

Employment Law

September 2010

Phasing out the Default Retirement Age

At the end of July the Government published a consultation document setting out its proposals to phase out the default retirement age (DRA) of 65 and the statutory retirement procedures. The consultation period ends in October and we hope to have more details for you then. In the meantime, in this Alert we look at the proposals and the impact they could have on employers.

The Current Legal Position

Currently, an employer can require an employee to retire at the age of 65 without paying any financial compensation. The Employment Equality (Age) Regulations 2006 ('the Regulations') set out a 'duty to consider' procedure under which employers are required to notify the employee between six and twelve months before their intended date of retirement. The employee may make a request to continue to working beyond this date, but there is no obligation on the employer to agree to such a request.

New proposals

From 6 April 2011, transitional arrangements will be introduced to phase out the DRA. After this date, no new notifications of retirement under the DRA can be issued by employers. From 1 October 2011 the DRA and the statutory retirement procedures will be abolished.

Transitional arrangements

Where the employer has given notice of retirement under the DRA before 6 April 2011 and:

- the intended date of retirement is before 1 October 2011, the DRA will continue to apply so long as the employer continues to follow the statutory retirement procedures
- the intended date of retirement is after 1 October 2011, the DRA will no longer apply. The employer will need to objectively justify any retirement taking effect after this date

If an employer gives notice of retirement after 6 April 2011, they will not be able to rely on

the DRA. They may be able to rely on their own contractual compulsory retirement age. However, to do so, the employer will need to be able to objectively justify the retirement age. The alternative for the employer would be to rely on one of the other potentially fair reasons for dismissal (most probably capability).

Advantages

Older workers may support these changes if they want to work beyond 65 and are capable of doing so. Is it right to compel an employee to leave earlier than they otherwise would wish or need to? Current statistics show that 45% of 60-64 years olds are in employment, many of whom may wish or need to work beyond the age of 65.

Disadvantages

Many commentators are concerned that the new proposals could 'open the floodgates' and allow for an influx of age discrimination claims. The new proposals will inevitably make it harder for employers to 'performance manage' employees

out of the business who might otherwise have retired with dignity. The DRA does facilitate a predictable and respectable end to employment. Employers will be forced to introduce more rigorous performance management procedures in order to promote as well as dispense with employees.

Conclusion

Whatever the opinions about the new proposals, employers are certainly going to have to rethink their policies and procedures in relation to retirement. Employers should review the age profile of their workforce now and consider whether they intend to retain a contractual retirement age and associated retirement procedure. Employers who wish to do so will need to be able to objectively justify the age chosen.

For more information please contact:



Petra Venton

t: +44 (0)1892 506041

e: petra.venton@crippslaw.com