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A guide for individuals on the
Age Discrimination Regulations



Age and the Workplace

Helpline **08457 47 47 47**

08456 06 16 00

helpline for textphone users

08702 42 90 90

for ordering Acas publications

08456 00 34 44

for questions on managing
equality in the workplace



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inform

advise

train

work
with you

Acas can help *with your employment relations needs*

Every year Acas helps employers and employees from thousands of workplaces. That means we keep right up to date with today's employment relations issues – such as discipline and grievance handling, preventing discrimination and communicating effectively in workplaces. Make the most of our practical experience for your organisation – find out what we can do for you.

We inform

We answer your questions, give you the facts you need and talk through your options. You can then make informed decisions. Contact us to keep on top of what employment rights legislation means in practice – before it gets on top of you. Call our helpline **08457 47 47 47** or visit our website www.acas.org.uk.

We advise and guide

We give you practical know-how on setting up and keeping good relations in your organisation. Look at our publications on the website or ask our helpline to put you in touch with your local Acas adviser. Our Equality Direct helpline **08456 00 34 44** advises on equality issues, such as discrimination.

We train

From a two-hour session on the key points of new legislation or employing people to courses specially designed for people in your organisation, we offer training to suit you. Look on the website for what is coming up in your area and to book a place or talk to your local Acas office about our tailored services.

We work with you

We offer hands-on practical help and support to tackle issues in your business with you. This might be through one of our well-known problem-solving services. Or a programme we have worked out together to put your business firmly on track for effective employment relations. You will meet your Acas adviser and discuss exactly what is needed before giving any go-ahead.

What the regulations say – in summary

The regulations on age discrimination apply to all employers, private and public sector vocational training providers, trade unions, professional organisations, employer organisations and trustees and managers of occupational pension schemes. In this context an employer is anyone who has employees or who enters into a contract with a person for them to do work. The regulations cover recruitment, terms and conditions, promotions, transfers, dismissals and training. They do not cover the provision of goods and services.

The regulations make it unlawful on the grounds of age to:

- discriminate directly against you – that is, to treat you less favourably than others because of your age – unless objectively justified
- discriminate indirectly against you – that is, to apply a criterion, provision or practice which disadvantages your particular age unless it can be objectively justified
- subject you to harassment. Harassment is unwanted conduct that violates your dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for you having regard to all the circumstances including your perception of the issue
- victimise you because you have made or intend to make a complaint or allegation or have given or intend to give evidence in relation to a complaint of discrimination on grounds of age
- discriminate against you, in certain circumstances, after the working relationship has ended.

Employers could be responsible for the acts of employees who discriminate on grounds of age. This makes it important for them to train staff about the regulations.

Upper age limits on unfair dismissal and redundancy will be removed.

There will be a national default retirement age of 65, making compulsory retirement below 65 unlawful unless objectively justified. You will have the right to request to work beyond 65 or any other retirement age set by the company. The employer has a duty to consider such requests.

There are limited circumstances when discrimination may be lawful (see the full Acas Guide *Age and the workplace: Putting the Employment Equality (Age) Regulations 2006 into practice* that explains genuine occupational requirements, objective justifications, exceptions and exemptions). This guide does not use the precise legal terms contained within the regulations.

What the regulations mean to you

Am I protected against discrimination because of my age?

Yes. You are protected against direct and indirect discrimination. It will be unlawful on the grounds of age to:

- decide not to employ you
- dismiss you
- refuse to provide you with training
- deny you promotion
- give you adverse terms and conditions
- retire you before your usual retirement age (if you have one) or retire you before the default retirement age of 65 without an objective justification (see full Acas Guidance *Age and the workplace: Putting the Employment Equality (Age) Regulations into practice* pages 30-35).

Example: Whilst being interviewed, a job applicant says that she took her professional qualification 30 years ago. Although she has all the skills and competences required of the job holder, the organisation decides not to offer her the job because of her age. This is direct discrimination.
Note: A job applicant can make a claim to an employment tribunal, it is not necessary for them to have been employed by the organisation to make a claim of discrimination.

What is indirect discrimination?

Indirect discrimination means selection criteria, policies, benefits, employment rules or any other practices which, although they are applied to all employees, have the effect of disadvantaging people of a particular age unless the practice can be justified. Indirect discrimination is unlawful whether it is intentional or not.

Is it ever legal to discriminate against someone because of their age?

