

NEWS RELEASE



BOSS Federation Issues “Extreme Caution” Warning to Employers on Publication of Repeal of Default Retirement Age – Draft Regulations

The BOSS Federation has issued a cautionary warning to all member company Managing Directors and Chief Executives following the publication of new draft regulations concerning the Repeal of the Default Retirement Age.

The Federation has advised employers that they will have to convene an audit of their workforce and decide what action they take, following the Government's recent publication of the Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011. The new regulations were published on 17th February. The main purpose of the regulations is to remove the employer's right to retire employees. No retirement will be lawful after 4th April 2012, unless it can be justified. It is unclear how stiff the test of justification will be.

Head of Legal Anne Copley says, "Employers need to run an audit of their workforce and consider whether they want to take any measures before the cut-off date of 4th April. And they also need to re-visit their contractual and policy documents. BPIF's HR Advisers and legal team are of course available to help."

As previously stated, from 4th April employers will not be able to lawfully notify any employees of whatever age that they are to be retired. There are transitional provisions allowing retirement of any employees reaching the age of 65 before 30th September 2011. However, the wording of the draft Regulations has the effect of making it unlawful to use these provisions for any employee **who has already reached the age of 65**.

Thus any notices already issued with a retirement date set after 4th April but before 30th September will be unlawful and open employers to a claim of age discrimination.

This is an entirely unforeseen result, and many respected commentators consider it to be a drafting error. Meanwhile employers are left wondering what to do. BOSS advice is that they can either:

- Go ahead with giving notices to over-65s in the hope that the drafting is corrected in the final Regulations – however this runs the risk of discrimination claims if it turns out to have been deliberate and is not corrected.
- Wait until the final Regulations are published when there will at least be more certainty – but that will mean having to wait up until the last minute and all letters notifying of IRDs should be written and ready for delivery as soon as things become clearer. Remember, the last date for notification is 4th April 2011.

Anne continues: "This is a disaster for employers who were in the process of doing the best they could to comply with these new Regulations. Everyone should contact their advisers as to the best course of action."

Transitional Arrangements

There are transitional arrangements meaning that employers can still retire employees reaching the age of 65 on or before 30th September 2011. In order to come within those arrangements employers must:

- Notify the employee on or before 5th April 2011.
- The employee being retired must reach the age of 65 on or before 30th September 2011.
- The employee must be retired by 4th April 2012 at the latest.
- The full current statutory retirement procedure must have been carried out.

The future: age and retirement after 6th April 2011

- **Dismissals:** Retirement will only be fair if the procedure above was commenced prior to 6th April 2011. After that:
 - a. There will no longer be any "duty to consider" procedure.
 - b. Retirement in effect will no longer exist. Dismissals for an age-related reason will have to be objectively justified.
 - c. Justification will mean proving that the dismissal was a proportionate means of achieving a legitimate aim.
 - d. It is uncertain currently what will be acceptable justification, but social policy reasons are more likely to find favour with the courts.
- **Contracts:** Unless employers wish to maintain a contractual retirement age (CRA), all references to retirement should be removed. If a CRA is desired, then it should be debated and signed off by the Board with clear reasons given, to assist in passing the test of justification.
- **Recruitment:** It will no longer be lawful to deny recruitment opportunities to individuals on the basis that they are within 6 months of 65, or the normal retirement age if higher. Job applicants will have to be evaluated equally regardless of age, unless such difference in treatment can be objectively justified.
- **Benefits:** From 6th April 2011, employers will be entitled to remove "insurance and related financial service" benefits for those employees who have reached the age of 65 or the state pensionable age (if higher). That will include income protection schemes, death-in-service benefits and health insurance.

All queries to Anne Copley, BPIF Legal, 01676 526061 or anne.copley@bpif.org.uk

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For further information on the BOSS Federation and its services please visit:
www.bossfederation.co.uk Or contact Philippa Morrell on 020 7915 8326 or email Philippa
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Notes to editors:**The British Office Supplies and Services Federation (BOSS)**

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