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Why it makes good sense to raise the default retirement age

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Although politicians might think otherwise, the government is more likely to increase the age threshold for retirement than abandon it altogether

Edward Wanambwa and Anna Birtwistle

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On 1 February 2010, the government will complete a major consultation on whether to scrap or raise the default retirement age (DRA) of 65 years for UK employees. The results of its review are expected this spring.

The consultation follows the [Heyday](#) court challenge to the Employment Equality (Age) Regulations 2006 last year, in which the government successfully defended the current DRA. In the decision the judge expressed misgivings about 65 being the right age for default retirement in the future.

Consultation

The government is looking for evidence relating to:

- the operation of the DRA in practice;
- the reasons for organisations using mandatory retirement ages;
- the impact on organisations, individuals and the economy of raising or removing the DRA; and
- the experience and cost implications of organisations operating without a DRA.

Back-peddalling

The Department for Business, Innovation and Skills has stated that the "decision to scrap the default retirement age is not being fast-tracked" and has stressed that evidence is still being gathered from employers, unions and professional bodies.

The comments follow vocal criticism of the current DRA by [Harriet Harman](#), Labour deputy leader and minister for women and equality.

Scrap the DRA?

Given the current economic climate, scrapping the DRA altogether would be met with strong resistance from many businesses and the CBI.

If there was no DRA, employers would have to demonstrate that the forcible retirement of an older employee at any age was justifiable by showing that the contractual retirement age was a proportionate way of achieving a legitimate business aim. They could argue, for example, that it was essential for succession planning in the workforce.

Before we have case law on the subject, it will be difficult for employers to be confident that their justifications will stand up against a claim for age discrimination.

Capability

Since almost every employee who does not wish to leave voluntarily ultimately has to have their contract terminated in some way, this may mean putting older employees through a potentially humiliating capability dismissal following a long and successful career.

Employers may also face health and safety issues if older employees attempt to hide their ill health, or their decreasing memory or mobility, to avoid dismissal. Employers will need to have thorough risk and capability assessment processes in place to protect against these risks.

Raising the age?

An increase in the DRA to age 68 at the least is far more likely and would be in line with the legislated increase of the state pension age. It would seem wrong if people could not draw their state pension until the age of 68 while legally permitting employers to dismiss them at 65. Raising the default retirement threshold by two or three years looks like the simplest option.

Legislation

Age UK and the Equality and Human Rights Commission have both called for the DRA to be repealed by the equality bill. As yet, the legislation does not deal with the DRA. For the most part, the bill simply brings age discrimination in to line with other protected grounds. Whether the legislation will provide sufficient protection against age discrimination in the workplace remains to be seen.

The review of the DRA will be followed by proposals for secondary legislation setting out exceptions to the protections against age-based treatment where that treatment is beneficial or justifiable. Consultation on this will be announced later in 2010.

Further Info

Edward Wanambwa is a partner, and Anna Birtwistle is an associate, at CM Murray: edward.wanambwa@cm-murray.com; anna.birtwistle@cm-murray.com

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