



Tackling the age-old problem of discrimination

This autumn saw one of the biggest changes in UK employment law in 30 years – the Employment Equality (Age) Regulations. Here Community's National Secretary for Politics and Equal Rights, Joe Mann, answers your questions about how they could affect you...

The new law in brief

It is unlawful on the grounds of your age to:

- decide not to employ you
- dismiss you
- deny you promotion
- refuse to provide you with training
- offer you less favourable terms and conditions than others
- force you to retire before 65 (or your firm's retirement age).

When did the law come into force and why?

On 1 October in England, Scotland and Wales, with similar laws being introduced in Northern Ireland. Its pension provisions came into force on 1 December. With race, sex, disability, sexual orientation and religious discrimination already in existence, there was a need for protection against age discrimination, too – especially the need to offer people the choice of extending their working lives.

What does it mean and for who?

It means it's against the law to discriminate against workers, jobseekers or those applying for or in vocational training because of their age, young or old – with certain exemptions. The law currently only applies to under-65s but in 2011 the government will review extending its protection to over-65s.

Exemptions?

Discrimination may be justified on certain legal and health and safety grounds, such as the need to recruit over-18s as betting shop staff, or turn down a 64-year-old applicant if the job requires several years' expensive training. It's up to employers to prove that the business need outweighs the effects of the discrimination. This 'grey area' could be the basis of many tribunals in the next few years and the role of unions like Community could be crucial in challenging age-discriminating behaviour.

What areas does the law cover?

Retirement – If your employer tries to force you to retire before 65, you can claim age discrimination and unfair dismissal if they can't justify their actions or fail to follow notification procedures. There is currently no national retirement age but there is a 'state pension age' (60 for women and 65 for men). You don't have to retire at these ages. The law creates a new 'default' retirement age of 65 for men and women.

Staying on – You now have the right to request to work beyond 65 (or the firm's given retirement age). This doesn't affect voluntary retirement or your state pension age. Your employer must consider your request. If they agree, they will tell you whether you can stay on indefinitely or for a certain period. If they refuse they don't have to explain why but you can appeal against their decision.

Recruitment – Employers can no longer refuse to hire you because of your age or to advertise for certain age groups, unless they can justify it (see Exemptions above). However, if you are over 65 or within six months of retirement (or the firm's retirement age, if higher) you have no protection against discrimination when applying for jobs.

Promotion and training – All workers under 65 now have the same rights to apply for promotion and training, and can take legal action if denied opportunities because of their age.

Pay and non-pay benefits – Where these are linked to age and length of service the law allows differences to remain where pay and benefits depend on less than five years' service, or recognise loyalty, experience and motivate staff, and in the case of the minimum wage. The age limits for statutory sick, maternity, adoption and paternity pay have been removed so the legislation for all four applies in the same way whatever your age.

Pensions – There are number of exemptions for many age-based rules, allowing occupational pension schemes to continue to operate without significant changes.

Redundancy – The new law removes the upper and lower age limits for statutory redundancy payments so people aged 65 and over are entitled to payment calculated in the same way as for younger staff. Age and length of service will still be used to calculate statutory redundancy pay (and unfair dismissal compensation). So older people will continue to be paid at a higher rate than younger people, a difference the government believes is justified. Any workplace redundancy payments scheme that differs from the statutory scheme must be justified by the employer or could be unlawful. Firms can no longer use age or length of service to choose redundancy candidates.

Unfair dismissal – The upper age limit for claims has been removed, so if you are over 65 you now have the same right as younger workers to challenge for unfair dismissal, as long as you meet other eligibility requirements.

What should I do if I'm being discriminated against because of my age?

1. Contact your union representative for advice.
2. Gather evidence of potential discrimination, for example, figures on redundancies or training for different age groups.
3. Follow the company's grievance procedure, putting your complaint in writing.
4. Meet with your employer – you have the right to have a union rep or work colleague present.
5. Appeal if you're not satisfied with your employer's decision.

Where can I get more information?

www.worksmart.org.uk

Age and Employment Network – 0207 843 1590, www.taen.org.uk

0116 204 4200, www.niace.org.uk - education and training advice

www.ageconcern.co.uk, 0800 00 99 66 (0845 125 9732, Scotland)

www.helptheaged.org.uk

