

CODES OF PRACTICE ON WORKING LONGER

The Workplace Relations Commission has published Codes of Practice in relation to working longer and these are now Codes for the purposes of the Industrial Relations Act 1990. The Statutory Instrument was signed on 20 December 2017.

There is no statutory retirement age in the private sector. Retirement ages in the private sector are generally set out by means of:

- A** An express term in the employee's contract of employment
- B** An implied term in the employee's contract of employment
- C** Relevant policies, for example a staff handbook **and**
- D** Custom and practice generally arising from the pension date set out in the relevant occupational pension scheme.

The Equality (Miscellaneous Provisions Act) 2015 came into effect on 1 January 2016. Under that Act an employer can fix a retirement age or ages for employees provided:

- A** It is objectively and reasonably justified by a legitimate aim **and**
- B** The means of achieving that aim are appropriate and necessary.

Where employees are coming close to retirement employers could consider the provision of certain supports as set out below with a view to assisting the transition to retirement:

- A** Suitable pre-retirement courses
- B** Flexible or part-time working arrangements
- C** Counselling etc
- D** Appropriate guidance on how reliable and useful information can be sourced.

WHAT EMPLOYERS SHOULD DO

The Code recommends that employers should notify employees of the intention to retire him/her on the contractual retirement date within 6 to 12 months of that date. The initial notification should be in writing and should be followed up by a face to face meeting to address the following:

1. Clear understanding of the retirement date and any possible issues arising
2. 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
3. Transitional arrangements in regard to the particular post **and**
4. Assistance around guidance and information.

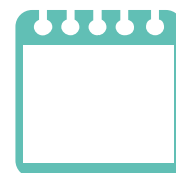


REQUEST TO WORK LONGER

The employee may request to continue working after the contractual retirement age. These requests have to be considered carefully.

The questions for the employee are:

1. Is the employee confident that he/she can continue to perform the role to the required standard?
2. Can flexible working options or alternative roles be considered?
3. What is the duration of the extension being sought?
4. Are there any pension implications?
5. Are there contract of employment implications?



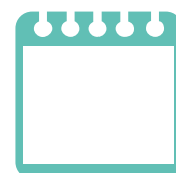
QUESTIONS FOR THE EMPLOYER

1. Are there good grounds on which to accept or refuse the request? It is important to remember that a fixed-term contract post-retirement must be objectively justified.
2. What are the objective criteria applicable to the request? This should form the basis of any assessment of a request to work beyond retirement age, to ensure an equal and consistent approach to addressing this and other future requests.
3. How would the arrangements for the employee remaining on in the workforce be contractually framed (e.g. fixed term contract)?
4. Could granting the request be on the basis of a more flexible working arrangement (e.g. less than full hours or an alternative role)?



REQUEST TO WORK LONGER PROCEDURE

- The employee should make the request in writing no less than 3 months before the intended retirement date.
- The employer and employee should meet.
- The employer's decision should be communicated to the employee as early as practical after the meeting.
- If the employer has decided to offer a fixed term contract, the period should be specified and the legal grounds underpinning the new contract.
- It is good practice to include a reference that the decision is made solely having regard to the case being made by the employee and does not apply universally.
- Where the decision is to refuse the request, the grounds for the decision should be communicated to the employee at a meeting.
- The employee should have recourse to an appeals mechanism e.g. through the normal established grievance procedures in the organisation.
- An employee may be accompanied to any or all of these meetings by a work colleague or union representative.



MORE INFORMATION

For more information please see the wording of the Statutory Instrument here:

<http://www.irishstatutebook.ie/eli/2017/si/600/made/en/pdf>

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