

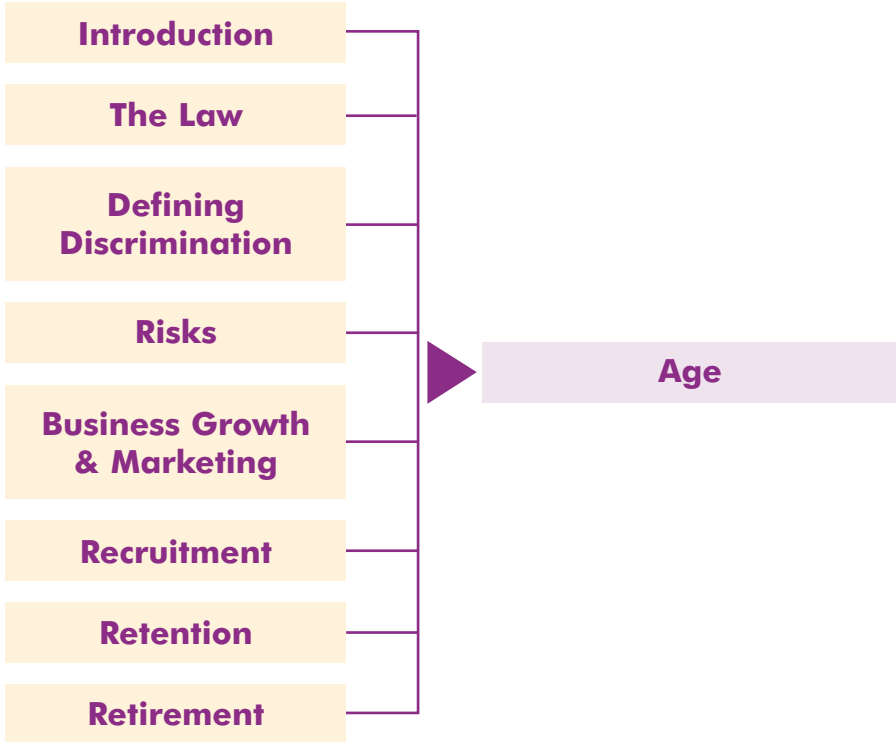
Age



The Diversity Means Business project is co-financed by the South East England Development Agency and the European Social Fund.

Age

This leaflet summarises age relating to diversity.



Further help and advice is available **FREE** to eligible businesses from the Diversity Means Business project team.

Tel **023 9284 1610**

email **info@diversitymeansbusiness.org.uk**

or visit **www.diversitymeansbusiness.org.uk**

for more information.

Introduction

New regulations relating to age discrimination were published in spring 2006 and come into force on 1 October 2006. Guidance and interpretation of this new legislation is currently limited but this booklet endeavours to provide you with some initial direction. The new law covers people aged between 18 and 65 in the workplace.

The Law

What the Law Requires of Employers

Prohibited behaviour and to whom it applies

The legislation will make it unlawful to discriminate on the basis of age in:

- Employment (including promotion, recruitment, retirement);
- Employment terms and conditions (including retirement and redundancy, pay and pensions);
- Vocational training

Who is covered

It is important to remember that the Regulations apply to all employees – often focus may be given to older employees at the risk of forgetting that younger employees are also covered. Consequently, you need to ensure that there is no age discrimination against:

- Any employee – there is no length of service limitation so the protection covers those applying for a job, those in employment and even some who have left employment;
- People undertaking or seeking access to vocational training.

It seems probable that unpaid volunteers are not covered. Discrimination can occur even if it is based on incorrect

assumptions about someone's age – and they do not need to disclose their actual age when making a complaint.

Who has responsibilities under the new Regulations

- All employers, regardless of size;
- Providers of vocational training;
- Their employees when acting in the course of their work – unless the employer can show that they have taken reasonable steps to prevent such.

Defining Discrimination

Discrimination can occur in several different ways:

- When an employer treats someone less favourably than others for a reason related to his or her age;
- When an employer fails to comply with specific duties created by the regulations – see Retirement below;
- Victimisation of someone who complains or supports a complaint of discrimination on the basis of age.

Direct and Indirect Discrimination; Positive Discrimination; Genuine Occupational Qualifications; Positive Action; Harassment

The principles contained in the main booklets will also apply under the Age Regulations.

Defence

The burden of proof rests on the employee/complainant to establish that discrimination has occurred. You may be able to defend different treatment or decisions based on age by showing that such was objectively justified. You will need to provide evidence that the treatment was necessary and appropriate to achieve a legitimate aim.

Risks

If you fail to comply with the Regulations, you risk:

- The cost of damages and compensation – there is no limit to the amount that may be awarded.
- The time and costs of administering the complaint and litigation;
- The adverse publicity and damage to reputation with customers;
- Damage to reputation and morale with existing and potential employees.

