

CATO SOLICITORS

Age Discrimination Advice for Businesses

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Introduction

The Irish introduced age discrimination provisions through the Employment Equality Act as far back as 1998 and since then age discrimination cases have constituted 25 percent of all discrimination claims reaching a tribunal. With unlimited awards in discrimination cases being promulgated and claims to employment tribunals up on this side of the water, businesses and practitioners have every reason to keep one eye the new law. What follows is a general summary of the new Age Discrimination Regulations with commentary.

Many commentators have hailed the emergence of age discrimination law in this country as an attempt to tackle the last area where employers have been able to unfairly discriminate in the workplace. Furthermore, this battleground will become more relevant to all of us as the proportion of the population aged over 65 increases. A 2001/02/14 DfEE Press Release stated that, 'there are around 19 million people aged 50 and over in the UK, that constitutes 40% of the adult population'. By 2006, 45 to 59 year olds will become the largest single group in the workforce, by 2010, in the UK over 40% of everyone aged 16 and over will be aged over 45 and by the mid 2030's well over a third of the workforce will be over 50. Older people will become an ever more significant proportion of the population and society will need to protect them as we depend increasingly on their contribution.

The new regulations, however also protect those younger workers who for example, find that older workers are being rewarded unfairly on the sole basis of their age. Some surprising suggestions as to what may fall foul of the new law have been put forward and are discussed below.

A Summary of the Regulations

To Whom do They Apply?

The Regulations apply to all employers, private and public sector vocational training providers, trade unions, professional organisations, employer organisations and trustees and managers of occupational pension schemes and crown-appointed (including unpaid) office holders (N.B. **Reg 30** provides that a dismissal for retirement will not constitute age discrimination provided that the employer observes the retirement procedure set down in Schedule 6 to the Regulations. This provision, which renders lawful an otherwise discriminatory dismissal, only applies in relation to employees as strictly defined by S.230 ERA, a person in Crown employment, and relevant members of the House of Commons and House of Lords staff).

Those Who are Protected

Employees, those on fixed term contracts, job applicants, self employed such as barristers, members of trade unions, anyone in vocational training, persons applying for a place on a vocational training course or persons applying to become members of trade organisations, police officers.

Those Not Protected

Members of the armed forces and unpaid volunteers

What Do The Regulations Say?

The Regulations make it unlawful on the grounds of age to:

- Discriminate against anyone i.e. treat them less favourably than others because of their age, unless objectively justified.
- Discriminate against them indirectly against anyone i.e. to apply a criterion, provision or practice which disadvantages people of a particular age unless it can be objectively justified.
- Subject someone to harassment i.e. to conduct that violates a person's dignity or creates an intimidating, hostile, degrading humiliating or offensive environment for them having regard to all the circumstances including the perception of the victim.
- Victimise someone because they intend to make a complaint or give evidence in relation in relation to a complaint of discrimination on grounds of age.
- Note: Employers can be liable for acts of employees who discriminate on grounds of age and so training staff about the regulations is vital.
- Upper age limits on unfair dismissal and redundancy will be removed.
- The natural default retirement age of 65 is introduced which means the compulsory retirement age of below 65 unlawful unless objectively justified.
- The employer has to consider any request by a worker to work on past 65.

Obvious Examples of Behaviour Covered under the new Act

- Subject to a defence of objective justification, discrimination by an employer or other person or body covered by the Regulations is unlawful if it relates to one of the following matters:
- the arrangements an employer makes for the purpose of determining to whom he should offer employment
- refusing to offer, or deliberately not offering, a person employment, or the terms on which employment is offered
- the terms afforded by an employer to a person in employment
- the opportunities the employer affords (or refuses to afford) the person for promotion, a transfer, training, or the receipt of any other benefit
- dismissing the person, or subjecting him or her to any other detriment.

Obvious examples of such discriminatory conduct are:

- Noting in a job specification that the post must be filled by a person of a particular age.
- Refusing to offer, or deliberately not offering, a person employment, or the terms on which employment is offered, it may be possible, as with the other strands of discrimination, to prove facts from which an inference of discrimination can be drawn **Reg 7(1)(a)(c)**
- The terms afforded by an employer to a person in employment **Reg 7(2)(a)**
- The opportunities the employer affords (or refuses to afford) the person for promotion, transfer, training, or receiving any other benefit: this would cover the situation where an employer withdraws access to training or benefits, such as offering life insurance, from workers over a certain age **Reg 7(2)(b) and (c)**
- dismissing the person, or subjecting him or her to any other detriment **Reg 7(2)(d)**.

Direct Discrimination

The most important difference is that, unlike all other forms of discrimination, direct discrimination on the ground of a person's age can be lawful if it constitutes a proportionate means of achieving a legitimate aim. Direct discrimination occurs where, on the ground of an employee's age, the employer treats him/her less favourably than he treats or would treat other persons **Reg 3(1)(a)**. This involves examination of someone in the same relevant circumstances as the employee **Reg 3(2)**. NB **Reg 3(3)(b)** makes it clear that discrimination on the ground of a person's age applies to those cases where the person is discriminated against on account of a mistaken belief of age.

Once the discriminator has demonstrated the existence of a legitimate aim he/she must then show that the provision, criterion or practice was proportionate. The ECJ has explained that such proportionality requires that the means used to achieve an aim must not exceed the limits of what is appropriate and necessary to achieve that aim e.g *C-157/96 R v Maff ex parte NFU [1998] ECR I-1211*.

What May Constitute Direct Discrimination

Recruitment – Advertising /Job Descriptions/ Training/Pay

Job specification criteria accompanying advertisements and the way in which potential job applicants are targeted may constitute 'arrangements an employer makes

for the purpose of determining to whom he should offer employment' under **Reg 7(1)(a)** and a candidate may point to the advertisement as an intention to discriminate. The way in which potential job applicants are targeted may constitute 'arrangements an employer makes for the purpose of determining to whom he should offer employment' and be caught by the Regulations.

7(1)(a) would apply to practices such as the milk-round, whereby employers target graduates. It is recommended that if employers choose to continue operating a graduate recruitment programme, that there are visible, alternative entry methods for older graduates and others. Employers should also consider the appropriateness and justifications for other programmes such as, leadership and management development programmes. Only 13.2 percent of undergraduate qualifiers in 2003 were aged 40 years and over (reported in Croner HR centre online, 2001). Questions on application forms, and job specification requirements could also fall within its scope. Hence, employers should be aware of asking when a candidate started at school and should ideally ask any age related questions in an age monitoring form.

