



**RULLION GROUP**

**Guidance Notes:**

**Age Discrimination**

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## Age Discrimination

The Employment Equality (Age) Regulations 2006 are due to come into force on 1 October 2006. This is the last strand of the European Employment Directive 2000 to be implemented. Age discrimination laws must be in place in all member states by 2 December 2006 at the latest.

Age discrimination can be explained as occurring when someone treats a person less favourably because of that person's age, and uses this as a basis for prejudice against and unfair treatment of that person.

Some key points to consider:

- More people are living longer, more active and healthier lives.
- Evidence shows that differences in absenteeism between age groups are slight.
- Older workers stay in their jobs longer than younger people.
- Age discrimination leads to under-achievement, reduced self-confidence and motivation, lower self-esteem and loss of personal income and status.
- Findings from many studies show that younger and older workers are on average equally effective in their work.
- Research shows that, given the right training, both older and younger people are equally capable of learning new skills

As life expectancy increases and the birth rate remains low, the proportion of the population aged over 65 will increase dramatically. Older people will become an ever more significant proportion of the population and society will increasingly depend upon the contribution they can make. This increased dependance upon the older workforce may increase discrimination towards young workers, which is suprisingly as prevalent in workplaces as discrimination against the older members of the workforce.

Age discrimination in employment can:

- affect anybody regardless of how old they are
- reduce employment prospects for older people, younger people and parents returning to work after a period of full-time childcare
- favour people in the age group 25 to 35
- prevent the full consideration of abilities, potential and experience of employees.

The regulations will:

- outlaw mandatory retirement ages below age 65 (except where they can be objectively justified)
- allow those under 65 to retire early if they wish
- give those over 65 the right to request to continue working
- be reviewed in 2011 to consider whether it is still necessary to maintain mandatory retirement ages at all
- ban unjustified age discrimination in recruitment, promotion and other employment terms, as well as in vocational training.

Direct and indirect discrimination on the grounds of age are banned, as are victimisation and harassment.

Positive action is allowed under the usual criteria: to encourage persons of a particular age group to take advantage of employment opportunities. These opportunities should prevent or compensate for any disadvantages, linked to age, which have been suffered by people of that age group, in that job, previously.

Some general exceptions to the legislation are provided, where age discrimination equates to positive action taken by the employer:

- Setting of an age requirement in order to ensure the protection of, or promotion of the vocational integration of those in a particular age group.
- Fixing a minimum age to qualify for certain advantages linked to employment or occupation in order to recruit or retain older people.
- Fixing of a maximum age for recruitment, or promotion purposes based on the training requirements of the role, or the need for a reasonable period in the post before retirement.

The National Minimum Wage Regulations will remain unaffected and differential hourly rates of NMW based on age will still be permitted.

## **Recruitment**

Age, age-related criteria or age ranges should not be used in advertisements other than to encourage applications from age groups which do not usually apply. Where this is the case, it should be clearly stated.

Adverts should avoid phrases such as '5 years experience', 'minimum 3 years in similar role' as this may be discriminatory against younger workers. Alternatives such as 'competent in the area of,' 'proven experience in the area of' should be used.

Specific requirements for a 'degree' may be indirectly discriminatory against older employees as fewer individuals attended university in the 50's, 60's and 70's.

It is advised that employers confirm that age criteria will not be taken into account in employment decisions but used only for monitoring purposes. Age information will usually appear on CV's and should be removed once it has been recorded for monitoring, prior to forwarding the CV to the relevant decision maker.

Interviewers and those concerned with selection must not base recruitment decisions or opinions on the basis of physical characteristics and unfounded assumptions.

Person specifications need to be updated to focus on competencies. Interviewers should ask about skills, knowledge and behaviour as opposed to qualifications. With the possible exception of professional qualifications if they are specifically required for a role.

## **Medical Advice**

An individual's age should not be used to make judgements about their abilities or fitness. Where such a judgement on a person's health is required, an occupational health or medical practitioner should be consulted.

## **Reward**

Pay and terms of employment should not be based on age-related criteria (e.g. salary ranges based on age or length of service), but should reflect the value of individual contributions and standards of job performance via one-to-one meetings, appraisal or performance review.

## **Training & Development**

All employees should be eligible for training and development programmes as there is the potential to waste talent if particular age groups, eg those near retirement, are automatically excluded. All training courses should be available to everyone as long as there is a business need for the individual to attend.

All employees should have the same development and promotion opportunities. Training programmes should be designed for attendees based on their needs and competencies in line with their job role.

Promotions must be awarded based on capability, success and achievement.

If a request is made for a candidate to be assigned to a particular role whom is aged 45-50, for example, then advice should be provided stating that recommendations for candidates cannot be based on this requirement, as it is discriminatory and that a candidate from any age group with the requisite skills could in most cases perform the job competently.

