

Subject: Compulsory Retirement at 65: Lawful? You may only find out in 2009

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From: Info <info@employease.co.uk>

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We wrote to you last year to make sense of the Employment Equality (Age)

Regulations 2006, introducing age discrimination legislation in the UK. One of the most important practical aspects of the Regulations was that you could, without having to justify your decision, force an employee to retire at the age of 65 provided that you follow the procedure.

The Regulations derived from a European Directive and as such can be challenged in the European Court of Justice. This is what Heyday did on behalf of Age Concern in 2006. Heyday is the membership organisation supported by Age Concern. Heyday argues that any compulsory retirement age in itself amounts to direct discrimination. The government argues that the introduction of a compulsory retirement age is objectively justified in that it helps employers with workforce planning.

No decision on this case is expected before early 2009. In the meantime, the Employment Tribunals in this country have received a number of applications for unfair dismissal and discrimination from employees retired at the age of 65.

On 8th November 2007, the President of the Employment Tribunals issued an Order that all present and future claims against compulsory retirement age be stayed pending the outcome of the ECJ decision. This means that if an employee forced to retire at the age of 65 or beyond lodges a claim in an Employment Tribunal, the Employment Tribunal must keep the claim open but not decide on it until the ECJ decides on the Heyday claim. This decision to stay all claims will be reviewed and may change after the Court of Appeal decides on the case of Mrs A Johns v Solent SD Limited which is due to be heard in 2008, but it may not. This is all clear as mud.

What all this means is very important for you in practice. Even if you follow the retirement procedure, you may be faced with a finding of unfair dismissal or discrimination in one to three years' time. Age Concern's website has loudly trumpeted this decision and provides a step by step guide as to how to lodge Employment Tribunal claims. It would be audacious to predict the outcome of the Heyday challenge, so in the meantime you must be extremely careful when planning to retire employee.

For more specific information or to discuss your requirements please call either Amanda Galashan or Julie Calleux at EmployEase on 0845 123 3741, or email us at info@employease.co.uk.

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EmployEase: The Employment Practice Ltd
75 Chancery Lane
London
WC2A 1AA
Tel: 0845 123 3741

And at:

17 Melville Gardens
Burntisland
Fife
KY3 0DT
Tel: 0845 123 3741

Company registered in England Reg No: 2931940
Registered Office: 18a Arundel Square London N7 8AS

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