

Age Discrimination

The rights of older and younger people in recruitment and selection



Overview

From 1st October 2006, age discrimination was outlawed with the introduction of the Employment Equality (Age) Regulations 2006. As of 1st October 2010, all existing equality legislation (including the 2006 Regulations) was consolidated into the Equality Act 2010 ('The Act').

The UK's population is continuing to age, and concerns are frequently expressed that we are not saving enough for our future. The fact is, many of us will need to work longer to keep pace, and this factsheet helps show how the law can support us in doing so. We recommend you read this in conjunction with our *'Age Concerns'* factsheet, which provides an overview of the law on age discrimination.

Advertisements

If it is not carefully worded and targeted, a job advert may be guilty of age discrimination. A candidate who is rejected for a job may use such an advert in pursuing a claim for age discrimination.

Job advertisements should be targeted to a wide audience to ensure diversity of applicants. Advertising in a magazine with a readership of a certain age group, for example, is likely to target only a certain age range. As a result this could amount to indirect discrimination, if the targeting cannot be objectively justified.

Wording is critical. Using certain descriptive words such as 'energetic', 'dynamic' or 'flexible' may suggest that the employer is looking for a younger employee. This is why employers must clearly identify the skills and competencies required to fulfil the role, and only these should form the basis of the advert. In Ireland, Ryanair was successfully sued for age discrimination when it used the words 'young and dynamic' in a job advertisement.

Application forms and selection criteria

Application forms which request dates of birth or a photograph may be indirectly discriminatory. For this reason, it is recommended that employers who wish to assess the diversity of their applicants should request information relating to age on a separate and anonymous monitoring form.

Asking questions of applicants from one age group and not of applicants from another age group could also be discriminatory. For example, a claim was upheld when a 58-year-old job applicant was refused a job after being asked questions on his 'drive and motivation' which were not asked of younger applicants.

Questions relating to an applicant's years of experience could also be an indirect way to determine an applicant's age. If employers require this information, they will have to demonstrate why the information is necessary.

Equally, employers advertising for applicants with a certain number of years' experience could be discriminating on the grounds of age - such requirements may in effect exclude younger candidates. If experience is a pre-requisite for a job, the employer must be able to justify this requirement objectively. Consideration should be given to the relevance of a candidate's prior experience to the role. If relevant experience is a genuine requirement for the position, justification should not present any problems. In another case at the other end of the scale, a 61-year-old teacher was found to have been discriminated against when she was rejected because the school wished to hire someone in the 'first five years of their career' for reasons of cost.

CV's often contain age-related information, so employers should consider using 'age-neutral' application forms, as opposed to requesting CV's.

Indirect discrimination may also be caused by asking prospective employees to pass a medical examination, if such testing cannot be fully justified.

Graduates

Only 13% of undergraduates in 2003 were over 40 years old. Therefore, only targeting graduates at career fairs or 'milk rounds' may be indirect discrimination. If there is no clear evidence that the employer is focused on the qualification that is necessary for the job, and not the age of the applicant, unsuccessful candidates who are suitable but simply older may have a good basis for an age discrimination claim.

Vocational training

All vocational and general educational training is governed by anti-discrimination legislation. Training and education providers will not be able to set age limits for entry to training, or in relation to the terms on which training is offered.

Education providers who set age limits must be able to justify the age criteria objectively, otherwise they could be guilty of indirect discrimination.



"All vocational and general educational training is governed by anti-discrimination legislation."

Bringing a claim for age discrimination

Please also note that strict time limits apply in respect of bringing a claim. Most claims will need to be brought in the Employment Tribunal within three months less one day of the treatment you are complaining about. In some instances, if a claim is lodged out of time, the Employment Tribunal has the power to extend the time limits if it is just and equitable to do so. However, this power should not be relied on.

You may also need to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures (which can be downloaded from the ACAS website). This is aimed at assisting parties to resolve disputes within the workplace. If your claim is successful but the Tribunal considers that you have failed to comply with the Code, your compensation could be reduced by up to 25%. (There are also penalties on the employer if they do not comply with the Code). Please note that the time limit for bringing a claim is not affected by compliance with the ACAS Code. It still needs to be brought within three months less one day of the treatment you are complaining about.



"Employers need to demonstrably show that they are focused on the qualification that is necessary for the job, not the age of the applicant".


The compensation for age discrimination is potentially unlimited, and will reflect the loss actually suffered as a result of the discrimination. This may even include an assessment of the percentage chance of succeeding in selection, had there been no discrimination.


Employment Tribunals may also make awards to compensate victims of discrimination for the 'injury to feelings' they have suffered.

Contact Us

Please feel free to discuss your own position and concerns. Contact your nearest Russell Jones & Walker office or call:

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This factsheet is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more details or information about the matters referred to in this factsheet please seek formal legal advice. This information was correct at time of going to press August 2011.