



January 2008

## NO MANDATORY RETIREMENT IN B.C. COMMENCING JANUARY 1, 2008

On January 1, 2008, amendments to the *B.C. Human Rights Code* came into force which prohibit discrimination against persons age 65 or older. One of the primary effects of these changes is that, as of January 1, 2008, mandatory retirement in B.C. is no longer permitted. The change makes B.C. the 10<sup>th</sup> province/territory to abolish mandatory retirement following Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Prince Edward Island, Nunavut, Yukon, and the Northwest Territories.

### **What does this mean for you?**

While most of your employees will undoubtedly continue to retire at age 65 or earlier, you may no longer require those who wish to continue to work to retire at a particular age, including age 65, unless there is a bona fide occupational requirement for the position based on the nature of the employment. To qualify as a bona fide occupational requirement, you must establish:

1. that you adopted the requirement for a purpose rationally connected to the performance of the job;
2. that you adopted the requirement in an honest and good faith belief that it was necessary to the fulfilment of that legitimate work-related purpose; and
3. that the requirement is reasonably necessary to the accomplishment of that legitimate work-related purpose. It must be demonstrated that it is impossible to accommodate individual employees without imposing an undue hardship.

Being unable to require employees to retire at a particular age, you will have to rely on evaluation programmes to assess employees' continuing ability to perform their job. In doing so, you should consider the following factors:

- ▶ Do you have an evaluation program in place?
  - The content of the evaluation program must not discriminate on the basis of age. For example, you cannot employ different evaluation mechanisms for employees over 65.



- The administration of the evaluation program must not discriminate on the basis of age. For example, you cannot start evaluations when an employee turns 65 years old.
  - Your managerial and supervisory staff should be trained to deal with assessment issues in an age sensitive way.
- ▶ What accommodation may be necessary to address age related issues with your workforce?
- ▶ If you have a collective agreement, does it comply with the changes to the *Human Rights Code*?

The *Human Rights Code* still allows bona fide schemes based on seniority and for the operation of bona fide retirement, superannuation or pension plans or bona fide group or employee insurance plans as they relate to marital status, physical or mental disability, sex or age. You should consider what benefits can practically be offered to employees past age 65 and are advised to contact your insurance providers to ensure that the benefits you are offering are consistent with your insurance plans.

We would be pleased to discuss any of these issues with you. Please feel free to call any member of the Labour and Employment Group listed below.

**Members of the Labour and Employment Group  
(in alphabetical order)**

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