. Bill 211 allows employers to retain discretion as to whether to offer such plans to employees age 65 and over. This amendment ensures that employees will be prevented from filing human rights complaints against plans that are consistent with the *ESA*.