

Time to challenge fixed retirement ages

Heyday's challenge to the element of the Age Regulations which permits employers to have a 'default' retirement age of 65 has been referred to the European Court of Justice. A decision is not expected until late 2008, or possibly even 2009. The government had promised to review this element of the regulations in 2011 anyway. These facts have significantly shifted the climate of opinion about how employers should behave on this issue. Many lawyers, and significant public bodies such as Age Concern, The Employers Forum on Age, and the Equality Challenge Unit for HE are advising that there are significant dangers, especially for public sector employers, in having a fixed retirement age, and that it would be wise for employers to consider seriously whether they need a fixed retirement age at all. Several universities are considering taking the step of getting rid of a retirement age. The agreement in FE between the AoC and the recognised unions sets out two options – to have no fixed retirement age, or to follow the right procedure if a retirement age is used. The Equality Unit would be interested to hear from any colleges or universities who have adopted the first option.

Now is the time for branches/LA's to put this issue on the negotiating agenda, and to persuade management that the wisest and best course for everyone is to get rid of a fixed retirement age.

In the meantime, if individuals are being forcibly retired at 65, the advice from a growing number of lawyers is to lodge a claim of age discrimination with the employment tribunal, asking for the claim to be stayed pending the decision of the European Court of Justice. The dismissal will still take place, but if the ECJ finds in Heyday's favour, compensation may be payable. Putting this possibility to the employer may cause them to re-consider forcible retirement. The claim must be lodged within three months of the date of termination set by the employer. Because of the special procedures set out in the Age

Regulations, there is no obligation to present a grievance in accordance with the statutory dispute resolution regulations, but the three month deadline is an absolute.

Anyone contemplating taking such a claim might first want to read the detailed guidance to be found on the Age Concern website

www.ageconcern.org.uk/

[age_discrimination_12.asp](http://www.ageconcern.org.uk/age_discrimination_12.asp) and discuss the matter with local UCU officers and/or your regional office. But don't forget the deadline.

This is a possible remedy for individuals, but as always, the best approach for a trade union is a collective one. It's time to banish fixed retirement ages from contracts of employment in colleges and universities.

Equality and sexual orientation

An active response to the report on equality and sexual orientation

The Centre for Excellence in Leadership have published a report undertaken by Phil Barnett (www.centreforexcellence.org.uk) which reveals widespread experience of homophobic harassment and bullying. It is also reported that little is being done to tackle this harassment and bullying. According to this research, however, at least a significant number of college leaders, staff and students have a will to act in developing sexual orientation equality.

A key part of much of our core union work is to identify what is not but could be done to ensure our institutions are environments which are welcoming and supportive for all. The report reflects this and identifies that organisations such as CEL, LSC, LLUK, in addition to unions and chartermarks, have key roles in ensuring such developments.

Issues exist around how to tackle discrimination and identify success in working with the LGB communities. Not least amongst the issues is the often-silent presence of LGB staff and students

underpinned by the reasons for this silence. LGBT staff often experience discrimination in a manner that either involves individual silence or the silence of others – ‘it’s OK so long as you don’t talk about it’. However in not talking about homophobia and in contrast positive gay and lesbian life the problems are compounded. In order to tackle these issues we suggest that there needs to be a linked approach to developing equality on the grounds of sexual orientation within the FE and HE sectors.

UCU is taking the lead in developing an active project responding to the CEL report and looking to form partnerships with, amongst others, CEL, LLUK, AOC, NUS and Unison. The UCU Equality Committee has agreed to:

- hold regional workshops / seminars to disseminate findings and offer recommendations for action at local level
- ask for and identify colleges to work as pilots
- provide opportunities for sharing practice amongst participating colleges and others
- support the development and implementation of policies and processes in pilot colleges
- encourage the development of events and building towards equality standards such as the Stonewall Diversity Index
- organise and facilitate good practice conferences and mainstreaming in the sector.

