

Your Legal Questions

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Q. I run a medium size business. In the past I have retired employees when they reach 65. However, I understand that the law is changing. Can I still do this?

A. The Government has announced that it intends to abolish the default retirement age ("DRA") currently in age discrimination law. At present employers are able to dismiss employees when they reach 65 without having to justify the dismissal provided they follow strictly the procedure for serving a retirement notice. It is proposed that no new retirement notices will be allowed from 6th April 2011, though retirements notified before then and taking effect before 1st October 2011 will still apply.

Going forward employers will have two choices, either to stop using specific ages to trigger retirement or alternatively to continue with a compulsory retirement age. However, once the protection of the DRA has gone, they will have to show that their chosen retirement age can be objectively justified. This can prove problematic although the courts have provided some guidance on how an employer might show that its choice of a compulsory retirement age is a proportionate means of achieving a legitimate aim e.g. airline pilots and safety.

It is likely that the majority of employers will operate without a retirement age. If the Government removes "retirement" as one of the potentially fair reasons for dismissal, employers will only be able to dismiss older employees by relying on one of the other reasons (capability, conduct, redundancy, illegality or some other substantial reason) and after following a fair procedure.

The DRA has provided a safety net for employers to let go employees whose performance has dropped off. Its removal is likely to result in employers becoming more ruthless about performance managing employees so that the gradual wind down to retirement may become a thing of the past.

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