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Age and employment

Explore the UK legal position and main issues employers face when dealing with age discrimination in the workplace

Introduction

Age discrimination occurs when someone is unfairly disadvantaged for reasons relating to their age which cannot be objectively justified. It has been illegal in the UK since 2006, with the law now incorporated into the Equality Act 2010. People of all ages can be affected, including younger and older workers, and the growing number of older people in employment makes this group a key focus.

This factsheet offers an overview of the different types of discrimination with examples of how they apply to age. It refers to retirement and suggests good employment practices to ensure everyone has fair access and opportunity to progress in work, regardless of their age.

Explore [our viewpoint on age-diverse workforces](#) in more detail, along with actions for government and recommendations for employers.

What is age discrimination?

Age discrimination arises when someone is unfairly disadvantaged for reasons, which cannot be objectively justified, relating to their age.

It's unwise to base employment decisions on age because it's a poor predictor of performance and it's misleading to equate physical and mental ability with age. The efficient and effective use of people's skills requires that employment decisions should be based on competencies, qualifications, skills, potential and objective job-related criteria obtained through careful analysis of job requirements and job performance. Employment decisions based on age are only legally permitted when they are objectively justified (when they are a proportionate means of achieving a legitimate aim).

A [government report](#) found that discrimination, bias and outdated practices on age grounds exist across workplaces, despite having been explicitly illegal since 2006. Evidence from this research suggests that older workers are regularly discriminated against in the jobs market and disproportionately likely to be selected for redundancy. The Centre for Ageing Better finds that the issue is pressing: [their survey](#) of over 500 employers shows that only 1 in 5 are currently discussing the strategic implications of an ageing workforce.

The number of older people in the workplace is expected to increase significantly over the next 20 years. Our reports [Managing an age-diverse workforce: what employers need to know](#) and [Managing an age-diverse workforce: employer and employee views](#) explore some of the key issues. [Creating longer, more fulfilling working lives](#) is a comparative study covering five European countries which investigates how employers can best manage an increasingly older workforce in the context of their health and well-being and care responsibilities with practical ideas for action.

The impact of coronavirus on different generations

The COVID-19 pandemic has had a profound impact on all sections of society, but particularly on older people who have suffered more severe illness and higher rates of death from this disease. The economic impact on older workers has also been severe according to the Centre for Ageing Better. Their report [A mid-life employment crisis: how COVID-19 will affect the job prospects of older workers](#) found that:

- The number of older workers seeking unemployment benefits doubled during the first national lockdown.
- There is a risk of further job losses now the Coronavirus Job Retention Scheme (also known as the furlough scheme) has ended.
- Over 50s are more likely to become long-term unemployed.
- Two out of five older workers say that they are concerned that their finances will get worse as a result of the pandemic.

Young people, while not so affected health-wise, have been disproportionately affected by [job cuts](#) and [lost work opportunities](#). Read our report [COVID-19 and the youth labour market](#) which assesses the effectiveness of government initiatives to support young people in accessing apprenticeships, traineeships and work placements.

For more on what employers should be doing, see our [Responding to the coronavirus hub](#).

The UK legal position

In Great Britain, discrimination on the grounds of age, originally introduced in 2006, is now contained in the Equality Act 2010.

Key points:

- The provisions protect people of all ages in employment regarding recruitment, promotion, reward and recognition, redundancy and vocational training.
- The provisions apply to all employers, providers of vocational training, trade unions, professional associations, employer organisations and trustees and managers of occupational pension schemes.
- Occupational pensions are covered by the provisions, as are employer contributions to personal pensions although, generally, the way in which pension schemes work is not affected.
- The provisions do not affect state pensions.

The Equality and Human Rights Commission (EHRC) has published guidance on [age discrimination](#) and the [Equality Act](#), including a [Code of practice on employment](#). Whilst not legally binding, the codes give important guidance on good practice and failing to follow them may be taken into account by tribunals or courts. CIPD members can find out more in our [Age discrimination Q&As](#).

Our [Brexit hub](#) has more on what the implications of leaving the EU might be for UK employment law.

Types of discrimination

Within the Equality Act 2010 there are a number of different types of discrimination. These apply to the protected characteristics, which include age.

