Guidance Notes for Employers: Handling Retirements

Introduction

* + 1. During 2011, the statutory provisions which apply to retirement dismissals and the default retirement age (DRA) of 65 years are being phased out and they will both be abolished from 1 October 2011. Transitional arrangements are in place for 6 months from 6 April 2011.
    2. This means that, from 6 April 2011, employers will no longer be able to issue notifications of retirement using the DRA and statutory procedures.

Statutory provisions and the DRA

* + 1. Under the statutory procedures which apply until 5 April 2011, employers are required to write to an employee not more than 12 months, but not less than 6 months, before his or her 65th birthday informing the employee that he/she is approaching retirement and that he/she is allowed to request to work beyond that date.
    2. Employers are able to retire employees who reach the age of 65 (or the employer’s normal retirement age, if that is higher) at any time before 30 September 2011, provided that the employee is given notice under the statutory retirement procedures on or before 5 April 2011. Simply-docs has the letters needed to comply with this statutory retirement procedure. They will be removed from the site after 5 April 2011.

Compulsory retirement age

* + 1. When the DRA is abolished, Companies will not be able to dismiss their employees just because they have reached the age of 65.
    2. From 1 October 2011, employers will not be able to compulsorily retire employees unless the retirement can be objectively justified. It is likely to be very difficult to justify a compulsory retirement age and, in order to do so, the employer would need to show that they were acting to further a legitimate aim of the business and that the actions to achieve that aim were proportionate.
    3. “Proportionate” means that:
       - 1. what the employer is doing is actually achieving its aim;
         2. the discriminatory effect should be significantly outweighed by the importance and benefits of the legitimate aim; and
         3. the employer should have no reasonable alternative to the action that it is taking.
    4. An aim could be “legitimate” if it relates to, for example:
       - 1. economic factors such as the needs of and the efficiency of running a business;
         2. the health, welfare and safety of the individual; or
         3. the particular training requirements of the job.
    5. Where the Employer believes that maintaining a compulsory retirement age can be objectively justified as a proportionate means of achieving a legitimate aim, this clause can be used in the employment contract:

**The [Company’s/Employer’s] normal retirement age is [65/(or higher age)]. When you reach this age, your employment will normally come to an end by reason of retirement. However, [the Company/Employer] will give you advance notice of your intended retirement date.**

Options for Employers

* + 1. Employers can decide to operate without a compulsory retirement age. This means that the Employer will not be able to ‘retire’ employees. Instead, the employee can decide when to retire and the only reason the Employer can dismiss them for is one of the potentially fair reasons of, for instance, lack of capability, misconduct, statutory restriction or redundancy, having followed a full and fair procedure.
    2. The employer can maintain a fixed, objectively-justified, retirement age. However, the employer should be aware that the test of objective justification is not an easy one to pass and a fixed retirement age will amount to age discrimination unless it can be objectively justified.
    3. The employer can maintain a fixed, objectively-justified retirement age for some specific roles in the organization but operate without a compulsory retirement age for others.

Voluntary Retirement

* + 1. Obviously, employees can still choose to retire voluntarily. In those circumstances, the employee should inform his/her line manager, ideally giving as much notice as possible. As a minimum, the employee must give the employer the amount of notice set down in his/her contract of employment.
    2. The employer should write to the employee acknowledging his/her notice to retire.

Benefits

Under the Employment Equality Regulations 2011, employers may, with effect from 6 April 2011, reduce or withdraw insurance benefits for employees aged 65 or over and this action will not amount to age discrimination.