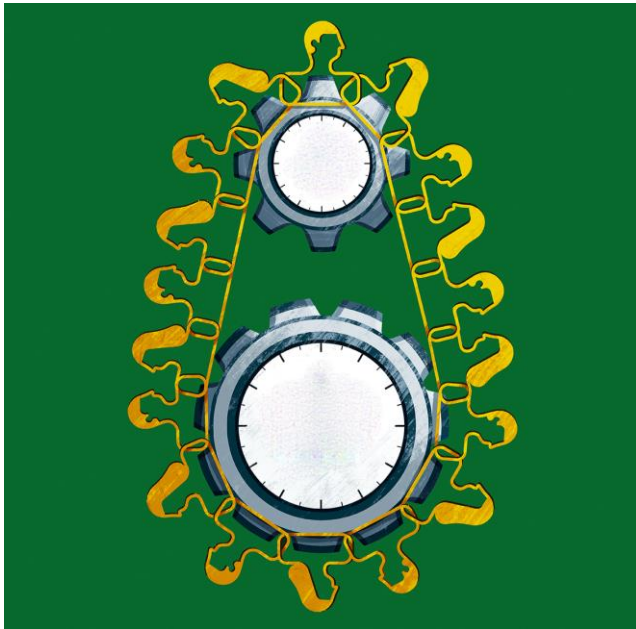


Employment Law Top Tips - Practical Pension Tips for HR Practitioners

Tuesday 22 January 2019



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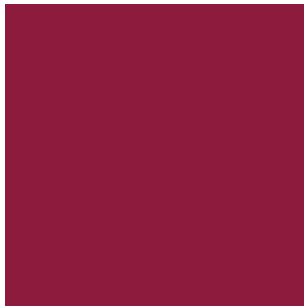
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Welcome

Melanie Crowley, Partner & Head of Employment Law & Benefits



Pensions – Everything You Wanted To Know But Were Afraid To Ask

Stephen Gillick, Partner & Head of Pensions



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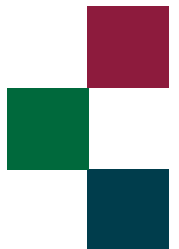
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What Will I Cover?

- Objective - To Make You Look Good!
 - Retirement Products
 - Options Available At Retirement
 - IORPS II
 - Brexit & Pensions
 - GDPR Update
 - Auto-Enrolment
 - Lessons From The UK

What Retirement Products Are Available?

- Many Different Types Of Retirement Product
 - Defined Contribution
 - Defined Benefit
 - Personal Retirement Savings Account (PRSA)
 - Small Self Administered Schemes (SSASs)
 - Approved Retirement Funds (ARFs)



What Retirement Products Are Available?

Defined Contribution Pensions

- Pension = Fixed EE & ER % Contribution
- Low Risk For Employer
- Fund Used To Purchase Benefits At Retirement
- Issues With Sufficiency – 4% Annuity Rates

What Retirement Products Are Available?

Defined Benefit Pensions

- Pension = Salary & Service At Retirement
- **Reasons for Decline**
 - Mobile Workers – DC Better Fit
 - Acquisitions – Employers Unwilling To Replicate DB
 - Increased Regulation - High Costs
 - Changes In Asset Markets
 - Longevity

What Retirement Products Are Available?

Personal Retirement Savings Account

- Introduced in 2002
- “Entry Level” Retirement Product
- Portable
- No Obligation To Contribute Just Facilitate Access
- Employer Beware – No Preservation Requirement

What is A Normal Retirement Age?

- Contractual vs Pensions Retirement Age
- Governing Scheme Documentation – Different Types of Scheme
- Member Booklets

What is A Normal Retirement Age?

Revenue Requirements

- Revenue Approval – Scheme Must Have A NRA
- NRA Of Between 60 – 70 Is Acceptable
- NRA May Differ For Different Categories Of Member
- NRA Can Be Agreed On An Individual Basis
- “Exceptional Occupations” – NRA Outside Of This Range A Possibility
- Different NRAs For An Individual Not Possible

What Are The Options Available?

