



PROPOSED ABOLITION OF THE DEFAULT RETIREMENT AGE

The Government has announced that it now intends to remove the default retirement age of 65 by October 2011. In light of this, the Government has entered a period of consultation which will end on 21 October 2010. This will provide employers and employer associations with an opportunity to express their views on the proposed changes.

By way of background, currently employers can lawfully force an employee to retire, provided the employer has followed the statutory retirement process and the employee is over 65 years old. The process is very prescriptive but, if the procedure is followed correctly, an employer can escape liability for both unfair dismissal and age discrimination.

If the new plans are adopted, from 6 April 2011, the statutory retirement process will begin to be phased out. From this date, no new notices under the statutory retirement procedure may be issued to an employee.

However, as part of the transitional provisions, if an employer has issued a notice before 6 April 2011 and the intended date of retirement will take effect before 1 October 2011, then the employer can rely on the current protections to avoid liability for unfair dismissal and age discrimination. If, however the intended retirement date is on or after 1 October 2011, regardless of the fact that the retirement notice has been issued, the dismissal will only be considered lawful if the employer can demonstrate that the reason for the dismissal is fair, and also that it is objectively justified in accordance with current age discrimination principles.

In our opinion, the abolition of the default retirement age and the statutory retirement procedure will have a significant impact upon employers. Currently employers may use the retirement procedure as a way to naturally rotate their workforce and encourage younger employees to

develop into more senior roles traditionally filled by their older colleagues. Furthermore, the statutory retirement procedures have offered employers a way to dismiss staff whilst maintaining the dignity of their older employees in circumstances where performance has diminished.

If the current regime is abolished as proposed, employers will need to adopt a different approach to their older workforce and will need to actively manage and address cases of poor conduct and poor performance in their older workforce. In addition, they will need to change employment documents such as contracts of employment and employment policies to take account of the change.

Should you have any queries relating to this, or any other matter, please contact a member of the Paris Smith Employment team.



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