

# Coming of Age New Age Discrimination Regulations

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The Employment Equality (Age) Regulations 2006 (“Regulations”) outlawing all forms of age discrimination in the workplace came into force in October of this year. Emma Thomas from our specialist employment and immigration law team explains what it could mean in practice for employers and employees.

## Implementation

The regulations were implemented in the UK in October 2006 following a European directive. Many other EU member states have already implemented the directive, for example Portugal had an implementation date of December 2003.

## Key Points in the New Regulations

The regulations will cover:

- all workers, including agency workers, as well as those in vocational training.
- discrimination on grounds of age generally and not only older workers.
- direct discrimination by outlawing where a person is treated less favourably as a result of their age
- indirect discrimination which occurs where a provision, condition or criterion is applied making it more difficult for a person of a certain age group to comply with, which causes that person to suffer a disadvantage as a result and an employer cannot provide an objective justification.
- unwanted conduct which constitutes harassment and victimisation (which occurs when a person is treated less favourably because they have made a complaint under these regulations) will always be unlawful.

Both direct and indirect discrimination may be justified if it can be shown that the reason for this is that it pursues a legitimate aim and that it is an appropriate and necessary way of achieving that aim. It is thought that this will be narrowly defined.

The regulations also provide for exemptions and where this is the case an employee will not need to justify any age related criterion. These include pay and other benefits relating to length of service of five years or less; pay under the National Minimum Wage and occupational pension schemes.

## Impact on Recruitment, Promotion and Retirement

From a practical point it will have an important bearing on recruitment policies.

Employers will need to ensure that:

- job advertisements comply with the regulations;
- an age limit is not applied for recruitment unless justified; and
- candidates are not discriminated against on grounds of their age.

During the employment relationship, employers must make sure that employees are not treated differently on grounds of age. This may occur, for example, where an age limit is applied on a promotion without justification.

Retirement is perhaps the area of most concern to many employers. The regulations set a national default retirement age of 65. Where a company sets a default retirement age below this it will need to change it or be able to justify it. There is also a “duty to consider” procedure which must be followed by employers when intending to retire an employee. This consists of notifying the employee in writing of their intended date of retirement within a certain timescale. An employer must also inform them of their right to request to continue working.

The importance of following this duty to consider procedure lies in the fact that as of October 2006 employees over the age of 65 may be able to bring a claim for unfair dismissal.

## What should employers do now?

It is advisable to review policies and procedures to ensure that they comply with the regulations. In particular, applications forms, employment contracts and handbooks should be reviewed and employers need to identify and make necessary changes. Retirement procedures should also be checked. Staff should be trained and be made aware of the implications of these regulations as employers may be liable for the conduct of employees unless it can be shown that they took reasonable steps to prevent discrimination by employees.

For more information on these new regulations and advice on how to comply please contact Emma Thomas on 01245 453826 or email [emma.thomas@birkettlong.co.uk](mailto:emma.thomas@birkettlong.co.uk)