



Mandatory retirement in Sask. ends November 17, 2007

On May 17, 2007, Bill 9, *The Saskatchewan Human Rights Code Amendment Act, 2006* ("Bill 9") received Royal Assent. It will come into force on November 17, 2007.

Bill 9 will make it unlawful in almost all situations to compel employees to retire at a certain age. The six month transition period is intended to give employers time to revise employment policies or to negotiate changes to collective agreements to ensure compliance when this new law comes into force.

In making such changes, employers may wish to consider encouraging retirement through making early retirement packages, phased retirement, or part time opportunities available to employees. Employers who have been using mandatory retirement as a substitute for properly evaluating and enforcing performance standards may also wish to revisit their performance evaluation processes. In so doing, however, care must be taken to avoid discriminating against

aged employees in gauging performance.

Employers should also expect that Bill 9 will result in more demands for accommodation in respect to age-related illnesses, disabilities, and other realities of aging. Employers' responsibility in this regard

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only ends when the accommodation sought would result in undue hardship.

For employers that offer pension, disability, and other group benefits, it will also be important for them to consult with their legal counsel, insurance providers, actuarial and financial advisors concerning the proposed changes to the law.

There is some uncertainty in the law at the moment about the rules surrounding age limits in benefits and pension plans.

Labour, Employment and Administrative Law Group

Lawyers in the McKercher McKercher & Whitmore LLP Labour, Employment and Administrative Law practice group actively advise and represent clients on labour related matters and in appearances before the Labour Relations Board and various Arbitration Tribunals.

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Northern Overtime Exemption to be repealed as of September 1, 2007

The Northern Overtime Exemption, which has been in place for over 50 years, is a labour standards regulation that exempts workplaces operating north of Township 62 from the hours of work and overtime provisions of *The Labour Standards Act, 1995*. Labour Minister David Forbes announced on May 18, 2007 that the Province will eliminate the Northern Overtime Exemption effective September 1, 2007.

In so doing, the New Democratic Government is adopting the recommendation of Ron Harper, MLA for Regina Northeast. Premier Lorne Calvert appointed this southern Saskatchewan MLA last summer to review the Northern Overtime Exemption.

While the exemption will be eliminated for most workplaces, the Government intends to allow fishers and trappers to continue to enjoy the exemption. For those workplaces that lose the exemption, legal counsel should be consulted to explore the options available to minimize the economic impact of the New Democratic Government's decision, including averaging permits or averaging agreements in the unionized setting.

Bill banning replacement workers defeated in the House of Commons

Bill C-257, sponsored by the Bloc Québécois, was voted down in third reading this spring. The Bill would have prohibited unionized employers regulated by the *Canada Labour Code* from hiring replacement workers to do the work of striking or locked out employees.

“The defeat of Bill C-257, however, has not brought this issue to an end.”

The Bill raised the fears of a number of employers and employer organizations when it passed second reading in the House of Commons with broad support. The proposed legislation, however, lost the

support of most of the Liberal Members of Parliament after Stéphane Dion spoke out against the Bill on the basis that it did not adequately address the need for essential workers and services.

The defeat of Bill C-257, however, has not brought this issue to an end. Liberal M.P. Mario Silva has since introduced Bill C-415, which would prohibit replacement workers, while making some provision for essential services. Bill C-415 has not yet proceeded beyond first reading.

Personal harassment legislation receives Royal Assent

On May 17, 2007, Bill 66, *The Occupational Health and Safety (Harassment Prevention) Amendment Act (Saskatchewan)* received Royal Assent. The purpose of Bill 66 is to impose on Saskatchewan employers the significant responsibility to prevent personal harassment from occurring in the workplace. The Bill was swiftly pushed through the Legislature by the New Democratic Government, passing third reading within a month of its introduction.

Bill 66 expands the definition of “harassment” under *The Occupational Health and Safety Act* to include “any inappropriate conduct, comment, display, action or gesture by a person” that “adversely affects the worker’s psychological or physical well-being and that the person knows or ought reasonably to know would cause a worker to be humiliated or intimidated”.

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The generality of this definition could potentially catch many instances of interpersonal conflict in the workplace. The Bill somewhat tem-

pers these general and sweeping words by further stating that harassment will only be found where there is “repeated conduct, comments, displays, actions or gestures” or where there is a “a single, serious occurrence of conduct, or a single, serious comment, display, action or gesture, that has a lasting, harmful effect on the worker”.

There is also a much needed exception for “reasonable action” taken by an employer relating to the management and direction of the employer’s workers or the workplace.

This expanded definition of “harassment” is not yet in effect. The Bill will come into force on Proclamation. The Government has indicated that it will proclaim the Bill after some investigation is conducted into how best to implement this new law.

It is likely that employers will be required to amend existing harassment policies to include provisions intended to prevent and address personal harassment. It would prudent for employers striving to comply with this new obligation to seek the assistance of legal advice.



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