

## **Retirement Age (Longer Working)**

*Recently the Work Place Commission (WRC) was instructed by the Minister to publish a Code of Practice on Retirement Age (Longer Working) which was published in December 2017. The result was a detailed Code of Practice explaining what an employer must take into consideration and guidance on drafting a policy on Retirement age (Longer Working).*

The Code of Practice referred to the traditional age of retirement of 65 and noted that the older workforce of Ireland is significantly growing.

Therefore, if an employer was to retire an employee at the age of 65, this may be deemed as discrimination under the nine grounds of age set out in legislation under the Employment Equality Acts 1998 to 2015.

In the public sector, anyone employed before 2004 must normally retire at 65, while anyone employed since 2013 would normally retire at 70 – although they can choose to voluntarily retire at whatever that State Pension age will be. With this in mind, you can see why it's extremely important to have a written policy around Retirement age (Longer Working).

### **Constructing the policy**

Employers must prepare to deal with any requests from employees who want stay and work beyond the retirement age that's reflected by the business – so a written policy and procedure is a must.

The Code of Practice sets out 4 main areas that the policy must cover:

1. Utilising the skills and experience of older workers
2. Objective justification of retirement, which means that the objective justification must be:
  1. an express term in the employee's contract of employment
  2. an implied term in the employee's contract of employment
  3. relevant policies, for example, a staff handbook, and
  4. custom and practice generally arising from the pension date set out in the relevant occupational pension scheme
3. Standard retirement arrangements and
4. Request to work longer

Each of these aspects must be covered within the policy.

### **You and the law**

It's now law that the compulsory retirement age is set by employers, and must be capable of objective justification both by the existence of a legitimate aim, and evidence that the means of achieving that aim is appropriate and necessary.

What constitutes a legitimate aim by an employer may include any of the following:

- Intergenerational fairness (allowing younger workers to progress)
- Motivation and dynamism through the increased prospect of promotion
- Health and Safety (generally in more safety-critical occupations)

- Creation of a balanced age structure in the workforce
- Personal and professional dignity (avoiding capability issues with older employees)
- Succession planning

**If you have any questions in relation to retirement policies, please contact Peninsula's expert employment law advisors on the 24 Hour Advice Service on 1890 252 923**