

Retirement

On 6 April 2011, the law on retirement changed completely and the default retirement age was abolished. Any employer who now places employees under an automatic requirement to retire at normal state pension age will be at risk of committing unlawful age discrimination. Since 2011, workers have had the right to choose when they want to retire and employers cannot force employees to retire at a particular time unless the retirement can be objectively justified or, there is an "occupational requirement" for a younger employee to fulfil a particular role.

Where an employer wants to be able to objectively justify the requirement for a fixed retirement age that employer must be able to show that the fixed retirement age meets a legitimate aim and is a proportionate means of achieving that aim.

Points to consider when dealing with the recruitment and retirement of older workers

- Following the abolition of the default retirement age, an employer should ensure that the dismissal of an older worker is based on one of the five potentially fair reasons for dismissal as stated in the Employment Rights Act 1996.
- Where an employer can objectively justify retirement, the potentially fair reason will typically be "some other substantial reason"
- It is unlawful to refuse to recruit someone who has reached normal retirement age, unless the decision can be objectively justified.
- Employees are free to change their mind in respect of retiring at any time up until the point that formal notice of termination of employment has been issued. Employers should not subject any employee who changes their position in respect of retirement to any form of detriment.
- When issues are experience with an older worker's ability to carry out the fundamental terms of their role, this should usually be dealt with in accordance with the Company's normal capability procedure.
- It is highly advisable to have a Retirement Policy in place, the terms of which should be communicated to all staff.

FAQs

Is it unlawful to retire employees at all?

No. Employees can be retired compulsorily where this can be objectively justified, or where there is an occupational requirement defence.

An employee is not performing well, what can be done to bring their employment to an end now that I cannot dismiss them on grounds of retirement?

The employee should be managed in the same way as any other employee and consideration to managing the employee on grounds of capability would have to be given.

What can be said to an older employee in respect of their plans for retirement?

Any discussion in this regard is best off being general in nature. Any direct questions such as “are you planning to retire in the near future” are best avoided. If the employee indicates that they wish to retire then there is no problem in talking to them about their thoughts in this regard and in respect of any future working arrangements.