Show Me the Benefits: Group Insurance for Active Employees Aged 65+

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Our Session Today

• Setting the Stage
• Survey Says . . .
• Legal Landscape
• Case Study (Me)
• Refreshing Your Plan
• Discussion/Questions
Setting the Stage

**THE GLOBE AND MAIL**

Report on Business
Many boomers are opting to work past what used to be called ‘retirement age’

**CALGARY HERALD**

Business
Workforce shrinking as boomers retire: study

**THE GLOBE AND MAIL**

Report on Business
BOOM, BUST & ECONOMIC HEADACHES

**THE GLOBE AND MAIL**

Careers
Greying work force a corporate challenge

**THE GLOBE AND MAIL**

Report on Business
Quit cold turkey or phase into retirement?

**THE GLOBE AND MAIL**

Business
Workers face potential reduction in benefits when they turn 65; Although Canada’s work force is getting increasingly older, current laws do little to protect employee benefits past the age of 65

**NATIONAL POST**

Financial Post
The early retirement boomerang; Older workers return to workforce
In 2014/2015, the growth rate of the population aged 65 years and older was 3.5%, approximately four times the growth rate of the total population.

Beginning in 2015, there were more persons aged 65 years and older in Canada than children aged 0 to 14 years.

Nearly one in six Canadians (16.1%) was at least 65 years old in 2015.

Increase in number of Canadian workers over age 65 in the past decade

>135%

Current workforce participation rates in the age 60 to 64 group

54.70%

Current workforce participation rates in the over age 65 group

13.90%

Workforce participation rates for the over age 65 group over the past 20 years

2x

Globe and Mail, November 7, 2015 “Boom, Bust & Economic Headaches
Why the Shift?

**Economic**

- Research shows that people neglect to save properly for retirement
- Fewer defined benefit plans as defined contribution plans gain prominence
- Financial downturn resulted in the erosion of retirement savings
- Family circumstances may require additional financial resources

**Financial necessity forces people to continue working—End to Freedom 55**
Why the Shift?

Nature of work

- Industrial versus knowledge based occupations
- Work is becoming less physically demanding due to technological advances
- Not always the financial incentive to continue working, often it is the social benefits and challenges offered in the workplace

Workers are choosing to continue working because they value being employed

Hoyes, Michalos & Associates
Why the Shift?

Elimination of mandatory retirement

- The changing nature of the workforce led to the elimination of broad-based mandatory retirement laws
- Gradual retirement theme
  - Since 2008, ITA allows for simultaneous pension accrual and withdrawal
  - Maximum age limit to start withdrawing RRSP raised from 69 to 71

This means employees can stay in the workplace past age 65 instead of being forced into retirement by employers
Survey Says . . .

- In 2016, Aon completed a national survey asking employers about current practices respecting active employees over age 65

- Key findings
  - 45% of respondents expect to have 5%-10% of their workforce over 65 in five years
  - Fewer than 10% of respondents have a formal policy governing benefits for older workers
  - For Life and Disability benefits, less than 6% are taking action relative to their over—65 employees
Survey Says . . .

- **Key findings (continued)**
  - 75% of respondents do not offer or plan to offer, LTD benefits to over—65 employees
  - Benefits/Challenges of the over—65 workforce

<table>
<thead>
<tr>
<th>Benefits</th>
<th>Rank</th>
<th>Challenges</th>
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<tbody>
<tr>
<td>Recognition of experience/well-developed skill set</td>
<td>1</td>
<td>Maintaining productivity</td>
</tr>
<tr>
<td>Provision of training and mentorship for younger generations</td>
<td>2</td>
<td>Health and safety</td>
</tr>
<tr>
<td>Help to limit labour shortages/skills gap</td>
<td>3</td>
<td>Increased benefit costs</td>
</tr>
<tr>
<td>Leadership skills</td>
<td>4</td>
<td>Performance management</td>
</tr>
<tr>
<td>Maintain corporate memory/network</td>
<td>5</td>
<td>Potential for age-discrimination challenges</td>
</tr>
</tbody>
</table>
Legal Landscape

- The legal environment is complicated, there are many things to consider!

- Canadian Charter of Rights and Freedoms
- Provincial Human Rights legislation
- Employment agreements/contracts
- Benefit policy documents
- Collective agreements
- Case law

16D-11
Most employers routinely terminate or reduce group benefits plan coverage for employees over age 65, the question becomes:

Are employers legally entitled to treat employees, for group benefits plan purposes, differently at age 65 than other employees?
**Legal Landscape**

- As human rights legislation prohibits discrimination based on protected grounds including age, an exclusion based on age would appear to trigger a human rights claim under provincial human rights legislation.

