



Employment Bulletin

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PRACTICE DIRECTION - AGE DISCRIMINATION

The President of the Employment Tribunals has issued a Practice Direction staying all current (and future) tribunal claims involving allegations that the statutory redundancy age of 65 under regulation 30 of the Age Regulations is unlawful. Therefore all cases will be stayed until the European Court of Justice has decided the *Heyday* case.

On 6th December 2006, the High Court heard a Judicial Review brought by Heyday, the membership organisation supported by Age Concern, challenging the provisions of the law on age discrimination allowing mandatory retirement of employees over age 65. The case was then referred to the European Court of Justice. This has implications for all employees who were retired against their wishes at any time from 1st October 2006.

In particular employers would not be able to rely on the default retirement age of 65 so employees over 65 retired on or after the 1st October 2006 may put in claims for age discrimination and unfair dismissal in the hope that their claims would eventually be covered by revised legislation. However, the normal three-month time limit for lodging claims would still apply.

Therefore Age Concern are advising their members aged 65 or over who are being retired against their wishes to inform their employers of the Heyday case and its implications and to lodge protective claims with the Employment Tribunal where appropriate.

The Practice Direction applies in England and Wales but not Scotland where cases will be referred for individual decisions.

Practical Tips

- Review your policies in relation to retirement and don't forget to check terms and conditions for retirement clauses.
- Be organised! As an employer you are legally required to advise every employee of their right to request to work beyond 65 between six and twelve months before their 65th Birthday.
- Ensure that you keep sufficient records showing that you are complying with the Age Discrimination requirements.
- It is good practice to display information about current Age Discrimination developments.

Sufficient records depending on your business might include:

- Policies
- Contracts of Employment
- Correspondence between you and other employees pre-retirement and post-retirement

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact a member of the Employment Team on 0151 600 3000. If you no longer wish to receive the bulletin please let us know by return email.

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