



Guide to retirement

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 forces an employee to retire (known as compulsory retirement), the employee would be able to challenge this at an Employment Tribunal. The employee could make claims for unfair dismissal and age discrimination.

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, especially because of the risk of an age discrimination claim. Compensation in unfair dismissal cases is now capped, but in discrimination cases there is no such cap so these claims can prove costly.

“Cover all
the angles”



Key points to remember

- In order to avoid age discrimination claims, you need to treat employees in the same way regardless of age. This means that you can no longer press older employees about their plans to retire. One way of tackling this problem is to have regular meetings (or at least an annual appraisal meeting) with all employees to discuss their performance, training needs and plans for the business.
- 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.
- Once an employee has given their employer formal notice that they intend to retire on a specific date, if they change their mind, the notice can only be withdrawn if the employer agrees.
- Employees of any age may be dismissed on the grounds that they are not capable of doing their job to the required standard or that they 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, changing duties or adjusting working hours).
- 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 retirement. This allows the business to continue to benefit from the employee's skills and knowledge while the employee prepares for retirement.

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. In other words, the chosen retirement age must be 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.

Examples of legitimate aims include:

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

Employers considering a compulsory retirement age should also look at other approaches to achieving those aims.

Employers must also be able to provide objective evidence (e.g. statistical data) to support their reasons for imposing a compulsory retirement age. Even if the retirement age is objectively justified, employers will need to follow a fair procedure when retiring employees.

Setting a fixed retirement age is potentially dangerous territory and legal advice should be sought.

Contact us for advice

Although helpful, the brief information included in this document is intended as a guide only and does not constitute legal advice. For more detailed information regarding any of the matters raised in this guide, tailored to suit your specific circumstances, please contact Amanda Hyam.



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