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# Capability Reviews Now Critical

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## Introduction

April 2011 saw the abolition of the Default Retirement Age and the end of any new retirement notices to employees aged 65 or over.

With the latest figures revealing an increase of over 30% in age discrimination claims (6800 claims in 2010-11), employers are now having to look much more seriously at their capability review processes to be able to demonstrate they are being fair in bringing the employment of older workers to an end.

## Fixed Retirement Age?

It may still be possible to have a set retirement age for employees although organisations must be able to show there is an objective justification for this and demonstrate that the use of a fixed retirement age was a proportionate means of achieving a business aim.

Aims found to be legitimate by the courts include workforce planning, promoting recruitment and retention of younger employees, protecting against incompetence, ensuring a high quality of service, having an age-balanced workforce to promote the exchange of experience and innovation, and avoiding the adverse impact on pension and other benefit schemes.

Courts will consider if there were any alternatives that the employer had in achieving their stated aims (i.e. fitness or competency tests). The advice here is to take advice and consider well before implementing a fixed retirement age.

## Contact HR Insight

Offices in Romford, London (City & West End), St Albans, Hayes and Redhill.

## Capability Management

Dismissing an employee on the grounds of their capability to perform a job is a fair reason to dismiss an employee. Having a proper capability process in place for any underperforming employee, irrespective of their age, is now however absolutely essential.

The process should include meeting with the employee to discuss performance and to find out whether there are any underlying issues. Measurable objectives with timescales should be set and any necessary training arranged. Performance can then be monitored and action taken if no improvement is noted.

Employers must follow a fair procedure in order to dismiss to limit exposure to claims of unfair dismissal and age discrimination.

## Discussing the Future

Employers might be nervous that having a discussion about the future with an older member of the work force will result in a claim and seek to avoid this conversation. Building the discussion into the appraisal scheme for all employees & introducing a consultation clause into employment contracts will help to defend your position.

## Benefit Schemes

Do review your benefits as the costs of healthcare & life assurance can rise dramatically with age. **Businesses can stop benefits when employees reach the male state pension age without being age discriminatory**, but need to have this written into their contracts.

**General Enquiries**  
[enquiries@hrinsight.co.uk](mailto:enquiries@hrinsight.co.uk)

**Legal Support with HRi Legal**  
[legal@hrinsight.co.uk](mailto:legal@hrinsight.co.uk)

## STOP PRESS

### Fraudulent HMRC emails

HMRC has issued a warning over fraudulent emails as reports of phishing have risen by 300% in the last year.

Emails, claiming to be from HMRC, urge the recipient to click through to a replica of the HMRC website. The website then asks for credit or debit card details, enabling criminals to access accounts. HMRC do not contact anyone by email; they write to individuals or businesses

### Minimum Wage Increases

Increases in the minimum wage rates apply from 1 October 2011 with the rate for over-21s increasing from £5.93 to £6.08 (a 2.5% increase).

### Bribery Act Prosecution

A clerk in the Magistrates Court has become the first person to be prosecuted under the Bribery Act for requesting and receiving a bribe to influence court decisions. At this moment it is not clear if the Courts Service, his employer, will also be prosecuted. This highlights the need for businesses to have procedures in place to defend against such claims.

### Can We Help?

If you are concerned about your capability processes or need your **contracts or policies updated** to reflect the latest recommended changes, please contact us on **01708 758 958** or visit us at [www.hrinsight.co.uk](http://www.hrinsight.co.uk).

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