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Abolition of statutory retirement age – a change in the times

Labour had championed the idea that the statutory age of retirement should increase in line with increased life expectancy in the UK. The initial plans would have seen UK public sector workers retiring at age 68 by the year 2046. The new Government's confirmation recently that the statutory default retirement age (DRA) of 65 will be abolished from October 2011 leaves employers with some significant work to be done on strategic workforce planning, HR procedures and potentially also pension and benefit schemes.

The election of the new coalition Government has scuppered Labour plans and facilitated the new plans of a complete removal of a legal retirement age. Consultation on transitional arrangements has opened and will run until 21 October 2010. However, any concrete outcome of the consultation is likely to be only in the form of guidance on handling retirement - the fundamental proposed change in the law will not be affected.

The current law will apply to retirements which occur before 1 October 2011 and for which notice is given before 6 April 2011. Subject to consultation, the statutory retirement procedure and the right to request to work beyond retirement will also be abolished.

After that, the major decision for employers will be whether or not to retain a normal retirement age for their workforce.

Before reaching a decision, employers should take into consideration:

- the chosen age must be objectively justifiable as non-discriminatory on grounds of age, which means showing that it is a proportionate means of achieving a legitimate aim. This will be difficult for many employers who cannot point to a need to protect older employees, for example on health and safety or operational grounds, or a need to allow younger employees to progress through the ranks.
- a discretionary rather than a mandatory retirement age will not escape the need for objective justification in the case of any particular employee
- employers will need to decide whether to retain any pre-retirement procedure - the announcement suggests that allowing an employee to request to work beyond retirement will be integral to the fairness of the dismissal
- the inter-relation with pension scheme rights and other age-related benefits, such as PHI schemes that pay out until a certain age, will need to be reviewed
- incentive schemes, articles of association, shareholder agreements and other documents that use the concepts of retirement or normal retirement age, often in the context of good leaver provisions, are likely to need to be amended
- pension schemes are likely to be able to continue to use a retirement age of 65 but the detail of proposals in this area is not yet known.
- Not retaining any normal retirement age will also have significant consequences:
- the termination of any employee will have to be objectively justified in order to avoid age discrimination
- retirement as a fair reason for dismissal under the Employment Rights Act is likely to be abolished or linked to a justifiable normal retirement age - detail is awaited
- employers are therefore likely to fall back on capability and redundancy as reasons for removing older individuals from the workforce

- relying on capability as a reason for dismissal increases the risk of disability discrimination claims - recent statistics show that employees over 60 are more than twice as likely to have a disability than those under 60
- it is almost certain that incentive schemes, articles of association, shareholder agreements and other documents that use the concepts of retirement or normal retirement age, often in the context of good leaver provisions, will need to be amended.

The Government announcement does not deal with the issue of whether retirement will remain a fair reason for dismissal under the Employment Rights Act 1996. It is difficult to see how it could remain in its current form. It is fair to presume that both employers and employee will have turbulent times ahead when the new plans come into effect.

If you have any issues regarding age discrimination or anything else mentioned in this article, please contact Asim at Ramsay Employment Law

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