

# Ontario Human Rights Commission

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## TIME FOR ACTION: Advancing Human Rights For Older Ontarians

### Fact Sheet #1

### Age Discrimination and Employment

Older workers are often viewed as a drain on employers rather than as an asset and are regarded as less ambitious, hardworking, and dynamic. They are characterized as unable to learn new things and are often denied training and opportunities for advancement on the basis of age. Workplace "downsizing" has become a way to eliminate older workers who are no longer considered valuable. Still others find it difficult to even obtain employment because of their age.

Mandatory retirement is discriminatory by definition. Making a decision solely on the basis of age, and not on the basis of a person's ability to perform the essential duties of the job, is a clear form of unequal treatment.

Currently, no law in Ontario requires people to retire at any age. However, many workplaces have retirement policies that require all employees to retire at age 65. Employees who do not wish to retire at 65 have no means to challenge the collective agreement or personnel policy.

One of the reasons that employees cannot challenge mandatory retirement in Ontario is that the Ontario *Human Rights Code* itself defines "age" in the context of employment as an age that is eighteen years or more and less than sixty-five years. This means that it is not contrary to the *Code* for employers to require employees to retire at age 65 and that the Commission cannot accept a complaint of age discrimination in employment from someone who is 65 or older.

To address these issues, the Report recommends that the *Code* be amended to extend protection against age discrimination to workers over 65. The Commission agrees that employers should not be required to retain employees who are unable to perform the essential duties of the job. However, those who wish to continue working and are able to perform the essential duties of the job should be permitted to do so, regardless of their age. The point is to allow those who want to continue to work to have that choice. Flexible or phased-in retirement should be the goal.

The Report also recommends that government and community partners take the following steps to address other aspects of age discrimination in employment:

- *Irrespective of whether the Code is amended, that employers and unions reconsider the utility and necessity of requiring employees to retire at any fixed age and revise their retirement policies and collective agreements to promote flexibility and choice.*
- *That employers take steps to ensure that workplace policies and procedures do not have an adverse effect on older workers. Workplace human rights policies and education programs should address age discrimination and harassment.*
- *That workplaces are free of ageist assumptions and stereotypes, that employers ensure that older workers are afforded the same opportunities as their younger counterparts and that the value of older workers is recognized.*

The Commission is committed to addressing age discrimination as it occurs in the workplace. Over the next while, the Commission will develop and implement a broad public awareness campaign on ageism, and will engage in activities to educate employers and employees about their rights and responsibilities under the *Code*. These efforts will be aimed at dispelling the myths that are often associated with older workers and encouraging employers to value and view older workers positively.

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