

Employment Equality (Age) Regulations 2006

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Direct Discrimination 1

- Less favourable treatment
- Can be justified as a proportionate means of achieving a legitimate aim.

Direct Discrimination 2

- Covers perceived age
- Motive not required to prove case
- Age as an important factor – but not necessarily the sole reason

Direct Discrimination

Justification 1

- Same test as indirect discrimination – “proportionate means of achieving a legitimate aim”
- No list given
- EU Directive examples – special conditions to promote vocational integration or ensure protection; minimum or maximum age, experience or seniority for recruitment.

Direct Discrimination

Justification 2

- Legitimate aim – real need – not solely costs
- ACAS Guide
- DTI – health, welfare and safety
- Employment planning
- Training requirements
- Encouraging or rewarding loyalty
- Need for reasonable period of employment before retirement
- Recruiting or retaining older people

Direct Discrimination

Justification 3

- Must be proportionate
- Mangold v Helm – blanket age exclusion not proportionate

Indirect Discrimination

- Provision, criterion or practice.
- Particular disadvantage to persons of that “age group”
- Particular disadvantage to claimant.
- Not justifiable as a proportionate means of achieving a legitimate aim.
- CROSS – not cost alone

Age Group

- Group defined by reference to age whether by reference to a particular age or range of ages
- Includes apparent age

Harassment

- Same test as race, religion etc
- Objective test
- Reasonableness test does not apply where the conduct has an harassive purpose
- Jokes and banter – amend policies

Exclusions

- Selection for employment – exclusion of those aged 65 or who would within 6 months from the date of his/her application for employment reach the employers normal retirement age or 65 (not promotion!)
- Genuine Occupational Qualification having regard to the nature of the employment or the context in which it is carried out

Positive action exclusion

- Training & encouraging where it prevents or compensates for disadvantages linked to age suffered persons of that age or age group

Length of Service Benefits

- Blanket exception for benefits based on service up to a maximum of 5 years.
- Benefits awarded for service over 5 years unlawful except where it reasonably appears to the employer that it fulfils a business need (for example encouraging or rewarding loyalty, motivation or experience)
- Complex provisions on how to calculate service
- Total service or service at or about a particular level.
- Doesn't apply to benefits awarded on leaving employment

Other employment exclusions

- National minimum wage
- Enhanced redundancy payments
- Life assurance cover to retired

Default Retirement Age

- 65 – to be reviewed in 2011.
- Lower age requires objective justification.
- Dismissal of an employee by reason of retirement will not constitute age discrimination if employer retires employees at or above the age of 65.

- Default retirement age only applies to “employees”
- Excludes others e.g. partners, office holders, contract workers?

- No right to claim age discrimination or unfair dismissal in respect of genuine retirement from age 65 onwards.
- No right to claim age discrimination in recruitment or selection from age 65 onwards.

Planned Retirement Dates

- The date on which an employee reaches the age of 65.
- Where there is a normal retirement age (whether this is above or below 65) when the employee reaches that age.
- Employee must be given at least 6 months written notice that he/she would be retired on a particular date and that he/she has the right to request working beyond retirement age.

Duty to Consider Procedure

- Right to request working beyond retirement age.
- Meeting must be held between employer and employee – decision within 2 weeks.
- Appeal against refusal.

Occupational Pensions

- Regulations will effectively exempt most age related rules.
- Scheme Managers will be able to retain other age related rules provided they can be objectively justified.

Statutory Redundancy Scheme

- Upper age limit abolished.
- Basis of calculation to remove age based provisions.
- 20 years service maximum will remain.

Issues for Councils Pre Implementation

- ACAS - guide – Age and the workplace
 - Recruitment
 - Retaining Staff
 - Retirement
 - Review policies
 - Action plans

Working beyond retirement date

- ACAS guide flow chart
- Annex 6 meeting
- Post meeting action
- Appeal meeting
- Post appeal meeting action

Employers Forum on Age

- Model letters – Retirement Process
- Fact sheets
- Application forms

Transitional arrangements

- Applies to employees who are retiring on or shortly after 1st October 2006
- ACAS guide, Annex 12
- Notice given before the 1st October 2006
- Employee to retire after the 1st October but before 1st April 2007
- Notice must be at least the period required by the contract of employment or, where the employee is already serving contractual notice exceeding four weeks, the employer must give at least four weeks notice.
- 1st October, or as soon as practicable afterwards, the employer must write to the employee telling them of their right to request working longer

Transitional arrangements 2

- The employee can make a request to work longer after their contract has been terminated but not more than four weeks afterwards.
- Meeting must be held and an appeal must be held within a reasonable period

Transitional arrangements 3

- Where notice given after the 1st October 2006 that employee to be retired before the 1st April 2007
- Employer must notify of the intended retirement date in writing giving the longer of contractual or statutory notice and
- Tell them in writing that they have a right to request working longer