

*West
Dunbartonshire
Council*

**POSITIVE
EMPLOYMENT**

FAIR RETIREMENT PROCEDURES

**This document is available in large print, on tape, disc and by E-mail.
Please contact the Personnel Section on (01389) 737200**



INVESTOR IN PEOPLE



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1.	INTRODUCTION
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- 1.1 From 1 October 2006 the Employment Equality (Age) Regulations make it unlawful to discriminate against workers, employees, job seekers and trainees because of their age. In addition the Regulations require employers to implement a retirement procedure which affords employees the right to request to work beyond the organisation's retirement age, which in the case of West Dunbartonshire Council is age 65.

Fairness at work and good job performance go hand in hand. Tackling discrimination helps to attract, motivate and retain staff and will enhance our reputation as an 'employer of choice'. Eliminating discrimination helps everyone to have an equal opportunity to work and to develop skills.

Employees who are subjected to discrimination, harassment or victimisation may:

- be unhappy, less productive and less motivated
- resign
- make a complaint to an Employment Tribunal.

In addition employers often find:

- their reputation as an employer is damaged
- the cost of recruitment and training increases because of higher employee turnover
- there may be liability to pay compensation following a claim to an Employment Tribunal

- 1.2 This Procedure addresses the minimum requirements in terms of a fair retirement process to ensure we meet the requirements of the Employment Equality (Age) Regulations.

2.0.	FAIR RETIREMENT
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- 3.1 From the 1st October 2006 West Dunbartonshire Council is required to have a Procedure which ensures that all Managers adopt a fair and flexible approach to handling the retirement of employees.

- 3.2 Under the terms of the legislation a fair retirement is when the employer meets the following conditions:

1. Has given the employee written notice 6-12 months prior to the date of their retirement at the normal retirement age of 65 or later if agreed.

2. Advised the employee about their right to request to continue working beyond the normal retirement date.

The Manager must inform the employee in writing of the intended retirement date and of their right to make a request to work beyond retirement age, at least six months in advance but no more than 12 months before the intended date. If the employee does make such a request, the Manager must have followed the correct procedure for dealing with it. **Fair Retirement Flowchart (Appendix 1)**

- 3.3 There are many benefits to adopting a flexible approach to the employment and work patterns of older workers. Employees will now have the right to request to continue working beyond their retirement date (65) and West Dunbartonshire Council will have a duty to give consideration to all such requests. Managers need to think about each request on an individual basis and take into account any opportunity to vary the employee's hours or the duties they perform. West Dunbartonshire Council is under no obligation to agree to such requests but proper consideration must be given with due regard to business objectives.
- 3.4 Before making any decisions on whether to retire or continue working, employees should consider all their options and these are detailed below. In addition, employees should seek advice from Personnel who can also, if requested, obtain provisional pension calculations on behalf of the employee from the Strathclyde Pension Fund.

4.0. WORKING BEYOND RETIREMENT DATE

- 4.1 The Manager must notify the employee in writing of their right to request to continue working beyond their retirement date (at least six months in advance but no more than 12 months before the intended date).
- 4.2 When the Manager writes to the employee it is good practice to set out how the retirement process will be managed. Employees should be reminded of West Dunbartonshire Council's obligation to give consideration to any request to work after the normal retirement age. However, in order not to raise the expectations of the employee, it should be explained that West Dunbartonshire Council is entitled to refuse the request without giving a reason for the decision.

However, giving reasons and a more detailed explanation of the reasons, will enable the employee to leave with dignity and respect and help West Dunbartonshire Council maintain good workplace relationships with other employees. This is also in line with normal good practice recommended by ACAS.

- 4.3 When giving reasons, time should be taken to consider what is going to be said and how it is going to be said. Care must be taken to ensure there is no suggestion of discrimination against an employee on the grounds of race, gender, disability, sexual orientation or religion or belief.
- 4.4 Where employees have been properly notified and wish to continue working, the request to do so must be submitted in writing to the Manager no less than **three** months before the intended retirement date.
- 4.5 The employee's request must propose that their employment will continue past the intended retirement date either indefinitely, for a stated period, or until a stated date.
- 4.6 Where a Manager fails to notify the employee six months in advance of retirement, West Dunbartonshire Council may be liable for compensation. In the event of a failure to notify 6 months in advance the Manager still has an ongoing duty (up until two weeks before the retirement dismissal) to inform the employee of both the intended date and their right to request working longer. ***Failure to do this would make the dismissal automatically unfair.***
- 4.7 If a Manager fails to inform an employee of their intended retirement date and of the right to request to continue working, the employee will still be able to make a request not to retire at any stage until dismissal. If the employee does make a request, the employment must continue until the day after the Manager notifies the employee of their decision on the request.

5.0.	DEALING WITH A REQUEST
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- 5.1 Where an employee requests in writing not to be retired, this request must be considered by the Manager before the employee is retired. Failure to do so will make the dismissal automatically unfair. The Manager must meet the employee to discuss their request within a reasonable period of receiving it, but no later than 14 days (unless agreeing to the request or it is not practicable to hold a meeting) and inform them in writing of the decision as soon as is reasonably practicable but no later than 5 days following the meeting. The employee's employment continues until the Manager has informed the employee of the decision on the request.
- 5.2 As preparation for this meeting, Managers should reflect on the positive reasons why an extension may be granted - in particular savings on recruitment and training costs and retaining the valuable experience and knowledge of the employee.

