

# AGE DISCRIMINATION – HOW WILL YOU BE AFFECTED?

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On 1 October 2006 the Employment Equality (Age) Regulations 2006 come into force. Applicable to employment and vocational training, the Regulations will prohibit unjustified direct and indirect discrimination, harassment and victimisation on the grounds of age. In summary, the Regulations will:

- require employers who set their retirement age below 65 to change or justify it;
- impose a duty on employers to inform employees in writing, at least 6 months in advance of the intended retirement date, of their right to request to continue working, and impose a duty on employers to consider any such request;
- remove the upper age limit for unfair dismissal;
- allow the continuance of pay and non-pay benefits which are dependent on length of service requirements of 5 years or less, or which reward loyalty and experience;
- remove the age limits for Statutory Sick Pay, Statutory Maternity Pay, Statutory Adoption Pay and Statutory Paternity Pay;
- remove the lower and upper age limits in the statutory redundancy scheme, but leave the current age-banded system in place; and
- provide exemptions for many age-based rules in occupational pension schemes.

## Who will be affected?

The Regulations will apply to employers, trade unions, professional associations, employers' organisations, pensions trustees, and managers of occupational pension schemes. They will also apply to further and higher education institutions in relation to their provisions for students. As with sex and race discrimination, there will be no upper limit on potential compensation, so failure to comply could be very costly indeed.

## Some key points for employers

The Regulations will affect businesses in a variety of ways. In particular, their impact on the way in which employers should approach retirement and recruitment ought to be noted, as should the "objective justification" exemption.

### (i) Retirement

One of the primary aims of the Regulations is to encourage the retention of older people in the workforce. Therefore, from December 2006 onwards an employer may not set a retirement age of below 65 unless he or she can objectively justify it (although it should be noted that the government has already made clear that it plans to remove this default retirement age, and as such a review is set for 2011). Moreover, an employer will have a duty to inform the employee of their intention to retire them at least six months before the retirement date. An employer will also have a duty to inform the employee in writing of their right to request continuance of their employment, and a duty to consider any such request from an employee. Employees should be aware that such a request must be made in writing at least 6 weeks before the date set for retirement. Further, the employer will be obliged to hold a meeting to discuss the request and must inform the employee of its decision within two weeks.

### (ii) Recruitment

In order to comply with the Regulations, employers should ensure that application procedures and decision making processes are age neutral. For example, institutions should consider removing questions concerning age from their application procedures and adding them to their equal opportunities form. Similarly, when advertising for jobs, institutions should refrain from giving age restrictions (although it is thought that specifying minimum PQE might still be acceptable as long as it is a genuine occupational qualification for the job in question). As a

result, institutions will need to ensure that they keep scrupulous records in relation to interview decisions, and that their interviewing staff are adequately trained.

### (iii) Objective justification

Unlike other equality legislation, direct and indirect discrimination will not be prohibited if the employer can show that they acted justifiably. In order to do this, the employer will need to establish that their policy or practice directly or indirectly meets the legitimate aim they have in mind, and that that aim cannot be achieved through alternative and less discriminatory means. The government has given examples of such legitimate aims. These include setting age requirements to ensure the protection or promotion of people in a particular age group, and fixing a minimum age to qualify for certain advantages in order to recruit or retain older people. The rationale behind this seems to be that, unlike with sexual orientation or religious beliefs, age may genuinely be a relevant factor for certain aspects of employment and vocational training.

Clearly, the burden of proof for establishing the legitimacy of any policy or practice will rest with the employer. However, it is important to note that the complainant will only have to establish a *prima facie* case of discrimination before passing the burden. This has significant implications for record-keeping processes and for data collection and analysis on the part of employers.

If you wish to find out more about the impact that these Regulations will have on your business please visit the Department of Trade and Industry website at [www.dti.gov.uk](http://www.dti.gov.uk).

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