Litigation

In other countries, such as the USA and Ireland, litigation on the grounds of age discrimination has become a frequent cause of employment disputes. This is partly because it is relevant to every employee, rather than just some groups such as women, disabled people etc. Complaints may be most prevalent from existing employees in relation to internal recruitment and promotions where they are knowledgeable about your processes and behaviour.

Preventative steps/Action

You should take action now in relation to:

- Retirement – see Retention section below;
- Training of all staff to avoid discrimination by them.

Evidence

In addition to the amendments needed to policies, practices and procedures, recruiting material etc, you are recommended to gather other evidence such as relevant training provided, attendees, recruitment and appointment, age monitoring data etc.

What employers need to do

You may need to change your application forms, processes, procedures and advertising to avoid the possibility of less favourable treatment. Further detail is contained in the Recruitment section below.

You may need to change your personnel/HR policies, practices and procedures to ensure against less favourable treatment, especially as some existing age limits relating to conditions of service will be changed.

You must comply with the specific duties introduced in relation to retirement:

- To implement a "default" retirement age of 65;
- To give written notice of impending retirement;
- To consider an employee's request to work beyond retirement age.

Further details are contained in the Retention section below.

Case studies

Currently, no cases have been decided under the new regulations but the following are offered as illustrations of what may or may not be permitted. Several cases have been decided in the Republic of Ireland where similar legislation already exists. Further information and cases are available from the Employers Forum on Age.

An employer requires drivers to be of at least a specific age where this is related to insurance costs. This is likely to be justifiable for a small employer but may be less so for larger employers. There is likely to be consideration of the size of the costs/savings in relation to the resources/viability of the employer.

Harassment occurred when a woman was called "a young foolish girl" by an older male colleague.

Business Growth and Marketing

The Potential Market

Many businesses now recognise that, as the “baby boomers” age, they continue to be a significant market. Within 4 years, by 2010, 40% of the adult population (over 16) will be 45 years or older.

General Public

Targeting products only at the 60% of adults aged under 45 may mean that businesses miss out on the £160 billion disposable income of the remaining older section of the market. This latter 40% of the population may have different spending profiles, be interested in high value products and seek higher quality. Consequently, you need to analyse the prospective market and target your products effectively.

Public Sector

As with other aspects of diversity, many public sector organisations are becoming more concerned that their sub-contractors not only have appropriate policies but can demonstrate their implementation. If you are seeking such contracts, you should therefore include age issues in your other diversity-positive activities.

Other Businesses

Effective business-to-business relations require that both parties and their employees do not discriminate. If you permit inappropriate behaviour it is unlikely to create confidence that you have a professional or well-managed enterprise – other companies may look elsewhere to do their business.

Promotion and Public Relations

You can show that your goods and services are valuable to a wide market by ensuring that their employees represent a broad cross section of society.

Recruiting

The Potential Recruitment Pool

The following statistics from the Employers Forum on Age emphasise that you will need to consider recruits from every age group if you are to maintain an adequate workforce – the number of younger people available is decreasing significantly:

- There are 1 million fewer people in their 20s than ten years ago;
- People in the age range 45-59 form the largest single group in the workforce;
- By 2006 there will be more 55-64 year olds than 16-24 year olds for the first time;
- 68% of employers seeking skilled staff are experiencing recruitment difficulties.

Who is covered

- Any person applying for a job;
- Any person applying for employment related vocational training

Recruitment Process

Job description/Person Specification

Phrases such as “senior” or “junior” may no longer be appropriate, as you need to avoid any language that might indicate that you may make selection on the basis of age. Describing the job in terms of the size and scale of the responsibilities is likely to be preferable, and gives the applicant better information. Care will be needed to avoid requirements for experience or qualifications that are related to age. Use of competences and skills is preferable in describing the level of ability required. For example, in communications, management etc: “able to provide concise and

accurate briefings, able to manage a team of 10 people". Some qualification requirements may be necessary but specifying, for example, "GCSE or equivalent" is more inclusive.

Advertisements

Although there will be some exceptions, it will be no longer lawful to specify age limits in adverts unless you can justify such. You should also avoid terminology that can be interpreted as an age requirement e.g. "young vibrant person sought for..." or specifying a specific number of years experience without justification. Adverts that describe the competences or experience required not only avoid risk of discrimination but can target the appropriate type of applicant.

Application Process

You should remove any requirement to state date of birth on job application forms. Where you want to gather information about the age of the workforce for planning, management and other purposes, such information should be collected on monitoring forms and be kept separate from the selection process.

Selection processes

Although removal of date of birth details from the application forms will provide some safeguards, those selecting candidates for interview should know their responsibility not to discriminate and must also avoid using other information provided to make age based decisions.

