



New Age Discrimination legislation – 1st October 2006

Manpower update: a founder member of the Employers Forum on Age

What do you do?



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# New Age thinking

## What do you do?

A diverse workforce is increasingly important to ensure you're attracting and retaining the right people and the best skills for your organisation. And it's key to UK competitiveness, especially in light of changing demographics - the ageing population and shrinking workforce.

By 2010 only  
20% of the  
UK workforce  
will be white,  
able-bodied  
men, under  
45 years old

(Department of Work and Pensions, 2005)

As you're probably aware, to drive wider diversity in the workplace, from 1 October 2006 it will be unlawful to directly or indirectly discriminate on the grounds of age. This new legislation – the Employment Equality (Age) Regulations 2006 - covers people applying for a job, those already in employment, or anyone on vocational training. So it affects you, your work place and your workforce.

The Age Regulations touch all parts of the employment process.

Recruitment – where you advertise, what you say and how you do it.

Retention and reward – how you reward people and the benefits you provide, especially those based on length of service.

Redundancy – who's eligible, when and for how long.

Retirement – when you can and cannot set retirement ages for staff, and the process you must follow.

And, it covers not only older workers but all ages – young, old and those in between. So employers should review any conscious or unconscious stereotyping based on age.



# Turn mindsets on their head

Ending ageism in the workplace will require a significant shift in mindsets for both employers and workers. Manpower research\* shows a notable difference between employers and workers concerning age in the workplace of tomorrow. More than half of businesses (52%) agree they will want staff to work beyond the age of 65 – but just 19% of employees say they will do this. However, 35% of employees anticipate needing to supplement their pension, with a further 45% recognising that this might be a necessity. Employees still expect to retire by 65, but are increasingly recognising that their pensions may not be sufficient for their retirement.

So, looking to the future, people will work for longer, and age regulations should make that easier. Some employees will want to 'supplement' pensions through flexible working opportunities rather than extend their full-time career. Either way, this is a valuable pool of talent that employers know they need to tap into.

## Perceptions of Workers

While 64% do not think they have ever been discriminated against because of their age, 43% of workers have not applied for a job because they have considered themselves too young or too old. However, with the new legislation, 55% of workers would anticipate applying for jobs they might have previously ruled themselves out for because of their age.

Meanwhile, 33% of employers anticipate more applications from people aged 50 or over once the age regulations are in force.

You're probably already reviewing current HR practices to ensure you comply. This guide provides highlights of the new legislation and some key areas to pay attention to ahead of 1 October.

\* Source: Manpower Changing World of Work Report – Work Trends of 2016 (Feb 2006); Manpower NOP Research (July 2006)

In 1950, one in ten of the population was over 65. Today, it is one in six. There are now 1.5m more people aged 50-65 in the employment market than a decade ago.

# Ready or not?

The Employment Equality (Age) Regulations 2006 are detailed and if you are unsure how you're affected you should seek legal advice before 1 October.

The Regulations prohibit unjustified direct and indirect age discrimination, harassment or victimisation on the grounds of age in all areas of employment. People of every age are covered, young or old. They include all workers – employees, agency and contract workers and the self-employed, in the public or private sector. As with other discrimination legislation, employers are responsible for their own actions as well as the actions of their employees. They cover the following broad areas:

## Recruitment

The age regulations start here to ensure you attract age diverse applicants. You can ask for date of birth on application forms if necessary, though it might be more appropriate in a separate equal opportunities form. And while that information is key for monitoring purposes it should not be available to the interviewer.

Being clear about the skills required helps right from the start and means you can avoid relying on 'years of experience' which could be seen as ageist.

Employers do not need to consider applicants over 65, unless the employer's normal retirement age is over 65, or within six months of that age.

## Retention and Reward

Pay and non-pay benefits based on length of service can continue if they are based on five years service or less. After five years an employer has to be able to demonstrate that these benefits reward loyalty or motivate staff (for example additional holiday, long service awards and bonus schemes).

Age limits for Statutory Sick, Maternity, Paternity and Adoption Pay will be removed, while the age bands for National Minimum Wage will still apply.

Training should be available to all employees to regularly upskill, whatever their age.

## Redundancy and Unfair Dismissal

Age limits for redundancy and unfair dismissal will be removed. This gives older workers the same rights to claim unfair dismissal or receive a redundancy payment as younger workers, unless there is a genuine retirement. Selection for redundancy must not be based on age or length of service, so 'last in first out' rule should not be used.

Lower and upper age limits in the statutory redundancy scheme will also be removed although the current age-banded system stays in place.

## Retirement

A 'national default retirement age' of 65 will be introduced for men and women (to be reviewed in 2011). Employers can set their retirement ages at 65 or over, or not fix a retirement age at all. Employers need to give between six and twelve months notice to employees about their intended retirement date and notify them of their right to request working beyond retirement. This is one of the ways that employers and employees can enjoy flexible working practices, to enable better planning for retirement on both sides.

