

## Age discrimination

### A new right for employees from 1st October 2006

#### A summary of the new law on age-discrimination

By Philip Landau

#### Is there currently any legal protection against age discrimination?

No. This means, for example, that you can presently be dismissed at 65 (the default retirement age) and yet cannot bring a claim for unfair dismissal. This differs from younger employees who are entitled to bring a claim for unfair dismissal if they one year's qualifying period of employment.

#### When will the new laws be coming into effect?

1st October 2006.

#### Why have the age discrimination laws been introduced?

There are already discrimination laws in place for sex, race, disability, sexual orientation and religion, but there is nothing in place for age-related discrimination. The working population as a whole is getting older. The number of people aged under 50 is set to fall by two per cent by 2016, while the number aged between 50 and 69 is set to increase by 17 per cent. Many people are choosing to work longer either because they have to in order to maintain a minimum standard of retirement, or simply because they want to.

#### Who will be protected from the new regulations?

The regulations will apply to all employees (fixed and indefinite term), job applicants, contract workers, office holders (including company directors and partners), those who are on secondment and the self-employed. The regulations affect all areas of employment including recruitment, selection and promotion, the provision of training, the provision of benefits, retirement and occupational pensions. The regulations do not just apply to older employees, but also younger ones. For example, it will also be unlawful for an employer to impose a lower age limit when recruiting, unless this age restriction can be objectively justified.

#### What will the new regulations mean? You will be able to make a claim for unfair dismissal beyond the age of 65.

At present, you generally have no right to claim unfair dismissal after you have reached your employer's normal retirement age for your job or, if there isn't one, the age of 65. This means that there's no risk of an Employment Tribunal claim for an employer if they choose to dismiss you.

The new regulations will mean that after October 2006, older employees will have the same unfair dismissal rights as those of younger employees.

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#### **You will be able to claim a statutory minimum redundancy payment after the age of 65.**

You also presently do not have the right to claim the statutory minimum redundancy payment if you are over 65 (or after your normal retirement age if this is lower). This means that unless a redundancy payment when reaching this age is included in your employment contract, you won't receive any redundancy pay.

Age bands for calculating statutory redundancy payments and basic awards for unfair dismissal will remain unchanged, using a multiplier based on a number of weeks pay, ranging from half a week for younger employees to one and a half weeks for older employees.

#### **You cannot be forced to retire below the age of 65, unless it can be justified. You will have the right to request to work beyond 65.**

Under the new regulations the default retirement age is 65. If an employer's normal retirement age is below 65, it will need to be objectively justified.

Employees must be informed of their expected retirement date at least 6 months and no more than 12 months of the planned retirement. At the same time, employees must be advised of their right to request to work longer if they wish to.

An employee's request to work beyond 65 should be made in writing as soon as practical and where possible, at least 4 weeks before the end of the proposed retirement date. The request can even be made up to 4 weeks beyond termination of the contract of employment, but not after this date. A meeting to discuss the request should be held by the employer within a reasonable period after the employee's request has been made.

An employee's request to stay on must be considered using a detailed procedure laid down in the regulations. The employer must show it is appropriate and necessary to retire the employee. The fact that you may have reached a certain age is not in itself a good enough reason to retire you.

If an employer does not follow the correct retirement procedure, this could result in compensation to the employee of up to 8 weeks' pay or an automatically unfair dismissal, depending on the extent of the failure.

If, on notification, if an employee was to agree to retire, then there is clearly no need to follow the procedure.

#### **The Regulations will stop age-discrimination in employment and work-related training.**

Employers will have to make sure that any redundancy policies do not directly discriminate against older employees. They should also not discriminate indirectly – for example, by selecting only part-time workers for redundancy, when a large number of these may be older workers. Employers will not be able to discriminate in respect of the benefits they provide to employees over 65. The only exceptions will be where an age requirement can be objectively justified.

Can an employer simply make you redundant at 65 to avoid any liability under the new regulations?

If the principal reason for the dismissal is redundancy and not because of an employee's age, then the redundancy will be legal and the employee will be entitled to redundancy pay at age 65 or above as they would at any other age. If the retirement procedure is used to dismiss an employee, and the contract of employment terminates on the intended date of retirement, the reason for dismissal will be retirement and the dismissal will be fair. Remember though that the employer will need to justify the reason for dismissal on retirement grounds.

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#### **What do you do if you think you have been discriminated against because of age?**

From 1st October 2006, if you are an employee and still in employment and you cannot resolve the matter informally with your line manager, then it is best to first lodge an internal grievance which is a statutory entitlement. This may be appropriate, for example, where you may have been passed over for promotion, or you have been harassed by reason of your age. Your employer will be obliged to convene a meeting within 28 days to discuss your grievance. You may, however, still be able to bring a claim in the Employment Tribunal while you are still employed.

#### **For further information, please contact:**

**Philip Landau** [pl@lzwlaw.co.uk](mailto:pl@lzwlaw.co.uk)

If you have already been dismissed and you think you have been discriminated against, you can lodge a claim for unfair dismissal at the Employment Tribunal. Any claim should be issued within 3 months of the date of dismissal or alleged discriminatory act.

If you are successful in your claim, compensation can be awarded for financial loss and there will be no ceiling to the amount of damages that you can claim.

You should, if possible, seek detailed professional advice before making a claim against your employer.