

Ageism Is Alive And Well In Canadian Workplaces



Subtle and overt pressure is often placed on older employees to encourage their retirement

[U.S. President Joe Biden](#) dropping out of the presidential race is now old news. What is not old news is ageism in [Canadian workplaces](#).

A few weeks ago, we wrote about Canada's prohibition on mandatory [retirement age](#) policies and the human rights protections against [workplace age discrimination](#).

Despite all of these protections, subtle and overt pressure is often placed on older employees to encourage their retirement. Age discrimination is still alive and well in workplaces across the country.

What happens when an employer takes more subtle steps to push an employee toward retirement?

While, it may not be blatantly clear that such conduct is, in fact, in breach of human rights legislation in the same way that a written mandated retirement policy is, realistically, the effect is the same and, in practice, quite common.

The pressure to retire can include things like:

- Seemingly innocuous questions about what your retirement plans are – which you do not have to answer;
- Unilateral reductions in your hours, duties or authority absent any request or consent from you – which you do not have to accept or consent to;
- Reorganizations where only or disproportionately older employees seem to be affected;
Frequent comments about your age or retirement in passing – which we would recommend keeping notes of, including who said it, when and what was said;
- Layoffs where only older employees are laid off work;
- Outright requests that you retire from your role or accept a demotion – which you are not obligated to do;
- Increased and unfair scrutiny of your work including negative performance evaluations when you have had no history of same – which you can challenge; and,
- Increasingly hostile and toxic workplace conduct aimed at making you feel you are no longer wanted in the workplace – which again, we recommend keeping notes

of.

The reality is, if your employer wants you gone, they can always terminate your employment – there is no way to pre-empt a termination without cause. What your employer cannot do, however, is tell you that you have to retire by a certain date or age or exert undue pressure on you to do so earlier than you had planned.

Whether well-meaning or not, employers must be aware that even this more subtle pressure or changes to an employee's working conditions can, and likely will, establish age discrimination contrary to human rights legislation.

Employers must also be wary of the fact that, quite frankly, employees are far better informed of their rights than they have been in the past. There are several reasons for this, including increased access to information and ubiquitous legal advertising advising employees of their rights – often to the point of exaggerating those rights in the hope of attracting clients.

We frequently get calls from older employees who claim some or all of the above behaviours are present, or who were terminated and feel they were targeted as a result of their advanced age.

Employers would be smart to act in a manner where such allegations lack any meaningful foundation. Ageism, if established by the employee in court, will increase the employer's liabilities considerably as the employer is exposed to not only human rights damages but also the potential for an award of extraordinary damages such as bad faith, moral and punitive damages.

Employees, for their part, should relay any concerns about age discrimination with counsel to discuss next steps before going to your employer or human resources department. There are many possible avenues for redress depending upon the employer, the act, and your own situation.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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