

## Update on Mandatory Retirement: Changes to the BC Human Rights Code

In previous Labour Bulletins, we have discussed the potential difficulties an employer in the public sector faces in upholding a mandatory retirement policy. Earlier decisions have confirmed that those employers must have a clearly supportable rationale behind such a policy in order to avoid contravening the Canadian Charter of Rights and Freedoms. Now, the Government of British Columbia has introduced legislation that will make justification a statutory requirement for all employers in British Columbia.

Bill 31 has been introduced in the Legislature with the title “Human Rights Code (Mandatory Retirement Elimination) Amendment Act, 2007”. This Act will change the definition of “age” in the Human Rights Code. The current definition defines “age” as meaning “an age of 19 years or more and less than 65 years”. The new definition will define “age” to mean of “an age of 19 years or more”. The result is that an employment policy requiring mandatory retirement at age 65 may now constitute a contravention of the Human Rights Code unless an employer can establish that such a policy is a “bona fide occupational requirement”. This test is most easily met in occupations that, because of their nature, require fitness and/or agility in the interest of public safety, such as policing or firefighting.

Thus, the effect of this proposed change to the Human Rights Code is to place on all employers a statutory restriction on mandatory retirement policies; an issue that public sector employers have faced for several years.

Bill 31, once adopted, will come into force on January 1, 2008.

**Bruce Jordan**  
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2nd Floor  
837 Burdett Ave.  
Victoria, BC  
V8W 1B3

tel 250.380.7744  
fax 250.380.3008

[www.sms.bc.ca](http://www.sms.bc.ca)  
[logolaw@sms.bc.ca](mailto:logolaw@sms.bc.ca)