
Managing without the default retirement age

The issue

The general statutory exemption from age discrimination risk through a dismissal by reason of retirement at the default retirement age ("DRA") of 65 ends with effect from 6 April 2011. For a limited period, that protection continues provided only on or before 5 April 2011 the business gave an employee aged 65 by 30 September 2011 the requisite notice of retirement, that employee requests no later than 4 January 2012 an extension of their retirement date and, following the required process, a business retires the employee or agrees an extension of the original retirement date of up to six months.

On or after 6 April 2011 businesses who compulsorily retire employees risk a claim of age discrimination unless the retirement age can be objectively justified by that business generally or for that specific role.

The consequences

Businesses should decide either to maintain a justifiable fixed retirement age for all or part of their workforce or to remove any fixed retirement age and to use a fair dismissal procedure.

Justification of a fixed retirement age requires it to be a proportionate means of achieving a legitimate aim. Legitimate aims could include career succession or workforce planning. Proportionality requires both the means to be the least discriminatory available to achieve that aim and evidence of an assessment of this by the business. This is challenging to achieve in the UK due both to current UK case law and the divergence between the UK and the other European member states on the social policy considerations underlying justification.

The solution

- update employment contracts and staff handbooks to specify business' selected justifiable retirement age and/or to omit redundant DRA material
- remind the workforce that voluntary retirement at any age remains available
- businesses managing without a retirement age should consider and implement fairly ACAS guidance to hold annual workplace discussions with all employees to discuss future aims and aspirations and to help identify training and development needs so as to facilitate mutually beneficial outcomes
- provide training to managers on revised appraisal and performance management procedures
- businesses retaining a fixed retirement age should undertake a detailed impact analysis and gather appropriate evidence as to the proportionality of this choice