

Compulsory Retirement Age to be Abolished

■ By Tim Preston, Solicitor, Lightfoots LLP 29 July 2010

■ Compulsory Retirement Age Abolished

The government announced on 29 July 2010 that they intend, **probably from 6 April 2011**, not as far away as it may seem, to abolish the current right for employers (on giving at least 6 months' notice of their intention to do so) to terminate the employment of staff aged 65 or over, without having to give any reason other than age.

After that, for most normal employments, there will be *no* compulsory retirement age.

In principle, this is only fair. If it is morally wrong to dismiss someone just because they are black or a woman, then it can hardly be right to dismiss them just because they are over 65. However, like so much in employment law that is fair in theory, there will be problems and procedural pitfalls in practice. Indeed, one well known tabloid newspaper recently ran the headline:

"Government plans to scrap retirement at 65 'will line pockets of lawyers'"

Well, we quite like that idea! *You*, however, probably do not! We have therefore prepared this briefing to help you cope with the implications and to avoid having to call us more than occasionally.

The changes are officially still subject to consultation and to Parliamentary approval. However, all the main political parties want to abolish compulsory retirement and we expect this to become law.

The implications:

- Employers need *not* replace existing contracts of employment that refer to retirement ages. Those clauses will simply have no effect.
- Once compulsory retirement ages are abolished, employers can still dismiss staff over 65, like any other staff, for specific reasons like redundancy, misconduct or poor performance, *if* the employer follows all the recommended warning or consultation procedures.

- If an elderly employee with a long and distinguished record of service can no longer cope with the demands of the job, it will unfortunately no longer be possible to save everyone's face by retiring them on age grounds. However, the main remaining alternative, to put a once highly valued employee through months of disciplinary warnings and then sack them for poor performance, may be painful for all concerned.
- Employers may still compulsorily retire staff who will be 65 or over by giving at least six months' warning (as they can at present) *up to and including 5 April 2011*, with the retirement taking effect 6 months' later. Accordingly, if notice is given in time, compulsory retirements may continue to take effect up until the beginning of October 2011. However, employers will be well advised to take advice early to avoid getting the procedures wrong in a last minute rush. The notice of retirement has to be in a legally prescribed form and there are procedures that have to be followed.
- In the short term, to be brutally realistic, some employers may hurry to retire staff in their late 60s and older who are not high performers, while it is still possible to do so more easily under the existing procedure.
- As many employers already know, the law can make it expensive and/or cumbersome to dismiss staff regardless of the rights and wrongs of the matter. From next April, it will be especially so in the case of staff aged over 65, because of the likelihood of an *age discrimination claim*, and because *older staff may claim compensation for a long period of lost income, to reflect the difficulty of finding other work at their age*.
- Whenever the law allows people to claim compensation, whether for an accident, for discrimination or for anything else, inevitably, some claims brought will be genuine and some less so. No one likes to say so in public, but most employment lawyers admit privately that of all types of discrimination claim, age discrimination is amongst the most widely abused. Because of the

potentially higher compensation and other advantages, lawyers advising older employees who have been dismissed for any reason encourage them to think in terms of age discrimination, even if an employee had not previously thought age was the issue. Even employers who do all they can to be fair must expect that a high proportion of dismissals of over 65 will either result in age discrimination claims, or else require a “golden handshake” payment and compromise agreement as below.

- For several of the above reasons, once the new rules are in force, employers considering dismissing employees in their 60s and over will often prefer to offer a significant “golden handshake” in exchange for an agreement by the employee not to bring any further claim. Indeed,

older employees may increasingly expect this as the norm. To be binding, such an agreement must obey the law’s requirements for a Compromise Agreement.

- Pension schemes are not directly affected. If the rules of a pension scheme allow an employee to choose whether to start drawing a pension at 60, 65 or any other age, or to defer this until later, then they can still do any of these things.
- The new rule will only be important where an employee *does not want* to retire. An employee will still be able to retire at age 65 or any other age at which they wish (and can afford) to do so. An employer can still gently *ask* an employee who is coming up for 65 if they *want* to retire at that date. However, the employer can no longer automatically compel them to do so.

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