

Who is this for? LSC staff | LSC provider partners | The general reader

AGE LEGISLATION: OLD ENOUGH TO KNOW BETTER?

The new legislation: the Employment Equality (Age) Regulations, 2006

This legislation came into force in October 2006 and covers age-related discrimination in employment, training and adult education. A wide range of people are protected, including: present and past employees; contracted and self-employed workers; board members; volunteers delivering training courses; applicants for jobs; prospective, present and former learners in adult, further and higher education. This legislation also means particular types of employment practice are now subject to change: statutory sick pay, unfair dismissal and redundancy no longer have an upper age limit of 65.

What does this mean in practice?

The Employment Regulations outlaw direct and indirect discrimination, harassment and victimisation (see **brap's equalitybriefing** number one – *Discrimination: definitions & examples* for fuller descriptions of these). Consult the Employment Regulations for extended explanations and advice.

EXAMPLES | AGE DISCRIMINATION

Direct

Not extending training opportunities to staff over the age of 60: the investment is not considered worthwhile, "...because they are likely to retire soon."
Not considering applicants under the age of 30 for middle management roles.

Indirect

A job advert that invites candidates to join a "dynamic, lively and ambitious team" may be viewed as seeking to attract younger people specifically.
A redundancy policy based on the 'last in, first out' principle may be seen as discriminatory because it is likely to affect greater numbers of younger employees.

Harassment

A manager regularly makes age-related remarks about members of staff

- Being "too wet behind the ears to do a thorough job";
- Being "regularly late for work because of waiting until they could use their free bus pass".

Victimisation

Refusing to consider someone for employment because they once gave evidence at an age-related discrimination tribunal against the company.

Are there any exceptions or exemptions?

Age-related discrimination is permitted very occasionally: specifically if it affects the smooth running of the organisation or is a genuine occupational necessity. It is up to the employer or training provider to prove that an exemption applies in these instances and they have to show that the discrimination is appropriate or necessary. These are identified in the Employment Regulations in more detail. The law does not yet cover age-related discrimination in the provision of goods and services.

Two things to help you prepare...

QUIZ: HOW READY ARE YOU?

YES NO

Have you...

Provided training for staff about age discrimination?	<input type="checkbox"/>	<input type="checkbox"/>
Updated your equality policies and procedures?	<input type="checkbox"/>	<input type="checkbox"/>
Taken age and date of birth out of application forms and adverts?	<input type="checkbox"/>	<input type="checkbox"/>
Checked that any benefits linked to service are reasonable?	<input type="checkbox"/>	<input type="checkbox"/>
Justified why experience for the job/training is required?	<input type="checkbox"/>	<input type="checkbox"/>
Assessed whether your organisational culture is ageist?	<input type="checkbox"/>	<input type="checkbox"/>

RETIREMENT: YOUR 'DUTY TO CONSIDER'

If you wish to retire an employee you must:

- Notify your employee, in writing, of the intended retirement date not more than 12 months and not less than 6 months beforehand.
- Inform your employee of their right to request to work beyond the intended retirement date.
- Hold a meeting with your employee to discuss such a request.
- Inform your employee of the decision within 14 days of the meeting.
- Inform your employee that s/he has right to appeal within 14 days of the decision.

EXAMPLES | EXEMPTIONS/EXCEPTIONS

Genuine Occupational Requirement

Age related discrimination is permitted **if** it is essential for the job that the employee is of a particular age. In the past, for example, social workers had to be at least 24 years of age. If there is objective justification for this restriction, then this form of direct discrimination will remain lawful.

Legal reasons

If another law requires an employer to discriminate. For example: drivers must, by law, be 21 to be licensed to drive Heavy Goods Vehicles (HGVs). However, HGV training courses can accept learners under the age of 21 years old, who will complete their training in stages and 'graduate' at the age of 21.

Recruitment and retirement

- Employers may be justified in not recruiting a person who is within 6 months of retirement age if the post they have applied for requires extensive training.
- 65 has become the 'default retirement age' nationally. Employers may set a below 65 retirement age if they can objectively justify this.

Benefits for longer service

The legislation allows employers to continue providing pay and non-pay benefits, based upon length of service or experience, if the schemes require five years of service or less to qualify for the benefit/s. Schemes with more than five years length of service requirements will need to be justified objectively.