

news

Age discrimination - when I'm 65?

The concept of age discrimination is pretty fundamental in the context of pensions but there is no existing law which prohibits it¹. This is set to change from October 2006 when new legislation will come into force. Details are currently sketchy as Regulations will not be published until later this year, but employers need to start planning. Here we take a quick look at what we already know, including some recent developments.

Age discrimination

The origins

- The UK Government must introduce age discrimination law to comply with the EU Framework Directive for equal treatment in employment and occupation (the "Directive").
- This will affect working practices from recruitment to retirement and all stages in between. There is no exemption for pensions.

Discrimination

What will be prohibited?

- The new law will prevent both direct and indirect age discrimination.
- Direct discrimination may occur when one person is treated less favourably than another purely on age grounds (e.g. age-related employer contributions paid to a money purchase scheme).
- Indirect discrimination may occur when an apparently neutral provision disadvantages individuals of a particular age (e.g. ill-health pensions calculated by reference to prospective service to retirement favour the young).

Defences / exemptions

eg objective justification

- Unusually, the Directive allows employers to justify (because of legitimate aims) both direct and indirect discrimination.
- Also, the Directive permits the UK Government to:
 - allow pension schemes to set age limits for admission and entitlement to benefits;
 - use age criteria in actuarial calculations;
 provided this does not, in turn, amount to sex discrimination.

¹ Although unsuccessful claims have been brought before the Employment Tribunals, the Courts and the Pensions Ombudsman

Age discrimination

Recent developments

- As part of its build up to 2006, the Government recently announced its intention to set a "default" retirement age of 65 for all².
- The default age of 65 will apply to employment generally, and is not targeted solely at pension schemes.
- In general employment terms, a contractual retirement age below 65 will need to be objectively justified.
- Without a default retirement age, employers would have to justify requiring people to retire at any age.

Default retirement age

Effect on pensions

- The Government is concerned that having no default retirement age would increase pension scheme costs and lead to reduced benefits.
- However, having one does not fit well with the Directive's easement potentially allowing pension schemes to set a retirement age lower than 65.

Default retirement age

Some issues / questions

- Even with the default retirement age in place, employees will have a right to request to work beyond 65.
- How will such late retirements then be dealt with under the pension scheme?
- And will having a default age frustrate the intention of age discrimination legislation (by discouraging employers from allowing people to work after 65)?

Age discrimination

And tax simplification

- As things stand, pension schemes seem likely to be able to retain a fixed retirement age.
- However, employers need to work out how this fits not only with the broader employment picture but crucially with tax simplification.
- Employers getting ready to embrace a new culture of flexible retirement from April 2006 – with employees having the option of taking pension early and carrying on working – will need to amend pension scheme rules to achieve this.

² The Government intends to review the default age after five years

This edition of Sackers Extra News was prepared by the Sacker & Partners Employment Team to draw your attention to important employment aspects of pensions law. If you would like further information about age discrimination please contact us.

Faith Dickson Partner
Employment Team

faith.dickson@sackers.com
EmploymentUnit@sackers.com

SACKER^S
& PARTNERS

Solicitors specialising in pensions law

Sacker & Partners LLP
29 Ludgate Hill
London EC4M 7NX
Tel 020 7329 6699
Fax 020 7248 0552

enquiries@sackers.com
www.sackers.com

Nothing stated in this document should be treated as an authoritative statement of the law on any particular aspect or in any specific case. Action should not be taken on the basis of this document alone. For specific advice on any particular aspect you should consult the usual Solicitor with whom you deal. © Sacker & Partners LLP January 2005