Employer Perspectives on Enforced Retirement Ages

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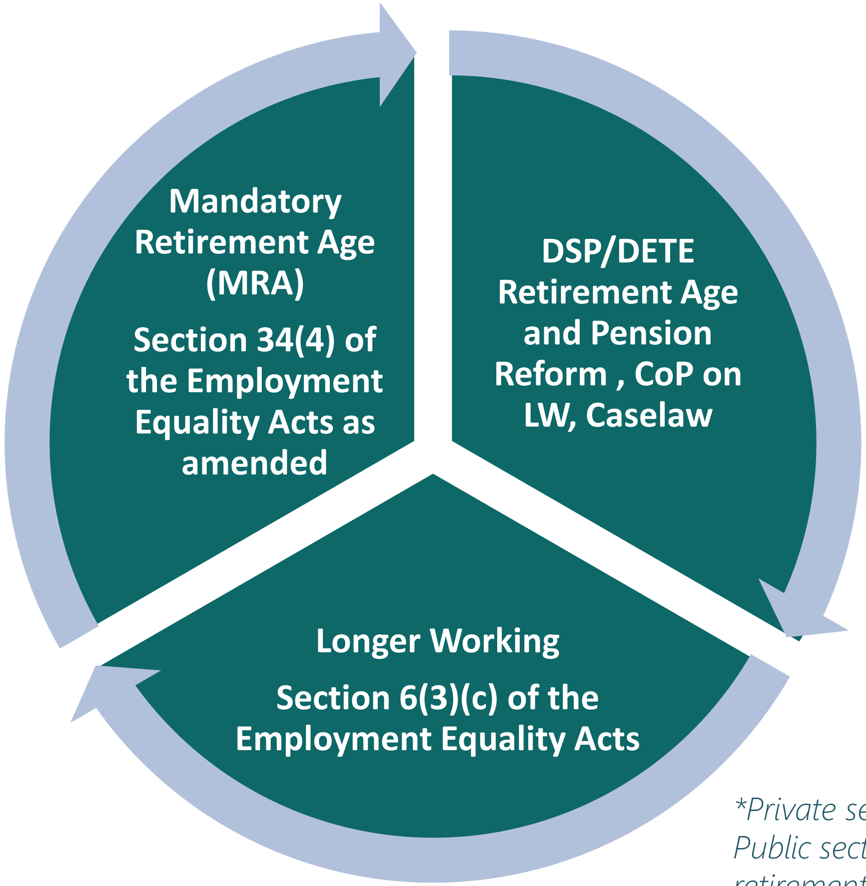
Status Quo
Current legal position with CRAs* and LW

Must have an enforceable contractual retirement age either through an express or implied term



Objectively and reasonably justified by a legitimate aim and the means of achieving that aim are appropriate and necessary"

**Private sector*
Public sector employees majority have a maximum statutory retirement age of 70 years with exception of those recruited b/w 2004 & 2012 who have no CRA and "Uniformed Fast Accrual Groups"

Evolving
Legal Position with CRAs and LW

"put the power in people's hands and give them the choice in terms of what best suits their own circumstances…..to allow, but in no way compel, an employee to stay in employment until the State Pension Age"

- Social Welfare (Miscellaneous Provisions) Act 2023
- Auto-Enrolment Pensions Savings Scheme Act
- Employment (Contractual Retirement Ages) Bill 2025

Caselaw

Fuchs &Kohler v Landhessen C-159/10 The Court has accepted that a measure that allows for the compulsory retirement of workers when they reach the age of 65 can meet the aim of encouraging recruitment and be regarded as not unduly prejudicing the legitimate claims of the workers concerned, if those workers are entitled to a pension the level of which cannot be regarded as unreasonable (following Palacious de la Villa C-411/05para 73)

Mallon v Min for Justice and the AG IECS20

Statutory retirement age upheld

"A significant factor in assessing whether a mandatory retirement rule is "appropriate and necessary" will be the financial impact on the persons involved and whether it will result in undue hardship to them. In that context, whether they will, on retirement, be entitled to an adequate pension is an important consideration." (exception to the application of Donnellan)

An Garda Siochana v Ronan EDA2560

AO ordered re-engagement for a period of 3 years referencing that the statutory CRA gave rise to undue harsh financial consequences.

