



Retirement age

The following principles have been confirmed by the courts in relation to termination of service based on age:

- Compelling employees to retire before the agreed retirement date constitutes an automatically unfair dismissal and founds a claim for compensation in terms of s 187 of the LRA, as well as a claim for unfair discrimination under s 6 of the EEA;
- The termination of an employee's services who has reached the agreed retirement age does not constitute a dismissal: termination is automatic;
- Where no retirement age has been agreed, it is incumbent on employers who want to retire employees to consult with them regarding a date of retirement and to ensure that the date is in line with practice for the position or profession that the employee is in;
- In the absence of an agreed retirement age in an employment contract the rules of a retirement fund could in appropriate circumstances constitute an incorporated term of the contract.

The case of *Bedderson v Sparrow Schools Education Trust* (Labour Court JS70/07, 26/02/2010, unreported) also now confirms that a retirement age cannot be imposed retrospectively. After initially retiring from teaching for 38 years at the age of 57, Mrs. Bedderson made a comeback and after taking up another position for a few years before again retiring, was employed as an educator by the Sparrow Schools Education Trust at one of its schools. Her age had not been raised as an issue before her appointment and her contract of employment also did not contain an agreed retirement age. During October 2006, the employer informed staff members that a mandatory retirement age of 65 years had been introduced in terms of a new retirement policy. In terms of this policy, employees over 65 could be considered for temporary employment up to the age of 70. Mrs. Bedderson was already a few months older than 70.

During November 2006, she received a letter from the employer, wherein she was informed that, according to the employer's retirement policy, she would not be offered an employment contract for 2007. She subsequently referred a dispute to the Labour Court claiming that her dismissal had been automatically unfair as well as unfairly discriminatory in terms of s 6 of the EEA.

The employer argued that it was entitled, in terms of the employee's contract of employment, to introduce a retirement policy at any stage. The argument was that as the employee had agreed that the employer could introduce such a policy, she had therefore also by implication agreed to the newly introduced retirement age. The court did not agree with this argument.

While employers were entitled to introduce policies and procedures regulating elements of the relationship between themselves and employees, such as the age of retirement, it could not be done without restriction: it cannot be done in breach of agreed terms of employment; it has to be done in consultation with employees; and the introduction of a new policy could not retrospectively change rights that have vested or, in this case, terminate someone's service on the basis of a new age requirement who had already passed that age.

The court found Mrs. Bedderson's dismissal to have been automatically unfair and also discriminatory in terms of the EEA. She was awarded compensation.

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