Working with Manpower ensures you are drawing from an age diverse candidate pool and can help better balance your workforce.

For further information on Age Regulations visit [manpower.co.uk/ageaware](http://manpower.co.uk/ageaware)

# Questions, Questions, Questions

## What is Direct and Indirect age discrimination?

Age discrimination tends to occur when assumptions about people's ability to do the job are made based on their age.

Direct discrimination could be the use of age limits such as 'only over 25's should apply'.

Indirect discrimination includes practices that disproportionately affect certain ages, for example requiring five or ten years experience for a role.

## Can you ever discriminate on the grounds of age?

Where there is a Genuine Occupational Requirement, or an 'objective justification' employers can take age into account - for example bar staff have to be over 18 to serve alcohol. 'Objective justifications' are less clear and likely to be tested over time by case law. Employers considering an objective justification should take legal advice and weigh up the risks.

## If my workforce isn't already age diverse how can I address this?

Positive action is allowed if your business needs to target a particular age group to improve age diversity across the workforce - for example, highlighting that you welcome applications from under-represented groups in job adverts. Once an applicant has applied they must be treated equally whatever their age. Positive discrimination is unlawful.

# Be age aware – Checklist for employers

Manpower research highlights the need for employers to consider further preparations in advance of the age regulations. 82% of large employers have reviewed HR practices - ranging from an age profile workforce audit, changes to HR policy and recruitment advertising. This figure was far lower elsewhere - only 25% for micro businesses. The public sector rated well with 62% of employers prepared.

There are plenty of things all staff need to consider, and it might as well start now.

## Identifying ageist behaviour

Ageist behaviour is normally based on stereotyped prejudices and myths, rather than an active dislike of a particular age group. Age-related assumptions might be positive or negative – and could influence an employment decision so will be classed as discriminatory.

Classic negative examples are ‘younger workers are less reliable’ or ‘older workers are more set in their ways’. Or on the other side, ‘younger workers are more enthusiastic’ or ‘older workers are more loyal’. These are generalisations and never true of everyone so should be avoided.

## Mind your language

Refresh your recruitment – job descriptions and ads especially. Where and how you advertise is also important – your overall recruitment strategy should reach a diverse audience. Consider words that could be perceived as aimed at a particular age group, 'energetic and dynamic', or 'mature and senior' - they could cause you problems if the rest of your recruitment process isn't balanced across the age diverse spectrum.

Focusing on skills required for the job mean you need not rely on asking for a specific number of years of experience, which is not necessarily evidence of someone acquiring and improving skills, only that they stayed in a role for an amount of time.

### Audit your employment practices

Discrimination law enables an individual to bring a claim if they can demonstrate that their 'age' may have had an impact. Employers then have to defend their record. It is best to avoid practices where someone may 'infer' age was an issue, e.g. asking for date of birth on an application form.

Check through employment practices such as recruitment and promotion procedures, training programmes and any equal opportunities policy statement to ensure compliance with the new age regulations.

### Raising awareness

Awareness and training is vital, especially for managers. Educate your employees – so they understand age discrimination. Training staff, especially those responsible for recruitment or people management, will help prevent unintended discrimination, and provide supporting evidence should you find a case brought against you.

Start communicating with staff now so they know what this involves and understand the benefits of the changes.

## Employers have to take the lead

We all need to challenge ageist assumptions and overcome the preconceived perceptions and misconceptions that exist. Following a few simple rules mean complying with age laws becomes easier.

- Remember age is not an indicator of ability – focus on skills and expertise.
- Fairness and equal treatment should guide all behaviour.
- If you think age is important, try justifying your decision on the basis of another form of discrimination such as gender or race. If that seems indefensible then it's probably wrong to use age as well.

72% of employers believed that their employees were 'aware' of the new age discrimination regulations. However, our research into workers' attitudes found 51% claiming to be totally unaware of the new age discrimination rules. This contrast demonstrates the importance for employers to raise awareness in the workplace.

Source: Manpower NOP report (July 2006)

The enormous opportunity this new legislation brings is for employers to tap into the widest pool of talent and find the best skills, sourcing the most productive workforce and employing the greatest competitive advantage.

The challenge is the change in mindsets. Tackling age discrimination will require a major shift in thinking, for employers, employees and job seekers. Employers and workers need to adjust to a changing world of work where age diversity will become the norm in all workplaces of the future.

## Manpower – providing an age diverse workforce for 50 years

Balancing age diversity across the workforce can be a challenge. Manpower can help – we've been doing it for 50 years in the UK. We screened more than one million people in 2005 – so you know our pool of candidates is wide and varied. With over 20,000 people working for us everyday we're already employing all ages and backgrounds. With no age limits for our temporary staff, Manpower has been

ahead of the game for some time. We currently have people from 16 to 77 working for us.

So we're well-placed to help you be age aware and age diverse. We can help find you the right skills for your temporary positions or permanent jobs. Across the range of sectors. A range of people.

[manpower.co.uk](http://manpower.co.uk)

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