

EAT rules law firms can force partners to retire

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Law firms will be able to enforce a mandatory retirement age for partners following a landmark ruling that clarifies how age discrimination laws apply to partnerships.

The Employment Appeal Tribunal (EAT) ruled that there are circumstances in which it is lawful to force partners to leave solely because they have reached a certain age.

Lawyers said the decision, in the case of *Leslie Seldon v Clarkson Wrights and Jakes*, is important because it clears up uncertainty over the issue that has existed since the age discrimination laws were introduced in October 2006.

Ronnie Fox, a partnership expert at Fox Solicitors, said that the ruling gives law firms an extremely valuable blueprint for how they can introduce their own mandatory retirement policies without breaching age discrimination laws.

However, the decision comes as a blow for partners approaching their firm's mandatory retirement age who are hoping to keep working.

Recruiters expect the number of partners in this position to rise as people attempt to counteract the effects of recent falls in the value of pensions and other assets by working longer.

Mr Seldon, former senior partner of Clarkson Wright and Jakes, a small law firm based in Kent, sued the firm for age discrimination after it forced him to leave at 65, the firm's mandatory retirement age.

He lost his case at the Employment Tribunal, leading to an appeal to the EAT.

However, although the EAT ruling clarifies general principles of how age discrimination applies to partnerships, it sent Mr Seldon's case back to the original tribunal for further clarifications. This means the issue of whether CWJ discriminated against Mr Seldon has not yet been decided.

Uncertainty over how age discrimination affects partnerships, which has caused many law firms to postpone tackling the issue, arose through a lack of clarity in the original legislation.

The law states that firms can force partners to retire at a predetermined age if doing so is "objectively justified", although it does not explain what would or would not be an objective justification in practice.

This has made it extremely difficult for firms to introduce a policy because they do not know whether their interpretation of objective justification would stand up before an Employment Tribunal if challenged by a disgruntled partner.

James Davies, head of employment at Lewis Silkin, said the Seldon case is important because it identifies two concrete examples of arguments that firms can make for mandatory retirement which have been accepted as objectively justified by the EAT.

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In Mr Seldon's case, the EAT accepted his firm's argument that mandatory retirement at 65 was justified because it ensured that younger associate solicitors had a realistic opportunity of making partner and so were incentivised to stay at the firm. The EAT also accepted that mandatory retirement facilitated forward planning at the firm because it would be clear when vacancies would arise.

Although these justifications will not apply to all law firms, Anthony Fincham, an employment partner at CMS Cameron McKenna, said many would be able to use them as a starting block for forming their own policies.

"The decision does not give firms free reign to retire partners whenever they like, but it does say that a carefully considered mandatory retirement policy which fits in with a firm's wider aims can comply with the Age Discrimination laws," he said.

Mr Davis said that in order to protect themselves from litigation, firms that want to enforce mandatory retirement must consult with partners and establish reasons why it is in the best interests of the firm as a whole.

Firms are free to use different or additional justifications to those used by Clarkson Wright and Jakes. But lawyers said most mandatory retirement policies drawn up in coming months were likely to focus on the associate retention and forward planning justifications because these were the ones that have been ratified by the EAT.

Mr Fox said firms should send partners a detailed memo explaining why a mandatory retirement age was necessary and consider amending their partnership deeds to include the same information.