Interview Process

All interviewing staff involved should be aware of their responsibilities under the Age Regulations so that they do not discriminate. It is key throughout to focus on ability rather than age; the new Regulations do not require an employer to take on someone who cannot do the job but you should assess candidates' skills fairly without considering age.

Case studies

An airline advertised for a young, dynamic professional and, when discrimination was alleged, claimed that the advert could mean “young at heart”. But it was shown that the applicants had all been under 40 and that the selection process did not conform with the employer's anti-discrimination policies. The airline lost the case.

The use of the word “young” was decided to show that the employer intended to discriminate. However, the complainant did not have the experience for the job and would not have been called for interview – so no actual discrimination took place.

Interviewers asking candidates how they would feel about being supervised by younger people was considered discriminatory.

An employer was able to defend a case by providing evidence of candidates’ different levels of experience, the scoring applied during the interview process against established criteria and age profiling evidence of other employees.

An interviewer was considered to have made discriminatory comments having suggested that older candidates would have more difficulties with the pressure and demands of a training course.

Retention

Statistics on Existing Workforces

- Close to half of young workers say they've been held back at work because of their age;
 - Nine out of 10 people aged 50 and over receive no training from their employer at all;
 - At least 40% of people who retired early feel that they were forced to against their will and would rather have continued to work.
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Personnel Management

Processes need to be transparent and fair and supported with evidence. Managers and those involved in recruitment, promotion and personnel activities need to ensure that language and behaviour are not discriminatory. Trainers need to be able to deliver to any age group.

Career Training and Promotion

Unless the employer can provide justification, it will be unlawful for employees to be selected for or excluded from training or promotion on the basis of age.

Case study

A disappointed candidate for promotion was able to establish discrimination by providing evidence that no one aged over 50 had been promoted over a period of several years.

Terms and Conditions of Service

It will be generally unlawful to provide terms that differ solely on the basis of age unless you can justify such. Benefits that reflect loyalty through length of employment are likely to be acceptable. Existing age limits will be removed for:

- Unfair dismissal and redundancy rights giving older workers the same rights as younger workers to claim unfair dismissal or receive a redundancy payment, unless there was a genuine retirement;
- Statutory Sick Pay, Statutory Maternity Pay, Statutory Adoption Pay and Statutory Paternity Pay.

The Regulations also include provisions relating to the statutory redundancy payments scheme. However, existing regulations relating to age-linked minimum wage and pay for apprentices are unchanged.

Retirement

Retirement Age

The regulations introduce a new "default" retirement age of 65. If you attempt to retire an employee before he or she reaches this age, you will need to be able to justify such or change it. There will however be a review of the default age in 2011.

Notice of Retirement and Associated Rights

You are required to have a planned retirement process – you must notify an employee in writing of the date when you intend them to retire (whether or not it is at age 65) and of their rights to request longer employment. This notice must be given at least 6 months before the intended retirement date and not more than 12 months before that date. Transitional arrangements will apply to retirements from 1 October 2006 to 31 March 2007. They are set out in schedule 7 to the Regulations.

Request to Remain in Work

All employees will have the right to request continuation of their employment beyond age 65 (or any other retirement age). You will have a duty to consider such a request. You must respond to a request to remain in work within 14 days and, where you refuse the request, you must justify the reasons. You will need to have robust performance management/appraisal systems, good records of sickness absence, timekeeping etc. if you wish to use these reasons for refusal.

Case study

An early retirement scheme was found to be discriminatory when it paid a worker aged 64 significantly less than a colleague aged 59 as the scheme had been based entirely on age.

State Pensions

The regulations do not affect state pensions.

Complaints, Grievance and Disciplinary Procedures

Your procedures should be amended to address incidents of discrimination, victimisation, and harassment on the basis of age.

Monitoring

In addition to recruitment data, you would be sensible to monitor the age of your workforce in relation to training, promotion, levels of responsibility, conditions of service etc.

Further Information

You should check the regulations for more detailed information on:

- Service related pay and benefits – benefit steps of up to five years may be acceptable;
- Pensions;
- Health benefit provisions;
- Death in service benefits;
- Age restrictions in apprentice schemes;
- Long service awards;
- Membership and representation in professional organisations (including employers' organisations and trade unions);
- Trustees and managers of occupational pension schemes.

The Armed Forces and the Reservists are not covered by the Regulations.

Action Checklist – You need to

Understand your legal responsibilities as an employer

Undertake all the actions shown in the other booklets in relation to age – we can provide a composite checklist

Make any changes to your recruitment procedures and documentation

Implement new retirement processes

Other sources of information are:

www.dti.gov.uk/er/equality/age.htm

www.agepositive.gov.uk

www.acas.org.uk

www.businesslink.gov.uk



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Please contact us if you require alternative versions of this leaflet.

Please note: The information provided in this handbook is not legal advice but is for general information only. If you require advice upon the law we strongly recommend that you speak to a legal professional.

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