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Retirement

A Guide



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INTRODUCTION

The default retirement age of 65 ceased to exist from October 2011. This means that most people can now carry on working for as long as they want to and retire when they choose.

If an employer does force an employee to retire (known as compulsory retirement), the employee would be able to challenge this at an employment tribunal.

Although most employers no longer set a compulsory retirement age, some may choose to do so, providing it can be justified.

This short guide covers some of the key points involved in retirement but it is always a sensible step to seek legal advice tailored to your particular circumstances.

KEY POINTS TO REMEMBER

- For all employers, it makes sense to have **regular meetings** (or at least an annual appraisal meeting) with employees to discuss their performance, training needs, plans for the business and the way these may affect employees and the employee's future plans.
- This approach creates an opportunity for the employee to raise the issue of **retirement**, including their **preferred date**. Employers and employees can also talk about changes to working arrangements in the run-up to retirement, for example reduced hours or more flexible working patterns. It is sensible to keep a note of what is discussed in these meetings.
- It is good practice for the employer to discuss future plans with all **workers, of all ages**, to avoid potential discrimination claims on the grounds of age.
- Once an employee has given their employer **formal notice** that they intend to retire on a specific date, but then changes their mind, the notice can only be withdrawn if the employer agrees.
- Under the default retirement age regime, employers could retire employees who were **not performing well** when they reached 65. Although this option is no longer open to employers, they can dismiss employees on the grounds that they are not capable of doing their job to the required standard or are capable but unwilling to work to the standards required.
- The correct **disciplinary procedures** must be followed when dismissing someone on capability grounds or the employee may be able to claim unfair dismissal.
- If a capability issue is linked to someone's **health**, the employer should explore other ways to help them do their job (e.g. providing equipment that allows them to work more effectively, such as a new chair where the old one is making back pain worse).
- It may suit the employer and employee for them to reduce their hours or to **work more flexibly** (e.g. from home) as they approach what was the traditional retirement age. This allows the business to continue to benefit from the employee's skills and knowledge about the job while the employee prepares for retirement lifestyle.

RETIRING EMPLOYEES AT A SET AGE

Employers may still be able to retire employees lawfully at a set age provided that the retirement age can be objectively justified as a **proportionate response to a legitimate aim**. Being able to justify this set age would be crucial if an employee challenged the policy at an employment tribunal.

In these circumstances, the advice of an employment law specialist would be particularly helpful, as employers need to ensure that the retirement age they set would objectively meet the legitimate aim test, for instance if it:

- supported in workforce planning (the need for business to recruit and retain staff, provide promotion opportunities and effectively manage succession)
- protected the health and safety of individual employees, the wider workforce and the general public.

They must also be able to provide objective evidence to support their reasons for imposing a compulsory retirement age.

If they are able to establish a compulsory retirement age, employers will need to follow a fair procedure when retiring employees who reach it.

Employers considering a compulsory retirement age might find it helpful to look at other approaches to achieving their workforce planning, health and safety or other legitimate aim.

To find out more about how we can help you, please contact us:



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Donna is a solicitor in the Employment team of Mackrell Turner Garrett's London office, where she advises both employers and employees on a full range of contentious and non-contentious issues.

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