

HEYDAY - AGE DISCRIMINATION

The long running saga of the Heyday case concerning age discrimination has reached a conclusion of sorts.

Age Concern, via an offshoot group Heyday, had sought to challenge certain aspects of the Employment Equality (Age) Regulations which came into force on 1 October 2006, the default retirement age of 65 and the approach taken to direct age discrimination. Under the Regulations, direct discrimination is permissible if it is a proportionate means of achieving a legitimate aim. This is unusual in the context of discrimination law when other acts of direct discrimination are simply unlawful.

The UK Government's position was that a default retirement age was justified for two reasons:

- it was necessary for workforce planning and
- to reduce the risk that employers would remove benefits, such as pensions from all staff, because of the extra cost burden in providing them for the over 65's.

The High Court referred the matter to the European Court of Justice which ruled earlier this year that a national rule that permits employers to dismiss employees aged 65 or over for retirement can, in principle, be justified. It also ruled that the test of justification is effectively the same for direct and indirect discrimination and that governments were not required to define or limit the kinds of situations in which less favourable treatment may be justified. The matter was then referred back to the High Court to determine whether the retirement of workers at the age of 65 is justified by a legitimate aim and whether the means of achieving that aim are appropriate and necessary.

The High Court ruled in September 2009 that the default retirement age of 65 was justified but there were very strong arguments why an age over 65 should have been adopted. The fact that the Government announced they were bringing forward a review of the default retirement age shortly before judgment was given is likely to have influenced the Court who commented that they could not see how a default retirement age of 65 could possibly remain in place after the review.

The decision is one of some relief for employers who had been facing claims from employees who had been forced to retire against their will at age 65. A number of claims had been issued in the Employment Tribunal and stayed pending the outcome of this hearing. It is likely, however, that following the case the default retirement age will increase. What it will increase to is currently the subject of speculation, but given the ageing population and the recent announcements in some quarters as to the intention to change the ages at which the state pension can be claimed, a default retirement age of 70 is certainly on the cards. It is, of course, entirely possible that the default retirement age may be removed altogether. For now, however, employers will be focusing on their policies and making sure that when compulsorily retiring employees, they are following the correct procedures.

This article offers general guidance only. It reflects the law as at October 2009. The circumstances of each case vary and this article should not be relied upon in place of specific legal advice.

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