

The Employment Equality (Age) Regulations 2006

Important: The purpose of this article is to give an overview of The Employment Equality (Age) Regulations 2006. It is not intended to replace the need to seek expert legal advice. If you would like advice, please do not hesitate to get in touch with William Sturges & Co.

QUESTION: Which of the following job advertisements may fall foul of age discrimination legislation in the UK? – *answer below*

1. “Vibrant and vivacious receptionist required for busy West London medical practice”
2. “Mature book-keeper needed, no accountancy training necessary”
3. “Courier required- must hold UK driving licence for at least 10 years”
4. “Energetic, young sales assistant required for part time work in supermarket”

Unlike sex or race discrimination, age discrimination was not until recently prohibited. Since 1st October 2006 all this changed with the introduction of The Employment Equality (Age) Regulations 2006, which forbid direct and indirect age discrimination on grounds of age unless it can be objectively justified.

Whom do these regulations affect?

- Former, current or prospective employers
- Partnerships and firms
- Trade Unions and corporate associations
- Vocational training providers
- Trustees and managers of occupational pension schemes

But job applicants over the age of 65 are NOT protected.

How would these regulations be breached?

- Direct Age Discrimination – where a decision is unjustifiably made on the grounds of a person’s age (e.g. a minimum/maximum age requirement).
- Indirect Age Discrimination – where a decision or policy puts a certain age group of people at a disadvantage (e.g. an unjustified requirement of 12 years work-experience).
- Harassment – where a person’s dignity is violated or where conduct is humiliating or offensive on account of age
- Victimisation – where a person is discriminated against (e.g. for alleging discrimination by an employer).

Can a breach ever be lawful?

According to the DTI examples of legitimate business aims which may offer objective justification for age discrimination are:

- Health, welfare and safety
- Facilitation and employment planning
- Particular training requirements
- Encouraging and rewarding loyalty
- Need for a reasonable period of employment before retirement

Justification on one of these grounds may make an otherwise discriminatory decision or policy lawful if the employer has no reasonable alternative. It may also provide a good defence in a tribunal claim.

Things to consider...

1. Recruitment

- Job specifications and advertisements

In creating the specification and the advertisements for a job, try not to use age-related words like mature, experienced or youthful. Stick to actual skills or abilities needed for the job. Do not stipulate a number of years experience unless necessary.

- Job application forms

Do not ask for e.g. date of birth or a photograph of the applicant at this stage.

- Job application process

Make sure selectors or interviewers are aware of these regulations, and panels contain a range of ages to prevent potential problems.

- Using recruitment agencies

The regulations apply to all 'employment agencies' which even covers those providing career guidance. Your instructions to them should be specific enough not to leave room for discrimination of any sort.

2. Employment

Salaries, benefits and bonuses should not relate to the recipient's age but to the type and quality of the work. There is, however, an exemption linked to the national minimum wage provisions that applies to specified age bands below the age of 22.

Service-related benefits can be made only if those **not** benefiting have less than 5 years' service.

Training should be available and accessible to all staff.

Appraisals should mirror the recruitment process in terms of fairness to all ages, and focus on competency.

References should reflect the work done and not give away the age of the employee.

Redundancy payments can still be linked to specific age bands.

3. Retirement

Retirement age for all employees can not be below 65 unless there is an objective justification for this. The process must also follow the new guidelines set out in the regulations including that the employee must be informed of his "right to request not to retire" and the employer's duty to consider this request. Transitional provisions apply to retirements from 1 October 2006 to 31 March 2007.

Making a claim...

Employees who believe that they have suffered age related discrimination or harassment should follow their employer's grievance procedure and exhaust their right of appeal under that procedure. Only once this has been done, or if the employer does not have a grievance procedure, can they take their case to the employment tribunal. This normally needs to be done within 3 months of the act which is the subject of the complaint.

ANSWER: All of them! 1 - Indirect discrimination against older applicants; 2 – Direct discrimination against younger applicants; 3 - Indirect discrimination against younger applicants; 4 - Direct discrimination against older applicants