LC overturned the AO decn relying on Mallon "[T]the State's policy of a mandatory retirement age of 70 as being entirely consistent with the jurisprudence of the CJEU. "

Roper v RTE ADJ-00019084

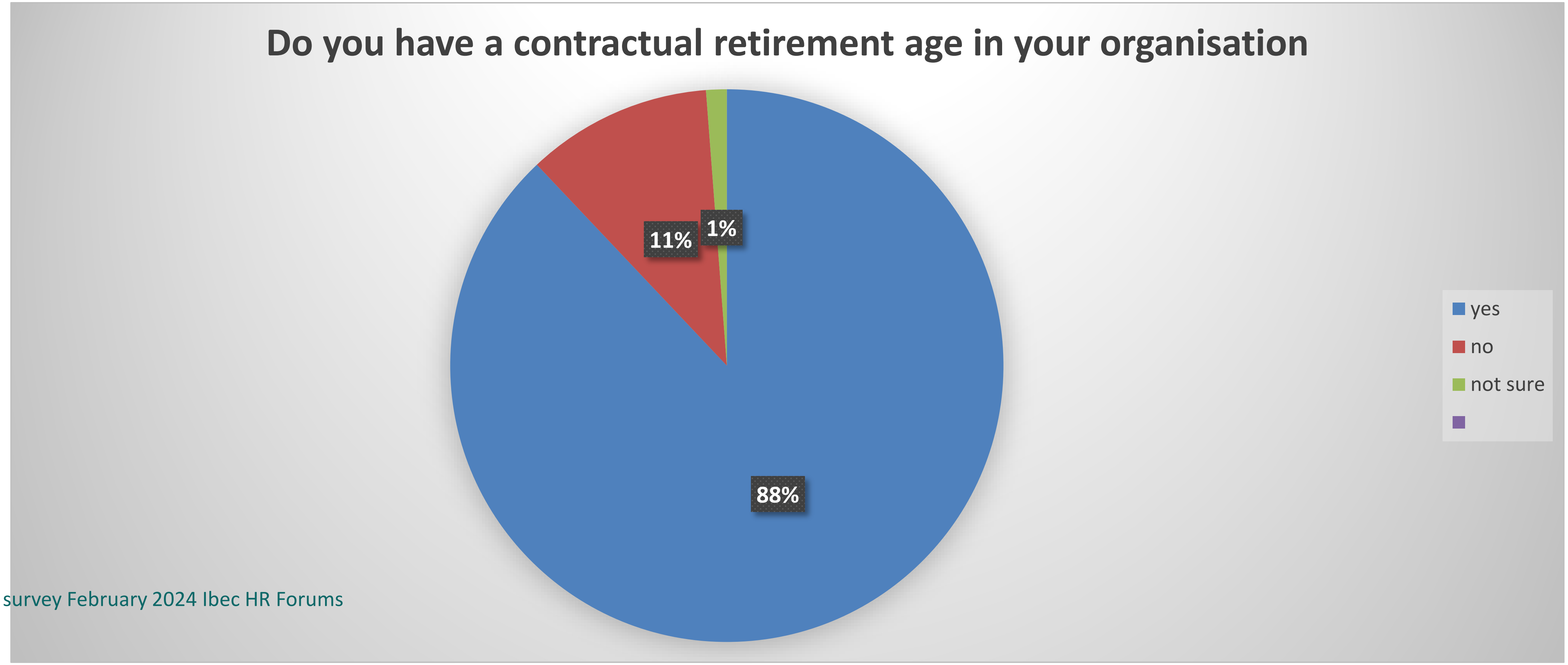
Award of 100k/CRA implied by reason of NRA

