

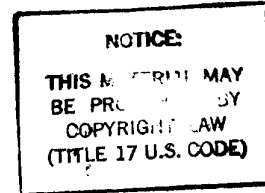
The Case for Allowing Mandatory Retirement

MORLEY GUNDERSON

*Centre for Industrial Relations and Department of Economics
University of Toronto*

and JAMES PESANDO*

*Institute for Policy Analysis and Department of Economics
University of Toronto*



Cet article décrit le cas de la retraite obligatoire, comme permettant aux partis privés de prendre des arrangements contractuels dans les circonstances où tous les partis impliqués ont un degré raisonnable d'information et un pouvoir de négociation (i.e., quand la retraite obligatoire est négociée dans le cadre d'une véritable entente collective et/ou accompagnée d'un plan de retraite). Cet article informe aussi sur la généralité et l'influence contraignante des différentes formes de la retraite obligatoire aussi bien que les arguments conventionnels pour et contre. On conclut avec une recommandation pour dispenser de conclure des ententes collectives et des plans de retraite, si la retraite obligatoire est interdite.

This paper presents the case for mandatory retirement as being based upon *allowing* private parties to enter into contractual arrangements in circumstances when all parties have a reasonable degree of information and bargaining power (e.g., when mandatory retirement is negotiated as part of a bona fide collective agreement and/or accompanied by a bona fide occupational pension plan). It also documents the prevalence and constraining influence of the various forms of mandatory retirement, as well as the conventional arguments for and against mandatory retirement. It concludes with a recommendation for exempting bona fide collective agreements and pension plans, if mandatory retirement is banned.

Mandatory retirement is controversial because of the extent to which it is intertwined with other controversial issues such as age discrimination, poverty among the aged, the job rights of the young, and the rights of employees and employers to enter into mutually binding arrangements. The purpose of this paper is to try to narrow the range of the controversy by outlining the case for *allowing* mandatory retirement. In our view, the word 'allowing' is the key, and the relevant policy question ought not to be 'are you for or against mandatory retirement?' but rather, 'under what conditions should parties be prohibited from entering into contractual arrangements, like mandatory retirement, that may inhibit their flexibility at some time in the future, presumably in return for other benefits like pensions and promotion opportunities?'

In order to put the case for allowing mandato-

ry retirement into its proper perspective, we first document its prevalence and forms, and the extent to which it constrains workers from continuing to work. We then discuss the conventional arguments for and against mandatory retirement. After outlining the case for mandatory retirement, we discuss the implications of a legislative ban on mandatory retirement and conclude with policy recommendations which we feel can maximize the benefits of allowing mandatory retirement while minimizing its adverse consequences.

Prevalence and Forms

Approximately half of the Canadian work force appears to be covered by some form of mandatory retirement provision, either as part of a collective agreement or a company personnel

policy (Economic Council of Canada, 1979:68, based upon the 1975 Retirement Survey; Dunlop, 1980:7, based upon the Conference Board Survey; Herzog, 1980 and Taylor, 1980, based upon a British Columbia Survey of 2,200 firms). Roughly similar numbers have been documented in the United States prior to their legislative ban (Kittner, 1977; Lazear, 1979:14; Schultz, 1974; Stone, 1980:14; and Wallfesh, 1978:14).

Data based upon major collective agreements (200 or more employees) in Ontario, as of 1979, indicated that there was considerable variability in the type of mandatory retirement and the age at which it applied (Gunderson, 1987). In fact *compulsory* retirement, whereby the existing contractual arrangement was terminated at age 65, but the employee could be retained under a new contractual arrangement until a later age such as 70, was much more common than *automatic* retirement with no possibility of renewal. Even under automatic retirement there was considerable variability in the age at which it applied, with age 65 being the required age in slightly less than half of the cases. Also, as indicated in Pesando and Gunderson (1987), most employees covered by an occupational pension plan and hence subject to some form of mandatory retirement, are also eligible for *early* retirement, typically after attaining age 55 and completing 10 years of service. Under early retirement, accrued pension benefits are reduced, either through an actuarial adjustment or a specified reduction formula. However, early retirees are often eligible for additional payments, such as bridging supplements, which continue through age 65, which is also the age at which the retired workers are eligible to receive (unreduced) Canada/Quebec Pension Plan Benefits and Old Age Security. Many employees, in addition, are eligible for *special retirement*, which allows them to retire before the normal retirement age set by the pension plan (typically age 65) with no reduction in their accrued pension benefits.

