



Bulletin 153

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FORCED RETIREMENT AT 65 REMAINS LAWFUL FOR NOW

From 1 October 2006, the Employment Equality (Age) Regulations introduced a national default retirement age (DRA) of 65. The DRA means that it is lawful for employers to terminate the employment of a member of staff on the grounds of age when they reach the age of 65.

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 new DRA. The Judge agreed to refer the case to the European Court of Justice.

In March 2009, the ECJ referred a decision back to the High Court after clarifying that social policy objectives "such as those related to employment and the labour market" may be considered legitimate under EU law. The High Court hearing took place in July 2009, with a decision announced on 25 September. The court ruled that the DRA was not unlawful when introduced in 2006, but there was now a compelling case for it to be scrapped. A deciding factor for the court is that the government has committed to reviewing the DRA in 2010. This means before the law is revised, for the time being, employers can still lawfully retire employees at the age of 65.

Practical Tips

Even though employees can still be compulsorily retired at 65, it is important to remember that employers are obliged at least 6 months before the retirement date to advise employees that they can request to work beyond 65 even if the employer has no intention of agreeing to such a request. The duty on the employer is to consider any such request. Failure to follow this simple procedure could result in a costly Tribunal claim.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you no longer wish to receive the bulletin please let us know by return e-mail to helen.calvert@brabnerscs.com

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