When predicting what impact the Regulations will have over here we can use Ireland as a touchstone as they introduced age discrimination provisions through the Employment Equality Act as far back as 1998. In the Irish case of, *Equality Authority v Ryanair DEC-E/2000/14*, Ryanair was fined £8000 for breaching Irish discrimination legislation by advertising for a job for a 'young and dynamic professional'. The respondent's argument that the word 'young' in an advertisement specifying a 'young' candidate was a euphemism for 'enthusiastic' and 'passionate' rather than a reference to age was rejected. It therefore follows that all job advertisements should attempt to be as age neutral as possible. Further steps to take may be:

Instead of focusing on the number of years experience required, employers might be better off setting requirements as to the type of experience needed for the job. Adverts such as, 'Graduated in the last seven years' will be deemed ageist under the new regime. Any request for a number of years experience must be objectively justified.

Employers must also be aware of alienating older candidates by stating that a candidate with little or no experience will be preferred or referring to a position as 'ideal for a first starter'. This sort of advertisement will be strong evidence leading to an inference of age discrimination. Even requesting that recent graduates apply (most are in their 20s) may be a criterion likely to discriminate against older graduates. Furthermore asking for degrees only offered in the last 20 years or so would be likely to be deemed to discriminate against older candidates. Monitoring shortlists and applications for a job to make sure that all age groups are represented is a good way of ensuring fairness.

In the Irish case of, *Tom O Connor v Lidl Ireland Gmbh (DEC – E – 005/12)* Lidl sought district managers and it advertised for a graduate with not more than 2-3 years experience in a commercial environment. The Equality Officer found that the advertisement was indirectly discriminatory on grounds of age. In light of Lidl destroying all CVs and applications for the district manager position the Equality officer ordered them to refrain from issuing similar advertisements, to remove the requirement specifying dates of birth, to retain information on recruitment for 12

months and to hold a clear record of the objective criteria in deciding not to call candidates to interview. It is also suggested that employers do not ask for a photograph with job applications for the above reasons.

If an advertisement is going to specify that an individual must be prepared to work late then it must be a genuine occupational requirement and a 'provision, criterion or practice' (pcp) that may be objectively justified. It is anticipated that otherwise it may be possible for members of a particular age group to prove that they have childcare commitments leading to an indirect discrimination claim. In the case of *Nagarajan v London Regional Transport 1999 ICR 877* the House of Lords held that interviewing and assessing candidates for a post can amount to making 'arrangements' for the purpose of determining to whom employment should be offered.

As far as performance reviews are concerned it has been suggested by commentators that a failure to conduct performance reviews of older candidates when younger workers are receiving them may constitute discrimination and further, the same applies if poor performance due to the natural impact of aging is considered when an individual is promoted, demoted or dismissed. Although the rules do not come into force until 1 October, they could still affect performance appraisals and progress reviews conducted before then. For example, employers may use old reviews and reports going back a number of years as factors influencing the award of benefits or promotion.

Training aimed at progressing the careers of their workers can advance an employee in terms of his/her continued progression through the ranks of the company and therefore should be open to all workers regardless of age.

Employers should be wary that pay structures may be indirectly discriminatory. Using experience as one of the criteria against which a decision to offer employment is made has the potential to constitute indirect discrimination. The same applies to promoting candidates on a pay scale to a level that they ordinarily would not be entitled to. Again, when offering terms and conditions experience age should not be a factor. **Reg 32** sums up the law well in that it allows an exception for service-related benefits, in that it makes allowances only for rewarding long service with the employer and not for experience gained elsewhere. **Reg 32(2)** states however, that if an employer gives higher pay or greater holiday entitlement to workers having more than five years' service, he will need to provide a good business reason for doing so, such as encouraging loyalty or motivation. It must 'reasonably appear' to the employer that one of these aims is fulfilled, he need not provide irrefutable proof that it actually is. Nonetheless, the standard of proof will not be satisfied without some evidence to back it up. The Acas Guidance suggests that employers could gather such evidence through monitoring, staff attitude surveys or focus groups.

Note that there are special provisions for calculating a worker's length of service for the above purposes. On each occasion on which the employer decides to use the criterion of length of service in relation to the award of a benefit, he must make a choice between two bases for calculating a worker's length of service. These are:

- the length of time the worker has been working for him doing work which he reasonably considers to be at or above a particular level (assessed by reference

- to the demands made on the worker in terms of, for example, effort, skills and decision-making); or
- the length of time the worker has been working for him in total - Reg 32(3).

The employer is also entitled to discount any period of absence from the calculation unless it would not be reasonable for him to do so, or even discount periods in service before a period of absence if it is reasonable to do so **Reg 32(4)**. NB The general exemption for service-related benefits does not apply to 'any benefit awarded to a worker by virtue of his ceasing to work for' the employer **Reg 32(7)**.

Retirement

Recital 14 of the preamble the EU Equal Treatment Framework Directive (No.2000/78) states that the Directive is without prejudice to national law setting retirement ages, and Article 6(1) provides that Member States may specifically permit difference of treatment on the ground of age where there is a legitimate employment policy justifying it. The Employment Equality (Age) Regulations 2006 SI 2006/1031 enact this by introducing a default retirement age of 65 (to be reviewed in 2011). A dismissal that is deemed to be for retirement falls within the ambit of **Reg. 30** and does not constitute unlawful discrimination.

Notification Crucial

Under Reg 30 this procedure only applies to, a person in Crown employment, the dismissal for retirement of employees employed under a contract of employment as defined by S.230 of the Employment Rights Act 1996, and relevant members of the House of Commons and House of Lords staff.

A dismissal for retirement reasons will not be deemed unlawful age discrimination if the **employer** between 6 and 12 months before the date of dismissal, in writing notifies the employee of his right to **request not to retire** on the intended date of retirement *. If that requirement is not followed, whether or not the dismissal is deemed to be for retirement and fair, will be determined by the tribunal, taking into consideration the extent to which the employer has complied with the rest of the procedural duties and the extent to which the employer has complied with the statutory procedure. Such a failure to notify can constitute a stand alone claim in the employment tribunal. **Para 11 of Schedule 6**, on finding such a complaint to be well-founded, a tribunal must order payment of compensation of an amount not exceeding eight weeks' pay. A 'week's pay', for this purpose, is subject to the £290 limit currently imposed by S.227(1) ERA.

