



## AGE DISCRIMINATION

The Employment Equality (Age) Regulations come into effect on 1 October 2006, and are expected to cause some problems for employers.

There is already in place a complex system of anti-discrimination legislation, which protects rights against discrimination on the grounds of:

- Sex
- Race
- Disability
- Religion or religious belief
- Sexual Orientation

As with other types of discrimination, employees will be protected against direct and indirect discrimination. Under the Regulations, a person will have directly discriminated against a person if:

He treats a person less favourably than he treats or would treat another person on the grounds of his age.

Indirect discrimination will be found if:

He applies a provision, criteria or practice which he applies or would apply equally to persons not of the same age group as that person, but...which puts or would put, persons of that age group at a particular disadvantage when compared with other persons

If the employer can show that the treatment in question is a proportionate means of achieving a legitimate business aim, this may provide them with a defence to such claims. However, the effects of these Regulations will impact on all areas of employment, many of which may not have even been considered by employers.

For example, employers will have to take the Regulations into account when dealing with some of the following issues:

- Contracts of Employment
- Promotion procedures
- Occupational health issues
- Advertising
- Interviewing and selection

Many employers will also have a clause in their contracts of employment, which require employees to retire at a certain age and this will now have to be considered in light of the Regulations. It will not necessarily become unlawful to have such a clause, as there will be an exemption which will allow employers to retire employees at or above 65 and set retirement ages within the organisation.

Retirement will also become a 'potentially fair reason' for dismissal (see unfair dismissal factsheet), and a retirement dismissal will be deemed to be fair when:

- It is genuinely on the grounds of retirement
- It takes place in accordance with new procedural requirements (as set down by the Regulations) for compulsory retirement

The Regulations provide a 'right to request' procedure for employees and a 'duty to consider procedure' for employers.

This means that all employees will have the right to request that they be allowed to work beyond the default retirement age of 65 and employers will then have a duty to seriously consider that request.

The employer will also have a duty to inform the employee in writing, at least two weeks before the retirement date of the right to request to work beyond retirement, and if they fail to do so, this could result in a finding of unfair dismissal.

Employers will need to consider fully their reasons for dismissing an employee. If the reason for dismissal is genuinely retirement, then the retirement procedures must be followed. If however, the reason is actually another potentially fair reason, such as conduct or capability, employers would need to follow the statutory disciplinary and grievance procedures (which would not normally apply to a retirement dismissal – see Statutory Disciplinary and Grievance Procedures factsheet). It is therefore essential that employers consider the reason for dismissal before embarking on one of the procedures; because the incorrect reason for dismissal could mean that the wrong procedure has been followed, thus leaving an employer open to a finding of automatic unfair dismissal.

If you have any concerns about the above, you can contact our Employment Law team for some free advice.

**Should you require further information about how our Employment Law team can help you - just call 0800 040 73 99 – and one of our specialist advisors will be pleased to assist.**

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