

## 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.

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## **Scope of the Age Regulations**

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### **Am I covered by the Age Regulations?**

The Age Regulations make discrimination in employment on the grounds of a person's age unlawful. They only apply to employment/workplace-related discrimination. This means that workers are protected from age discrimination in recruitment, employment terms and conditions, promotions, transfers, dismissals and vocational training. They do not apply to the provision of goods and services although the government has proposed legislation to cover such discrimination.

You do not have to be an employee in order to bring a claim for age discrimination. The legislation also protects "workers" which is a broad category covering full-time and part-time workers, trainees and apprentices, contract and agency workers, freelancers, the self-employed, partners in partnerships, office-holders, barristers and advocates.

There is no requirement for a particular length of service in order to bring an age discrimination claim. Job applicants and ex-employees are also covered by the Regulations.

The Regulations apply to all employers (both public and private sector), trade associations, trade unions, qualification awarding bodies, providers of training and employment agencies.

They also apply where an agent of the employer has discriminated against you or where someone else has instructed the employer to discriminate against you on grounds of age. An example of this would be where a client of your employer says they don't want anyone over the age of 50 working on their account. Your employer would remain liable for the decision to remove you from the account on grounds of your age.

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## **What sort of behaviour/treatment do the Age Regulations outlaw?**

The Regulations outlaw direct and indirect discrimination, victimisation and harassment. They also prohibit discrimination after the working relationship has come to an end. If you are subjected to any of the following forms of treatment, you may have a claim.

### **Direct discrimination**

If you are treated less favourably than another person because of your age, you may have a claim for direct age discrimination, unless the treatment can be objectively justified. An employer may be able to justify age discrimination if it can show that it is a "proportionate means of achieving a legitimate aim". This is a tough test and an employer will be expected to bring evidence to support any such argument.

An example of direct discrimination would be where an employer decides not to promote somebody because they are "too young" for the role, even if they have all the right skills, experiences and qualities for the job. If age is a significant factor in reaching the decision (even if it is not the only reason) and this is not justified, it will be unlawful.

### **Indirect discrimination**

This occurs where a "practice, provision or criterion" is applied equally to all individuals but it puts people of a particular age or age group at a disadvantage compared to persons of another age, and it cannot be 'objectively justified' (explained above).

An example of such a practice, provision or criterion might be a requirement that a person be a "recent university graduate." This would tend to disadvantage older workers who are less likely to have graduated recently.

### **Victimisation**

If you raise a complaint or allegation of age discrimination, or you assist somebody else to bring such a complaint and you are treated less favourably because of this, you can bring a claim of victimisation.

### **Harassment**

Harassment is defined as unwanted conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them. It takes account of all circumstances, including the perception of the victim.

Typical examples of harassment include derogatory comments about a person's age. Even a culture of light-hearted and casual age-based comments such as "You're over the hill" or "You're not up to it anymore" could support a claim of harassment. Unlawful harassment also includes exclusion or isolation of a person based on their age. An example of this would be where a group of younger workers regularly go for lunch or to the pub together and never invite their one older colleague. It could also include exclusion from meetings, training opportunities or corporate events.

### **After employment has ended**

You may still have a claim for age discrimination after employment has ended where the relationship between the act of discrimination and your employment is closely connected.

An example of this would be where you have sought a reference from a former employer who has refused to give you one. Another situation where such a claim could arise might relate to the way benefits such as share options are handled post-employment.

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## **Are all age groups covered?**

The Age Regulations cover workers of all age groups. Whatever age you are, if your age is a factor in your treatment, you may have a claim.

The Age Regulations apply not just in cases where your actual age is the cause of your treatment (e.g. 29 as opposed to 30) but also where your treatment is affected by other people's perception of your age (even if that perception is not accurate). You can also complain about actions which are based on the treatment of individuals of a particular age group or age range (compared to those of another age group), rather than your precise age. For example, you might be complaining about a requirement or scheme that puts workers over the age of 30 at a disadvantage as compared with workers between the ages of 20 and 30.

If you are under 16 you are unlikely to be covered as the Age Regulations only apply to discrimination in the workplace. They do not apply to an education provider or school (except in their role as employers) unless it provides vocational training.

There is no upper age limit to bringing a claim of age discrimination. However, the Age Regulations set a default retirement age of 65. Any normal retirement age below 65 now needs to be objectively justified (see above). Employees have the right to request to continue working beyond their normal retirement age, and employers have a duty to consider such requests but they have no duty to grant them or give a reason for refusing them.

This effectively means that a compulsory retirement age of 65 can still be enforced in the UK. This provision was recently the subject of a legal challenge at the European Court of Justice in a case brought by Age Concern, on behalf of older workers. The European Court of Justice held that a default retirement age was not in conflict with European law in principle but it now remains for the UK Courts to decide whether there are grounds justifying such a provision in the UK.

At the moment, this means that the right to bring a claim for unfair dismissal over the age of 65 is effectively limited to a situation where an employer completely ignores the procedures for handling retirement at the default retirement age.

It also means that where a default retirement age of 65 (or higher) exists, it will be lawful to refuse to recruit people who are over 64 and a half or six months before the retirement age (if higher). This means a ceiling on recruitment remains in practice.

Training for older workers may also be limited on the basis that employers expect to get some return on an investment in workforce training before the individual retires and this could have the effect of potentially justifying an upper limit on access to training. However, this has not been tested in the tribunals and it would depend on individual circumstances. Your starting point should be that you are entitled to any appropriate training offered regardless of age.

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## **Bringing a claim**

If you think you are the victim of age discrimination, you may bring a claim to the employment tribunal. There is no length of service requirement for doing so. A tribunal claim usually needs to be submitted within three months less one day of the date of the discrimination taking place. You will usually need

to raise a written grievance about your treatment with your employer in advance of bringing a claim. Tribunal time limits are strict so it is important to take legal advice promptly if you wish to bring a claim. You can also submit an age discrimination questionnaire to find out more information about your potential claim.

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

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**If you are concerned you may have experienced discrimination fill in the online questionnaire (EqualityXpress) at [www.rjw.co.uk/equalityxpress](http://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.**

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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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