*(The rule applies regardless of whether or not the date has already been specified in any notification or other information the employer may already have given the employee. If the employer fails to notify at least six months before the intended retirement date, he is subject to a continuing duty to inform the employee in writing of the intended date of retirement and of the right to request to work on past the retirement date **para 4, Sch 6**. This continuing duty lasts until two weeks before the

date the employee's employment is due to terminate. If the employer complies with the duty to inform in accordance with **para 4**, the dismissal is still potentially for retirement, and therefore potentially fair depending on whether the rest of the procedural requirements have been complied with).

The Employment Equality (Age) Regulations 2006 SI 2006/1031 introduces a default retirement age of 65. Provided the employer follows a prescribed procedure, he/she will be able fairly to dismiss an employee for retirement at this age or above. Employers who operate a retirement age lower than 65 will have to objectively justify it.

Request not to Retire

Pursuant to, **Para 5 of Schedule 6** if in a case where;

- The employer has fulfilled the notification requirements set out in **para 2**, the request is made between three and six months before the intended date of retirement (the right to request lapses three months before retirement);
- in a case where the employer has not fulfilled the notification requirements set out in para 2, the request is made at any time before the intended date of retirement

The employee has a right to request not to retire on the intended date of retirement but this must be in writing, and must propose that employment continue indefinitely, or for a stated period, or until a specified date. Where the employer has complied with neither the notification requirement of **para 2** nor the continuing duty to notify in accordance with **para 4**, the employee will not have an intended date of retirement. In that case, the employee's request must identify the date on which he or she believes the employer intends to retire him or her **para 5(2)**.

In what seems like an unnecessary further tightening up of procedures in employment law, **Para. 5(3) of Schedule 6** requires that the employee's request to work on past the intended retirement date must state that it is made 'under this paragraph'. It is not clear at this stage, whether this stipulation means simply that the request must be obviously labelled as a request not to retire or must expressly and specifically cite **Para 5 of Schedule 6 to the Employment Equality (Age) Regulations 2006**. Provision is made under **Para 7(3)** to remove the requirements in connection with the duty to consider a request to work on past the intended date of retirement where, before the end of the 'reasonable period' after the request is made, employer and employee agree between them to extend employment beyond the intended date of retirement.

Duty to Consider Request to Stay On

Under paras 7-9 of Schedule 6 the employer must:

- Hold a meeting to discuss the meeting with the employee within a reasonable period after receiving it (The requirements are also waived where it is not practicable to hold a meeting within the reasonable period **para 7(4)**. Where **para 7(4)** applies, the employer may consider the request without holding a meeting provided he considers any representations made by the employee).

- Take all reasonable steps to attend the meeting
- Notify the employee of the decision as soon as is reasonably practicable after the meeting.

An employer's failure to allow the employee to be accompanied can be compensated, following a successful complaint to an employment tribunal, by an award of no more than two weeks' pay (subject to a capping s.227(1) ERA). Both the employee and the companion are also protected from detriment and dismissal in relation to the right to be accompanied by **para 13 of Schedule 6. Paragraph 9 of Schedule 6** gives an employee the right to be accompanied during the initial meeting and during an appeal meeting, to consider his request not to retire. The companion must be chosen by the employee, must be a worker employed by the same employer as the employee, and must be permitted both to address the meeting and to confer with the employee during it. The employee also has the right to rearrange a meeting to a convenient time within seven days of the employer's proposed date if the chosen companion is not available on the employer's proposed date. S.108 ERA is amended by **para 24 of Schedule 8** to the Regulations so that complaints of unfair dismissal in this respect are not subject to the normal one-year qualifying period.

The Decision

The employer's decision must be notified in writing to the employee, and must be dated. If the decision is to let the employee continue indefinitely that must be stated or in the alternative, the extension agreed. If the employer decides to refuse the request, the notice should confirm both that he wishes to retire the employee and the date on which dismissal is to take effect.

The Appeal

Para. 8 of Schedule 6 imposes almost identical requirements as to the form and timing of the appeal meeting as are imposed in respect of the initial meeting. The appeal meeting must be held within a reasonable period after the date of the notice of appeal; the employer and employee must take all reasonable steps to attend; and the employer's written decision on appeal must be given to the employee as soon as is reasonably practicable after the date of the meeting.

However, there is very little guidance on what should be considered at the appeal meeting and how the decision should be made, again we must wait for case law to guide. The employee must give notice of appeal as soon as is reasonably practicable after the date of the employer's notice of decision the notice must be in writing, be dated and set out the grounds of appeal.

Fairness of Retirement Dismissals

Schedule 8 to the Regulations inserts certain provisions into the Employment Rights Act 1996S.98(2)(a) adds retirement to the existing potentially fair reasons for dismissal. However, instead of being subject to the usual test of fairness for dismissal provided for by S.98(4) ERA, Ss.98(2A) and (3A) provide that the fairness of retirement dismissals shall be determined only in accordance with **Ss.98ZA-98ZG**.

S.98ZA: dismissal of an employee before the age of 65, if he or she has no normal retirement age, is not for retirement.

S.98ZB: dismissal of an employee with no normal retirement age at 65 or above is for retirement if the **para 2** duty to inform the employee of the right to request not to retire has been complied with in respect of that date and the dismissal takes effect on the intended date of retirement, notwithstanding any other reason.

S.98ZC: dismissal of an employee before his or her normal retirement age is not for retirement.

S.98ZD: dismissal of an employee at the normal retirement age, where that age is 65 or above, is for retirement if the **para 2** duty to notify the employee of the right to request not to retire has been complied with in respect of that date and the dismissal takes effect on the intended date of retirement, notwithstanding any other reason.

S.98ZE: dismissal of an employee at the normal retirement age, where that age is lower than 65, is for retirement if the **para 2** duty to notify the employee of the right to request not to retire has been complied with in respect of that date and the dismissal takes effect on the intended date of retirement, notwithstanding any other reason, provided the lower retirement age is **objectively justified**.

S.98ZF: where the employer has failed to comply with the duty to notify under **para 2 of Schedule 6**, whether or not the dismissal is for retirement will be determined with regard to whether or not the employer notified the employee of the right to request working on past the intended retirement date under **para 4**, and, if so, how long before dismissal that notification was given, and whether or not the employer followed or sought to follow the duty to consider procedure. Matters to be considered by the tribunal in deciding whether the dismissal is for retirement or not are as follows:

- whether the employer has complied with the notification requirement under **para 4 of Schedule 6** (i.e. between six months and two weeks before the dismissal)
- if so, how long before the dismissal notification was given
- whether or not the employer has followed, or sought to follow, the duty to consider procedure.

