

## ***“Age is not just a number”***

### **A guide to retirement and retirement planning**

Up until recent times handling retirement and retirement, planning was easy. Men retired at 65 and women retired at 60. It may have been complicated in certain circumstances by what had been agreed with individual's and possibly what their contract of employment stated. However, in most cases, it was a simple affair; you would know Eric was approaching his 65<sup>th</sup> birthday and the natural way of doing things was that he would leave and put up his feet and tell the time using his commemorative carriage clock.

Things have changed since the introduction of the Employment Equality (Age) Regulations 2006. This much-publicised piece of legislation covers many areas relating to age discrimination in its broadest sense. When you think of age discrimination you might think, it relates more to those employers who, say, did not take on that 55 year old because they are “too old”. Well, the legislation looks to address this but its reach is much greater than that.

One area, which the legislation does address, is the age of retirement. For seemingly as long as any one can remember the ages of 60 and 65 were the only 2 that mattered, but its now so different.

This guide provides you with an outline of what you need to do should you have a staff member who is approaching retirement age. There are no exclusions for the smaller business- if you employ one member of staff or more and they are approaching “pension able age” then you need to start thinking about retirement planning

### **What has changed?**

The new Regulations have introduced a default retirement age of 65. This means that (in the absence of a higher retirement age established by the employer), 65 is now the contracted age that all staff retire at (regardless of sex)

The Regulations have now introduced a statutory procedure that you must follow should you have a staff member approaching the default age. As this is now a statutory procedure, all employers *must* follow this on all occasions.

The Regulations now provide for employees to have the *right* to request to work beyond the default retirement age of 65. Employers do not have to agree to the request but *you must follow the statutory procedure at all times.*

## **How to handle retirement**

### Stage 1: Retirement Planning

Retirement planning is no longer about pensions and monetary matters. Retirement planning for you as an employer is as simple as knowing when a staff member is approaching retirement.

To plan effectively you need to take account of the following:

1. What do your contracts of employment state in respect of retirement age? If they vary for men and women then these should be updated to reflect the default age
2. Check the ages that staff have actually been retiring at. If you have routinely let staff leave after the age of 65 you have set custom and practice at this which could affect your ability to say no to others.
3. Check the dates of birth for all staff and make particular note of those members of staff who are approaching the default age. This awareness is essential when operating the statutory procedure.

### **Stage 2: Operating the statutory retirement procedure**

The statutory procedure is very specific and providing it is followed, you should have no issues when it comes to dealing with staff who are retiring.

If you plan to retire a member of staff, you must:

- 1. Notify the staff member in writing of both:**
  - a. Their intended retirement date
  - b. Their right to *make a request* to continue working beyond this date

Your written notice must be given not more than twelve months before and *not less* than six months before the planned retirement. This is why it is so important that, through retirement planning, you know when someone is to retire and plan it in your diary.

This notification is absolute and, as such, it does not matter what is contained in a contract or staff handbook, the notification must be completed.

- 2. Respond to the staff member's request to work beyond their retirement date**

If a member of staff makes a request to work beyond their retirement date then you need to *call a meeting*. This meeting should be called within a reasonable time of being requested and certain things should be remembered:

- The staff member has *the right* to be accompanied by a work colleague (though not to a trade union member who is also a not

an employee). NB There are financial penalties should you fail to give the staff member the right to be accompanied.

- After the meeting, the employer should notify the staff member in writing of his decision. This should be done as soon as possible

NB: It is good practice to call the meeting and discuss the consequences of extending the retirement date i.e. what it means to the individual, what the law says about continuing employment *even* if you are happy to grant the request without consideration. The law does negate the need to call a meeting should you be happy to grant the request but to re-iterate, a meeting is good practice

### **Consequences of saying yes to the request to extend retirement age?**

- 1 If you agree to the request to continue to employ, the staff member's terms and conditions of employment will continue. You can agree a change e.g. different or more flexible hours but approach this with caution.
- 2 You should look to agree a new retirement date ( this isn't a legal requirement but certainly should be done)
- 3 Make sure everything is in writing

### **What happens if you want to say no to their request?**

The law places a big emphasis on following the procedure. If you do this (and give the reason for letting them go as retirement) then you should be fine. However, be very careful what you say as unnecessary comments could land you in trouble. If they are leaving because of retirement – this is the only reason you need to give

The employee has the right of appeal and can do this in writing (as with other Reasons for termination of contract. A meeting should be held to hear their appeal Again- REMEMBER THEIR RIGHT TO BE ACCOMPANIED.

### **What happens if the staff member stays on but you want them to retire at a later date?**

This is simple; you need to follow the statutory procedure again. However, if the original extension of employment was six months or less there is no need to notify and hold the meeting etc (though as with all things, having a meeting and discussing the situation is always recommended)

### **3. What happens if the staff member wants to retire**

If an employee wants to leave before their retirement date then this is not a dismissal, it is a resignation. A staff member may make their intentions clear well

before their retirement date and/or it may be picked up when you have followed the statutory procedure.

#### **4. The consequences of getting it right or getting it wrong**

It is very important that the procedures be followed. Failure to do so could lead to a judgement of unfair dismissal in that it is concluded that even though the staff member had reached their contracted retirement date, the contract should not have been terminated for retirement reasons. It may be that a judgement of automatic unfair dismissal is made if you do not do the following:

- Notify the staff member of their right to make a request not to retire
- Do not consider the staff member's request to retire
- Consider an appeal.

As mentioned earlier, there are financial penalties should you not give the staff member the right to be accompanied.

In summary, failure to follow procedure may cost you money and significant grief and lost time.

#### **In summary**

In summary, age is no longer a number. As with many things, it is all about following procedure. If you do follow procedure, retirement and retirement planning is easy. Failure to follow this is likely to cost you; and remember it does not matter how many staff members you employ.