

# Age Discrimination and Equal Opportunities

On 1 October 2006, the Employment Equality (Age) Regulations 2006, one of the most far reaching pieces of legislation this century came into force to prevent discrimination against workers, employees, job seekers and trainees on the basis of their age.

Its importance is underlined by the fact that nearly a third of all workers will be over the age of fifty by 2020, which means that businesses increasingly need to recognise the benefits of age diversity in the workplace.

Unfortunately, a recent survey of over 150 organisations indicates that most businesses are not prepared for the changes. Employers need to ensure they have the appropriate policies and procedures in place to deal with age discrimination and should raise awareness of it so that acts of discrimination on the grounds of age can be prevented.

All companies should support and promote the principal of equal opportunities in employment on the grounds of their colour, race, ethnic or national origin, religion or belief, sex, sexual orientation, marital/parental status, disability or age.

To ensure our clients support and prepare for such equal opportunities or age discrimination **abacus** have prepared the following procedure. If you require further assistance contact your local **abacus** accountant who will be able to help you.

## Policy

The company wholeheartedly supports and promotes the principle of equal opportunities in employment. We are unreservedly opposed to any form of less favourable treatment, whether through direct or indirect discrimination being applied against employees of the Company, or applicants for employment, on the grounds of their colour, race, ethnic or national origin, religion or belief, sex, sexual orientation, marital/parental status, disability, or age.

We will take every possible step to ensure that individuals are treated equally and fairly and that decisions on recruitment, selection, training, promotion, career management and every other aspect of employment are based solely on objective and job related criteria.

The purpose of this document is to ensure that human resources, talents and skills available throughout the company are utilised without discrimination on recruitment and throughout employment.

## Objectives

The Company recognises its obligations and responsibilities under the Sex Discrimination, Disability Discrimination, Equal Pay, Race Relations, and Employment Acts. The Company's objectives are to ensure that:

1. Employees are aware of their personal obligations to avoid discrimination in accordance with this Equal Opportunity policy.
2. No applicant or employee is treated less favourably than another in accordance with this policy.
3. No applicant or employee is placed at a disadvantage by requirements, conditions or procedures which have a disproportionately adverse effect on them and cannot be shown to be necessary for the satisfactory completion of the job.
4. Entry into the Company and opportunities for promotion and training are made available to all applicants.
5. No individual is discriminated against in accordance with this policy in respect of selection for redundancy, short time working, or dismissal.
6. Where appropriate and permissible within the law, members of under represented groups are given training and are encouraged to achieve equality of opportunity.

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## Procedure

In order to ensure the effective implementation of this policy and objectives the following procedures will be adopted on a Company wide basis:

### Responsibilities

The Company will ensure that employees are made aware of the provisions of this policy and of their personal responsibilities by regularly bringing these responsibilities to their attention on induction. Any incidents of discrimination and/or harassment will be fully investigated. All employees have a responsibility to co-operate with and adopt the requirements of this policy and ensure equality in employment by virtue of their actions and attitudes towards others.

### Discipline

Behaviour and language contrary to the spirit of this policy will not be tolerated. Failure of employees to observe this procedure will lead to disciplinary action. Any employees found to be guilty of harassing another on any grounds stated within the policy statement, in the absence of mitigating circumstances, will be summarily dismissed.

### Procedural Reviews

All techniques for recruitment, selection and training, both internal and external, will be reviewed by management to ensure that no unfair or unlawful discrimination has occurred. Criteria will be reviewed to ensure that it is objective based on personal performance and merit on each occasion.

### Training

Employees, particularly those involved in internal/external selection issues, will received regular update training in equal opportunities legislation and issues where necessary. All employees will be advised of their obligations in respect of this policy at induction.

### Advertising

The Company will advertise as an equal opportunities employer.

### Monitoring

The Company will regularly monitor ethnic origin, sex, colour, nationality, marital/parental status and disability of employees and applicants. The Company application for will allow for collection of relevant data. Records held and any analysis will be subject to the full requirements of data protection legislation.

### Grievance

Employees who feel they have been treated in a manner contrary to the spirit of this policy should seek recourse in accordance with the grievance procedure.

### Exit Procedures

Standard exit documentation will be completed and an exit interview carried out in the respect of all employees leaving the company. Reasons for resignation will be recorded and analysed.

