

Employment

# Change in State Pension Age – The Looming Crisis

Date: 01 February 2013

## Change in State Pension Age – The Looming Crisis

Published: 01 February 2013

Employers should be aware that with effect from 1 January 2014 the age at which an employee will qualify to receive the State Pension will change on a phased basis, initially to age 67. This means, for employees who retire from employment in 2013 at age 65, that there will be a significant time period between the date of retirement and the date at which State Pension will be paid. The change gives rise to significant legal and practical concerns.

When the State pension age changes there will be an increasing number of employees who may previously have expected to retire from their employment at 65 and to receive their State pension but who will experience a gap between their employment retirement date and the date on which they will receive the State pension.

This raises employment law concerns and also may have implications for pension schemes.

From a pension perspective this is particularly of concern where payment of benefits under a defined benefit scheme is coordinated with the State pension. An employee who is entitled to a defined benefit may have a right to receive a pension from a scheme notwithstanding that there is a shortfall where there is no State pension payable. This could have serious implications for pension schemes.

From an employment/equality perspective there is the potential for significant conflict at the end of the employment relationship if employers seek to compulsorily enforce an express or implied retirement age.

Unlike some other EU jurisdictions there is no mandatory retirement age in Irish law. In some cases employment contracts specify that the normal retirement age in the employer organisation is 65. In other cases the retirement age is specified in a collective agreement negotiated with a representative trade union, or the age may be sector specific. For many employees where there is no contract of employment or where there is no stated retirement age there may be an assumption on the part of both employer and employee that the employee will retire at age 65 – implicitly on the assumption that the State pension will be payable at that date.

With the change in the date on which the State pension will be payable there is likely to be an increased incidence of employees seeking to remain in employment after age 65, whether on a fixed term basis or otherwise so as to bridge the gap between loss of employment income and the date on which State pension is payable.

Employers may take the view that they are entitled to rely on the contractual retirement age (if it exists) and to insist that an employee retires at age 65. But there is an increasing incidence of employees asserting that to be required to retire at age 65 amounts to age discrimination, unless the employer is in a position to justify the termination by reference to objective criteria.

In the recent case of Elizabeth Sweeney –v- Aer Lingus (DEC – E 2012 – 135) the claimant was awarded €5000 compensation by the Equality Tribunal on the basis that the employer had failed to establish that her compulsory retirement at age 65 served a “legitimate aim or purpose”.

What constitutes “objective justification” is not currently defined by any Irish regulations. This therefore leaves it to each employer to justify any compulsory retirement by reference to its own circumstances and to expose it to the legal risk of age discrimination claims. This is quite apart from the industrial relations risks of employee dissatisfaction whether from younger employees (deprived of promotion opportunities) or older (who would prefer to retire as expected but find that they cannot afford to do so) and the resultant stagnancy in the workplace with older employees remaining in situ.

There is a need for clear and coherent guidelines to provide certainty to both employers and employees. The Department of Social Protection continues to examine the issue and heard from interested parties at a forum convened in December 2012, attended by Maura Connolly of this office as a Law Society representative in conjunction with industry and other social partner representatives. We will continue to actively pursue this issue as a priority to be resolved in 2013.

*For further information on this topic or generally please contact Maura Connolly, Partner, [mconnolly@efc.ie](mailto:mconnolly@efc.ie) or any member of the Employment & Employee Benefits Group.*

*This note is intended to provide a general overview and guidance. It is given wholly without any liability or responsibility on the part of Eugene F. Collins and does not replace the necessity to obtain legal advice.*