In short, there is considerable variability in the type of mandatory retirement, the age at which it applies, and the extent to which it is accompanied by early or special retirement provisions. In turn, this suggests that mandatory retirement is a component of the complex set of compensation

arrangements that prevail around the time of retirement, and that it is affected by the varying circumstances of the different employment environments and work forces (Gunderson and Pesando, 1980). It is not simply a blunt instrument forcing everyone to retire at age 65.

Mandatory retirement is also associated with workers who are relatively advantaged in that they tend to have higher wages and pensions and a long-term employment relationship, often with the protection of a formal collective agreement or personnel policy (Dunlop, 1980; Lazear, 1979; Urban Institute, 1981:53). These workers tend to work in the primary or core labour market and not in the secondary or peripheral labour market. This is important because it reminds us that poverty amongst the aged, which is a real policy concern, is unlikely to be seriously exacerbated by mandatory retirement.

Nevertheless, *some* workers may not have the safety net of a satisfactory occupational pension plan if they are subject to mandatory retirement, even though mandatory retirement and occupational pension plans *tend* to go hand-in-hand. There is limited empirical evidence which suggests that about 10 per cent of workers subject to mandatory retirement may not have an occupational pension (Dunlop, 1980:7; Lazear, 1979:1281; Urban Institute, 1981:67). In addition, some short-service employees may enter the pension plan late in their careers and hence not accumulate substantial pension credits even if they are members of a generous plan. Also, there are obviously low benefit pension plans as well as low wage workers who would receive correspondingly low pension benefits. These are groups for which there may be legitimate policy concern to the extent that they are required to retire and yet have inadequate income from their occupational pension plan.

While not minimizing the potential importance of these groups, there are a number of observations suggesting that their actual importance is empirically not known and their effects are sometimes mitigated by other circumstances. First, the evidence that perhaps 10 per cent of workers subject to mandatory retirement age are not covered by an occupational pension plan is often anecdotal and not based upon hard evidence. Second, we do not know whether such

workers are subject to automatic retirement (in which case they have to retire from that company) or compulsory retirement (in which case they can be rehired under a new contractual arrangement). Third, short-service employees, who may not have sufficient time to accumulate substantial credits, are likely to be entering the pension plan fairly close to the normal retirement age and hence are likely to be fully aware of the rules under which they are entering that contractual arrangement. In addition, they might not have been hired were their employer's obligations not limited somewhat by the existence of mandatory retirement. Fourth, low wage employees rationally may be reluctant to give up any compensating wages to obtain more generous pension benefits in view of the fact that income replacement rates under public pension programs (the CPP/QPP, Old Age Security) are highest for low-income workers. In addition, such workers may rationally prefer high cash wages because any private pension income may simply reduce their entitlements to income-tested benefits such as the Guaranteed Income Supplement.

The 'twinning' of mandatory retirement and occupational pension plans also may give the impression that, if mandatory retirement is banned, the features of occupational pension plans can readily be adapted to serve as a substitute for mandatory retirement. For example, benefit accruals and actuarial adjustments could be changed to create a monetary disincentive to delay retirement beyond the normal retirement age. In theory, this is the case. In practice, however, as shown in the simulations in Pesando and Gunderson (forthcoming), those postponed retirement provisions that have the greatest potential to discourage work beyond age 65 (no further benefit accruals and no actuarial adjustments after attainment of the normal retirement age) have also been banned in jurisdictions (Quebec, Manitoba, federal) which have banned mandatory retirement.

Constraining Effect

While about half of the work force appears to be subject to some form of mandatory retirement, the evidence is less conclusive about the num-

bers who are involuntarily constrained by mandatory retirement (i.e., those who would like to continue working if mandatory retirement were banned). The general consensus is that the numbers are small: 18 per cent of men and 3 per cent of women are subject to compulsory retirement according to the Department of Health and Welfare (1973:9,23); about 6 per cent of those who planned to retire at the mandatory retirement age according to the Economic Council of Canada (1979:68); at most half of those who are compelled to retire at age 65 according to Dunlop (1980:12). The downward trend in the labour force participation rate of older workers also indicates that the trend is towards earlier and not delayed retirement.

If mandatory retirement were banned, however, this trend towards earlier retirement could change in the future for a number of reasons. For example, workers would have more time to change their retirement plans, and they might be more likely to do so if substantial numbers of their peers also began to retire later. Further, the proportion of the work force that is white-collar and professional will continue to increase, and this group tends to retire at a later age. If pensions, public or private, were redesigned to become available at a later effective age as the result of a ban on mandatory retirement, the trend towards early retirement also could be reversed.

