

## **LONDON BOROUGH OF MERTON RETIREMENT PROCEDURE**

### **1. Introduction**

The Employment Equality (Age) Regulations 2006, the “Regulations”, come into force on 1 October 2006. The Council will retain the retirement age of 65, as clarified by the Equal Opportunities and Personnel Sub Committee in 1993.

In order to comply with the legislation, the Council has adopted a ‘Duty to Consider’ procedure. This procedure must be followed in all planned retirement actions for staff, by creating for the employee the right to request to work beyond the contractual retirement age.

Failure to follow the procedure may result in the retirement dismissal being automatically unfair.

The procedure, now takes the place of the Retirement and Extension of Service procedure contained within ‘Merton Council Policy for Leaving the Authority’.

### **2. Scope**

This procedure covers all permanent employees including Teachers at the London Borough of Merton. The relevant Terms and Conditions will apply in each case. This includes staff on both temporary and fixed-term contracts.

### **3. ‘Duty to Consider’**

Under the Regulations, employees have the right to request to continue working beyond the age of 65, either on an indefinite basis, for a defined period or until a specified date. The Council must seriously and genuinely consider any request of this nature, taking all reasonable steps to accommodate the request.

Retirement will not constitute unfair dismissal if it is at or after 65 and the Council has followed this ‘Duty to Consider’ procedure.

#### **3.1 Intended Retirement Process**

Line Managers, with the support from their Departmental HR Team’s (DHRT) will need to follow a statutory process for notifying employees of their forthcoming retirement.

- Employees will be informed in writing by their DHRT of their intended date of retirement and given details of their right to request to continue working beyond this date. The employee will be provided with this information at least six months and no more than 12 months before their 65<sup>th</sup> birthday.

- An employee who wishes to continue with their intended date of retirement should notify their Line Manager by completing the attached form. This includes employees who are in the Local Government Pension Scheme so as to allow sufficient time for pension arrangements to be made.

### **3.3 Working Beyond Retirement**

Any employee who wishes to continue working beyond the age of 65 may request that their employment continues indefinitely, for a stated period or until a stated date:

- The employee's request to continue working must be made in writing no less than three months but not more six months before the intended date of retirement and should be submitted on the standard form.
- The Line Manager, with appropriate HR support if required, must meet with the employee to discuss the request. The meeting must be held within a reasonable period of the request being received. (As a guide 10 working days) Both the Line Manager and employee must take all reasonable steps to attend the meeting.
- The employee has the right to be accompanied at the meeting by a trade union official or work colleague. The representative may put the employee's case forward and confer but may not answer questions on the employee's behalf.
- Although the employee can seek to continue to work beyond the age of 65 for an 'indefinite' period, it is up to the Line Manager to agree to this or whether they would prefer the employee to continue working for an agreed period of time, for example one year or less. The employee can appeal against this decision.
- Following the meeting the employee must be advised in writing of the decision as soon as is practicably possible. (As a guide, 5 working days).
- If the Line Manager agrees to the employee continuing to work beyond 65, the DHRT will advise the employee in writing of the new retirement date and ensure that the contract of employment is amended.
- If the Line Manager, with the agreement of the Level 3 Manager, does not wish the employee to continue working beyond 65, then the employee should be notified in writing that the retirement will take effect on the intended retirement date.
- The employee must be advised that they have a right of appeal against the decision and that a TU representative/work colleague may accompany them to an appeal meeting. A Head of Service not previously involved at any stage of these

proceedings will hear the appeal.

- The regulations require any appeal to be made as soon as is practicably possible after the decision letter is issued. The employee must set out the grounds of appeal, be in writing and be dated.
- Following the appeal the employee must be advised of the final decision in writing as soon as is practicably possible. (As a guide, 5 working days). There is no further right of appeal.
- The Regulations do not require that the Council give a reason for refusing the employees request to work beyond retirement age. The Merton procedure is to give a reason for the decision.
- An employee can make only one request in relation to continuing to work beyond the intended retirement date. However, if the request is granted and a new intended retirement date is established, it then becomes possible to make a further request to carry on working beyond that revised date.

Although retirement is potentially a fair reason for dismissal, the employee's dismissal could be unfair and inconsistent application of the procedures could give rise to other claims of discrimination such as sex, race and disability if the correct procedure has not been adhered to.

The employee can request to postpone the first meeting or appeal meeting should their chosen representative be unable to attend on the original date and time proposed. The meeting can be postponed and re scheduled to a mutually convenient date within 7 working days of the original meeting date.

### **3.4 Further Extensions**

This 'Duty to Consider' procedure will have to be followed every time the employee is nearing their intended date of retirement, unless any request for a different retirement date results in a retirement date, which is within 6 months of the original retirement date. Therefore if agreement has been reached that they can continue to work and a new intended date for retirement has been set, the procedures set out above must be followed on each occasion applicable. (Appendix a Flowchart)

## **4. Medical Clearance**

From 1 October 2006, it will not be possible to require an employee, seeking an extension to service, to obtain a medical clearance or undergo a medical examination without their prior consent unless it is a justified and an essential requirement for the post.

