

# LEGAL UPDATE

A Regional Employers Services Publication

Vol. 09, March 4, 2020

## BC HUMAN RIGHTS TRIBUNAL RULES THAT REDUCED BENEFITS FOR EMPLOYEES OVER AGE 65 IS NOT DISCRIMINATORY

In [\*Barker v. Molson Coors Breweries and another \(No. 3\), 2019 BCHRT 192\*](#), the BC Human Rights Tribunal dismissed a complaint alleging that reduced benefits for workers over age 65 are discriminatory.

### BACKGROUND

When John Barker began his employment with Molson Coors Breweries (the “Employer”), the Human Rights Code (the “Code”) did not protect people over the age of 65 from age discrimination in their employment. Workers were required by the Employer to retire at the age of 65.

During the 1988 bargaining year, the Employer wanted to retain an employee older than age 65. The Employer and the Molson Coors Breweries and Service Employees International Union Local 2 (the “Union”), agreed to a letter of understanding (“LOU”) regarding deferred retirement that would maintain the employee’s wage, but provide reduced benefits equivalent to those available to retired employees.

The LOU affected the level of benefits available to employees over age 65 as follows:

- Dental coverage was eliminated;
- Short and Long Term Disability benefits were no longer available;

- Coverage for both Life Insurance and Accidental Death and Dismemberment was reduced from \$95,000 to \$5,000 (for each benefit);
- Vision Care coverage was eliminated; and
- Coverage for an acupuncturist was reduced.

The deferred retirement LOU was maintained over successive rounds of collective bargaining up until and including 2006. In 2006, and again in 2012 the parties negotiated various changes to the LOU (unrelated to the dispute) and the LOU was maintained in the 2012-15 Collective Agreement. However, due to administrative oversight, the Employer did not apply the reduced benefits clause in the LOU to workers over 65 from 2012-2015. When it discovered the error, the Employer worked out a memorandum of settlement during negotiations with the Union to maintain the LOU in the new collective agreement.

In 2008, the definition of “age” in the Code was amended, resulting in the abolishment of mandatory retirement (with limited exceptions).

In 2016, when Barker was 68, his benefits were reduced, in keeping with the memorandum of settlement and the LOU.

Barker worked until age 69 and continued to receive the benefits he was eligible for as a worker over 65. He brought a human rights complaint alleging that the reduction of benefits for workers over age 65 was discriminatory on the basis of age.

## THE DECISION

The reduction in benefits to workers over age 65 constituted adverse treatment on the basis of age. However, paragraph 13(3)(b) of the Code allows for distinctions on the basis of marital status, disability, sex, and age within *bona fide* group or employee insurance plans. As such, the Tribunal examined the test for a *bona fide* plan, which required that a plan be a “legitimate plan, adopted in good faith and not for the purpose of defeating rights.”

In its analysis, the Tribunal first considered the significance of age to each type of benefit. Age was considered a significant factor with respect to long-term disability benefits and life insurance. The impact of providing equivalent benefits to workers over and under age 65 would increase premiums for all workers due to the potential increased utilization of these benefits by older workers. Age was also determined to be a risk factor for short-term disability benefits and extended health; however, moderately so as they are typically more manageable and time limited. Age was not considered a significant factor with respect to dental benefits, but rather a cost savings to the employer by eliminating employer paid premiums for workers over age 65.

Nevertheless, in addressing the objective elements, the Tribunal found that the plan is comprised of the entire package of benefits, and that it was required to evaluate the plan as a whole and not the actuarial details or mechanics of the terms and conditions of the plan. In addressing the subjective elements, the Tribunal considered the motives and intentions of the plan, which found that the Employer’s objective was to keep costs down, while the Union’s objective was to negotiate the most valuable benefits package possible for all members. Molson negotiated the level of benefits with the Union and then purchased those benefits from a large and reputable insurance provider. The plan at issue was objectively *bona fide* as being “legitimate”. The LOU was deemed to be adopted in good faith and not for the purpose of defeating protected rights and was *bona fide*.

The Tribunal found that the age-based reduction in Barker’s benefits came from the operation of a *bona fide* group or employee insurance plan and is therefore exempt from discrimination on the basis of age. The complaint was dismissed. The Tribunal does not have jurisdiction to apply the Charter so the question regarding the constitutionality of this exemption must eventually be answered by the Courts.

## QUESTIONS?

If you have any comments or questions about this update, please e-mail [RES360@metrovancover.org](mailto:RES360@metrovancover.org) or call 604-451-6558.

## SOURCES

*CanLII:*

<https://www.canlii.org/en/bc/bchrt/doc/2019/2019bchrt192/2019bchrt192.html?autocompleteStr=barker%20v.molson&autocompletePos=2>

*Benefits Canada:* <https://www.benefitscanada.com/news/b-c-tribunal-finds-reduced-benefits-for-older-workers-not-age-discrimination-139911>

*Hicks Morley:* <https://hicksmorley.com/2019/11/28/b-c-tribunal-finds-that-reduced-benefits-for-employees-over-age-65-under-employers-benefit-plan-is-not-discriminatory/>