If you are looking to address issues around equality and sexual orientation in your college or university and/or would be interested in participating in this project please contact Seth Atkin at satkin@ucu.org.uk

Letters

Occupational stress survey

Dear Editor

We are conducting a study at Liverpool John Moores University into occupational stress, investigating the experience of physical symptoms and beliefs regarding health. The study has been funded by the HSE as part of their initiative to investigate the relationship between stress and health.

Participation involves completion of an online questionnaire, which takes approximately 20 minutes. The online format ensures maximum confidentiality and anonymity, and all data will be covered by the Data Protection Act (1988).

Members who decide to take part have the option to be entered into a prize draw, with the first prize a £250 holiday voucher.

The survey can be accessed using the following link: www.survey.ljmu.ac.uk/ljmuocc2/

Anyone who would like further details concerning the questionnaire can contact me using the details below:

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Note-takers in negotiations

Dear Editor

During the course of a long drawn out dispute involving members at Bradford University, UCU requested and obtained agreement with the university for the UCU rep to have a UCU note-taker present at formal meetings. The request was made following negotiations and an agreement with the institution that the UCU notes did not take any precedence over the notes made by the university’s sanctified scribe.

However, despite this caveat, this event may be of some interest to UCU negotiators at various levels as it could provide:

- 1 An additional set of eyes and ears to support the negotiator(s) in the course of events/hearings/disciplinaries.
- 2 An alternative record of proceedings thereby allowing stronger challenges, if necessary, to be mounted around the veracity of the official minutes taken by university staff.

Colleagues who are in the position of group negotiations/representing individual members in disputes or grievances may possibly find this a useful gambit to use. The precedent is there for such requests to be made. Contact B Gulam (w.gulam@salford.ac.uk if you want further details)

Bill Gulam, Salford University. Joint Chair UCU Equality Committee

Disability Equality Project Conference – 17 May

The forms to apply for this are now available online at

www.ucu.org.uk/index.cfm?articleid=2055

Right for unions to expel BNP members upheld

A British National Party (BNP) member was expelled from membership of ASLEF on the grounds that his views were incompatible with those of ASLEF and of the trade union movement.

The BNP member took the case to the British courts, claiming that his human rights had been breached, and the British courts upheld his claim. ASLEF then took the case to the European Court of Human Rights.

In February, the court ruled in ASLEF's favour, saying that expulsion from membership of those who hold views completely incompatible with the beliefs of the organisation is not incompatible with the European Convention on Human Rights.

This judgement comes as a great relief to the whole British trade union movement, which has been struggling for some time to deal with the issues caused by recent attempts by the BNP to infiltrate trade unions.

Meanwhile, the BNP has set up 'Solidarity', which they describe as a trade union for British workers as an alternative method of infiltrating the trade union movement.

Extension of right to request flexible working

As previously notified, the Work and Families Act extends the right to request flexible working from 6 April 2007. This right already exists for the parents of children under 6 (or under 18 for a disabled child). Set procedures exist for making the request, and the government claims that it has been a great success, with 47% of working mothers of small children working flexibly, compared to 17% in 2002. 'Flexible working' is taken to mean a wide range of changes to working practice, including compressed hours, flexitime, working from home, job-sharing, staggered hours, reduced hours and term-time working. Employers do not have to agree to the request, but they have to consider it seriously, and may refuse it only when there is 'a recognised business reason' for doing so.

The right to request will now be extended to employers who care for, or expect to care for, adults. A carer will be defined as an employee

'who is, or expects to be, caring for an adult who is married to, or the partner or civil partner of the employee; or is a near relative of the employee; or falls into neither of those categories, but lives at the same address as the employee.' In the context of this legislation a 'near relative' is defined as including parents, parents-in-law, adult child, siblings, uncles, aunts, grandparents and step-relatives.

Teaching in both FE and HE, which has always involved flexible time-tabling, including evening hours, lends itself easily to many variations of flexible working. It should not be difficult for management to agree requests from lecturers. To access the forms and letter templates to use in making the request to your employer, go to www.direct.gov.uk/Employment/Employees/Fs/en

For more detailed advice, Carers UK have produced a booklet, which can be found at www.carersuk.org/Employersforcarers/Forcarers

There was much pressure on the government to extend the right to request flexible working to parents of children up to 18, but this did not occur. There now seems to be growing consensus however, that flexible working has many benefits for all sides, and that the right to request should be extended to **all** employees.

