

SUCCESSION PLANNING: A GUIDE FOR THE WARY

EMPLOYMENT

QUICK V CORNWALL COUNCIL

Mrs Quick was a primary school head teacher. The local authority was restructuring four local schools, and spoke to Mrs Quick about her future plans. Some of those discussions included mention of her plans for retirement, which the authority envisaged would be early retirement under a compromise agreement. Mrs Quick was over 60 at the relevant time.

When Mrs Quick was eventually dismissed, she alleged those discussions constituted direct age discrimination, on the basis that a younger head teacher in her position would not have faced questions about their retirement plans.

The Employment Tribunal rejected those allegations, finding that the authority was doing nothing more than sensible succession planning in the context of the wider restructuring that was taking place. Since Mrs Quick was not being forced to take early retirement, and any settlement would need to be agreed with her, the Tribunal concluded the discussions were a normal part of management planning.

Although this is a helpful decision, which reflects the commercial realities many businesses face, there are some cautionary points to note:

- ◆ The decision is at Employment Tribunal level only. There is not yet any higher judicial authority supporting the conclusions reached in this case.
- ◆ The Tribunal's reasoning may be suspect on some points. For example, one of the comments complained of was that Mrs Quick was told "too many people carry on after they should have retired". Many lawyers would regard that sort of remark as ageist discrimination.
- ◆ Mrs Quick had made tentative enquiries about retirement, so it may be that the Tribunal allowed the employer more leeway than it would in other cases.

LESSONS FOR THE FUTURE: TOP TIPS FOR EFFECTIVE SUCCESSION PLANNING

ACAS (which issues best practice guidance in employment matters) recommends asking all employees similar questions as part of an annual appraisal, seeking the individual's own views about their short-, medium- and long-term aims. The idea is that this process will elicit enough information for you to make informed management decisions about career progression, succession planning and workforce structuring.

Some companies prefer a slightly different approach where retirement is only raised with older workers. Although the case summarised in this article lends support for that strategy, there must be a risk that only covering retirement with older staff will be perceived as ageist and, whether or not technically permissible, will affect employee relations and/or the Tribunal's general approach in any litigation.

So, our top tips are:

DO

- ◆ Ask about long- and short-term objectives. Short might mean the coming appraisal period, with long-term plans covering anything beyond that.
- ◆ Keep to a clear structure during appraisals, to avoid getting drawn into discussions that might be discriminatory.
- ◆ Ensure performance management is:
 - consistent for all employees regardless of age;
 - clear, so employees know exactly what is expected of them;
 - objective, so that assessments are less open to challenge; and
 - robust, so that issues are addressed as they arise, without being left to fester.
- ◆ Put accurate documentation in place to support the performance management process, and train managers so that they implement the process properly.

DON'T

- ◆ Use derogatory or belittling language, even in jest. Phrases such as "Can't teach an old dog", "He's past it", "I bet they didn't have this in your day" etc. carry great risk.
- ◆ Make the assumption that performance will decline as employees get older.

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