

## **Retirement notices – when less is not more**

The Employment Appeal Tribunal (EAT) has handed down its judgment in the case of Bailey v R & R Plant (Peterborough) Ltd which will be of relevance to employers seeking to rely upon notices of retirement issued under the statutory retirement procedure (now repealed). It has not been possible to issue new notices of retirement under the statutory retirement procedure since 6 April 2011, but subject to the requirements of the transitional provisions, notices issued prior to that date will continue to have effect.

### **The case**

Mr Bailey was employed as a motor vehicle engineer repairing plant and machinery. It was accepted that his normal retirement age was 65. The retirement notice which he was given stated that if he wished to work beyond his retirement date he was required to apply to the company in writing. He did so but was unsuccessful and his employment terminated, prompting him to bring claims of wrongful dismissal, unfair dismissal and age discrimination. The Employment Tribunal rejected his claims. He appealed in respect of unfair dismissal only and was successful, being awarded over £4,000 in compensation.

The EAT found that the retirement notice Mr Bailey had been given was invalid because it did not contain all of the required information. In its judgment it concluded that "An employee is not informed of the statutory procedural right merely by being told that he may make a request not to retire. He is informed of the statutory procedural right only if he is told the essential conditions by which it may be exercised". Those conditions include the need for the employee's request to be in writing, and for it expressly to state that it is made under paragraph 5 of Schedule 6 to the Equality (Age) Regulations 2006.

### **Implications for employers**

Failure to include all of the required information in a notice of retirement will render that notice invalid. If the employer retires the employee against their will it could result in successful claims for unfair dismissal and age discrimination. Awards in discrimination claims are uncapped and Tribunals are likely to take a 'whole of life' approach to loss of earnings on the basis that there is a real risk that older claimants will never find alternative employment.

### **What should employers do?**

It is not possible to issue new notices of retirement under the statutory retirement procedure as it has been repealed. Employers seeking to rely upon such notices issued prior to 6 April 2011 should urgently review them and take legal advice to minimise the risk of claims.

### **If you are an employer we can –**

- identify areas where you may be at risk and help you to address them
- support you with advice on day to day and major issues
- defend you against employment related claims
- revise your employment documentation and procedures
- provide training to your staff
- improve your health and safety compliance
- keep you informed on developments in the law and best practice
- draft compromise agreements for you to give employees and negotiate with their representatives.

### **If you are an employee we can –**

- bring any employment related claims for you
- negotiate an exit from employment for you on favourable terms
- help you with any issues arising during your employment
- advise you on contractual documentation
- advise you on compromise agreements and negotiate improved terms.

### **For further information**

Please call us on 020 7148 7850 or email [info@levenesemployment.co.uk](mailto:info@levenesemployment.co.uk).

Alternatively please contact Victoria Willson directly on 020 7148 7852 or [vwillson@levenesemployment.co.uk](mailto:vwillson@levenesemployment.co.uk).

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