# When Is Age Discrimination Allowed – Know The Laws Of Your Province




**Age discrimination bans are subject to exemptions that vary by province.**

Human rights laws ban employers from basing employment decisions and policies on a person's age. At the same time, there are some situations in which age is an unavoidable factor, for example, with regard to eligibility for pension and retirement benefits. Age may also be what's called a bona fide occupational requirement (BFOR) for some positions that only persons of certain ages are capable of performing, such as playing the role of a teenager in a movie. That's why bans on age discrimination include certain exemptions. Here's a rundown of the exemptions in each part of Canada.

## Exemptions to Ban on Age Discrimination

### FEDERAL

Ban on discrimination doesn't cover: (a) Refusal, exclusion, expulsion, suspension, limitation, specification or preference in employment shown by employer to be based on a bona fide occupational requirement; (b) 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; and (c) Terms and conditions of bona fide pension plans allowed by regulations (*Canadian Human Rights Act*, Sec. 15(1))

### ALBERTA

(a) Ban on age and marital status discrimination 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"; and (b) Ban on employment discrimination on any ground doesn't apply to a refusal, limitation, specification or preference based on a bona fide occupational requirement (*Alberta Human Rights Act,* Secs. 7(2) and (3))

### BRITISH COLUMBIA

(a) "Age" protected from discrimination defined as 19 or older (*Human Rights Code*, Sec. 1); **Exceptions:** (b) Ban on age discrimination doesn't apply to a bona fide scheme based on seniority; (c) 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 the employer and an insurer (*Code*, Sec. 13(3)); and (d) Ban on employment discrimination against any group doesn't apply to a refusal, limitation, specification or preference based on a bona fide occupational requirement (*Code*, Sec. 13(4))

**MANITOBA**

Ban on employment discrimination doesn't apply to discrimination based on bona fide and reasonable requirements or qualifications for the employment or occupation (*Human Rights Code*, Sec. 14(1)); (b) 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 (*Code*, Sec. 14(7)); or (c) 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 (*Code*, Sec. 14(10))

**NEW BRUNSWICK**

Ban on age discrimination doesn't apply to: (a)Termination of employment or refusal to employ because of the 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 (*Human Rights Act*, Sec. 4)

**NEWFOUNDLAND**

(a) Ban on discrimination doesn't apply to expression of a limitation, specification or preference based on a good faith occupational qualification; and (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 (*Human Rights Act, 2010*, Sec. 14)

**NOVA SCOTIA**

(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 bona fide occupational requirement, or (Z) "a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society"; and (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 (*Human Rights Act*, Sec. 6)

**ONTARIO**

(a) "Age" protected from discrimination defined as 18 or older (*Human Rights Code*, Sec. 10(1));

(b) Illegal to deny or condition employment on enrollment in an employee benefit, pension or superannuation plan or fund or a group insurance contract between the employer and an insurer that makes distinctions, preferences or exclusions based on age or other protected grounds (*Code*, Sec. 25(1)); (c) 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 (*Code*, Sec. 25(2)); and (d) 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 (*Code*, Secs. 25(2.1) and (2.2))

**PRINCE EDWARD ISLAND**

Ban on age and disability discrimination don't affect operation of genuine retirement or pension plan or any genuine group or employee insurance plan (*Human Rights Act*, Sec. 11)

**QUÉBEC**

(a) 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"; and (b) Use of health as a risk determination factor in such contracts or plan is NOT discrimination (*Charter of Human Rights and Freedoms*, Sec. 20.1)

**SASKATCHEWAN**

(a) "Age" protected from discrimination defined as 18 or older (*Sask. Human Rights Code*, *2018,* Sec. 2(1)); (b) 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 (*Code,* Sec. 16(5)); and (c) Ban on sex, disability or age discrimination doesn't apply if sex, ability or age is a reasonable and bona fide occupational qualification and requirement for the position (*Code,* Sec. 16(7))

**NORTHWEST TERRITORIES**

(a) Ban on age, marital status and family status discrimination doesn't affect the operation of any bona fide retirement or pension plan or the terms and conditions of any bona fide group or employee insurance plan (*Human Rights Act*, Sec. 7(2)); and (b) Ban on employment discrimination doesn't apply to a practice based on a bona fide occupational requirement (*Act*, Sec. 7(3))

**NUNAVUT**

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 (*Human Rights Act*, Sec. 9(2)); and (b) Ban on employment discrimination doesn't apply to a practice based on a bona fide occupational requirement (*Act*, Sec. 9(4))

**YUKON**

Ban on employment discrimination doesn't apply to reasonable requirements or qualifications for

the employment (*Human Rights Act*, Sec. 10)