

## Retirement at 65?

### Think again – you now have choices

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#### **With the default retirement age of 65 shortly about to disappear, will employers embrace the new culture of retaining older workers?**

As allegations of age discrimination against TV and radio personalities continue, employers will now have to be far more careful otherwise it will cost them dearly.

In January 2011 ex-Countryfile presenter, Miriam O'Reilly, successfully won her battle against the BBC for their unfair decision to sack her because of her age. The Employment Tribunal's landmark decision was a 'powerful signal' against age discrimination and looks set to positively influence attitudes towards the recruitment and employment of older workers. Now, campaigners against ageism have been given another reason to celebrate with the Government's announcement that the default retirement age of 65 will be phased out from 6 April and completely removed by 1 October 2011.

Under the current legislation, employers can force an employee to retire when they reach 65 without having to give any compensation. Retirement, therefore, is currently a fair reason for dismissal, provided the employer gives 6 months' notice and considers any written application by the employee to continue in employment. The Government's decision to abolish this legislation is significant recognition that, with people living longer and changing structure of our society, it is no longer justifiable or economical.

Under the new proposals, employers will no longer be entitled to issue an employee with a notification for compulsory retirement simply because he has reached the age of 65. Employees will in the main now be given the choice of when to retire. The latest draft of the transitional arrangements indicate that only employees who are told of their retirement before 6 April 2011, and who are already 65 or will reach 65 before 1 October, can still be forced to leave work under the current rules.

Employers have not under the new rules, however, been left without the option of going down the compulsory retirement route at all. They would need to show that it can be 'objectively justified' as a proportionate means of achieving a legitimate aim. An example is where physical capacity is a particular requirement. If objective justification is not possible, then the employer's actions will amount to unlawful discrimination on the basis of age.

There has been research to show that in 2009 alone over 100,000 workers were forced to retire. The proposals, therefore, have been met with substantial support and are widely accepted to be a positive step in ensuring the working freedom of older employees. Being 65 no longer means that your effectiveness and standard of performance as an employee should be negatively viewed. Indeed, many workers of 65 or over are still fit, active and keen to remain in work. It was always rather an anomaly that employers had free reign to deprive the workforce of valuable skills and years of experience of the older worker, who are more often than not committed employees.

The proposals do not intend to give the over 65s special treatment- only equality. It should not be forgotten, therefore, that employers can still terminate their employment based on poor performance. In fact, we may see an increase in employers making this argument, especially as the qualification period needed for an employee to bring an unfair dismissal claim against his employer is likely to be increased from one year to two. However, the proposals demonstrate that there should not be a link between old age and an inability to perform well. Not having the freedom to take the easy route and retire an employee when he or she reaches 65 means employers will have to find ways of objectively assessing the capabilities of their employees with the hope of utilising them effectively and retaining them in employment. If necessary, consideration should be given to increasing the flexibility of working hours, continued training and a greater availability of part-time jobs.

The Government's proposals recognise that attitudes towards our ageing population must change. We can only hope that employers in turn embrace this important change to our working culture.

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