

## What happens when an employee retires?

People often use the expression "going on retirement". In many cases, employees are aware of their retirement age, and there are no issues when they retire. However, there are situations in which an employee does not want to "retire," leading to the employer terminating the employment relationship. When an employer terminates the employment relationship this is termed a dismissal as per section 186 (1) (a) of the Labour Relations Act 66 of 1995 as amended ("LRA").

According to section 187(1)(f) of the LRA an employee may not be unfairly discriminated against on any arbitrary ground, including age. The LRA goes on to state that a dismissal based on age is fair if the employee has reached the **normal or agreed retirement age**.

## Our courts have provided the following important guidelines regarding termination of employment based on age:

- Dismissal based on age will be automatically unfair unless the employer can show that the employee has reached the normal or agreed retirement age for persons employed in that capacity.
- It is not unfair for an employer to terminate the services of an employee based on age at any time after the employee has reached his/ her agreed or normal retirement age.
- Employers may include the retirement age in the contract of employment. Under such circumstances this may be regarded as the agreed retirement age.
- The "normal retirement age" applies when there is no agreed retirement age. When determining the normal retirement age, the provident or pension fund rules, company policy or the "norm" (custom and practice) may be relevant considerations.
- If an employee who has reached or worked beyond the agreed or normal retirement age is dismissed for reasons unrelated to age, such as misconduct, incapacity, or the employer's operational requirements, then the employer must ensure that the dismissal is both procedurally and substantively fair.
- Where an employee continues to work beyond the normal or agreed retirement age, his/her contract may be terminated at any stage thereafter, unless the parties had agreed to a fixed term of post-retirement employment in which case the employer should allow the employee to complete that term of employment.

