



# GROUP BENEFITS NEWS

SPRING - SUMMER 2005

No obligation to provide employee benefits past age 65.

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## ONTARIO ELIMINATES MANDATORY RETIREMENT

The McGuinty government has introduced legislation to eliminate mandatory retirement and provide greater flexibility and choices for workers aged 65 and older. The new legislation is expected to be passed this fall and become law by the fall of 2006, allowing workplaces a 1 year transition period.

According to Labour Minister Chris Bentley "people are healthier and living longer so it is unfair to insist that they stop working simply because they turn 65. Ending mandatory retirement would allow workers to retire based on lifestyle, circumstance and priorities. We listened to the needs and concerns of business, labour and others who have consulted with us and are doing this in a way that protects existing rights to pensions, early retirement and benefit plans".

The elimination of mandatory retirement will have an impact on the design and cost of administering employee benefit plans, succession planning and reasonable notice entitlement, and the employers' duty to accommodate an aging workforce. The new legislation has addressed some major issues including the following:

### Employee Benefit Plans

Employers will not be obligated to provide benefits for those employees aged 65 or older. The government has not proposed any legislative changes to the Employment Standards Act, 2000, which states that employers cannot

discriminate on the basis of age in providing benefits to employees aged 18 to 64. In introducing the new legislation to end mandatory retirement it was the government's intention not to undermine the benefits and protection that employees under age 65 currently enjoy.

Although the new law does not obligate employers to provide employee benefits, we expect that both union and non-union employees will attempt to bargain for benefits beyond age 65.

### Ontario Drug Benefit Plan

The Ontario government will continue to pay for prescription drugs for those over the age of 65, thereby reducing the burden to employers.

In the event that employers provide drug benefits to retired employees beyond age 65, the ODB plan would remain first payer through co-ordination of benefits provisions.

### Collective Agreements

Mandatory retirement provisions in the existing collective agreements will no longer be enforceable and all mandatory retirement policies will be in violation of the Ontario Human Rights Code once the proposed legislation becomes law. This will allow employers and unions approximately one year to make the appropriate changes to policies and collective agreement language in order to conform to the

changes in the legislation.

### Staying on the job

In 2002, retirees were asked what would have enticed them to keep working. Top reasons include:

REASONS	%
Working fewer days	28.3
Part-time work	27.8
Better health	26.5
Working shorter days	25.6
Salary increase	21.2
More vacation	19.0
No forced retirement	11.8
Suitable caregiving	6.3

Source: Statistics Canada

### Employer Sponsored Pension Plans

There will be no impact on pension benefits already earned and employees could continue membership in pension plans and accrue benefits past age 65, subject to service or contribution caps.

### Canada Pension Plan

Canada Pension Plan eligibility will not be impacted.

Although there is no immediate impact to government pensions, some labour groups were concerned that ending mandatory retirement could prompt government to raise the pensionable age. "In every country where they've eliminated mandatory

retirement they've ultimately moved the access to government pensions up. In the United States you've got to be 67," said Ontario Federation of Labour president Wayne Samuelson.

#### RRSPs and RIFs

We are still unsure of whether or not there will be changes made with respect to the current income tax act which does not allow members of a pension plan, RRSP, RIF, etc., to defer receipt of retirement income past age 69. Under the new Ontario legislation, an employee may be working past the age of 69 and be forced by the income tax act to convert their RRSPs into RIFs and begin withdrawing funds from the RIF.

#### WSIB Benefits

Entitlement under WSIB will not change for workers less than age 63. Benefits will be eligible to age 65. However, workers age 63 or more at the time of their injury will be entitled to WSIB benefits for a maximum period of two years.

#### Age Discrimination

The current Ontario Human Rights Code prohibits discrimination on the basis of age, which is defined as more than 18 years and less than 65. Under this definition, employers had the right to enforce mandatory retirement at age

65 without concern of penalty for discrimination. Conversely, under the new legislation an employer who wishes to terminate an employee at age 65 or over will be required to justify their decision to terminate the employee based on the same criteria that they would apply to younger employees. Employers will be allowed to enforce mandatory retirement where it can be justified on a reasonable bona fide occupational requirement or qualification necessary for the performance of essential job duties, such as firefighters and police which are currently required to retire at age 60. In such cases employers must demonstrate that:

- a. An aged-based job requirement or qualification is a "bona fide occupational requirement."
- b. The individual employee does not meet the job requirement or qualification.
- c. The employee could not be accommodated without causing undue hardship to the employer.

As a result, in most, if not all cases, the effect of the change in the Human Rights Code will be that each employee who wishes to work past age 65 will have to be assessed as to their individual abilities to perform the work required and justification given for each employee

who does not meet the requirements.

#### Termination Beyond Age 65

Under the new Act employers will have to prove cause for dismissing an employee over 65, or provide significant amounts in termination/severance pay in lieu. This will mean that standards or performance indicators will have to be carefully established for all employees if employers wish to terminate older employees without risk. Obviously, this will create an extra burden for the employer since they will have to continually assess the performance of their older workers and determine at which point an employee becomes incapable of performing their duties. Failure to do so will certainly give rise to more human rights complaints and wrongful dismissal suits by former employees.

