

Managing requests to work beyond Retirement Age

The topic of retirement age raised its head again last week when it was announced that the issue of the “gap” year between those retiring at 65 but unable to claim the State Pension until they turned 66 was being dealt with.

Previously those retired at 65, usually employees with an employment contract that stipulated the retirement age at 65 whether in the private or not-for-profit sector, had to sign on the live register to claim Job Seeker’s Allowance and prove that they were genuinely looking for work.

However, the new solution simply allows those retiring at 65 to claim Job Seekers without the need to sign-on or look for work. However, it does leave this group of people €45 per week worse off than those in receipt of the State pension.

Increasing State pension age

A study released last week highlighted that the State pension liabilities are rising at a rate of 10% each year¹ and pensions now account for 38% of the total social welfare budget². Given the aging population, it is no surprise that this cost will continue to increase year-on-year. In an effort to address the issue, the Government had plans to further increase the pension age this year to 67 and then again to 68 in 2028. However, in the midst of the pandemic the scheduled increase this year has been suspended and the Pension Commission has launched a public consultation process to look at the future sustainability of the pension system, including qualifying retirement age.

Currently, there is no compulsory retirement age for Irish employees, but one can be outlined in the terms and conditions of employment and employers can enforce it if it can be objectively justified that it’s in the pursuit of a legitimate aim and there is a sound rationale to do so.

Employees looking to work longer

The changing demographics of Irish workers, along with the financial necessity especially in a Covid environment, means that many people may want to continue to work beyond 65. Employers in the Community and Not-for-Profit Sectors would be advised to take any request to work longer under careful consideration given the potential implications in terms of compliance with employment legislation.

While there is provision in the Employment Equality Acts, 1998 – 2015 that states that fixing a retirement age does not constitute age discrimination, once it can be objectively justified in the pursuit of a legitimate aim, there have been several successful WRC claims made in favour of employees who have been treated unfairly due to their age.

¹ Irish Times, 10th February 2021 – “State pension liabilities rising 10% a year, CSO study finds”

² RTE.ie, 10th February 2021 – “Pension consultation launched on future of State pension.”

Code of Practice

The Workplace Relations Commission prepared a Code of Practice on Longer Working back in 2018 to help provide guidance for employers when managing retirement among employees. The areas of guidance are:

1. Utilising the skills and experience of older employees
2. Objective justification
3. Retirement arrangements
4. Dealing with requests to work longer

Utilising skills and experience

The Code sets out some measures that can be taken by employers to use the skills and experience of older employees, including training on age diversity, encouraging the sharing of knowledge and experience, ensuring there is no age-related bias and encouraging a culture where there is a need to train employees of all ages.

Objective justification

Any compulsory retirement age is not discriminatory if it can be justified objectively *“both by the existence of a legitimate aim and evidence that the means of achieving that aim is appropriate and necessary”*. This could include:

- 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.

Retirement arrangements

The Code sets out guidance for employers on how to support the employee’s transition to retirement including:

- Opening a dialogue with individual employees on their plans around retirement, particularly where no contractual retirement age exists, so that there is a clear understanding between the parties.
- Providing supports such as, pre-retirement courses, flexible working arrangements and/or counselling to facilitate the transition to retirement.
- Providing clear information to employees on retirement procedures, both at recruitment stage and at regular intervals during employment.

Request for longer working

Any request should be considered carefully, and employers should consider the following when assessing any requests:

- Grounds or reasons the request should be accepted or refused.
- The factors that are impersonal to the employment
- What form would any extensions take (fixed term contract, etc)
- And, whether flexible working might be more appropriate.

The Code also sets out the process and timeframe that any request should be considered, including outlining the procedure for meeting with the employee, granting or refusing the request in writing and clearly stating the reasons for the decision.

Conclusion

It is advisable that a retirement age is specified in the Terms of Employment for all employees and that provision for same is in both the contract of employment and in the appropriate policy in order to provide a clear understanding from the outset of the relationship.

But if a request for longer working is submitted, it should be considered and assessed on the merits of the employee's request and the current and future needs of the charity or organisation. Employers need to bear in mind that every employee must be treated fairly and consistently when addressing future requests as well as the potential impacts on existing contracts, and in order to avoid financial liability that has occurred at the WRC. While it is imperative that organisations within the Community, Charity and Not-for-Profit Sector consider the objective justifications in the pursuit of a legitimate aim for all requests it is just as important to look at all available options in terms of the employment relationship and the concepts of fairness and equality.

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