Salary drop from 100k to 12k

Obj. justification failed due to the "*disproportionately negative effect on the complainant of her retirement compared to the dubious positive impact on her employer.*"

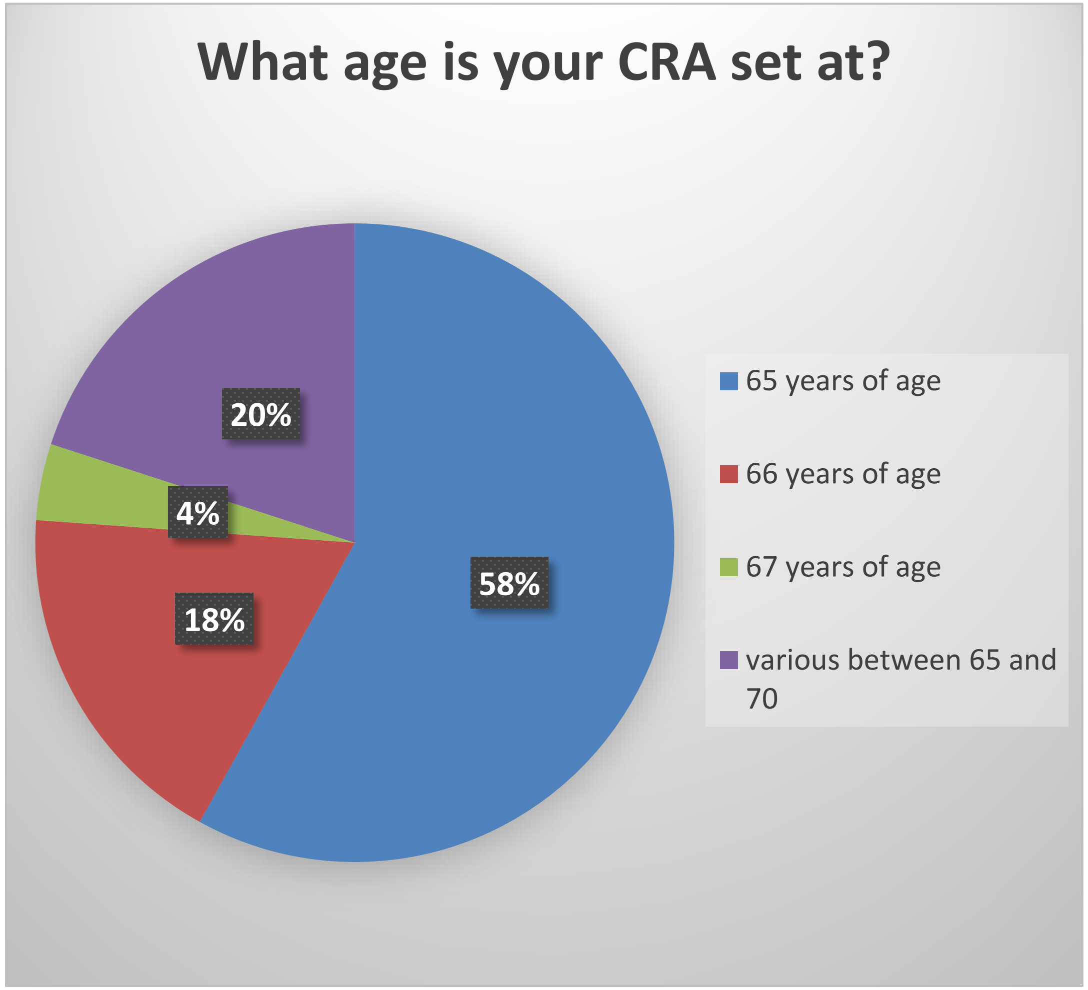
Poll Question	Do you intend working beyond 65 years of age
1	Yes- for social and intellectual reasons
2	Yes-because I am fit healthy and able to work
3	Yes-because of financial reasons
4	Yes-for other reasons
5	No
6	I don’t know yet

