

EMPLOYMENT

Mandatory retirement: *age discrimination or legitimate workplace policy?*

Mandatory retirement ages feature in many employment contracts and/or company policies. While some employees may be pleased to embark on a new stage of life on reaching a mandatory retirement age after many years in the workforce, there is an evident increasing appetite to remain working beyond what would have been regarded as the traditional retirement age of 65.

This trend is expected to continue as average life expectancy increases and employees reflect on whether they have made adequate pension provision to fund their retirement.

7 MIN READ

The law in relation to mandatory retirement has evolved in recent years and it is fair to say employers who wish to retire employees at a mandatory retirement age are under increasing pressure to justify their position. Not only that, but the General Scheme of the Employment (Restriction of Certain Mandatory Retirement Ages) Bill (the **General Scheme**) has recently been published, which proposes to introduce a ban on mandatory retirement below the current state pension entitlement age of 66 where the employee does not consent to it.

In this briefing we outline the current law, what lies ahead and what this all means for your business.



What is the current law?

In Ireland there is no statutory mandatory retirement age for private sector employees and many employers seek to rely on a contractual mandatory retirement age. While the Employment Equality Acts prohibit discrimination on the ground of age, there is an exception in respect of contractual mandatory retirement ages, provided the employer can show that it is objectively and reasonably justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

The Workplace Relations Commission (WRC) Code of Practice on Longer Working (the **Code**) sets out best industrial relations practice in managing engagement between employers and employees in the run up to a mandatory retirement age. It also sets out a number of potential legitimate aims for setting a mandatory retirement age in the first place, these include:

- intergenerational fairness (allowing younger workers to progress)
- motivation and dynamism through the increased prospect of promotion
- health and safety concerns (generally in more safety critical occupations)

- the preservation of personal and professional dignity (avoiding capability issues with older employees)
- succession planning
- the creation of a balanced age structure in the workforce

Trends in recent case law

While the 'legitimate aims' in the Code are broad in nature, case law makes clear that employers' cited aims for having and enforcing a mandatory retirement age will be subject to scrutiny, if challenged. Mere generalisations for having a mandatory retirement age are certainly not enough to withstand legal scrutiny.

In *Mary Costigan v South Leinster MABS CLG*¹, the complainant was employed as an administrator for over 10 years until she was required to retire in 2022. Although the complainant's contract was silent on retirement age, a new staff handbook introduced in 2020 provided for a retirement age of 66. According to the respondent, the age profile of its staff was of concern for two reasons: (i) as employees aged, so too did the age profile of clients using MABS, and (ii) the age profile of staff indicated there would be a 'brain drain' as a considerable portion of the workforce would retire within a confined period.

¹ADJ-00041989

The respondent therefore relied on the legitimate aims of (i) ensuring a balanced age structure and (ii) succession planning. Due to a lack of evidence to back up the company's first reason, the Workplace Relation Commission (**WRC**) concluded that the mandatory retirement age was not appropriate and necessary to mitigate against an unbalanced age structure. In relation to a 'brain drain' the evidence showed the age structure in the organisation was more balanced in 2022 than it was in 2020. The complainant's retirement was therefore found not to be proportionate in the circumstances. The respondent was ordered to pay the complainant €15,000, which equated to approximately nine months' pay.

In **Brendan Beirne v Rosderra Irish Meats Group**², the complainant was required to retire from his employment when he reached the age of 65. He made an application to continue working but this was refused. The company submitted that it had a long-established normal retirement age of 65 years which was justified by legitimate aims, including succession planning. However, while

the WRC noted that the company had a contractual retirement age in place, there was no evidence that its objective grounds were outlined to the complainant at any stage. The WRC commented that aims, such as succession planning, cannot be considered as generic justification for refusing all requests to work beyond the normal retirement age. Therefore, the WRC found the complainant was discriminatorily dismissed on grounds of his age and awarded him €30,000 compensation.

In contrast, the High Court looked at the issue of a mandatory retirement age in the public sector in **Mallon v Minister for Justice**³ and held that a retirement age of 70 was not discriminatory and was justified by legitimate aims. Mr. Mallon had brought a judicial review challenge to the mandatory retirement age of 70 imposed on sheriffs in Ireland. The High Court, in refusing the order sought by Mr. Mallon stated "*requiring mandatory retirement, [...] is prima facie directly discriminatory. Nonetheless, it seems to me that it can be said that the overall aims, as identified in evidence in this case from the general history*

of compulsory retirement in the public service, are legitimate ones."

