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### **Working after retirement – but how does one terminate employment?**

**Due to advances in medical science and the changing nature of working conditions, there is an increasing tendency for people to work until later in life. It sometimes makes sense for companies to allow certain employees to continue working after the agreed or normal retirement age. The question is this: How does one go about terminating employment during that period?**

If the employer and employee agree on a new retirement date, there should not be any problem. However, where the matter is left open-ended the question arises whether the employee can expect to have a 'job for life'; or whether the employer may at some stage conclude that the retirement date has finally arrived and advise the employee accordingly? In the latter case the employer could be faced with an unfair dismissal claim. To make matters worse, permitting an employee to work after the initial retirement date puts one in 'no-man's-land' where there is again no agreed upon or 'normal' retirement age. Termination based on age during this period would amount to unfair discrimination and the employer may be faced with a compensation award of up to 24 months' remuneration.

In the case of ***Datt v Gunnebo Industries (Pty) Ltd [2009] 5 BLLR 449 (LC)*** things did not go the employer's way. The employer and the employee (an accountant) had agreed that employment would continue beyond the normal retirement age of 65 years. No new retirement date was specified. In fact, the employer had made the mistake of stating '*... we now request that you remain in our employ until such time as we mutually agree that you should take retirement.*' However, by the time the employee reached the age of 67 the employer felt that he was a 'risk' to the company and should make way for a new accountant. He was informed that he should retire. The employer ended up having to pay compensation for an amount equivalent to 24 months' remuneration.

But what would the situation be if the employer did not bind itself as it did in the ***Gunnebo*** case and simply terminated on notice in terms of the contract of employment? In the Labour Court case of ***Randall v Ivor Karan t/a Karan Beef Feedlot*** (handed down in May 2010) the court pointed out that there were conflicting views on the matter. In this case the Labour Court decided that the unilateral decision of an employer to terminate the employment of its Group Financial Director after the agreed retirement age amounted to unfair discrimination. The employee was awarded compensation equivalent to 20 months' remuneration. However, the Labour Court's award was overturned by the Labour Appeal Court (LAC) in ***Ivor Karan t/a Karan Beef Feedlot v Randall*** (handed down in June 2012). The LAC found that it was not unfair in this case to terminate employment unilaterally, as the employer had, prior to the retirement date, communicated the following: '*This is to confirm that you will reach your retirement age on [date]. We would like you to continue to work for Karan Beef. The normal notice period will apply in the event that we would like you to go on retirement.*' By doing so, the employer had reserved the right to terminate the employee's services on notice in terms of the contract of employment.

The LAC in the **Karan**-matter seems to have opened the door for an employer to terminate on notice after the retirement date, provided that the employer has reserved the right to do so. One must hasten to add, though, that the LAC also considered it relevant that this had been the employer's standard practice in respect of employees who on different occasions had found themselves in a similar position to that of the employee in question. Employers should therefore not consider this *carte blanche* to terminate on notice after retirement.

The safest approach for employers to adopt in cases of post-retirement employment remains this: Agree in writing on a new retirement date before the advent of the initial agreed upon or 'normal' retirement date.

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