In addition, the empirical evidence of the impact of the ban on mandatory retirement in the United States is likely to be of limited relevance for Canada because of the differences in the public pension schemes in the two countries. In the United States, after a modest level of earned income, there is a high implicit tax on earnings for those who continue working past 65, in that such workers forgo some Social Security benefits if they earn income in the labour market. This 'tax-back' feature can be a powerful incentive to retire, and may have significantly reduced the number of employees who chose to continue working after mandatory retirement was banned in the United States. The Canada/Quebec Pension Plan, in contrast, does not have this 'tax-back' feature; recipients do not forgo any public pension if they continue to work. For this reason, the number of employees who would continue

working, if mandatory retirement were banned, could be larger in Canada than in the United States. This also means that the adjustment consequences could be more prominent in Canada than they have been in the United States.

Whatever the numbers who, *at the time of retirement*, indicate that they would like to continue working, our contention is that that is not a meaningful measure of the numbers who are involuntarily constrained by mandatory retirement. If, as we contend, mandatory retirement is typically a component of a long-term contractual arrangement which enables the wages of older workers to be higher than they would be in the absence of mandatory retirement, it should not be surprising that employees may prefer to continue working at the time that the mandatory retirement constraint becomes binding. Employees may well prefer the removal of the one element of the contractual arrangement that is no longer favourable to them, once they have received other benefits associated with that constraint. Our contention is that the evidence of whether people are involuntarily constrained by mandatory retirement is better examined when they make such long-term contractual arrangements, not when the constraining point of the arrangement becomes binding.

Conventional Arguments against Mandatory Retirement

The main argument against mandatory retirement is that it appears to violate the human rights of some older workers, and that it thus represents age-based discrimination. This argument is given credence by the fact that all Canadian jurisdictions prohibit discrimination on the basis of age. However, those jurisdictions that allow mandatory retirement do so by specifying that their legislation does not apply to persons 65 years of age and older. These exemptions may give the appearance that it is acceptable to discriminate against individuals aged 65 or older. Since the Canadian *Charter of Rights and Freedoms* contains no age limit on its prohibition of discrimination on the basis of age, these age exemptions are in violation of the Charter unless they are deemed to be 'reasonable limits prescribed by law as can be demonstrably justified in a free and

democratic society'. Hence, the debate over mandatory retirement is essentially a debate over whether it is a reasonable restriction or one that constitutes age based discrimination. Our contention is that the restriction is a reasonable one, and the analysis that follows makes this case.

Conventional Arguments for Mandatory Retirement

The arguments in favour of allowing mandatory retirement can be grouped into four main categories: (1) it promotes work sharing, (2) it facilitates planning, (3) it minimizes monitoring and evaluation, and (4) it facilitates deferred compensation systems.

Work sharing

Mandatory retirement is often justified on the grounds of opening up job and promotion opportunities for younger workers. In essence, it may be thought of as a form of life cycle work sharing, whereby older workers vacate jobs that create promotion opportunities for middle-aged workers. Their promotion, in turn, creates new job opportunities for younger workers which may also lead to an infusion of new ideas and talents into the organization. This can be especially important for particular sectors, like universities, where new openings are often predicated upon retirements in particular departments. In times of sustained high unemployment, especially youth unemployment, policies to share the available jobs have taken on particular appeal. Alternative forms of work sharing include delayed school leaving, unpaid leaves, reduced workweeks, restrictions on overtime, unemployment-insurance-assisted work sharing plans, and early retirement. European countries, for example, are emphasizing many of these forms of work sharing. The emphasis is on the promotion of early retirement, not the removal of mandatory retirement, in part because of a chronic problem of youth unemployment (Cuvillier, 1984).

While it may be true that a particular worker who does not retire may occupy a job that cannot be filled by another worker, this need not be true for the economy as a whole. Economists tend to emphasize that it is a fallacy (termed the 'lump-

of-labour' fallacy) to assume that there are a fixed number of jobs in the economy, so that one person occupying a job means that another person does not have a job (Pesando, 1979). Rather, the economy is more accurately characterized as dynamic and continuously in a state of flux, as workers with jobs help create jobs elsewhere through their spending patterns. Nonetheless, the absorption of new entrants into the labour force may require adjustments, perhaps in real wages, and may thus take time. This may explain why the discussion in the media gives a great deal of attention to this rationale for mandatory retirement, while economists would assign it a somewhat lower level of importance.

