

Termination of Benefits at Age 65

A recent interim decision by the Human Rights Tribunal of Ontario (“HRTO”) on May 18, 2018 has the potential to significantly impact an employer’s ability to terminate employee benefits after the age of 65.

Currently, the *Ontario Human Rights Code* and the *Ontario Employment Standards Act Regulations* permit a distinction between employees under the age of 65 and those who are 65 and older as it relates to the provision of benefits. Both pieces of law specifically “carve out” employees who are 65 and older from protections with respect to different treatment in benefit plans, pension and other workplace plans. As such, although employees 65+ cannot be discriminated against on the basis of age, this same protection does not apply when it comes to the provision of benefits (i.e. employers can lawfully terminate benefits for employees 65 or older).

That is until Mr. Talos filed a claim and challenged this exception alleging that it is contrary to the *Human Rights Code*. Further, Mr. Talos alleged that the exception that permits employers to terminate benefits for employees over age 65 infringed his rights under the *Canadian Charter of Rights and Freedoms* and was therefore unconstitutional. The claim was particularly in regards to Mr. Talos’ extended health, dental and life insurance benefits.

Interim Decision

The HRTO adjudicator found in favour of Mr. Talos’ claim that he experienced a disadvantage on the basis of age, and that his Charter right had been infringed. Absent actuarial evidence, the adjudicator stated that Mr. Talos’ employer, Grand Erie District School Board, was unable to prove that the “carve out” provision is necessary to maintain the viability of workplace benefit plans.

Takeaways

The provision of the *Human Rights Code* regarding the exception is still in effect. However, employers may not be able to rely on the exception as a defense against claims when terminating benefits at age 65 or older. Since this is an interim decision only, e2r® will keep you apprised of further developments.

We encourage you to contact an e2r® Advisor should you have any questions regarding this decision and how it may impact your workplace.