



## **SETTING A MANDATORY RETIREMENT AGE FOR WORKERS\***

Some employers wish to have a Mandatory Retirement Age for employees. A Mandatory Retirement Age must be capable of being reasonably and objectively justified if they are challenged by employees as being discriminatory on grounds of age.

The issue of objective justification is one that causes problems. We thought it might be useful to set out some of the main points that an employer might consider.

### 1. Health and Safety concerns.

It is justifiable to have a mandatory retirement age for, for example, workers who are drivers, pilots or who would work in jobs which are very physically demanding. However, a lot of workplaces do not have these high risks to health and safety. Employers would need to be in a position to demonstrate by way of hazard identification and risk analysis exercise that they have looked at the particular work environment in setting a mandatory retirement age rather than simply following what was historically done. This needs to be done at the time that the retirement age is set not when you get a claim. This means that it will be necessary to do these evaluations on a fairly regular basis and to amend Mandatory Retirement Ages, and this would mean normally upwards.

### 2. Succession planning.

All employers need to plan for the future. They need to have right people in place with the required skills and experience for the business.

It is legitimate where you have a retirement age which is there to promote opportunities for younger employees who may have different skill sets and experience. However, again this must be able to be objectively justified.



3. Encouraging the recruitment and promotion of younger people.

It would appear that employers can have a Mandatory Retirement Age which is necessary to encourage employees to stay and progress within an organisation and motivate employees with a prospect of being promoted to more senior roles.

Terminating the employment contracts of employees who have reached their retirement age makes it easier for other workers to get promotion.

4. Age balance.

If an employer can show that there is a benefit for having a balanced level of experience in the organisation where there is a wider mix of skills and experience and allowing for the recruitment of people with newer and different skill sets and experience than this can be a ground.

### Conclusion

It is important that employers understand that if a Mandatory Retirement Age is discriminatory on the age ground that the Workplace Relations Commission or the Labour Court can look to the requirements and circumstances of each organisation when determining whether a Mandatory Retirement Age constitutes age discrimination. Therefore employers will need to be able to demonstrate that they consider their individual Mandatory Retirement Age carefully taking into account particular requirements of their own organisations and the roles carried out by their employees in order to objectively justify a Mandatory Retirement Age. This means that there need to be a paper trail created at the time which can be reviewed.

**\*Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

**\*\*In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**