

***Retiring from Work
Employment Law
Developments 2016***

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2016 Updates – Mandatory Retirement Age

- Since 1 January 2016 employers (public and private sector) can set a mandatory retirement age provided:
 - (a) it is objectively and reasonably justified by a legitimate aim (such as employment or labour market policies or vocational training) and
 - (b) The means of achieving that aim are appropriate and necessary
- This position is consistent with the directive on age discrimination, case law of CJEU and recent Irish case law

2016 Updates – Mandatory Retirement Age

- Employers must be able to objectively justify the retirement age in their own organisation if called upon to do so.
- The objective justification test is applied when the mandatory retirement date is set and not at the point of the employee retiring.
- An employees pension becoming payable at a certain age was held not to constitute objective justification *Elizabeth Sweeny v Aer Lingus Teo*

2016 Updates – Mandatory Retirement Age Case Law

Legitimate Aims which have been accepted by third parties

The creation of prospects in the labour market for individual seeking employment

Case: *Palacios de la Villa v Cortefiel Servicios S.A.*

- CJEU noted mandatory retirement age was put in place at instigation of trade unions to promote better distribution of work between generations

Case: *Fuchs v Land Hesson*

- CJEU agreed that establishing a balanced age structure, encouraging recruitment of young people and preventing disputes about the performance of older people were deemed objective justification

2016 Updates – Mandatory Retirement Age Case Law

Legitimate Aims which have been accepted by third parties

Health and Safety reasons – generally only Safety Critical roles

Case: Michael Chrzanowsky v Transdev Dublin Light Rail Limited

WRC-Risks associated with advancing age to include deterioration in reaction times and tram drivers aged between 60 and 65 are five times more likely to be absent (due to illness or injury (than drivers under 50))

Case: Saunders v CHC Ireland Ltd

Equality Tribunal agreed mandatory retirement for winchmen at 55 was objectively and reasonably justified.

2016 Updates – Mandatory Retirement Age Case Law

Legitimate Aims which have been accepted by third parties

Ensuring motivation and drive of employees through the increased prospect of promotion due to senior members of the organisation retiring

Case: *Doyle v ESB International*

The Tribunal held that the retirement age ensured “...*cohesion among all of its employees*”

Case: *Donnellan v Minister for Justice, Equality and Law Reform*

Irish High Court accepted that a retirement age was necessary to ensure “*motivation and dynamism through the increased prospect of promotion*” were “*rational and legitimate*”

2016 Updates – Mandatory Retirement Age Case Law

Legitimate Aims which have been accepted by third parties – a higher threshold?

Case: O'Mahony v Southwest Doctors On Call Limited (South Doc) 2014

Respondent permitted to offer a “business centric” justification but Tribunal concluded it was not trying to retain younger people or plan for succession – simply trying to reduce headcount in the least expensive way.

2016 Updates – Interdepartmental Group on Fuller Working Lives

The Group developed a set of broad principles in order to encourage individuals to remain in employment beyond what is considered to be the normal retirement age. The principles include:

- An acceptance in society that longer working is not only possible, but also necessary so as to adjust with the increase in age for eligibility for the state pension;
- Facilitating workers, insofar as possible, with the option to work beyond normal retirement age, having regard to certainty and flexibility in relation to workforce planning;

2016 Updates – Interdepartmental Group on Fuller Working Lives

Recommendations

- Providing older workers with appropriate support and training. Additional fixed term employment contracts should be fair, with the terms and conditions of the previous contract of employment taken into consideration and;
- Social welfare should continue to provide a safety net for those who are not in a position to work longer

2016 Updates – Interdepartmental Group on Fuller Working Lives

Recommendations

- The Department of Jobs, Enterprise and Innovation will request that the Workplace Relations Commission develop a Code of Practice in relation to longer working
- Employers should ensure that they have a clear policy on retirement in place, which has been communicated to employees. Awareness should be raised by employers and worker representatives of the practicalities of working longer. These issues should include tax treatment and retirement income, incentives to remain in work, training and employment opportunities, etc.

2016 Updates – Interdepartmental Group on Fuller Working Lives

Recommendations

- The Department of Education and Skills would request SOLAS and the Education and Training Board in the context of the National Skills Strategy to support older workers remaining in the workforce by providing them with training opportunities.

Questions??

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