




A guide for employers
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in collaboration with

AGE POSITIVE

DWP Department for
Work and Pensions

PERFORMANCE AND RETIREMENT PRACTICES – GET IT RIGHT!



Sussex Community NHS Trust find a growing number of older employees welcome the opportunity to work longer and are fully capable of doing so. The trust has seen notable benefits: retention of essential skills, greater stability, reduced recruitment and training costs.

T Shea Waste Management reports that some employers have misconceptions around hiring older workers in a physical industry. T Shea finds that older employees absorb training quickly as they can apply their life experience and common sense to the theory.

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This guide provides you with important information to help you review performance management and retirement – for the benefit of your business and your workers.

Please note this guide is for help and information only. It is not meant as an authoritative statement of law. The Chartered Institute of Personnel and Development and the Department for Work and Pensions take no responsibility for your use of information. You should always take professional advice on any specific legal or financial matter.

INTRODUCTION

We are currently facing challenging times and modern solutions may be required for these twenty-first-century problems. We are an ageing society and this is likely to have a dramatic impact on your workforce. By 2020, almost a third of the workforce will be over the age of 50. With the removal of the Default Retirement Age, now is the time to review what changes or improvements can be introduced.

The challenge for employers is to attract and retain the best people for the business. The procedures your business has regarding retirement is one area that impacts directly on employee retention and can be critical to your bottom line. You can't afford to lose key people that can help pull you through these difficult times. Traditional retirement practices may no longer be fit for purpose and losing valuable skills and expertise of older workers is the last thing you want to do.

If it is some time since you reviewed your procedures or you want to be sure that you are currently matching the practices of your competitors, this guide – jointly published by Age Positive and the Chartered Institute of Personnel and Development (CIPD) – will give you the help and information you require to get the most from your performance and retirement procedures.

AN ACTION PLAN

HOW TO CONDUCT A REVIEW OF YOUR PERFORMANCE AND RETIREMENT PROCEDURES

A review of your retirement practices is recommended:

- if it has been some time since you last reviewed them
- if they are mainly historical in nature
- if you need to further reflect on them in the current economic climate.

Follow the clearly defined steps in the action plan below to carry out this review:

Step 1 – Determine who will lead and participate in the review, including any trade union officials and employee representatives, and who will make sure that the change processes are well communicated.

Step 2 – Read about the changes to the law on age and retirement on page 6.

Step 3 – Study the detail set out on pages 8–12 regarding the information and procedures which relate to retirement, pensions, performance management and flexible working – and make sure that you are fully familiar with them.

Step 4 – Study the detail set out on pages 6 and 8 regarding the procedures which relate to the retirement choices you have. Depending on which retirement policy you decide to adopt, make sure that you are fully familiar with all the procedures you need to have in place, particularly those relating to compliance.

Step 5 – Complete the checklist on page 13. The boxes you have been unable to tick will highlight the areas where you need more information or an improved understanding of the impact of your retirement procedures on your business and, ultimately, bottom line.

Step 6 – Discuss and improve, if necessary, proposed changes with those affected to make sure everyone is on board prior to implementation. Make any changes or improvements needed by making sure HR, line managers, employee and pension scheme managers receive and understand the relevant information.

Step 7 – Agree a process of periodic review of awareness, training and communication requirements to make sure your chosen procedures continue to meet your business need.

Step 8 – As a final check – and to make sure you have covered all aspects of your decision-making – use the additional sources shown on page 14 to access and consider any further sources of information and help available.

THE LAW ON AGE AND RETIREMENT HAS CHANGED

The Government has phased out the Default Retirement Age (DRA). This means that you can't make your employees retire unless appropriate notifications were sent out before 6 April 2011, in line with the Default Retirement Age procedures.

Employers cannot compulsorily retire their employees, unless the retirement can be objectively justified in their particular circumstances.

In some specific cases it may be possible to objectively justify the retirement. But you would need to show that you were acting in the legitimate interests of your business. You would also have to show that your actions are appropriate and necessary. You might need to defend these actions at a tribunal, if you were challenged.

