

## Age discrimination and work injuries

June 1, 2008

### The Report: June / July 2008 vol.29 num.2

by SARAH OLEARY



I read Maureen Headleys Executive Director column in the last issue of *The Report* with great interest. She explained that it is now illegal in BC to deny someone the right to work just because they have turned 65. She outlined what this means with respect to our union obligations and collective agreements.

How will this affect my right to compensation from the Workers Compensation Board / WorkSafeBC? If I continue working after 65, am I still covered?



*The Workers Compensation Act* spells out the entitlements of injured workers to wage loss benefits and pensions.

If you continue to work past the age of 65 and are injured in the course of your employment, you would be entitled to wage loss benefits just as anyone else would.

However, when your condition has resolved as much as it is likely to ... they call this "reaching a plateau" ... the WCB must then assess you for a permanent disability pension, or a permanent functional impairment award.

Prior to the new Workers Compensation legislation passed by the Liberal government in 2002, injured workers were entitled to pensions for life. Gordon Campbell put a stop to that, legislating that all pensions now end at age 65.

What does this mean for older workers?

This limiting provision ... which was the same in virtually all the provinces ... was challenged in a number of jurisdictions across Canada on the basis that it was discriminatory to those workers who had continued working beyond age 65. In order to avoid this kind of legislative challenge, the new *Workers Compensation Act* now states that a pension ends at age 65 *unless*:

- (ii) if the Board is satisfied that the worker would retire after [age 65, and in such a case, it will end on] the date the worker would retire, as determined by the Board.

What this means is that the standard rule now is that all pensions end at age 65 *unless there is evidence to indicate that you would have kept on working after that date.*

Therefore, a word of advice for those who continue or plan to continue to work past the age of 65: make sure that your intentions are known by your employer and anyone else with whom you live and work. You may even want to put your planned retirement date (if you have one) in writing in order to be able to prove that you would still be on the job. Just bear in mind that if you are close to or past the usual retirement date, every bit of evidence you can produce to prove your long term plans will be helpful. 

*For help filing a WCB report or claim, contact your steward. For more information, or if you feel your WCB claim has been unfairly rejected, contact Sarah OLeary at the HSA office for assistance.*

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