

# The retirement of the Default Retirement Age

Employers can currently retire employees when they reach the Default Retirement Age ('DRA') of 65. However, the Government is introducing changes. These changes mean that the option of retiring employees at 65 will not be available in future.

Employers should be aware of the following:

- The DRA will no longer exist from **1 October 2011**.
- The deadline for issuing employees with notices of intended retirement under the current normal statutory procedure is **30 March 2011**.
- Any retirement notification issued after 30 March 2011 but before 6 April 2011 that is intended to take effect before 1 October 2011 will still be valid, if a special '**short notice**' procedure is used. This means that although the employee could claim limited compensation, the dismissal can still be fair.
- From 1 October 2011 employers wanting to retain a retirement age will need to demonstrate that it is **justified**.

## Action points

Employers should take steps now to prepare their business for this significant change. You should take the following action:

1. Conduct a **staff audit** to identify employees who are, or will be, 65 before 1 October 2011.
2. **Consider** whether it is in the interests of your business to use the current statutory retirement procedure for these staff.
3. **Issue notices** of any intended retirement no later than 30 March 2011 (or 5 April 2011 if short notice).

## Looking ahead

The removal of the DRA may result in employers dismissing older employees on the grounds of incapability, i.e. ill-health or performance. This may well sour the employment relationship and lead to disputes. Employers will therefore need to plan for the future:

1. **Review** appraisal, capability, performance and absence management policies. These need to be robust enough to enable you to dismiss employees in circumstances where their retirement could not be objectively justified.
2. **Check** employee benefits to assess whether any insurance-based products (such as life assurance, medical cover, critical illness cover and permanent health insurance) have a cut-off point of 65.
3. **Consider** whether you will continue to have a retirement age (and in particular how you would justify this) after 1 October 2011. Options include:
  - a) Retain and seek to justify your existing Normal Retirement Age ('NRA'). You will still need to justify the decision to apply it to a particular employee.
  - b) Retain an NRA but increase the age. This will still need to be justified.
  - c) Remove your NRA altogether. This changes the focus of any future dismissals to one of the other potentially fair reasons, e.g. conduct, capability or redundancy. You would still need to follow a fair procedure to counter any claims of unfair dismissal and age discrimination.

These changes are imminent and will undoubtedly have an impact on your business. If in doubt about what you should be doing to protect your business or plan for the future, please call us to discuss further. All RCPA members are eligible for a 10% discount.

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