

AGE DISCRIMINATION

- Employment Equality (Age) Regulations (NI) 2006 – 1st October 2006.
- Framework Employment Equality Directive 2000.
- October 2006 to April 2007 – 972 age discrimination complaints lodged in GB.
- In Republic of Ireland, around 50% of its discrimination claims are age related.

Types of Discrimination

- Direct Discrimination –subject to justification defence
- Indirect discrimination – subject to justification defence.
- Harassment
- Victimization.

Justifying Age Discrimination

- Discriminator must show *“the treatment to be a proportionate means of achieving a legitimate aim”*
- Each case will be decided on its own facts.
- An aim can only be legitimate if you have evidence to support it.
- Directive states legitimate aims include legitimate employment policy, labour market, vocational training objectives.
- Costs alone will not amount to a legitimate aim

Justifying Age Discrimination (2)

- The means of achieving the legitimate aim must be *“proportionate”*.
- Balancing exercise – importance of aim weighed up against discriminatory effect of the requirement.
- Is there an alternative non-discriminatory or less discriminatory way of achieving the same result? If so, the means chosen are much less likely to be found to be proportionate.

Default Retirement Age

- 65
- Mandatory retirement ages below that will be unlawful unless objectively justified.
- Heyday case – challenging UK compulsory retirement provision – referred to the ECJ.
- President of the Employment Tribunals in GB ordered to stay claims made by compulsory retired employees pending the Heyday decision.
- Key issue whether or not a provision in national law that allowed dismissal on reaching retirement age is “*justified by a legitimate aim, including legitimate employment policy ... and if the means of achieving that aim are appropriate and necessary*” in accordance with Article 6 of the Directive.

Palacios Villa v Cortefiel Servicios SA [2007] IRLR 989

- ECJ held that the Directive does not prohibit a Spanish law allowing employees to be retired at age 65.
- ECJ held that a mandatory retirement age falls within the scope of the Directive's prohibition on discriminatory dismissal on age grounds.
- But justified – in Spain the aim of the mandatory retirement age was to deal with high unemployment.

Palacios Villa v Cortefiel Servicios SA [2007] IRLR 989 (2)

- Therefore, encouragement of recruitment a legitimate aim of social policy. Spanish Government introduced legislation during a period of high unemployment to provide jobs for the young and this was proportionate in circumstances.
- In Heyday, the UK Government will have to show that the default retirement age is justified.

First NI case

- McCoy v James McGregor & Son Ltd
- Decision awaited
- Funded by ECNI
- Recruitment case
- Claimant in his fifties, unsuccessful at interview for a sales post

Service Related Benefits

- Regulations completely exclude anyone with less than 5 years service from claiming discrimination on grounds of age in relation to service related benefits.
- For benefits beyond 5 years, employer must be able to defend - were it reasonably appears to the employer that the length of service criteria fulfills a business need of his undertaking (i.e. by encouraging the loyalty or motivation, or rewarding experience of some or all of workers).

Cadman v HSC [2006] IRLR 969 (Equal Pay)

- Rewarding experience that “*enables a worker to perform his duties better*” constitutes a legitimate objective of pay policy, and does not amount to sex discrimination.
- If an employee can show there are “*serious doubts*” about the reasons for the extra rewards, a challenge may still be brought.

Relevant Considerations

- Length of experience – use of experiences as a recruitment criterion, could give rise to the possibility of an indirect discrimination challenge. Can you objectively justify?
- Qualifications – need evidence that a particular qualification is necessary for the job. A proportionate response may be to identify an alternative qualification or equivalent experience.