#### Early Retirement Incentives

Employers may be forced to offer a number of alternatives to employees in an effort to control costs. A number of incentives have been offered to older workers to retire, including early retirement packages, leaves of absence without or partial pay, voluntary resignation, and a reduction of hours worked. Certainly, all will increase costs from current levels.



#### Conclusion

The proposed legislation has raised a number of concerns on the impact to younger workers, making it more difficult to find employment opportunities. However, evidence in both Quebec and Manitoba, who introduced bans on mandatory retirement in the 1980's, would suggest that younger workers will not be harmed by the change.

The Ontario Government has estimated that they expect approximately 4 per cent of the 100,000 Ontarians that turn age 65 this year will wish to continue working. Consequently, there is little doubt that employers will have to review their current retirement arrangements as a result of the elimination of mandatory retirement.

Ensure that you contact your Mosey & Mosey representative should you have any questions regarding the new legislation and /or the impact on your organization.

## INTRODUCING NEW PROFESSIONAL SERVICES

### HUMAN RESOURCE CONSULTING

Mosey and Mosey wishes to introduce Robert Granger, C.M.M.III, as Senior Human Resource Consultant who will be of assistance to your organization in handling your current and future needs. With looming skill shortages and fierce corporate competition for "the best and brightest staff", effective human resource strategies will

have an impact on the future of every organization. It is no surprise that the most successful organizations have demonstrated innovative and tailored human resource programs and processes, which have enhanced results to the bottom line. These same organizations have also demonstrated their dedication to proactively plan

for future issues affecting their workforce. With this approach, they are greatly enhancing the probability of their organizational success.

While your organization may not be large, complex or even at risk today, you may already be starting to see signs that are signaling potential issues for

tomorrow. Don't wait to have these issues surface, be prepared **before** you find you are faced with an adverse situation. By planning ahead, difficult human resource issues that are critical to the success of your organization can be managed. By taking an organized and comprehensive look at your

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municipality, you can proactively assess and diagnose the many human resource challenges you may be currently facing and/or ones that are likely to lie ahead.

Human Resource Consulting Services include:

**Pay Equity**  
**Union Negotiations**  
**Terminations**  
**WSIB Issues**

**Hiring Process**  
**Mediation**  
**Disciplinary Action**  
**LTD/STD Plan Matters**

Contact Bob directly at (519)837-7717 or

Mosey & Mosey Head Office at 1-800-268-8383.

## ACTUARIAL SERVICES

With the ever increasing focus on maximizing every premium dollar we are very pleased to announce a strategic partnership with Nexus Actuarial Consultants. Like Mosey & Mosey, Nexus specializes in providing the public sector with highly professional services which focus on forecasting, evaluating and accounting the future costs of employee benefits.

Since its inception in 1994, the actuarial consultants at Nexus

have been providing their public sector clients with performance measurement, experience rating and funding advice regarding Workers Compensation and Long Term Disability. With the emergence of new retirement and post-employment benefit accounting guidelines in the late 1990's, which came into full force for the public sector in 2004, Nexus has been leading the way in developing effective services to enable full compliance.

With a focus on minimizing its client's efforts and maximizing their understanding, Nexus has enabled well over 50 public sector clients to come to grips with the challenges of the new reporting requirements. With half a decade of experience under their belt regarding the new accounting guidelines, the actuarial team at Nexus, armed with their sophisticated computer models, are well placed to prepare sound forecasts of the future. They can help you

understand, for example, what your benefits will cost you in 5, 10 and 20 years time when you will likely have far more retirees. They can evaluate the impact of eliminating mandatory retirement and price the long term impact of alternative benefit provisions.

Contact us today to determine how we can help your organization.

## TWO-TIER HEALTH CARE

The Supreme Court of Canada last week handed down a landmark ruling relating to the ban on private health care by invalidating Quebec's ban on private health insurance. The court ruled it unconstitutional to ban private insurance under circumstances where the public system fails to provide reasonable service. This ruling is viewed as a warning to other provinces not to let waiting lists get out of hand.

The decision was based on a 1997 case brought forward by Mr. George Zeliotis, a 73 year old Montrealer, after he was forced to wait almost one year for hip replacement surgery. Mr. Zeliotis's position was that the long and unreasonable waiting time violated his constitutional rights and, as a result, he should have the right to pay for the procedure in order to secure speedier treatment. The court agreed and in their 60 page decision noted that "access to a waiting list is not access to health care". More

importantly, it ruled that the current system infringes on the rights of patients who have to wait for treatment.

The ruling did spark immediate fears of a two-tier health care system – one with wealthy Canadians buying private care, while poorer citizens make do with an inferior and deteriorating public health care system. Prime Minister Paul Martin was quick to react to the fears by downplaying them. "We're not going to a two-tier health-care system in this country", and added that "what we want to do is to strengthen the public health-care system".

