



## RETIREMENT AGES

### 1. CAN AN EMPLOYER IN IRELAND HAVE A RETIREMENT AGE POLICY?

Yes. The Employment Equality Acts definitively state that *“it shall not constitute discrimination on the age ground to fix different ages for the retirement.”* Therefore, employers are permitted to operate retirement age policies.

### 2. ARE THERE ANY RESTRICTIONS ON OPERATING RETIREMENT AGE POLICIES?

Yes. There are two primary requirements that an employer must be able to satisfy:

- (a) That the retirement age policy forms part of the employee’s terms and conditions of employment.
- (b) That the employer can objectively justify why the company operates a retirement policy.

#### (a) Retirement policy must form part of the employee’s terms and conditions

Usefully, the recently issued [WRC Code of Practice on Longer Working \(S.I. No. 600 of 2017\)](#) outlines that an employer can evidence the existence of a retirement policy through the following methods:

- an express term in the employee’s contract of employment;
- an implied term in the employee’s contract of employment;
- relevant policies, for example a staff handbook; and
- custom and practice generally arising from the pension date set out in the relevant occupational pension scheme.

If an employer cannot evidence that the retirement policy exists then the employer is greatly exposed to an unfair dismissal claim or an age discrimination claim should they proceed to retire an employee.

#### (b) Objective Justification for Retirement Ages

It’s important to bear in mind that age is one of the protected discrimination grounds and the net point here is that retirement policies are inherently age discriminatory as it amounts to terminating employment solely based on an employee reaching a certain age. Therefore, it is not sufficient for an employer to simply have a retirement policy; the employer needs to be able to justify why they operate that policy in the first place.

Again, usefully, the [WRC Code of Practice on Longer Working \(S.I. No. 600 of 2017\)](#) outlines examples of potentially justifiable reasons that an employer may be able to apply to their own situation, namely:

- 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); or
- Succession planning.

### 3. WHAT AGE IS DEEMED AN ACCEPTABLE/JUSTIFIABLE RETIREMENT AGE?

The appropriate age of retirement will vary from one business to the next and therefore employers need to be sure that the retirement age policy they implement is appropriate for their business. For example, a retirement age of 55 was deemed justifiable in *Saunders -v- CHC Ireland Limited (DEC-E2011-142)* due to the safety critical nature of the role (the employee was a helicopter winchman in a search and rescue team).



#### **4. WHAT AGE IS DEEMED AN ACCEPTABLE/JUSTIFIABLE RETIREMENT AGE?**

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- A retirement age of 55 was deemed justifiable by in *Saunders -v- CHC Ireland Limited* due to the safety critical nature of the role (the employee was a search and rescue helicopter winchman).
- A retirement age of 60 was deemed justifiable for the position of Garda Commissioner in *Donnellan -v- Minister for Justice, Equality and Law Reform and others* as it was necessary to create motivation in the workforce through the prospect of promotional opportunities.

The above are illustrative examples where lower than normal retirement ages were justified. It is equally possible that an employer in a different case with a retirement policy age of 65 or 66 who cannot show objective justification for same would lose a case of age discrimination. Therefore, some thought needs to go into creating and applying a retirement policy in any business.

#### **5. TIPS IN DRAFTING A POLICY**

There will always be an element of uncertainty when it comes to setting a retirement age. Do I have an objectively justifiable reason? If I do, then is the age that I am asking people to retire appropriate?

This matter is further complicated by the fact that the age when the State pension becomes payable is now 66 and will increase to 67 in 2021 and then 68 in 2028. Furthermore, 36% of workers do not have a private pension and, therefore, if such a worker is required to retire at 65 but is not entitled to a State pension until 68 then it is far more likely that such an employee will take a claim of age discrimination in order to supplement the income gap. Therefore, adopting a retirement policy that is cognisant of the State pension age will minimise the likelihood of an age discrimination claim occurring in the first place and therefore will ease some of that uncertainty.

Many employers are setting out that their retirement age is “*in line with the State pension age*”. From my own perspective, this is a little imprecise as it may result in retiring some people at 66, others at 67, and others at 68, and such a variance may be difficult to justify. My own advice, from the perspective of minimising risk, is to adopt a retirement age of 68 but to allow flexibility for early retirement. For example:

*“The normal age for retirement is 68 although the employee may, with the agreement of the Company, retire at the age that they become entitled to the State pension should that be an earlier date.”*

For employers, it would be easier to justify a retirement age of 68 than, for example, 65 or 66. Furthermore, many employees may wish to retire at an earlier age anyway, such as when they become entitled to the State pension or when they are in a position to draw down their own private pension.

Notably, In July 2017, 86% of the Citizen’s Assembly stated that mandatory retirement ages should be abolished. If employers adopt a policy like this, and there are less age discrimination claims arising as a result, then it will be far easier for employer’s bodies to be able to justify why mandatory retirement age policies should be retained.