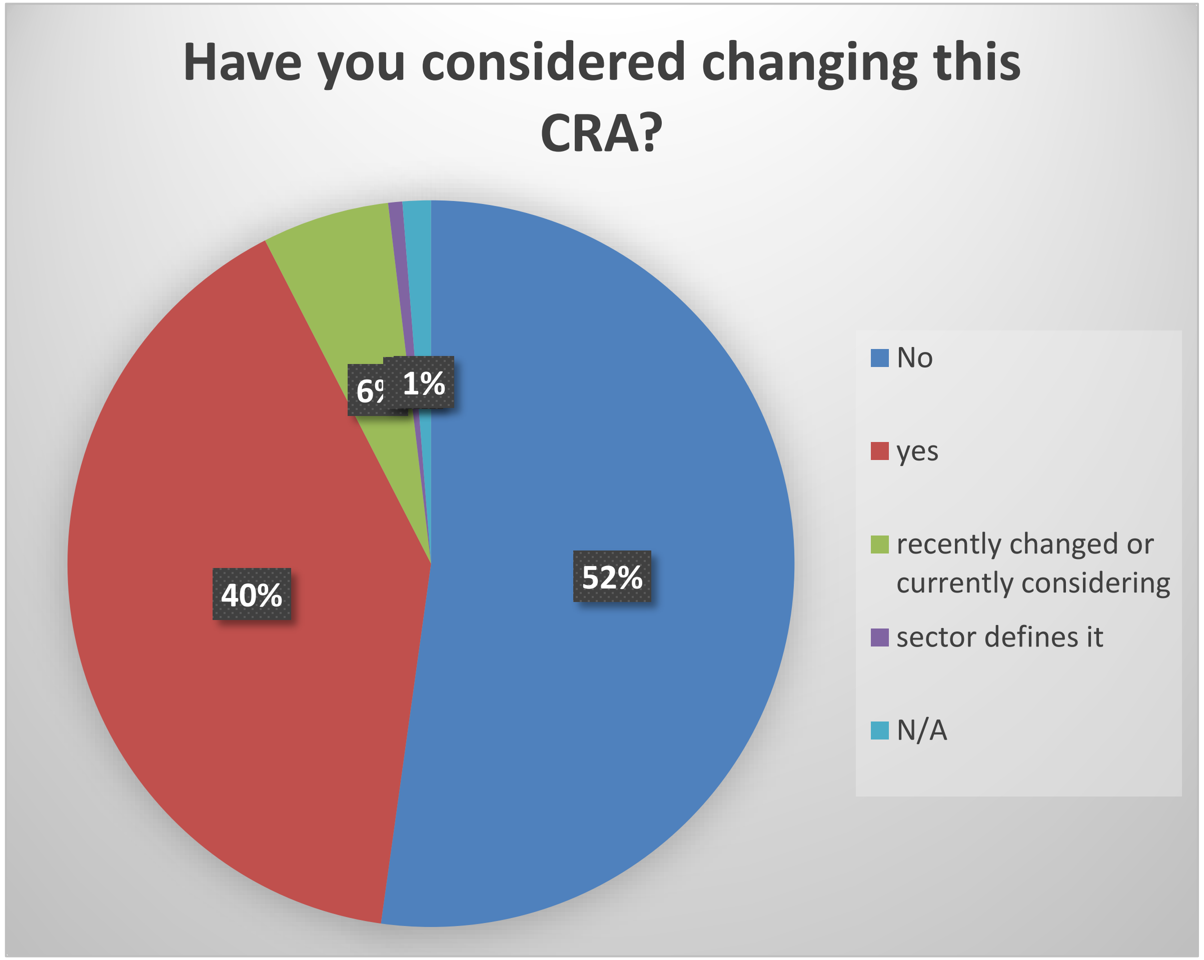
89% of Ibec members surveyed* had a CRA