5.3 At the meeting the employee has a right to be accompanied by a colleague and there is the same right in relation to any subsequent appeal meeting. The individual accompanying the employee must be:

- chosen by the employee
- a worker or trade union representative employed by West Dunbartonshire Council
- permitted to address the meeting but not answer questions on behalf of the employee
- permitted to confer with the employee during the meeting

5.4 The employee may appeal against the decision to a manager more senior than the one who made the original decision, as soon as is reasonably practicable, but no later than 14 days after receiving notification of the decision.

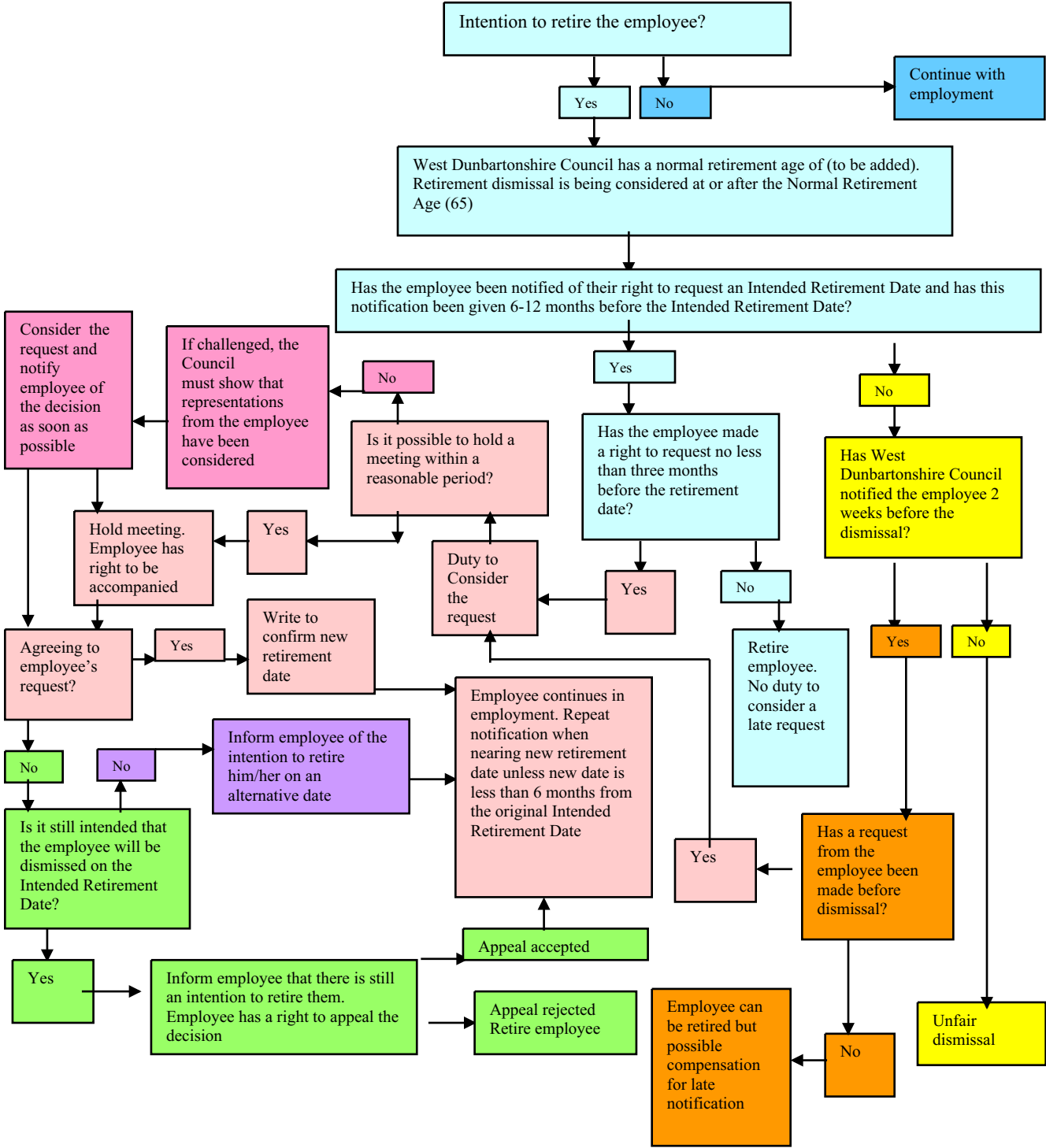
If the employee does appeal, the appeal meeting should be held within 5 working days. The employee may appeal the decision if the Manager refuses the request in its entirety or if the Manager accepts it but decides to continue employing the employee for a shorter period than the employee requested. The appeal meeting can be held after the retirement has taken effect.

