**Retirement How-to Guide**

# Considerations

You need to ensure that you are not placing the organisation at risk of an age discrimination claim. Since the abolition of the default retirement age, companies need to take an informed decision about whether or not they can justify a company retirement age.

Whether a retirement age can be justified will vary from industry to industry, but may be specific to your business or to specific roles within the business. So before this policy can even be written, the basic principle of having or not having a retirement age needs to be agreed by the appropriate people and if the decision is not to have a retirement age, senior managers need to be very clear about how they treat, manage and ultimately terminate an elderly member of staff who is probably long serving, but no longer capable of doing their job.

# Legal context

The default retirement age (DRA) was abolished on 1 October 2011. Compulsory retirement may now only be permitted in circumstances where an employer can objectively justify it and therefore they have an employer-justified retirement age (EJRA).

Some organisations may apply different retirement policies to different categories of staff or may move staff from one job to another i.e. a stressful high risk full time role to a less stressful, safer, part time role.

For an employer to set an EJRA, it needs to meet the following criteria:

* If an employee believes they have been dismissed from a business as a result of their age, they are able to bring an employment tribunal claim. This may be for discrimination, but could also be for constructive, unfair or wrongful dismissal depending on the circumstances.

Since the abolition of the DRA, it is the responsibility of the employee to discuss when and how they wish to terminate their employment. It is possible for employers to initiate this conversation, but it should be done as part of the normal career development or performance discussion which all employees have and not be specifically for older workers.

# Essential considerations

The main consideration for companies is whether or not there is an EJRA and if so, what this should be. It may not necessarily be 65, 68 or even 75. The actual age will need to be justified as well as the principle of setting a retirement age.

If there is no EJRA, then there must be clear guidelines for managing older workers so they do not end up being dismissed on grounds of lack of capability after 20 years of exemplary service.

Many organisations will arrange pre-retirement workshops. To avoid risks of discrimination, these should be made available to anyone who wants to attend, regardless of age.

If you are writing a policy which includes retirement due to ill health, you need to ensure that the terms of any company paid healthcare, life assurance or permanent medical insurance policies do not conflict with the retirement policy you are developing.

If your company provides a pension, you need to check that the terms of the pension scheme fit with your retirement policy and that employees who choose to reduce their hours or change their role do not lose out on their pension rights as a result.

# Additional considerations:

Parties and gifts

As well as covering the actual retirement processes, you may also want to consider offering advice on retirement parties. This advice may include whether there is a company contribution, who can be invited and whether it can be one lunchtime.

Another consideration may extend to retirement gifts or payments, traditional in both large companies and public sector organisations. To ensure consistency and therefore no discrimination, clear guidelines should be developed and communicated to those around the retiring employee. If you are going to have a culture of providing a gift, is it paid for by the employer or do friends and colleagues contribute towards a gift? You should also consider if there are any differences between:

* someone retiring with two years of service and someone retiring with 22 years of service
* someone retiring at their own request or someone retiring at the company’s ‘request’.

Advice for line managers

Where an older worker really does not want to leave and shows no signs of retiring, it is important that their line manager, or another appropriate person within the business who has a good relationship with the employee, seeks to understand the barriers to retirement. For many there may be purely financial concerns, while for others the fear of loss of contact with friends and the lack of structured days in retirement may be preventing them from seeking to retire. Each individual employee will be different and a retirement policy needs to be able to cope with different scenarios.

Returning to business following retirement

* Should an employee wish to return to the business following their retirement, would this be permitted and under what circumstances?
* Would you allow a retired employee to become a consultant to the business and invoice for the services they previously delivered as an employee?
* Would you allow someone to return part-time when they were previously in a full-time position?
* Would you have to go through a second retirement with them when the time comes?
* Would you grant continuous service to a returning employee if they came back within a certain period and if so, what is that period?
* If you allow a return for some employees, would you have an exposure rejecting this arrangement for others?

# Training

When a business is dealing with the potential retirement, resignation or termination of an older worker, many line managers will be younger and potentially less experienced than the older worker leaving and therefore specific care and attention should be given to not only training managers in what the policy is, but how to have the required conversations without offending the leaving employee.

No one wants to be told they are too old to do their job and while some people will willingly accept the situation, some older workers will aggressively fight retirement and line managers need to be fully equipped to deal with this sensitively, correctly and without exposing the business to claims of discrimination, bullying or harassment.