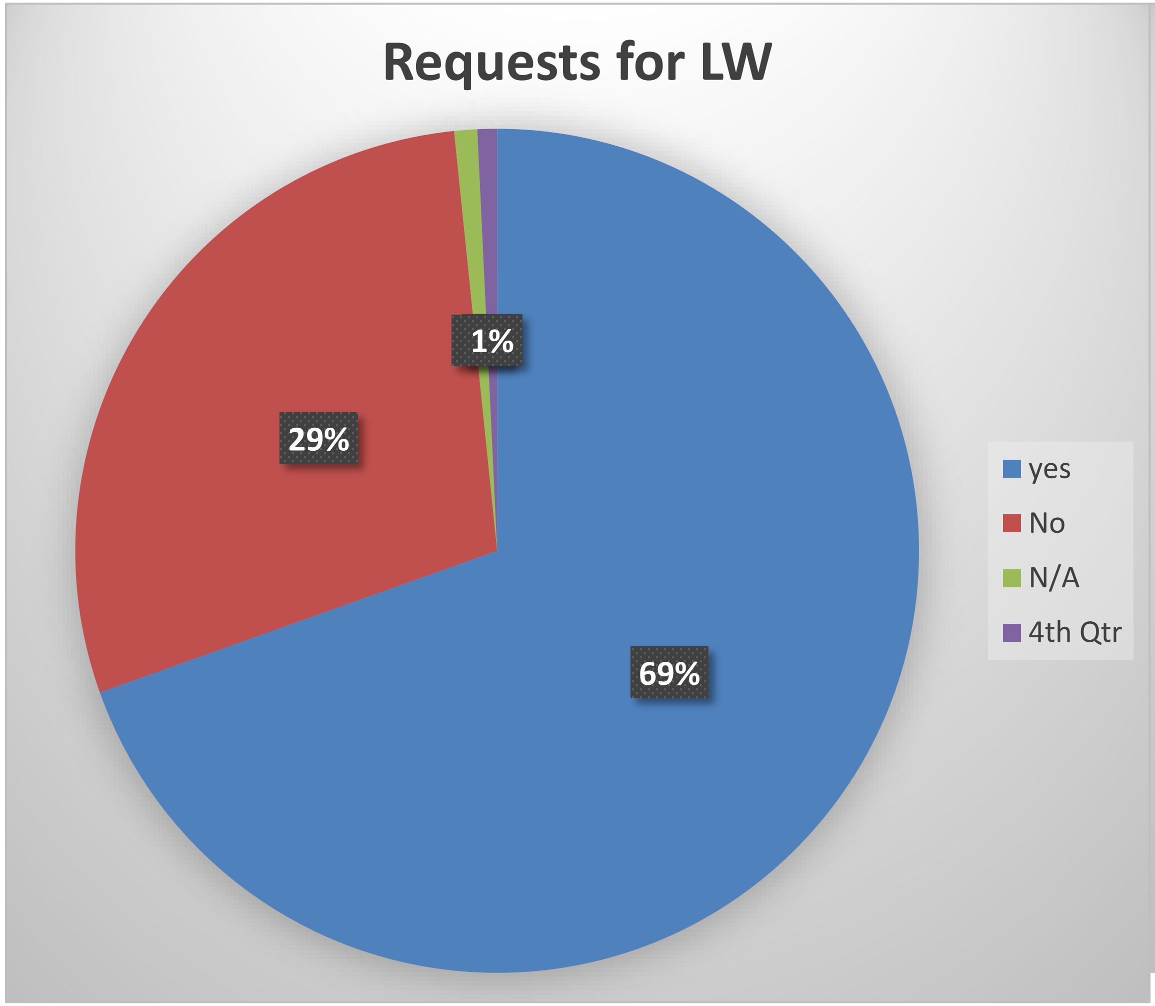
*Flash survey February 2024 Ibec HR Forums

