

Private sector retirement facts and myths



Shanika Best (FP)

By Shanika Best

"My employee is retiring soon, what should I do?" This is a common question from employers in the private sector. In this article, we will zone in on facts and myths relating to the retirement age for the private sector in Barbados.

Firstly, there is no legislated retirement age for the private sector in Barbados. There is a National Insurance Scheme (NIS) established pensionable age of 67 years. The NIS pensionable age often has employers in a quandary where the myth was borne that an employer can terminate an employee once they reach the age of 67 years. This is not the case. Our Employment Rights Act (ERA) – 2012, notes that an employee can only be terminated for the following reasons: conduct, redundancy, some other substantial reason, capability or contravention because of a duty or restriction.

Further, the Act notes that employees have the right not to be unfairly dismissed. Section 30 specifically notes that if a contract of employment is terminated for a reason that relates to the age of the employee, that action may contravene the employee's right. This is further supported by The Employment (Prevention of Discrimination) Act – 2020 which notes that age is one of the grounds on which an employee can make a claim of discrimination.

Not a guaranteed way

Given there is no legislative retirement age for the private sector, employers must therefore, rely on the employment contract and company policy to guide employees on a company's established age and process for retirement. This allows for the agreement to be done at the acceptance of the contract stage, whereby the employee agrees to all terms and conditions at that point. However, this is not a guaranteed way to avoid claims of age discrimination.

While the contract and policy are advantageous, to inform employees of the company's retirement expectations and process; this has also contributed to the myth that once a retirement age is established through the contract and policy, an employee can be terminated once they reach that age. To dismiss an employee in such a manner is counter to the process of consultation that is a common theme throughout our legislation.

This principle governs the employment relationship and should pre-empt the ending of that relationship by either party. Consequently, should retirement be apparent, consultation



There is no legislated retirement age for the private sector in Barbados. (Internet image)

should commence within a reasonable timeline, between the employer and employee before any action is taken.

Another consideration when determining if to retire an employee, is the employee's performance. This is done through a company's performance management system. This lends to the rationale for the termination, whereby the employee is not being terminated solely because of age, but performance would be considered as well.

There are instances where an employer may consider allowing an employee to work beyond the company's established retirement age. This is on the basis that the employee's performance is meeting or exceeding company expectations. This approach is satisfactory.

Contribute to the myth

However, this has also contributed to the myth that given the employee has worked beyond the company's established retirement age, then the company can terminate the contract at any time beyond that point; because such action would also conflict with the prescriptions set forth in the Employment Rights Act – 2012 and Employment (Prevention of Discrimination) Act – 2020.

Finally, the myth that an employee is unable to make a claim of ageism under the Employment (Prevention of Discrimination) Act – 2020, if they do not fall between the national working age established by the NIS which is 16 - 67. The fact is, that the Employment (Prevention of Discrimination) Act – 2020 notes the definition of an employee as the same as the ERA, that is "an employee means an individual who has entered into or works under or, where the employment has ended, worked under, a contract of employment". Given this definition does not include an age parameter, this means an employee irrespective of age is eligible to make a claim in accordance with the Act.

In conclusion, while an employment contract and company retirement policy are advantageous; regrettably, this does not mean that they cannot be challenged, where the conciliation process will ensue. This is because there is no definitive law that governs the retirement age for the private sector in Barbados. However, the probability of legal disputes may be reduced with these documents in place.

Shanika Best is an employment relations advisor at the Barbados Employers' Confederation.