



The Case for Abolishing Mandatory Retirement in Ireland

Age Action is Ireland's leading advocacy organisation promoting equality for all of us as we age

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Rialtas na hÉireann
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Age Action

Age Action is the leading advocacy organisation on ageing and older people in Ireland. Age Action advocates for a society that enables all older people to participate and to live full, independent lives, based on the realisation of rights and equality, recognising the diversity of experience and situation. Our mission is to achieve fundamental change in the lives of all older people by eliminating age discrimination, promoting positive ageing, and securing the right for all of us to comprehensive and high-quality services.

Background

“The practice of mandatory retirement which is rather common in Ireland is not consistent with strategies to remove obstacles to working at an older age. This may be particularly important for some workers who prefer to retire gradually and work beyond the mandatory retirement age. Therefore, the government should move to abolish mandatory retirement, possibly subject to a limited number of exemptions for specific occupations.”

—OECD 2006 ¹

Mandatory retirement, at any age, is ageist and unacceptable. This paper sets out the rationale, from a human rights and equality perspective, and from an economic perspective, why Ireland should abolish mandatory retirement.

The United Nations Economic Commission for Europe (UNECE) stated that “it is desirable for persons to be able to remain in employment as long as they are fit enough and wish to work”.² The 2019 *Future Jobs* report includes “incentives for people who wish to work longer” as one of its deliverables, which includes the action to “review barriers to older workers participating in the labour market”.³ Yet, for many workers in Ireland, mandatory retirement makes these aspirations impossible.

Requiring employees to retire once they reach a certain age is discriminatory. The Employment Equality Acts prohibit discrimination on the grounds of age in employment in general. However, Section 34 creates a special exemption for mandatory retirement ages in employment contracts. It specifies that there must be a legitimate aim that a mandatory retirement clause is meant to achieve, and the mandatory retirement clause must be an appropriate and necessary means of achieving it.⁴ There are no exact figures for how many workers are affected by this discrimination, but mandatory retirement is thought to be prevalent in Irish society,⁵ and unless existing contracts are altered, mandatory retirement will continue to occur for decades to come.

A 2017 survey of European countries—including Ireland—found that 30% of retired persons would have preferred to work for longer.⁶ The UNECE⁷ and the OECD⁸ have

¹ See e.g. OECD (2006), *Ageing and Employment Policies/Vieillessement et politiques de l'emploi: Ireland 2006*, Ageing and Employment Policies, OECD Publishing, Paris, <https://doi.org/10.1787/9789264036239-en>.

² https://doras.dcu.ie/23438/1/living_longer_learning_longer_-_working_longer_implications_for_new_workforce_dynamics.pdf

³ <https://enterprise.gov.ie/en/publications/publication-files/future-jobs-ireland-2019.pdf>

⁴ Employment Equality Acts 1998-2022, S34(4).

⁵ See e.g. OECD (2006), *Ageing and Employment Policies/Vieillessement et politiques de l'emploi: Ireland 2006*, Ageing and Employment Policies, OECD Publishing, Paris, <https://doi.org/10.1787/9789264036239-en>.

⁶ Steiber, Nadia, and Martin Kohli. "You can't always get what you want: actual and preferred ages of retirement in Europe." *Ageing & Society* 37.2 (2017): 352-385.

⁷ UNECE (United Nations Economic Commission for Europe) (2012, June). UNECE Policy Brief on Ageing No.13. New York: UNECE Working Group on Ageing

⁸ OECD (2006), *Ageing and Employment Policies/Vieillessement et politiques de l'emploi: Ireland 2006*, Ageing and Employment Policies, OECD Publishing, Paris, <https://doi.org/10.1787/9789264036239-en>.

both laid out strong cases for the abolition of mandatory retirement, the OECD focusing on the Irish context specifically. It already has been abolished—in some cases for decades—in Australia, Canada, New Zealand and the USA.⁹ It was largely abolished in the UK from 2011.¹⁰

Mandatory retirement prevents older persons from participating in society, it insults their dignity, and it denies their diversity. Age Action is therefore calling for its abolition. The Employment Equality Acts should be amended to remove the provision that allows for mandatory retirement and the related provisions which allow for maximum ages for job recruitment and the offering of fixed term contracts to persons over the “mandatory retirement age”.¹¹ Similarly, the mandatory retirement age of 70 in the public sector should be abolished.

Human Rights and Mandatory Retirement

Age Action takes a human rights-based approach to advocacy for older persons, and we are critical of the invocation of older persons’ well-being to justify a practice which violates their human rights. It does so insofar as it undermines their dignity and autonomy, where dignity and autonomy are principles underlying human rights.

