

How to manage employees who are heading towards retirement age

It's an issue that many employers face – what to do when you have a number of employees who are nearing what was traditionally regarded as retirement age?

There are a number of ways of managing staff who are heading towards retirement.

One may be to have a retirement policy under which the employer is willing to offer retirement benefits to staff nearing an age where succession is a commercial need. Retirement policies require careful drafting so as not to breach unfair dismissal *and* discrimination laws. Members interested in this option are urged to contact the THA's IR Manager Ben Walker to discuss its benefits and risks.

In the event that an employer believes that an employee can no longer perform the duties required of their position, then the employer will need to manage the performance of the employee in the same fair, lawful way that they would with a staff-member of any age. It is **not** sufficient for the employer to merely state that the employee is unable to perform their duties simply *because* he or she has reached a certain age.

The employee's performance should be examined, and if the employee is not meeting the requirements of the position, they should be given a warning as to their status and a reasonable period to improve upon their performance. In addition, an employee should not be subjected to a performance management process merely because they have reached a certain age.

In some circumstances it may also be possible to set a retirement age in advance by agreement between the employer and employee. Such an agreement between the parties will be, in effect, a fixed-term contract with the termination date having been fixed in advance.

It is crucial to note that dismissing an employee simply on the basis of their age is unlawful under both state and federal legislation, including the federal Age Discrimination Act 2004 and s 351 of the Fair Work Act 2009 (FW Act). The FW Act also prohibits "adverse action", including refusing to employ someone, injuring an employee in their employment or prejudicially altering their position, on the basis of age. The Age Discrimination Act also prohibits a range of less favourable kinds of treatment on the basis of age alone. Consequently, an employer cannot force an employee to retire at a specified age.