## Review of Policy

The operation of this policy and procedures will be reviewed regularly by management and updated in light of any legislation changes.

## Actions that can be considered either direct or indirect discrimination

Both direct discrimination (treating someone less favourably because of their age or because of the age they appear to be) and indirect discrimination (having a policy or practice which puts people of a certain age at a disadvantage, compared with other people) are unlawful.

An example of direct discrimination would be where someone with all the skills and competencies to undertake a role is not offered the position just because they completed their professional qualification 30 years ago. Other examples could include refusing to hire a 40 year old because of a company's youthful image, not providing health insurance to the over 50's and not promoting a 25 year old because they may not command respect.

A business requiring applicants for a courier position to have held a driving licence for five years is likely to be guilty of indirect discrimination. A higher proportion of people aged between 40 and above will have fulfilled this criteria than those aged 25. Other examples of indirect discrimination could include seeking an 'energetic employee', requiring 30 years of experience or asking clerical workers to pass a health test.

Unlike other forms of anti-discrimination legislation, however, age discrimination can be objectively justified if it is both proportionate and necessary. For example, an employer might argue that it was appropriate and necessary to refuse to recruit people over 60 where there is a long and expensive training period before starting the job. However, cost by itself is not capable of justifying such an action.

## Harassment

Harassment on the basis of age is equally unlawful. For example, a mature trainee teacher may be teased and tormented in a school on the grounds of age during the teaching experience. If no action is taken by the head teacher, this may be treated as harassment. An employee may be written off as 'too slow' or 'an old timer'. This too could be seen as harassment.

## Recruitment

Employers must be aware of the significance of the legislation at all stages in the recruitment process and to avoid breaking the age rules they should consider:

- removing age/date of birth from adverts for example: 'Trainee Sales Representatives... envisaged age 21-30 years'
- reviewing application forms to ensure they do not ask for unnecessary information about periods and dates
- avoiding asking for 'so many years of experience' in job descriptions and person specifications for example: 'graduated in the last seven years'
- avoiding using language that might imply a preference for someone of a certain age, such as 'mature', 'young', 'energetic' or 'the atmosphere in the office, although demanding, is lively, relaxed and young'
- ensuring that other visible methods are used to recruit graduates as well as university milk rounds, to avoid limiting opportunities to young graduates
- focusing on competencies to undertake a role and not making interview notes that refer to age considerations
- never asking personal questions nor make assumptions about health or physical abilities.

## Service related benefits

Employers are allowed to use a length of service criterion in pay and non-pay benefits of up to five years' service. Benefits based on over five years service are also allowed if the benefit reflects a higher level of experience, rewards loyalty or increases or maintains motivation and is applied equally to all employees in

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similar situations. It is for the employer to demonstrate that the variation in pay/benefits over five years can be objectively justified.

Employers are recommended to review their pay and benefits policies now to ensure that they are based on experience, skills and other non-age related criteria.

## Redundancy

The existing statutory payment provisions remain in place. Employers can, as before, pay enhanced redundancy payments. However, to avoid discriminating, employers should use the same age brackets and multipliers as used when calculating statutory redundancy pay.

## Retirement

Default retirement age (formerly 65) has been phased out – most people can now work for as long as they want to.

Retirement age is when an employee chooses to retire. Most businesses don't set a compulsory retirement age for their employees.

If an employee chooses to work longer they can't be discriminated against.

However, some employers can set a compulsory retirement age if they can clearly justify it.

It's an employee's responsibility to discuss when and how to retire with their employer. This could include phasing retirement by working flexibly.

Employers may or may not be able to agree requests. If an employee is unhappy with their employer's decision, they can challenge this at an employment tribunal.

Retirement is a form of resignation – employers and employees must follow the right procedures for this.

## State Pension age

Retirement age is not the same as State Pension age which can be between 61 and 68, depending when someone was born and if they're male or female. Anyone can carry on working past State Pension age.

## Action for employers

Employers need to undertake the following to ensure that they are not breaking the law:

- review equal opportunities policies
- review employee benefits
- review policies and procedures on retirement
- undertake equal opportunities training covering recruitment, promotion and training.

## How abacus can help

Your local **abacus** accountant will be more than willing to assist you in the implementation of your equal opportunity policy and provide you with any additional information you require.

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