The Indignity of Mandatory Retirement

Dignity is a fundamental underlying value of human rights. It is named in the first article of the Universal Declaration of Human Rights and the preamble of the International Convention on Civil and Political Rights. It is framed as a standalone right in the EU Charter of Fundamental Rights, with the EU Fundamental Rights Agency explaining, “The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights.”¹²

The Irish Code of Practice on Longer Working cites protecting “personal and professional dignity” as a legitimate aim of mandatory retirement. It defines this as “avoiding capability issues with older employees”.¹³ The assumptions inherent in the belief that mandatory retirement protects dignity are at odds with empirical evidence. As Blackham illustrates,¹⁴ it assumes that ageing leads to a decline in capacity. It assumes that this decline is and ought to be stigmatized, and that it should go unacknowledged where possible. It assumes a paternalistic relationship in which employers can unilaterally decide to take action to protect employees from potentially humiliating experiences, regardless of the desires of the employees. It assumes that the alternative to mandatory retirement—that is performance review and management of individual workers—will inevitably be experienced by workers as an affront to their dignity.

⁹ <https://assets.publishing.service.gov.uk/media/5a7b97a5ed915d414762160e/rrep674.pdf>

¹⁰ Quoted in Slowey, Maria, and Tanya Zubrzycki. "Living longer, learning longer—working longer? Implications for new workforce dynamics." (2018): 1-110. https://doras.dcu.ie/23438/1/living_longer_learning_longer_-_working_longer_implications_for_new_workforce_dynamics.pdf

¹¹ Employment Equality Acts 1998-2022, SS34(5) and 6(3)(c)

¹² <https://fra.europa.eu/en/eu-charter/article/1-human-dignity>

¹³ Industrial Relations Act 1990 (Code of Practice on Longer Working) (Declaration) Order 2017 (S.I. No. 600 of 2017).

¹⁴ Blackham, Alysia. "Interrogating the ‘dignity’ argument for mandatory retirement: an undignified development?." *Industrial Law Journal* 48.3 (2019): 377-415

These assumptions can be challenged on numerous grounds. Firstly, research demonstrates that age is not a reliable predictor of capacity.¹⁵ Where capacity does decline in older workers, this may be due to the form of self-directed ageism known as ‘stereotype threat’, that is the internalization of the expectation that their capacity will decline.¹⁶ Moreover, it can be offset by the strengths older workers have often accrued, for example in terms of experience, stress management, and intrinsic motivation to work.¹⁷ Research can exaggerate or falsely find evidence of ‘generational differences’, which has been a topic of discussion in HR research for years.¹⁸ In reality, where certain differences are associated with different age cohorts, they are often quite modest.¹⁹ The differences within age groups are often far more pronounced than the differences between groups, yet this internal variation in age groups can be difficult to capture in studies. It also cannot be assumed that changes across ages are linear. They are often curvilinear, with older and younger workers having more in common with each other than with middle aged workers.²⁰

Secondly, dignity, and its inverse ‘humiliation’, are subjective concepts that are therefore unlikely to be protected by one size fits all policies like mandatory retirement which have no regard for individual relationships or preferences.

Thirdly, where the capacity of older workers has declined, this can be managed in more sophisticated and measured ways than mandatory retirement. There are many ways employers can empower older workers, including to improve or update their capabilities.²¹ Providing older persons with opportunities for growth is a recognition of their dignity. This is not to say that performance reviews and management cannot be conducted in a humiliating or discriminatory way, or that certain individuals may not be particularly prone to experiencing them as a humiliation. But they can be carried out in productive, respectful, and personalized manners. Mandatory retirement cannot.

It is not employees, but employers, who benefit from a means of avoiding normal disciplinary or dismissal procedures with older workers. Case studies in the UK found that mandatory retirement, rather than protecting dignity, “looked more like an evasion

¹⁵ Blackham, Alysia. "Interrogating the ‘dignity’ argument for mandatory retirement: an undignified development?." *Industrial Law Journal* 48.3 (2019): 377-415.

¹⁶ Manzi, Claudia, et al. "Double Jeopardy-Analyzing the Combined Effect of Age and Gender Stereotype Threat on Older Workers." *Frontiers in psychology* 11 (2021): 606690; von Hippel, Courtney, Elise K. Kalokerinos, and Julie D. Henry. "Stereotype threat among older employees: relationship with job attitudes and turnover intentions." *Psychology and aging* 28.1 (2013): 17.

¹⁷ Slowey, Maria, and Tanya Zubrzycki. "Living longer, learning longer—working longer? Implications for new workforce dynamics." (2018): 1-110. https://doras.dcu.ie/23438/1/living_longer_learning_longer_-_working_longer_implications_for_new_workforce_dynamics.pdf

¹⁸ Smeaton, Deborah, and Jane Parry. "Becoming an age-friendly employer: evidence report." *United Kingdom: Centre for Ageing Better* (2018).

¹⁹ Grosch, James W., and Juliann C. Scholl. "Designing age-friendly workplaces: An occupational health perspective." *Current and emerging trends in aging and work* (2020): 429-451.

²⁰ Grosch, James W., and Juliann C. Scholl. "Designing age-friendly workplaces: An occupational health perspective." *Current and emerging trends in aging and work* (2020): 429-451.