Direct discrimination

This applies to all protected characteristics. It's treating someone less favourably than another person because of a protected characteristic that they have. For example, it's promoting or demoting someone because they're of a specific age, regardless of their ability or experience. Direct age discrimination can potentially be objectively justified in the same way as indirect age discrimination.

Indirect discrimination

Indirect discrimination occurs when:

1. a provision, criterion or practice is applied to all, **and:**
2. it puts a group with a protected characteristic at a disadvantage when compared with another group
3. an individual is put at a disadvantage
4. the employer cannot show it to be a proportionate means of achieving a legitimate aim

For example, if a criterion is put in place that an employee must have at least 10 years' service before being eligible to apply for promotion, this means that employees under the age of 26 cannot be promoted. This would be unlawful unless the employer could show that there was a good reason for the 10 years' service being required.

Associative discrimination

This is treating someone less favourably because they associate with an individual who has a protected characteristic. For example, treating someone unfairly because they're part of a group of young employees, even though they themselves are older.

Perceptive discrimination

This is treating someone less favourably because it's perceived that they have a protected characteristic, whether they do or not. For example, refusing to appoint someone because it's wrongly thought that they are a particular age.

Victimisation

Victimisation occurs when someone is treated less favourably because they've made or supported a complaint, or raised a grievance under the Equality Act 2010. It also applies if it's thought that they've made a complaint. A comparator isn't required for a claim of victimisation. Post-employment victimisation can occur - for example, refusing to give a reference to someone who had made a complaint under the Equality Act 2010 - although the Act has some grey areas concerning post-employment victimisation.

Harassment

Harassment is 'unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual'.

There's no longer any specific legislation making employers liable for harassment that

comes from a third party (for example, a customer). However an employer can still be liable as a result of numerous other legal duties, for example breach of contract, direct discrimination and under the Protection from Harassment Act 1997. This, and good practice, mean that employers should continue to take steps to protect employees from all forms of harassment.

Find out more in our [factsheet on workplace bullying and harassment](#).

Positive action

Employers can take positive action, for example to address under-representation or other forms of disadvantage within the workforce. The provisions are complex and must be handled very carefully. Different provisions apply concerning positive action relating to recruitment and promotion. See [guidance from the EHRC](#).

Other important legal points

- Length of service requirements for employment benefits practices of five years or less are legal.
- Length of service requirements for employment benefits practices of periods longer than five years may also be justifiable if the employer can show that they've awarded the benefit to reward loyalty, to encourage motivation or to recognise the experience of a worker.
- The National Minimum Wage and National Living Wage are still related to age, as is the basic award used when calculating unfair dismissal awards.

Retirement

It's still theoretically possible for an organisation to have a specific retirement age, but this has to be objectively justified which is extremely difficult for most employers to establish.

Employees may agree to retire at a certain age, but employers can now only enforce dismissal of an older worker by following a fair dismissal procedure and relying on one of the [fair reasons for dismissal](#).

CIPD members can find more information on the removal of the default retirement age in our [Age discrimination Q&As](#).

Good employment practices

People professionals have a key role in creating fair and inclusive workplaces. As part of coherent [inclusion, diversity](#) and [employee engagement](#) strategies, employers should undertake thorough reviews or equality analyses of policies and working practices to remove unfair discrimination and bias. Our [podcast on thinking strategically about age diversity](#) discusses how organisations can support different generations of workers. And our Megatrends report [Ageing gracefully: the opportunities of an older workforce](#) examines the opportunities afforded by extending working lives as the UK's ageing population continues to expand.

Our [viewpoint on age-diverse workforces](#) gives recommendations for employers, with additional information below.

Inclusion policy

Although there's no legal requirement to have a written inclusion and diversity policy, it's a good idea to produce and actively use one. In some discrimination claims, employers may have a defence if they can show that they took all reasonable steps to prevent the discrimination occurring. Having a comprehensive current policy, and recent relevant training will help employers to distance themselves from liability for acts such as harassment by an individual perpetrator employed by them. A policy also demonstrates the organisation takes its legal and moral obligations towards being a diverse and inclusive employer seriously. It can also encourage employees to treat others equally.

Recruitment and selection

Interviewers, and those concerned with selection, should be trained to make sure they understand what causes age discrimination and how to avoid it so they make recruitment decisions based on objective criteria relevant to the job and personal merit.

