



Dealing with Retirement

Note: This publication is intended to provide general guidance only. It does not constitute legal advice and should not be relied upon as doing so.

Advisory Officers, at the Employment Relations Service, can offer confidential and free advice on all aspects of employment law and employment relations.

Overview

Introduction

In Guernsey, there is no legislation which stipulates at what age an employee should retire and there may be numerous reasons why an older employee would wish to stay on in the workplace. A balanced workforce with employees of varying ages and experience can make a positive contribution to an organisation.

Retirement where no contractual retirement age is specified

Employees have the option to voluntarily retire at a time of their choosing by giving appropriate notice under the contract of employment but some may wish to continue working indefinitely. In an era when the working population is getting older it should not be assumed that all employees will retire at a certain age.

Workplace discussions

Whatever the size of the organisation workplace discussions can be vital to ensure good management, to aid effective communication and planning and to meet future business needs.

Areas to discuss could include performance to date, developmental or training needs, future plans (employer), aims and aspirations (employee) and future performance. Through such discussions employers will be able to match the needs of the business with the employees' aspirations and plans. They will also provide an opportunity to discuss the employees' intentions with regard to retirement.

Where a discussion regarding retirement occurs alternatives can also be raised and discussed such as flexible working hours, part time work or working on a fixed term basis, as appropriate.

Employees should be encouraged to have open and frank dialogue with their employers about their intentions for the future in the short term, medium and long term. This could be incorporated within the framework of routine performance appraisals.

Employers may wish to record workplace discussions and retain them for as long as there is a business need for doing so. It is useful to provide a copy of those notes to the employee, as confirmation of the discussion.

What if an employee has indicated that they will retire and changes their mind?

If an employee has given formal written notice to retire, an employer is under no obligation to let them withdraw their notice. However, if an employee merely suggests that they are planning to retire, the employer should not assume that a formal notice of retirement has been given.

Workplace discussions to clarify the employee's intentions on their future in the workplace can assist both employee and employer on planning and managing the way forward.

Retirement and unfair dismissal

If an employee is retired against their wishes (i.e. a dismissal occurs) and qualifies for the right not to be unfairly dismissed, he/she may make a claim for unfair dismissal. Please refer to the guidance notes [‘The Requirements of The Employment Protection \(Guernsey\) Law, 1998’](#) for further information. The employer would then need to demonstrate that there was a fair reason to dismiss (see list below), and that a fair procedure was followed:

- Conduct
- Capability (see below)
- Redundancy
- Statutory reason (e.g. expiry of housing licence)
- Some other substantial reason

Poor performance

Poor performance of older employees should be addressed as it would be for an employee of any age. Employers may wish to refer to the employment guide to ‘Managing Underperformance’ for more information on how to approach these issues.

Failure to tackle poor performance in the expectation that employees may be retiring in the near future is not effective management. It is also important for employers to avoid stereotyping by assuming that poor performance is more likely to be associated with older employees.

Contractual retirement age

An employer may decide to include a retirement date or age in the employee's contract of employment. Whilst this may provide some support to a defence in the event of an Employment Tribunal it is important to bear in mind that the legal force of an enforced contractual retirement date has not been fully tested at a Guernsey Employment Tribunal.

Other Publications

Publications can be downloaded from the website on a wide range of employment relations subjects, including local employment legislation and best practice guidance on other employment related matters.

Contact Information

For further advice

- Check www.gov.gg/employmentrelations
- Email employmentrelations@gov.gg
- Contact the **Employment Relations Service**, Edward T Wheadon House, Le Truchot, St Peter Port, GY1 3WH
- Telephone number: **01481 220026**