



## **Age Regulations 2006**

The Employment Equality (Age) Regulations will come into force on 1 October 2006. All discrimination on the grounds of age are covered within the regulations, not just discrimination against older workers.

### **Who do the Age Regulations apply to?**

The regulations apply to all employers, private and public sector vocational training providers, trade unions, professional organisations, employer organisations and trustees and managers of occupational pension schemes. They cover all workers, including office holders, barristers, partners in business and agency workers.

### **What do the Regulations cover?**

The regulations cover:

- recruitment
- terms and conditions of employment
- promotions
- transfers
- dismissals
- training

They do NOT cover the provision of goods and services, unlike, for example, the race and sex discrimination provisions.

### **What do the Regulations say?**

The Age Regulations outlaw direct as well as indirect discrimination. However, in both cases discrimination will not be unlawful if it can be objectively justified.

Employers could be responsible for the acts of employees who discriminate on the grounds of age. If, for example, harassment takes place in the workplace or a time and place associated with the workplace, an employer may be liable along with the individual(s) directly responsible.

Upper age limits on unfair dismissal and redundancy will be removed.

There will be a national default retirement age of 65, making compulsory retirement below 65 unlawful unless it can be objectively justified.

Employees will have the right to request to work beyond 65 or any other retirement age set by the organisation or company they work for. The employer has a duty to consider such requests, although the employer does not actually have to give a reason for refusing any request.

There are circumstances when discrimination may be lawful – see genuine occupational requirements, objectives justifications, exceptions and exemptions.

### **What is meant by direct age discrimination?**

Direct discrimination is defined in the Regulations as less favourable treatment on grounds of age in employment and vocational training, including education courses provided by further and higher education institutions and the activities of trade unions. Unlawful age discriminatory terms in collective agreements will be deemed void.

Examples of direct discrimination are: not recruiting someone because of their age, dismissing them, turning them down for promotion, refusing to give them training, giving them lesser terms and conditions on age-related grounds.

But an employer is NOT prohibited from discriminating against a job applicant by refusing to employ them because they are (or are within 6 months of reaching) 65 or above the employer's normal retirement age.

### **What is meant by indirect age discrimination?**

This means where a provision, criterion or practice is applied which puts people of one age group at a particular disadvantage when compared with people of a different age group.

### **Harassment and victimisation**

Harassment is unlawful according to the Regulations. Harassment is defined as unwanted conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them, having regard to all the circumstances including the perception of the victim.

It is also unlawful to victimise someone because they 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.

### **Objective justification**

An employer may treat people differently on the grounds of age if they have an objective justification, but they will have to show evidence to support any claim of objective justification. Direct and indirect discrimination will be justified if it is "a proportionate means of achieving a legitimate aim".

By *proportionate* is meant:

- what an employer is doing must actually contribute to a legitimate aim and there must be evidence of this
- the discriminatory effect should be significantly outweighed by the importance of benefits of the legitimate aim
- an employer should have no alternative to the action they are taking. If the legitimate aim can be achieved by less or non-discriminatory means, then these must take precedence.

A *legitimate aim* might include:

- economic factors such as business needs and efficiency
- the health, welfare and safety of an individual (including protection of young people or older workers)
- the particular training requirements of the job

The legitimate aim *must* correspond with an employer's real need. Economic efficiency, for example, may be a real need, but saving money because discrimination is cheaper than non-discrimination is not legitimate. The legitimate aim cannot be related to age discrimination itself.

## **Exceptions and exemptions**

There are exceptions to or exemptions from the Age Regulations in the following areas:

- pay and other employment benefits based on length of service (see separate paragraph below)
- pay related to the National Minimum Wage (e.g. an employer may pay those aged 18-21 more than those under 18, as long as those under 18 are paid less than the minimum adult rate. The exemption does not allow employers to pay different rates to those in the same age category).
- acts under statutory authority (e.g. age used in legislation to qualify for various licences)
- enhanced redundancy (statutory redundancy payments calculated using age-related criteria will still be lawful)
- life assurance
- retirement
- occupational pension systems

### ***Exemptions based on length of service***

Sometimes employers require a certain length of service before increasing or awarding a benefit, e.g. holiday entitlement. Any benefit earned by *five years or less* will be exempt. Employers may use pay scales that reflect growing experience or limit the provision of non-pay benefits to those who have served a qualifying period, subject to the five-year limit.

The use of service of *more than* five years for all types of work will be lawful if:

- awarding or increasing the benefit is meant to reflect a higher level of experience of the employee, or to reward loyalty, or to increase or maintain the motivation of the employee
- the employer has reasonable grounds for concluding that using length of service in this way fulfils a business need of their undertaking

In order to meet these requirements employers would need evidence from which they can conclude there is a benefit to the organisation. This might include information gathered through monitoring, surveys or focus groups.

### **Genuine occupational requirement (GOR)**

In limited circumstances it will be lawful for an employer to treat people differently if it is a genuine occupational requirement that the job holder must be of a particular age. In such a scenario it must be considered what the nature of the work is and the context in which it is carried out.

### **Retirement**

Employers will be able to retire employees at 65 or above or, where objectively justified, a lower normal retirement age. The Age Regulations or unfair dismissal/redundancy law cannot be used to challenge such dismissals if the employer has given between one year and six months notice of 'retirement' and complied with procedures to notify of, and consider, any request to stay on past the intended retirement.

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/organisation and all employers will have a 'duty to consider' requests from employees to work beyond 65. If an employee makes such a request, the employer must hold a meeting to discuss this. If the request is then refused, the employee has the right to an appeal meeting. However, the employer is not obliged to give a reason for refusing any such request. The employee has the right to be accompanied by a companion who is a worker employed by the same employer at any meeting to discuss the request.

ACAS has produced a guide for employers entitled "Age and the Workplace – Putting the Employment Equality (Age) Regulations 2006 into practice". This guide contains a "fair retirement flow chart" and a "request to work beyond retirement" flow chart which may be a useful reference point for employees as well as employers.

### **Pensions**

Trustees and managers of pension schemes must not discriminate against or harass members of those schemes on grounds of age. However, pension schemes often use age bands or cut-offs to assess contributions and calculate benefits. The Age Regulations allow these practices to continue, including practices relating to early receipt of pensions without actuarial reduction. The Age Regulations also contain more extensive exemptions for other indirectly discriminatory pensions practices, which may be subject to testing under the EU Framework Directive. These might include: closing schemes to new

members, and calculations or criteria relating to levels of pensionable pay and length of service.

Separate DTI guidance on the pensions aspects of the Regulations is available from their website. (See under Where to find more information).

### **How can the union help?**

Any member who believes they have been subject to discrimination should speak in the first instance to their local association/branch for advice. Many local associations/branches will also have an appointed equal opportunities officer who can offer guidance and advice.

### **Checklist for local associations/branches**

- Does your institution's equal opportunities policy cover age discrimination?
- Does the policy need updating in line with the Regulations?
- Has your institution briefed staff on the provisions of the legislation?
- Tell members about age equality and the new Regulations and about any work you are doing in this area.
- Tell AUT/UCU about any examples of good practice which can be disseminated.

### **Where to find out more information**

The TUC has produced a guide to the Age Regulations which can be found at:  
[www.tuc.org.uk/equality](http://www.tuc.org.uk/equality)

ACAS  
[www.acas.org.uk](http://www.acas.org.uk)

DTI  
<http://www.dti.gov.uk/employment/discrimination/age-discrimination/index.html>

Equality Challenge Unit  
[www.ecu.ac.uk](http://www.ecu.ac.uk)

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