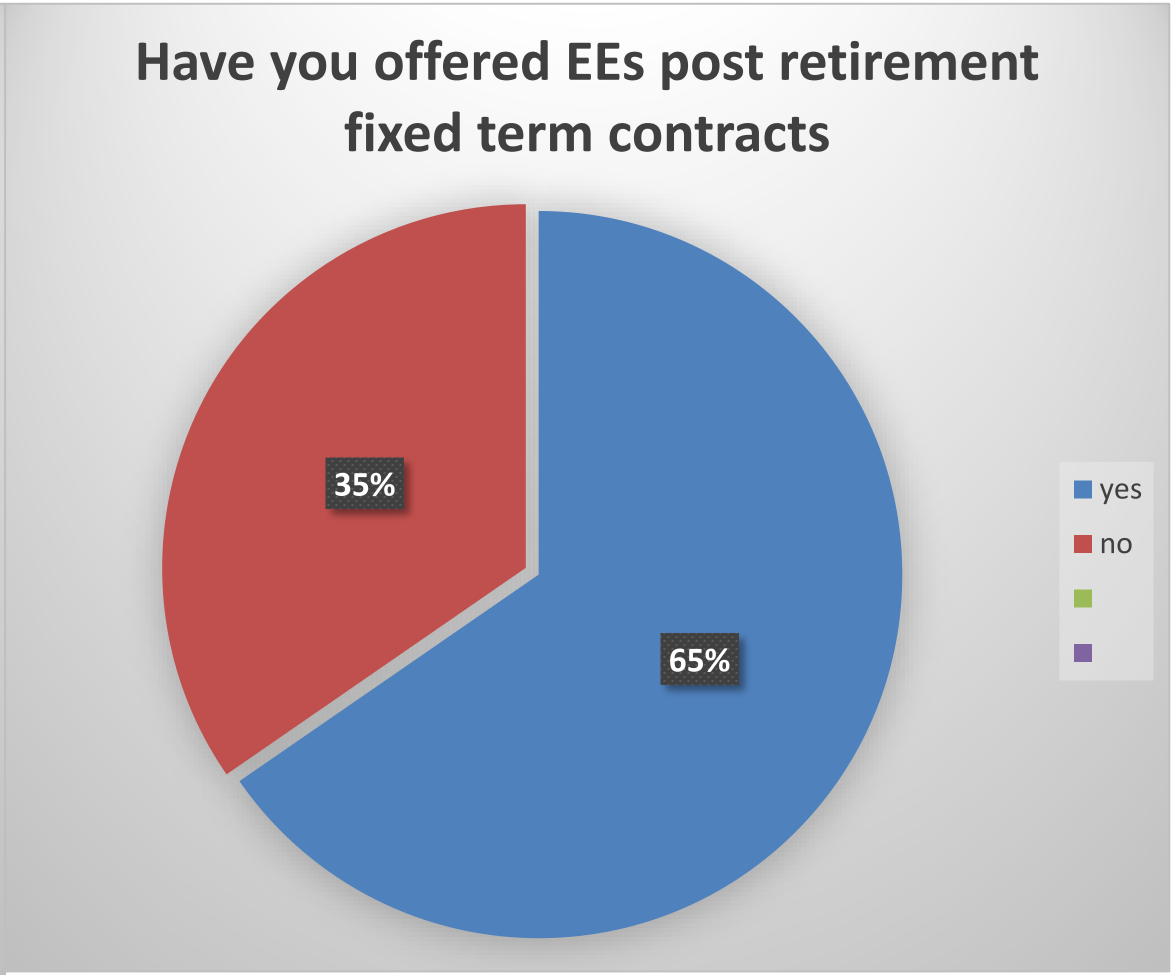
58% of Ibec members surveyed* have a CRA of 65 years with 46% having changed/considering changing their CRA





Longer Working





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Why retirement ages

Creates a legitimate autonomy of employers for workforce planning

“Good workforce planning is a critical element in any workplace. Central to this are appropriate employee numbers and skillsets, recruitment, and planning for departures including retirement.”