5.5 The notification requirements must be repeated each time an individual nears an extended point for retirement to ensure a fair retirement procedure. **(see Appendix 1 - Flowchart for a Fair Retirement)**. E.g. if an employees contract is extended beyond the normal retirement age for a period of 6 months the manager must repeat the process of writing to an individual giving them notification of their right to work beyond the intended retirement date.

In following this framework correctly the termination of the contract at the set retirement age 65 or revised retirement date, will be fair and non discriminatory on grounds of age. Where a termination is for reasons of retirement, the statutory dismissals procedures as detailed in The Employment Act 2002 (Dispute Resolution) Regulations do not apply.

*** Sample letters are attached as Annexes**

Fair Retirement Flow Chart



Example Letter:

Manager's Letter to Inform Employee of their Retirement Date and their Right to make a Request

NOTE: Employees must be informed no more than one year, but no later than six months, before their retirement date:

- What is the intended retirement date
- That the employee has a right to request not to be retired.

Dear xxxxxx

I note from our records you will reach the age of 65, which is the normal age for retirement within West Dunbartonshire Council, on xxxxxxxx . I am therefore writing to inform you that you have the right to request not to be retired on this date, in line with the Councils Positive Employment – Fair Retirement Procedures.

I will give careful consideration to any request you may make to work beyond this date and will inform you if I am unable to approve your request. In the event that I am unable to approve such a request I am not required under the legislation to provide you with a reason, however I will endeavour to provide a rationale for my decision.

If you decide to request to work beyond the normal retirement date this must be put in writing and indicate whether the proposal is for an indefinite period, a stated period of time or until a stated date.

Your request not to be retired must be returned to xxxxxxxx no later than three months before xxxxxx. Failure to do so will mean that you lose your statutory right to have your request considered and you will be retired on the retirement date above.

May I take this opportunity to thank you for xxxx years service you have given to this Authority and will make every effort to accommodate any request you may make.

Yours sincerely

Example Letter

Manager's Letter Informing the Employee of a Meeting to Discuss a Request Not to Retire

NOTE: The meeting to discuss the request must be held within a reasonable period after the request has been received, no later than 14 days. The employee has a right to be accompanied at the meeting.

The companion can be chosen by the employee but must be a worker employed by West Dunbartonshire Council. The companion can address the meeting but not answer questions on behalf of the employee. The companion may also confer with the employee during the meeting.

Dear xxxxxx

I am writing to inform you that after receiving your request not to be retired that there will be a meeting to discuss your request.

The meeting will be held on xxxxxxxx at xxxxxxxx in xxxxxxxxxxxx.

You have the right to be accompanied at the meeting by a fellow worker or a trade union representative. Your companion can address the meeting but not answer questions on your behalf although you may confer with your companion during the meeting.

After the meeting if it is decided to continue your employment beyond the intended retirement date of xxxxxxxx, you will receive written notification within 5 days reflecting these agreed changes to your contract.

If no agreement is reached you will receive further notification confirming your intended retirement date and informing you of your right to appeal.

Yours sincerely

Example Letter

Manager's Letter Confirming Retirement on the Intended Date

NOTE: If after the meeting to discuss the employee's request not to be retired, the Manager decides that the employee should still be retired, the employee must be informed as soon as is reasonably practicable, but not later than 5 days. The employee must also be informed that they have a right to appeal.

Dear xxxxx

I am writing to inform you that, after our meeting held on (date) to discuss your request not to be retired, it is still the intention of West Dunbartonshire Council to retire you on (insert intended retirement date).

You have a right to appeal this decision. Your appeal will be heard by (name of more senior Manager)

If you wish to appeal you must inform me within 14 days of receipt of this letter. Failure to do so may mean that you lose the right to an appeal meeting and, in such circumstances; (name of more senior manager) may consider your appeal without holding a meeting. Consideration of any previous representations that you have made would be taken into account.

Yours sincerely

Example Letter

Appeal Manager's Letter to Employee Notifying the Result of their Appeal

NOTE: the Appeal Manager will hold the appeal meeting to discuss the employee's appeal not to be retired, as soon as is reasonably practicable, but no later than 5 days. If it is not reasonably practicable to hold an appeal meeting within a reasonable period, West Dunbartonshire Council may consider the appeal without holding a meeting. Any representations that the employee has made will be considered.

Dear xxxxx

I am writing to inform you that after our meeting held on (date) to discuss your appeal not to be retired, it is still the intention of West Dunbartonshire Council to retire you on (insert intended retirement date).

There is no further right of appeal against this decision.

I appreciate that this decision will be disappointing to you and in no way reflects on the valuable contribution you have made to the Council over the years

Yours sincerely

Example Letter

Letter to Employee Confirming New Retirement Date

Dear xxxxxx

I am writing to inform you that following our meeting to consider your request not to be retired/appeal meeting (delete as appropriate), it has been agreed that your new intended retirement date shall be (insert date).

As agreed at the meeting to discuss your request not to be retired/ appeal meeting (delete as appropriate), your new working pattern will be as follows. (Delete this paragraph if no new working pattern is agreed).

Yours sincerely