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ONTARIO GOVERNMENT PROPOSES END TO MANDATORY RETIREMENT

Michael Conradi
Tel. 416.595.8550
mconradi@millerthomson.ca

On June 7, 2005, the McGuinty government introduced anticipated legislation that proposes an end to mandatory retirement in Ontario. The proposed legislation, titled "*Ending Mandatory Retirement Statute Law Amendment Act, 2005*", will, according to the Ministry of Labour's press release "provide greater fairness and choice for workers aged 65 and older".

The issue of mandatory retirement was discussed in two Labour & Employment Communiqué's dated May 6 and June 3, 2003. The Ontario government's first attempt to introduce mandatory retirement legislation died on First Reading.

According to the Ministry of Labour's press release, the following is a summary of the *Act's* proposed changes and impact.

Currently, the Ontario *Human Rights Code* ("*Code*") prohibits discrimination in employment on the basis of age. For the purposes of employment, the *Code* defines "age" as 18 years of age and older but less than 65. As a result, workplace policies can force workers aged 65 or older to retire. The legislation, if passed, would amend the *Code* by removing the age 65 cap on discrimination in employment. A single exception to the above is where mandatory retirement could be justified as a bona fide occupational requirement ("BFOR").

Currently, the *Employment Standards Act, 2000* ("*ESA*") provides that an individual whose employment is terminated at age 65 as a result of a mandatory retirement policy or practice is not entitled to notice of termination or pay in lieu. If the *Act* is passed, all eligible employees, regardless of age, would be entitled to receive notice of termination or pay in lieu of notice. Employers whose mandatory retirement policies are permitted under the *Code*, however, would not be obliged to issue notice of termination or pay in lieu in accordance with the *ESA*.

For employers with unions, collective agreements would no longer be permitted to include provisions requiring mandatory retirement, except where such policies are permitted under the *Code* as a BFOR. Mandatory retirement provisions in a collective agreement would become unenforceable exactly one year after the legislation receives Royal Assent. Unions and employers would still be permitted to negotiate voluntary early retirement packages.

If the proposed legislation is passed, all employers would be provided with a one-year transition period from the date of Royal Assent. The transition period would allow workplaces time to adjust and reconfigure their policies and programs.

The Act will not be applied retroactively - that is, an employer who compels a 65 year-old employee to retire before the legislation is enacted will not be required to rehire the employee.

It is also important to consider what impact, if any, the Act would have on employment-related benefits. For example, ending mandatory retirement would not have an impact on pension benefits already earned. Employees who continue working after age 65 could continue membership in pension plans and accrue benefits past age 65 subject to service or contribution caps. The Act would not affect eligibility to receive Canada Pension Plan (CPP) benefits at age 65 because any changes would be a matter of federal jurisdiction. Furthermore, the *ESA* currently prohibits employers from discriminating on the basis of age in providing benefits to employees aged 18 to 64. The provision of benefits to workers aged 65 and older would continue to be at the employer's discretion. Finally, individuals aged 65 or more would continue to be eligible for government benefits such as the Ontario Drug Benefit Plan.

The Act would also amend or repeal age-related provisions of other Ontario statutes including the *Election Act*, the *Health Protection and Promotion Act*, the *Ombudsman Act*, the *Coroner's Act*, the *Public Service Act*, and the *Workplace Safety and Insurance Act, 1997* ("*WSIA*"). Entitlements under the *WSIA* would not change.

If passed, Ontario would become the fourth Canadian jurisdiction, along with Manitoba, Quebec and Yukon, to prohibit mandatory retirement.

Miller Thomson LLP will continue to monitor the status of this legislation and will keep you up to date on how it may affect your workplace.

ABOUT THE AUTHOR:

Michael Conradi is a member of our Labour and Employment Group. He provides legal services and advice to a wide range of clients in the private and public sectors.

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*Miller Thomson LLP
2500 – 20 Queen Street West
Toronto, ON M5H 3S1*

*416.595.8500
416.595.8695 (fax)*

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