Code of Practice on Longer Working S.I.600/2027

NO CRA

Succession planning and intergenerational fairness would likely be more difficult to achieve

Robust policies req'd for e.g. the management of an employee's dignity in relation to fitness to work reviews that did not offend the EEAs

Potential rise in obligations to provide reasonable accommodations

No restrictions on redundancy payments to be made to employees close to retirement as provided by the EEAs

Review of OPS and other contractual benefits- PHI & DIS cover where provided.

The Gap

Gap created by rise on 1 January 2014 of State pension age 66 (with provision for incremental rise to 68 in 2028 repealed)

Options for ERs;

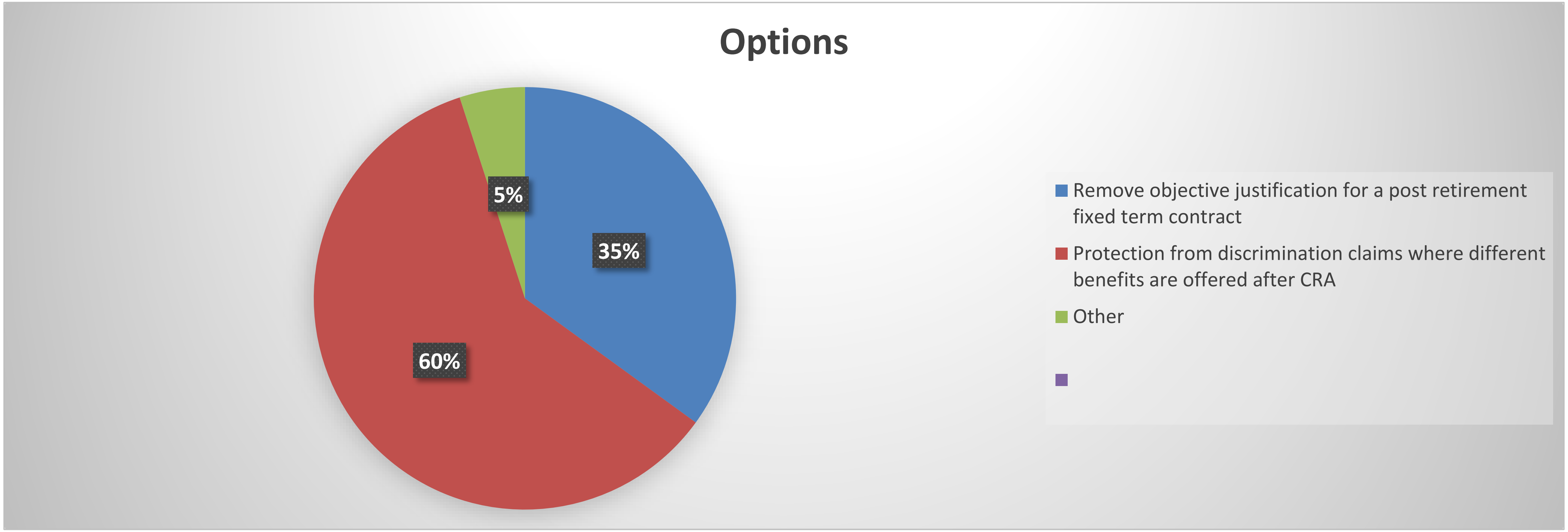
Retain/enforce 65 yrs as CRA,

Align CRA to 66 years on a voluntary basis

Remove the CRA and allow employment indefinitely,

Offer post-retirement fixed term contract in line with section 6(3)(c) of the EEAs

Other options to support employers in aligning the fixed age for retirement with the state pension age



Longer road for EE working lives.

Retirement ages of 65 to become a thing of the past with exceptions

Term of the post-retirement fixed term contract to increase

COP on LW to be revised

Increased/renewed policies and training

Need for simplification of regulation and clear infrastructure to allow the pension landscape support longer working with provision for additional products

Thank you