

# Employment Bulletin

## Justified retirement provisions

Most employers have long since removed any enforced retirement provisions from their standard terms and conditions. This was in response to section 13 of the Equality Act 2010, which made it directly discriminatory to have any provision for enforced retirement. This is however subject to an exception, in that an enforced retirement clause can be allowed if the provision can be objectively justified as a justified retirement age.

In the higher education sector, there are only three universities that have default justified retirement ages in place- The University of Oxford, The University of Cambridge and University of St Andrews.

If an employer wishes to have a fixed retirement age, it must be able to show that:

- It is intended to meet a legitimate aim.
- Having the particular retirement age meets that aim.
- It is proportionate to use that retirement age as a means of meeting that aim.

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## Holiday pay for 'part-year' workers

The Harpur Trust v Brazel [2019] EWCA Civ 1402: this is a recent decision from the Court of Appeal on the complex issue of calculating holiday for 'part-year' workers with irregular hours.

Ms Brazel, a visiting music teacher at Bedford Girls School, was employed by the school on a zero-hours contract, and generally worked around 32 weeks a year. Ms Brazel contended that she lost out on holiday pay after the school changed the way it paid visiting music teachers by calculating her earnings at the end of each term and paying her one-third of 12.07% of that figure.

This was a payment system that was in accordance with the method for calculating casual workers' holiday pay that was recommended by Acas. The figure of 12.07% is derived from  $5.6/46.4$  where 46.4 is the number of working weeks in the year when 5.6 weeks is deducted from 52 weeks.

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