



Retirement of employees

Retirement is the dismissal of employees on their attaining a certain age. One might think that this is an example of age discrimination and yet The Employment Equality (Age) Regulations 2006 provide that an employer can compulsorily retire an employee without attracting age discrimination or unfair dismissal liability, provided the dismissal is effected in accordance with statutory procedure.

The regulations set a default retirement age of 65. This means that you can retire employees or set retirement ages within your company at or above 65. Employers who operate a retirement age lower than 65 will not fall within the compulsory retirement provisions and will therefore need to satisfy a test of objective justification to avoid an age discrimination claim.

In summary the procedure to be followed is:

- 1** Between 6 and 12 months before the intended retirement date, the Employer must notify the employee of (a) the date of their intended retirement, and (b) their right to request to continue working.
- 2** A request to continue working must be made by the employee between 3 and 6 months before the intended retirement date.
- 3** The employer must hold a meeting to discuss the request and must inform the employee of the decision as soon as reasonably practicable thereafter.
- 4** The employee will have a right of appeal and if an appeal is made, the employer must hold an appeal meeting and must inform the employee of the decision.

It should be noted that the statutory retirement procedure will not affect the application of other discrimination legislation to the dismissal. For example, an employee could still argue that he or she was dismissed for a reason related to their disability.

Finally, it should be noted that there is currently a challenge in the European Court of Justice to the compulsory retirement provisions in the Age Regulations. The ECJ's ruling is not expected before some time in 2009 but it means that there could be a change to the law on the horizon if the challenge is successful.

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