

---

questions and answers  
age discrimination



**DICKINSON DEES**



---

**WHEN WILL THE LAW CHANGE ?**

The regulations to combat age discrimination in employment and vocational training – the Employment Equality (Age) Regulations 2006 ("the Regulations") - will come into force in the UK on 1 October 2006.

**WHO IS PROTECTED?**

The Regulations offer wide-ranging protection whatever your age, to people who are working, whether they are directly employed, on fixed or indefinite term contracts, or working under another type of contract, such as agency workers and some self-employed people. Applicants for jobs or training are covered, and in some circumstances, so are people who have left work.

**DO THE REGULATIONS APPLY TO ALL BUSINESSES?**

The Regulations apply to all employers, whatever the size of the business, along with providers of vocational training, including further and higher education institutions and private training companies, trades union, professional associations, and employer's organisations.

**IN OUR BUSINESS, WE TREAT EVERYONE THE SAME, REGARDLESS OF AGE – SURELY THAT MEANS WE WON'T HAVE ANY ISSUES TO DEAL WITH?**

Not necessarily. The Regulations make it unlawful to discriminate directly against a person on the basis of their age, or their apparent age, eg to employ A instead of B because A looks younger. However, in line with other existing discrimination legislation, the Regulations will also make it unlawful to discriminate indirectly, by adopting a provision, criterion or practice which applies to everyone, but causes disadvantage to a certain group (such as younger or older people).

**ARE THERE ANY EXCEPTIONS TO THE NEW RULES ?**

Both direct and indirect discrimination can be objectively justified and lawful if they can be shown to be a proportionate means of achieving a legitimate aim.

Determining pay and benefits on the basis of length of service or experience – for example, extra annual leave after so many years service – is quite common. The legislation will allow employers to provide pay and non-pay benefits based on length of service or experience, which might otherwise amount to unlawful direct or indirect discrimination, if 1) less than five years, or 2) they can justify doing so where the aim is to recognise experience, reward loyalty or encourage motivation; the employer reasonably concludes there will be a business benefit in doing it, and the employer applies the length of service criterion to all staff in similar situations.

**OUR COMPANY IS LOOKING TO ADVERTISE A VACANCY – WHAT FACTORS DO WE NEED TO CONSIDER WHEN ADVERTISING ?**

You could look at training the staff responsible for selecting and interviewing candidates in equal opportunities and age discrimination; avoid asking for photographs; move information about dates of birth or age to diversity monitoring forms not seen by selectors; job specifications should be drafted so that they are based on the skills required for the job; consider whether the qualifications you ask for are necessary, or whether there are other ways of specifying the skill level you require; avoid using language which suggests a candidate of a particular age, eg "young", or "mature".

It is also important to ensure that you use only reputable recruitment consultants, who you can be sure will act appropriately, and within the scope of the new rules.

---

questions and answers  
**age discrimination**



**DICKINSON DEES**



---

**WE ARE PLANNING A CAMPAIGN TO RECRUIT SOME EMPLOYEES OVER THE AGE OF 50. CAN WE CONTINUE WITH THIS?**

The Regulations cover the employment relationship from the outset, and deal with recruitment and selection. Positive action to redress imbalances is permitted, but you will need to be able to show that imbalances exist.

**IS IT TRUE THAT EMPLOYEES OVER 65 WILL NOW BE ABLE TO BRING UNFAIR DISMISSAL CLAIMS?**

Current age limits on unfair dismissal and redundancy claims will be removed by the Regulations.

**A NUMBER OF OUR STAFF ARE DUE TO RETIRE. IS THERE ANYTHING WE NEED TO DO DIFFERENTLY?**

The Regulations include a national default retirement age of 65, and a right for employees to request working beyond the set retirement age. Retirement will be a new and potentially fair reason for dismissal. An employer must inform an employee of the intended retirement date at least six months but not more than 12 months in advance. An employee may request not to be retired, and the employer must consider such a request, using a detailed "duty to consider" procedure. For employees due to retire between 1 October 06 and 1 April 07, there are detailed transitional provisions in the Regulations.

**WHAT DO WE NEED TO DO NOW?**

Employers should review their employment practices in order to avoid age discrimination. This review should include recruitment, promotion and performance management, access to training, rewards, benefits and redundancy and retirement provisions. Policies should be reviewed to ensure that they cover harassment and victimisation on the grounds of age, which are both prohibited by the Regulations. Attitudes to older employees may need to be changed, and any stereotypes which may have arisen may need to be addressed.

**WHERE CAN WE FIND MORE INFORMATION?**

claire-jane.nicol@dickinson-dees.com  
www.ageconcern.org.uk  
www.acas.org.uk