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REMOVAL OF THE DEFAULT RETIREMENT AGE (DRA) AND INSURED GROUP RISK BENEFITS

HOW WILL THE NEW LEGISLATION AFFECT GROUP RISK BENEFITS?

Current Situation

The Labour Government first raised the question as to whether or not the existence of a default retirement age was appropriate or necessary in modern society. Under the new Coalition Government a consultation document was published in July 2010 setting out proposals and seeking views on the removal of the DRA.

Presently, employers can 'dismiss' employees fairly when they reach the age of 65. All they are required to do is follow a set procedure, notifying the individual 6-12 months in advance that they intend to retire them at 65 and that the employee may request to remain in employment longer. Where an individual expresses an interest, there is no obligation on the employer to let them work beyond 65.

Why is this happening?

The removal of the DRA is just one of a number of steps the Government is taking to help encourage people to work longer against a backdrop of changing demographics. The Coalition Government believe it is good for society and individuals alike and evidence shows that keeping more people in work helps the economy grow.

The consultation document indicated the proposals will 'help' employers by removing the administrative burden of statutory retirement procedures, however many business groups say it will increase the burden of compliance that they are forced to shoulder.

How will employers be affected?

The transitional arrangements for phasing out the DRA are currently under way and it will be removed completely by October 2011. Any retirements notified using the DRA, where the retirement age occurs before 1st October 2011, is still allowed provided the procedures set out in the Employment Equality (Age) Regulations 2006 are followed correctly. After that date if an employee is compulsorily retired by an employer, unless the employer is using an EJRA (Employed Justified Retirement Age), this could be treated as unfair dismissal.

How will Group Risk Benefits be affected?

A key concern was the unintended consequences the removal of the DRA would create for employers who offer group risk benefits, such as income protection and group life cover.

However, following lobbying from employers and insurers, the Government confirmed that group risk insured benefits will attract an exemption from the principle of equal treatment on the grounds of age. In simple terms, employers will be allowed to withdraw insurance or a related financial service when an employee reaches age 65 (or state pension age, if higher). These exemptions will only apply where the benefits are provided to all of the employer's workforce or a class of its employees.

Impact on Group Risk Benefits

Without this exception, employers would face the risk of increased costs by having to extend cover for employees of any age. For many employers, this would most likely have resulted in a withdrawal or scaling down of benefits.

Some clarity is needed from the regulations on the following issues:

- No reference has been made as to whether group critical illness is included in the exemption;
- Only insured benefits have been mooted. It is not clear whether the exemption will apply to self insured arrangements. If not, employers who operate such schemes may wish to consider switching to an insured arrangement;
- It is not yet clear whether employers will be able to use maximum ages that exceed the State Pension Age. Currently employers may still allow group risk benefits to apply beyond age 65.

The new regulations will not protect an employer from liability where the withdrawal of an insurance benefit amounts to a breach of contract. Breaches of this particular type of contractual entitlement can be hugely costly. Employers may wish to think about seeking legal advice to review existing contracts of employment to be satisfied they are legally entitled not to provide these benefits.

CONTACTS

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