²¹ Vodopivec, Milan, et al. "Increasing employment of older workers: Addressing labour market obstacles." *Journal of population ageing* 12.3 (2019): 273-298; Kuitto, Kati, and Jan Helmdag. "Extending working lives: How policies shape retirement and labour market participation of older workers." *Social Policy & Administration* 55.3 (2021): 423-439; Blackham, Alysia. "Interrogating the ‘dignity’ argument for mandatory retirement: an undignified development?." *Industrial Law Journal* 48.3 (2019): 377-415.

of managerial responsibility.”²² There are policy and human rights reasons that Irish law has circumscribed how and under what conditions an employer can dismiss an employee. These reasons should apply to older workers too. The law should not be tasked with protecting people from difficult conversations. Dignity involves possessing autonomy and being treated with respect. Mandatory retirement does not afford people autonomy or respect. Therefore, mandatory retirement is not dignified.

Mandatory Retirement’s Threat to Autonomy

Closely related to dignity—in fact, a crucial ingredient of dignity—is autonomy. That is, the degree to which a person can exercise choice and control in decision-making over their own lives. Retirement is a period of radical change in a person’s life and can have many different effects on our well-being. It can disrupt a person’s identity, their trust in themselves, or increase anxiety around death and dying. It can also have positive impacts such as a renewed commitment to social relationships, greater self-actualization, or an increased desire to meaningfully engage with society.²³ There is a strong and growing body of research demonstrating that the level of control a person feels over their decision to retire is the key predictor of their post-retirement well-being, both in the short and long term. Control over retirement influences subjective feelings of happiness, mental health, life satisfaction, self-reported health status, dietary habits, marital satisfaction, self-efficacy, and income adequacy in retirement.²⁴ For example, one study of older Irish adults found a statistically significant effect that “retirement (broadly defined) leads to poorer mental health, at least in the immediate aftermath of retirement. However, a closer look at the data shows that this observed effect arises only for people whose retirement is involuntary or who retire due to ill-health. For people who retire voluntarily, there appears to be no mental health effects.”²⁵

²² McNair, S., Flynn, M. and Dutton, N. 2007. Employer responses to an ageing workforce: A qualitative study Research Report No. 455 (Leeds, DWP). Available online at:

<http://www.researchonline.org.uk/fskills/search/download.do?ref=B6253/>

²³ Osborne, John W. "Psychological effects of the transition to retirement." *Canadian Journal of Counselling and Psychotherapy* 46.1 (2012): 45-58.

²⁴ See e.g. De Vaus, David, et al. "Does gradual retirement have better outcomes than abrupt retirement? Results from an Australian panel study." *Ageing & Society* 27.5 (2007): 667-682; Dingemans, Ellen, and Kène Henkens. "Involuntary retirement, bridge employment, and satisfaction with life: A longitudinal investigation." *Journal of Organizational Behavior* 35.4 (2014): 575-591; Calvo, Esteban, Kelly Haverstick, and Steven A. Sass. "Gradual retirement, sense of control, and retirees' happiness." *Research on Aging* 31.1 (2009): 112-135; Quine, Susan, et al. "When choice in retirement decisions is missing: Qualitative and quantitative findings of impact on well-being." *Australasian Journal on Ageing* 26.4 (2007): 173-179; Gong, Cathy Honge, and Hal Kendig. "Impacts of voluntary and involuntary workforce transitions at mature ages: Longitudinal evidence from HILDA." *Australasian Journal on Ageing* 37.1 (2018): 11-16; Mosca, Irene, and Alan Barrett. "The impact of voluntary and involuntary retirement on mental health: Evidence from older Irish adults." Available at SSRN 2543918 (2014); Dingemans, Ellen, and Kène Henkens. "How do retirement dynamics influence mental well-being in later life? A 10-year panel study." *Scandinavian journal of work, environment & health* (2015): 16-23; Mosca I, Barrett A. The Impact of Voluntary and Involuntary Retirement on Mental Health: Evidence from Older Irish Adults. *J Ment Health Policy Econ*. 2016 Mar;19(1):33-44. PMID. <https://pubmed.ncbi.nlm.nih.gov/27084792/>; Mandal B, Roe B. Job loss, retirement and the mental health of older Americans. *J Ment Health Policy Econ*. 2008 Dec;11(4):167-76. <https://pubmed.ncbi.nlm.nih.gov/19096091/>; Somers AR. Social, economic, and health aspects of mandatory retirement. *J Health Polit Policy Law*. 1981 Fall;6(3):542-57. doi: 10.1215/03616878-6-3-542. <https://pubmed.ncbi.nlm.nih.gov/7320461/>

²⁵ Mosca I, Barrett A. The Impact of Voluntary and Involuntary Retirement on Mental Health: Evidence from Older Irish Adults. *J Ment Health Policy Econ*. 2016 Mar;19(1):33-44. PMID. <https://pubmed.ncbi.nlm.nih.gov/27084792/>

