

WORKING IN A WORLD WITHOUT RETIREMENT AGES

by Richard Sheldon

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This September sees the latest extension to the Discrimination (Jersey) Law 2013 (**Law**), with the addition of age as a protected characteristic. Whilst this amendment will have a significant impact in a number of areas for Jersey employers, without question the biggest changes relate to retirement of employees.

Historically, the position of employees was that they could simply be shown the door once they reached 65. However, in future not only will the upper age limit for unfair dismissal be removed, but also employers will have to objectively justify any compulsory retirement age. In order to allow employers to prepare for this new world, there will be a transitional period, with the majority of the new age discrimination laws coming into force immediately, but these specific retirement changes being deferred until 1 September 2018.

Once these changes come into force whilst in theory it will be possible to retain a compulsory retirement age, the requirement to objectively justify this age will mean most organisations will have little choice but to operate without one. Direct comparisons can usefully be drawn here with the UK who went through a similar change in 2011, and whilst there have been some examples where a default retirement age has been objectively justified, the reality is this is an exception. What has happened instead is that employers have found new ways to work that suit them.

Certainly one major benefit of the change is that it forces an employer to look more at the strengths and weaknesses of the individual, rather than the arbitrary number of their age. If an employee is good at their job – why not keep them on and retain that knowledge and experience and if they are not – don't wait until they are 65 to deal with the problem!

The change also forces employers to focus on succession planning where it is most needed. The truth is a certain level of staff turnover is both inevitable and healthy, and so it is unnecessary to know when every employee is going to leave, whether that be to retire or for any other reason. What businesses need to focus on though are the key roles and have a frank conversation with the individuals (not just those over 60) about future plans and aspirations.

Others will adopt more creative solutions in order to encourage retirement. One benefit offered is to arrange financial advisors to help employees plan for retirement, so that when they do reach 65 they are financially able to do so. Another option is to put in place flexible retirement schemes, with a retirement date agreed with the employee in return for a gradual reduction in hours, to help them ease into retirement.

Where employees do stay beyond normal retirement age, usually it should be possible to retain them on their existing contracts of employment. One important point to note in this regard is that the Law will continue to allow employers to exclude employees from insurance related benefits such as private medical if they are above retirement age. The temptation of many employers will be to use fixed term contracts for such staff, however this can often cause more problems than it solves as the expiry of a fixed term contract is treated as a dismissal. During the two year transition period, this point is academic because the upper-age limit of 65 on unfair dismissal claims remains, however, once it is removed employers will need to demonstrate a fair reason.

Whilst with any new employment legislation it is very easy to portray it as anti-business, Jersey employers should see this change as an opportunity to change how they think about their people. When Jersey employers already have such a relatively small pool of employees to choose from at the best of times, the Law will ultimately force them to remove some of those traditional preconceptions around age, and provide the platform to maximise the talent there already is within the island.

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