



Retirement and age discrimination

26 June 2024

The Irish Government has recently approved plans to increase the mandatory retirement age for gardaí, prison officers, and members of the Defence Forces from 60 to 62 years of age, reflecting the reality across all sectors that people can and want to work in their chosen careers for longer. The Employment (Restriction of Certain Mandatory Retirement Ages) Bill, 2024 (the Bill) is also progressing towards enactment and includes a statutory provision to allow, but not compel, an employee to stay in employment until the State Pension age of 66.

Under the Bill, an employer will not be able to set a compulsory retirement age less than the State Pension age if the employee does not consent to retire. The Bill will provide for certain exemptions where the employer can justify the retirement age, such as retirement ages which are set out in law and apply to some public servants, or contractual retirement ages for public-safety critical professions or physically demanding professions.

As a result of the multiple changes to retirement age in recent years, and with more changes expected following the enactment of the Bill, there can be a degree of uncertainty amongst employees and employers as to what the legislative retirement age is and the process in place. Therefore, it is critical for employers to appropriately retain the expertise and knowledge of experienced staff in a transparent and consistent manner.

What is the retirement age in Ireland?

There is currently no fixed retirement age for private sector employees, though the common retirement age is 65. Private sector employers therefore need robust retirement policies and practices in place to ensure they are not at risk of age-based discrimination due to inconsistent processes.

The age of qualification for the State Pension (contributory) is 66 years old, provided enough PRSI contributions have been made. If an employee retires at 65, they can apply for Jobseekers Benefit until they are old enough to receive the State Pension. From January 2024, an employee can opt to defer claiming the State Pension up to age 70 and can continue working to increase their state pension.

For self-employed individuals, there is no set retirement age, although a retirement age may be included in the company's articles of association.

Age discrimination

The Employment Equality Acts, 1998-2015, provide the nine protected grounds under which employees cannot be treated in a less favourable way than others, namely:

- Gender
- Civil status
- Family status
- Sexual orientation

- Religion
- Age
- Disability
- Race
- Membership of the Travelling Community

Age discrimination cases often draw media and public attention. In these cases, the WRC has regularly found in favour of employees where gaps in the retirement process were identified, even when employers argue that a mandatory retirement age is necessary for intergenerational fairness and succession planning. Where an adjudicator finds that there is no objective justification for an employer's decision to refuse to allow employees to work beyond the mandatory retirement age, they can order a forcibly retired employee to be reinstated in their role with backpay for the months they were retired.

Where employers can reasonably justify a retirement age and demonstrate a transparent, consistently applied process, adjudicators are more likely to uphold the employer's justification.

Enforcing a retirement age

The Code of Practice on Longer Working (S.I. No. 600 of 2017), published by the WRC, provides guidance for employers on retirement ages. The Code requires companies enforcing retirement ages to objectively justify their retirement age by demonstrating a legitimate aim and providing evidence that the means of achieving this aim are appropriate and necessary. Examples of legitimate aims include:

- Intergenerational fairness (allowing younger workers to progress).
- Motivation and dynamism through the increased prospect of promotion.
- Health and Safety (generally in more safety critical occupations).
- Creation of a balanced age structure in the workforce.
- Personal and professional dignity (avoiding capability issues with older employees).
- Succession planning.

Employers can use multiple of these aims and can amend the retirement age over time with the changing needs of the company. However, they must always be able to provide evidence of the appropriate and necessary means for having a retirement age in the event of an employee challenging the process.

This guidance is expected to change once the Employment (Restriction of Certain Mandatory Retirement Ages) Bill 2024 is enacted.

Employment contracts

While not specifically required under Irish employment legislation, it is considered best practice to include a retirement clause in all contracts of employment, particularly should an employer wish to enforce a retirement age. In cases where an existing contract does not have such terms and conditions, or if the employer wishes to change the stated retirement age, the employee will need to agree and sign off on adding this clause.

Employees who reach the retirement age can be provided with a single short-term fixed-term or fixed-purpose contract (typically 12-18 months) to help meet the short-term needs of the employer or employee as required.

All organisations should have a retirement policy in place which informs employees of the retirement age in effect and of the procedure in place for employees once they reach the stated retirement age. Keeping employees informed and up to date with the organisation's retirement policy will improve awareness and allow for both the

employer and employee to develop succession plans and prepare for retirement well in advance of the employee reaching retirement age.

The policy should also outline the organisation's approach to retirement planning and how they will support retiring employees, which will further help employees approaching retirement age to prepare.

Consistency

Ultimately, one of the key findings in age discrimination cases is the consistent and fair application of principles relating to employment. An inconsistent application of principles is significantly more likely to lead to the WRC deeming that an employee was treated less favourably than their colleagues. HR policies and procedures can therefore be a powerful control to ensure that rules and principles are applied equally and consistently across an organisation.

How Forvis Mazars can support you

Our people consulting team is highly skilled in the area of employment law and compliance and can support you to ensure you are fully compliant with the latest employment legislation. Our team offer a wide array of services in this regard, including the following:

- Reviewing and drafting employee contracts.
- HR and employment law advice services.
- Development of HR policies and procedures.
- HR audits against legislation and best practice.
- Developing and updating employee handbooks.

Contact a member of our team today to discuss how we can help ensure you are compliant with current employment legislation.