

Employment & Employee Benefits Group

Caps on Severance Payments and the Equality Acts

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A Labour Court decision published last year may have implications for ex gratia redundancy payments to employees who are made redundant at a time when they are close to retirement. The outcome of this case means that it is open to employers to offer lower severance packages to employees who are close to their normal retirement age.

Negotiated severance packages

In *Hospira v Roper and others*, (2013) SIPTU, on behalf of the employees of *Hospira*, had negotiated a redundancy scheme of five week's pay per year of service for all employees. However the scheme included a provision by which employees who were close to their retirement would receive the *lesser* of the agreed severance package or, alternatively, the salary that they would have earned had they remained in employment until their normal retirement age. This arrangement adversely affected a number of employees who had long service with the company and who were close to retirement. They brought a claim to the Equality Tribunal complaining that the scheme was discriminatory on grounds of age.

The Equality Acts includes a provision which specifically provides that it is not discriminatory to provide different rates of severance payment for different employees based on or taking into account the period between the age of an employee on leaving the employment and his or her compulsory retirement age.

Decision

The Labour Court, on appeal from a decision of the Equality Tribunal, held that age discrimination did not need to be objectively justified by the employer but instead found that the objective justification had been provided by the Oireachtas in the legislation itself. The Court found that the underlying reason for this provision is that workers close to retirement are in a substantially different position to those employees who have longer periods in which they could have expected to remain in the active labour force. The Court held that, as a matter of social and labour market policy, this difference can be legitimately reflected in constructing redundancy packages.

The Court held that a worker who is made redundant at a time when they are close to their retirement date, and who receives a redundancy payment equal to the earnings that he or she could have expected up to that date, suffers no financial loss.

The Court also noted that a similar arrangement in respect to differences based on age in the calculation of redundancy payments was recently upheld by the UK Employment Appeals Tribunal in *Kraft Food (UK) v Hastie*. In that case the EAT held that a cap on awards made under a redundancy scheme was justified even though it led to direct and indirect age discrimination. The EAT considered that the aim of preventing employees who were nearing retirement from receiving a "windfall" was legitimate.

Severance packages on these terms have not been common practise until now and it will be interesting to see whether this decision has the effect of ending windfall payments to those employees who are close to retirement.

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