

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

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International Society
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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'

 **REUTERS**

Seniors outnumber children in Canada for first time, census shows

CALGARY HERALD

Business

Workforce shrinking as boomers retire: study

THE GLOBE AND MAIL 

Report on Business

BOOM, BUST & ECONOMIC HEADACHES

 **mondaq**

Older Workers More Likely To Suffer A Workplace Injury

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?

NATIONAL POST

Financial Post

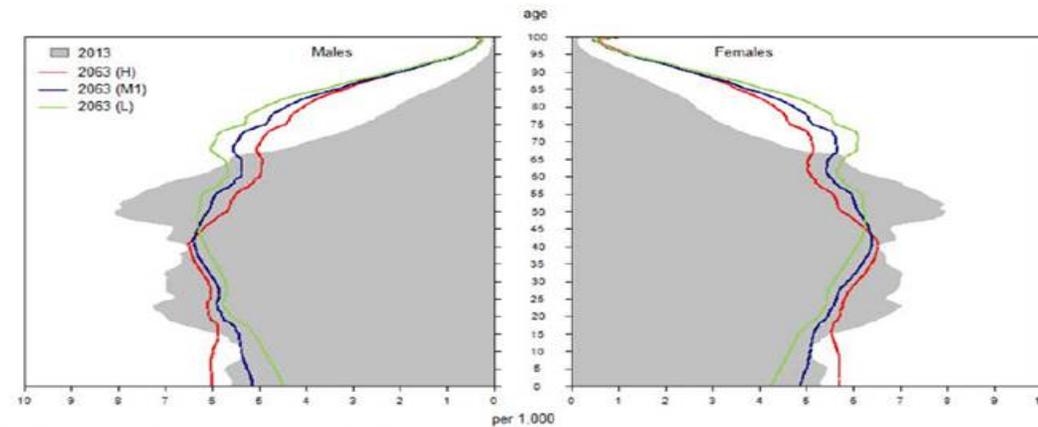
The early retirement boomerang; Older workers return to workforce

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

Setting the Stage



Note: Persons aged 100 and over are included at age 100.
Source: Statistics Canada, Demography Division.

- 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

Source: CANSIM 281-0001, Population Projections for Canada (2013 to 2063), Provinces and Territories (2013 to 2038), and Canada's Population Estimates: age and sex, July 1, 2015

Setting the Stage

>135%

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

54.70%

Current workforce
participation rates in the
age 60 to 64 group

2x

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

13.90%

Current workforce
participation rates in the
over age 65 group

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

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

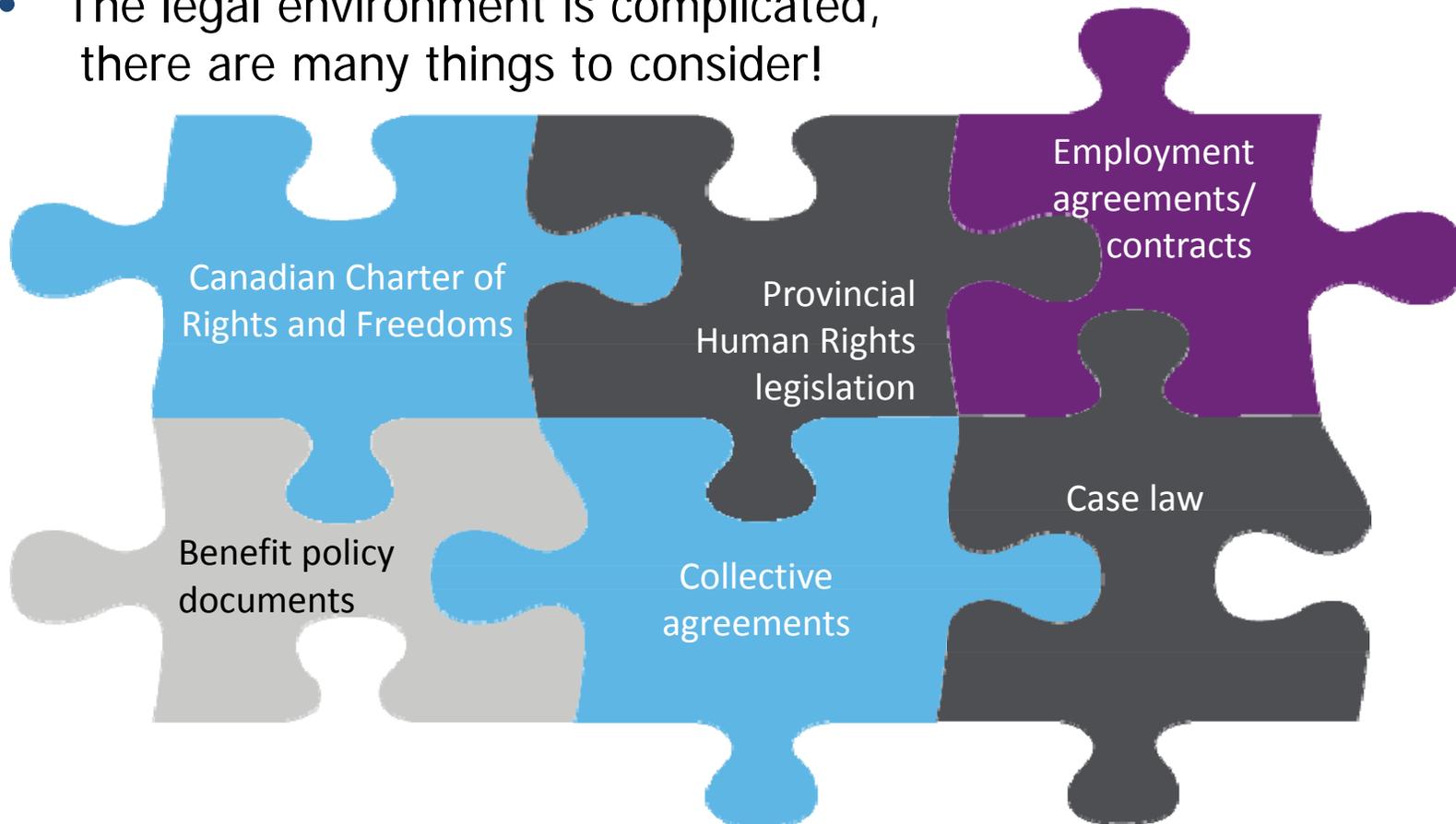
Survey Says . . .

- 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

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

Legal Landscape

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



Legal Landscape

- 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

A View From the Courts

[Johnston obo others v. City of Vancouver \(No. 2\), 2015 BCHRT 90 \(CanLII\)](#)

- 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

A View From the Courts

[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?

[Talos v. Grand Erie District School Board, \[2013\] O.H.R.T.D. No. 2144](#)

- 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

Case Study (Me)

- 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)

Benefit	Before Age 65	After Age 65
Basic Life Insurance	1x Salary; WOP	50% of Salary; no WOP
AD&D	1X Salary; WOP	50% of Salary; no WOP
Employee Optional Life	7x Salary; WOP	Not available
Long Term Disability	70% monthly earnings	Not available
Critical Illness*	Flat amount; max \$150k	50%; max \$50k

* 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

Refreshing 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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