There are limited circumstances when it is lawful to treat people differently because of their age. It is not unlawful to discriminate on the grounds of your age:

- if there is an **objective justification** for treating people differently – for example, it might be necessary to fix a maximum age for the recruitment or promotion of employees (this maximum age might reflect the training requirements of the post or the need for a reasonable period of employment before retirement)
- where you are older than, or within six months of, the employer's normal retirement age, or 65 if the employer doesn't have one, there is a specific exemption allowing an employer to refuse to recruit you
- if the discrimination is covered by one of the **exceptions or exemptions** given in the regulations – for example pay related to the National Minimum Wage
- if there is a **genuine occupational requirement (GOR)** that a person must be of a certain age – for example, if an employer is producing a play which has parts for older or younger characters.

For more details see section on genuine occupational requirements, objective justifications, exceptions and exemptions in the full Acas Guidance *Age and the workplace: Putting the Employment Equality (Age) Regulations into practice* (pages 30-35).

Do I have the right not to be harassed because of my age?

Yes. Harassment includes behaviour that is offensive, frightening or in any way distressing. It may be intentional bullying which is obvious or violent, but it can also be unintentional, subtle and insidious. It may involve nicknames, teasing, name calling or other behaviour which is not with malicious intent but which is upsetting. It may be about the

individual's age or it may be about the age of those with whom the individual associates. It may not be targeted at an individual(s) but consist of a general culture which, for instance, appears to tolerate the telling of ageist jokes.

Who is responsible for harassment?

Employers may be held responsible for the actions of their employees – as well as the employees being individually responsible. If harassment takes place in the workplace or at a time and place associated with the workplace, for example a work-related social gathering, you may be liable. Employers may be ordered to pay compensation unless it can be shown that they took reasonable steps to prevent harassment. If you harass someone you may also be ordered to pay compensation.

A good employer should protect you from harassment by third parties, such as service users and customers.

When deciding if you have been harassed, how you feel about what has happened to you is very important.

Example: A young employee is continually told he is 'wet behind the ears' and 'straight out of the pram' which he finds humiliating and distressing. This is harassment.

Example: An employee has a father working in the same workplace. People in the workplace often tell jokes about 'old fogies' and tease the employee about teaching 'old dogs new tricks'. This may be harassment on the grounds of age, even though it is not the victim's own age that is the subject of the teasing.

What is victimisation?

Victimisation is where you are treated detrimentally because you have made a complaint or intend to make a complaint about discrimination or harassment or have given evidence or intend to give evidence relating to a complaint about discrimination or harassment.

You may find yourself being labelled as a 'troublemaker', denied promotion or training, or be 'sent to Coventry' by your colleagues. If this happens or if your employer fails to take reasonable steps to prevent it from happening you, your employer may be ordered to pay compensation. If you victimise someone you may also be ordered to pay compensation.

Example: An employee claims discrimination against their employer on the grounds of age. A work colleague gives evidence on their behalf at the employment tribunal. When the work colleague applies for promotion her application is rejected even though she is able to show she has all the necessary skills and experience. Her manager maintains she is a 'troublemaker' because she had given evidence at the tribunal and should not be promoted. This is victimisation.

Do my rights stop when I leave my job?

No. Your protection against discrimination, harassment or victimisation continues after the end of your working relationship. It covers issues such as references either written or verbal.

Example: A manager is approached by someone from another organisation. He says that Ms 'A' has applied for a job and asks for a reference. The manager says that he cannot recommend her as she was not accepted by other staff because she was 'too young and inexperienced'. This is direct discrimination because of age.

What you can do if you think you have suffered discrimination or harassment

How do I express my concerns?

If you think you are being harassed or discriminated against it is a good idea to make it clear to the person who is harassing you that their behaviour is unwelcome and that you want it to stop. However, you do not have to do this, particularly if you are feeling bullied or intimidated. If you do choose to address your concerns to the person, be clear and assertive but take care that you are not perceived to be bullying the individual. Some people may find it helpful to ask a friend, colleague, welfare officer or trade union representative to be with them in a support role.

What if the problem doesn't stop?

If speaking to the person in question has failed to stop the problem, you should talk to your manager or your trade union representative. If it is your manager or supervisor who is harassing you, speak to someone higher up. Employers should deal with such complaints quickly, thoroughly and sympathetically.

It is usually best to try and sort things out quickly and as close to the problem as possible. If your organisation has a personnel or human resources department or an equality adviser you might find it helpful to talk to them. Discrimination can happen accidentally or through thoughtlessness. