



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

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?