



RETIREMENT: MANAGEMENT GUIDE

1. INTRODUCTION

The aim of the Retirement Management Guide is to provide guidance on supporting mature employees who wish to continue working (and to be mindful of age-related hurdles they may face) as well as those employees who wish to transition into retirement.

This Guide provides an outline of an employer's legal obligations including avoiding unlawful discrimination.

This document is written for **Human Resource employees and managers only** and is not intended for distribution amongst broader staff.

2. LEGISLATION

The *Age Discrimination Act 2004* protects people from age discrimination the workplace.

The *Disability Discrimination Act 1992* protects people from discrimination on the basis of a disability (which may be age-related) and provides an obligation to make reasonable adjustments in the workplace to accommodate an individual's disability.

There is no mandatory age for retirement in Australia and therefore employees are able to continue working so long as they are able to do so, in a manner that is safe to them and others.

Workplace Health and Safety laws apply in all States and Territories. An employer together with its employees have certain duties regarding safety under this legislation and other relevant legislation in the State or Territory where they work.

3. AN EMPLOYER'S LEGAL OBLIGATIONS

Employers are required, so far as is reasonably practicable, to provide a safe and healthy workplace for workers.

An employer's additional legal obligations include:



- Considering requests for flexible work arrangements made by employees aged 55 and over in accordance with the National Employment Standards and any applicable enterprise agreement/modern award;
- Considering whether reasonable adjustments may be necessary in the workplace for employees with a disability (physical or psychological); and
- Ensuring that employees can perform their work safely.

The risks in not managing workplace health and safety are not just breach of a legislation but may also result in workers' compensation claims, general protections or unlawful discrimination claims.

It is not against the law to dismiss someone if they unable to perform the inherent requirements of the job because of a disability (which may be related to age). However, employers need to be mindful of their legal obligation to make reasonable adjustments in the workplace to accommodate older employees and avoid any discriminatory action.

4. LEGAL RISKS – AGE DISCRIMINATION

Stereotypes about older workers can influence the decisions that employers make in during the life cycle of an employee, including recruitment, promotion, training, retirement and redundancy.

Organisations that take steps to address age discrimination can help attract, motivate and retain good staff. It also enhances reputation as an employer of choice.

Age discrimination happens when someone is treated unfairly or denied an opportunity because of their age. Additionally, age discrimination can arise when an employer imposes an unreasonable requirement, condition or practice which an older worker cannot comply with, where younger workers can comply.

For example, it could be age discrimination when making choices around redundancy, or forcing someone to retire, because of his or her age, or harassing or bullying a person because of his or her age.

5. REQUESTS FOR FLEXIBLE WORK ARRANGEMENTS

Under the *Fair Work Act 2009*, an employee who is 55 or older can request a Flexible Work Arrangement. This may include an employee requesting:

- A reduction to working hours or days;



- Applying to work on a part-time or job-sharing basis;
- Applying for a change of responsibilities or duties, such as mentoring or training staff; or
- Training opportunities such as upskilling or reskilling.

Employees may also wish to access accrued annual leave and/or long service leave such as utilising leave on a regular and systematic basis (e.g. one or two days per week of leave) or applying for extended leave periods (one month or more).

For further information about requests for Flexible Work Arrangements, please see the Flexible Work Policy and the Flexible Work Management Guide.

6. REASONABLE ADJUSTMENTS

If an employee has a disability, there is a positive legal obligation on employers to make reasonable adjustments to enable the employee to fulfil the inherent requirements of their role.

An employer is legally obliged to make reasonable adjustments to allow a person with a disability to perform the role safely unless such an adjustment would result in 'unjustifiable hardship' to the employer.

For further information on reasonable adjustments, see the Fitness for Work Policy and the Fitness for Work Management Guide.

7. PHASED RETIREMENT

Phased retirement is a staged plan or agreement with the organisation towards a retirement date.

An employee who wishes to explore a phased retirement must discuss their plans with their manager.

Once the terms of a phased return have been agreed between the employee and their manager, and approved by Human Resources, the plan should be finalised in writing in accordance with the Retirement Policy.

8. OTHER CONSIDERATIONS

Employers should be mindful of actions and processes which may be of assistance to mature employees and how they can create a positive work environment for employees approaching retirement.



EXAMPLES

The following are examples of best practices that an employer can implement.