Under **S.98ZG** a dismissal for retirement is fair unless the employer has failed to notify the employee in accordance with **para 4** or has failed to comply with the duty to consider procedure (a procedurally correct dismissal for retirement is automatically fair under the new rules). Thus it follows on reading **S.98 ZG** that an employer who allows his staff to work past 65 can dismiss any member of staff who has chosen to do so, on six months' notice and, provided he follows the statutory procedure, that dismissal will be automatically fair. The automatically fair provisions mean that no argument may be put forward by the member of staff such as he/she was making a protected disclosure. **Schedule 7** to the Regulations provides for the situation where a dismissal for retirement takes place after commencement and before 1 April 2007, putting in place a new timetable for the notification and right to request procedures.

The procedure to be followed to make a retirement dismissal fair depends on whether notice to dismiss is given before, on or after the commencement date, 1 October 2006.

The Claimant will have a right to compensation under **para 11** if the employer fails to inform him/her of the right to request to work on. Under the statutory retirement procedure that applies to dismissals taking place on or after 1 April 2007, a retired employee has the right to claim up to eight weeks' pay as compensation for the employer's failure to inform him or her of the right to request to work on past the intended retirement date under **para 2 of Schedule 6**.

During the **transitional period**, the employer is not placed under the **para 2** duty in respect of dismissals carried out before 1 April 2007. So long as he notifies the employee of the right to request at the appropriate time under the transitional provisions, he is treated as having complied with the duty **paras 2(2)(a) and 4(2)(a) of Schedule 7**. The appropriate time under the transitional provisions will be much closer to the intended retirement date than would otherwise be the case. If the employer does not notify at the appropriate time, the **para 2** duty does not apply and the **para 4** duty (i.e. the continuing duty to notify) applies as if the employer had failed to notify under **para 2 - paras 2(3)(b), 3(2)(b), 4(3)(b) and 5(2)(b)**. There is never any actual failure to notify under **para 2**, and so the right to complain to the tribunal cannot be engaged.

Dismissals taking effect between 1 October 2006 and 31 March 2007

IDS Brief use the following easy flow diagram:

(1) When was the notice of dismissal given?

If before 1 October, go to question 2.

If on or after 1 October, go to question 3.

(2) Has the employer given contractual notice, or, if that is more than four weeks, at least four weeks' notice of dismissal for retirement?

If YES, go to question 4.

If NO, the employer is under a continuing duty, as of 1 October and lasting until the expiry date, to inform the employee of his right to request not to retire. Go to question 6.

(3) Has the employer given at least contractual notice, or statutory minimum notice if that is greater, of dismissal for retirement?

If yes, go to question 5.

If no, the employer is under a continuing duty lasting until the expiry date to inform the employee of his right to request not to retire. Go to question 6.

(4) Has the employer on, or as soon as is reasonably practicable after, 1 October, informed the employee of his right to request not to retire?

If YES, the employer is treated as having complied with the main duty to notify under para 2 of Schedule 6. The employee can make a valid request not to retire at least four weeks before the notice expires or, if not practicable, as soon as is reasonably practicable up until four weeks after the expiry date. Provided the right to request procedure is followed properly, the resultant dismissal will be for retirement and will be fair.

If NO, the employer is under a continuing duty lasting until the expiry date to inform the employee of his right to request not to retire. Go to question 6.

(5) Has the employer, on or before the date he gave the employee notice of dismissal for retirement, informed the employee of his or her right to request not to retire?

If YES, the employer is treated as having complied with the main duty to notify under **para 2 of Schedule 6**. The employee can make a valid request not to retire at least four weeks before the notice expires or, if not practicable, as soon as is reasonably practicable up until four weeks after the expiry date. Provided the right to request procedure is followed properly, the resultant dismissal will be for retirement and will be fair.

If NO, the employer is under a continuing duty lasting until the expiry date to inform the employee of his right to request not to retire. Go to question 6.

(6) Has the employer discharged the continuing duty to inform by the date of dismissal?

If YES, the employee can make a valid request not to retire at least four weeks before the notice expires or, if not practicable, as soon as is reasonably practicable up until four weeks after the expiry date. Whether or not the resultant dismissal is for retirement will be determined having regard to how long before retirement notification was given and whether or not the employer followed or sought to follow the duty to consider procedure (**S.98ZF ERA**).

If NO, the dismissal will be unfair for failure to comply with the continuing duty to notify.

Dismissals before the age of 65

While the statutory retirement procedure above makes the dismissal for retirement of employees aged 65 or over relatively straightforward, retirement below 65 will only be possible if the employee has a normal retirement age below 65 and that lower retirement age is objectively justified **S.98ZE ERA**.

Employers must think long and hard before introducing a retirement age below 65 as it will be very difficult to provide objective justification for such an arrangement. For example, it would be arguably less discriminatory testing employees for their capability to continue doing a job rather than introduce a blanket retirement age if a

legitimate aim under the proportionality test of justification is to be satisfied. Therefore most employers currently operating a retirement age below will need to raise them to 65.

Retirement of Workers

Reg 30 does not include workers such as agency workers or independent contractors when it stipulates that the specified retirement age is fair and not discriminatory, no similar provision is made for workers who do not come within the S.230 ERA but this does not prevent a worker who finds his or her contract terminated on reaching a certain age arguing that he or she has suffered direct age discrimination. Such a termination would therefore need to be objectively justified. Objective justification that is based on the employer's business needs, and that takes account of the worker's particular circumstances, will need to be shown. Note: partners in law firms are deemed 'in employment' for the purposes of the Age Discrimination Regulations and so can bring claims of discrimination if they are dismissed for reaching a certain age.

Dismissals for Other Reasons

Those employees whose health leads to dismissal may find themselves dismissed for capability. If they do not qualify as, disabled under the DDA they now have a second avenue of redress. From 1 October 2006, any dismissal that is not for retirement may give rise to a claim for age discrimination if the worker can show that age-related reasons were behind the employer's decision to dismiss. Dismissals for capability may well overlap with Disability Discrimination Claims and many cases where both are pleaded are anticipated.

