





Overview 

1. Retirement Ages & Auto Enrolment
2. Flexible Working Requests
3. Weather Events & HR Considerations
4. Budget 2019

2018

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Context 

- Population Ageing and the Public Finances in Ireland – August 2018
- An increase in both the employment rate of older workers (for instance by linking retirement age to life expectancy) and of those of working age (by addressing barriers that weigh on female participation rates) could help to mitigate the impact of population ageing on the public finances.

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Auto Enrolment



- Roadmap for Pensions Reform 2018 – 2023.
- Ambitious five year pension's roadmap.
- Automatic Enrolment Scheme (the "Scheme") by 2022.
- On 22 August 2018, Minister Doherty launched a public consultation process

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Auto Enrolment



- Workers who earn more than €20,000 will be subject to auto-enrollment to a pension scheme in 2022 if they are not already members of a Scheme. It is thought that this will affect over 850,000 workers.
- 6% of their gross pay towards their pension annually.
- Will require employers to match contributions of their employees up to a salary of €75,000.
- State will then contribute €1 for every €3 saved by the employee

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Auto Enrolment



- UK Experience.
- Key lessons learned was that employers "*will have [their] own unique challenges depending on [their] structure – we advocate starting 18 months ahead*".
- Employers will have to register and provide the relevant data to their providers.
- Payroll software will also need updating.
- Communications piece.

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Law Relating to Retirement Ages



- Public Service Superannuation (Age of Retirement) Bill 2018.
- Employment Equality Acts – s. 34(4).
- Equality (Miscellaneous Provisions) Act 2015.
- Concept of “objective justification”.



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WRC Code of Practice



- December 2017 – WRC publishes the Industrial Relations Act 1990 (Code of Practice on Longer Working) (Declaration) Order 2017.
- Guide for employers, employees and reps on best practice in the run-up to retirement in the workplace.
- Includes guidance on how to respond to requests to work beyond the employer’s mandatory retirement age.
- Code is now the starting point for all employers and HR professionals in addressing retirement in the workplace.



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WRC Code of Practice – 4 Headings



1. Utilising the skills and experience of older workers.
2. Objective justification.
3. Standard retirement arrangements.
4. Requests to work longer.



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1. Utilising the skills and experience of older workers



- The Code highlights the importance of respecting the value to a business of the experience of older members of staff and encourages a positive culture which is accepting and inclusive of workers of all age groups.
- The Code outlines steps which can be taken to improve the culture in a workplace in this regard such as training on age diversity or the adopting of flexible working patterns where suitable.
- It is noted that age bias should be avoided in any company policies and procedures.



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2. Objective Justification



- The Code also sets out that a compulsory retirement age can exist but only where there is a legitimate aim and where there is evidence that the means of achieving this aim are appropriate and necessary.



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Examples of Objective Justification



- Succession Planning
- Health & Safety (generally in more safety critical occupations)
- Personal and Professional Dignity (avoiding capability issues)
- Motivation and Dynamism through the increased prospect of promotion
- Intergenerational Fairness

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3. Standard retirement arrangements



- The Code outlines the importance of identifying specific individual's intentions in relation to retirement in advance of their retirement date and the benefits of providing good information and suitable guidance in relation to same.
- The Code provides an outline of the key considerations which should be taken into account in the retirement process.



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4. Requests to work longer



- The Code also provides a procedure to be followed in circumstances where an employee requests to work longer.
- Key concerns and considerations which should be dealt with by both the employee and the employer are set out and a suggested process for dealing with a request is outlined.
- The Code recommends that an employee must make a request in writing no less than 3 months from intended retirement date.
- It is suggested that a meeting take place between employer and employee and that the employer's decision is clearly communicated to the employee.



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Requests to work longer



- If a fixed term contract is to be offered post retirement age to an employee, the time period and the legal grounds underpinning the contract should be set out.
- If an employee's request is refused, it is suggested that a meeting be held with the employee setting out the grounds on which the refusal is based.
- It is also suggested that the employee be provided with an appeals mechanism through the established grievance procedure.
- The Code recommends that an employee can be accompanied to a meeting by a work colleague or a trade union representative.