Moreover, persons who had voluntarily retired have a more stable well-being in the face of health deterioration or declining incomes.²⁶ While a gradual rather than abrupt transition to retirement can mitigate some of the harm done by involuntary retirement, it is not as strong or as reliable an influence on a person's well-being as control over the retirement decision.²⁷

The importance of choice and control is linked to the diversity among older persons in Ireland. In making decisions on work and retirement, different people need different supports and can benefit from different opportunities. For example, an individual's health status, and the health status of their partner, can be a strong predictor of retirement preferences and behaviours.²⁸ Retirement preferences and behaviours are also influenced by the kind of work an individual has been engaged in, the sector they are employed in, and how long they have already been at work.²⁹ Individual personality differences and subjective views on retirement also demonstrate the need for flexibility and variety when it comes to retirement decision making.³⁰

Defenders of mandatory retirement may claim that workers exercised 'choice and control' upon entering into a contract that included a mandatory retirement clause. This belies the reality that persons seeking work are at a power disadvantage and are typically not in a position to refuse a contract because of its inclusion of a mandatory retirement clause, or to request its removal. Moreover, given the prevalence of mandatory retirement clauses, workers cannot be expected to simply seek out jobs without a mandatory retirement age. Employment law recognises as a fundamental truth the power imbalance between employer and employee. Facilitating workers' choice and control requires preventing employers from including discriminatory terms of employment that are an affront to dignity and autonomy.

Mandatory Retirement, Income Adequacy, and Autonomy

The importance of choice and control meaningfully interacts with income adequacy. If older persons do not have enough money they can be forced into undesirable ways of living and working. European research from 2012 found that most persons who want to work past retirement age are motivated by the need to earn further income.³¹ Research from other jurisdictions demonstrates that working beyond retirement age due to

²⁶ Gong, Cathy Honge, and Hal Kendig. "Impacts of voluntary and involuntary workforce transitions at mature ages: Longitudinal evidence from HILDA." *Australasian Journal on Ageing* 37.1 (2018): 11-16

²⁷ De Vaus, David, et al. "Does gradual retirement have better outcomes than abrupt retirement? Results from an Australian panel study." *Ageing & Society* 27.5 (2007): 667-682; Dingemans, Ellen, and Kène Henkens. "Involuntary retirement, bridge employment, and satisfaction with life: A longitudinal investigation." *Journal of organizational Behavior* 35.4 (2014): 575-591; Calvo, Esteban, Kelly Haverstick, and Steven A. Sass. "Gradual retirement, sense of control, and retirees' happiness." *Research on Aging* 31.1 (2009): 112-135.

²⁸ Gannon, Brenda, and Jennifer Roberts. "Part-time work and health among older workers in Ireland and Britain." *Applied Economics* 43.30 (2011): 4749-4757.

²⁹ Léime, Á. Ní, and Debra Street. "Working later in the USA and Ireland: implications for precariously and securely employed women." *Ageing & Society* 39.10 (2019): 2194-2218; Léime, Áine Ní. "Older women public sector workers in Ireland: Decisions about retirement timing." *Journal of Women & Aging* 29.5 (2017): 392-404; Kuitto, Kati, and Jan Helmdag. "Extending working lives: How policies shape retirement and labour market participation of older workers." *Social Policy & Administration* 55.3 (2021): 423-439.

³⁰ Léime, Áine Ní. "Older women public sector workers in Ireland: Decisions about retirement timing." *Journal of Women & Aging* 29.5 (2017): 392-404.

³¹ European Commission (2012), Special Eurobarometer 378: Active Ageing, Brussels. Irish research also demonstrates the link between income and freedom to retire: Léime, Áine Ní. "Older women public sector workers in Ireland: Decisions about retirement timing." *Journal of Women & Aging* 29.5 (2017): 392-404.

economic, rather than intrinsic, motivations is associated with poorer well-being.³² Restricted access to retirement and the resulting increased dependence on employment for income has been found to deepen societal economic inequalities.^{33 34}

Abolishing mandatory retirement should strengthen older persons' autonomy. It should not lead to unwanted work intensification.³⁵ Others have warned against the wisdom of abolishing mandatory retirement in the absence of a strong pension system.³⁶ For abolition of mandatory retirement to preserve autonomy, it must be matched by a guarantee of adequate income in retirement, so that older workers are not unduly pressured to remain in work.

Equality and Mandatory Retirement

Age Action advocates for equality-proofed policy and services and the elimination of all forms of ageism from our society. Mandatory retirement treats people unequally based on their age. It does not promote fairness, intergenerational or otherwise. This section demonstrates the unfairness and inequity of mandatory retirement before outlining how the practice of mandatory retirement reinforces ageism.

The Unfairness of Mandatory Retirement

Along with dignity, the other primary justification for the practice of mandatory retirement is intergenerational fairness. Intergenerational fairness is a form of equality as it ensures social advantages are not disproportionately accrued by certain generations at the expense of others. Inequality is usually unfair. In fact intergenerational fairness is overlapping with and sometimes used interchangeably with intergenerational equity.

