RESOLUTION FOR CFUW ONTARIO COUNCIL AGM 2016

Age Discrimination in Ontario Employee Benefit Programs

Proposed by CFUW-Ottawa

Related policies – none

RESOLVED: that the Canadian Federation of University Women (CFUW) urge the Government of Ontario to revise the Ontario Employment Standards Act to ensure that all employees who contribute to an employer’s benefit plan remain covered for their full term of employment, regardless of age.

BACKGROUND

The Canadian Human Rights Commission (2013) defines Discrimination as “an action or a decision that treats a person or a group negatively for reasons such as their race, age or disability. These reasons are known as grounds of discrimination.” The Commission lists 11 grounds that are protected under the Canadian Human Rights Act (1985): race; national or ethnic origin; colour; religion; age; sex; sexual orientation; marital status; family status; disability; or a conviction for which a pardon has been granted or a record suspended.

In Canada, employee benefit plans are legally required only for federal government and federally-regulated employers. Other employers who provide benefit plans must meet provincial Employment Standards Acts (ESAs.) The Ontario ESA (Ontario Ministry of Labour, 2000) declares that every individual is equal before and under the law, has the right to protection and shall not be discriminated against. It states that no employer shall provide, offer or arrange for a benefit plan that treats persons differently because of age, sex or marital status. However, the ESA Reg. 286/01 currently limits participation in benefit plans to employees “who are 18 or over but under 65.” The Ontario Human Rights Code (1990) allows age-based distinctions in employee benefit plans if they comply with the ESA regulations; and because the ESA defines age as “18 years or more and less than 65 years” protection under both the Code and the ESA ends at age 65. Surely this is contrary to the intent of the Act!

Your Guide to the Employment Standards Act 2000 (Ontario Ministry of Labour, 2015) states that “Employees and their dependents, beneficiaries or survivors must not be treated differently because of the employee’s age, sex or marital status.” But the same Guideline also states: “An employer cannot discriminate because of the age of an employee if the employee is 18 or over but under 65.” In other words, an employer is free to discriminate against an employee who is under 18 or over 65!
This resolution addresses discrimination based on age: specifically, situations where employers provide benefit plans, but exclude workers once they reach the age of 65. In our current economic climate more and more Canadians need to work after the age of 65. CFUW needs policy to advocate for fair treatment of these older workers.

At present there may not be large numbers of workers affected but:
   a) there are currently workers aged 65 and over who are being discriminated against on the basis of age;
   b) the numbers of affected workers is increasing significantly; and
   c) women are increasingly vulnerable.

**a). Age discrimination against workers aged 65 and over.** Canada no longer has a mandatory retirement age. Employees can continue to work well past the age of 65. It is not mandatory for employers (other than those mandated or managed by the federal government or the crown) to provide benefit programs for their employees; but in Ontario those that do may legally refuse to include employees older than 65. These older employees are not entitled to medical, dental, ocular or other group benefits, regardless of how much or how long they have contributed to their employer’s benefit plans. This is discrimination based on age.

**b). More workers are being affected.** In 1996, 29.8 percent of men 55 and over were employed; by 2010 the employment rate for this group had risen to 39.4 percent. The largest increase was among men 65 to 69, which almost doubled between 2000 and 2010 (Carrière & Galarneau, 2010). In 2012 the Government of Canada raised the age at which Canadians can claim Old Age Security (OAS) from 65 to 67. This age raise, being phased in over several years, will ultimately affect hundreds of thousands of Canadians. Many older Canadians, including those who retired at age 65 currently rely on OAS for as much as 25 % of their retirement income. But now that we can no longer count on OAS at age 65, many of us will need to work until at least age 67 to remain financially solvent and meet ongoing expenses (Carrière & Galarneau, 2012). Under current practice, many will be obliged to work an additional two years - despite the loss of their employee benefits. Is this fair?

**c) Women are increasingly vulnerable.** Women are especially vulnerable to this age discrimination because proportionally more women (who often have fewer total or continuous years of employment) must work after age 65. The upward trend for women working past the traditional retirement range began in 1996. By 2010, 64.1 percent of women aged 50 to 59 were still in the workforce and the percentage of women 60 to 64 still working had almost doubled (from 21.5 percent) to 41.4 percent.) The proportion of women aged 65 to 69 still in the labour force had increased from 6.9 percent in 2000 to 16.6 percent in 2010 (Carrière & Galarneau, 2010).
The retirement age is rising

In 2014, 79% of employees expected to delay retirement until age 60 or older, up from 70% in 2011 (Canadian Payroll Association, 2014). The average retirement age of Canadians does not necessarily reflect current changes in retirement behaviour (McLearn, 2012). Consider two 60 year olds, one of whom retires this year while the other works until the age of 70. The first retiree will have his or her retirement recorded this year but the second individual will not be recorded amongst retirement statistics for another 10 years.

