

## **View from the Chair; Business Newsletter; 26 October 2021 Geraldine McGahey, Chief Commissioner, Equality Commission NI**

### **When is someone too old to work?**

It's ten years now since the default retirement age was abolished and the effects of no longer having to retire at fixed ages are being felt across the entire workforce in Northern Ireland. It's an ageing workforce.

A Government report last November showed that more people in the UK aged over 50 are in the labour force, and that with the increase of the state pension age for both men and women to 66, the average age at which men leave work is now 65.2 years and for women it's 64.3 years.

There are twice as many people in work aged 65 and over since 1984, from 4.9% in 1984 to 10.4% in 2020. At the same time, the employment rate gap between 50 to 64 and 35 to 49 year olds is closing, down from 20.9 percentage points in 1984 to 13.2 percentage points in 2020.

What all this means for employers is that they must be aware that age discrimination legislation in Northern Ireland covers the workplace. We've written on this page before about the pitfalls of broaching the subject of retirement with employees and about fair selection for redundancy.

We recently settled a case in which we supported a 74 year old woman who worked for nearly 30 years in a care setting in taking a claim of age discrimination against her employer, who apologised unreservedly and paid her £2,000 compensation.

At the start of the pandemic she was obliged to shield for 12 weeks because of medical conditions which were being controlled by medication so that she could work. At the end of May, the woman received a call from her place of work, asking her to return to work at the beginning of June. When she went back to work, she says was both surprised and upset to be taken aside within a couple of days and told that her weekly hours were being reduced from 30 to 20. She says that when she asked why, she was told: "your age".

In August, at a further meeting with managers, the woman says an appointment was set up for her to go to an occupational health physician. She attended and was told by the doctor that she was indeed fit for work. Nevertheless her hours stayed at 20 and after a period of annual leave in September, she found the stress of the situation too much and went on sick leave. Six months later, still suffering from anxiety and

depression, and with no contact from her employer, the woman resigned.

It is never acceptable to judge someone's abilities on the basis of their age. An employer should not stereotype older people as being less capable, and in managing older workers, employers need to have objective reasons for making decisions about pay, terms and conditions.

In particular, apart from very specific circumstances, employers cannot force someone to retire.

The choices are to allow employees to work until they voluntarily resign, retire, or die, or they can still be dismissed on the same grounds that might justify the dismissal of any employee, such as misconduct or redundancy.

Don't subscribe to the stereotypes of older workers being less agile, technophobic, more prone to sickness absence and resistant to change, instead look at the resilience, loyalty and experience of your older workers and use their strengths.

We have advice and guidance on our website and we can advise any employer individually on how to avoid age discrimination at work, including handling the question of retirement, just ring 028 90 500 600 or email [edenquiries@equalityni.org](mailto:edenquiries@equalityni.org)