The Irish Code of Practice on Longer Working cites "intergenerational fairness" as a potential justification for mandatory retirement. It defines this as "allowing younger workers to progress".³⁷ The section on Economics and Mandatory Retirement below goes into greater detail on why older workers do not in fact disadvantage younger workers, but in the context of equality, it is important to flag that codifying these arguments normalises ageism, exacerbates intergenerational conflict and tension, and assumes that younger workers ought to be prioritised over older workers as a matter of course. Women and migrants have also been portrayed as preventing 'worthier' workers (white and male) from accessing employment.

³² Dingemans, Ellen, and Kène Henkens. "Involuntary retirement, bridge employment, and satisfaction with life: A longitudinal investigation." *Journal of organizational Behavior* 35.4 (2014): 575-591

³³ Kuitto, Kati, and Jan Helmdag. "Extending working lives: How policies shape retirement and labour market participation of older workers." *Social Policy & Administration* 55.3 (2021): 423-439.

³⁴ see e.g. Vodopivec, Milan, et al. "Increasing employment of older workers: Addressing labour market obstacles." *Journal of population ageing* 12.3 (2019): 273-298; Kuitto, Kati, and Jan Helmdag. "Extending working lives: How policies shape retirement and labour market participation of older workers." *Social Policy & Administration* 55.3 (2021): 423-439.

³⁵ Blackham, Alysia. "Does removing default retirement ages benefit individuals? A comparative empirical case study of the university sector." *International Journal of Discrimination and the Law* 21.2 (2021): 77-93.

³⁶ Sargeant, Malcolm. "Mandatory retirement age and age discrimination." *Employee Relations* (2004).

³⁷ Industrial Relations Act 1990 (Code of Practice on Longer Working) (Declaration) Order 2017 (S.I. No. 600 of 2017)

Forcing older workers to retire does long-lasting damage to their health and well-being and is further linked to income inadequacy in older age. It also promotes dangerous stereotypes about older persons and denies their worth, individuality, and ability to contribute to a workplace. Recognizing the contribution and worth of older persons, and not assuming that younger persons have a stronger claim to employment, is part of intergenerational fairness. Thus it is inaccurate to claim that fairness or equity is achieved by forcing older workers out of employment to give opportunities to younger workers. This is especially true given that there are other ways to support older persons to retire or reduce their working hours, as elaborated upon in the Code of Practice on Longer Working. More sophisticated and fair-minded means of supporting younger workers ought to be devised.

Ageism and the Worth of the Older Worker

Ageism is now recognised as one of the most widespread prejudices around the world. That is why the WHO has launched a global campaign to combat ageism. Its 2021 *Global Report on Ageism* is a landmark publication that describes the widespread ageism found in all societies, as well as its grave costs. It classifies mandatory retirement as a form of institutional ageism.³⁸

Age Action's recent polling demonstrates the prevalence of ageist attitudes in Ireland, including in relation to the workforce.³⁹ Our research found that unemployed persons were much more likely than the average person to report having been discriminated against on the grounds of their age in the past few years. This chimes with other Irish research that demonstrates unemployed people aged 55+ perceive their age as a barrier to employment.⁴⁰ Managers may have fears or apprehensions about hiring or keeping on older workers. Often these fears relate to performance management issues, though research suggests these issues rarely manifest in practice.⁴¹ Many also believe that an older worker's earnings will have outgrown their productivity,⁴² though research contradicts the assumption that productivity declines with age.⁴³ While people are often capable of identifying the benefits older workers bring to the workplace, they are less likely to agree that the benefits outweigh perceived disadvantages.⁴⁴ Research provides limited or no justification for belief in negative stereotypes about older workers,⁴⁵ and

³⁸ <https://iris.who.int/bitstream/handle/10665/340208/9789240016866-eng.pdf>

³⁹ <https://www.ageaction.ie/news/2022/12/07/are-we-ageist>

⁴⁰ Slowey, Maria, and Tanya Zubrzycki. "Living longer, learning longer—working longer? Implications for new workforce dynamics." (2018): 1-110. https://doras.dcu.ie/23438/1/living_longer_learning_longer_-_working_longer_implications_for_new_workforce_dynamics.pdf

⁴¹ Slowey, Maria, and Tanya Zubrzycki. "Living longer, learning longer—working longer? Implications for new workforce dynamics." (2018): 1-110. https://doras.dcu.ie/23438/1/living_longer_learning_longer_-_working_longer_implications_for_new_workforce_dynamics.pdf

⁴² Oude Mulders, Jaap, et al. "How likely are employers to rehire older workers after mandatory retirement? A vignette study among managers." *De Economist* 162.4 (2014): 415-431.

⁴³ Oliveira Martins, Joaquim, et al. "The impact of ageing on demand, factor markets and growth." *Factor Markets and Growth* (March 29, 2005) (2005).