Amendments to Other Legislation

The statutory multipliers, prescribed under S.162 ERA, provide that a redundant employee is entitled to half a week's pay in respect of every year of employment under the age of 22; a week's pay for every year aged 22-40; and one and a half weeks' pay for every year aged 41 and over, subject to an overall maximum of 20 years. The only difference under the new rules will be the removal of the lower and upper limits on the right to claim redundancy payments (previously 18 and 65) and the 'taper' by which payments were reduced for employees aged over 64.

Under **Reg 33**, employers will still be able to offer redundancy payments that vary according to the employee's age so long as they are based on the statutory multipliers. An employer may enhance the amount offered by doing any or all of the following:

*

ignoring the limit on a week's pay provided for by S.227 ERA, to which statutory redundancy payments are subject

*

multiplying the amount allowed for each year of employment

*

multiplying the total amount of the payment.

Under **Reg 33(1)(a)**, the amounts an employer offers to different employees must all be calculated in the same way. Circumventing the application of these rules by multiplying payments to different age groups by different amounts is not permitted. The rules permitting redundancy payments based on the statutory bands also cover redundancy payments made to employees who would not qualify for a statutory redundancy payment (i.e. those with less than two years' continuous service) and to employees who take voluntary redundancy.

Contracts and Collective Agreements

Schedule 5 of the Regulations introduces provisions that render void terms of contracts and collective agreements that are unlawful under the Regulations. These provisions potentially affect large numbers of workers e.g, collective agreements may well contain terms purporting to confer a right to termination payments or enhanced redundancy packages that do not fall within the Regulations' specific exceptions (see above). Such terms are only void if they are 'unlawful by virtue of [the] Regulations' - which means that any term that, though otherwise discriminatory, can be objectively justified can remain.

Paragraph 1(3) of Schedule 5 renders unenforceable any contract term that seeks to exclude or limit the application of the Regulations. **This does not, however, apply to a properly constituted compromise agreement**, which fulfils the conditions set out in **para 2 of Schedule 5**. Complaints under the Regulations are also added to the list of claims set out in S.18 of the Employment Tribunals Act 1996 - that may be conciliated by Acas.

Justification

As with other forms of discrimination – age discrimination can be lawful in certain circumstances. Age in many cases ‘may genuinely be a relevant factor for certain aspects of employment and vocational training’ For example in vocations where there is a great deal of heavy lifting and years of training, it may be justified to exclude a sixty year old from the selection process. **Direct discrimination will be lawful if the treatment in question is shown to be a ‘proportionate means of achieving a legitimate aim’ Reg 3(1)**. Proportionate is to be equated with ‘appropriate and necessary’, and involves a balancing exercise between the discriminatory impact of the treatment in question and the legitimate aim of the employer, according to the DTI. The guidance states that a balancing exercise must be undertaken between the discriminatory impact of the treatment in question and the legitimate aim of the employer. The original draft of the Regulations (now removed) suggested that the fixing of a minimum age before being able to qualify for certain benefits. This proposal was an example dabbling with positive discrimination, something incompatible with the ethos behind existing discrimination legislation.

The thorny issue of whether cost and expense may be deemed justification for discrimination has been tackled with the first draft of the Regulations in July 2005,

which noted that discrimination will not be justified merely because it may be more expensive not to discriminate. However if case law in other areas of discrimination is followed it is possible that economic factors may be a valid consideration as one of combined justifications see the sex discrimination case of *Cross v British Airways plc* 2005 IRLR 42.

The Legitimate Aim

The DTI's initial public consultation entitled 'Age Matters', issued in July 2003, pointed to such factors as health and safety, the facilitation of employment planning, encouraging and rewarding loyalty, training requirements and the need for a reasonable period of employment before retirement, which might in exceptional circumstances warrant directly discriminatory measures.

Regulation 8 allows an employer, when recruiting for a post to treat job applicants differently on grounds of their age if possessing a characteristic related to age is a genuine occupational requirement for that post. An employer may also rely on this exception when promoting, transferring or training persons for a post and when dismissing persons from a post where a 'GOR' applies in respect of that post. This regulation is similar to regulation 7 of SO/RB.

Burden of Proof

Reg 37 makes provision concerning the burden of proof. Once the person making the complaint has made out a prima facie case that discrimination or harassment has taken place it is for the Respondent to prove that he/she did not commit the act of discrimination or harassment. The equivalent provisions for other areas of discrimination may be found in SO/RB reg 29 and s.63A of the SDA.

Territorial Jurisdiction

The rules (**Reg 10**) only apply to employment and contract work at an establishment in Great Britain, i.e. where the employee does his work wholly or partly in Great Britain. If the employee works wholly outside Great Britain, he or she will still fall within the scope of the Regulations where: (i) the employer has a place of business at an establishment in Great Britain; (ii) the employee's work is done for the purposes of the business carried on at that establishment; and (iii) the employee ordinarily resides in Great Britain at the time of recruitment or at any time during the employment or contract work.

Indirect Discrimination

Indirect discrimination occurs where: A applies to B a provision, criterion or practice which A applies, or would apply, equally to persons not of the same age group as B;

and that provision, criterion or practice puts persons of B's age group at a particular disadvantage when compared with other persons; and B suffers that disadvantage.

The meaning of, 'age group' as of yet has been given no clear definition by the DTI or any other source.

Harassment

Reg 6 defines harassment as, 'unwanted conduct which has the purpose or effect of either violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person, where such conduct is done 'on grounds of age'. The Regulations offer a slightly higher level of protection than the Framework Directive, which requires that the offending conduct must violate a person's dignity and create a hostile or degrading environment to constitute harassment, the Regulations merely require that one or other of these conditions be satisfied. Again, we await case law to offer further guidance.

The Regulations also spell out that conduct will only be regarded as having the effect of creating a 'hostile environment', etc if, having regard to all the circumstances including in particular the perception of the complainant, it should reasonably be considered as having that effect **Reg 6(2)**. The Regulations require that this conduct is unwanted, therefore it is important for the complainant to ensure that they make it clear that the behaviour is unwanted. Harassment of an older person does not necessarily constitute age harassment; the reason for the conduct in question must be the person's age in order for harassment to occur.

NB.) Reg 25 provides that employers are liable for acts of their workers that are unlawful under the Regulations, unless they have taken reasonable steps to prevent them. Training staff to not subject workers to jokes relating to age and in not excluding older employees in social activities on the grounds of age is advisable.

Examples of comments which might constitute harassment are:

A Named Female Complainant v a Company (DEC-E/2003/032) – “only a young foolish girl” (Ireland)

'Old git' comments

Riseman v Advanta Corp 2001 reported on www.law.com – “Uncle Mitty”

and “grumpy” (United States).