## 5. Pension Entitlement

It is recommended that the employee who is reaching retirement age discuss their specific circumstances with the Pensions Manager.

## 6. Transitional Arrangements

The transitional arrangements will apply to employees retiring from 1 October 2006 to 31 March 2007.

Where an employee is due to retire soon after 1 October 2006 the procedures for ensuring a retirement dismissal are fair are summarised below:

### 6.1 Notice Given Before the 1<sup>st</sup> October 2006

If the employee is given notice **before** 1<sup>st</sup> October that they are due to retire after **1<sup>st</sup> October 2006 but before 1<sup>st</sup> April 2007 the Council must:**

- Ensure that notice is at least the period required by the contract of employment.

OR

- Where the employee is already serving a longer period of notice required by the contract that exceeds four weeks, the Council must give at least four weeks notice before 1<sup>st</sup> October 2006 to ensure the employee is aware and given the statutory minimum period of notice for retirement.

On 1<sup>st</sup> October, or as soon as practicable afterwards, the DHRT will write to the employee advising them of their right to request to work beyond their retirement age.

The employee can make such a request after their contract has been terminated but no later than four weeks after the termination.

A meeting to discuss the request, and any subsequent appeal meeting must be held within a reasonable period. (As a guide, 10 working days). The employee has the right to be accompanied by a Trade Union representative or work colleague.

### 6.2 Notice given after 1<sup>st</sup> October 2006

If the employee is given notice on or **after** the 1<sup>st</sup> October 2006 and before 1<sup>st</sup> April 2007 the Council must:

- Write to the employee advising them of the intended retirement date giving the longer of the contractual or statutory notice and
- Advise them in writing that they have a right to request working

beyond their retirement date.

An employee who wishes to exercise this right should make a written request:

- Where possible four weeks before the intended retirement date,

Or

- As soon as is reasonably practicable after being notified of the 'right to request'.

The request can be made after the employee's contract has been terminated but no more than four weeks after termination.

A meeting to discuss the request, and any subsequent appeal meeting, must be held within a reasonable period. The employee has the right to be accompanied by a Trade Union representative or work colleague.

**Anyone retiring on or after 1<sup>st</sup> April 2007 will be subject to the full retirement procedure set out in the Employment Equality (Age) Regulations 2006 and detailed in this guidance.**

## **7. Objective Justifications, Exceptions, Exemptions and Genuine Occupational Qualifications.**

Please see the attached explanatory guidance at (Appendix b).

## **8. No Contractual Rights and Variation**

This procedure does not and is not intended to vary or create any contractual right or obligation. The Council has discretion to vary, amend or withdraw this document.

## **9. Monitoring and Review**

The Council is committed to monitoring the consistent application of this procedure and will formally review its application in November 2007 in consultation with Staff side and other appropriate staff representatives.

## Appendix b

### **Guidance on Objective Justifications, Exceptions, Exemptions and Genuine Occupations Requirements**

The following guidance is an extract from Acas 'Age and the Workforce'

#### **Objective Justifications**

You may treat people differently on the grounds of their age if you have an **objective justification**.

An objective justification allows employers to set requirements that are directly age discriminatory.

The provision of real evidence will be required to support any claim of objective justification. Assertion alone will not be sufficient and each case must be considered on its individual merits.

Both direct and indirect discrimination will be justified if it is:

- A proportionate means (of)
- Achieving a legitimate aim

#### **What is proportionate?**

This means:

- What you are doing must actually contribute to a legitimate aim, e.g. if your aim is to encourage loyalty then you ought to have evidence that the provisions or criterion you introduce is actually doing so
- The discriminatory effect should be significantly outweighed by the importance and benefits of the legitimate aim
- You should have no reasonable alternative to the action you are taking. If the legitimate aim can be achieved by less or non-discriminatory means then these must take precedence.

#### **What is a legitimate aim?**

A legitimate aim might include:

- Economic factors such as business needs and efficiency
- The health, welfare and safety of the individual (including protection of young people or older workers)
- The particular training requirements of the job

A legitimate aim must correspond with a real need of the employer – economic efficiency may be a real aim but saving money because discrimination is cheaper than non-discrimination is not legitimate. The legitimate aim cannot be related to age discrimination itself.

### **Exception and Exemptions**

There are also exceptions to or exemptions from the age regulations in the following areas:

- Pay and other employment benefits based on length of service
- Pay related to the National Minimum wage
- Acts under statutory authority
- Enhanced redundancy
- Life assurance
- Retirement
- Occupational pensions schemes

### **Genuine Occupational Requirement (GOR)**

In very limited circumstances, it will be lawful for an employer to treat people differently if it is a GOR that the jobholder must be of a particular age. When deciding if this applies, it is necessary to consider the nature of the work and the context in which it is carried out. Jobs may change over time and you should review whether the requirement continues to apply, particularly when recruiting