Although this was a Quebec case, its impact on other provinces is not yet clear. However, two of the dissenting justices in the Supreme Court predicted that the decision would lead to a parallel private health-care system in Quebec and that



allowing private insurance "would precipitate a seismic shift" in health policy in the province, favouring the wealthy. Moreover, the Canadian Medical Association stated that governments in Canada have failed to follow through on past promises to improve the public health-care system and that "today's decision represents a stinging indictment of the failure of governments to respond to the mountain of studies and years of research with real action for our health-care system".

Canada's top three insurance carriers, Manulife Financial, Great-West Life and Sun Life all reacted cautiously and declined to comment on the potential impact of the decision. It is our view that Ontario and other provinces could meet the spirit of the ruling by reducing wait times for health-care, thereby avoiding private care and insurance. Currently, On-

tario's health-care system is stretched to the limits and reducing wait times is no small task. The almost daily demands made by the McGuinty government for more federal funding highlights the need to improve accessibility to patients and reinforces the fact that the quality of care is deteriorating.

Most plan sponsors are not in a position to fund private health-care as a result of the high costs. However, depending on how long the wait times become, it is possible that employers might be forced to expand their group health benefit plans, as was the case when the Ontario government delisted chiropractic care and eye exams. Although we do not believe private health-care will become a reality in the very near future, it is critical that plan sponsors begin to protect themselves through the review of their benefit plan programs, including benefit plan and collective agreement contract language.



"Dear Abbi" is a new feature of our quarterly newsletter in which one of our senior service representatives – Abigail O'Neill – will answer frequently asked questions as they pertain to the provision of employee group benefits. We believe this column will be of interest and value in the administration of your employee group benefit program. Should you require further information in regard to this feature, contact Abbi via e-mail at [aoneill@mosey.on.ca](mailto:aoneill@mosey.on.ca)

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## **DEAR ABBI: AN EMPLOYEE HAS JUST APPROACHED ME TO INSIST THAT THEY MUST, BY ORDER OF THE COURT, CONTINUE TO PROVIDE HEALTH AND DENTAL CARE COVERAGE FOR THEIR FORMER SPOUSE. ARE WE OBLIGED TO MAINTAIN BENEFITS IN THIS SITUATION?**

Dear Administrator,

Coverage under Group Benefit Plans is provided to employees and to their eligible dependents as defined under the applicable policy. In most insurance contracts spouse is defined as your legally married spouse or a person of the opposite or same sex who has consistently lived with you in a conjugal relationship for a period of one year or more.

Only one spouse can be covered at a time. In this regard coverage may be continued for an ex-spouse for the full duration of a formal separation, whether or not there is a court order that requires the employee to continue benefits or not. It is the employee's decision. However, if the employee takes up residence with another person for at least one year and represents that person as his/her spouse, the new spouse can be designated as the covered spouse and coverage on the legally separated spouse will terminate.

In the case of a finalized divorce, even if there is a court

order that the employee must continue benefits, the previously dependent spouse will no longer meet the definition of "Spouse" under the Policy, and will no longer be eligible for coverage. A court order does not impact the terms and conditions of the group insurance contract which is between the employer and the carrier.

Consequently, it will be the employee's responsibility to arrange for individual coverage for their ex-spouse. Most carriers provide a variety of individual benefit plans that can be purchased on behalf of the former spouse to meet any such obligation. Please feel free to contact your Mosey & Mosey Service Consultant for information and applications specific to your carrier.

Coverage for dependent children will continue as long as the children are younger than the limiting age noted in the policy and meet other requirements for being a dependent child, regardless of the relationship with the ex-spouse.

## **INTRODUCING NEW STAFF**

Mosey & Mosey is proud to introduce new members to our consulting team. Their industry insight, extensive experience, and outstanding commitment to customer service will complement and enhance our ability in providing a superior customer experience for our clients.

### ***Kristine Barkley, Technical Consultant***

Kristine has over 10 years of underwriting experience and has held senior positions with Manulife Financial and Benefits Division prior to joining Mosey & Mosey.

### ***Robert Granger, C.M.M.III, Human Resource Consultant***

Robert has over 30 years experience in the Public Sector and most recently retired as the Human Resources Director at The County of Wellington.

### ***Bill Kafkis, Senior Technical Consultant***

Bill has over 15 years of underwriting experience in both the large and small case markets. He recently held a senior underwriting position with Manulife Financial prior to joining Mosey & Mosey.

### ***Gladys Law, Service Consultant***

Gladys recently held the position of Group Client Service Representative with Industrial Alliance prior to joining Mosey & Mosey. She also has spent two years at a consulting firm in the role of a benefits analyst.

### ***Douglas Stewart, Senior Technical Consultant***

Doug brings over 24 years of industry and employee benefits experience working for large consulting firms. Doug has held positions of Vice-President with Marsh Canada and Senior Technical Consultant with Mercers.