

Subject: Default Retirement Age Positioning Paper

Date: December 2009

1. Introduction

This paper provides background, highlights the key considerations, the benefits for employers without a DRA and the issues employers with a DRA are concerned about plus the evidence required for the review of the DRA.

2. Background

- Discrimination is built into the design of the DRA. It is based on the assumption that age affects someone's ability to do the job.
- Unlike other protected characteristics age can be used arbitrarily to fairly dismiss people.
- According to the CBI 81% of requests to stay on are being accepted. The EFA/TAEN survey supports this statistic. This begs the question 'What is happening to the other 19%?' They are being forced to retire against their will and there is nothing they can do about it.
- The closure of DB pension schemes and poorer returns from DC schemes is putting additional pressure on individuals to continue working.
- There is ongoing confusion within government, the media and individuals between 'pension age' and 'retirement age'. The age at which an individual is eligible for a pension is totally separate from their suitability or ability to work.

3. Key Considerations

- The current legislation enables employers to retire people at 65 years of age without explanation.
- Legislation should be there to defend the right of individuals to retire.
- It should be an individual's choice as to how and when they retire
- As long as an employee continues to be willing and able to do a job, their age should not be a factor.
- Lack of clarity is not good for employers.
- The Government have already brought the DRA review forward to 2010.
- There are conflicting messages from Government ie Pensions, Economy, DWP want to remove it and BIS are less radical.
- The Heyday judgement strongly indicates that whilst a DRA may be objectively justified setting it at 65 is no longer proportionate.

4. The benefits for Employers operating without a DRA

- Clear demonstration of organisational values
- Improved customer facing image
- Retention of key skills
- People feel valued and remain motivated to perform
- Mixed age teams result in improved business performance
- Older people often act as role models and help mentor younger people
- Employee engagement and satisfaction rates are improved

- Employees can leave with dignity

5. Issues Employers with a DRA are concerned about

- Succession and resource planning
- Performance management
- Pension schemes
- Flexible working
- Safe discussions
- The likely difficulty of justifying a mandatory retirement age at company level, or for particular categories of employees
- Employers want to keep the DRA as a 'get out of jail free' card

6. Evidence required for the review of the DRA

- In depth discussion with organisations operating without retirement age including stats etc to build detailed case study of how it works in practice:
 - Develop questionnaire
 - Draw on existing case studies and response to EFA/TAEN and previous questionnaires
- Questionnaire to all members re: their approach to retirement
 - check against EFA/TAEN responses, could just go to non-respondents with same survey
- Detailed EFA argument based on business and social justice case for removing DRA.

7. Summary

Many large employers are already benefiting from the removal of the DRA and the ESC are asked to debate the way forward and provide a steer to the Secretariat to ensure we are able to challenge age discrimination at work.

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