The High Court noted that "*the justification relied upon for the mandatory retirement age is that it enables planning (for retirement, for recruitment and for promotion), it makes way for younger people, personal and professional dignity, allows an age balance and intergenerational fairness and consistency. In particular, I accept that the aims sought to be achieved by the adoption of a standard retirement age of 70 were to allow for planning at the level of the individual and at the level of the organisation, the creation of an age balance in the workforce, personal and professional dignity, intergenerational fairness and standardising retirement age in the public service.*"

This case has been appealed to the Supreme Court. The hearing has taken place and the Supreme Court's judgment is eagerly awaited as it is expected to clarify the law in this area and, in particular, whether an employer just needs to be objectively justify having a retirement age or whether it needs to go further and justify the application of that retirement age in every particular case.

²ADJ-00027036

³[2022] IEHC 546

The Employment (Restriction of Certain Mandatory Retirement Ages) Bill 2024

In March 2024, the General Scheme of a new Bill was published. It proposes to prohibit an employer from enforcing a retirement age below the age of 66 where an employee does not consent to it. The objective is to allow, but not compel, an employee to stay in employment until the state pension age and the initiative stems from a recommendation from the Pensions Commission. It will only apply to contractual retirement ages and not those set by statute.

According to the General Scheme, it will be up to the employee to notify the employer in writing, no less than three months prior to the date on which they would have been required to retire, that they do not consent. They may indicate that they wish to retire at 66 or at an age between the contractual retirement age and 66.

Three months is a default notice period and an employer may vary this to any period, not exceeding six months.

The onus is on the employee to make the notification - where they do not make it, the employer may take it that they consent to retire at the contractual retirement age.

An employee may withdraw the notice but, if they do, must give the employer notice of termination in accordance with their employment contract or in accordance with the Minimum Notice and Terms of Employment Act.

The new law will have no bearing on the provisions of the Employment Equality Acts. Employees may continue to bring claims in respect of age discrimination where they are subject to mandatory retirement and employers may still seek to justify it, as outlined above.

There will be an amendment to the Unfair Dismissals Acts so that the current exemption from application of the Acts in respect of employees who have reached normal retirement age will be amended to include the wording "being an age greater than the pensionable age". Therefore, employees who are forced to retire below the state pension age pursuant to a contractual retirement age may bring a claim under the Unfair Dismissals Acts.

Where an employee is dismissed in breach of the new law, they may seek redress under the Unfair Dismissals Acts or the Employment Equality Acts, but not both.

Pre-legislative scrutiny of the new law has now commenced, and this will be followed by publication of the actual Bill itself.

What does this mean for employers?

It is undeniable that employers must have concrete justifications for having and enforcing any mandatory retirement age. Significant compensatory awards can be made for age discrimination where an employer is not in a position to demonstrate such justification. With the new law approaching, employers seeking to rely on mandatory retirement ages below 66 will come under increasing pressure to justify their position.

Our top tips are:

- Follow the Code: although not legally binding the WRC and Labour Court will have regard to an employer's adherence to the Code in any claim.
- Have a policy: a retirement policy should set out the rationale for having a retirement age and what process an employee needs to follow if they wish to make a request to work beyond retirement age.
- If an employer chooses to rely on legitimate aims, such as 'ensuring a balanced age structure' or 'succession planning', the employer should have empirical evidence to support the proposition that enforcing the retirement age is appropriate and necessary to achieve such aims.

- In advance of the upcoming new law and where a mandatory retirement age is currently set below 66, give due consideration to increasing it. Having a mandatory retirement age of 66 or above will avoid the inherent uncertainty in dealing with notices of objection and may prove easier to justify in the event of a challenge.
- Where requests to work beyond retirement age are received, consider permitting employees to work beyond retirement in certain justifiable cases but on a fixed-term basis.

For further information in relation to this topic please contact [Michael Doyle](#), Partner, [Triona Sugrue](#), Knowledge Consultant, [Jason McMEnamin](#), Associate, [Aoife Brady](#), Solicitor, or another member of the Employment team.



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