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Expert view

Why it's different for self-employed

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Many older people become part-time employees, contractors or consultants. They might also use their super to supplement income with a private pension.

If their new job involves working less than 10 hours a week, they can also withdraw lump sums from super. This is possible as long as they have reached the age at which they are allowed to withdraw super if they have no intention of working more than minimal hours.

This is now 55 years old. But what if you are already a self-employed contractor or consultant who wishes to retire from full-time work and work minimal hours, asks a reader.

He gives the example of a self-employed chiropractor who works full time and wishes to move into part-time self-employment and collect a super pension. A similar situation may exist for a self-employed tradesman or a professional such as an accountant, financial adviser or stockbroker.

Does their entitlement to their super rely on the same definition of retirement as for an employee?

Meeting the conditions for retirement and super withdrawals depends on age, says Olivia Long, chief executive of do-it-yourself super administrator SuperGuardian.

A member of a super fund who is under 60 is said to have retired if their employment ceases and they never intend to work again, either full- or part-time.

Part-time is defined as working more than 10 hours a week. Working for less than 10 hours is not classified as part-time work.

Whether it is a large super fund or a DIY fund, says Long, the crucial issue is that the trustees of the fund must be satisfied it is the intent of the member to never work again.

A declaration can be prepared and signed by the member stating their intention to cease employment and to either not work again or to work for less than 10 hours a week.

However, this declaration does not prevent the member from returning to work, as the declaration concerns the intention at the time of retiring and circumstances may change.

> **The trustees must be satisfied it is the intent of the member to never work again.**
> Olivia Long, SuperGuardian

A member who retires but later chooses to re-enter the workforce, either part-time (more than 10 hours a week) or full-time, can continue to collect pension benefits that they became entitled to when they first retired.

For members over 60 "cessation of employment" is an important milestone that gives you access to pension benefits, and any intention to return to work is irrelevant. A member who worked as an employee can return to work soon after ceasing employment and continue to access an account-based pension.

However, the concept of cessation of employment is more difficult to meet for self-employed people as merely reducing the number of hours worked does not constitute cessation of employment. This is where it can become more complicated.

Self-employed persons between 60 and 64 are still required to prove their intention was never to work again when they signed a declaration.

This intention may be difficult to prove, admits Long. But a written declaration by a self-employed person intending never to work again or only work for less than 10 hours a week should constitute retirement as required by the superannuation legislation.

If at a later date the member wishes to work more than 10 hours due to a change in circumstances this does not prevent them from continuing to receive pension benefits in the form of an account-based pension.

One important point to note, says Long, is that any super fund member – including those with DIY funds – who is between 55 and 64 may access their pension benefits by way of a transition to retirement pension.

This is a simple solution if a member has any doubts about going back to work in future. They need not retire and can continue to work in any capacity for any period.

However, the maximum pension amount you can withdraw from the fund will be capped at 10 per cent of your member balance either when you start the pension if this is during the year or at the beginning of each subsequent financial year.

When you reach 65, super benefits can be accessed as an account-based pension or a lump sum regardless of your employment situation: self-employed or otherwise.