## **Clients**

Rullion consultants are aware of the legislation surrounding age discrimination and will instruct clients that they cannot discriminate against individuals due to their age when placing them on assignment. Clients should not request applicants of specific age to undertake assignments, as this will be discriminatory on the grounds of age. Placing of individuals will have to be based on their skills and ability to perform the role.

Should there be an instance where a claim was issued to the Employment Tribunal by a temporary worker in relation to an age discrimination complaint this would initially raise the question of employment status (who is the employer? Client or Rullion?), which is standard in claims involving recruitment companies. If a client discriminated against a temporary worker either consciously or unconsciously, Rullion and the client company will be cited in the claim. Rullion and the client will be required to defend their respective positions. There is no limit on compensation payable to the claimant should either company be found to have been complicit in any way with the act of discrimination.

## **Retention**

When releasing employees from businesses, the organisation's future needs for knowledge, skills and competencies should be taken into account. Employers should, where possible, utilise the experience of its senior employees by looking at alternative roles rather than removing them from the business.

## **Retirement**

Research indicates that many older workers would welcome an opportunity:

- for phased retirement
- for flexible working
- to work beyond the normal retirement age
- to work on a self-employed / contractor / temporary worker basis

Organisations should also consider the advantages of using retirees as mentors to pass on experience and develop other employees through use of their knowledge and expertise.

The Government has confirmed its decision to retain the default retirement age of 65 but give those over 65 the opportunity to request to continue working. It is proposed to hold a review in 2011 to consider if it is necessary to maintain mandatory retirement ages.

The default retirement age of 65 therefore remains and will not constitute age discrimination, if employers retire employees at or above the age of 65 where it is a genuine retirement.

Where an employer wishes to retire an employee at or over the age of 65 the employee should be given at least 6 months notice of this intention. The employee may then have the opportunity to make a request not to be retired at that specific time. A similar procedure to requests for Flexible Working should be adopted.

Employees will be given the option when they are contacted as to whether or not they wish to retire. If the employee chooses not to retire, employers may be required to agree an alternative date with them and go through this process again 6 months prior to the new agreed retirement date. In some circumstances however employers may be entitled to refuse a request to extend the retirement age i.e. for health reasons but this would have to be fully documented.

## **Requests for extension to retirement age**

Best practise in this situation suggests a request in writing should be submitted by the employee to management confirming their requirement to continue working beyond the age of 65. A discussion should then take place between the employer and individual within 48 hours of the request being made. The discussion should involve whether the individual is capable to continue in the role both in terms of skills and experience and also with regard to their health.

*(A refusal to consider a request may result in a claim at an Employment Tribunal where up to 8 weeks pay may be enforced by way of compensation.)*

After this meeting, employers should make a decision within 7 days on whether to extend the retirement age of the individual, if so what age should this be extended to, or alternatively refuse the request to extend and provide reasons for this decision. Written confirmation detailing the decision should then be provided to the individual.

Employees refused an extension to their retirement age will have the opportunity to appeal against the company decision to their employer. This appeal should be written in direct response to the correspondence provided following the previous meeting. Rejection of this appeal will be final and the retirement process will then take place at the confirmed date.

Employers may look to increase the standard retirement age of employees if the average age of the workforce increases over time, in order to retain knowledge and experience in the business.

## **Benefits**

Benefits such as private health insurance are generally more expensive for older workers. Increased expense however will be no excuse for employers to exclude older workers from a scheme if the employee is entitled to it. Employers will need to look into alternative schemes for older workers or arrange discounts etc with insurers.

Employers often use length of service as a criterion for pay and non-pay benefits such as extra holiday entitlements. This could amount to indirect discrimination under the age regulations, as older employees are more likely to have the necessary length of service. Specific scenarios will be considered as they arise.

The legislation includes 3 exemptions to this rule regarding length of service, which means rewarding loyalty and dedication to the Company will in some instances be permitted:

- Nothing will prevent an employer from using length of service up to a maximum of 5 years as a criterion for awarding a benefit to a worker.
- When it reasonably appears to an employer that there will be an advantage to them in rewarding loyalty in terms of motivating employees or recognising the experience of workers by awarding benefits on the basis of length of service the employer may do so, so long as the benefit is offered to all employees who meet the length of service criteria.
- Where an employer is providing a statutory benefit, which requires a qualifying period (e.g. employees requesting maternity pay require a specific unbroken length of service to qualify).

### **Other Rights**

There will be no upper age limit for employees claiming redundancy payments. The new redundancy calculator in line with this legislation will be agreed in due course.

Age discrimination in recruitment will still be permitted where applicants have attained the age of 65 if there is a potential that they will wish to retire soon after gaining a position with the employer. Applicants aged over 65 can be rejected for positions on the basis of their age but this should be discussed with management prior to any action being taken

It will not be unlawful for employers:

- To fix an age for admission to a pension scheme
- To fix an age for entitlements to pension benefits,
- To have different contributions attributable to age or length of service
- To close a scheme to new members
- To provide different schemes for members of different ages or different lengths of service.