

Employment & Employee Benefits

What is the Current Law on Retirement Age?

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In a previous Employment Update two years ago we looked at the law on retirement ages. This law has now been codified by an amendment to the Employment Equality Acts which came into effect on 1 January 2016. In a nutshell, this provides that it is not age discrimination for an employer to set a retirement age for its staff if:

- (a) This is objectively and reasonably justified by a legitimate aim; and
- (b) The means of achieving that aim are proportionate and necessary.

Key questions arise from this:

1. How does an employer set a retirement age?

In order to be able to rely on a retirement age, it must be stated in the contract of employment or an employer would have to be in a position to show that employees are fully aware of it. It should be normal practice for workers to retire at this age.

2. What is a legitimate aim?

Examples of legitimate aims which have been upheld are:

- 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.

3. What would constitute “proportionate and necessary” means of achieving this?

This question is probably best answered with a question: are there other less discriminatory measures capable of achieving the same aim? If not, employers should consider why they have chosen that particular retirement age, whether it achieves their legitimate aim, and whether they have evidence to back this up.

Fixed-Term Contracts

There was a further amendment to the Employment Equality Acts with effect from 1 January 2016 in relation to the provision of fixed term contracts to workers who have reached the employer's retirement age. This provides that offering such a worker a fixed term contract shall also not constitute age discrimination provided such a measure is

- (i) objectively and reasonably justified by a legitimate aim; and
- (ii) the means of achieving that aim are proportionate and necessary.

Employers should be mindful that in working under a fixed-term contract such an employee has rights under the Protection of Employees (Fixed Term Work) Act in relation to comparable treatment and the renewal of fixed-term contracts.

What can employers do if they wish to rely on a retirement age?

1. Ensure that all contracts of employment and employee handbooks specify the retirement age and it is implemented consistently

2. Have a legitimate aim for this specific retirement age which is objectively justified. The review and approach should be documented to assist in defending any future claim.
3. Where employers receive a request from an employee to work beyond their retirement age they need to carefully consider how they respond to this. Such requests should be dealt with on a case by case basis with employers being mindful that the granting of such request creates precedent for other employees and may make it more difficult for employers to rely on their normal retirement age.

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