

A BRIEF TO THE MINISTRY OF LABOUR'S
TASK FORCE ON BENEFITS
BY
THE ONTARIO COMMITTEE ON THE STATUS OF WOMEN

Prepared by:

Elizabeth Adamson
Sandra Birkenmayer
Marjory Cohen
Audrey Orr
Alice Protz
Catherine Stewart

Toronto, Ontario
April, 1973

TABLE OF CONTENTS

I Statement of Position

II Discussion

- a) The Concept of Needs
- b) Voluntary and Compulsory Plans
- c) Rates for Benefits
- d) Costs of Equality

III Conclusions

I STATEMENT OF POSITION

The Ontario Human Rights Code, Part I, Section 4 (1) (g) states that:

'No person shall,

g) discriminate against any employee with regard to any term or condition of employment,

because of race, creed, colour, age, sex, marital status, nationality, ancestry, or place of origin of such person or employee.

This clause is currently limited by the inclusion of the following note:

'Note: Clause g of subsection 1 of section 4, as enacted by section 5 of the Human Rights Code Amendment Act, 1972 does not apply to any bona fide superannuation or pension fund or plan or any bona fide insurance plan that provides life, accident, sickness or disability insurance or benefits that discriminate against an employee because of age, sex or marital status until a day to be named by the Lieutenant Governor by his proclamation. See 1972, c.119, s.16.

It is the position of the Ontario Committee on the Status of Women that:

1. THE LIEUTENANT GOVERNOR IMMEDIATELY PROCLAIM SECTION 4 (1) (g) INTO FULL EFFECT.
2. COMPLIANCE BE CALLED FOR WITHIN A SET TIME SCHEDULE USING THE FOLLOWING GUIDELINES:
 - a) All new benefit plans of all types established from the date of proclamation must immediately conform.
 - b) All existing group life insurance plans (excluding survivor income benefits) are to conform within 3 months.
 - c) All existing group health and disability plans are to conform within 6 months.
 - d) All existing group pension plans and group survivor income benefits funded by group life insurance are to conform within 12 months.
 - e) Until all existing benefit plans of an employer are non-discriminatory, in accordance with the Code, other revisions to these plans cannot be made.

II Discussion

The validity of Part I, Section 4 (1) (g) of the Human Rights Code which prohibits discrimination on the basis of age, sex or marital status with respect to terms and conditions of employment, is not in question and therefore this brief will not attempt to rejustify its existence. The questions at hand are to set a timetable for its full implementation and to clarify some interpretations.

The Ontario Committee on the Status of women is concerned that there are arguments being put forward to this Task Force intended to limit the intent of Section 4 (1) (g) and we therefore wish to comment on some of these arguments specifically as they relate to sex and marital status.

a) The Concept of Needs

The argument most often used to 'justify' such discriminatory practices as different eligibility for benefits based on sex or marital status, different benefit plans for men and women, different survivor benefits for men and women etc., is that benefit plans are designed to meet the 'needs' of employees and that such needs can justifiably be determined on the basis of sex and marital status.

We fully recognize that the purpose of pension plans, life insurance plans and other such benefits, is to meet the needs and desires of working people for protection from income loss as the result of death, disability or retirement. The question becomes one of what are an individual's needs, and who determines them. It is no more logical to say that all men have the same needs than it is to argue that all women have the same needs. All married persons don't necessarily have similar needs, nor do single persons.

The whole social structure of our society is changing. Traditional concepts of male/female roles are undergoing fundamental changes and our attitudes with respect to marriage, children and

life style are not the same as they were even a few years ago.

Let us examine briefly some of the basic assumptions underlying current practice in the field of employee benefits:

1. All male employees have financial responsibilities for dependents (wives and children).
2. Not all women employees have 'needs' for benefits while all male employees do have such 'needs'.
3. Women do not have financial responsibilities for dependents.
4. Single men have greater 'needs' than single women.
5. Single persons do not have financial responsibilities for dependents.
6. Women work only for short periods of time, are not career oriented, and do not want (or need) benefits.

These assumptions are not acceptable in the light of current facts. To begin with, in 1971, 32.8% of the labour force in Canada were women. (1) This represents a 63% increase in ten years (2), and there is no indication that the trend has stopped. At the same time, women are participating in the labour force for longer periods of time than ever before. The increasing availability of day care centres and acceptance of maternity leave has meant that more women are now able to continue working.

It should also be noted that 9% of the female work force are separated, deserted, divorced or widowed and that 34% of working women are single.(3) This means that at least 43% of the female work force do not have husbands to provide for any of their 'needs'. Of the remaining 57% who are married, many are working out of necessity to supplement inadequate earnings of their husbands or to provide income when the husband is unemployed. On the basis of these facts, the assumption that women employees have no 'needs' for benefits is invalid.

