

Ageism is acknowledged as being the most widespread discrimination within the workplace across all of the European Union. This unacceptable situation continues despite the introduction of new laws and an ageing population.

Time to change

Bringing together our expertise - **Wise Owls Promoting Age Diversity** project have produced a series of best practice guides in different areas relating to age and employment that include: employers, research, training, lobbying and a self help guide to help the unemployed over 50s.

Who are we?

Promoting Age Diversity exists thanks to funding from Trust for London to promote age diversity to employers, employees, and decision-makers on behalf of older working age people.

Become the solution

Employers play a vital role in this process. Inside this guide we highlight the benefits of older workers, along with facts that show older workers within an age diverse work place makes business sense.

For more information on P.A.D. and the work we are carrying out, please visit: www.wiseowls.co.uk/welcome/index/pad_info

Benefits of age diversity

- Widen your company's skill base
- Increase your customer age range
- Improve customer care
- Improve your working culture
- Let older workers train the younger staff
- Diverse workers offer greater value
- Your customers come from every age group; make sure your staff do!

Myths about older workers

- They are 'past it' – over the hill!
- They become ill and take sick leave more often
- They are short-sighted and hard of hearing
- They have more accidents
- They don't like change
- They find it hard to learn new skills
- They are not IT literate
- They are less productive

Age discrimination law

Since the Treaty of Amsterdam came into force in 1999, new EU laws, or Directives, have been enacted in the area of anti-discrimination. The Council Directive 2000/78/EC (described as a Directive 'establishing a general framework for equal treatment in employment and occupation') implements the principle of equal treatment in the area of employment, covering disability, religion or belief, sexual orientation and age.

The Directive entered into force on the 2nd December 2000 and gave member states three years to transpose the Directive into law, with an additional three years for legislation in the area of age and disability.

Recruitment

Best practice in how to avoid ageism?

Decisions about recruitment are never easy. The key point for any employer is whether the person can do the job. Do they have the skills required for your needs? This and this alone, ought to be the main focus of the whole recruitment process from the advertising of the vacancy through to the interview.

Best ways to do this?

Application form

- Remove age/date of birth from the main application form and include it in a diversity monitoring form to be retained by HR/Personnel
- Review your application form to ensure that you are not asking for unnecessary information about periods and dates
- Consider using a skill based only application form with examples of how these have been applied in the past
- Asking for age-related information on an application form could allow discrimination to take place

Job description and person specification

A job description outlines the duties required for the post. A person specification gives the skills, knowledge and experience required to carry out these duties.

Avoid references, however oblique, to age in both the job description and the person specification. For example, avoid asking for 'so many years' experience as this may rule out younger people who have the skills required, but have not had the opportunity to demonstrate them over an extended period. Equally avoid words such as youthful or starter, which will remove older workers from the application process.

A jobseeker could challenge these requirements and you may have to justify it.

Interview

It is very important that any people involved in the short listing process, base their decisions on skills and ability alone. They should be trained, reminded of their responsibility not to discriminate on age and use the skills stated as a basis for making their decisions against the requirements of the person specification.

Decisions made on short listing should all be recorded and decisions retained for a period of approximately 12 months.

Interviewing

Interviews are best carried out by more than one person. They should try to avoid asking questions related to age, for example, 'How would you feel about being managed by someone younger?'

Focus on the applicant's ability and if more than one has similar capabilities, then the applicant who is more competent or offers the best skill mix should be appointed.

Make sure the interviewers are aware of the equal opportunities and diversity law. Again, retain your decisions for 12 months from the date of the interviews.

Advertising

Employing a diverse workforce makes business sense. Limit your staff parameters and you limit your skills base. Advertise sensibly in ways that reach out to the wider community, to as large and diverse an audience as possible. Advertise on multiple websites that reach out to a diverse community or to websites that genuinely reach out to all members of society.

Redundancy

Redundancies are possibly the worst situation any employer will have to face in regards to their business or organisation. They directly affect people's lives and if done badly, can leave your company with added problems in addition to the redundancies themselves.