A diary containing 'old git' comments or 'amusing' old age birthday cards, is likely to establish a prima facie case of less favourable treatment on grounds of age on grounds of a discriminatory atmosphere at work In determining whether the criterion that the conduct shall be regarded as having that effect, a tribunal will consider both objective aspects (does the conduct have the effect of violating a person's dignity or affect the

environment) and the subjective view of the complainant. There is no provision for justification built into the Regulations.

Victimisation

Reg 4 In brief, A is regarded as victimising B if he treats B less favourably than he treats or would treat other persons in the same circumstances, and does so by reason that B has done (or is intending certain protected acts. The same applies if A knows that B intends to do a protected act, or suspects that B has done or intends to do such an act.

'A Protected Act'

- The definition of 'protected acts' under **Reg 4** mirrors that found in existing victimisation law. The protected acts are:
- bringing proceedings under the Regulations against A or anyone else;
- giving evidence in connection with a case brought under the Regulations;
- doing anything else under or by reference to the Regulations;
- and alleging that A has done an act which would be unlawful under the Regulations.

If the allegation, evidence or information turns out to be false, B will still be protected unless he or she was not acting in good faith in making the allegation or giving the information or evidence, as the case may be.

In What Instances are Otherwise Discriminatory Acts Lawful Under the Regulations?

Reg 7(4) It will be lawful for an employer to refuse to employ someone who has attained the employer's normal retirement age or, if there is no NRA, the age of 65, or who is within six months of retirement age at the date of application.

Reg 27 provides that no act done in order to comply with any statutory requirement shall be rendered unlawful under the Regulations. Health and Safety law is the first statutory requirement that springs to mind in potentially posing problems under this Regulation.

Reg 34 provides that employers who provide life assurance cover to workers who have had to retire early due to illness will be able to discontinue that cover when the worker reaches the normal retirement age, if there is one, or 65 if not.

Reg 28 states that no act done for the purpose of safeguarding national security shall be rendered unlawful, provided the act was justified.

Reg 8 recognises that there are limited circumstances in which being of a particular age will be a necessity for the position in question. Case law will no doubt offer guidance as what circumstances will be deemed a reasonable occupational requirement.

Upper age limits for the right to claim unfair dismissal and redundancy payments are to be removed by the new Regulations as from 1 October 2006 however exemptions from the principle of non-discrimination on the ground of age made for service-related benefits and minimum pay rates applicable to younger workers under the national minimum wage legislation are two exceptions to non-discrimination on the ground of age.

The national minimum wage is set at different levels depending on the age of the worker. As announced by the DTI on 20th March 2006, the adult rate of the national minimum wage for those aged 22 or more is increased by 30p from £5.05 to £5.35 per hour with effect from 1st October 2006. As a result the basic adult NMW will be almost 50% more than when it was introduced in 1999. The equivalent rate then was £3.60 per hour. The youth rate, for 18-21 year olds, increases from £4.25 to £4.45 per hour in October 2006 and the rate for 16 and 17 year olds increases from £3 to £3.30 per hour.

This age related pay will still be permitted but this rule effectively protects employers who pay only national minimum wage rates. However if a 20yr old is paid £8 per hour and a 23 yr old is paid £20 per hour, the junior worker could bring a claim for discrimination.

Pension Exemptions

Schedule 2 of the Age Discrimination Regulations contains rules relating to conditions of access to, and entitlement under, pension schemes. While the Regulations make it unlawful for trustees and managers of occupational pension schemes to discriminate against members or prospective members on the ground of age, there are lots of exemptions. These include:

- setting a minimum level of pensionable pay for admission to a scheme, provided that level is not above the lower earnings limit (currently £84 per week)
- setting a minimum age for payment of benefits provided that, in the case of benefits paid under a defined benefit arrangement before any early retirement pivot age (i.e. the earliest age for benefit without reduction), such benefits are subject to actuarial reduction and the member is not credited with added years
- only providing benefits to members who have completed more than a minimum period of service, provided that minimum is not more than two years
- in the case of a money-purchase scheme, applying different rates of employer or member contributions according to members' ages where this is done with the aim of equalising or making more equal the amount of benefit that differently aged members in comparable situations are entitled to.
- setting a minimum or maximum age for admission to the scheme

Practical Steps for Businesses

We can look to Ireland for guidance who introduced age discrimination provisions through the Employment Equality Act 1998, age discrimination claims have constituted 25 per cent of all discrimination applications to tribunals.

Introduce Flexible Policies

The Nationwide Building Society has recently extended its flexible retirement policy to allow employees to continue working up to the age of 75.

Employment continues after normal retirement on the same terms, including entitlement to private health insurance and critical illness cover, which many other employers believe would be too costly to provide to older workers. In a study for IDS Diversity at Work No.23, Nationwide's HR Manager responsible for diversity noted that raising the retirement age to 75 was also likely to reduce administrative costs, as there would be far fewer 74-year-olds than 64-year-olds likely to put in a formal request not to retire.

Diversity Policies - Training Staff about What may Constitute Harassment

Train employees that it is unacceptable to joke about a person's age/ physical traits connected with age and that it is wrong to only involve individuals of certain age in social activities. Note **Reg 25** provides that employers are liable for acts of their workers that are unlawful under the Regulations, unless they have taken reasonable steps to prevent them.

Positive Action

An employer may not directly discriminate against employees, job applicants or candidates for promotion in order to achieve a more diverse workforce, **Reg 29(1)** however does permit action short of positive discrimination with this purpose in mind. This is either giving persons of a particular age or age group access to facilities for training with the aim of making them suitable for that type of work, or encouraging persons of a particular age or age group to take advantage of opportunities for doing that work. The DTI consultation paper sums up the situation well:

An employment agency targets an older age group by advertising that it specialises in finding work for people above 50. This itself would be unlikely to constitute difference of treatment on grounds of age. However if a 30 year old wanted to use the agency's services and was refused because of his or her age, the employment agency would have to objectively justify this.

This would include, for example, advertising positions in publications whose readership is known to be of a particularly under-represented age-group.

ASDA claims to be the largest employer of over 50s and state that morale has risen and absences have dropped as a result but the benefits to the company will not satisfy discrimination law. The company must show that over 50s will prevent or compensate for disadvantages suffered by that age group.

