

High Court Holds that the UK's Default Retirement Age of 65 Is Lawful

30 September 2009

Introduction

On 25 September, the High Court in the UK delivered its long-awaited judgement in the “*Heyday*” case in *R (on the Application of Age UK) v Secretary of State for Business, Innovation and Skills* [2009] EWHC 2336).

The High Court held that the default retirement age (DRA) of 65 under regulation 30 of the Employment Equality (Age) Regulations 2006 (the Age Regulations) is not contrary to the Equal Treatment Framework Directive (2000/78/EC) (the Directive)—meaning that it remains potentially “fair” to force employees to retire when they reach the age of 65.

Background to the *Heyday* Case

The decision follows a referral of this case by the UK courts to the European Court of Justice (ECJ) to opine on whether the DRA in the Age Regulations infringed the provisions of the Directive. The ECJ was asked to clarify the conditions under which member states may authorise the dismissal of workers by reason of retirement. Age UK (formerly known as Heyday) contested that the UK Government was breaking European laws by forcing people to retire at 65.

The ECJ gave its judgement on 5 March 2009, finding that the provisions of the Age Regulations, such as regulation 30, which allows for the compulsory retirement of workers at age 65 (subject to justification), are potentially compatible with the provisions of the Directive and not in contravention of it.

The ECJ went on to say that ultimately it was for the UK High Court to “determine whether and to what extent a provision which allows employers to dismiss workers who have reached retirement age is justified by ‘legitimate’ aims within the meaning of Article 6(1) of the Directive”.

It added that it was for the High Court to “ascertain, first, whether the UK legislation reflects such a legitimate aim and second, whether the means chosen were appropriate and necessary to achieve it”.

The High Court's Decision

The High Court rejected Age UK's challenges that the DRA of 65 in the Age Regulations was not proportionate, and there was no clear and consistent social policy aim pursued by the UK Government in relation to setting the DRA.

The High Court held that regulation 30 had been implemented to pursue legitimate social policy objectives concerning the labour market, and was proportionate, bearing in mind the UK Government's margin of discretion in implementing the Directive in 2006.

As a result, the DRA of 65 remains lawful. However, the court found the arguments against the regulation compelling, and made a number of comments which suggest that the regulation may not survive for much longer. Indeed, the judge in the case, when making his decision, said that he took into account the UK Government's move to bring forward a review of the DRA from 2011 to early next year and added that he "cannot presently see how 65 could remain after this review".

Conclusion

As the law stands in the UK, an employer can fairly terminate an employee's employment at the age of 65 without any termination payment, even if the employee does not want to retire.

Individual employees have the right to request to continue working beyond the date on which the employer wants them to retire, but the employer can refuse the employee's request and the law does not require the employer to give any reason for that decision.

An employer can also refuse to recruit anyone over the age of 65.

Hundreds of retirement-related employment tribunal cases have been on hold awaiting the outcome of the *Heyday* challenge. Unless *Heyday* appeals, these cases can now move forward and it is likely that the claims brought by people who did not want to retire will fail.

However, considering the strong indication given by the judge in this case, the DRA will likely change following the UK Government's review of regulation 30 in 2010.

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