

# Age Discrimination Exemptions – Know The Laws Of Your Province



Human rights laws make it illegal to discriminate against job applicants and employees on the basis of age. While requirements vary by jurisdiction, employment discrimination typically includes:

- Refusing to employ or continue to employ somebody due to their age;
- Imposing differential and less favorable terms of employment based on a person's age;
- Using or circulating any job ad, employment application form, asking applicants direct questions about or other communication that indicates a preference or limitation based on age;
- Harassing a person due to age;
- Retaliating against a person for complaining about age discrimination; and
- Expelling, excluding or limiting a person's participation in a trade union or other employment based organization, including a benefits plan, due to age.

However, the human rights laws also recognize that a person's age is a legitimate and nondiscriminatory factor on which to base employment decisions, policies and practices. Among the exceptions in which otherwise discriminatory practices are permitted is when age is a bona fide occupational requirement (BFOR) for a position, such as the role of a 15-year-old in a movie. Human rights laws also make allowances for what are called bona fide pension and retirement plans in which participation, accrual and payment of benefits are based on age. Here's a rundown of the exemptions from age-based employment discrimination in each part of Canada.

## **Age Discrimination Exemptions Across Canada**

("BFOR" means a "bona fide occupational requirement")

### **FEDERAL (Canadian Human Rights Act)**

#### **Exceptions/Practices NOT Considered Illegal Age Discrimination**

\*Refusal, exclusion, expulsion, suspension, limitation, specification or preference in employment based on a BFOR;

\*Refusal or termination of employment because individual hasn't reached the minimum age, or has reached the maximum age, that applies to that employment by law or under regulations;

\*Terms and conditions of bona fide pension plans that differentiate on basis of age that are allowed by *Canadian Human Rights Benefit Regulations* regarding benefit plans participation, benefit provisions and contributions

(Sec. 15(1))

### ALBERTA (Alberta Human Rights Act)

#### **Exceptions/Practices NOT Considered Illegal Age Discrimination**

\*Ban on age and marital status discrimination in employment doesn't affect "operation of any bona fide retirement or pension plan or the terms or conditions of any bona fide group or employee insurance plan" (Sec. 7(2))

\*Ban on employment discrimination on any ground doesn't apply to refusal, limitation, specification or preference based on a BFOR (Sec. 7(3))

### BRITISH COLUMBIA (1) (Human Rights Code)

#### **Exceptions/Practices NOT Considered Illegal Age Discrimination**

\*Ban on age discrimination doesn't apply to bona fide scheme based on seniority (Sec. 13(3)(a));

\*Ban on age, marital status, physical or mental disability or sex discrimination doesn't apply to the "operation of a bona fide retirement, superannuation or pension plan or a bona fide group or employee insurance plan," regardless of whether the plan is the subject of an insurance contract between employer and an insurer (Sec. 13(3)(b));

\*Ban on employment discrimination against any group doesn't apply to a refusal, limitation, specification or preference based on a BFOR (Sec. 13(4))

### MANITOBA (Human Rights Code)

#### **Exceptions/Practices NOT Considered Illegal Age Discrimination**

\*Ban on employment discrimination doesn't apply to discrimination based on bona fide and reasonable requirements or qualifications for the employment or occupation (Sec. 14(1));

\*Distinctions, conditions, requirements or qualifications that the regulations say are deemed bona fide and reasonable regarding an employee benefit plan, whether provided for by individual contract, collective agreement or otherwise (Sec. 14(7));

\*Limiting the employment or occupation of a person under the age of majority, or classifying or referring to a person under the age of majority for an employment or occupation, in accordance with Manitoba law regulating the employment or occupation (Sec. 14(10))

## [NEW BRUNSWICK \(Human Rights Act\)](#)

### **Exceptions/Practices NOT Considered Illegal Age Discrimination**

\*A limitation, specification, exclusion, denial or preference based on a prohibited ground of discrimination is not discriminatory if Commission determines it's based on a bona fide requirement or qualification that justifies the difference (Sec. 2.2)

#### **Ban on age discrimination doesn't apply to:**

- (a) Termination of employment or refusal to employ because of terms or conditions of any bona fide retirement or pension plan;
- (b) The operation of the terms or conditions of a bona fide retirement or pension plan that have the effect of a minimum service requirement;
- (c) The operation of terms or conditions of a bona fide group or employee insurance plan; or
- (d) A limitation, specification, exclusion, denial or preference in relation to a person who hasn't reached the age of majority that's required or authorized by an act or regulation (Sec. 4)