Before 1965, when the eligibility age was lowered to 65, Canada Pension Plan/ Quebec Pension Plan (CPP/QPP) pensions were not paid out until the age of 70. At that time, most Canadians didn’t live much past 68 and governments were not obligated to pay out CPP/QPP or OAS benefits to pensioners who survived for decades (Carrière & Galarneau, 2012). Life expectancy in Canada is now 78.9 years for men and 85.3 years for women (The Economist, 2014). Canada benefits when older Canadians stay in the work force. Senior workers who continue to be covered by benefit plans can save more on their own, and they continue to pay higher income taxes than they would pay as pensioners (McLearn, 2012). Many older Canadians must continue working in order to meet their current and ongoing expenses; many are still supporting children and paying mortgages, and have fewer opportunities to save for retirement (McLearn, 2012).

Employers can negotiate discriminatory benefit plans

Employers who provide benefit plans contract with insurance companies to provide coverage. The employer negotiates coverage and can legally exclude specific categories (e.g. employees with severe handicaps) or groups (e.g. employees over the age of 65), consistent with insurance company policy and practice. The insurance company may charge higher rates if an employer wants to include employees over age 65, a group which it considers a greater insurance risk. The employer may decide not to assume the higher cost. Unions may support the employer’s decision to exclude these workers in order to maintain lower-cost benefits for the majority of their members. Although older members continue to pay dues as required, their union may not represent members who grieve exclusion from employee benefits based on age; or may not negotiate employee benefits packages to include workers aged 65 and older. With union membership declining, and the numbers of older workers rising, unions who do not consider older workers as equal members are also discriminating based on age. This is short sighted at best.

Employee benefits are as important to seniors as they are to an employee in her 30s or 40s. Older Canadians may be more likely to require expensive medical, dental or ocular care; but younger employees who require long-term compensation for a significant or chronic condition would be a larger drain on an employee benefit program. In fact, a 48 year old with three children could be a bigger drain on a plan than an older employee.
The exclusion of older employees is discriminatory
Section 15, of the Canadian Charter of Rights and Freedoms (1982) states that:
“1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
2) Subsection (1) does not preclude any law, program or activity that has as its objective the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”

A legal challenge (Wasser & Hussein, 2014)
George Talos, a teacher for the Grand Erie District School Board, was cut off at the age of 65 from the employee benefit package in the collective agreement under which he was employed. He filed a claim with the Ontario Human Rights Tribunal, which ruled that the Ontario Human Rights Code does not prohibit discrimination in benefit plans with respect to employees who are over the age of 65. In other words, because the Code doesn’t explicitly identify this specific practice as discriminatory, it is not contrary to the Code. Mr. Talos is pursuing a Charter challenge that asks the Supreme Court of Canada to recognize this as age discrimination.

Conclusion
Section 15 of the Canadian Charter of Rights and Freedoms (1982) promises equality before and under the law and the right to equal protection and equal benefit of the law without discrimination by factors including age. Unfortunately, workers in Ontario over the age of 65 may be denied this right. This ageism must end. It is time for the Government of Ontario to take the necessary action to ensure that workers 65 years of age and older are allowed to participate equally in employee benefit packages.
REFERENCES
Urls confirmed November 13, 2015


Canadian Payroll Association (2014). Sixth annual National Payroll Week Research Survey http://cnw.ca/6d1zM


Amendments to Proposed Resolutions

- Amendments are meant to strengthen, clarify and support the original resolution.

- An amendment must always be germane – that is, closely related to, or having bearing on, the subject of the motion to be amended. This means no new subject can be introduced under the pretext of being an amendment. “Roberts Rules of Order”, Newly Revised edition.

- Hostile amendments, which change the meaning or direction of the resolution, are unacceptable.

- The Resolution Proposers may accept or reject your amendment. If it is accepted, it will be incorporated into the amended Resolution to be presented at the AGM.

Amendment Procedure

- Study the Resolution carefully. After reviewing it, if you consider making an amendment, follow the procedure below.

- To be considered, amendments must be received by April 1.

- Please submit amendments in the requested Resolution Amendment format. Due to the number of amendments received by the Chair of Resolutions, we also request that you send these by email.

- Simply copy and paste from ‘Resolution number and title’ to ‘Rationale for amendment(s)’ into your word processor and fill it out the document from there.
CFUW Ontario Council  
Resolution Amendments  
2016  

Proposed amendments must be received  
via e-mail at (resolutions@cfuwontcouncil.ca)  
by April 1, 2016  

Name of Club:  

Contact Person: (Name, address, telephone, e-mail)  

Amend clause number ... by:  
    Striking out the word or words,  
    or  
    By inserting the word or words  

The amended clause to read:  
    RESOLVED, That  

Rationale for amendment (s):  

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