

D3 Employee Solutions Factsheet

No 4 Retirement Rights

D3 Employee Solutions' Factsheets reflect our understanding of the law as at the date in the footer. They are meant to summarise the situation and should not be relied upon as a definitive or complete statement of the legal position. Always seek advice if in doubt.

Until 2006, it was normal for employees to retire at the age set by their employer as the 'normal retirement age'. Provided that it was the same for men and women, the normal retirement age could be any age and the law did not class retirement as a dismissal.

With the advent of the Age Discrimination Regulations in 2006 it became unlawful to insist that employees retire at a retirement age below the age of 65. Retirement is now classed as a dismissal and is one of the potentially fair reasons for dismissal.

Forcing someone to retire is currently fair provided:

1. It is no earlier than age 65, unless an earlier age can pass the 'tough test' of 'objective justification' – even if a person is able to take their pension earlier
2. At least 6 months and no more than 12 months' notice is given – even if the retirement age is set down in the employee's contract
3. When notice is given, the employee is advised that they can request to continue working
4. Where such a request is made, a meeting is held (at which the employee has the right to be accompanied) to discuss the request
5. The employee is permitted to appeal the employer's decision

An employer is not obliged to agree to a request; nor are they obliged to give reasons for whatever decision they reach, although it might be considered good practice to do so. However, in reaching decisions on these matters they must not discriminate on grounds of race, gender, disability, sexual orientation or religious belief.

If an employer does agree to a request it can be:

- To the same or different work

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- To the same or different hours
- For an indefinite period or for stipulated period.

When it is for an indefinite period, a decision to dismiss by reason of retirement will need to follow the same procedure if it is to be fair

Removing the Default Retirement Age

The Government set the so-called default retirement age of 65 somewhat reluctantly and it set 2011 as the year for reviewing it. This review was brought forward to 2010 and the new Coalition Government has announced that the default retire age of 65 will be abandoned with effect from 1st October 2011.

There is currently a formal consultation process on the detail of the change, but it is extremely unlikely that the proposal will fundamentally changed.

Therefore from October 2011 employers will either have to 'objectively justify a particular retirement age' (not easy!) or get used to an era of flexible retirement. We can assist employers in determining their new retirement policy in response to this change.

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