

Guide

The Employment Equality (Age) Regulations 2006

The TAEN Guides to the Age Regulations are primarily for employees, jobseekers and learners and aim to give a simple, clear explanation.

The Age Regulations and Training

Basic position

Employers, training agencies, qualifications bodies and all further and higher education institutions who provide training must comply with the Employment Equality (Age) Regulations 2006. This means that it is unlawful to treat employees less favourably because of their age:

- in selecting who should be provided training;
- in the terms on which training is provided;
- by refusing access to training;
- by the adverse treatment of learners during training;
- by terminating the training;

unless the employer can justify the reason for the treatment objectively.

You can challenge a failure to consider you for training in employment because of your age even if you have not actually made an application for training and been rejected.

What is ‘vocational training’?

Vocational training includes all types and all levels of training which are related to:

1. employment;
2. vocational guidance; (eg Connexions, LearnDirect)
3. facilities for training;
4. practical work experience (Jobcentre Plus, New Deal); and
5. assessment related to the award of any professional or trade qualification.

There is some ambiguity as to what falls within these definitions of vocational training, although the general understanding is that all government supported programmes will fall within the scope of the Age Regulations.

If you believe the training is non-vocational, it is still a good idea to check by seeking independent legal advice.

When can an employer justify restricting training on the grounds of age?

There are certain situations where providers of training can justifiably restrict access to training on the grounds of age.

1. Where age is a genuine occupational requirement (‘GOR’)

If an age-related characteristic is an essential requirement. This may apply to theatre, film or modelling training, for example.

2. Where an employer would not see any return on the money they invest in training an individual because he or she is close to retirement.

A 50-year-old is still potentially 15 or more years away from retirement, so there would not really be any distinction between younger age groups to justify restricting that individual from undertaking one week’s induction or other specialist training. In practice, this restriction could be hard to justify unless an individual was one or two years away from retirement or the employer would not see a return in the remaining employment years as a result of the length and cost of the course.

3. 'Positive action' targeting training at an under-represented age group would be lawful.

An IT course targeted at older workers could potentially be justified if the older workers have lower levels of IT skills and qualifications than younger ones, or are under-represented in such programmes generally. The aim is to prevent or compensate for disadvantages linked to age suffered by persons of that age or age group.

Funding of training

The government has made it clear that state funding for training and education is not covered by the Age Regulations and so you can not make a claim for age discrimination if such funding is restricted or denied to you.

Next steps and advice

Employees should complain in writing to their employer first, before bringing a claim to an employment tribunal. Although there can be three-month extensions in some discrimination claims, time limits are strict, and can be limited to three months less one day from the date of the discrimination.

From 6 April 2009 an employee should follow the Acas grievance Code of Practice relating to grievances and raise a grievance without undue delay to their employer and appeal any adverse outcome. Claims to the employment tribunal outside the three-month time limit are very unlikely to be permitted. This will apply to England, Wales and Scotland but not Northern Ireland.

Claims against qualifications bodies should be made to an employment tribunal within three months of the act of discrimination. However, certain qualifications bodies which are regulated by statute (such as the General Medical Council) have their own appeal processes. You must use the statutory appeal process and if this fails, then bring proceedings for judicial review at the High Court (for England and Wales) or the Court of Session (for Scotland) within three months of the decision.

Claims against service providers should be brought in the County Court (in England & Wales) or the Sheriff Court (in Scotland) within six months.

For further information on bringing a claim please refer to the Guides on Redress and How to Make a Claim.

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 (1 June 2009). 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.

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