⁴⁴ Wolff, C. (2013). Managing older workers without a default retirement age: 2013 XpertHR Survey. United Kingdom; cited in Slowey, Maria, and Tanya Zubrzycki. "Living longer, learning longer—working longer? Implications for new workforce dynamics." (2018): 1-110. https://doras.dcu.ie/23438/1/living_longer_learning_longer_-_working_longer_implications_for_new_workforce_dynamics.pdf

⁴⁵ Slowey, Maria, and Tanya Zubrzycki. "Living longer, learning longer—working longer? Implications for new workforce dynamics." (2018): 1-110. https://doras.dcu.ie/23438/1/living_longer_learning_longer_-_working_longer_implications_for_new_workforce_dynamics.pdf

demonstrates that the age or generation of a worker is not a useful predictor of their capabilities or characteristics.⁴⁶ Yet discriminatory assumptions about older workers continue to be made and acted upon, because of how deeply rooted ageism is in our society.

Many cases taken by older persons to the Workplace Relations Commission (WRC) on the grounds of age under the Employment Equality Acts relate to mandatory retirement, though most are unsuccessful. This demonstrates that even where the employer has acted legally, there is a feeling of injustice and unfairness. Where challenges are successful, it is often because the employer has failed to provide a legitimate aim for the inclusion of the mandatory retirement clause in the employment contract. While it is positive that those individual cases have been addressed through the WRC, they suggest a trend of mandatory retirement clauses being included as a default measure. Generic guidance has been given to Irish businesses to include mandatory retirement clauses in contracts.⁴⁷ SIPTU, who have provided representation to many of the workers challenging mandatory retirement in the WRC, have found that justifications for its inclusion in an employment contract are often “spurious”.⁴⁸ In one successful defence of a mandatory retirement clause, one of the employer’s cited justifications was that having a mandatory retirement age was in line with sectoral norms.⁴⁹

One justification for mandatory retirement may seem more objectively based in fact. This is that abolishing mandatory retirement could increase insurance costs for employers. While international research indicates this can be true, some have found that the fear is overblown.⁵⁰ Moreover, even under the current system of mandatory retirement, the Court of Justice of the European Union (CJEU) has found that a business’s economic interests are not a defence for the practice, but that it has to be in the interest of the public.⁵¹ Given that it is not in the interest of the public to insult the human rights and equality of older persons, the risk of increasing insurance costs cannot in and of itself justify a system of mandatory retirement.

Mandatory retirement policies are adopted based on generalized assumptions about older workers. Laws that permit mandatory retirement legitimize ageism, which deepens inequality.

Economics and Mandatory Retirement

The above sections have already touched on economic arguments against mandatory retirement, and the economic implications of the practice interact with and inform the human rights and equality considerations. For the purpose of analysis, this section examines the economic arguments separately. It provides an estimate of the extent of

⁴⁶ Grosch, James W., and Juliann C. Scholl. "Designing age-friendly workplaces: An occupational health perspective." *Current and emerging trends in aging and work* (2020): 429-451.

⁴⁷ Wood, Andrew, Marisa Robertson, and Dominika Wintersgill. *A comparative review of international approaches to mandatory retirement*. London: HM Stationery Office, 2010.

⁴⁸ SIPTU Submission to the Review of the Equality Acts December 2021
https://www.siptu.ie/media/publications/file_22826_en.pdf

⁴⁹ <https://www.workplacereactions.ie/en/cases/2022/april/adj-00028294.html>

⁵⁰ Wood, Andrew, Marisa Robertson, and Dominika Wintersgill. *A comparative review of international approaches to mandatory retirement*. London: HM Stationery Office, 2010.

⁵¹ R (Age Concern England) v Secretary of State for Business, Enterprise and Regulatory Reform, Case C-388/07 [2009] ICR 1080

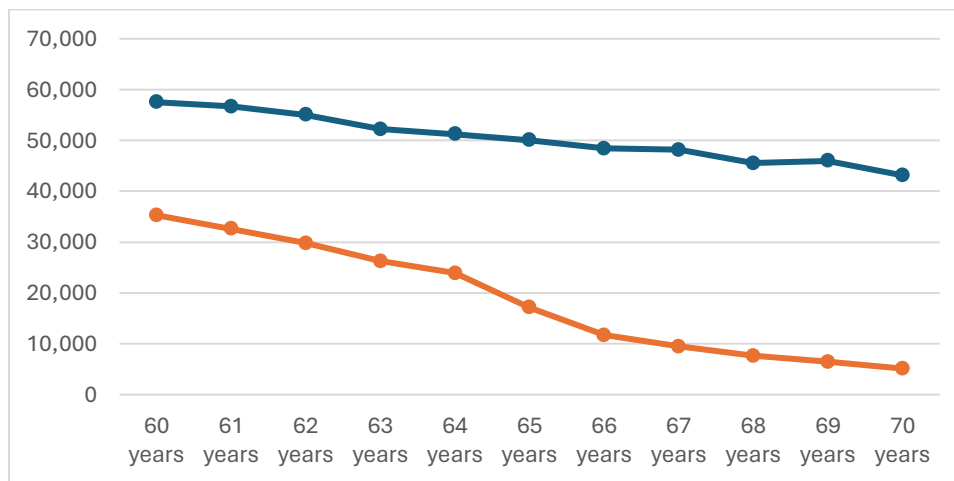
mandatory retirement at age 65, and it outlines the economic advantages of abolishing mandatory retirement, as well as countering arguments that abolition would be onerous on employers.

