



Retirement Age - NEU guidance for members in England & Wales

Before October 2011 an employee could not present a claim for unfair dismissal if they were forced to retire at age 65. Removal of the default retirement age means dismissal on grounds of age will no longer be treated as automatically fair. The purpose of this document is to examine what that means in practice for teachers and other school staff who wish to continue working beyond age 65.

Does removal of the default retirement age mean I can't be forced to retire?

No, removal of the default retirement age does not mean you cannot be forced to retire. You may be forced to retire if your employer has a set retirement age that can be justified. A retirement age set by an employer is known as an Employer Justified Retirement Age (EJRA). Some employers use EJRA for posts requiring a high level of mental and/or physical fitness, such as posts in the emergency services and air traffic control.

Employers may argue that school staff (particularly PE teachers and those who work with children and young people with special educational needs) need a significant level of mental and/or physical fitness to cope with the demands of the post and that they should have a set retirement age of 65. Such an approach would have to be capable of justification on objective rather than subjective grounds.

What do the employment contracts of school staff say about retirement age?

Currently, the Burgundy Book, the national agreement on teachers' conditions of service in England and Wales, permits employers to retire a teacher at the end of the school term in which they attain the age of 65. The Burgundy Book also allows for the contract of employment to be extended beyond the age of 65 by agreement.

The Green Book, which governs the terms and conditions of support staff, is silent on retirement age. This does not necessarily mean that employers have not adopted EJRA to suit local arrangements.

The Red Book, the national agreement for teachers in sixth form colleges, provides that "employers cannot force employees to retire or set a retirement age unless it can be objectively justified".

What is the union's view on Employer Justified Retirement Age?

It is the union's view that blind adherence to the provisions in the Burgundy Book, or to any other EJRA, may give rise to discrimination if it is applied in a blanket fashion, ie it is applied indiscriminately to all school staff without regard to their individual circumstances. It may also give rise to claims of unfair dismissal.

What approach should my employer be taking?

Employers have three options available to them. They can:

- assuming they have adopted the Burgundy Book provisions, keep the provisions as they are, provided they can objectively justify them
- set an EJRA which is capable of justification and has been agreed with the unions
- have no fixed retirement age.

On what grounds may my employer seek to justify a compulsory retirement age of 65?

Cases from the Court of Justice of the European Union have indicated that the following reasons may amount to justification:

- to prevent job blocking (although it should be noted that the UK Government does not accept this as a valid reason for setting a retirement age)
- the evidence shows that older workers are adequately protected as most of them wish to stop working as soon as they are able
- to avoid the indignity of forced retirement of those who are underperforming
- to provide employment prospects for young people and encourage them to seek employment by holding out good promotion prospects
- to improve staff retention by encouraging staff to think that there are jobs to which they may aspire
- to facilitate succession planning.

Should I be talking to my line manager about my plans for retirement during my performance management meetings?

Yes, you should. Since the removal of the default retirement age, some employers have been afraid to broach the subject of retirement with employees for fear of discrimination claims. Provided the subject is broached carefully and sensitively through the performance management arrangements operating in your school/college, there is no need for your line manager to be tentative or reluctant about discussing your plans for the future. Indeed, it is good practice for line managers to discuss plans with all teachers, regardless of their age.

What should I do if I wish to continue in service beyond age 65?

If the Burgundy Book provisions do not apply to you and your employer does not have an EJRA, you may continue in employment beyond age 65 without having to make a formal request to do so.

Where the Burgundy Book provisions apply, or your employer has an EJRA of 65, you can take the following action:

- Make a written request to stay on beyond age 65 if you have not heard from your employer at least a year before your 65th birthday, or you have not been asked what your plans are as part of the performance management arrangements.
- If you want to work differently going forward – eg job share, work reduced hours/phased retirement, work from home or at different times, mentor NQTs etc – make that clear in your request.
- Ask your head teacher for a face-to-face meeting as soon as possible and with union representation (where appropriate) to discuss and consider your request.
- In any event, ask for a written response containing, where appropriate, the employer's arguments for refusing your request. It will not be enough for your employer to rely on the Burgundy Book provisions or on the arguments used to support the creation of an EJRA. In the union's view, each decision to dismiss on age grounds must be separately justified, eg because the needs of the school/college warrants dismissal.

I don't have the stamina to continue working in a classroom, but I enjoy teaching. What should I do?

Many experienced and long-serving teachers feel the same way. The demands of teaching are such that few teachers have the stamina to continue classroom teaching beyond the normal retirement age. Employers and governing bodies need to think creatively about how to retain the wealth of knowledge and expertise that long-serving teachers bring to schools and colleges. The NEU's casework experience suggests that schools discourage older teachers from remaining in service beyond retirement age through an inflexible approach to working time and conditions.

If this is an issue you feel strongly about, why not discuss it with your school/college rep, or if you don't have a school/college rep, with your district or branch secretary. It may be possible for you to lead a school or college discussion about the issue. You could also carry out a survey to find out what changes your colleagues believe would be needed to make teaching more attractive to older teachers and other teachers with a need to work flexibly (eg teachers with young and/or disabled children).

What should I do next?

If further advice is needed, contact your NEU workplace rep in the first instance. If there is no NEU rep in your workplace, or the peripatetic nature of your employment makes contact with a workplace rep difficult, contact the NEU Adviceline in England on 0345 811 8111 or NEU Cymru in Wales on 029 2046 5000.

Further contact details may be found at: neu.org.uk/contact-us

Further resources

NEU guidance documents, available at: neu.org.uk

Age Discrimination

Age Harassment

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