Age, age-related criteria, age ranges or minimum number of years of experience shouldn't be used in adverts. Rarely, this may be permissible to encourage applications from age groups which don't usually apply. While such forms of encouragement through positive action are lawful, positive discrimination isn't and employers need to make sure they treat everyone fairly regardless of their age, especially when trying to redress imbalances in the average age of their workforces.

While age should not be taken into account in employment decisions, age details are needed by employers for a variety of reasons including, for example, workforce monitoring. However, monitoring information can be asked for in a section of the application that will not be sent to the shortlisting or interview panel. It should also be made clear to applicants why age details and any other equality monitoring information is

being collected, and that it won't be used inappropriately in the selection process.

Medical advice

A person's age shouldn't be used to make judgements about their abilities or fitness. Where such a judgement is required, an occupational health or medical practitioner should be consulted. Age shouldn't be used as a factor in physical test requirements.

Reward

Pay and terms of employment should be based on personal contributions and standards of job performance rather than on age.

Training and development

Employees of all ages should be eligible for training and development programmes. The automatic exclusion of age groups, such as those nearing retirement, is not only potentially unfairly discriminatory, but also leads to a failure to make the best use of talent and can stop people from making better contributions and adding greater value to business performance.

Promotion

Good talent management practice requires the removal of prejudice and stereotyping in connection with appraisal and performance management.

Staff retention

Evidence shows the value of flexible working both as a retention tool and to help people to make an effective return to work.

Redundancy

When making redundancies, the organisation's future needs for knowledge, skills and competencies should be taken into account to safeguard its economic success. Organisations need to take care in applying their selection criteria. For example, the sole use of 'last in-first out' (LIFO) as a method of selecting for redundancy is likely to be unlawful, as it may be indirectly age discriminatory.

Useful contacts and further reading

Contacts

[Acas – Discrimination, bullying and harassment](#)

[GOV.UK - Employers: preventing discrimination](#)

[Equality and Human Rights Commission - Age discrimination](#)

[Government Equalities Office](#)

[Age Positive initiative](#)

[The Age and Employment Network \(TAEN\)](#)

[Business in the Community - Age at Work Campaign](#)

[Centre for Ageing Better](#)

Books and reports

ACAS (2019) *[Age discrimination: key points for the workplace](#)*. London: Acas.

ALTMANN, R. (2015) *[A new vision for older workers: retain, retrain, recruit](#)*. London: Department for Work and Pensions

CENTRE FOR AGEING BETTER (2019) *[Mid-life support: insights for employers](#)*. London: The Centre.

RUBENSTEIN, M. (2021) *[Discrimination: a guide to the relevant case law](#)*. 34th ed. London: Michael Rubenstein Publishing.

UK COMMISSION FOR EMPLOYMENT AND SKILLS (2015) *[Catch 16-24: youth employment challenge](#)*. London: UK Commission for Employment and Skills.

Journal articles

BASKA, M. (2020) *[Number of unemployed older workers increased by a third during lockdown, data suggests](#)*. *People Management* (online) 23 November.

BEATSON, M. (2018) *[Is the generation game rigged?](#)* *CIPD Voice*. Issue 15, 3 September.

BOYS, J. (2019) *[The older worker paradox: why the 'ageing workforce' is too young](#)*. *CIPD Voice*. Issue 19, 5 July.

CALNAN, M. (2017) *[Ageism the most common form of discrimination, say employees](#)*.

People Management (online). 30 March.

CHURCHILL, F. (2020) One in eight older workers delaying retirement because of coronavirus, poll finds. *People Management* (online). 2 December.

FLEISCHMANN, M., KOSTER, F. and SCHIPPERS, J. (2015) Nothing ventured, nothing gained! How and under which conditions employers provide employability-enhancing practices to their older workers. *International Journal of Human Resource Management*. Vol 26, No 22, December. pp2908-2925.

KIRTON, H. (2018) Is age the last workplace taboo? *People Management* (online). 23 August.

STIRPE, L. TRULLEN, J. and BONACHE, J. (2018) Retaining an ageing workforce: the effects of high performance work systems and flexible work programmes. *Human Resource Management Journal*. Vol 28, No 4, November. Reviewed in *In a Nutshell*, issue 85.

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