



New Age Discrimination Regulations in force from 1 October 2006

The Employment Equality (Age) Regulations 2006 come into force today. The Regulations apply to all employers and cover recruitment, terms and conditions, promotions, transfers, dismissals and training. It is now unlawful to discriminate against somebody on the grounds of his or her age - either directly or indirectly – unless such treatment can be objectively justified.

Below are 10 Dos and Don'ts which will help you comply with your obligations under these Age Regulations: -

DO consider your application form

Remove the date of birth/age from the main application form and put it on a diversity monitoring form. Examine your application form and ensure that you can justify the information you are asking for e.g. Do you need the dates the applicant went to school?

DON'T have discriminatory job adverts.

References to “experienced” should be used with great care. Words such as “young” and “mature” should be avoided. Be careful that any requirements, such as qualifications or years of experience, do not indirectly discriminate against those of any particular age, or at least, if they do, that they can be objectively justified. The focus should be on the skills required of an employee. Don't set unnecessary standards for experience – they must be capable of justification.

DO train selectors in anti-age discrimination.

Train those who are to be selectors at interview to concentrate solely on those areas relevant to the requirements of the position and to avoid questions which may be seen to relate to age. Questions such as “How would you feel managing older/younger people?” should never be asked. Where possible have a range of age groups on any interview panel. It is important that selectors are trained to avoid making assumptions about the capability or fitness of somebody for a job based upon their age.

DO undertake staff training.

Staff must be made aware that any instances of discrimination, including age discrimination, will not be tolerated. Make them aware that it is unlawful. Make them aware of the company's equality and disciplinary policies. It must be remembered that employers are liable for the actions of their employees and must be able to show that they have taken all reasonable steps to prevent discriminatory behaviour if a claim arises. Notice boards and regular circulars detailing the company's policy, disciplinary and grievance procedures will also help to demonstrate that you have taken appropriate steps and will reduce the likelihood of a claim arising.

DON'T ignore complaints.

If somebody complains, take their complaint seriously – even where you consider the behaviour to be harmless; it is the effect on the individual which is of importance. Take

appropriate action to ensure that the behaviour stops and, where appropriate, staff are disciplined. It is important to make sure that any inappropriate behaviour is "nipped in the bud". An environment where ageist jokes etc are acceptable can breed an age discrimination claim. In any claim against an employer a tribunal will consider the impact upon that particular employee who is the claimant. It will be of particular relevance that an employer knew of the culture and did nothing about it.

DO check your policies for retirement and redundancy.

Upper age limits for unfair dismissal and redundancy claims have been removed. There will be a default retirement age of 65 and compulsory retirement below that is unlawful – unless it can be objectively justified.

DON'T forget to advise your employees of their intended retirement age and entitlement to request that they continue working beyond that age.

An employee should be notified of the intended retirement date for them at least 6 months before that date. They have the right to request to work beyond that date and must be advised of that request at the same time.

DO give consideration to an employee's request that they work beyond the expected retirement age.

An employee must make their request at least 3 months before the scheduled date. Whilst you do not have to give a reason for any refusal you must give consideration to any request made. You must invite them to a meeting to discuss the issue and allow them to bring a work colleague (if there is a work colleague who is also a trade union representative they should be allowed to bring that person). In any event, it may well be that allowing them to work on for longer will save you money in recruiting and retraining. If you decide not to keep them on they must be given a right of appeal which – where possible – should be considered by an alternative individual.

DON'T refer to somebody's age if giving a reference – whether verbal or written.

The Regulations can apply even where the employment relationship has ended. Comments such as "He didn't fit in – he was too old and boring." or "He was too young and immature." can make you liable to a discrimination claim. Again ensure that all staff are aware that the Regulations continue to apply even where the employee has left your business.

DO consult one of us in the Employment Unit if in any doubt.

You should consult us if you are in any doubt about your equality, grievance or disciplinary policies or about any adverts for vacancies or criteria for selection. You should be mindful that certain requirements or criteria may be seen as indirect discrimination. It is particularly worthwhile consulting us at an early stage if you receive a complaint. Proper handling of complaints at an early stage may prevent a claim arising or at least provide some defence should a claim arise. Further, proper and early complaints handling can serve to minimise resignations and dismissals and help to maintain a happy workforce.

This e-briefing is sent to you by Anderson Strathern's [Employment Unit](#). We hope you find it useful. If we can help with any matters arising from this e-zine, or any employment law matter please contact [Neil Maclean](#), or any other member of our team.