

## Breakfast Seminar Series Managing the Aging Workforce

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## Session Overview

- Stereotypes v. Reality
- Changing Landscape
- Canadian Reality
- Case study in two parts:
  - Restructuring
  - Performance
- Takeaways

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# Background

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## Stereotypes About Older Workers

- Will not adapt to change
- Unable or unwilling to learn new technology late in their career
- Have bad attitudes
- Are frequently absent
- Are slower than younger workers
- Salary cost is out-of-step with length of tenure

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## The Reality About Older Workers

- Lower turnover rates
- More accurate
- More flexible
- More creative
- Fewer workplace accidents
- More dedicated, with positive work values
- Fewer absences, but may be lengthier
- Fear discrimination, not change

## That was Then (1990)

- SCC said in *McKinney v. University of Guelph*
  - “...it is generally known that persons over 45 have more difficulty finding work than others.”
- The Court identified a correlation between age and declining work performance

## This is Now (2016)

- A 60-year old plaintiff has poor prospects for re-employment “competing with younger, more recently trained and likely less expensive talent.”
  - *Ozorio v. Canadian Hearing Society* (Ontario Sup. Ct. J)
- It is discriminatory to assume a correlation between aging and declining work performance

## The Canadian Reality

Elimination of mandatory retirement

+

Aging population

+

Economic downturns

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**More Canadians in the workforce for longer**

## What About your Workplace?

How many have...

- Employees over the age of 65? 70?
- Introduced new systems/technology?
- Dealt with an older employee's performance problems?
- Offered training to older employees, only to have them decline it?
- Wanted to talk to employees about retiring, but weren't sure how?

## Statistical Support (Canada)

- 1 in 5 workers aged 55 years and over
- More older workers who work part-time or have other flexible work arrangements
- Of the 55 and over population
  - 10% in workforce in 2001
  - 17% in 2009
  - Stats Can prediction - 24% in 2021
- Similar to other G8 countries (lower than the USA)

## Wrongful Dismissal Statistics

- Disproportionate number of plaintiffs in reported wrongful dismissal cases are 50+
- 185% increase nationally (of reported cases) between 2012 and 2016
- 68% of the last 25 reasonable notice surveys EH has produced relate to workers 55 or older

## Impact of Age on Notice Periods

- Assumption - 24 month maximum
- 26 months (65 years old)
  - *Hussain v. Suzuki Canada Ltd.* (2011)
- 30 months (59 years old)
  - *David v. Congregation B'Nai Isreal* (1999)
- Not automatic if employee decides to retire
  - *Kimball v. Windsor Raceway Inc.* (2014)

# Case Study Part One: Restructuring

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## Scenario Summary

- Mid-size, non-union employer with 50 employees
- Upgrades technology
- Downsizing required
- Only 5 employees over the age of 55 on the list
- Two options:
  - Termination
  - Voluntary Early Retirement Incentive

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## Option 1 – Termination Considerations

- Why these employees?
- What are the operational requirements?
- Can I show my work?
- Do I have enforceable employment agreements that limit notice?

## Option 2: Voluntary Early Retirement Incentive Considerations

- Can I offer to all employees?
- What if too many people volunteer?
- What can I offer?
  - Examples - severance package, early pension, extended health benefits, reward long service
- Is it truly voluntary?
- How can I prepare in advance?
  - Financial planning sessions
  - EAP – transitions to retirement



## Beware of ...

- Stereotypical assumptions about older workers
- Discriminatory effect on older workers
- Human rights and other damages
- Increased notice periods – non-unionized
- Collective agreement limitations – unionized

## Takeaways

- If terminating
  - Have objective operational requirements
  - Do not target older workers
  - If performance-related, ensure documentation in place

## Takeaways

- If offering an early retirement incentive
  - Offer it to all employees in a class/department
  - Make sure the offer is pressure-free
  - Ensure employees are educated about retirement
  - Union agreement?
- Any other options?

## Case Study Part Two: Performance

## Scenario Summary

- 3 of 5 of the 55+ employees accepted early retirement packages
- Of the 2 remaining employees:
  - One did not adapt well to the technological change
  - The other has adapted, but has a bad attitude about the changes

## Issue 1: Performance Management

- Performance manage the older employee as you would any other employee
- Actively manage all employees throughout the employment relationship, regardless of age
- Avoid performance management of older employees, exclusively

## Performance Management Basics

- Identify the problem in specific terms
- Meet to discuss concerns
- Set out clear and defined expectations verbally or, if appropriate, in writing
- Discuss possible solutions
- Document discussions
- Draft counseling and corrective action plan

## Issue 2: Accommodation

- Do not assume accommodation required
- If required, consider adjustments to:
  - Duties and tasks
  - Work methods
  - Hours of work
  - Location of work
  - Amount of work
- To the point of undue hardship
- Involve union if unionized

## Summary

- Exercise caution when contemplating action that impacts one or more older workers
- Be mindful of stereotypes
- Always ask – why this employee?
- Do not be afraid to act when you have solid operational requirements
- Understand potential liability
- Talk to us

## Questions?