



Age Discrimination – The next strand of discrimination legislation.

Recent years have seen a rapid growth in employment law – and in the complexity of the regulation that employers need to consider in their management of their staff. We have seen the prohibition of discrimination on grounds of part time status, of fixed term contract workers, on grounds of sexual orientation or religious belief. These have represented gradual, and incremental additions to the protections that workers have from unjustified discrimination, which have long since included gender and race and, more recently, disability. Most of them have presented little difficulty to employers in effecting compliance.

These "strands" of discrimination might be categorised as those which affect, in the main, the minorities in our working population, their basic principles are understandable and accepted by the working community.

The next big thing in the area of discrimination law is unquestionably the prohibition of discrimination on the grounds of age. The Employment Equality (Age) Regulations 2006 will come into force on 1st October 2006. They will prohibit unjustified discrimination of any worker on the grounds of his or her age. The regulations don't concentrate solely on the older worker but any worker and thus they will have an impact on the employment of all workers young or old (or in the middle). The one thing that can be guaranteed to happen to all workers is that they will get older and so this new law will have an impact on every one.

That makes the preparation for introduction a big issue for employers. When the law comes into force it will become unlawful for anyone to harass a worker on grounds of their age and employers will be responsible for the actions of their employees unless they can show that they have taken all reasonable steps to stop discrimination occurring.

So what happens when the workers in the print room club together to get a birthday card for Jimmy when he hits 40? If, as is often the case at present, it makes a supposedly humorous remark about being "over the hill" and Jimmy feels upset, then in the language of the regulation has his dignity at work been affected? – if so he may well be able to claim that he has been unlawfully discriminated against on grounds of his age. The tribunal might well say that the employer is due to compensate him if he hasn't taken steps to alert his workers to the new law.

Recent surveys have shown that employers are doing very little at present to prepare themselves for the new regulations and with only a year to go some say there is a lot to be done.

The regulations have been brought about by a growing awareness that with an ageing population, and the parlous state of the pension schemes society needs to do something to reduce the impact of retirement. Under the new regime, unless it can be objectively justified it will be unlawful to have a normal retirement age of anything less than 65. There was a great deal of lobbying to do away with retirement ages altogether and it seems

clear that the government has reserved its position on that at least until 2010 when we can expect to see the 65 limit disappear.

In the past those reaching retirement age were stripped of their rights to complain of unfair dismissal and redundancy (on the premise, one supposes, that they had come to the end of their working life and should be encouraged to go quietly from the working population). All that will change in October 2006 when everyone reaching retirement age will be entitled to ask to stay on.

The TUC has suggested that the regulations don't do enough to make us start thinking about turning retirement into a transitional period rather than an end to working life, and that we have lost an opportunity to look at making work for the older worker something that fits his or her life style (and of course their income) requirements.

As for the employers they worry about how they will continue to offer the same health and life insurance benefits to the older worker, and how they will rise to the challenge of telling an older worker that his performance is deteriorating when in the past they might have let him plod quietly up to his gold watch. The "let it be " approach may, in fact, be a form of actionable discrimination if an older worker can say that, had he been younger, the boss would have no hesitation in telling him to pull his socks up. To refrain from offering to teach Granny to suck eggs may be actionable discrimination!

The other big area of concern is at the other end of the employment spectrum – in recruitment. In other jurisdictions where age discrimination is already unlawful we have seen cases of employers being found guilty of age discrimination in advertising for "young and dynamic" staff or for looking for people who were "2-3 years post qualified". We already have experience of dealing with cases from unhappy job seekers saying "is it cos I am Black" or Irish or Asian – will they now be able to run claims on the basis of their age?

One thing is for certain, the dawning of the age of age discrimination may be just over the horizon but unlike many of the other recently added discrimination strands it will, I think, lead to a real need for employers to rethink their staffing, retirement and harassment policies. Every one of us carries stereotypical ideas as to the effects of age – these are the stereotypes that will be challenged in the courts and tribunals from 1st October 2006.

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