

Why Settle For Retirement When You Can Keep On Working?

Richard Craig, a solicitor with Mills Selig considers the implications of the abolition of the compulsory retirement age of 65, which starts to come into effect this April.

The Daily Telegraph recently reported that a study by Prudential revealed that almost half of those who planned to retire this year will have no choice but to continue to work for as much as ten extra years because they have insufficient pension.

Perhaps then the abolition of compulsory retirement is good news for many over-65s who are fit and capable enough to carry on working beyond the current default retirement age.

Implemented in 2006, the Employment Equality (Age) Regulations (Northern Ireland) 2006 meant that employers could force their employees to retire at the age of 65. Employees could request to stay on after this age but employers could refuse these requests if they wished to. Scrapping the Default Retirement Age (DRA) does not mean that anyone has to stay at work if they don't want to, but it gives employees the chance to stay in work beyond 65 if they are still willing and able to do their job.

Be prepared

Retirements under the DRA procedure will cease completely on 1 October 2011 and no notices of intended retirement may be issued after 6 April 2011. There will be a "phasing out" period where retirements that have been notified before 6 April 2011 to take effect before 1 October will be valid. However, retirements notified before 6 April but intended to take effect after 1 October 2011 will not be valid unless they can be objectively justified.

It is essential that all employers ensure they have brought their

work systems in line with the abolition of the DRA. It may be helpful to obtain specific advice on issues like retaining a compulsory retirement age or capability and performance management procedures. At the very least, employers should ensure that their information in relation to these matters are up-to-date.

What grounds justify retirement?

Employers will continue to be able to make redundancies, dismiss people on grounds of capability or launch disciplinary proceedings – as long as their decision is not based on someone's age.

It is likely that capability reviews will become even more prevalent in those types of industry where the workforce does not remain for long periods after turning 65, if at all. It goes without saying that Employers must ensure that capability issues are objective and fairly applied rather than used as a method to manage older staff out of the workplace. The risk of doing this incorrectly may include claims for age discrimination and/or constructive dismissal.

Employers also have the option of retaining a compulsory retirement age but only if this can be objectively justified. This presents a problem in itself for Employers as the guidance states that "to justify a compulsory retirement age, the employer must be able to show that it is a proportionate means of achieving a legitimate aim." Employers are therefore likely to face the Courts and Tribunals Service when the inevitable disputes surrounding compulsory retirement ages ensue.



Richard Craig, Solicitor, Mills Selig.

The future's bright, the future's silver

The protection of an ageing workforce comes at a cost to the employer. As mentioned above, the Tribunal may ultimately be called upon to determine whether a decision to set a compulsory retirement age can be objectively justified.

A further major concern is the fact that the transitional provisions only apply to employees who "attain" the age limit during the 6 April to 30 September 2011 "window". This means anyone already aged over 65 or the normal retirement age adopted by the employer cannot be lawfully retired.

Since the plans to abolish the DRA were announced in July 2010, Acas (the government body set up to help with employment relations by supplying information, advice and training) has been issuing guidelines on the implications of the abolition of compulsory retirement and the transition phase. The fact that this

guidance has been amended as recently as the middle of February this year suggests ongoing uncertainty about the implications and may go some way to explain why several institutions are nervous about what will happen post April, 6.

Unfortunately, it is therefore likely that we can expect to see an increase in unfair dismissal claims and age discrimination claims as employers and employees alike seek to work out the implications of the abolition of the DRA. Employers would be prudent to seek appropriate advice before taking any steps that may potentially affect employees approaching 65 or the normal retirement age of the company.

Eye

For further information, please contact Richard on 028 9024 3878 or richard.craig@millselig.com