Prevalence of Mandatory Retirement

As shown in the figure below, there is a greater decline in employment at age 65 than there is at age 66, despite the state pension not being available until age 66. While it cannot be known how many were affected by mandatory retirement, it is likely that the sudden drop off in employment between age 64 and 65 is largely due to mandatory retirement.

As of Census 2022, there were 23,928 people aged 64 in employment, 17,162 aged 65 in employment, and 11,704 aged 66 in employment. From age 60 to 64, there was an average decline of 2,840 employments per year. The fall in employment was 6,766 between age 64 and 65, and a further 5,458 between age 65 and 66. The higher level of employment loss at age 65 suggests that nearly four thousand older persons (and potentially more) faced mandatory retirement at age 65.

Figure 1. Population by year of age (blue); number in employment by year of age (orange) (Census 2022)⁵²



The Prevalence of Older Workers

According to the Q4 2023 Labour Force Study, 118,300 people aged 65 or older remain at work. This includes people in their 70s and older. In 2014, it found 57,800 people aged 65 or older at work.⁵³ This represents a 105% increase over just ten years. Based on the above Census data, it is likely that 100,000+ of them are workers aged 66 or older. Many of them are likely to be part-time workers. This includes a wide range of occupations, including farmers and white-collar professionals.

The Q4 2023 survey finds that one in seven (14.4%) persons aged 65 or older remains at work, 21.6% of men and 8.6% of women.⁵⁴ When it comes to paid work past the age of 65, men tend to outnumber women on a three to one basis, while older women are

⁵² <https://data.cso.ie/table/F8048>

⁵³ <https://data.cso.ie/table/QLF18>

⁵⁴ <https://data.cso.ie/table/QLF28>

more likely to be involved in providing unpaid care, and also provide more hours per week than men.

The Economic Advantages of Abolishing Mandatory Retirement

It is government policy to encourage and support longer working lives, and this has been progressed through the new option to defer access to the state pension and by the new mandatory retirement age of 70 in the public service.

Supporting longer working lives respects individual choice, but it is also a pragmatic reaction to the fact that average life expectancy has increased, and people at age 65 can look forward to an average of 18-21 years of older age,⁵⁵ including receipt of the state pension from age 66. The Department of Finance has identified Ireland's ageing demographics as one of four medium-term challenges to the state.⁵⁶ Yet mandatory retirement perpetuates a culture of forced retirement at age 65—a year before workers can access the state pension.

With the transformation of the economy, some older persons have higher expectations for their quality of life, beyond what the state pension will afford. There are also a higher proportion of older persons renting in the private rented sector (3.5% in Census 2022)⁵⁷, many of whom continue to work to afford rent.

When people continue in employment in older age, they pay a higher level of taxation (directly and/or indirectly through consumption taxes) and they are less likely to seek additional support from the state. A greater proportion of older workers leads to a greater level of consumption in the economy, which in turn supports economic activity and employment.

Current estimates for the future cost of the state pension and other public spending tend to be based on the ageist age-based dependency ratio, which assumes that all persons age 65 or older are dependents and all those aged 15-64 are working to support them. Given that over 100,000 people aged 66 or older remain at work, while many people age 15-64 are students, unpaid carers or unable to work due to disability, a more realistic approach would be to use an employment-based dependency ratio, which would demonstrate the important contribution of older workers to the state finances.⁵⁸

Countering Arguments in Favour of Mandatory Retirement

Concerns are sometimes raised that banning mandatory retirement will have negative effects, such as blocking younger workers from getting jobs or by putting an onerous burden on employers to manage the performance (and potential dismissal) of older workers.

The Irish Code of Practice on Longer Working cites “intergenerational fairness” as a potential justification for mandatory retirement. It defines this as “allowing younger workers to progress”.⁵⁹ Many proponents of mandatory retirement ages rely on what is known as the lump of labour fallacy. This assumes that there is a set number of jobs in

⁵⁵ <https://www.cso.ie/en/releasesandpublications/er/ilt/irishlifetablesno172015-2017/>

⁵⁶ <https://www.gov.ie/pdf/?file=https://assets.gov.ie/260158/50762603-827c-4269-a5cf-995edaa651dd.pdf#page=5>

⁵⁷ <https://data.cso.ie/table/F2017A>

⁵⁸ See, for example, https://webapps.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_747257.pdf

⁵⁹ Industrial Relations Act 1990 (Code of Practice on Longer Working) (Declaration) Order 2017 (S.I. No. 600 of 2017)

the economy and that more jobs for older workers means fewer jobs for younger workers. This has also been used as an argument against the inclusion of migrants and women in the labour market,⁶⁰ and as in those contexts, the concern is not borne out in empirical research.