(1) Canada Department of Labour. Women in the Labour Force, 1971: Facts and Figures (Ottawa: Information Canada 1973). Table 1, p.2.

(2) Ibid, Table 2, p.4.

(3) Ibid, Table 10, p.20.

We should also recognize that not all married men have dependent wives and children, since some wives are self supporting. Single persons may also have financial responsibility for dependents e.g. children, parents.

A good example of the type of discrimination supposedly 'justified' on this concept of needs, is the area of survivor benefits from group pension plans. Some group pension plans only provide survivor benefits for widows of male contributors while denying such benefits to spouses of female contributors. This practice is without question discriminatory. It is equally unjust to make the benefit payable to a husband conditional upon proof of disability or total dependency, if no such proof is required for wives. Equal benefits for surviving spouses and dependent children must therefore be mandatory within any group where contributors are paying for the same benefits. Another inequality exists however if there are single contributors to the group plan. At the moment, they must pay the same as married persons but they cannot take advantage of survivor benefits.

Needs can therefore vary considerably, and it is not valid to classify a person's needs on the basis of sex or marital status.

Recognizing this concept, it follows logically that the employer's contributions to all benefit plans (including health) can also no longer be discriminatory on the basis of sex or marital status.

b) Voluntary and Compulsory Plans

The argument has apparently been raised that voluntary benefit plans should not come under the jurisdiction of Section 4 (1) (g). Our position is that all plans, whether voluntary or compulsory, must come under this statute, otherwise the intent and basic fabric of that statute is violated.

It would also be our position that it would be discriminatory to make certain benefits voluntary for some groups of employees and compulsory for other groups, when such groups are determined on the basis of sex and marital status.

The feasibility of this position is demonstrated by the situation in the United States. Title VII of the 1964 Civil Rights Act prohibits discrimination in 'terms, conditions, or privileges of employment', and this has been interpreted, in Decisions of the Equal Employment Opportunity Commission, to mean that job related plans must be equally available to members of both sexes.

c) Rates for Benefits

We disagree with the practice of charging males and females different rates for the same benefit coverage, or different coverage for the same rates. This practice is based on the argument that actuarial mortality tables show that women as a group live longer than men as a group.

Differences in mortality between the sexes, taken as whole groups do exist today (4), but the situation is not that simple. It is quite possible that there might be no differences in mortality between working men and working women in the same age and occupational level. Unfortunately, there are no statistics in this area. There is evidence however (5) to show that there are differences in mortality rates within the total male population which are not based solely on age e.g. race, ethnic group, geographic location. Even if women do as a whole, live longer than men now, this could change as women begin to assume a more equitable position in the work force.

(4) Statistics Canada, Health and Welfare Division, Vital Statistics 1969, (Ottawa: Information Canada, 1972), p. 271.

This information indicates that average life expectancy for women is 75.18 years vs. 68.75 for men.

(5) U.S. Department of Commerce, Statistical Abstract of the United States 1972, Superintendent of Documents, Washington 1972, p.56. Canadian data is not available.

Let us look for a moment at life insurance plans. If women live longer, they are lower risks for insurance companies and hence, using the same arguments as used for pension plans, should pay less than men for the same coverage. But, this does not occur! What happens is that in setting a rate for a group plan, the women's and men's risks are averaged out and everyone pays the same rate. So, where mortality is to their advantage, women lose out in the averaging and yet where it is to their disadvantage in pension plans, they are on their own and have to pay the higher rates. Women just can't win! The only logical conclusion that can be drawn is that if you can average for life insurance plans you can do the same for pension plans. Therefore, all persons should pay the same rates for the same benefits.

The feasibility of this position is also demonstrated by the fact that in the United States, members of both sexes pay the same amounts for the same benefits. (6)

d) Costs of Equality

The argument to allow continued discrimination because its elimination might be costly, is an irrelevant, immaterial and totally invalid argument.

(6) Title VII, U.S. Civil Rights Act 1964, and Decisions of the Equal Employment Opportunity Commission.

III CONCLUSIONS

After careful study of this whole benefits area, it became clear to us that the insurance industry must break away from traditional concepts of needs, roles and attitudes, and design benefit plans to meet the needs of today and tomorrow. When moral suasion fails to bring about the required changes, then the law must be used to force those changes. We are confident that the industry will find satisfactory methods for conforming to this law once they are forced to do so.

We therefore recommend that there be no further delay in bringing Section 4 (1) (g) into full effect. This Section should be made effective immediately, there must be no limitations, and compliance should be in accordance with a set time schedule, as recommended at the beginning of this brief.