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Case Law Examples



Cox –v- RTE – March 2018

- two contracts of employment with RTE running concurrently
- full-time contract of employment which commenced in 2004 until March 2016 on which date she retired on the grounds that RTE had a compulsory retirement age of 65
- separate casual or irregular contract of employment, which commenced in August 2003, for which she was paid a daily rate
- defined contribution pension scheme attached to the casual irregular contract
- eight months before reaching his or her 65th birthday, a staff member in this category will be notified that he or she would be required to retire at age 65 if a decision accordingly has been made
- intergeneration of fairness, dignity, and respect in the workplace and ensuring the promotion of younger members, particularly in a broadcasting setting

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Case Law Examples



John O'Brien v PPI Adhesive Plastics 2018

- complainant was retired against his wish, when he turned 66 years of age and had accrued 46 years of service with the company.
- WRC was not satisfied that the company operated a universally applied compulsory retirement age nor that the alleged policy satisfied a legitimate aim.
- The complainant said that he was never advised of a company retirement age – no contract.
- The company claimed that the normal retirement age of 65 years arose in two circumstances: for union members, by virtue of a collective agreement and, for non-union employees, by custom and practice.
- that the company's mandatory retirement age satisfied a legitimate aim or that the means to achieve that aim were appropriate and necessary.

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IHREC Retirement & Fixed-Term Contracts



- Guidelines published April 2018
- To be read in conjunction with the WRC Code of Practice
- Commission has reserved its position re issuing a Code of Practice on retirement and age discrimination



Commission on Equality and Diversity
in the Workplace
Irish Human Rights and Equality Commission

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Key TakeAways



- Be definite about retirement age – objective justification?
- Apply retirement age consistently.
- Requests to work longer – deal with them under the WRC Code and IHREC guidance.
- Policies – must be drawn up with Code and Guidelines.

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Requests for Flexible Working



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Requests for Flexible Working



Requests by employees for flexible working

- Growing trend amongst younger generation of employees seeking more flexible working hours.
- No statutory right in Ireland, as is the case in the UK.
- Benefits of having a Flexible Working Policy in place to address requests received.
- Addressing circumstances where employee requests flexible working hours for medical reasons.



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UK Experience



- The Employment Rights Act 1996 introduced the right to request flexibility due to growing demand by both employers and employees.
- The legislation recognises an employee's right to request a change to contractual terms and conditions of employment in order to work flexibly if they have worked with an employer for a continuous 26 week period.
- An employee can only make one statutory request in any 12 month period.
- Before June 2014, the right to apply for flexible working time only applied to parents of children under 17 or 18 in the cases of parents of disabled children or to those caring for an adult. The right has now been extended to any eligible employee.
- No significant overall increase in the number of employees working flexibly since the legislation came into effect in 2014.

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Is flexibility really working in the UK?



- 30 % of flexible workers felt they were regarded as less important than colleagues who worked conventional hours.
- 25% of flexible workers believed they were given fewer opportunities than colleagues who worked conventional hours.
- 25% also believed that they had missed out on promotion because of their status as flexible workers.



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Introducing a Flexible Working Policy



- A flexible working policy ensures consistency and transparency in terms of how requests are handled.
- The introduction of a policy also fosters a positive culture and ensures employees are aware they will not be treated less favourably for requesting flexible working hours.
- A policy document should include details which should be included in the application form, how the employee will be informed of the decision and factors which may be considered in determining a request. Policies of this kind will also often provide for a trial period of between 3 and 6 months in order to see how the proposed arrangement works.



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Factors to be considered



- Burden of additional costs
- Detrimental effect on ability to meet customer demand
- Inability to reorganise work among existing staff or recruit additional staff
- Detrimental impact on quality or performance
- Insufficient work during the periods the employee proposes to work
- Planned structural changes

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Practical Steps



- It is good practice for an employer to communicate the decision to the employee in writing.
- Where multiple requests are received, the requests should be considered in the order that they are received.
- In considering whether to grant a request, an employer must be careful not to inadvertently discriminate against particular employees.
- If an employer is not in a position to grant a request for flexible working hours because a number of employees are already working flexibly, it may be considered good practice to consider calling for volunteers from existing flexible working employees.



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Flexible Working Hours and Reasonable Accommodation



- In terms of providing flexible working hours to employees seeking reasonable accommodation, regard should be had to the seminal judgment of *Nano Nagle School v Marie Daly*.
- The judgment clearly set out that an employee must still possess full competence to complete tasks that form the "essence of the position" irrespective of the severity of his/her disability.
- In this regard, there may be a limit to what an employer is required to do in order to comply with its obligations. This judgment should be considered in determining requests, eg. where an employee has requested to be taken off night shifts when they have been employed for the very purpose of working such shifts.

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Weather Events – Legal Considerations



- No –attendance – employer’s decision or employee’s decision?
- Red weather alerts have no legal standing.
- Health & safety considerations.
- Short-time or lay off – contractual provisions?
- Force Majeure Leave relevant?
- Policy documents now becoming the HR norm.

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Budget 2018 & Finance Bill 2018



- Tax relief for additional superannuation contributions (ASC) made by public servants from pensionable pay.
- BIK on electric cars exemption extended for 3 years to 2021 – cap of €50k on value of car.
- KEEP – small and medium sized enterprises tax relief on shares offered to key employees which can be tax free.

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Questions?



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