Younger workers do not automatically fill gaps left behind by older workers retiring and early retirement policies have not encouraged youth employment.⁶¹ International and Irish research find no link between the employment level of older and younger workers,⁶² although, if anything, more employment for older persons can coincide with more employment for younger persons.⁶³ Even in recessions there is no evidence suggesting that more employment for older workers means less employment for younger workers. The lump of labour fallacy is inaccurate because it does not account for the flexibility and dynamism of the labour market, including the fact that the jobs being exited at any given time are often not the jobs being taken up.⁶⁴ Moreover, mandatory retirement clauses are created years or decades prior to their being triggered. If their inclusion is to be justified on intergenerational fairness, this implies that employers were anticipating, years or decades in advance, a situation in which younger persons would be struggling to find employment.

There may be specific sectors in which the continued employment of older workers discourages the hiring of younger workers.⁶⁵ Inadequate research on industry crowding has been conducted to ensure confidence in the effectiveness of mandatory retirement as a solution.⁶⁶ Yet even assuming mandatory retirement improves youth employment in certain sectors, this does not mean it promotes equality or intergenerational fairness. When multiple parties are found to have conflicting interests, fairness and equality necessitate a balancing exercise. Balancing interests means that one group is not unduly disadvantaged in the provision of benefits to another group. While proponents of mandatory retirement emphasise the importance of improving the employment prospects of younger workers, there is no demonstration that forcing older workers to retire is a balanced means of achieving this.

⁶⁰ Dewhurst, Elaine. "Intergenerational balance, mandatory retirement and age discrimination in Europe: How can the ECJ better support national courts in finding a balance between the generations?." *Common Market Law Review* 50.5 (2013).

⁶¹ Dewhurst, Elaine. "Intergenerational balance, mandatory retirement and age discrimination in Europe: How can the ECJ better support national courts in finding a balance between the generations?." *Common Market Law Review* 50.5 (2013).

⁶² Wood, Andrew, Marisa Robertson, and Dominika Wintersgill. *A comparative review of international approaches to mandatory retirement*. London: HM Stationery Office, 2010.

⁶³ Salazar-Xirinachs, Executive Director for Employment (ILO), "Promoting Longer Life and Ensuring Work Ability" at UNECE (United Nations Economic Commission for Europe) Ministerial Conference on Ageing, Vienna, Austria (2012), 9-10; Aker, Gruber and Milligan, "The Interaction of Youth and Elderly Labour Markets in Canada" In J. Gruber and D. Wise, National Bureau of Economic Research Social Security Programmes and Retirement around the World: The Relationship to Youth Unemployment (Chicago, 2010) at p. 77.

⁶⁴ Macnicol, John. *Age discrimination: An historical and contemporary analysis*. Cambridge University Press, 2006, 18.

⁶⁵ Dewhurst, Elaine. "Intergenerational balance, mandatory retirement and age discrimination in Europe: How can the ECJ better support national courts in finding a balance between the generations?." *Common Market Law Review* 50.5 (2013).

⁶⁶ Dewhurst, Elaine. "Intergenerational balance, mandatory retirement and age discrimination in Europe: How can the ECJ better support national courts in finding a balance between the generations?." *Common Market Law Review* 50.5 (2013).

In relation to the purported burden on employers, there is little burden when the scale of the issue of managing older workers is compared to the scale of other human resource management issues. With 2.7 million people in employment, the tasks of supervising and managing performance of 2.6 million workers under the age of 65 far outweighs the task of managing older workers, especially as most older workers today are self-employed, including farmers. Moreover, IBEC reports a turnover rate of 9.7% for Irish businesses.⁶⁷ If this applied to all 2.7 million people at work, it implies over 260,000 new hires to replace departing staff. That level of HR activity is far greater than the challenging of respecting the dignity and autonomy of older workers by abolishing mandatory retirement and giving older workers access to the same opportunities and management processes as younger workers.

Conclusion

Mandatory retirement is age discrimination. The onus is thus on its proponents to justify it. However, arguments in favour of mandatory retirement are flawed. It is at odds with human rights and equality. It does not protect older persons' dignity or autonomy and it does not deliver intergenerational fairness. It reinforces ageism in the workplace and society at large and weakens older people's incomes. Government policy claims to support longer working lives, yet the proposal to allow mandatory retirement at age 66 contradicts this. The Employment Equality Acts should be amended to abolish the practice, including in existing contracts, which will be a significant change for older workers in Ireland. It is important that they have access to an adequate income in retirement so they can enjoy their new freedom to extend their working lives rather than remaining in employment under the threat of financial insecurity.

⁶⁷ https://www.ibec.ie/-/media/documents/connect-and-learn/research/hr-update-2023/ibec_hr_report_2023.pdf