

Strategies for Managing an Aging Workforce

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The Challenges of Managing an Aging Workforce

“Age is an issue of mind over matter. If you don’t mind, it doesn’t matter.”

- Mark Twain

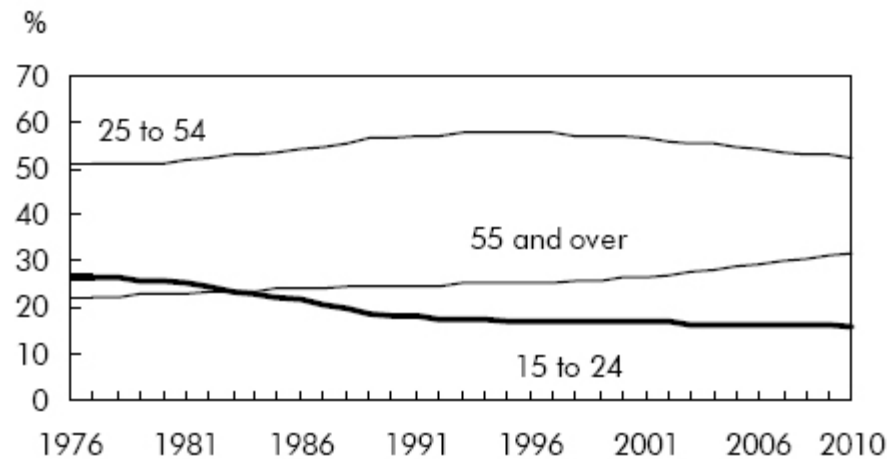


The Challenges of Managing an Aging Workforce

- Challenge #1: The Aging Employee: *Discrimination Because of Age and Managing Your Duty to Accommodate*
- Challenge #2: The Aging Employee with Diminishing Productivity: *Managing Performance Issues*

The Demographics Don't Lie

Age Composition of the Population

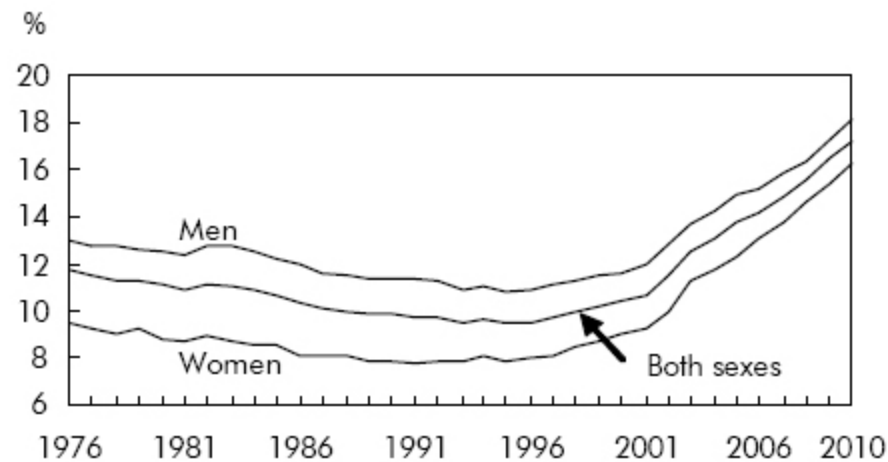


Source: Statistics Canada, Labour Force Survey, 1976 to 2010.

- The percentage of the population aged 55 and older has increased rapidly since 2000

