

Employers beware – age discrimination

A new right for employees from 1st October 2006

A useful summary of the new legislation on age-discrimination, and helpful action list.

By Philip Landau
 Employment Law Solicitor

The Employment Equality (Age) Regulations 2006 will come into force on 1st October 2006.

The regulations will:

- make age discrimination unlawful in recruitment, promotion and training.
- remove the current age limit of 65 for unfair dismissal and redundancy rights.
- end unjustified and forced retirement ages of below 65.

The regulations will also introduce:

- a right for employees to request working beyond retirement age and a duty on employers to consider that request.
- a new requirement for employers to give at least six months notice to employees about their intended retirement date so that individuals can plan better for retirement.

Five key questions and answers regarding the new age-discrimination law.

1. Why have the age discrimination laws been introduced?

There are already discrimination laws in place for race, sex, 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 due to changes in lifestyle.

2. Who does the law cover?

- All employees, contract workers, office holders, the police and members of trade organisations. It also covers the self-employed.
- People who apply for work.
- People taking part in or applying for employment related vocational training

3. What does the new law mean?

The main points are:

- Employees will be able to make a claim for unfair dismissal beyond the age of 65.
- Employees will be able to claim a statutory minimum redundancy payment after the age of 65. 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.

- Employees cannot be forced to retire below the age of 65 (the default retirement age), unless it can be justified. They 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. This is a statutory right.

An employee's request to work beyond 65 will need to 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 you as employer within a reasonable period after the employee's request has been made.

- 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.

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The only exceptions will be where an age requirement can be objectively justified.

4. Are there any circumstances when treatment on grounds of age will be lawful?

- Exemptions will be allowed on Genuine Occupational Requirement (GOR) grounds and if there is an objective justification. However, both are likely to be difficult to prove.
- The 'test of objective justification', means employers will have to show with evidence that they are pursuing a legitimate aim and that it is a proportionate means of achieving that aim.
- The legislation will protect individuals or companies who are forced to discriminate on age grounds in order to comply with other legislation e.g. bar staff serving alcohol must be at least 18.

5. Do I need to worry if there is a genuine redundancy situation for an employee who has reached 65?

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 you will need to justify the reason for dismissal on retirement grounds.

An action checklist for employers

- Employers should check their employment contracts, policies and handbooks and amend any provisions that are likely to be discriminatory. You should make clear to managers and other employees that harassment on grounds of age will be viewed as misconduct.
- Consider whether any training of your managers is necessary.
- You should take care to ensure that when you advertise job vacancies:
- you do not exclude a particular age group;
- you choose the wording carefully in advertisements (for example, do not give the impression that applicants from a particular age group will be favoured by asking for a "mature" or "young and dynamic" person);
- you do not insist on qualification requirements where these could have a discriminatory effect – for example, asking for media studies from older people.

Any discriminatory practices will need to be objectively justified.

- Ensure whoever is involved in the selection procedure do not bring age-related prejudices to it and that recruitment agencies are not asked to recruit specifically on the basis of someone's age. Consider whether age-related questions should still appear in the application forms where discrimination could be inferred. Consider interviewing a wider age range of persons.
- Ensure that older workers are not excluded from training simply because of their age.
- Ensure all employees are given equal consideration for promotion. Promotion decisions need to be transparent and not based on age considerations.

- Check that any service-related benefits are not shown to be discriminatory to younger employees, especially where they are based on length of service. Unless they fall within an exemption or are justified in some other way, then you should consider either reducing the length of service criterion to 5 years or changing their qualification criteria to something other than length of service (for example, performance).

For further information please contact Philip by telephone on 020 7357 9494 or email:

Philip Landau pl@lzwlaw.co.uk