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**January 2011**  
**Volume 13 Issue 1**

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## **Age Based Benefits**

When an employee reaches age 65, there are some changes that happen to their group insurance coverage. Each contract is unique but most include some sort of reduction schedule for the life and accidental death and dismemberment (AD&D) benefits. Some plans reduce the in-force amount by 50% at age 65 while others use a graduated scale such as 15% each year starting at age 65 and continuing to age 69. Coverage will either freeze at that point or terminate depending on the terms of the contract.

Long-Term Disability (LTD) benefits will also terminate at age 65. Employees who become disabled after age 65 should apply to CPP or QPP for disability benefits. Employees currently on a disability claim will be notified by their case adjudicator that their payments will end on their 65<sup>th</sup> birthday and will advise the employee to apply to CPP/QPP if they have not already done so.

Other benefits typically have termination ages of 70 or 75, but again, this varies by contract.

With the elimination of mandatory retirement, we are seeing employees stay in full-time roles past age 65 which has lead to questions as to why a 67 year old employee should have different benefits than his 56 year old counterpart. Others have

questioned how this could be permissible given that the Canadian Charter of Rights and Freedoms prohibits discrimination based on age.

In 2006 the Ontario Human Rights Code was amended to apply to all employees over age 18. This amendment effectively put an end to mandatory retirement. The amendment also specifically permitted employers to differentiate on the basis of age so long as benefit plans complied with the Employment Standards Act (ESA). The ESA prohibits distinction based on age but only to those under age 65.

The union for the Ontario Nurses Association took issue with the fact that their members who were over age 65 received different benefits than their under age 65 colleagues and claimed that the Ontario Human Rights Code violated the Canadian Charter of Rights and Freedoms.

In deciding the case, Arbitrator Brian Etherington recognized that a distinction based on age does contravene the Charter but also noted that there are reasonable limits on those rights thereby making age-based benefit distinctions acceptable. In his decision, he noted “[the government] must inevitably engage in some line drawing and decide on which is the preferable limitation from a social policy perspective given the need to balance the interests of the individual with the collective

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1550 Enterprise Road, Suite 215, Mississauga, ON L4W 4P4

Toll Free: 1-877-685-2515

25 Irvin Street, Kitchener, ON N2H 1K6

Toll Free: 1-866-536-0389

[www.gmsinsurance.com](http://www.gmsinsurance.com)

interests at stake.”

It is important to note that this decision only applies to the parties involved. However, it does provide a solid foundation for other such agreements. This decision provides some level of relief to benefit plan sponsors who are concerned that their own plans provide varying levels of coverage based solely on age.

## **EI Benefits for Family Businesses**

Like many other employees, employees related to the owner of a company typically pay into the Employment Insurance (EI) plan. However, many family members get a rude awakening when EI denies their claim for benefits.

Under the Employment Insurance Act, there are various groups of workers who are excluded from the EI program. These include employees who are related by blood, marriage, common-law, or adoption to the business owner or to a shareholder who controls more than 40% of the company. An exception is when the relationship is deemed to be at arm's length.

When considering the eligibility of a family member the Canadian Revenue Agency (CRA) will review the circumstances of the employment, including remuneration paid, terms and conditions, the duration, nature and importance of the work performed. If it is reasonable to conclude that the employer and employee would have entered

into a substantially similar contract if there was no familial relationship then the relationship is deemed to be at arm's length and the employee should pay into and participate in the EI program.

On the other hand, if the relationship is not at arm's length, then the employee is not eligible for EI benefits and should not pay EI premiums. This could save the business up to \$2,000 a year. However, it is very important to get a ruling on this from the CRA before terminating premium payments. Failure to pay premiums based on a misinterpretation of eligibility could result in penalties and fines. If the CRA deems an employee to not be eligible for EI, and premiums have been paid, an application can be made to recoup the overpaid premium going back up to three years. This is something that companies can undertake on their own or with their accountant.

Alternatively, a quick internet search will turn up companies who specialize in EI refunds.

Keep in mind that there are advantages to having an employee deemed to be eligible for employment benefits. EI covers more than just the loss of employment. Eligible employees are able to claim maternity, paternity, and compassionate care benefits. It may be advantageous to pay into the program in order to be able to claim these benefits. Again, a ruling by the CRA will help determine eligibility.

Requests for a ruling can be made via the CRA website (<http://www.cra-arc.gc.ca/tx/hm/cppwrks-eng.html>) or by calling 1-800-959-5525.

Sources: [www.hicksmorely.com](http://www.hicksmorely.com), FTR Now, November 5, 2010.

[www.cra-arc.gc.ca](http://www.cra-arc.gc.ca)

## **Quiz Corner**

*Put your mental mettle to the test and a \$50 prize in your pocket!*

A man was on the gallows and the hangman felt sorry for him and said to the crowd present, “If anyone can stump me with a riddle, I will let this man go free.” A person stood up in the crowd, pointed to the man in the noose and said:

“For brothers and sisters, I have none

But that man's father is my father's son.

How are we related?”

**Answers can be sent to: [info@gmsinsurance.com](mailto:info@gmsinsurance.com) or by fax to 905-670-4146. We will draw a winner from the correct answers.**

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