

Employment & Employee Benefits Group

Change in State Pension Age and Compulsory Retirement – Where do things stand?

There is a high level of concern on the part of both employees and employers in relation to the enforceability of a mandatory retirement age in the workplace, particularly as a result of the increase in the state pension age, which rose to 66 on 1 January 2014 (and which will rise to 67 and 68 in years to come).

No retirement age specified in Irish law

Unlike some other EU jurisdictions, there is no mandatory retirement age specified in Irish legislation. An employer is free to set a 'normal retirement age' for its workforce. Under the Unfair Dismissals Acts, employees who have reached the "normal retiring age for employees of the same employer in similar employment" are precluded from bringing a claim for unfair dismissal.

The 'normal retirement age' must either be in the contract of employment, or an employer would have to be in a position to show that employees are fully aware of the 'normal retirement age' in order to be able to enforce it.

Age discrimination

The Employment Equality Acts permit employers to fix a retirement age. However, as confirmed in recent European and Irish case law, in order to rely on this provision, an employer must be able to justify the age it sets by reference to objective criteria and show that it serves a legitimate aim.

In the case of *Paul Doyle v ESB International Ltd (2012)* the complainant, a graphic designer, was forced to retire at age 65. He claimed that this constituted age discrimination. Among the company's arguments were

- (i) that retirement at 65 was a long established custom and practice in the organisation;
- (ii) that a retirement age of 65 was justifiable; and
- (iii) that the organisation had invested significant resources into training its employees, who would move elsewhere if they could not progress in the organisation.

The Equality Officer noted that for a retirement age to be fixed by an employer, evidence of a planned and systematic approach to retirement ages is required. In all of the circumstances, the Equality Officer held that a retirement age of 65 was an appropriate and proportionate measure for the purposes of a legitimate aim of the company.

"Objective criteria" and "Legitimate aim"

There is an absence of legislative clarity on what constitutes "objective criteria" or "legitimate aim" - leaving this to be assessed by the Equality Tribunal on a case-by-case basis. Circumstances which have been held to be "objective criteria" or a "legitimate aim" may include:

- To create opportunities in the labour market for persons seeking employment;
- Establishing a balanced age structure, encouraging recruitment of young people and preventing disputes about the performance of older people;
- Inter-generational fairness or sharing employment between generations;
- Motivation and dynamism through the increased prospect of promotion;

- Health & safety concerns.

It is likely that, in cases which are based on events from this year, the state pension age of 66 will be a factor to be taken into account, particularly if there is no company pension available to the employee at 65.

Legislative Reform

Legislative reform is required to provide further clarity in this area. For now, in order to rely on a compulsory retirement age, employers need to show that:

- (i) the retirement age is an established term of the employee's employment; and
- (ii) that the age chosen can be justified by a legitimate aim.

It is worth noting that a Private Members Bill has recently been published, the Employment Equality (Abolition of Mandatory Retirement Age) Bill 2014, which seeks to abolish altogether the ability of employers to set retirement ages. It remains to be seen whether this Bill will be supported and passed by Government.

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