More information about age legislation is on the Acas website at www.acas.org.uk

Asda finds that many employees, particularly older people, don't want to be working full-time hours all year round, so they created a range of flexible options, such as: working for the ten busiest weeks of the year without having to leave and re-join; job-sharing and shift-swapping for colleagues needing to be absent for specific family or domestic reasons; 'Benidorm leave', where the job is kept open while staff take a few months off. These flexible approaches are available to all age groups.

OLDER WORKERS – FACTS, NOT MYTHS

The facts below show that older workers generally:

- have lower levels of employee turnover
- are as successful in training as younger workers and strong in people skills and customer services, based on years of life experience
- have a broad range of skills and experience, offering opportunities to mentor new recruits
- have fewer accidents and lower levels of short-term sickness
- are just as flexible as younger workers and may contribute useful ideas based on their work experience
- don't block opportunities for younger workers
- remain as productive in most jobs at least up to age 70, where they receive the same levels of training as younger workers (HSL 2011, DWP 2006).

Letting older workers stay on doesn't tend to block opportunities for younger workers.

Research by the Institute of Fiscal Studies (Banks et al 2010) found no positive effect on youth employment from measures which allow older workers to retire early in order to release jobs for younger workers. Many employers believe removing older workers simply to 'make way' for younger is damaging to productivity. It unnecessarily increases employee turnover costs, including that of recruiting and training new workers. It fails to make the most of existing skills and experience.

MANAGING PERFORMANCE AND RETIREMENT

Offering employees the choice to work for longer can help keep skills in the business and enable the employee to make a gradual transition between full-time work and retirement. Many employers report that retaining productive and experienced people can reduce employee turnover, lower recruitment and training costs, and have a positive effect on productivity:

- Make it clear that employees can decide whether to retire or work on. It's not about working indefinitely – it's still fine for workers to plan towards retiring with a positive attitude.
- Ensure managers know how to offer options for working for longer and retirement. Performance discussions provide a good opportunity for that discussion.

INFORMAL DISCUSSIONS/PERFORMANCE REVIEWS

Whether formal or informal, performance discussions help you to get the most from your workers. Increasingly, employers are using performance appraisals (at the moment nine out of ten workers get a performance appraisal) (Metcalf and Meadows 2010).

Line managers and supervisors need to be able to assess employees of all ages on their performance and ability, and take appropriate action. At any age, leaving someone to perform poorly can be costly to the business.

Make sure managers are able to discuss performance with workers of all ages, without making assumptions about age.

The focus should be on competence, ability and potential. Use performance discussions to help to build strengths and identify solutions to tackle weaknesses, whatever the age of the employee.

Use discussions to manage underperformance and see if you can both find a solution:

- Identify training and development opportunities to improve performance.
- Revisit your regular health and safety workplace assessments.
- Consider whether a new work pattern, role or a change in hours or responsibilities would help you to retain older workers' skills and experience, and help them to perform effectively.

FAIR DISMISSAL

If poor performance cannot be resolved, follow the normal fair dismissal procedures. Ignoring shortfalls because it is assumed that an employee is near retirement may be discriminatory, particularly if the performance of younger workers is handled differently.

More information about fair dismissal is on the Acas website: www.acas.org.uk

EMPLOYING OLDER WORKERS – Q&A

Don't older workers block job opportunities for younger workers?

Some people worry that older workers might be blocking job opportunities for younger workers, but this assumes there are a fixed number of jobs in the labour market – that's just not true. Removing older workers to make way for younger can be damaging to productivity, as it can fail to maximise existing skills. It can increase employee turnover costs, including recruiting and training new workers. Encourage sharing of skills – retaining experienced employees can help to train and mentor other workers.

Without fixed retirement ages, won't older workers have to resign to finally leave?

Older workers can still plan to retire, and when they come to that point when they intend to do so, they would have to let their employer have notice. As they approach pension age, many older workers will want to consider their options for working on or retiring.

I have an older employee who needs a change; I don't want to lose them.

If a worker is no longer able to do their current job, or an alternative, a change in their hours or responsibilities might help them cope better and enable you to retain valuable skills and experience.