- Training managers in Flexible Work Arrangement policies and ensuring that employees are aware of their right to request flexible work.
- Considering different types of flexible working, include part-time work, job-share, extended holidays, and allowing employees to utilise leave entitlements as they transition to retirement (e.g. one day of long service leave per week in accordance with the Long Service Leave Act 2018 (Vic) or State based long service leave applicable in the Company location, or otherwise annual leave). Ensuring rostering and workload processes are in place to cover employees who wish to work flexibly.
- Providing resources and training to managers to support performance management for older employees, career progression and retirement planning conversations.
- Making sure that the workplace, including the main building, information and IT, is accessible to more mature employees.
- Having contact point/s for employees to discuss any issues relating to discrimination and harassment, for example, by establishing Workplace Contact Officers.
- Retirement planning should include financial planning (i.e. superannuation and pension) as well as health and wellbeing support. An employer should not offer personal financial advice, but instead refer employees financial professionals to deliver independent financial training sessions about retirement options. This support may be available as part of the employer's Employee Assistance Program, or the employee's superannuation fund.
- Introducing an awards and recognition scheme available to employees, including gifts or ceremonies in recognition for long service.
- Providing health and lifestyle seminars for older employees.
- Providing for mentoring roles for older workers to coach younger employees.

Employers should recognise that discrimination and harassment between staff members is not just a personal issue but one which negatively affects the organisation's culture, productivity of staff and profitability.

It is recommended that employers identify and plan to address possible risk factors for example, where there is a staff member returning from extended leave due to illness or injury, or the presence of a large aging workforce.



It is best practice for employers to be proactive and consider how to identify potential problem areas where discrimination or harassment may arise. This could be by conducting staff surveys or exit interviews with departing employees, or by reviewing work units with high rates of absenteeism or staff turnover.

WELLBEING DISCUSSIONS

Managers are encouraged to initiate regular discussions with their team members about wellbeing, while being mindful not to probe too much into an employee's private health concerns, and seeking advice from Health, Safety and Wellbeing specialists where appropriate. These discussions may occur where an employee has demonstrated a change in health, engagement or performance at work.

Where a manager wishes to commence a "wellbeing discussion" with an employee approaching the age of 65 or older, the manager should be mindful not to make any discriminatory or offensive comments about their age. Instead, they should discuss the employee's intentions and options moving forward such as flexible work arrangements, taking periods of leave, etc. Open communication and regular discussions between managers and employees are encouraged so that the employee does not feel like the conversation has been deliberately instigated because of their age.

Conversations by managers should not be based on age. Instead, a culture around discussing careers should be established. This will help to normalise thinking about work/life progression and minimise concerns about discrimination from managers and employees.

NOTE TO EMPLOYER: where making modifications to the policy or management guide, please seek legal advice to ensure it meets minimum legal requirements.



CHECKLIST FOR THE RETIREMENT POLICY AND FRAMEWORK

The following checklist can be used to guide managers as they support an employee's transition to retirement.

<p>Pre-retirement – request for flexible work under the Fair Work Act</p> <p>a) Eligibility requirements under the <i>Fair Work Act</i> –</p> <ul style="list-style-type: none">○ Has the employee making the request been employed for at least 12 months? <input type="checkbox"/>○ Is the employee entitled to make a request for flexible work arrangements? (Are 55 years or older, etc). <input type="checkbox"/> <p>b) Formal application made by the employee –</p> <ul style="list-style-type: none">○ Has the employee put the request for flexible work in writing and set out reasons? <input type="checkbox"/> <p>c) Formal response by employer</p> <ul style="list-style-type: none">○ Has the employer provided a written response to the employee within 21 days stating if the request is granted or refused? <input type="checkbox"/>○ If refused, has the employer provided reasonable business grounds for the refusal? <input type="checkbox"/> <p>d) Where the employee is not eligible to make a request for flexible work under legislation, or has their request declined, can the employer come up with an alternative to accommodate both employer and employee? (This is a legal requirement for employees to whom a modern award applies, and is otherwise considered to be best practice for other employees). <input type="checkbox"/></p>	
<p>Pre-retirement planning</p> <ul style="list-style-type: none">● Engage employee in wellbeing discussions and support transition to retirement planning (e.g. financial planning, superannuation, health and wellbeing) <input type="checkbox"/>	
<p>Post retirement</p> <ul style="list-style-type: none">● Confirm openness to former employees to stay in contact after retirement <input type="checkbox"/>	