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Retirement Age

Retirement Age is a topical issue and is receiving a significant amount of attention from Employment Tribunals and judicial bodies. A recent Discrimination case brought to the Equality Tribunal; **Elizabeth Sweeney v Aer Lingus Teo (DEC-E2012-135)** has highlighted the need for employers to consider the reasons behind their compulsory retirement age and ensure that this is outlined in their Retirement Policy.

In this case the Tribunal ruled in the employees favour and awarded her €5,000 (*taking into account the pension that she had been in receipt of since her Retirement*) and determined that Aer Lingus had failed to establish that the employee's compulsory retirement at the age of 65 "**served a legitimate aim, or purpose**".

The compulsory retirement age was **not contained** within the employee's contract of employment. However, Aer Lingus relied, as part of their defence, on the terms within the Occupational Pension Scheme which referenced pension benefits which accrued at 65 years.

The Employee argued that it was **not clearly communicated to her** at any stage during her employment that she would be subject to mandatory retirement.

She referred specifically to similar cases including;

- Palacios de la Villa" judgment (C/411/05) in which the Court of Justice of the European Union ruled that national legislation setting a retirement age was "objectively and reasonably justified by a legitimate aim relating to employment policy and the labour market".
- Donnellan v Minister for Justice (2008) IEHC 467 case where the High Court ruled that a compulsory retirement age

The enforcement of a Retirement Age is not unlawful provided that the employers Retirement Policy can be objectively justified as achieving a legitimate aim or purpose and that it is appropriate proportionate and necessary to achieve organisational interest.

Examples of legitimate aims include; To create opportunities in the labour market for those looking for work, to ensure retention, motivation and dynamism among existing staff through increased promotion prospects, to address an age imbalance.

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for assistant Garda Commissioners was "objectively justified by reference to a legitimate aim and the means used were appropriate and reasonable".

Decision

The Tribunal noted that "**it is well established in both community and Irish law that pension entitlement does not necessitate retirement.**" They determined that **in the absence of justification for the discrimination** the claimant was entitled to succeed in her claim.

Recommendations for Employers

- Employers are advised to review their Retirement Policy.
- Ensure that Contracts of Employment outline the Retirement Policy and that employees are required to sign to confirm their receipt of it at the commencement of employment.
- Ensure that any compulsory Retirement Age can be objectively justified/ achieves a legitimate aim and is appropriate and reasonable.
- Monitor scheduled increases in the State retirement age as per the Social Welfare Act 2011 including; **66** years from 2014; **67** years from 2021; **68** years from 2024.