

## Warning of employment retirement processes

A warning to charities about how easy it is to fall foul of the Employment Equality (Age) Regulations 2006 when retiring an employee. This case is only an Employment Tribunal decision, and therefore not binding on other Employment Tribunals but it demonstrates how careful charities have to be to follow the retirement legislation in full.

Mr Plewes was employed by Adams Pork Produce Ltd. His contract of employment stated that his normal retirement date was "the day before the employee's 65<sup>th</sup> Birthday". This was apparently to avoid requiring employees to work on their actual birthday. Mr Plewes was accordingly retired, following the retirement notification procedure, on 29 December, the day before his 65<sup>th</sup> birthday. He did not want to retire, but his request and appeal to continue working beyond his intended retirement date was refused. His grievance was ignored, and two weeks after his retirement he started work for the same employer through an agency, doing the same work for less money.

Mr Plewes brought a claim for unfair dismissal and age discrimination. He alleged that his normal retirement date was below the age of 65 and therefore his dismissal was not for the reason of retirement as set out in the legislation, but was unlawful age discrimination - unless his employer could show that his treatment could be objectively justified.

The Employment Tribunal accepted Mr Plewes' argument. The contract stated that retirement was the day before the 65<sup>th</sup> birthday; therefore the normal retirement age was 64 years and 364 days. As it was a retirement age below 65, it had to be objectively justified and the employer concerned could not do so. Whether or not the employer had followed the proper retirement procedures did not matter in this case. Mr Plewes was awarded over £36,000 compensation, which had been uplifted by 50% for not following the statutory dismissal procedure (because the employer was following the retirement procedure).

Although this decision is not binding law, charities need to review the wording in their contracts of employment in relation to retirement to ensure that it does not give rise to a problem like this. Charities should also make sure that the practical arrangements they follow when employees are retiring also comply with this strict requirement.

### Contact

For further information or guidance, please contact:

**Lynda Smedley**

E: [lynda.smedley@bllaw.co.uk](mailto:lynda.smedley@bllaw.co.uk)

T: 023 8085 7450

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