Options Available At Retirement

- Lump Sum – Max 1.5 X Final Remuneration Or €200K
- Annuity or ARF

Annuity	ARF
Guaranteed Income	More Control
Numerous Options	Continued Growth
Fixed – Good/Bad?	Minimum Drawdown – 4%
Incomes Could Stop on Death	Can Pass on Death
Very Expensive	Could Run Out of Cash
	Minimum Income of €12,700

What Are The Options Available?

Options Available On Early Retirement

- Revenue Approval – On Or After 50th Birthday
- Ill Health – Paid Immediately Regardless Of Age
- Numerous Rules – Can Be Very Generous or Reduced
- Trustee/Employer Consent
- Defined Benefit – Trustees May Not Consent
- Less Money Saved & Paid For Longer Time Period = Less Pension

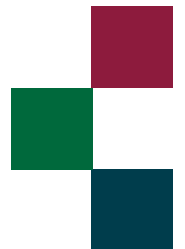
What Are The Options Available?

Options Available On Late Retirement

- Popular With Change to State Pension
- Results In Higher Benefits
- Employer And/Or Trustee Consent
- Can Elect to:
 - Take Benefits @ NRA & Continue To Work
 - Defer Benefits Until Actual Retirement Date
- Tax Advice if Near Revenue Maximum Pot
- Unfortunate Solution to Pensions Crisis

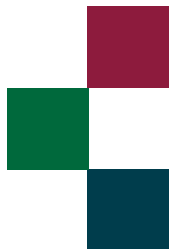
What Is IORP II?

- In Force 13 January 2019
- New Trustee “Fit & Proper” Requirements
- Increased Governance
- New Pension Benefit Statement
- Increased Costs
- Beware Of Employer Indemnification
- Ireland Has Failed To Transpose Directive
- No Derogation For Small Schemes



How Will Brexit Impact On Pensions?

- Impact Depends On Deal Reached
- Investment Volatility
- Ex-Pat Pensions
- Cross Border Schemes



Will GDPR Result In Changes For Pensions?

- In Force 25 May 2018
- Significant Changes - Wider Scope, Standards Have Been Raised & Enhanced Rights For Data Subjects
- New Concepts e.g. Accountability, DPO etc.
- Data Processors Subject To Additional Compliance Obligations
- Higher sanctions - 4% Of Annual Revenue Or €20 million
- Direct Liability To Data Subjects For Loss
- Consider retention Periods

What Is Auto-Enrolment?

- 2022 – 2 Year Phased Roll Out
- 6% ER/EE and 2% State Contribution
- 4 Approved Providers
- Capping of Annual Charges
- Employer Obligated to Enrol Employees Aged Between 23-60
- Exemption if Already in A Pension Plan
- Self Employed & Outside Age Band Can Opt-In

Lessons From The UK

UK Pensions Ombudsman Decisions

Tracing Benefit

- Left Employment In 1990
- Scheme Wound Up After Various Changes
- Assets Distributed – None To Member
- Claim - Out Of Time
- Restitution Sought & Obtained

Lessons From The UK

Pensions Ombudsman Decisions II

Investment Decisions Not Followed

- Scheme Changes in Administrator/Investment Manager
- Complainant Didn't Attend Information Sessions
- Fund Moved To Default On Change of Investment Manager
- Instructed Move to High Risk – Not Actioned
- Complainant Responsible For Initial Loss
- Broker Instructed To Compensate For “Secondary” Loss

Lessons From The UK

Pensions Ombudsman Decisions III

Death Benefit Loss

- Lump Sum Of Four Times Salary In Letter
- Lump Sum Of Three Times Salary In Rules
- Rules Win Out
- Member Can't Rely On Error in Statement
- Perhaps Different If Member Took Action On Statement?