## [NEWFOUNDLAND \(Human Rights Act, 2010, Sec. 14\)](#)

### **Exceptions/Practices NOT Considered Illegal Age Discrimination**

- (a) Ban on discrimination doesn't apply to expression of a limitation, specification or preference based on a good faith occupational qualification;
- (b) Ban on age discrimination doesn't prevent the operation of: (i) a good faith retirement or pension plan (but exclusion doesn't cover a provision requiring a person to retire at an age set out in the plan), (ii) the operation of the terms or conditions of a good faith retirement or pension plan which have the effect of a minimum service requirement, or (iii) the terms and conditions of a good faith group or employee insurance plan (Sec. 14)

## [NOVA SCOTIA \(Human Rights Act, Sec. 6\)](#)

### **Exceptions/Practices NOT Considered Illegal Age Discrimination**

- (a) Ban on employment discrimination doesn't apply: (i) where the nature and extent of the physical disability or mental disability reasonably precludes performance of a particular employment, or (ii) to a where a denial, refusal or other form of alleged discrimination that's (X) based upon a bona fide qualification, (Y) based upon a BFOR, or (Z) "a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society";
- (b) Ban on age discrimination doesn't prevent, on account of age, the operation of a bona fide pension plan or the terms or conditions of a bona fide group or employee insurance plan (Sec. 6)

## [ONTARIO \(2\) \(Human Rights Code\)](#)

### **Exceptions/Practices NOT Considered Illegal Age Discrimination**

\* Ban on age, sex, record of offences or marital status discrimination in employment doesn't apply if the age, sex, record of offences or marital status of the applicant is a reasonable and bona fide qualification because of the nature of the employment (Sec. 24(1)(b));

\*Ban on sex, marital status or family status discrimination doesn't apply to an employee superannuation or pension plan or fund or a group insurance contract between the employer and an insurer that complies with ESA requirements (Sec. 25(2));

\*Ban on age discrimination doesn't apply to employee benefit, pension, superannuation or group insurance plan or fund that complies with ESA requirements regardless of whether the plan or fund is the subject of an insurance contract between an insurer and employer (Secs. 25(2.1) and (2.2))

## [PRINCE EDWARD ISLAND \(Human Rights Act, Sec. 11\)](#)

### **Exceptions/Practices NOT Considered Illegal Age Discrimination**

Ban on age and disability discrimination doesn't affect operation of genuine retirement or pension plan or any genuine group or employee insurance plan

## [QUÉBEC \(Charter of Human Rights and Freedoms\)](#)

### **Exceptions/Practices NOT Considered Illegal Age Discrimination**

\*A distinction, exclusion or preference distinction based on age, sex or civil status in an insurance or pension contract, social benefits plan or public pension or public insurance plan is presumed NOT discrimination if its use is "warranted and the basis therefor is a risk determination factor based on actuarial data" (Sec. 20.1);

\*Use of health as a risk determination factor in such contracts or plan is NOT discrimination (Sec. 20.1)

## [SASKATCHEWAN \(2\) \(Sask. Human Rights Code\)](#)

### **Exceptions/Practices NOT Considered Illegal Age Discrimination**

\*Ban on age discrimination doesn't apply to term or condition of: (i) a bona fide retirement, superannuation or pension plan, (ii) a bona fide group or employee insurance plan, or (iii) any bona fide scheme based on seniority (Sec. 16(5));

\*Ban on sex, disability or age discrimination doesn't apply if sex, ability or age is a reasonable and BFOR and qualification for the position (Sec. 16(7))

## [NORTHWEST TERRITORIES \(Human Rights Act\)](#)

### **Exceptions/Practices NOT Considered Illegal Age Discrimination**

\*Ban on age, marital status and family status discrimination doesn't affect operation of any bona fide retirement or pension plan or terms and conditions of any bona fide group or employee insurance plan (Sec. 7(2));

\*Ban on employment discrimination doesn't apply to a practice based on a BFOR (Sec. 7(3))

### NUNAVUT (Human Rights Act)

#### **Exceptions/Practices NOT Considered Illegal Age Discrimination**

\*Ban on age and marital status discrimination doesn't affect the operation of any genuine retirement or pension plan or the terms and conditions of any genuine group or employee insurance plan (Sec. 9(2));

\*Ban on employment discrimination doesn't apply to a practice based on a BFOR (Sec. 9(4))

### YUKON (Human Rights Act)

#### **Exceptions/Practices NOT Considered Illegal Age Discrimination**

Ban on employment discrimination doesn't apply to reasonable requirements or qualifications for the employment (Sec. 10)

#### **Notes**

(1) In BC, "age" protected from discrimination means 19 or older

(2) In Ontario and Saskatchewan, "age" protected from discrimination means 18 or older