**Not so fast**

- Legislation in most provinces and territories still allow health insurance plans to treat individuals over age 65 differently, without this distinction amounting to discrimination.
- This is generally allowed if employers can prove that the distinction is based on actuarial data or a “bona fide” plan.
- To date, case law has reinforced this notion.
  - Be aware that it can and is being challenged.
Legal Landscape

- As our comments are general in nature, you need to review any promises you’ve made to employees through your communications.
- Employment agreements/contracts
  - These may refer to termination of benefits at a specific age.
- Benefit policy documents
  - Considered part of the employer promise made.
- Collective agreements
  - What has the union negotiated in terms of age of termination for benefits?
  - Age limit in the collective agreement should prevail.

Courts take seriously agreements negotiated between all parties subject to human rights legislation.
It was argued that age discrimination occurred because the employer did not provide long term disability benefits to employees once they reached age 65.

In Johnston, the city's position was that exclusion from long term disability benefits upon employees attaining age 65 was related to the operation of a bone fide group or employee insurance plan.

After examining the evidence and applying an established legal test, the Tribunal determined that the disability plan was legitimate, adopted in good faith and not for the purpose of defeating protected rights.

Tribunal found that terms of the disability plan did not contravene the code.
Rein v. Alberta (Human Rights Commission)

- Rein alleged age discrimination due to cessation of Group Health and Life Insurance benefits upon attainment of age 65 (despite continuing to work)
- The court dismissed the application finding that the Plan was *bona fide* and thus the cessation of benefits at age 65 was not discriminatory by virtue of s. 7(2) of the Alberta Human Rights Act
A View From the Courts

Is the landscape is shifting?


• The primary issue in the application is whether or not this cessation of benefits at age 65 constitutes a breach of the Human Rights Code
• Phase 1: Tribunal acknowledges discrimination based on age is allowable in Ontario under the ESA and Human Rights Code
• Phase 2: The tribunal is tasked with determining whether cessation of benefits at age 65 is allowed under the Canadian Charter of Human Rights and Freedoms

Employers should watch for the outcome of this case
• What a difference a day makes . . .
• As an employee who attained age 65 and continued to work, I experienced, first hand, the benefit plan challenges facing older workers
## Case Study (Me)

<table>
<thead>
<tr>
<th>Benefit</th>
<th>Before Age 65</th>
<th>After Age 65</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Life Insurance</td>
<td>1x Salary; WOP</td>
<td>50% of Salary; no WOP</td>
</tr>
<tr>
<td>AD&amp;D</td>
<td>1X Salary; WOP</td>
<td>50% of Salary; no WOP</td>
</tr>
<tr>
<td>Employee Optional Life</td>
<td>7x Salary; WOP</td>
<td>Not available</td>
</tr>
<tr>
<td>Long Term Disability</td>
<td>70% monthly earnings</td>
<td>Not available</td>
</tr>
<tr>
<td>Critical Illness*</td>
<td>Flat amount; max $150k</td>
<td>50%; max $50k</td>
</tr>
</tbody>
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* I did not enrol in CI
Case Study (Me)

**Impact of benefit plan changes:**

- Total Life Insurance reduced from over $1 million to less than $100k
- Income protection reduced to 26 weeks
- Value of employer cost share lost
- EHC reimbursement coordinated between Provincial plan and insurer
- No premium waivers available
**Refreshing Your Plan**

**Health and dental**
- Generally not an issue as insurers willing to extend benefits to retirement
- Ensure coverage extends to at least age 70
- Advise employees about coordination provisions with Provincial plans

**Life**
- Generally not an issue as insurers willing to extend benefits to retirement
- Consider removing any benefit reduction at specified ages
- Allow Optional Employee Life to age 70
- Other considerations—Waiver of Premium, Conversion Option often terminate at age 65
Refresh Your Plan

Disability

• Consider the newer LTD insurance options
  - Recent designs offer limited/graded benefit duration after age 65
• Think outside the group box
  - Guaranteed Standard Issue (GSI) LTD
    ▪ Individual LTD policy purchased before age 65 is renewable past age 65 if still active
• Long Term Care (LTC) Insurance
  ▪ Coverage for health/personal care services if unable to perform activities of daily living requiring home care or LTC facility

Retirement

• Provide financial education regarding pension accumulation/withdrawal
Key Takeaways

- Retirement at older ages and gradual retirement is on the rise, what we see now is the tip of the iceberg
- Employers are allowed to treat individuals over age 65 differently with respect to group benefits plans, without being discriminatory
- For the majority of plan sponsors, benefits for active employees 65 and over is not on the radar screen

Best Practices

- Start preparing by determining your policy on older workers and ensuring your human resource practices are aligned and well communicated
- Ensure benefit programs are equitable and consider the needs of the over 65 worker
- If you are retaining older workers, consideration must be given to the financial impact to both the employee and the employer
- Keep up to date on developments in legislative landscape
Discussion

• What have you seen?
• What are you currently doing?
• Do you have a workplace policy regarding older workers?
• What position are you taking with respect to benefits after age 65?
• How does your organization view your older workers?
• Do you have clear language in your documentation regarding the reduction or termination of benefits at 65?
• Have you considered the financial impact to employees over age 65 for the reduction/loss of benefits?
• Have you asked employees over age 65 their opinion?
• Have you had complaints from older workers?
Questions/ Thank you

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