Recruitment

Job specification criteria accompanying advertisements and the way in which potential job applicants are targeted may constitute ‘arrangements an employer makes for the purpose of determining to whom he should offer employment’ under **Reg 7(1)(a)** and a candidate may point to the advertisement as an intention to discriminate. The way in which potential job applicants are targeted may constitute ‘arrangements an employer makes for the purpose of determining to whom he should offer employment’ and be caught by the Regulations. **7(1)(a)** would apply to practices such as the milk-round, whereby employers target graduates. It is recommended that if employers choose to continue operating a graduate recruitment programme, that there are visible, alternative entry methods for older graduates and others. Employers should also consider the appropriateness and justifications for other programmes such as fast track, leadership and management development programmes. Employers should make sure that they target all age groups for roles and do not specify age groups in recruitment advertisements.

The following type of job adverts should be avoided:

‘The atmosphere in the office is lively relaxed and young...’

‘Applicant must have graduated in the last 7 years...’

‘Trainee chef....envisaged age 21- 28....’

Questions on application forms, and job specification requirements could also fall within its scope. The Acas Guidance, ‘Age and the Workplace’, which contains advice on good practice under the Regulations, recommends removal of questions on age and date of birth from the main application form, and instead collecting this information through a separate diversity monitoring form. Questions asking for dates as to when the applicant went to school should also be avoided. It is also suggested that employers do not ask for a photograph with job applications for the above reasons.

Those in charge of recruitment should be trained in being age-neutral in the selection of employees. It therefore follows that all job advertisements should attempt to be as age neutral as possible. Further steps to take may be:

Instead of focusing on the number of years’ experience required, employers might be better off setting requirements as to the type of experience needed for the job.

Beware of alienating older candidates by stating that a candidate with little or no experience will be preferred or referring to a position as ‘ideal for a first starter’. This will be strong evidence leading to an inference of age discrimination. Even requesting that recent graduates (most are in their 20s) may be a criterion likely to discriminate against older graduates. Furthermore asking for degrees only offered in the last 20 years or so would be likely to be deemed to discriminate against older candidates.

If an advertisement is going to specify that an individual must be prepared to work late then it must be a genuine occupational requirement and a ‘provision, criterion or practice’ (pcp) that may be objectively justified. It is anticipated that otherwise it may

be possible for members of a particular age group to prove that they have childcare commitments leading to an indirect discrimination claim.

Interviews and performance management meetings are also covered under the Regulations and therefore it is advisable to ensure that interviewers have received training on what not to allude to. Any perception on a worker's part that effective performance management is being denied them is likely to be perceived as a substantial detriment. When dealing with performance it should be noted that taking account of any decline in performance that is a result of ageing may constitute age discrimination. Although the rules do not come into force until 1 October, they could still affect performance appraisals and progress reviews conducted before then. For example, employers may use old reviews and reports going back a number of years as factors influencing the award of benefits or promotion. Monitoring shortlists and applications for a job is a good way of ensuring fairness.

Training aimed at progressing the careers of their workers can advance an employee in terms of his/her continued progression through the ranks of the company and therefore should be open to all workers regardless of age. Training in order to allow an older worker to catch up if the action 'prevents or compensates for disadvantages linked to age suffered by persons of that age or age group doing that work or likely to take up that work' **Reg 29(1)**.

Pay/Terms and Conditions

These should not be determined on experience. **Reg 32** sums up the law well in that it allows an exception for service-related benefits, which makes allowances only for rewarding long service with the employer and not for experience gained elsewhere. If an employer is to reward loyalty for long service he/she should only do so above 5 years and should conduct some form of staff survey or focus group that will prove that such extra benefits bring such loyalty.

Note that there are special provisions for calculating a worker's length of service for the above purposes. On each occasion on which the employer decides to use the criterion of length of service in relation to the award of a benefit, he must make a choice between two bases for calculating a worker's length of service. These are:

- the length of time the worker has been working for him doing work which he reasonably considers to be at or above a particular level (assessed by reference to the demands made on the worker in terms of, for example, effort, skills and decision-making); or
- the length of time the worker has been working for him in total **Reg 32(3)**.

The employer is also entitled to discount any period of absence from the calculation unless it would not be reasonable for him to do so, or even discount periods in service before a period of absence if it is reasonable to do so **Reg 32(4)**. NB The general exemption for service-related benefits does not apply to 'any benefit awarded to a worker by virtue of his ceasing to work for' the employer **Reg 32(7)**.

Handling Retirement

The Employment Equality (Age) Regulations 2006 SI 2006/1031 introduces a default retirement age of 65. Provided the employer follows a prescribed procedure, he/she will be able fairly to dismiss an employee for retirement at this age or above. The procedure to put in place is as follows:

A dismissal for retirement reasons will not be deemed unlawful age discrimination if the **employer** between 6 and 12 months before the date of dismissal, in writing notifies the employee of his right to **request not to retire** on the intended date of retirement.

The rule applies regardless of whether or not the date has already been specified in any notification or other information the employer may already have given the employee. If the employer fails to notify at least six months before the intended retirement date, he is subject to a continuing duty to inform the employee in writing of the intended date of retirement and of the right to request to work on past the retirement date **para 4, Sch 6**. This continuing duty lasts until two weeks before the date the employee's employment is due to terminate.

Retirement of Workers as Opposed to Employees

Reg 30 does not include workers such as agency workers or independent contractors when it stipulates that the specified retirement age is fair and not discriminatory, no similar provision is made for workers who do not come within the S.230 ERA but this does not prevent a worker who finds his or her contract terminated on reaching a certain age arguing that he or she has suffered direct age discrimination. Such a termination would therefore need to be objectively justified. Objective justification that is based on the employer's business needs, and that takes account of the worker's particular circumstances, will need to be shown.

Dismissals before the age of 65

While the statutory retirement procedure above makes the dismissal for retirement of employees aged 65 or over relatively straightforward, retirement below 65 will only be possible if the employee has a normal retirement age below 65 and that lower retirement age is objectively justified **S.98ZE ERA**.

Employers must think long and hard before introducing a retirement age below 65 as it will be very difficult to provide objective justification for such an arrangement. For example, it would be arguably less discriminatory testing employees for their capability to continue doing a job rather than introduce a blanket retirement age if a legitimate aim under the proportionality test of justification is to be satisfied. Therefore most employers currently operating a retirement age below will need to raise them to 65.