Facilitate Planning

Mandatory retirement may facilitate planning on the part of both employers and employees. For employers, having a known termination date to a particular contractual arrangement facilitates planning for replacements, pension payouts, training and upgrading, as well as for medical and disability payments. The latter may be particularly important for older workers (Billings, 1986).

For employees, a fixed retirement date pressures them to plan for their retirement and this, in turn, is likely to leave them better prepared for the eventuality of retirement (Burke, 1984; Wall and Shatshat, 1981). If they know their likely retirement date, employees are more likely to participate in retirement planning programs, to save for retirement, perhaps even to search for alternative employment or to prepare for a geographic move.

Minimize Monitoring and Evaluation of Older Workers

A fixed retirement date minimizes the need to monitor and evaluate the performance of older workers. If the performance of older workers declines, employers are likely to carry them through to retirement, when this date is known in advance. This is also true of co-workers in work groups.

Conversely, if mandatory retirement is banned, employers will have to monitor and evaluate the performance of their older workers more carefully. The pay of older workers will have to be

linked more closely to their performance, given the indefinite term of their employment relationship. In addition, employers will be faced with the inevitability of having to dismiss some older workers. Documentation of performance will be important to avoid wrongful dismissal charges through the courts, or unjust dismissal charges through employment standards provisions (in some jurisdictions). Documentation of performance will also be important to avoid possible age discrimination charges; a likelihood that will increase if older workers receive deferred wages (discussed subsequently) and wages are realigned to reflect more closely productivity subsequent to a ban on mandatory retirement.

In short, one should not presume that a ban on mandatory retirement means that older workers will be able to retain their jobs. In fact, some older workers may be dismissed prior to what would have been their mandatory retirement age, and others will be subject to more scrutiny and evaluation. This in turn may jeopardize their human rights and affect the notion of their retiring with dignity (Gunderson, 1983).

Facilitate Deferred Compensation

Mandatory retirement may also facilitate a system of deferred compensation in which workers are paid more than their productivity when they are older, and less than their productivity when they are younger. (In competitive markets, equilibrium requires that the expected present value of the compensation and productivity streams be equal). Mandatory retirement facilitates a deferred compensation system by providing a finite termination date to the contractual arrangement. Without such a termination date, compensation could exceed productivity indefinitely and hence the contractual arrangement could not exist. Lazear (1979) has argued that such a deferred compensation system ensures honesty and work effort on the part of employees because they want to be retained in order to receive the deferred compensation. The situation is analogous to that of posting a performance bond, with the reputation of the firm ensuring that the employer will be fair in repaying the bond.

Deferred compensation may prevail for reasons other than those advanced by Lazear. It may

reduce unwanted turnover, as employees have an incentive to stay with the company to receive their deferred compensation. This in turn may encourage employers to provide training since they will have a longer period over which to amortize their training costs. Deferred compensation may also provide workers with an interest in the financial solvency of their employer, since that solvency is necessary for employers to pay the deferred compensation. Deferred compensation may also reduce the need for the constant monitoring and evaluation of workers. All that is necessary is periodic, retrospective appraisals (i.e., based on past performance), with continuation with the firm and hence the right to receive the deferred compensation contingent upon satisfactory performance.

Employees may prefer, or at least willingly accept, a system of deferred compensation. To the extent that this system promotes honesty, work effort, training, and reduces monitoring and evaluation costs, the gains in productivity and the reduction in costs may be shared with employees. Deferred compensation can also constitute a form of forced savings, as it ensures a steady increase in wages even if productivity does not increase commensurately. Employees may also prefer periodic, retrospective monitoring to a system of more constant monitoring. Employees may also be guaranteed a degree of certainty in receiving their deferred wage, through such procedures as seniority-based wage increases, pension guarantees and the protection of a collective agreement. All of these characterize the longer-term, contractual employment relationship of which deferred compensation and mandatory retirement are likely to be a part.

