

Request to work beyond retirement must be considered in good faith

Failure to genuinely consider an employee's request to work beyond retirement, will fall foul of the duty to consider procedure in Schedule 6 of the Employment Equality (Age) Regulations 2006 and will make a dismissal unfair. *Ayodele v Compass Group plc* demonstrates that any statutory obligation must be performed genuinely and in good faith.

Mr Ayodele requested to work beyond his 65th birthday. His contract of employment and retirement policy gave a retirement age of 65. Although the retirement policy referred to the duty to consider procedure, no guidance was provided on how this would be carried out. A meeting to consider his request and an appeal meeting took place as a mere formality. It was made clear that it was the Company policy to retire people at 65 and there would be no exceptions to this. Nothing he could say or do would affect the outcome. Mr Ayodele was dismissed and brought a claim for unfair dismissal.

The tribunal held that Mr Ayodele had been dismissed by reason of retirement but that the procedure for the dismissal had been unfair. The Company had complied with its notification requirements but had failed to comply with the duty to consider procedure. Although the wording in the Regulations suggests that a summary process is permissible, a completely sham process or a mere charade does not comply with the legislation.

Mr Adoyele was awarded two years' loss of earnings, which was the period of his requested extension.

This decision is surprising considering that in the Regulations, the duty to consider procedure appears to consist of only procedural requirements and lacks any requirement that this must be performed in good faith. This decision may well rest on the employer's transparent intention to conduct a "tick-box" exercise only. Employers retiring employees before the default retirement age is abolished, may be vulnerable to claims if they are unable to demonstrate that some consideration was given to the request to work beyond retirement and it wasn't just a procedural formality.