

## **Retirement Update: What's in the New Code of Practice on Longer Working?**

The Labour Court's recent publication of its 2025 Annual Report included a number of case reports involving age discrimination claims where Employees challenged the legality of mandatory retirement ages. Given Ireland's aging population, the upward trend in the frequency of age discrimination claims looks likely to continue and Organisations can also expect to receive an increasing number of requests for longer working beyond a contractual retirement age.

Against this backdrop, the Workplace Relations Commission recently published a new Code of Practice on Longer Working (the 'Code of Practice'). The updated Code of Practice includes guidance on the consent-based framework established by the Employment (Contractual Retirement Ages) Act 2025 (the '2025 Act') whereby eligible Employees are entitled to notify their Employer that they do not consent to retire at the contractual retirement age, where that age is lower than the State pension age of 66. In this update, we examine the best practice guidance that is set out in the Code of Practice.

### **Background**

The purpose of the Code of Practice is to set out best principles and practices to follow during the engagement between Employers and Employees in the run up to retirement, whether this is for Employees who fall within the scope of the 2025 Act or for Employees aged 66 and older who wish to continue working beyond a contractual retirement age.

The Code sets out best practice under the following headings:

- Understanding the relevant provisions of the 2025 Act
- Utilising the skills and experience of older workers
- Objective justification of retirement on contractual retirement age grounds
- Standard retirement arrangements

### **Key Provisions**

#### ○ Guidance on the use of Employment (Contractual Retirement Ages) Act 2025

Section 4 of the Code of Practice sets out detailed guidance on the operation of the 2025 Act. This section provides guidance to Employees seeking to make a notification under the new legislation, Employers who have received such a notification as well as advice on referring a complaint to the Workplace Relations Commission. and updating company policies and contractual documentation. Section 4 concludes by recommending that Organisations, as a matter of best practice, could disseminate information about the relevant provisions in the 2025 Act to their supervisors and staff through awareness sessions and training courses.

#### ○ Utilising the Skills and Experience of Older Workers

Section 5 encourages Organisations to take measures to maximise the experience and skills of older workers, and to harness and accommodate those experiences and skills. Such measures could include:

- Training of management at all levels about age diversity and the benefits of such diversity
- Encouraging knowledge and experience sharing and utilising the skills and experiences of all workers

- Exploring measures around flexible working patterns
- ‘Proofing’ policies and procedures for age bias, or
- Encouraging a culture that appreciates the continuing need for relevant training and development amongst all age groups

Delivering a positive message around embracing and valuing Employees of all ages, raising age discrimination awareness and having a culture that does not tolerate discrimination remain key to good industrial and workplace relations.

- Objective Justification

Section 6 of the Code of Practice reiterates that compulsory retirement ages must be objectively justified both by the existence of a legitimate aim and evidence that the means of achieving that aim are appropriate and necessary.

Examples of what constitutes a legitimate aim may include:

- Intergenerational fairness (allowing younger workers to progress)
- Motivation and dynamism through the increased prospect of promotion
- Health and safety (generally in more safety critical occupations)
- Creation of a balanced age structure in the workforce
- Personal and professional dignity (avoiding capability issues with older Employees), or
- Succession planning.

The Code of Practice differentiates between the treatment of older workers who come within the scope of the 2025 Act and workers who are aged 66 and older who wish to request longer working.

The 2025 Act requires the objective justification test to be applied to the retirement of the Employee concerned while the application of the objective justification test for workers aged 66 and older relates to fixing different retirement ages for various classes or descriptions of Employees in accordance with the Equality (Miscellaneous Provisions) Act 2015.

- Standard Retirement Arrangements

Section 7 recommends that Organisation identify individual intentions to provide relevant information to Employees. Section 8 of the Code of Practice sets out a recommended retirement process. It is good practice to notify an Employee of the intention to retire him/her on the contractual retirement date within 6 -12 months of that date. The 2025 Act prescribes specific time limits for giving notice to Employees who fall within the scope of that legislation.

While the initial notification should be in writing, it should be followed up with a face-to-face meeting which should focus on addressing the following:

- Clear understanding of the retirement date and any possible issues arising
- Exploration of measures (subject to agreement) which would support the pathway to retirement, for example flexible working, looking at alternative roles up to the date of retirement
- Transitional arrangements in regard to the particular post, and
- Assistance around guidance and information.

- Requests to Work Longer by Employees Aged 66 and Older

Sections 9 and 10 of the Code of Practice set out questions for both the Employer and the Employee to consider as part of a request for longer working. A structured process for managing requests from Employees aged 66 who wish to continue working is also useful and includes a recommendation that the process incorporates an appeals mechanism.

### **What Does the New Code of Practice Mean for Organisations?**

While following the guidance in the Code of Practice is not mandatory, an Employer's failure to adhere to its provisions is admissible in evidence before the Workplace Relations Commission and the Labour Court. Organisations should therefore carefully consider the Code of Practice when developing policies and making retirement decisions.

The new Code of Practice provides a timely opportunity for Organisations to review their existing retirement policies, procedures and contractual arrangements to ensure that they are aligned with the 2025 Act and current best practice.

Given the increasing focus on age discrimination and the likelihood of more Employees seeking to work beyond traditional retirement ages, a proactive and structured approach will be important. Organisations should take the opportunity presented by the new Code of Practice to review their retirement arrangements now, rather than waiting for a dispute or age discrimination claim to arise.

### **How Adare Trusted People Partners Can Help**

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- Retirement compliance, including contractual retirement ages, longer working requests and objective justification
- Contracts of Employment, Policies & Procedures, Managing Compliance
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- Advice on day-to-day matters
- Dedicated Client Manager
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