



EMPLOYMENT, PENSIONS AND EMPLOYEE BENEFITS

Compulsory Retirement Age - End of an Era?

by **Elizabeth Mara**

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Elizabeth Mara discusses changing expectations and requirements in relation to retirement ages.

January 2014 saw an increase in the qualification age for drawing a State pension from sixty-five to sixty-six years. The qualification age is set to be further increased to sixty-seven and sixty-eight years of age in 2021 and 2028 respectively. A large number of employment contracts in Ireland contain a mandatory retirement age of sixty-five.

Retirement Age

There is no national compulsory retirement age in Ireland. A small number of professions are subject to a statutory retirement age such as Gardaí, judges and firefighters, but the vast majority of retirement conditions are usually provided for in the contract of employment. It has been customary for companies to include a retirement age of sixty-five years which, prior to 2014, would have corresponded with a worker's entitlement to receive a State pension.

Age Discrimination Ireland

Until relatively recently, termination of employment by reason of reaching the age of compulsory retirement was an accepted practice and did not pose a risk of age discrimination litigation to an employer. Compulsory retirement ages were considered lawful pursuant to the Equality Acts 1998 to 2011 (Equality Acts) in circumstances where section 34(4) of the Equality Acts provides as follows:

"It shall not constitute discrimination on the age ground to fix different ages for the retirement (whether voluntarily or compulsorily) of employees or any class or description of employees."

Age Equality Europe

The Equality Acts transpose Council Directive 2000/78/EC (Directive) into Irish law. The Directive however is not as liberal as Irish legislation in terms of providing an exception to age discrimination for compulsory retirement ages. Rather than permitting the setting of blanket retirement ages as per the Equality Acts, article 6(1) of the Directive states:

"Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary."

European legislation requires that compulsory retirement ages meet the additional condition of being objectively and reasonably justified by a legitimate aim. Irish legislation is inconsistent with the overarching European legislation. Recent case law before the Equality Tribunal in Ireland has resulted in a number of compulsory retirement age clauses being scrutinised in light of the inconsistency between Irish and European legislation.

Meaning of objective justification and legitimate aim?

The Directive does not define "objective justification" and "legitimate aim" however recent Irish case law has illustrated the meaning. In the case of *Donnellan v Minister for Justice, Equality and Law Reform* [2008] IECH 467, Mr Justice McKechnie held that a compulsory retirement age of sixty for an Assistant Garda Commissioner could be objectively justified to ensure "motivation and dynamism through the increased prospect of promotion."

The Equality Tribunal has determined that a retirement age of fifty-five for a winch man on a helicopter was objectively justified where the health and safety of people being rescued by him needed to be ensured (*Saunders v CHC Ireland Limited* Dec-E/2011/142).

Other examples of objective justification from Irish and European Union case law have included: the offering of career paths to ensure retention of staff, the establishment of an age balanced workforce and the creation of opportunities in the labour market.

Implications for Employers

The recent focus on the requirement for compulsory retirement ages to be objectively justified by a legitimate aim means that employers should examine their existing retirement policies to ensure there is a legitimate basis for and rationale behind the decision to impose a ceiling on the working age. Justification will depend on the nature of the industry and work carried out by the employees.

Repercussions of the recession have been felt by a large number of older members of the workforce. Financial obligations may be forcing some people to work to an older age than they had previously anticipated. The decline in value of pension funds may also force people to work longer than expected in order to maintain an acceptable standard of living. The increase in the State pension age will exacerbate the financial situation for many. It is likely that more employees will need to work to a greater age out of financial necessity. Employers therefore are likely to receive an increase in requests to work beyond the contractual retirement age. Equally employees may be more likely to challenge compulsory retirement ages in circumstances where they simply cannot afford to cease working.

Considerations

Employers should review existing contracts of employment and seek to amend the retirement policy to ensure it is objectively justified and conforms with legislation.

Employers should examine the business operation to ascertain what level of compulsory retirement age may be required or justified, if any.

Employers should carefully consider requests by employees to remain working past the contractual retirement age as doing so may dilute the justification for the retirement age in the first instance.

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