

Mandatory retirement age legal case referred to European Court of Justice

The Heyday (backed by Age Concern) case challenging Mandatory Retirement Ages has been referred to the European Court of Justice (ECJ) for a preliminary ruling.

The High Court has made an order referring five questions to the ECJ which address whether parts of the Employment Equality (Age) Regulations 2006 properly implement the European Union Directive on Equal Treatment. The parts being challenged are the default retirement age and the linked exception relating to the recruitment of employees over age 65 (Regulation 30, and parts of Regulation 7); and the scope for justification of direct discrimination (Regulation 3). The wording of these questions was agreed between the DTI, which has been replaced by the Department for Business Enterprise & Regulatory Reform and the National Council on Ageing^[1], and endorsed by the High Court.

Heyday and Age Concern believe that the new rules breach the requirements of the European Directive because they leave people over 65 without the right to choose to continue to work and enable employers to refuse to recruit anyone over the age of 65. More and more employers are using the new regulations to force out people over 65, knowing they cannot be accused of unlawful discrimination.

Ailsa Ogilvie, Heyday Director, said:

“This is an extremely important stage in the legal case challenging the UK Government’s policy of allowing mandatory retirement ages.

“The Government’s decision to allow employers to sack people at 65 completely contradicts its stated aim of encouraging longer working lives. It is absurd to think that as soon as you turn 65, the knowledge and skills that you’ve built up over the years are no longer valued and needed. Mandatory retirement ages simply force out dedicated and experienced employees who are still able to work and deliver high standards.

“This case does not need go to the ECJ. It can be simply settled by the Government reviewing mandatory retirement ages now, rather than waiting until 2011.”

-Ends-

Notes to Editors

[1] The judicial review application has been made by the National Council on Ageing, which operates under the names Heyday and Age Concern

The Government has said it will review the decision to allow mandatory retirement ages in 2011.

Age Concern is the largest organisation in the UK working for older people. Every day we are in touch with thousands of older people, enabling them to make more of life. Our services include information and advice, befriending, day centres, lunch clubs, transport services, home visits, and advocacy services. More information can be found on our website.

Heyday is a not-for-profit membership organisation created by Age Concern for people approaching and in retirement. Launched in May 2006, its aims are to provide a ‘voice’ for this generation and to equip members with all they need to

make better plans for retirement. Benefits include: bi-monthly Heyday magazine and newsletter, an interactive website, money-saving offers, member-only products and services, expert information and a social network. For more information please visit <http://www.heyday.org.uk/>.

Heyday, backed by Age Concern, is represented by Irwin Mitchell, the UK's 4th largest law firm, which was recently voted the 'National law firm of the year' at the prestigious Lawyer Awards, 2007. The firm employs more than 2,300 staff with offices in Birmingham, Glasgow, Leeds, London, Manchester, Newcastle, and Sheffield as well as the Spanish cities of Marbella and Madrid. Barristers acting in the case are Robin Allen QC and Declan O'Dempsey from Cloisters.

The questions referred are:

1. National retirement ages and the scope of the Directive

i) Does the scope of the Directive extend to national rules which permit employers to dismiss employees aged 65 or over by reason of retirement?

ii) Does the scope of the Directive extend to national rules which permit employers to dismiss employees aged 65 or over by reason of retirement where they were introduced after the Directive was made?

iii) In the light of the answers to (i) and (ii) above

(1) were section 109 and/or 156 of the 1996 Act, and/or

(2) are Regulations 30 and 7, when read with Schedules 8 and 6 to the Regulations,

national provisions laying down retirement ages within the meaning of Recital 14?

2. The definition of direct age discrimination: justification defence

iv) Does Article 6(1) of the Directive permit Member States to introduce legislation providing that a difference of treatment on grounds of age does not constitute discrimination if it is determined to be a proportionate means of achieving a legitimate aim, or does Article 6(1) require Member States to define the kinds of differences of treatment which may be so justified, by a list or other measure which is similar in form and content to Article 6(1)?

3. The test for the justification of direct and indirect discrimination

v) Is there any, and if so what, significant practical difference between the test for justification set out in Article 2(2) of the Directive in relation to indirect discrimination, and the test for justification set out in relation to direct age discrimination at Article 6(1) of the Directive?

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