

**NEWSLETTER – MAY 2007**

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**BILL 31 - ELIMINATION OF MANDATORY RETIREMENT**

On April 25, 2007, the B.C. government, as expected, introduced a bill in the Legislature that would effectively put an end to mandatory retirement in this province. If passed as introduced, the *Human Rights Code (Mandatory Retirement Elimination) Amendment Act, 2007* (“Bill 31”) will have the effect of eliminating mandatory retirement in B.C. by amending the provincial *Human Rights Code*<sup>1</sup> (the “Code”).

As discussed in our November/December 2006 newsletter, section 13 of the Code presently prohibits mandatory retirement of employees between the ages of 19 and 65. If passed, Bill 31 will amend the Code definition of “age” to mean “an age of 19 years or more”. Employees aged 65 or older will be protected from age discrimination. Employers will be prohibited from forcing such employees to retire simply on account of their age.

A further change will be effected in respect of paragraph 13(3)(b) of the Code. That paragraph currently provides that the prohibition against age discrimination does not extend to the operation of a *bona fide* retirement, superannuation or pension plan or to a *bona fide* group or employee

insurance plan. The paragraph will be amended by adding self-insured benefit plans to the list of plans exempted from the prohibition against age discrimination. This amendment will not affect an employer’s right to take age into account in granting employee benefits and in making distinctions in retirement or pension plans (such as specifying early and normal retirement ages).

A third change will affect section 41 of the Code. Mandatory retirement schemes (and other age-related or dependent plans and programs) established pursuant to legislation will be permissible and will not be considered to violate the Code.

Under Bill 31, employers in B.C. have around eight months to assess current arrangements and implement necessary changes. If passed, this legislation will come into force on January 1, 2008. This is relatively quick when one draws comparisons with other Canadian jurisdictions acting to eliminate mandatory retirement. For example, in Ontario, the transitional period was one year and, in Nova Scotia, the period is two years.

It is important to note that Bill 31 will not be retroactive in effect. Employers will not be

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<sup>1</sup> *Human Rights Code*, R.S.B.C. 1996, c. 210.

required to re-employ employees who retire before the legislation comes into effect.

Moreover, the legislation will not require employees to work past age 65. The legislation will simply give employees the choice to retire at any age, subject to terminations in accordance with the law, *bona fide* occupational requirements, and undue hardship in accommodations.

As stated in our November/December 2006 newsletter, there are many issues that employers in this province should be seriously considering in light of the pending

legislative amendments. In particular, we encourage employers to review current policies and procedures to guard against allegations of ageism or age-related discrimination. In the unionized sector, consideration should be given to whether changes will be required to collective agreements.

On your request, we would be happy to provide you with a copy of our November/December 2006 newsletter, in which we provided a more complete list of pointers to prepare for the elimination of mandatory retirement.

*If you have questions regarding the issues raised in this newsletter and how they may affect you or your company, please do not hesitate to contact any lawyer at our firm.*

*Lawyer contact information can be obtained by contacting us at (604) 806-0922 or visiting our website at [www.ropergreyell.com](http://www.ropergreyell.com).*

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\* Every effort has been made to ensure accuracy in respect of this newsletter. The comments, however, are necessarily of a general nature. Clients and other interested parties are urged to seek specific advice on matters of concern and not to rely solely on the text of this newsletter. \*