



## Age Discrimination Policy

The Age Discrimination Act became lawful on the 1<sup>st</sup> October 2006. As with any discrimination claim it is for the employer to prove that they did not discriminate. The complainant's word is "first word".

### Direct discrimination

Direct discrimination is less favourable treatment because of someone's age.

For example it is unlawful on the grounds of age to:

- decide not to employ someone
- dismiss them
- refuse to provide them with training
- deny them promotion
- give them adverse terms and conditions
- retire an employee before the employer's usual retirement age (if there is one) or retire an employee before the default retirement age of 65 without an objective justification, for example, medically unfit

### Example:

Whilst being interviewed, a job applicant says that she took her professional qualification 30 years ago. Although she has all the skills and competences required of the job holder, the organisation decides not to offer her the job because of her age. This is direct discrimination.

*NOTE: A job applicant can make a claim to an employment tribunal, it is not necessary for them to have been employed by the organisation to make a claim of discrimination.*

### Indirect discrimination

Indirect discrimination means selection criteria, policies, benefits, employment rules or any other practices which, although they are applied to all employees, have the effect of disadvantaging people of a particular age unless the practice can be justified.

Indirect discrimination is unlawful whether it is intentional or not.

### Recruitment

Indirect discrimination would display itself as stating that the employee must have a degree (i.e. must be 21 years old) and if this is a stated requirement for a job that can be learned and does not require a degree then it could be perceived as "Age Discrimination."

That does not mean to say that if a degree is required, for example, Engineering, Health & Safety, Legal, etc., that you cannot use this criteria – the burden of proof is on us, the organisation, to state why the person requires the qualification to be able to do the job.

Also the employer can no longer use the terms GCSE's or GCE's. Some employees may have taken GCE's but their younger colleagues may have taken GCSE's therefore this would be discriminatory to a particular age group. The best practice around this dilemma is to be precise and state what criteria you require and why.

### Example:

The person will be responsible for compiling and writing specifications and therefore excellent writing skills, including grammar and punctuation, will be an essential requirement. Additionally the person will manage a budget and therefore a high degree of numeracy and accuracy is essential.

## Qualifications

We do need to be careful as to what professional qualification we require.

If we require an accountant to be ACCA trained that is permissible but to then go on and say they need to be a fellow of the "Chartered Accountants profession" we would need to explain why this is a requirement for this particular job.

## Lawful discrimination

There are limited circumstances when it is lawful to treat people differently because of their age. It is not unlawful to discriminate on the grounds of age if:

- There is an objective justification for treating people differently – for example, it might be necessary to fix a maximum age for the recruitment or promotion of employees (this maximum age might reflect the training requirements of the post or the need for a reasonable period of employment before retirement)
- Where a person is older than, or within six months of, the employer's normal retirement age, or 65 if the employer doesn't have one, there is a specific exemption allowing employers to refuse to recruit that person
- The discrimination is covered by one of the exceptions or exemptions given in the regulations – for example pay related to the National Minimum Wage
- There is a genuine occupational requirement (GOR) that a person must be of a certain age – for example, if we know that the job requires the proficient use of a chain saw on a regular basis and the HSE rules disallows a younger person to use that piece of equipment until they are of a certain age, then we can apply the relevant minimum age

## Harassment

Harassment includes behaviour that is offensive, frightening or in any way distressing. It may be intentional bullying which is obvious or violent, but it can also be unintentional, subtle and insidious.

It may involve nicknames, teasing, name calling or other behaviour which is not with malicious intent but which is upsetting. It may be about the individual's age or it may be about the age of those with whom the individual associates. It may not be targeted at an individual(s) but consist of a general culture which, for instance, appears to tolerate the telling of ageist jokes.

**Example:**

A young employee is continually told he is “wet behind the ears” and “straight out of the pram” which he finds humiliating and distressing. This is harassment.

**Example:**

An employee has a father working in the same workplace. People in the workplace often tell jokes about “old fogies” and tease the employee about “teaching an old dog new tricks”. This may be harassment on the grounds of age, even though it is not the victim’s own age that is the subject of the teasing.

**Example:**

Birthday cards that are circulated for signature that have ageist comments written on them such as “over the hill” or “past your sell by date”.

All of the above examples can be construed as age discrimination.

## Pay

The reward strategy should underpin pay rates to performance and not to length of service. (*Name of organization here*) can attribute a lawful level of experience and expertise to pay –but we can no longer reward length of service by increase of pay. We can however have stepped benefits for a period of up to five years service, such as our sickness payments etc. but thereafter everyone should be treated the same.

## Fair retirement

A fair retirement is one that:

- takes effect on or after the default retirement age (or on or after the employer’s normal retirement age – if there is one – in our case this is 65 years old both for males and females) and
- where the employer has given the employee written notice of the date of their intended retirement and told them about their right to request to continue working

For the retirement to be classed as “fair” you need to have informed the employee in writing of their intended retirement date and of their right to make a request to work beyond retirement age at least six months in advance (but no more than 12 months before the intended date). If they do make such a request, you must have followed the correct procedure for dealing with it.

## Working Beyond Retirement Date

### Notification of Right to Request to Continue Working

You should notify the employee in writing of their right to request to go on working beyond their retirement date (at least six months in advance but no more than 12 months before the intended date).

When you write to the employee it is good practice to set out how you will manage the retirement process. Remind them of your obligation to give consideration to any request to work after the normal retirement age and in order not to raise the expectations of the employee, explain that you are entitled to refuse the request.

You are not required to give a reason for your decision as – if you have followed the retirement procedure correctly. If you choose to give reasons, take the time to consider what you are going to say and how you are going to say it.

You must be careful not to suggest that you might be discriminating against the employee on the grounds of race, gender, disability, sexual orientation or religion or belief. If the employee has been properly notified (as above) and wishes to continue working, they must request to do so no less than three months before the intended retirement date.

If you fail to notify the employee six months in advance of retirement, you may be liable for compensation and you have an ongoing duty (up until two weeks before the retirement dismissal) to inform the employee of both the intended date and their right to request working longer. Failure to do this will make the dismissal automatically unfair.

If you fail to inform the employee of their intended retirement date and of their right to request to continue working, the employee will still be able to make a request not to retire at any stage until dismissal. If the employee does make a request the employment must continue until the day after the employer notifies the employee of their decision on the request.

Employees should be able to retire with dignity so try and use as much tact and sensitivity as possible.

## Redundancy

Redundancy procedures should be based on business needs rather than age.

Employees and their representatives must be involved in planning for redundancy.

Age should not be a factor when making decisions about redundancy and neither should length of service i.e. first in last out. This particular statement is also important as it could be perceived as age discrimination and sex discrimination as women can justifiably state that they could not conform to the same length of service as a male due to child rearing responsibilities.

Enhanced redundancy payments may be made based on age and length of service. The new redundancy statutory payments are as follows as of 1st October, 2006.

- Up to the age of 21 - 0.5 week's pay for each completed year of service
- 22 - 40 years of age - 1 week's pay for each completed year of service
- 41+ years of age - 1.5 weeks' pay for each completed year of service

The qualifying and maximum service of twenty years still holds but the upper age limit of 65 has been removed. It therefore means that a person of 70 years old who became employed at 58 would be entitled to 12 years redundancy payment.