

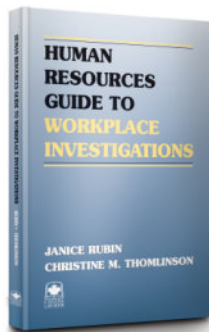
EMPLOYERS' ALERT

December 2006

Mandatory Retirement Retired as of December 12, 2006

WHAT'S NEW AT RUBIN THOMLINSON LLP

We are proud to announce that our new book, "The Human Resources Guide to Workplace Investigations", co-written by Partners Janice Rubin and Christine Thomlinson, is now available through Canada Law Book.



To order your copy, please call 1 (800) 263-2937

Please visit our new website at
www.rubinthomlinson.com

We work with employer clients to provide optimal legal solutions to their challenging workplace issues. If you would like to know more about our practice, please do not hesitate to contact us at (416) 847-1814 or via e-mail at contact@rt-law.ca

Prior to December 12, 2006, mandatory retirement policies at age 65 were permitted because of a restrictive definition of "age" in the Human Rights Code which only protected discrimination of persons "18 or more and less than 65 years".

Effective December 12, 2006, however, the definition of age in the Human Rights Code was amended to prevent discrimination of individuals "18 years or more" and, as such, mandatory retirement at age 65 is now outlawed in Ontario.

In response, employers will have to critically evaluate their hiring, employment and termination policies to ensure that they are acting in accordance with the new definition of age in the Human Rights Code.

Effect on Other Legislation

While changes to the definition of age under the Human Rights Code will occur, other legislation relating to persons 65 or over will remain intact.

Employment Standards Act

Differentiation based on age is still permissible in respect of pension, benefit and group insurance plans because "age", as defined under the Employment Standards Act, includes persons "18 years or more and less than 65 years".

Workplace Safety Insurance Act

Workers under the age of 63 who are injured at work and in receipt of loss of earnings benefits will continue to cease to be eligible to receive benefits at age 65. Workers aged 63 or more at the time of injury will continue to be eligible to receive loss of earnings benefits for a maximum of two years.

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Upcoming Events at Rubin Thomlinson LLP:

Each of our upcoming training sessions is designed to raise awareness of relevant employment law issues and trends, and strengthen participants' skill at applying this knowledge to their own workplaces:

- NEW "Help I've Got to Hire Someone"
February 20, 2007

Mark the date!

February 13, 2006 is the date of our annual "Employment Law Roundup" breakfast, when RT Partner Christine Thomlinson will discuss the most interesting employment law cases of 2006. You'll receive your invitation by email in early January.

Please contact us at 416.847.1814 or by email at contact@rt-law.ca for additional information on any of our workshops or other events.

This alert is prepared as a service for our clients and other persons dealing with employment issues. It is not intended to be a complete statement of the law or an opinion on any subject. Although we endeavour to ensure its accuracy, no one should act upon it without a thorough examination of the law after the facts of a specific situation are considered. No part of this publication may be reproduced without prior written permission of Rubin Thomlinson LLP. This has been sent to you courtesy of Rubin Thomlinson LLP.

What this means for employers:

- Employees 65 years of age or older exited from the workplace will be entitled to statutory and common-law severance pay.
- Even in these exited cases, if the employee believes that the decision to terminate was related to age, he or she may complain to the Human Rights Commission alleging discrimination. This could lead him/her to receive a significant damage award, including reinstatement. You should therefore speak to your legal counsel before terminating someone where allegations of age discrimination could arise.
- As you may be employing a greater number of older workers, you will need to accommodate any age-related disabilities the same way you would any other disability – to the point of undue hardship.
- In very limited circumstances, an employer may be able to maintain mandatory retirement if it can show that it is a "bona fide occupational requirement." Given recent case law, it will be very difficult for most employers to make this argument, and legal advice should be sought before taking such a position.
- Under the Employment Standards Act, it will remain permissible to treat employees over 65 differently with respect to entitlement and eligibility for employee benefit plans, pension, or group insurance plans. However, changing benefits plans for an older worker may still trigger a constructive dismissal, if these changes are without the employee's permission and are substantial.