What do I do about poor-performing older workers?

Many employers find that managing employee performance without fixed retirement ages is not a problem: they use performance discussions and fair dismissal procedures for all their workers.

Managers need to be able to assess employees of all ages on their performance and ability, and take appropriate action. If performance can't be improved, use the normal fair dismissal procedures as for workers of any age.

I have an employee who has developed a disability. What must I do?

Where an employee develops a disability as defined by the Equality Act 2010, you may need to make reasonable adjustments to help them to continue to do their job.

More information about making reasonable adjustments is on the Equality and Human Rights Commission (EHRC) website: www.equalityhumanrights.com

Isn't retiring someone more dignified than using performance management?

There's nothing dignified about letting someone continue to underperform while leaving them to think they're doing a good job. Manage the performance of employees of all ages, through formal or informal performance management discussions. Where workers expect to be treated equally regardless of age, the issue of 'loss of dignity' doesn't tend to arise.

I've heard that older workers don't want to take up training.

Older workers are not always aware of opportunities that are open to them or assume they are for less experienced workers. Older workers do take up training when it is made clear that it's relevant to them and they are encouraged to take it up.

Don't older workers offer a poor return on training investment?

Age is not generally a good indication of return on training investment. The risk of an employee leaving after training or promotion can be the same across all age groups. Research shows that – where older workers have received the same level of training as younger colleagues – older worker productivity does not usually decline at least up to age 70 (HSL 2011).

Can older people do physical work as well as younger people?

Strength is individual; some older workers are more physically able than younger colleagues. Age does not tend to determine an employee's physical ability to do a job. Poor workplace design and inflexible working practices are more likely to prevent employees from being fully effective. Physical demands of work may be minimised through adaptations in work design or the use of appropriate equipment.

Aren't older workers a health liability and more likely to have accidents at work?

Evidence shows you can benefit from the commitment and good attendance shown by older workers. They tend to have fewer accidents and lower levels of short-term sickness (HSL 2011).

Generally, employees know when they are no longer able to carry on and self-select to leave or 'retire'.

A health and safety risk assessment is an important step in protecting your workers and your business, as well as complying with the law. Risk assessment should be related to the job, not to an employee's age.

More information can be found in the guide *Five Steps to Risk Assessment* on the HSE website:

www.hse.gov.uk/risk/fivesteps.htm

B&Q use performance appraisals to help their employees to 'get back on track', either in their existing role or in an alternative role which better matches their skills and strengths.

FLEXIBLE WORKING FOR OLDER WORKERS

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Flexible working options can help employers to keep skilled and experienced employees.

For many older employees, part-time or flexible working is a popular option as it allows them to make a gradual transition between full-time work and retirement.

Sixty per cent of over-50s would like to continue working past state pension age, but on a part-time basis. Half of people who recently retired would have considered working longer if they could have accessed flexible work (Maitland 2010, McNair et al 2004).

WON'T OFFERING FLEXIBLE WORKING MAKE LIFE HARDER FOR ME AS AN EMPLOYER?

Flexible working can help to manage the flow of work, day to day or over the longer term. Benefits can include less downtime for machinery when 24-hour shifts can be covered, extending the hours that customers can access the business, or covering peak business periods.

Make sure that managers know how to offer opportunities and consider requests fairly and positively.

Types of flexible working include:

- flexi-time
- shift work
- job-sharing
- compressed hours
- part-time or reduced hours
- temporary contracts
- seasonal work
- term-time only
- homeworking
- unpaid leave
- annualised hours
- call-down contracts
- peak service/peak production times.

SHOULD I TALK TO MY EMPLOYEES OR WAIT FOR THEM TO TALK TO ME?

Talk to your workers. Promote the benefits of more choice, otherwise they may be wary about asking about staying on and doing flexible or part-time work, or won't know how to raise the issue. As a result, they may leave work or take their skills and experience to a different employer.

Offer individuals an opportunity to discuss the options available to them through performance discussions.

