

Age Discrimination

Your rights at retirement



Overview

The Employment Equality (Age) Regulations 2006 came into force on 1st October 2006 and made it unlawful to discriminate against workers and job seekers because of their age. As of 1st October 2010, all existing equality legislation (including the 2006 Regulations) was consolidated into the Equality Act 2010 ('The Act').

The Age Regulations when they were introduced brought in important provisions about the default retirement age ("DRA") of 65. The default retirement age was then phased out from 6th April 2011, although people who were given valid notice by their employer before that date could still be retiring lawfully well into 2012.

Any dismissal because of age taking place on or after 6th April 2011 (unless a retirement dismissal due to a valid notice served before that date) is direct age discrimination under the Equality Act 2010 (EqA 2010). As direct age discrimination it will be unlawful unless the employer can objectively justify it.

Compulsory Retirement now that the DRA is removed

The fact that the DRA has been removed does not mean that individual employers will be completely prevented from imposing compulsory retirement ages. An employer who wishes to have a Compulsory Retirement Age for its workforce will be able to do so if they can objectively justify it, i.e. show that it is a proportionate means of achieving a legitimate aim.

Legitimate aims could include economic factors such as the needs of and the efficiency of running a business, the health, welfare and safety of the individual (including the protection of young people or older workers) or the particular training requirements of the job. What amounts to a legitimate aim will depend on the nature of the industry and business and the role the employee carries out. Recent case law indicates that the need to provide career development opportunities to younger members of staff and succession planning as well as the promotion of a congenial atmosphere within a business may be legitimate aims in certain circumstances.

Whether the means are proportionate should involve looking at whether the measure is achieving the employer's stated aim, whether the discriminatory effect is outweighed by the importance and benefits of the aim and whether the employer had no reasonable alternative which was less discriminatory.

Which dismissals will fall within the transitional provisions?

For a retirement dismissal to fall within the transitional provisions and therefore be lawful, the following conditions have to be met:

- The notice of intended retirement must have been issued on or before 5th April 2011
- The employee being retired must have reached the age of 65 (or the normal retirement age if this is higher) on or before 30th September 2011
- All requirements of the statutory retirement procedure must have been met
- An employer must have given between 6 and 12 months' notice of retirement meaning that a notice given on the last possible date (5th April 2011) will expire at the latest on 5th April 2012.

An employer who intends to retire an employee must do so fairly. A fair retirement occurs if:

- The retirement takes effect on or after the default retirement age (or on or after the employer's usual retirement age if the employer has set one)
- The employer has given written notice of the date of the intended retirement and highlighted the right to request to work beyond the intended date of retirement.

Employer Notification

If an employer intended to retire an employee then the employer must have:

- Informed the employee of the retirement date in writing
- Informed the employee no more than one year and no less than six months before the Intended Retirement Date (IRD)
- Informed the employee of their right to request to work beyond the retirement age.

Extensions to work beyond retirement

An employee may make a request to work beyond retirement between three and six months before the intended retirement date. The last possible date such a request may be made under these provisions is 4th January 2012.

Employers will still be free to grant an extension of employment to those who request it. However, an indefinite extension or an extension of more than six months would require a new notice of intended retirement date to be issued. Such notices are no longer effective since 5th April 2011. Therefore, employers will only be likely to offer an extension of the retirement date for six months or less. The last possible date on which any such extension could expire under these provisions is 6 months after 5th April 2012, namely 5th October 2012.

If an extension was offered for a date beyond that, the employer could face a claim for age discrimination and unfair dismissal if it tried to put the 'retirement' into effect.

The right to appeal an employer's refusal

If an employer has followed the procedure and refuses to allow an employee to work beyond the retirement age, the employee may appeal against that decision.


The appeal meeting should be held as soon as reasonably practicable after the employee has submitted a written appeal setting out grounds of appeal and the meeting can take place after the retirement has taken effect.


Any claims for an employer's failure to follow procedure must be presented to an Employment Tribunal within three months less one day of the failure occurring. As noted above, a Tribunal may award up to eight weeks' pay as compensation. This is in addition to the possible claim an employee may have for unfair dismissal. Time limits in Employment Tribunals are very strict, so it is important to take action quickly to avoid losing your right to bring a claim.

Contact Us

Please feel free to discuss your own position and concerns. Contact your nearest Russell Jones & Walker office or call:

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