

## **Guide to Age Legislation**

Employers are increasingly recognising the value and contribution of older employees. Age diversity delivers different attitudes, life-stages and experiences and helps ensure organisations are better able to both understand their diverse customers and to respond to fluctuations in demand. Many UK employers are already taking advantage of the flexibility that older workers can offer over hours and seasonal working. Employers are also gradually recognising and benefiting from the fact that many older skilled people aren't just 'in it for the money' as work provides much valued stimulation and social contact for those who do not want to move full-time into the garden or onto the golf course.

Fairness at work and good job performance go hand in hand. Tackling discrimination helps to attract, motivate and retain staff and enhances your reputation as an employer. Eliminating discrimination helps everyone to have an equal opportunity to work and develop their skills.

Employers who are subjected to discrimination, harassment or victimisation may:

- be unhappy, less production and less motivated
- resign
- make a complaint to an employment tribunal.

In addition employers may find:

- their reputation as a business and as an employer may be damaged.
- the cost of recruitment and training will increase because of higher employee turnover.
- they may be liable to pay compensation following a claim to an employment tribunal: there is not upper limit to the amount of this compensation.

There is already legislation to protect people against discrimination on the grounds of sex, race, disability, gender reassignment, sexual orientation and religion or belief. The new age regulations should pose few difficulties in organisations where people are treated fairly and with consideration.

## 10 key facts your business needs to know about age legislation

1. Age legislation came into force on 1st October 2006.
2. Regulations cover employment and vocational training. This includes access to help and guidance, recruitment, promotion, development, termination, perks and pay.
3. The regulations cover people of all ages, both young and old.
4. All employers, providers of vocational training, trade unions, professional associations, employer organisations and trustees, and managers of occupational pension schemes will have new obligations to consider.
5. Goods, facilities and services are not included in these regulations.
6. Upper age limits for unfair dismissal and redundancy will be removed.
7. A national default retirement age of 65 will be introduced making compulsory retirement below age 65 unlawful (unless objectively justified). This will be reviewed in 2011.
8. All employees will have the 'right to request' to work beyond the default retirement age of 65 or any other retirement age set by the company and all employers will have a 'duty to consider' requests from employees to work beyond 65.
9. Occupational pensions are covered by the regulations, as are employer contributions to personal pensions. However, the regulations generally allow pension schemes to work as they do now.
10. The regulations do not affect state pensions.

The new regulations protect employees from discrimination and harassment on the grounds of age. They also introduce a national default retirement age of 65.

### How old do people have to be to suffer age discrimination at work?

Anyone can suffer age discrimination whether they are young or old. The Employment Equality (Age) Regulations cover all workers and must be applied by all employers – including trade unions and training providers. The Chartered Institute of Personnel and Development have suggested that the only time people are free from age discrimination is between the ages of 35 and 40.

Claims of harassment based on age could cost you. In Ireland, Mr O'Byrne claimed that by trying to establish a 'young and dynamic' image his department had discriminated against its older staff members. A young female manager won a claim for harassment which she made when an older male member of staff called her 'a young foolish girl'. Also, it was decided that Ryanair's advertisement for a 'young and dynamic professional' was discriminatory, even though it was argued that 'young' had been used to indicate a state of mind rather than actual age – Ryanair was fined IR£8,000.

## 'Age check' for employers

### Recruitment advertisements

- Avoid specifying a minimum/maximum length of experience as this disadvantages certain age groups.
- Advertise in a cross-section of media so you get in touch with all age groups.

### Application forms

- Do not ask for date of birth on the application form (this information can go on your monitoring form) or unnecessary dates of employment history.
- Use skills/competence-based application forms.

### Selection Procedures

- Train managers to avoid stereotypes e.g. the assumption that younger workers do not have the skills for management or older workers are just coasting towards retirement
- Monitor the results of your recruitment and selection. Do you need to take positive action to help recruit certain age groups?

### Training

- Make sure training is open to all – do not overlook an older person for training thinking they may not be interested in career development

### Performance Appraisal

- Set the same standards of performance regardless of the age of the employee when writing appraisal reports avoid comments like 'does well despite their age' or 'shows remarkable maturity for their age'

### Redundancy Policy

- Review your policies: LIFO (last in, first out) or length of service to select employees for redundancy is likely to be discriminatory

### Equality Policy

- Add age to your equality policy and talk to your employees about how you tackle age discrimination
- Make sure your bullying and harassment policies cover age

Know your Workforce

- Think about who is likely to retire when (the government plans to introduce a national default retirement age of 65)
- Consider flexible working for older workers

### **A new approach to retirement**

Also, from October 1<sup>st</sup> retirement ages under 65 are unlawful unless you can justify them. This will be very difficult to do. So, if any of your employees retirement ages are below 65 you need to consider whether to raise them or remove retirement ages altogether.

Compulsorily retiring employees at 65 or higher age will not be age discrimination, but you will have to follow new statutory procedures. These include giving at least six months notice to employees of their intended date of retirement. Employees will also have the right to request not to retire. You should consider what strategy to adopt for dealing with such requests. This could include encouraging older employees to work up to or beyond normal retirement age by offering flexible working options.

For further information there is a handy checklist called 'Removing Ageism, make it your business' on [www.agepositive.gov.uk](http://www.agepositive.gov.uk).