Top Tips

- Know Your Pension Scheme
- Get Your Scheme GDPR Compliant
- Prepare For IORPS II
- Be Ready For Auto-Enrolment
- Consider Brexit Impact

Setting a Retirement Age – Considerations for Employers

Elizabeth Ryan, Partner, Employment Law & Benefits



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That was then.....

This is now.....

While an employer can fix a retirement age it must be capable of satisfying the followings tests:

- Limb 1- objectively and reasonably justified by a legitimate aim of the employer
- Limb 2 - the means of achieving that aim are appropriate and necessary

Two Limb Tests

Limb 1

Examples of legitimate aims as outlined in case law (as discussed in our 2018 Top Tips on Pensions).

- intergenerational fairness (allowing younger workers to progress)
- motivation and dynamism (through the increased prospect of promotion);
- health and safety (generally a more safety critical occupations)
- creation of a balanced age structuring the workforce;

Two Limb Tests

Limb 1 continued.....

- personal and professional dignity (avoiding capabilities issues with older employees);
- succession planning

An employer should be capable of producing data to support their legitimate aim as they bear the burden of proof of defending it.

Two Limb Test

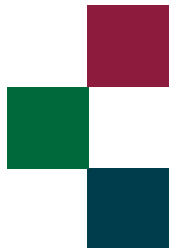
Limb 2

Don't forget the second **Limb 2!** Once you have established a legitimate aim - are you confident that it is appropriate and necessary and that there is no alternative/non-discriminatory way of achieving the same result?




- *European Commission v Hungary*

So how does it work in practice?

- Professional services – motivation and dynamism
- Manufacturing – intergenerational fairness
- Retail – creation of balanced age
- Search and rescue – health and safety
- *Doyle v ESB* – court said overarching justification applicable to most employees, could operate universally



How do I set a Mandatory Retirement Age?

- If you have one currently test if it's robust (passes the two limb test) 
- If you don't have a mandatory retirement age now put one in place in a strategic manner following a review of your work profile, age demographic, workforce planning
- Document the rationale for your retirement age and communicate it 

Can I have a conversation with employees about retiring?

Applicable whether or not your organisation has a retirement age

- Start having conversations at least annually with all of your employees about their performance, their future plans and keep a record of such conversations.
- Don't confine these conversations to those employees who have reached a certain age.
- Topics can include:
 - Performance to date against targets
 - Developmental training needs

Can I have a conversation with employees about retiring? contd.....

Applicable whether or not your organisation has a retirement age

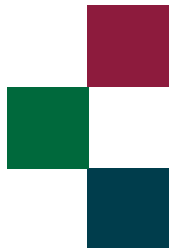
- Aims and aspirations (short medium and long term)
- Where an employee indicated that they want to retire at some future date they may want to discuss adjusting working hours, reducing duties or altering their job in some way in the lead up to retirement.
- Future performance

What are the steps that support employees towards retirement?

Consider providing suitable supports in place for employees who are planning for retirement such as assistance with independent financial planning, flexible part time work arrangements etc.

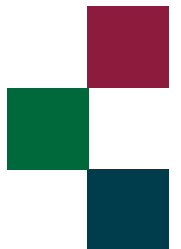
What do I do where an Employee wants to remain in employment after reaching the retirement age?

- Considerations for the employee and the employer
- Request to work longer procedure
- Fixed term contracts



Top Tips

- Take steps to put a mandatory retirement age in place and ensure that it is not discriminatory.
- Start a process of annual conversations with your employees.
- Consider how you will manage requests from employees to work beyond their retirement age.



Thank You

Questions?



Stephen Gillick

sgillick@MHC.ie
+353 1 614 2198



Elizabeth Ryan

eryan@MHC.ie
+353 614 5283



Melanie Crowley

mcrowley@mhc.ie
+353 1 614 5230

