Compulsory retirement age
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Retire when you want revolution

The age at which people retire, or are expected to retire, from employment is a subject which has been gathering a lot of attention in recent years. In the past most people understood that retirement would be at age 65 – the age when the State Pension was available. However, with increasing life expectancies, financial commitments and changing lifestyles, many employees may wish to retire at a different age – and possibly have a different work pattern in later years of employment.

One key factor which may drive employees' desire to work beyond age 65 is the fact that the State Pension Age is now 66 and is set to increase further to age 68 by 2028. A general consensus is emerging that mandatory retirement ages should be abolished, thereby letting employees decide, based on their own personal circumstances, when they will leave employment – ‘the retire when you want revolution’.

Citizens' assembly

The 99-person forum voted overwhelmingly in favour of abolishing the practice of employers setting an age at which workers must retire, with 86% of members opposing mandatory retirement ages.

For many employers, having a fixed retirement age can enable them to achieve certain aims – such as workforce planning, the creation of promotional opportunities for younger employees and managing health and safety concerns. This is now being challenged. Whilst there is no statutory retirement age for private sector employees in Ireland, many employment contracts specify a date of the employee’s 65th birthday. Many private sector organisations rely on a retirement age on the basis of custom and practice or arising from pension scheme documentation. In other cases, especially for small organisations with few employees, there may be contracts of employment in place.

An employee’s perspective

A key motivation for an employee wishing to work beyond age 65 may be that of the cost and affordability of retirement. As it stands, there is an income gap between ages 65 and 66 – members commence the drawdown of any private pension provision they may have at age 65 but the State Pension benefit does not commence until age 66. This gap will widen further as the State Pension Age continues to increase. This will of course be a particular concern for those with smaller private pension benefits, who haven’t made appropriate pension provision. Therefore, a priority for employers should be to actively engage with their employees on the importance of retirement planning and pension provision, particularly where there are significant numbers who are in the run up to retirement.

The issue for not-for-profit organisations as employers

As a first step an employer will need to determine whether this will likely be an issue for them, and how they might address the issue in a manner that fits in with their ethos and their wider role and purpose.

Equality legislation

As an employer, a not-for-profit organisation needs to comply with all the relevant equality legislation and, in some cases, this may require a change to employee policy and practice. In our experience, not-for-profit organisations often have more diverse workforces in terms of age profile (by comparison to that prevailing generally). Where an organisation chooses to impose a set retirement age on its employees, then Irish equality legislation does not prohibit this where the employer is able to objectively justify compulsory retirement - i.e. a retirement age can only be enforced if an employer can give reasonable and proportionate grounds for doing so. Objective justification is not currently defined in Irish Regulations – therefore this leaves it to each employer to justify any compulsory retirement by reference to its own circumstance and exposes it to the legal risk of age discrimination claims.

Alternatives to retiring at a fixed age

Fixed term contracts are sometimes used as a tool to allow an employee work beyond the contractual retirement age. Where an employer chooses to offer a fixed term contract to an
Steps for employers

• Establish whether it is desirable to set a compulsory retirement age for employees.

• Check whether a retirement age is set out in contracts of employment.

• Where is it is deemed desirable to have a set retirement age:
  • It should be set out in contracts of employment;
  • A policy should be put in place and clearly communicated and applied consistently to all staff;
  • Objective justification for a compulsory retirement age should be set from the outset – not just when a case arises; and

• The employer should actively engage with employees on retirement planning, pension provision and other State benefits available to ‘bridge the gap’ before the State Pension commences.

• Where a fixed term contract is offered, the decision to award it should be clearly documented. Again, consider putting in place a policy for such decisions.

• Consider how any contractual retirement age interacts with pension, death in service and disability benefits.

Case study – a Workplace Relations Commission Ruling July 2017

A former employee brought an unfair dismissal claim on the grounds of age to the Workplace Relations Commission against his former employer. The former employee stated that he was not provided with a written contract of employment, but did receive a statement of his terms and conditions of employment which was silent on the matter of a retirement age, and he did not enter into any agreement with the former employer in relation to retirement.

The former employer stated that the normal retirement age of 65 had been well established in the company and is an implied term of employment. The company has an occupational pension scheme in place which specifically provides for a normal retirement age of 65. The former employee was offered the opportunity to join the company pension scheme, which he subsequently declined.

The company has established objective justification for their retirement age of 65 years including health and safety, workforce and succession planning and promotion and inter-generational fairness.

The Adjudicator’s Findings and Conclusions

The Adjudicator held that the company had not fixed a retirement age in respect of the former employee and that he was dismissed because of his age.

• The company had ample opportunity to inform the former employee of a requirement that he retire at age 65;

• It could not be accepted that the former employee had knowledge of a retirement age of 65 years on the basis of his declining to join a company pension scheme;

• There was no express term in his conditions of employment requiring him to retire at age 65 years and, in the Adjudicator’s opinion, no such term can be regarded as having been implied or incorporated on any of the accepted tests.

As it was held that the former employee was dismissed because of his age, it was not necessary for the Adjudicator to consider Respondent’s arguments of objective justification for a retirement age of 65 years. However, it was noted that the justifiable reasons provided by the company were as a result of a report completed after the former employee’s retirement and at no point in written correspondence prior to retirement had the company explained this reason for his retirement as a reasonable and justifiable requirement for a retirement age of 65.

employee to work beyond the contractual retirement age, the justification underpinning this decision should be driven by considerations which are different to those considerations underpinning the overall retirement age in the organisation. Consideration could be given to changing the policy on retirement age altogether – does the current policy remain appropriate and where there is a contractual retirement age is it objectively justified? Looking at this now means that an organisation will be prepared and understand the issue should the abolition of a mandatory retirement age take place.
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