The Demographics Don't Lie

Percentage of Workers Aged 55 and Older

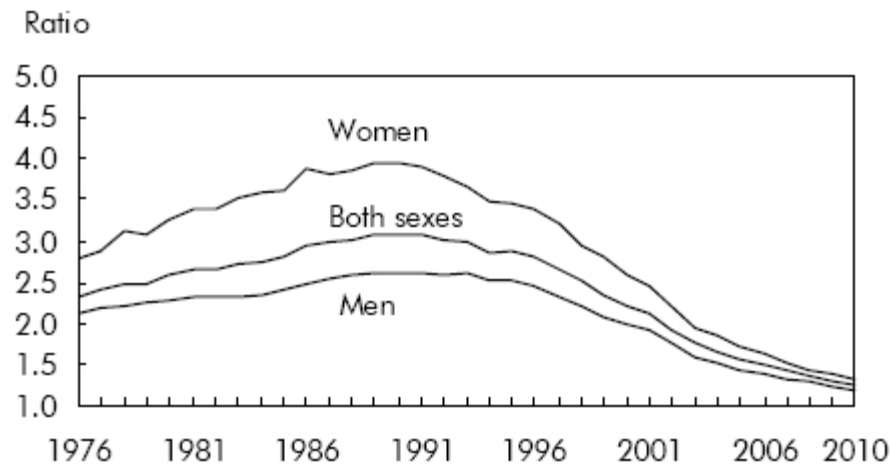


Source: Statistics Canada, Labour Force Survey, 1976 to 2010.

- In 2010, more than 1 in 6 workers was aged 55 or older

The Demographics Don't Lie

Ratio of Younger Workers to Workers Aged 55 or Older



Source: Statistics Canada, Labour Force Survey, 1976 to 2010.

- After peaking in 1991, the entrant–retiree ratio dropped to 1.3 in 2010

Why Are Employers Facing Age Challenges?

End of mandatory retirement

- All provinces have abolished mandatory retirement at age 65
- Today, cannot terminate employment merely because employee has reached certain age, or consider age in making decisions regarding hiring, promotion, termination, etc.

Is This a Big Issue?

Average Effective Retirement Age in Canada

Year	Men	Women
2003	63.1	61.5
2007	63.3	61.9
2013	63.8	62.5

(Source: *OECD*)

The Workforce

Traditionalists (1922-1945)

70 – 93 years old

Goal is to build a legacy



Baby Boomers (1946-1964)

51– 69 years old

Goal is to put their stamp on things



Gen Xer (1965-1980)

35 – 50 years old

Goal is to maintain independence



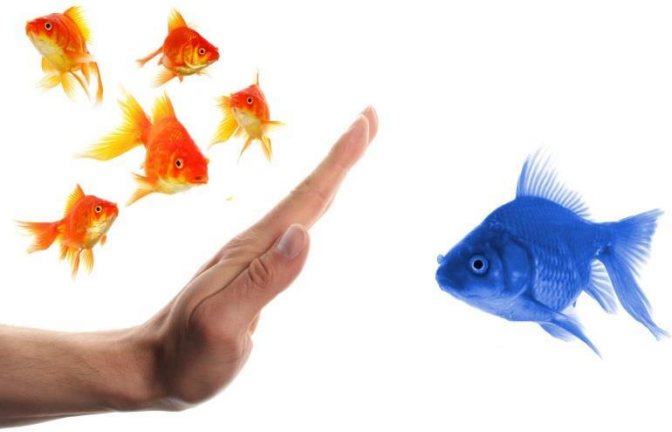
Gen Ys (1981-2000)

15 – 34 years old

Goal is to find work & life that has meaning



Challenge #1: Discrimination Because of Age and Managing Your Duty to Accommodate



Employers are prohibited from discriminating on the basis of:

- *Age*
- *Disability*

Two Issues:

- (1) Employer favours younger workers;
OR
- (2) Employer fails in addressing older worker's decline in health, skills/abilities

Discrimination on the Basis of Age

Example

Price v. Top Line Roofing , 2013 BCHRT 306

- 3 younger employees were hired just a few months prior to the termination of Mr. Price, a 53 year old journeyman roofer.
- BCHRT concludes by inference that age must have been a factor in the employer's decision to terminate Mr. Price's employment.
- Mr. Price awarded several months of wage losses.