Help individuals assess the financial implications of flexible working. Information about 'Changing the way you work in later life' is on the Directgov website: www.direct.gov.uk

It is good practice to offer flexible working to all employees. Remember, it may be difficult to justify offering it to older workers if you don't also offer it to other groups, such as parents of young children.

More information about flexible working is in the CIPD factsheet *Flexible Working*: <http://www.cipd.co.uk/hr-resources/factsheets/flexible-working.aspx>

PENSIONS

Older workers can work past state pension age and claim their state pension. Or, they can defer claiming their state pension for at least a year. If they decide to do this, they will then get either an enhanced pension or a lump sum when they do claim their state pension. The state pension age is changing. Your employees will need to know what this means for them.

If you offer a pension scheme, consider reviewing its terms to support members who want to work beyond the scheme's normal pension age. Many employers have already adapted their pension arrangements to support flexible, later retirement. For example, some allow contributions to be made to the scheme as long as the member continues to work. Others allow access to alternative arrangements, such as a different scheme.

The Department for Work and Pensions notifies people as they approach state pension age. Workplace pension schemes notify members as they approach the scheme's normal pension age. These notifications can prompt older workers to consider their options for retirement or working on. You should be open to discussions with your older workers to help them consider their options, for example carrying on as they are, changing working patterns or job role, or reducing hours.

Pension ages are being raised for men and women to 66 by 2020. From late 2012 the process will begin for employers to automatically enrol all eligible job-holders into a qualifying workplace pension and to make contributions into it, although small businesses will have additional time to prepare.

More information about workplace pension reforms can be found on the Business Link website:

www.businesslink.gov.uk

GUIDANCE FOR YOUR EMPLOYEES

- Refer employees to guidance about working on in the 'Pensions and retirement planning' information on the Directgov website: **www.direct.gov.uk**
- Suggest that employees talk to their pension providers, who can help them consider the financial implications of working longer.

CHECKLIST – PERFORMANCE AND RETIREMENT PRACTICES

- **Be fair** – treat workers of all ages fairly and with respect, taking into account their individual needs and preferences and the scope to accommodate these and meet business challenges.
- **Be informed** – make sure managers have the information they need to manage the performance of employees of all ages, including older workers.
- **Review the performance of all your workers.** If you review only one group of workers and exclude others, you risk unlawful age discrimination.
- **Encourage a culture of performance management.** This can help to avoid unexpected announcements, confrontations or 'loss of dignity'. Be honest, fair and build trust.
- **Use regular performance discussions** – focus on performance, potential and forward-planning.
- **Ask all employees where they see themselves in a year or two** – this will give older workers an opportunity to talk about retirement planning.
- **Tell your workers about their options** – use formal or informal discussions at any time to encourage employees to say whether they want to carry on working as they are, or whether they are considering a need for a change.
- **Be flexible** – offering flexible working options, such as a change in hours or responsibilities, could help employees to carry on working productively and help you to retain their valuable skills and experience.
- **Refer employees to guidance on working and retirement planning** on the Directgov website: www.direct.gov.uk
- **Suggest that employees talk to their pension providers**, who can help them consider the financial implications for working longer.
- **Plan for the transfer of knowledge, skills and experience back into the business** when employees want to plan towards their retirement. Phasing retirement through part-time or flexible working can give older employees the opportunity to work longer, while helping to mentor or train their replacement. This will help both you and the individual to plan ahead.
- **If an employee is not delivering properly, address this through performance management**, whatever their age. Discuss the problem and whether training, reasonable adjustment, or flexible working or a job change could resolve it.
- **Use the same fair dismissal procedures for all employees** where performance problems cannot be resolved.
- **Monitor who is leaving your business and why.** If people are retiring because they think they have reached an age when this is expected, consider what you can do to change this perception.

FURTHER HELP AND INFORMATION

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INFORMATION

Acas

Helpline: 08457 47 47 47
www.acas.org.uk

CIPD

www.cipd.co.uk

Age Positive

www.businesslink.gov.uk/agepositive

Business Link

www.businesslink.gov.uk

Employers Network for Equality and Inclusion

www.enei.org.uk

Equality and Human Rights Commission (EHRC)

www.equalityhumanrights.com



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