

Court of Appeal denies over 65s the right to claim unfair dismissal

EMPLOYMENT

The Court of Appeal has very recently given its long awaited landmark judgement dealing with the upper age limits for statutory claims. The decision in *Rutherford and another –v- Secretary of State for Trade and Industry* centred on whether the upper age limit on the right to claim unfair dismissal or a statutory redundancy payment are indirectly discriminatory. Mr Rutherford argued that because more men than women are in employment over 65, the statutory age limit prohibiting over 65s from claiming unfair dismissal or a redundancy payment were discriminatory in that more men than women are affected by this rule.

The Employment Tribunal agreed with Mr Rutherford – the upper age limit had a disparate adverse impact on men compared to women. It reached its decision on statistical evidence. However, on appeal the Employment Appeal Tribunal (“EAT”) overturned the Employment Tribunal’s decision on the grounds that the Tribunal had, in considering the statistical evidence considered the wrong group of workforce – the Tribunal should have considered the impact of the rule on the whole workforce not just the over 65s. The Court of Appeal agreed with the EAT’s interpretation.

The judgement means that the law remains unchanged so that employees aged 65 or over still do not qualify for the right to claim unfair dismissal or a redundancy payment. Therefore, at the moment, nothing for employers to do. However, employers should be aware, that the judgement does not sit easily with the new European Equal Treatment Directive which requires the UK to outlaw age discrimination from 2006. The UK Government is still consulting as to how to comply with the Directive. At the moment, there is still debate about whether the upper age of retirement should rise or be abolished. A new taskforce considering this is expected to put forward a recommendation by the end of the year. This will delay the publication of any draft regulations. As soon as there is any further news on this we will of course let all you know. In the meantime, employers can relax as the law remains unchanged.

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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