

Insight: London Employment & Benefits

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Default retirement age of 65 survives legal challenge

The High Court has ruled that the default retirement age of 65 remains lawful. Employers are still able to require employees to retire at age 65 and may refuse to employ them beyond that age, without any redundancy payment or compensation for unfair dismissal or age discrimination. Employees have the right to request to continue working beyond that age, but the employer can refuse that request without giving a "fair" reason (so long as they follow the correct procedure). Employers can also refuse to recruit anyone above the age of 65. One practical outcome is that employers can still rely upon automatic retirement at 65 as a method of "natural wastage" when seeking to restructure their workforce.

The decision by the High Court followed the clarification by the ECJ in *Incorporated Trustees of the National Council on Ageing (Age Concern England) v Secretary of State for Business, Enterprise and Regulatory Reform* (also known as the "Heyday Challenge") that Article 6(1) of Directive 2000/78 does not preclude a national measure which derogates from the principle prohibiting discrimination. The High Court was left to determine if any such derogation is justified having regard to "legitimate social policy objectives, such as those related to employment policy, the labour market or vocational training".

The Government succeeded in persuading the High Court that compulsory retirement at age 65 was a legitimate social policy related to the labour market when the Employment Equality (Age) Regulations were first introduced in October 2006, but only just.

Employers should be aware that the issue of compulsory retirement at age 65 is unlikely to have been laid to rest for long. The High Court stated that there is now a "compelling" case for it to go. The judge, Mr Justice Blake, strongly suggested that his decision would have been different if the legislation had been introduced more recently than 2006, and if the Government had not announced its review of the retirement age laws were to be brought forward by a year to 2010. He said "*I cannot presently see how 65 could remain as a [default retirement age] after the review.*"

Employers should therefore be aware that the retirement age laws are likely to be changed over the next year or so. In the meantime, however, it is not necessary for an employer to objectively justify compulsory retirement for employees at age 65.

The citation for this decision is *Age UK, R (on the application of) v Attorney General [2009] EWHC 2336 (Admin) (25 September 2009)*.



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