Empirically, there is evidence that deferred compensation arrangements are prevalent. Abraham and Medoff (1982:308-18) summarize their own research and the results of 21 other studies. They conclude that productivity is roughly constant by age and seniority, while wages rise sharply with seniority. As a result, younger workers are paid less than their productivity and older workers are paid more than their productivity. Abraham and Farber (1987) and Altonji and Shataiko (1987) provide empirical evidence indicating that the effect of seniority on earnings is reduced considerably when one

controls for the effect of conventionally unobserved variables such as the quality of the worker or of the worker-employer match. Nevertheless, they do find evidence of some independent effect of seniority. In addition, neither of these studies included pension benefit accruals which are an important vehicle through which the deferral of compensation can take place, especially as workers approach the normal retirement age (Pesando and Gunderson, forthcoming).

Case for Allowing Mandatory Retirement

It is important to recognize that our argument is not for or against mandatory retirement *per se*. Rather, our argument is for *allowing* mandatory retirement to be negotiated by employers and their employees, either as part of a collective agreement or as a personnel policy.

The economic case for allowing mandatory retirement favours allowing the bargaining parties to weigh the pros and cons of mandatory retirement in their particular employment relationship. If mandatory retirement is beneficial to a particular employer, but undesirable to many of the employees, the employer will have to provide a quid pro quo (e.g., a generous pension plan or a compensating wage) to offset this 'unattractive' element in the package of work rules and pay policy. This could take place in formal collective bargaining or the informal bargaining that underlies the formation of a personnel policy. If employees found mandatory retirement to be attractive, no compensating quid pro quo would be required or it would be minimal.

In essence, through the mechanism of the market or the collective bargaining process, the cost considerations of employers will confront the preferences of employees. One would expect this interaction to result in a diversity of mandatory retirement (and other) arrangements. If employers begin to view mandatory retirement as unnecessary, or if employees begin to find it increasingly unattractive, then mandatory retirement should become less prevalent over time.

This perspective views the role of government as mainly one of requiring that the parties are informed of their rights and responsibilities, and that the parties carry out their contractual ar-

rangements such as pension commitments. Governments may even want to set examples in their own employment relationship in hope that such practices will be emulated elsewhere.

Clearly, there are cases when society overrides the preferences of the market, because it deems the outcomes to be socially unacceptable. Such is the case, for example, for transactions as varied as prostitution, the sale of drugs, indentured service and the hiring of labour below the minimum wage. The payment of discriminatory wages for women or racial minorities is not allowed, even if the parties are willing to accept such arrangements.

There are other times when society sanctions contractual arrangements that may inhibit flexibility and freedom at some time in the future, presumably because of the benefits of such contractual arrangement over a longer period of time. Such may be the case with marriage contracts or contracts to repay a loan.

There may also be times when internal union trade-offs are deemed to be socially unacceptable, for example, if they ignore minority rights, including the rights of older workers. However, union preferences generally reflect their median voter, who is likely to be older and interested in pensions and retirement related issues. Presumably, most union members expect ultimately to be affected by their decisions with respect to retirement issues, and hence are unlikely to bargain for mandatory retirement if they expect to find it to be unduly constraining. In essence, there is little reason to believe that internal union trade-offs inadequately reflect the legitimate preferences of their members with respect to mandatory retirement. Hence, unions should be allowed to bargain for its existence, and they should be allowed to bargain for its removal or a change in its form.

Concluding Observations

Given that there is a legitimate trade-off between the rights of parties to enter into contractual arrangements, and the rights of employees to be protected against age discrimination, a possible solution is to remove the age limit in anti-discrimination legislation but to exempt bona fide collective agreements and pension plans

from the resultant ban on mandatory retirement. This practice, which exists in New Brunswick, effectively would allow mandatory retirement to prevail in most circumstances since it is usually associated with a pension plan or collective agreement. However, it would ensure that mandatory retirement existed only in situations of reasonable employee bargaining power or where it was accompanied by an explicit *quid pro quo* in the form of an occupational pension plan that would, typically, provide a degree of income security to the retiring employee. Allowing the normal age discrimination provisions to apply would ensure the protection of anti-discrimination legislation to persons of all ages, including that small portion who are subject to mandatory retirement but who may not be covered by an occupational pension plan.

This is simply meant to be illustrative of one possible compromise in balancing the right to be protected against age discrimination against the right to enter into mutually beneficial contractual arrangements. It also illustrates that the economic case is not for mandatory retirement *per se*, but for the right of employers and employees to enter into mutually beneficial contractual arrangements that might include provisions like mandatory retirement. This is important, since it highlights the fact that the relevant policy question for the legislatures and the courts is not 'are you for or against mandatory retirement?' but rather 'are you for or against prohibiting private parties from entering into contractual arrangements like mandatory retirement?'

Notes

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