

How to Guide

Managing Retirement

From 30th September 2011 employees will be able to notify their employer when they wish to retire. Furthermore employees cannot be forced to retire, (subject to exceptions below) The changes to retirement have been brought in under The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011.

Headlines

- Employers cannot force employees to retire from 30th September 2011 except in exceptional circumstances (see Frequently asked Questions)
- The employee must notify the employer of their intention to retire in writing. You can determine this notice period in your Company Retirement Policy
- An employee can withdraw their notice of retirement and continue working by making a written request. The employer must give this request reasonable consideration and not withhold permission unreasonably
- In the event an employee is entitled to group insured risk benefits like sickness, accident and medical insurance employees will lose entitlement to these benefits upon attaining the age of 65 regardless of whether the employee continues to work for the employer.

Jargon

No specific jargon related to redundancy

Retirement in Detail

When an employee wishes to retire they should complete *RET LETTER 1 (Letter Informing Employer of Employee's Intended Retirement Date)*

The employer can set out the notice period an employee must provide of their intention to retire. This should be set out in the employer's retirement policy (See draft Retirement Policy in the Policy and Procedures section)

e.g. 'The employee must notify the employer of their intention to retire not more than (insert a period of time e.g. one year) and not less than (insert a period of time e.g. six months) in advance of the retirement date'

When an employee wishes to withdraw their notice of retirement and continue working they should complete *RET LETTER 2 (Employee's Letter Requesting Permission TO Withdraw Notice Of Retirement)*. The employee must give notice of their intention to withdraw their notice of retirement. This should be set out in the employer's retirement policy (See draft Retirement Policy in the Policy and Procedures section)

e.g. 'If the employee wishes to withdraw their notice of retirement and continue working beyond his/her retirement age he/she must make a written request to (insert name) no later than (insert period of time e.g. three months).'



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Retirement in Detail

On receipt of a written request you must give reasonable consideration to granting permission to withdraw the notice. Such permission should not be reasonably withheld, however, you, as the employer are not obliged to agree to the withdrawal of the employee's retirement notice (see Frequently asked Questions).

Each employee may only make one request for withdrawal in relation to each intended retirement notice.

If you plan to refuse an employee's request to withdraw their retirement notice then complete RET LETTER 3 (Letter Of Refusal Of An Employee's Request To Withdraw Their Retirement Notice) detailing your reasons for refusal e.g. job already advertised, restructuring etc.

If you plan to accept an employee's request to withdraw their retirement notice then complete RET LETTER 4 (Letter Following Acceptance By An Employer Of An Employee's Request To Withdraw Their Retirement Notice).

You should respond to the employee's request using either RET LETTER 3 or 4 within a specified period as set out in your company retirement policy.

Should an employee fail to make a written request to withdraw their notice of retirement within the agreed time period then you may proceed to terminate the employee's contract of employment on the grounds of retirement.

Frequently asked Questions

What is an objectively justified exception for an enforced retirement age?

An employer can still have enforced retirement if it can be objectively justified due to the nature of the work undertaken by the employees. However, the employer must be prepared to justify their fixed retirement age, if need be at an Employment Tribunal.

Examples of an objectively justified retirement age would be where a job requires a certain level of fitness, such as the emergency services or mental ability, for example air traffic controllers.

As you can see from the examples the cases where a fixed retirement age can be justified are limited.

However, less extreme, (but obvious) examples would be building labourer, removal man etc. We expect to see a number of cases in the coming months going to Employment Tribunals, which will determine the extent to which employers can rely upon an objectively justified retirement age.



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Frequently asked Questions

What if an employee aged sixty five plus is underperforming?

If an employee is under-performing the employer should take the same action regardless of the employee's age. Issues that may need to be addressed would include further training and support. However, ultimately the employer is still able to dismiss an under-performing employee, regardless of age.

When and how can I raise the issue of retirement with an employee?

Employers without an objectively justified retirement age also have to be careful about raising the issue of retirement with an employee to avoid age discrimination.

It is best to raise the issue as part of an annual appraisal meeting, but the employer must ask all employees (young and old) the same question e.g. "what are your future plans?" It is for the employee to raise the issue of their retirement age with the employer, not the other way around anymore.

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