

Employment E-Brief 13

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COMPULSORY RETIREMENT AT 65 CAN AMOUNT TO SEX DISCRIMINATION

Sections 109 and 156 of the Employment Rights Act 1996 (which prevent anybody claiming unfair dismissal or redundancy if they are over their employers normal retirement age or, if there is none, 65) have been found to be indirectly discriminatory on the grounds of sex.

The tribunal, re-hearing the case of Rutherford v Town Circle Ltd, decided that the provisions disproportionately affected men and that the resulting indirect discrimination could not be objectively justified. Having made these two important findings, the tribunal disapplied the provisions and allowed Mr Rutherford's claims for unfair dismissal and redundancy to proceed; he is 67.

The case is likely to be appealed but, in the meantime, employers applying fixed retirement ages should tread carefully and ensure that they have a fair reason to dismiss other than the fact that the employee has reached retirement age. For example, facilitating the progression of younger members of staff.

Employers should also be aware that the Government is obliged, under the EC Equal Treatment Directive, to introduce legislation prohibiting both direct and indirect discrimination on the basis of age by 2006. Although the Directive provides that discrimination on the grounds of age can be objectively justified in certain circumstances, we do not yet know how the Government will interpret this, or define the circumstances.

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