Request not to Retire

Pursuant to, **Para 5 of Schedule 6** if in a case where;

- The employer has fulfilled the notification requirements set out in **para 2**, the request is made between three and six months before the intended date of retirement (the right to request lapses three months before retirement);
- in a case where the employer has not fulfilled the notification requirements set out in para 2, the request is made at any time before the intended date of retirement

The employee has a right to request not to retire on the intended date of retirement but the must be in writing, and must propose that employment continue indefinitely, or for a stated period, or until a specified date. Where the employer has complied with neither the notification requirement of **para 2** nor the continuing duty to notify in accordance with **para 4**, the employee will not have an intended date of retirement. In that case, the employee's request must identify the date on which he or she believes the employer intends to retire him or her **para 5(2)**.

In what seems like an unnecessary further tightening up of procedures in employment law, **Para. 5(3) of Schedule 6** requires that the employee's request to work on past the intended retirement date must state that it is made 'under this paragraph'. It is not clear at this stage, whether this stipulation means simply that the request must be obviously labelled as a request not to retire or must expressly and specifically cite **Para 5 of Schedule 6 to the Employment Equality (Age) Regulations 2006**. Provision is made under **Para 7(3)** to remove the requirements in connection with the duty to consider a request to work on past the intended date of retirement where, before the end of the 'reasonable period' after the request is made, employer and employee agree between them to extend employment beyond the intended date of retirement .

Duty to Consider Request to Stay On

Under paras 7-9 of Schedule 6 the employer must:

- Hold a meeting to discuss the meeting with the employee within a reasonable period after receiving it (The requirements are also waived where it is not practicable to hold a meeting within the reasonable period - para 7(4). Where para 7(4) applies, the employer may consider the request without holding a meeting provided he considers any representations made by the employee).
- Take all reasonable steps to attend the meeting

Notify the employee of the decision as soon as is reasonably practicable after the meeting.

The Decision

The employer's decision must be notified in writing to the employee, and must be dated. If the decision is to let the employee continue indefinitely that must be stated or in the alternative, the extension agreed. If the employer decides to refuse the request, the notice should confirm both that he wishes to retire the employee and the date on which dismissal is to take effect.

The Appeal

Para. 8 of Schedule 6 imposes almost identical requirements as to the form and timing of the appeal meeting as are imposed in respect of the initial meeting. The appeal meeting must be held within a reasonable period after the date of the notice of appeal; the employer and employee must take all reasonable steps to attend; and the employer's written decision on appeal must be given to the employee as soon as is reasonably practicable after the date of the meeting.

However, there is very little guidance on what should be considered at the appeal meeting and how the decision should be made, again we must wait for case law to guide. The employee must give notice of appeal as soon as is reasonably practicable after the date of the employer's notice of decision the notice must be in writing, be dated and set out the grounds of appeal.

Redundancy

Employers should be careful that their redundancy policies are age neutral. For example, often companies may operate a, 'last in last out' approach, this may be deemed discriminatory as often the last in are younger employees. When releasing employees, the organisation's future needs for knowledge, skills and competencies should be taken into account the "corporate memory" needs protection. Alternatives to redundancy should therefore always be considered as a part of the redundancy procedure e.g. shorter hours, part time working, contractual arrangements, secondments or employment breaks.

The upper age limit on entitlement to statutory redundancy pay is to be removed. The Government stated that it did not believe that there are legitimate aims supporting discrimination against older employees in the form of an upper age limit on redundancy payments. The two-year qualifying length of service however, although potentially discriminatory will be maintained.

Dismissals for Other Reasons

Those employees whose health leads to dismissal may find themselves dismissed for capability. If they do not qualify as, disabled under the DDA they now have a second avenue of redress. From 1 October 2006, any dismissal that is not for retirement may give rise to a claim for age discrimination if the worker can show that age-related reasons were behind the employer's decision to dismiss. Dismissals for capability may well overlap with Disability Discrimination Claims and many cases where both are pleaded are anticipated.

Harassment

Employees should be trained as to what constitutes harassment and be made clear that such behaviour can constitute a final written warning or gross misconduct. **Reg 6** defines harassment as, 'unwanted conduct which has the purpose or effect of either violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person, where such conduct is done 'on grounds of age'.

Reg 25 provides that employers are liable for acts of their workers that are unlawful under the Regulations, unless they have taken reasonable steps to prevent them. Training staff to not subject workers to jokes relating to age and in not excluding older employees in social activities on the grounds of age is advisable.

Examples of comments which might constitute harassment are:

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and “grumpy” (United States).

A diary containing ‘old git’ comments or ‘amusing’ old age birthday cards, is likely to establish a prima facie case of less favourable treatment on grounds of age on grounds of a discriminatory atmosphere at work

Business Checklist

- Introduce an equal opportunities policy which includes age considerations.
- Ensure age is never used as a factor in staff recruitment/training/development/ or exit procedures and make sure employees are aware of this.
- Conduct a review of current procedures with the specific aim of identifying and removing all ageist practices, including pensions.
- Meet with employee representatives to decide how best to remove age from existing contracts and agreements and get feedback from staff questionnaires.
- Develop a system for analysing staff surveys and monitoring employee information by age to assist in identifying potential problem areas.
- Where a judgement on an applicant’s health or fitness is required, an occupational health or medical practitioner should be consulted and no assumptions made based on their age.
- Assess candidates objectively not their age or physical characteristics but on their ability to do the job, relevant knowledge and experience and personal qualities, not their age or physical characteristics. Record these assessments for one year. Use age profiling to monitor the selection process at short-listing, interview and appointment to ensure that you have been fair.
- Ensure that rates of pay and other benefits are not linked to the age of the individual, but to their experience or other non age-related criteria; Do not claim that certain pay and benefits are restricted by insurance premiums. The majority of policies are based on the overall business claims record and not on the age of the employees

Train staff:

- Make sure all your personnel staff and line managers fully aware that the changes are coming in 2006.
- Train your staff so that they are fully aware of the behaviours that could be perceived as harassment, direct or indirect discrimination and victimisation on the grounds of age?
- Always ensure that staff responsible for selecting and interviewing candidates are trained in equal opportunities and age discrimination.
- Make sure managers and supervisors do not introduce minimum or maximum age “cut-offs” simply because of assumptions about age groups, and that they are aware that age is not a barrier to career progression and promotion.
- Update policies dealing with bullying and harassment to ensure that they include harassment on age grounds and make it clear that such harassment is unlawful and that individuals can be held personally liable as well as, or instead of, the employer.

Useful Links

www.acas.org.uk

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