

## Age Discrimination

### Major Changes in Employment Law

Later this year discrimination in the workplace on the basis of age will become unlawful as a result of the Employment Equality (Age) Regulations 2006. Age discrimination legislation has been promised for a number of years and is now likely to become effective in October 2006. The new Age Discrimination Regulations will be enforced alongside the existing legislation which deal with discrimination on grounds of race, sex, disability, sexual orientation, religion and belief.

It is increasingly evident that these new Age Discrimination Regulations will become one of the most far reaching changes to employment law that we have seen in recent years. Given the amount of legislation that we have seen in the employment field recently, this gives some indication as to the extent of the new regulations.

The major changes that will be brought in by the new Age Discrimination Legislation will be:

- (i) Age discrimination in both employment and vocational training will be prohibited.
- (ii) A default retirement age of 65 will be established and anything lower will need to be justified.
- (iii) Requests from employees to continue working beyond retirement will need to be considered.
- (iv) Employees must be informed in advance of their intended retirement date.
- (v) The upper age limits for unfair dismissal and redundancy claims will be scrapped.
- (vi) Some service related benefits will no longer be lawful.

The legislation is intended to protect both old and young employees. Apart from employees, the new regulations will cover all workers, which will include those who are self-employed, contract workers and office holders. There will also be protection to people who apply for work and in some instances people who have left work. The only people not to be affected by the new regulations will be members of the regular Armed Forces together with unpaid volunteers.

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The regulations will cover direct and indirect discrimination as well as harassment and victimisation. In each of these cases an employer can also be held responsible for the action of its employees.

Generally, the only circumstances when different treatment on grounds of age will be lawful are when they can be shown to be genuine occupational requirements and also where it can be shown that there is an objective justification for that requirement. In practice, both of these are likely to be extremely difficult to prove. The objective justification test will mean that an employer will have to show with evidence that they are pursuing a legitimate aim and that it is both an appropriate and necessary means of achieving that aim.

As far as benefits are concerned, any benefit, which is based on, a length of service, which requires five years, or less for it to apply in full can continue. However, after five years employers must show that there will be an advantage from rewarding loyalty or encouraging the motivation or recognising the experience of workers by awarding benefits on the basis of length of service. Again, in practical terms this is going to prove extremely difficult to justify.

As a result of this new legislation, the employers now need to carefully review many of their employment policies including:

- (i) Their recruitment policies and procedures. For example, words in recruitment adverts such as "10 years' experience" or "mature" could be unlawful.
- (ii) Retirement arrangements. 65 will now be the default retirement age for all.
- (iii) Pay and benefits arrangements. If these are currently linked to age and length of service, they must be justified. Any link between age and medical/health benefits should be broken.
- (iv) Redundancy policies – selection criteria and enhanced packages in particular will need to be reviewed.

If you have any concerns about this forthcoming legislation then the key here must be to seek advice. Contact Ashley Holden at Herrington & Carmichael on 0118 977 4045.