

Age of equality



DEBORAH THOMAS EXPLAINS WHY TREASURY HAS TO RECRUIT, TRAIN, TREAT AND PROMOTE PEOPLE ON THE BASIS OF THEIR SKILLS RATHER THAN THEIR DATE OF BIRTH.

We live in an ageist society where youth is highly valued. You only have to look at the youth of our political and business leaders to realise that. But it is important that employees are appraised on the basis of their relevant skills and ability.

The government will be keen to enforce its new anti-ageism legislation, so employers should be extremely careful in implementing policies and procedures. Courts will generally give the individual the benefit of the doubt, not the employer.

So what is this new legislation?

As a result of the Employment Equality (Age) Regulations 2006 that took effect from 1 October this year, some employers may have to adjust their approach to recruitment and internal succession planning and processes.

The regulations makes it unlawful to discriminate against workers, job seekers and trainees because of their age. Unlike the similar US legislation, which protects the over-40s only, the UK legislation will cover discrimination against both older and younger employees. The main areas covered are recruitment, selection and promotion; benefits; retirements; pensions; and dismissal.

One of the aims of the regulations is to halve the loss of talent companies suffer simply through a self-imposed ageist mindset, and to increase access to employment for younger individuals.

The legislation provides the same level of protection as other forms of discrimination legislation, and covers the following:

- Direct discrimination (such as setting specific age limits);
- Indirect discrimination (such as setting criteria that individuals of a particular age are less likely to satisfy);
- Harassment, which covers intentionally or unintentionally subjecting a person to unwanted conduct because of their age (such as age-related banter or jokes); and
- Victimisation (in other words, less favourable treatment because an individual sought to rely on rights under regulations).

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HOW NOT TO FALL FOUL OF THE LAW

- Make sure that any job specifications (for both internal and external candidates) focus on skills and competencies rather than age or years of experience.
- Consider for a position all candidates who possess the ability to fill it – even if they appear overqualified (for example, a senior treasurer applying for a more junior position). Candidates are not required to submit their date of birth or year of qualification on their CV.
- Ensure that your reasons for rejection are clear and justifiable.
- Educate your staff about the issues, particularly as the employer can be held liable for employees' actions. It is key that recruiters assess on competency and are not influenced by age.
- Seek advice from your human resources department or take legal advice if necessary.
- Think about the impact on your business of breaking the law.
- Whatever you do, don't discriminate on the basis of age.

A defence of objective justification exists that would allow organisations to discriminate legally in any of these ways but proving objective justification would require statistical data.

So is there anything that companies can do straightaway to help them comply with the legislation?

In terms of recruitment, yes. Take a look at the box above for some of the basic steps that need to be taken.

The legislation is not about making it impossible to reject candidates for a particular position. Individuals still need the relevant skills and competencies to carry out the role. However, you may find yourself having to justify your decision to take person A rather than person B, both internally and externally.

Test cases will probably be taken through the courts over the next few and the outcomes there will provide some benchmarking. However, companies should not rely on this, as each case has its own particular set of circumstances to consider.

This legislation is positive and an opportunity to be inclusive. With potential retirement ages rising up to 70, employers have an extended pool of talent to fish in. Use this legislation to change attitudes and make the employment world better for everyone, including yourself.

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