Did you know that pensionable age will increase to 67 by 2031? It is hardly surprising given that when originally set, it was in line with life expectancy in the 1800's.

Today, our parent's generation have expectations of retirement in which their hard work will have paid off (hopefully) and that they will have time to enjoy their good health. However, the continually increasing life expectancy of the modern population means that the retirement age will rise again in the future and because of this the law needs to adapt to protect and provide for the ageing workforce.

Under the current provisions of our Discrimination Law, employers can require employees to retire at the Social Security pensionable age of 65. Should an employer's current policy require an employee to retire before reaching this milestone, the employer will need to demonstrate that the policy is a "proportionate means of achieving a legitimate aim". The changes to the Discrimination Law in force this time next year will outlaw such policies.

As of 1 September 2018, the position under the Jersey Discrimination Law will be akin to that of the UK in that the dismissal of an employee of any age (even when they have attained pensionable age) by reason of retirement will be an act of direct age discrimination unless it can be objectively justified. Whilst retirement will become one of the potentially fair reasons for dismissal, employees will be able to make a claim for unfair dismissal if they believe that their employer has acted unreasonably in requiring them to retire.

The legislature has afforded employers a two year window in which to review and adjust their retirement policies before the abolition of forced retirement comes into force. Beware! Some UK employers are still making costly mistakes in this area despite the UK Law changing almost six years ago. One company, Rock Oil, recently found itself defending claims of unfair dismissal and age discrimination from a former company accountant arising from Rock Oil's attempts to have the employee, then 67, to retire against his wishes.

Rock Oil contended that it dismissed the employee for conduct reasons. However, the Employment Tribunal found that the employer's contentions were a disguise. The Tribunal reported that it was only "*when the claimant indicated that he did not intend to retire, the management trumped up charges against him in what can only be described in a threatening manner*" and found that the employee's dismissal and the conduct leading up to it were inextricably linked with his age. Such conduct allowed an inference of age discrimination – an inference that Rock Oil could not rebut.

The ill-thought scheme to disregard the employee's retirement wishes cost Rock Oil £182,000 in damages.

General work place discussions with employees about their futures and ambitions, perhaps as part of their appraisals, can create an opportunity to discuss future work requirements. However, unless an employee has indicated a desire to retire in the near future, care should be taken to avoid direct questioning in this regard. They should not be forced into retirement against their wishes.

Next year's amendment to the Discrimination Law may drive a coach and horse through our assumptions about what people can do as they get older.  It will support employees who need or want to work past pensionable age. However, as the workforce continues to labour for longer, whether by choice or by

necessity, are the assumptions about retirement set to change?