Discrimination on the Basis of Age

Example

Cowling v. Alberta Employment and Immigration, 2012 AHRC 12

- The AHRT found that an employer on the basis of age discriminated when it restructured and did not renew the contractual employment of a 67 year old woman who was past the “historical age of retirement”.
- It ordered reinstatement through a one-year contract, lost wages over a period of five years discounted at 30% for contingencies, general damages for injury to dignity and self-respect in the amount of \$15,000, interest and costs.

The Duty to Accommodate Aging

Question: Is there a legal duty to accommodate AGING ... i.e. must an Employer accommodate declining skills/performance due to the natural effects of growing older?

Answer: Possibly, but little case law on this point.

The OHRC would say it could be discriminatory if an Employer does not create an inclusive environment which encourages older workers to remain in the workplace by accommodating their needs.

(Source: OHRC Policy on Discrimination Against Older People Because of Age)

The Duty to Accommodate Aging

What could this mean?

Employers could establish practices which:

- Alleviate physically demanding work from older workers who cannot keep up
- Allow older workers more flexibility in schedules – flex time, compressed work weeks, part time arrangements
- Ease a gradual transition into retirement
- Ensure that older workers are not stereotyped and passed over for promotions, training and transfers

The Duty to Accommodate Due to Disability/Family Status

- More typically, the accommodation of older workers is for reasons of disability and/or family status (such as for taking care of ailing spouse)
- The legal principles of accommodation for disability and family status are no different than the principles applicable to younger workers

The Duty to Accommodate



- Duty to accommodate to the point of undue hardship
- Requires an individualized assessment of employee's capabilities and limitations, and required adjustments to job or workplace
- Does not require a perfect solution

Managing Your Duty to Accommodate

In all cases, an employer must be able to establish that it:

- Followed a thorough process to determine the nature and degree of the accommodation required; **and**
- Used the information gathered to determine what, if any, accommodation is available (or not available) for the employee

Strategies for Accommodating the Aging Employee

Determine what accommodation is available

- Flexible work hours
- Reduced hours or compressed work weeks
- Job sharing arrangements
- Training or re-training
- Lateral moves to a better fit
- Altering premises to make accessible
- Demotions into less demanding positions
- Purchasing or modifying tools, equipment or aid



Strategies for Accommodating the Aging Employee

Determine what accommodation is not available

- Undue hardship may be established if accommodation would mean:
 - Creating a new position for the employee
 - Continuing to employ an employee who cannot perform the essential/core functions of his or her position
 - A significant impact on the collective agreement
 - Increased safety risk for employees
 - Financial hardship for the employer

Strategies for Accommodating the Aging Employee

OVERALL

- Accommodation for older workers is challenging. Aging affects people differently. Some suffer medical issues, others remain healthy but decline in physical or mental ability, or both.
- It is important to remember that there is no one solution for every case.

Characteristics of Engagement

Organization

Transparent

Responsive

Partnering



Employee

Expenditure of
discretionary effort

Emotional connection to
the organization

Acceptance of
Accountability

Challenge #2: Managing Performance Issues

Common Issues

- Work (or certain duties) becomes too physically challenging to perform
- Productivity diminishes
- No specific medical or health-related reasons given

Managing Performance Issues

“As a general principle, older workers should be treated as individuals, assessed on their own merits instead of presumed group characteristics and offered the same opportunities as everyone else in hiring, training and promotion. They should be subjected to the same performance management practices as every other worker.”

(Source: OHRC Policy on Discrimination Against Older People Because of Age)

Goals of Performance Management

An effective performance management process
achieves 3 goals:

1. Establishes measureable goals and objectives for employees
2. Assesses achievement and attainment of the objectives
3. Uses this information to improve performance through coaching, compensation and development

Performance Management as Both Art & Science

*Effective management is both an **art and science**. The people we work with are pieces of a complex puzzle which challenge our ability to solve problems. Individual performance management techniques are part of our toolkit. When we use them well and together, we can create a positive workplace experience”*

Lennon, D. (April 21, 2011)

In performance management, we often focus on the science more than the ‘art’.

