



Are there wrinkles in your retirement procedure?

Employers have a number of legitimate reasons for wishing to be able to require an employee to retire. The key reasons are either financial – retirement may result in a reduced workforce without having to go through the complexities and costs of redundancy – or are about succession planning – retirement may allow an employer to promote other employees or bring in 'new blood'.

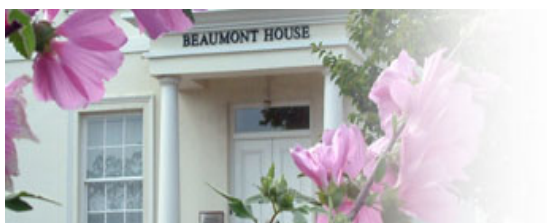
The compulsory retirement of employees has become more complex since European law banning age discrimination has been introduced. The UK interpretation of this law permits employers to require an employee to retire at 65 (or older) – without being open to a legal claim for age discrimination. Any earlier retirement age is only permitted if objectively justified. However, employers are required to follow a detailed procedure giving the employee at least 6 months written notice that they must retire at 65 and a chance to put forward their case for staying on beyond 65. The employer must consider what the employee has to say – but if they disagree they can force the retirement.

This legal position has been challenged in the courts by Age Concern. Age Concern argued that it was unlawful under European Law for employers to be able to require retirement at a particular age – they argued this would amount to age discrimination. Employers, they said, should have to be able to justify the dismissal of the employee on a basis other than age. Hundreds of claims have been brought against employers on this basis.

The case has now been considered by the highest court in the EU – the European Court of Justice. It decided in March 2009 that the UK law permitting employers to force retirement at 65 may be lawful under European law – but the final decision will be left to the High Court in London. Most lawyers think that its now likely that the High Court will uphold the UK law and permit employers to make the decision on whether an employee must retire at 65 or not.

If you need advice on how to get it right with an employee who is in the last year before retirement age contact Julie Thompson on 01752 827014.





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Nash & Co Solicitors LLP
Beaumont House, Beaumont Park, Plymouth PL4 9BD
Tel: 01752 66 44 44
www.nash.co.uk