

# Age discrimination

The rights of older and younger people in recruitment and selection



## Overview

From 1st October 2006, age discrimination was outlawed with the introduction of the Employment Equality (Age) Regulations 2006 (the 'Age Regulations'). As of 1st October 2010, all existing equality legislation (including the Regulations) was consolidated into the Equality Act 2010 (the 'Act').

The UK's population is continuing to age, and concerns are frequently expressed that we are not saving enough for our future. It is likely that many of us will need to work longer in the future, and this factsheet helps show how the law can support us in doing so. We recommend you read this in conjunction with our 'Age Concerns' factsheet, which provides an overview of the law on age discrimination.

### Advertisements

If it is not carefully worded and targeted a job advert may be discriminating. A candidate who is rejected for a job may use such an advert in pursuing a claim for age discrimination.

Job advertisements should be targeted to a wide audience to ensure diversity of applicants. Advertising in a magazine with a readership of a certain age group, for example, is likely to target only a certain age range. As a result this could amount to indirect discrimination, if the targeting cannot be objectively justified.

The wording is critical. Using certain descriptive words, such as 'energetic', 'dynamic' or 'flexible', may suggest that the employer is looking for a younger employee. This is why employers must clearly identify the skills and competencies required to fulfil the

role, and only these should form the basis of the advert. In Ireland, Ryanair was successfully sued for age discrimination when it used the words 'young and dynamic' in a job advertisement.

### Application forms and selection criteria

Application forms that request date of birth or a photograph may be indirectly discriminatory. Therefore, employers who wish to assess the diversity of their applicants will often request information relating to age on a separate and anonymous monitoring form.

Asking questions of applicants from one age group and not another could also be discriminatory. For example, a claim was upheld when a 58-year-old job applicant was refused a job after being asked questions on his 'drive and motivation', which were not put to of younger applicants.

Questions relating to an applicant's years of experience could also be an indirect way to determine an applicant's age. If employers require this information, they will have to demonstrate why the information is necessary.

Equally, employers advertising for applicants with a certain number of years' experience could be discriminating on the grounds of

age - such requirements may in effect exclude younger candidates. If experience is a pre-requisite for a job, the employer must be able to justify this requirement objectively.

### All vocational and general educational training is governed by anti-discrimination legislation

If relevant experience is a genuine requirement for the position, justification may not present any problems to the employer. At the other end of the scale, a 61-year-old teacher was found to have been discriminated against when she was rejected for a role because the school wished to hire someone in the 'first five years of their career' for reasons of cost.

CVs often contain age-related information, so employers may use 'age-neutral' application forms as an alternative.

Asking prospective employees to pass a medical examination may also be indirectly discriminatory, if such testing cannot be fully justified.

### Graduates

In statistical terms, relatively few graduates are over 40 years old. Therefore, only targeting graduates at career fairs or 'milk rounds' may be indirect discrimination. If there is

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## Age discrimination in recruitment and selection

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no clear evidence that the employer is focused on the qualification that is necessary for the job, and not the age of the applicant, unsuccessful candidates who are suitable, but simply older, may have a good basis for an age discrimination claim.

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### Vocational training

All vocational and general educational training is governed by anti-discrimination legislation.

Education providers who set age limits must be able to justify the age criteria objectively, otherwise they could be guilty of discrimination.

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### Bringing a claim for age discrimination

Please note that strict time limits apply in respect of bringing a claim. Most claims will need to be issued in the Employment Tribunal within three months less one day of the treatment you are complaining about. In some instances, if a claim is lodged out of time, the Employment Tribunal has the power to extend the time limits if it is just and equitable to do so.

However, this exception should not be relied upon.

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### Mandatory ACAS Early Conciliation

If you are thinking about making an employment tribunal claim, you will first need to notify details of your claim to ACAS, who will then offer early conciliation to try to resolve the dispute. The conciliation period can be up to one month. If the claim does not settle, ACAS will issue a certificate confirming that the mandatory conciliation process has concluded.

There are changes to time periods within which to lodge claims to allow for the period during which a claim is with ACAS. The period within which a claim is with ACAS will not count for calculation of time limits; and if

the time limit would usually expire during that period, or within the month after the certificate is issued, then you will have up to one month following receipt of the conciliation certificate in which to lodge a claim.

The process makes the calculation of time limits in employment tribunal cases more complicated. Claimants are advised to be aware of limitation issues and seek legal advice promptly. For further information on the ACAS early conciliation process visit: [www.acas.org.uk](http://www.acas.org.uk).

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### Grievances

You may need to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures (the code). The code can be downloaded from the ACAS website. This is aimed at assisting parties to resolve disputes within the workplace. If your claim is successful, but the Tribunal considers that you have unreasonably failed to comply with the Code, your compensation could be reduced by up to 25%. There are similar penalties on the employer if they do not comply with the Code. Please note that the time limit for bringing a claim is not affected by compliance with the ACAS Code. It still needs to be brought within the time limits referred to above.

The compensation for age discrimination is potentially unlimited. It will reflect the loss actually suffered as a result of the discrimination. In respect of a claim brought by an applicant for a role, this may even include an assessment of the percentage chance of succeeding in selection, had there been no discrimination.

Employment Tribunals may also make awards to compensate victims of discrimination for the 'injury to feelings' and any 'injury to health' they have suffered.

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