Selection

When selecting employees for redundancy, it is of vital and legal importance that you know you are not making decisions which don't discriminate, either directly or indirectly, against people because of their age, disability, ethnicity, gender, maternity, gender reassignment, marriage or civil partnership status, religion or belief, or sexual orientation.

Redundancy selection criteria

A clear criteria is essential to aid you in the identification of which employees to make redundant. The 'selection pool' (as it's known), can help you avoid to make discriminatory decisions. The criteria must be objective, fair and equally applicable across a particular 'selection pool' of employees. All staff should be judged on the skills required in your organisation, but you may also consider criteria such as:

- Length of service
- Attendance levels (be aware that someone's attendance record might be affected by a protected characteristic: for example, sickness absence during pregnancy)
- Qualifications and previous training
- Punctuality
- Disciplinary record
- Adaptability for different types of work
- Standard of work performance

It is possible to be unfair to certain groups simply by not thinking through the consequences of using certain criteria. For example, some older workers may have missed out on access to training as older workers have often been overlooked in the past. So it would be unfair to place too much weight on qualifications as a criterion.

Be fair

Ensure fairness of all your employees, choose more than one criterion and ideally a series of them. Rank your employees (perhaps through a points system) against the criteria. This method should help you ensure that you are making the best decision for your organisation. Age diversity makes business sense. Once the employees have been matched against

the criteria, then you decide which you intend to make redundant. This is critical and may be the point where any legal action will come. Make sure you are able to justify the decisions made.

Age and redundancy payments

Enhanced redundancy payments are allowed based on age. However, these must be calculated in exactly the same way as statutory redundancy payments to avoid age discrimination claims. Provided the scheme mirrors the statutory scheme, then you can choose to be more generous.

Contractual redundancy schemes

If you have your own contractual redundancy scheme then you need to examine this and check that its conditions can be justified as a proportionate means of achieving a legitimate aim and so are not discriminatory. If you think your scheme is discriminatory then you need to take further advice.

Benefits of older workers

- Older workers attract older customers
- The over 50s have more money to spend than any other generation, making them the kind of people shops want to attract!
- Older workers are more loyal; 55 – 64 stay in their jobs up to three times longer than their younger counterparts
- A work force that is loyal to a business is more likely to be productive and go that extra mile
- Older workers take less sick leave
- Older workers often have a better attitude to work than their younger counterparts and are less likely to take unnecessary time off
- Older workers can train younger workers
- Over 50s at a Volvo plant in Sweden, 90% of who had strain injuries so could no longer work on the production line, were tasked with instructing younger workers on how to make the cars, performing service and preparatory work. Not only does this approach mean that younger workers can benefit from older workers experience, it also reduces direct competition between the age groups and creates a more harmonious and stable workforce, improving self-esteem and reducing sick leave. The amount of costly early retirements fell

Summary

Protection against discrimination in employment on the grounds of age came into effect in October 2006 when the Employment Equality (Age) Regulations 2006 were implemented. On 1 October 2010, the main provisions of the Equality Act 2010 came into force. The Act consolidated all the previous discrimination laws, including the Employment Equality (Age) Regulations, into one Act, reconciling most of the differences between them and repealing the age regulations. The Equality Act applies to job applicants, all workers including contract workers and agency temps, apprentices, office holders, the police and people in vocational training. It prohibits unjustified direct and indirect age discrimination, victimisation and harassment related to age, of people of any age, young or old. There is no qualifying period of service necessary to make a complaint to a tribunal, and no limit on the amount of compensation that can be awarded.