This change is likely to come in time, but not in the next few years.

Please note that the changes to maternity and adoption leave (set out in Equality News 2) apply to babies born or adopted after 1 April 2007. From that date, the standard rate of statutory adoption, maternity and paternity pay goes up to £112.75

Update on Gender Equality Duty

Just a reminder that this comes into force on 6 April in England and Wales, with a requirement to publish gender equality schemes on 30 April. In Scotland, schemes do not have to be published until 29 June. Enrolment forms for UCU's briefing day on the duty on 29 March, can be found at www.ucu.org.uk/circ/rtf/ucu10.rtf

Barbara Limon, Gender Equality Duty Manager at the Equal Opportunities Commission (EOC) will be speaking at this event. The agreement between the AoC and the recognised FE unions

on sex equality, now renamed 'Joint Agreement on Guidance for Gender Equality in Employment' has been very significantly updated, and improved to reflect the gender equality duty. It has been sent to FE branches.

The Equalities Review, a major government review headed by Trevor Philips, issued its final report on 28 February. It is a very lengthy document, running to 176 pages. It contains some very interesting statistics, and looks laterally at discrimination in areas such as education, health, work etc. Its coverage of LGBT issues is weak. It sees the key problem as lack of opportunity rather than active discrimination, and places little emphasis on legislative reform. Given its chair, it is likely to be seen as a key document by the Commission for Equality and Human Rights when it starts work in October. The report can be accessed at www.theequalitiesreview.org.uk

Goods and Services Regulations

The row over the regulations to prohibit discrimination in the provision of goods and services on the grounds of sexual orientation has been resolved. As it was widely reported in the national press, readers will no doubt be aware that there will be no permanent exemption for Catholic adoption agencies, although they will be allowed a transitional period. Concerns remain about the potential for teachers in faith schools being allowed to give negative accounts of 'homosexuality'. Nevertheless, the regulations are a big step forward in reducing the areas where it is possible to legally discriminate on the grounds of sexual orientation.

These regulations will come into force on 30 April 2007. On the same day, parallel regulations covering religion or belief will come into force. These regulations were contained in the Equality Act 2006, but are only now coming into force. As with the regulations covering employment and training, it is important to note that they cover non-belief as well as belief. In the current climate, it is obviously important to have legislation that outlaws discriminating against anyone on the grounds of their religion, or their atheism. But as with the employment regulations, the conflicting rights raised by the two

new sets of regulations will no doubt continue to cause tension.

This means that the only areas where discrimination in the provision of goods and services is not prohibited are transgender and age. The transgender regulations are promised for October 2007, but there is no such commitment on age. Clearly this is a massive issue, as it is arguable that age discrimination is much more of an issue in relation to goods and services (most notably health services) than it is in relation to employment, where discrimination **is** outlawed. It does not take a genius to work out that effective implementation of removing age discrimination from the provision of goods and services would be massively expensive, and hence, presumably, the government silence on this issue.

Help the Aged are organising a mass lobby of parliament on 18 April, to take forward the campaign on this issue. Further information can be found at www.helptheaged.org.uk/en-gb/Campaign/FightingAgeism/LobbyYourMP/default.htm

Equality Unit News

On 5 February, Seth Atkin took up the post of Equality Support Official. Seth will be mainly concerned with LGBT, disability and cross-cutting issues.

Before coming to work for UCU, Seth was a NATFHE/UCU activist for a number of years and has moved from a post at Sutton Coldfield College, where he was the UCU branch chair.

Get in touch

Please send any views, letters etc for the publication and any administrative queries to Pauline Bartlett or Trade Coals at eqadmin@ucu.org.uk tel 020 7520 3225. For policy matters, contact one of the following: Kate Heasman at kheasman@ucu.org.uk Chris Nicholas at cnicholas@ucu.org.uk Charlotte Nielsen at cnielsen@ucu.org.uk or Seth Atkin at satkin@ucu.org.uk.