

Retirement? What retirement?

A major change in Employment Law for 2011 is the government's decision to abolish the default retirement age of 65 from October 2011.

The question of retirement has been a hot topic since 2006 when the Age Discrimination legislation was brought into force. The new Regulations introduced a default retirement age of 65 (DRA), which meant employers could no longer force workers to retire before then unless they could justify it. However it also meant that they could automatically retire workers at that age, without paying any sort of compensation, as long as they followed a proper process.

This latter consequence caused social uproar and resulted in the Heyday case, commenced by the Heyday Membership Association within Age Concern. They sought to argue that the default retirement age was in itself age discriminatory against the older worker and a lengthy legal battle ensued going all the way to the European Court of Justice. Whilst the case was ultimately ruled in favour of retaining the DRA, the media interest and publicity over the issue created a serious incentive for the government to consider ditching it.

And so here we are in 2011, and the government has announced that from October 2011 the DRA will be defunct and transitional provisions for the phasing out of the DRA will commence from 6th April 2011. During the transition, employers will not be able to issue workers with new notices to retire however those already in existence will be allowed to continue provided the following applies:

1. A notification of retirement was issued by the employer prior to 6th April – the last possible date to provide the necessary 6 months notice is 30th March;
2. The date of retirement is before 1st October i.e. 30th September or before and
3. The requirements of the statutory retirement process are met.

Any retirement to be commenced between 30th March and 6th April will be subject to short notice provisions.

After October 2011 no worker can be compulsorily retired on reaching 65 unless it can be objectively justified.

What will this mean for employers in practice?

Whilst for many the removal of the DRA is seen as a beneficial development, for employers it is likely to lead to a number of difficulties in managing the workforce. Not only will they have to factor in older employees into their business plans, but there will be a knock on effect on policies and procedures, career advancement for all staff and performance management. Should they fail to address these issues and make changes where needed, they could face claims of unfair dismissal and discrimination.

Employers Checklist

On a final note employers should remember certain key points about this change:

1. Workers will retire as and when they want to and if they are forced to do so against their will without objective justification they are likely to complain to a Tribunal!
2. You cannot discriminate against any worker on the grounds of age
3. The changes will apply to all employers in all industries and of any size
4. State pension age and entitlements will not be affected

If you are not sure how to deal with the above changes or need guidance to make sure you carry out everything correctly, we at Sydney Mitchell are here to help. Our team of dedicated Employment Solicitors are on hand to walk you through any changes you may need to action as a result of the abolition of the DRA and can advise you on all aspects of Employment Law generally whenever you need them. For further information on the firm and the Employment Team please contact us on 0121 698 2200 or visit our website at www.sydnemitchell.co.uk.