Facts

- There is no upper or lower age limit in respect of unfair dismissal or statutory redundancy pay rights.
- Direct and indirect discrimination because of age are prohibited unless the employer can show objective justification for their actions.
- To justify age discrimination, the employer has to show that they had a legitimate aim and that the action taken or criteria applied represented an appropriate and necessary means of achieving that aim.
- Certain types of positive action are allowed if the employer believes that persons of a particular age group are under-represented, have special needs or are disadvantaged in relation to particular work and the employer wishes to address the under-representation, special needs or disadvantage.
- Employers may base differences in pay and benefits on length of service, but only if the length of service criterion used is five years or less; if longer, the enhanced pay or benefits must be in place to encourage loyalty, reward experience or maintain/enhance motivation.
- A national default retirement age of 65 is currently set and a retirement age below 65 is unlawful unless the employer can justify it on objective grounds.

- Employers must give between six months' and 12 months' notice to employees before their intended retirement dates and inform them of their right to request not to be retired.
- Employees have the right to ask their employers to let them work beyond age 65 and such requests must be considered in good faith and according to a prescribed procedure.
- Certain types of positive action are allowed if the employer believes that persons of a particular age group are disadvantaged in relation to particular work and the employer wishes to compensate for that disadvantage.
- The upper age limits for unfair dismissal and statutory redundancy rights have been abolished.

Retirement - Key things to remember

- Workers will retire when they are ready to, enforced retirement will only be possible if it is objectively justified.
- You must avoid discriminating against all workers on the grounds of age.
- This legislation will be applicable to all employers and all company sizes and sectors. These changes do not affect an employee's state pension age and entitlements, which may well be separate from the age at which they retire.

Age-related redundancy payments

Example: An employer decides to pay qualifying employees earning £600 a week an enhanced redundancy payment based on their actual week's pay. This is done rather than the maximum amount specified at Part 11 of the Employment Rights Act 1996 (ERA 1996) which is currently £350.

So an employee aged 45 with 18 years' continuous employment week, would receive one and a half weeks' pay for each year of employment in which they're not below the age of 41. In addition, they receive one week's pay for each year of employment in which they are not below the age of 22 so he would receive the following: $3 \times (1.5 \times £600) + (15 \times £600) = £11,700$. As well as this, the employer can pay qualifying

employees an enhanced redundancy payment calculated in accordance with section 162 of ERA 1996, but after calculating the appropriate amount for each year of employment, the employer may apply a multiple of two rather than one.

So the employer could pay the 45 year old £23,400 rather than £11,700.

Alternatively, the employer could apply the maximum amount of £350 to the persons payment, but apply a multiple of 2 and pay them the following:

$2 \times [3 \times (1.5 \times £350) + (15 \times £350)] = 2 \times (£1575 + 5250) = £13,650.$

*“It’s easier to ignore
the facts than to change
the preconceptions”*

Jessamyn West - Writer

Key Facts

Unemployment

- There are currently 384,000 unemployed over 50s in the UK, 4.5% of the total over 50 population (Nov 2010). This is lower than at the same point last year, 4.7% in November 2009. However, it is higher than in 2008 when the unemployment rate for over 50s was 3.6%. The rate of unemployed over 50s for men is slightly higher than for women, 5.6% compared to 3.1%

Redundancy

- In 2010, 26.53% of the UK's redundancies have been aged over 50. This is at its highest point in the last 10 years. The redundancy rate in the public sector was much higher than the National average, with 66% of all redundancies in County councils and 57% of redundancies in London Borough councils being over 50.

Re-employment

- In 2010, 16.59% of over 50s found reemployment. This is up 0.21% on the previous year. However, this increase is significantly lower than the increase in jobs vacancies between 2009 - 2010, 3.75%.

Sickness/Absence

- 50 - 64 and 64+ year's olds are absent less often than their younger counterparts, absence rate of 2.4% and 1.9% respectively, compared to the national average of 2.5%.

Pay

- 50 - 59 year olds earn on average less per year than 30-39 and 40 - 49 year olds; £28,356 compared to £29,004 and £30,443 respectively. Over 60s earn on average £20,895 per year.

Training

- 24% of 50 - 59 year olds and 13% of 60+ year olds took part in some form of training last year. This is lower than other age groups.

