



ON THE JOB

When push comes to shove

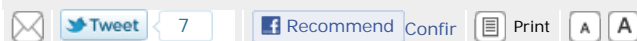
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7 comments



You're in your early to mid-sixties, have just marked your 25-year milestone at the company, are liked and respected by your colleagues, and have always had favourable performance reviews.

Suddenly your boss is criticizing your work and suggesting your skills no longer match the job. You're assigned work well below your position – and now you're getting the idea that you're being nudged toward the door. What to do?

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Most provinces have abolished mandatory retirement for workers who reach the age of 65. But although companies can no longer cut you loose simply because of your age, they do have other ways of shedding older staff. And that means many workers can no longer control when they'll take that exit door.

Some 40 per cent of retired Canadians say they had to leave the work force earlier than they had planned, according to a recent survey by Royal Bank of Canada of more than 2,200 Canadians over the age of 50. Eighteen per cent of those respondents said their employer asked them to leave earlier than they had expected, either because their skills were no longer required or because the company downsized or closed.

"Employers can't terminate you because you're old, any more than they can if you are gay or a woman. That's discrimination, which is a human rights violation," said Janice Rubin, partner with Rubin, Thomlinson LLP Toronto.

"But whether you are 45 or 65, they can terminate your employment and give you a termination package," she noted.

Still, that doesn't mean age discrimination doesn't happen, said Daniel

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Lublin, a workplace lawyer specializing in hiring and dismissals and a partner with Whitten & Lublin LLP in Toronto.

"There will rarely be a smoking gun where they'll say, 'You're old and we don't want to retain you any more' – it's more subtle than that," he said. "But there are companies that have made a deliberate decision to shed its older work force."

So what happens if push comes to shove? What recourse do older workers have? Here are some possible scenarios, with advice from the experts.

THE DOOR OPENS

The scenario: You're just over 60 and you're receiving strong signals from your employer that it may be time to start thinking about retirement. What's the best way to strike a good deal for yourself?

The advice: If you are ready and willing to leave, try to negotiate a deal that meets both your needs, Ms. Rubin suggests. You may be able to negotiate a package for early retirement. In some instances, companies will keep you on for six months to train a new employee and then give you a lump sum payout. There may be possibilities for you to remain on, perhaps as a consultant who fills in for employee mat leaves or sabbaticals, she said.

Many workers are reluctant to go to their employer and say, "Make me an offer," Mr. Lublin said. "It's a difficult conversation to have." But in fact many employers are willing to discuss an exit package that will benefit both you and the company.

THE ATMOSPHERE CHANGES

The scenario: You have been working for the same employer for more than two decades, and have been doing well at your job. Suddenly, your manager is criticizing your performance, scheduling you to work odd hours and taking away some of your responsibilities.

The advice: "It's not uncommon for employees to reach a milestone of 25 or 30 years and then a month later the criticism starts," Mr. Lublin said.

Many older workers are old-school, he said: They're used to simply taking what's given to them, and they'll often just let things go. But if you don't fashion a rebuttal, your employer's view of events stays undisputed in your file and could be used against you later on.

Your response should be calm and unemotional. "It's really important to document, document, document," Mr. Lublin said. Challenge a negative performance review with a written response citing your view of events and any inconsistencies. "You want to punch a hole in their argument," he explained.

If you believe your manager is trying to build a case that will result in your termination, you should speak with an employment lawyer who can provide you with some advice on how to handle the situation to ensure you get the best deal should you be shown the door, he said.

YOUR JOB CHANGES

The scenario: You're 63 and are asked to take on new responsibilities. Although you are given training for the new tasks, you can't quite master them. Now the company is strongly suggesting it's time for you to go.

The advice: If you know the job is changing and you feel yourself in a position where you can't continue working, you should try to negotiate a graceful exit, Ms. Rubin said. But never voluntarily resign.

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Mr. Lublin notes that changes to the terms of employment for older employee could be constructive dismissal. "Although there is no legal distinction between an older and a younger employee, the duty to accommodate under human rights legislation, and the common law of constructive dismissal, may require employers to consider workplace changes through the lens of an older employee's ability to adapt," he said. The best plan of action might be to get legal advice, he added.

THE 'AGEISM' QUESTION

The scenario: You've just turned 65 and your boss is telling you that you no longer have the right stuff for your job. Could this be a case of age discrimination?

The advice: "I might interpret this as a veiled reference to age," Ms. Rubin said.

But you need to be honest with yourself: Are you underperforming? Are you still suited to the work you are expected to perform? If you think you're still up to the job, but your "spidey senses are tingling," it's a good idea to get advice from a labour lawyer, she said.

Bear in mind that age discrimination is usually very subtle and very hard to prove. So be sure to document any events or conversations that support your case, Ms. Rubin said.

If you believe you're being discriminated against because of your age, you need to set off alarm bells, Mr. Lublin agreed. He recommends that you meet with your company's human resources manager, or someone in a senior management role, and outline your concerns in writing. Companies have a legal obligation to investigate an employee's complaint, he said, adding: "A lot of cases die on the vine because workers don't complain."







Mr. Lublin notes that calling an employer out on ageism often protects the employee. "They can't turn around and fire you. It's almost like you're an endangered species."

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