

Guide

The Equality Act 2010

The TAEN Guides to the age related provisions of the Equality Act 2010 are primarily for employees, jobseekers and learners and aim to give a simple, clear explanation. The relevant provisions were formerly contained in the Employment Equality (Age) Regulations 2006 but since October 2010 they have been found in the Equality Act 2010.

Pensions

Introduction

The Equality Act 2010 makes it unlawful to discriminate against employees because of their age. There are regularly age-related provisions in occupational pension schemes, and the legislation requires trustees to treat members the same irrespective of age for some provisions; but there are exemptions for others.

Basic position

By their very nature, pension schemes are related to age and later stages of life. They need age criteria within them.

Actuarial calculations have to relate to age; a pension calculation for two people aged 70 and 55 cannot ignore the difference in age.

There is also a minimum age on which you can first draw an occupational pension, if the rules of the scheme allow it. It is currently 55. This is lawful.

The legislation covers the managers and the trustees of occupational pension schemes and employer contributions to personal pension plans, and they are not allowed to engage in age discriminatory activities.

However, as the general aim of the legislation is not to disturb the arrangements for occupational pension schemes, it is unlikely that you will have valid grounds for claiming age discrimination in respect of your pension arrangements. There is a long list of exemptions contained within the legislation.

Exemptions relating to pensions

These include:

- Minimum and maximum ages to join a pension scheme, including different ages for different categories of employee;
- Setting ages for entitlement for benefits from the scheme;
- Fixing early and late retirement ages under the scheme;
- Using age in actuarial calculations;
- Varying contribution rates according to age;
- Linking pension levels to length of pensionable service;
- Setting a maximum age for transfers out of the scheme;
- Providing different pension schemes for different groups of employees of different ages;
- Setting age limits on benefits for dependants;
- Setting age-related increases in pension payments.

The legislation does not however allow pension schemes to put an age ceiling on continuing to contribute to or accrue a pension.

If you are concerned about how your pension scheme treats you and you consider this may be age-related, you may wish to raise this with your employer and / or seek independent advice. It is important that all the practical issues related to this are surfaced and discussed.

A detailed guide to the legislation and pensions, including a useful listing of the practical implications of each exemption, is available from <http://webarchive.nationalarchives.gov.uk/+http://www.berr.gov.uk/files/file35877.pdf>

This reflects the legislation as it stood in 2006 but remains valid in relation to pensions.

If you are concerned you may have experienced discrimination fill in the online questionnaire (EqualityXpress) at www.rjw.co.uk/equalityxpress. Russell Jones & Walker Solicitors will then contact you with their opinion on your claim. The service is free and 100 per cent confidential.

The information in this guide was prepared by the award winning employment department at Russell Jones & Walker Solicitors

Care has been taken to ensure that the information provided in this Guide is accurate up to the date of publication (6 April 2011). However, we do not accept responsibility for mistakes or omissions. In particular, the information provided is for general educational purposes only and is not intended to be legal advice, taking into account your particular circumstances. Please do not use this information to disregard any legal advice, nor to delay in seeking legal advice or representation because of any material contained in it.

© TAEN – The Age and Employment Network 2011

TAEN's aim is to help create an effective labour market which works for people in mid and later life, for employers and for the economy.

Supported by  ageUK