

Age discrimination



Overview

Discrimination, victimisation and harassment of an individual in the workplace because of their age is prohibited under the Equality Act 2010 ('The Act'). It is unlawful to treat a person differently in the workplace because of their age, unless it can be objectively justified or is covered by an exemption or genuine occupational requirement.

The definition of age

The Act is both wide and vague in its definition of age, so it can cover all individuals of any age. Commonly, the most obvious forms of age discrimination concern older individuals, but the protection applies equally in relation to treatment of individuals of any age, old or young.

The protection provided by The Act

When are you protected?

The Act applies to advertising for jobs, recruitment, employment, vocational training, dismissal, and after employment, for instance, if an employer provides a discriminatory reference.

Who is protected?

Under The Act, 'employment' is widely defined, with a wider set of circumstances constituting 'employment' than, say unfair dismissal legislation. 'Employment' includes those employed under an employment contract, workers, those working under apprenticeships, Crown employees, and members of the House of Commons and House of Lords. If you are supplied by your employer to work for another employer (contract workers), or are an office holder (company directors and members of some independent public bodies) you will also be protected. The

Act extends further to the police, barristers, partnerships, providers of vocational training, employment agencies and trade organisations, among others.

What is prohibited?

The Act outlaws direct and indirect discrimination, victimisation and harassment. The prohibited behaviour does not have to be directly committed by the employer and employers may be responsible for the acts of their employees.

Discrimination, victimisation and harassment

Direct discrimination

It is unlawful to treat a person less favourably because of age. In order to succeed in a claim of direct discrimination, you must show:

- That you have been treated less favourably because of age.
- That you can compare your treatment to someone (actual or hypothetical) with similar characteristics to yourself save for your age.
- That you were subject to disadvantage or detriment as a result of the treatment.

The comparator

The Act requires that like must be compared with like, so the less favourable treatment must be compared with that of someone

of a different age, known as a comparator. Your comparator must be a person (real or hypothetical) who in all other respects is in a similar or not materially different position to you.

Conscious or unconscious acts

There is no need to show motive or intention behind the discriminatory treatment as it is accepted that discriminatory treatment can be unconscious. Further, it does not matter if the discriminator shares the age of the individual being discriminated against.

Your age or someone else's age

The less favourable treatment does not necessarily have to be because of your own age. For example, someone who is treated less favourably because of the age of a third party (because of the age of your partner or child, for example) would also be protected.

Your perceived age

The Act also protects those who are treated less favourably because of their perceived age.

Indirect discrimination

The Act provides that a person also discriminates if an arrangement or formal or informal policy relating to the employment (technically known as a provision, criterion or practice ('PCP')) is applied or would be applied equally to all employees, but:

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