Managing Performance Issues

Legal Science of Managing Performance

- Apply the same performance management criteria as for any other worker:
 - Use objective evaluation tools rationally connected to the job
 - Evaluate evenly and consistently, regardless of age
 - Hold regular performance reviews

Managing Performance Issues

Legal Science of Managing Performance (cont'd)

- Clearly communicate performance issues, expected standard of performance and consequences of continued under-performance
- When necessary, discipline, up to and including termination of employment
- Document, Document, Document!

The Art of Performance Management

- Understanding your employees— motivators, learning styles, expectations & values
- Being able to ascertain if an employee's performance is knowledge, skills or attitude gap or strength
- Acknowledging that you may be spending too much time with the bottom 20%, the top 20% and not enough with the middle 60%

The Art of Performance Management

- Using different communication styles and techniques to have the right performance management conversations with different employees
- Acknowledging the emotional component for both you and the employee
- Being aware of the 'ostrich' effect (high & low performers)

Managing Performance Issues

Cost of Termination

Common Law Reasonable Notice

- Age and length of service are key factors considered by a court in the assessment of how long it will take for the employee to find reasonably comparable employment
- In *Hussain v. Suzuki Canada Inc.*, the Ontario Superior Court awarded 26 months' notice to a 62 year old Assistant Warehouse Supervisor employed with the company for 36 years.



Managing Performance Issues

Cost of Termination

Common Law Reasonable Notice

- In *Kotech v. Affina* (“*Kotech*”), the Ontario Superior Court awarded a 70 year old labourer 24.5 months’ notice on the basis of 20 years of service (22 months of pay in lieu of notice in addition to 11 weeks of working notice already provided). On appeal, the notice period was reduced to 18 months less the 11 weeks of working notice as no exceptional circumstances warranted a higher notice period.



Managing Performance Issues

Alternative Solutions

- There is a potential tension between performance management of older workers and age discrimination.
- Why? The employee is being held to a standard that cannot be met given the employee's natural performance decline.
- To overcome this, a best practice Employer would have other solutions available in partnership with the performance management process:
 - Alternative employment opportunities
 - Phased retirement plan
 - Fixed or short-term contracts
 - Voluntary early retirement incentives

Generational Approach

Traditionalist: only on 2 occasions, may be uncomfortable with formal review process, 1 x year comfort level

Baby Boomer: political/stakeholder sensitive, reluctant to admit areas of opportunity, accustomed to sandwich model, afraid of conflict discussions, formal, biannual comfort level

Gen X: focus on areas of opportunity, objective criteria SMART, formal & informal, two-way dialogue, monthly/quarterly comfort level

Gen Y: potential emotional response to review process, assessment gap requires self-reflection, two-way peer to peer discussion, informal as well as formal, very frequent – weekly/daily comfort level

Scenarios

#1 Senior Crane Operator

Mr. Senior is 70 years old and has been employed by Excellent Employer for 40 years. Mr. Senior is currently employed as a crane operator. His productivity has declined in recent years and he has been the source of at least one moderate safety incident.

Respond to the 2 issues listed on your Fact Sheet

Scenarios

#2 Less Productive Supervisor

Ms. Less Productive is 59 years old and has worked for Investment Company for 20 years as a supervisor. Investment Company employs two other supervisors: Ms. Young (age 35, employed for 10 years) and Mr. Younger (age 25, employed for 3 months). As her name would suggest, Ms. Less Productive is less productive than the other two employees. Due to a slowdown in work, Investment Company would like to terminate Ms. Less Productive's employment.

Respond to the 3 issues listed on your Fact Sheet

Scenarios

#3 New Technology

Ms. Grumpy is 63 years old and has been employed by Advanced Technology for 30 years as an Administrative Assistant. Advanced Technology recently adopted new technology and as a result its Administrative Assistants must use new and more advanced computer programs. Advanced Technology will provide training and support for all of its Administrative Assistants. Ms. Grumpy has refused to learn the new computer programs, stating that she does not have to learn the new technology because she is “old”.

Respond to the 2 issues listed on your Fact Sheet

QUESTIONS?

