



Canadian Association of University Teachers  
Association canadienne des professeurs et professeurs d'université

# Memorandum 17:12

**Date:** May 18, 2017  
**To:** Local, Federated and Provincial Associations  
**From:** David Robinson, Executive Director  
**Re:** **Age Discrimination**

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Recently, CAUT has received several inquiries about age discrimination against academic staff. This memo seeks to clarify that human rights legislation across the country generally prohibits age discrimination in employment matters, but with one important exception with respect to pensions and benefits.

## **No Discrimination in Employment**

Age is one of the recognized "protected grounds" in human rights legislation in Canada. This means that an employer cannot refuse to hire or promote, or refuse to continue to employ someone of legal working age because of their age.

Further, employers cannot discriminate by including preferences related to age in a job posting. Similarly, they cannot ask questions connected to age during an interview or application process. Employers are required to focus on the ability of an applicant to do a job rather than on preferences or requirements that relate to a protected ground. For example, an employer cannot ask older candidates during a job interview when they plan to retire. A question of this kind may be intended to weed out applicants based on their age. This would be illegal, unless the discriminatory preference was demonstrably required for the job.

Job advertisements that directly or indirectly discriminate on the basis of age are prohibited under human rights law, unless the employer can demonstrate that the criteria in the advertisement are based on a *bona fide* occupational requirement (the "BFOR" defence). For instance, a requirement that an applicant for a position be a recent graduate may discourage applications from older academic staff. This may amount to discrimination on the basis of age, unless such requirements are *bona fide*.

In addition, Associations should be aware that older workers may require accommodation in their employment for reasons such as disability and the need to care for an ailing spouse.

**Mandatory Retirement**

In Canada, mandatory retirement has been eliminated. However, in certain situations an employer can still enforce a fixed retirement age provided it can be justified under the BFOR defence. Mandatory retirement has been upheld for some occupations -- e.g. police, firefighters, bus drivers -- where employers have demonstrated that mandatory retirement is imposed in good faith, and is necessary to ensure efficiency and safety. For teaching and research, it is very unlikely that any mandatory retirement rule would be found legal and non-discriminatory.

Note, however, that retirement incentives are not discriminatory as long as an academic staff member has the option to refuse the offer and keep their job without consequences.

**Pension and Benefits**

Although age is a protected ground against discrimination, it is generally legal when insurance, pensions, and benefits programs discriminate based on a person's age. This means that a pension or benefits program is allowed to exclude someone when they reach the age of 65. Similarly, a pension program can require that benefits be paid out at a certain age, regardless of working status. However, while such discrimination has been upheld by the courts, CAUT nevertheless encourages member associations and university and college employers to develop and maintain pension and benefit programs that comply with the spirit of human rights legislation.

If you require any further clarification about age discrimination please do not hesitate to contact the CAUT office.