

Age Discrimination Legislation

All change in the workplace from October 2006

After much debate, legislation to tackle Ageism in the workplace finally comes into force from 1 October 2006 with the launch of the Employment Equality (Age) Regulations. In essence, it'll be unlawful to discriminate against an employee or job applicant on the grounds of age. This is a very far reaching piece of legislation which will impact on businesses of all kinds. It will also be extremely important for many individuals.

Although it has a tremendous significance for those who are "in their prime", the legislation applies to people of all ages and covers discrimination on the grounds of youth as well as old age.

If you're in business you'll probably have received information from government sources. As an individual you'll probably have read articles in the newspaper. Either way, the deadline is closing in fast and there is much uncertainty over the impact.

In this primer we're highlighting the main aspects of the legislation and also the places to turn to for further information. We are indebted to and acknowledge these sources. However, these themselves are only guides. For definitive information reference must be made to the legislation itself. It's probable that once the regulations come into effect then there'll be many tests of the implications through tribunals and legal cases.

Sources of Information

If you're in business it's likely you'll have received a booklet called "Be Ready" from the Department for Work and Pensions. This booklet and associated information is produced in conjunction with various government, employer and union organisations under the name of the "Age Partnership Group". For free information in the form of a "Be Ready Organiser" call 0845 715 2000 or email apg@trgeuropeplc.com.

Within this overall framework, Acas, Britain's leading employment relations organisation, has prepared various guides which can be downloaded for free from www.acas.org.uk or are available from the publications order line on 08702 429090. In particular, there is a guide for employers "Age and the Workplace: Putting the Employment Equality (Age) Regulations into practice" and for individuals "Advice leaflet – Age and the workplace". There is also a Helpline on 08457 474747.

The Key Points

The following 10 key facts have been published by the Department of Works and Pensions.

1. Age legislation comes into force on 1 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 old and young.
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. See regulations for more details.
10. The regulations do not affect state pensions.

Implications

The detailed implications will only emerge once the legislation comes into force but it’s going to permeate almost every aspect of employment.

Acas has produced a checklist for employers to get them thinking which includes the following:

Recruitment advertising

Avoid specifying a minimum/maximum length of experience as this disadvantages certain age groups (also, asking for “graduates” may discriminate against older workers).

Advertise in a cross-section of media so you get in touch with all age groups.

Application forms

Although it isn’t unlawful to ask for date of birth on application forms, we suggest you:

only ask for a date of birth on your monitoring form and ensure it is not seen by those involved in the selection process

use skills/competence-based application forms instead.

Selection procedures

Train managers to avoid stereotypes – for example 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 increase your selection options to help recruit certain age groups? For details visit the Department of Trade and Industry website at www.dti.gov.uk/er/equality/age.

Training

Make sure training is available 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 employee’s age.

When writing appraisal reports avoid comments like “does well despite their age” or “shows remarkable maturity for their age”.

Redundancy policy

Review your policies: use of 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 to tackle age discrimination.

Make sure your bullying and harassment policies cover age.

Know your workforce

Think about who is likely to retire and when (the government plans to introduce a national default retirement age of 65).

Consider flexible working for older workers.

Its effect for individuals

There is obviously a great deal of speculation and comment taking place as to what the implications of the new legislation will be and also regarding the readiness of businesses to deal with the new requirements. The area is ripe for newspaper articles and pub jokers identifying how the new regulations will change things that we have hitherto taken for granted. However, until previous practices are challenged and carefully reconsidered it will not be possible to see just how far-reaching the new legislation is.

Already one local council is reviewing its practice of giving long service awards. Birthday cards with ageist jokes may seem harmless to some but may be offensive or humiliating to others. Discount schemes for pensioners may have to be looked at in a new light.

For the moment at least, while matters become clearer, a good place to start if you believe you’ve got an issue and want an objective understanding is to refer to the Acas website and move on from there.

Main points

Here we give some of the main points.

The legislation is based on similar principles to other discrimination law in that it deals with direct discrimination, indirect discrimination, harassment and victimisation.

The regulations make it unlawful on the grounds of age to:

- discriminate directly against you – that is, to treat you less favourably than others because of your age – unless objectively justified
- discriminate indirectly against you – that is, apply a criterion, provision or practice which disadvantages your particular age unless it can be objectively justified
- subject you to harassment. Harassment is unwanted conduct that violates your dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for you having regard to all the circumstances including your perception of the issue
- victimise you because you have made or intend to make a complaint or allegation or have given or intend to give evidence in relation to a complaint of discrimination on the grounds of age
- discriminate against you, in certain circumstances, after the working relationship has ended.

What this might mean

Amongst other things, it will be unlawful on the grounds of age to:

1. decide not to employ you
2. dismiss you
3. refuse to provide you with training
4. deny you promotion
5. give you adverse terms and conditions
6. retire you before your usual retirement age (if you have one) or retire you before the default retirement age of 65 without an objective justification.

There are limited circumstances when it is lawful to treat people differently because of their age. To understand these, you should refer to more detailed coverage of the subject or obtain appropriate professional advice.

There are also some transitional arrangements which apply in the early stages of the new era. These also can't be covered in detail here.

It's apparent that, in all kinds of ways, attitudes, actions and vocabulary are going to have to change, whether it's in formal organisational procedures and practices or whether it's in office banter. Job adverts, selection procedures, performance appraisals will all have to be carefully scrutinised for offending words, phrases and implications, for example:

“young”
“mature”
“junior”
“wet behind the ears”
“straight out of the pram”
“old dog new tricks”
“old fogies”
“10 years' experience”

In conclusion

Where we are at the moment is that the new regulations are here and although some firms are ready many, in particular smaller firms, are not. They are either not sufficiently aware of the urgency or of the impact, or they see this as just another set of regulations that have to be complied with.

But compliance is a very negative way to view the changes. The rules apply to the young at least as much as to older workers. What is being advocated is that competence and ability are the determinants of appropriate employment, not age or experience per se. This can only be good for employers in the long run.

At present there is a severe skills shortage in many areas and yet older workers are finding it difficult to obtain employment and “are put out to grass” before they are ready and while they are still capable of working effectively. The challenge is there, for employers and employees alike, to find a way through.

More flexible and imaginative approaches are required on all sides and areas like continued development and training and motivational tools should be seen in a positive light whatever a person's age. A proper dialogue must take place so that the transition from employment to retirement is as mutually beneficial and as seamless as possible.

Other useful publications

“The Impact of Age Regulations on pension schemes”
www.dti.gov.uk/er/equality/age.htm

“Removing Ageism – make it your business”
www.agepositive.gov.uk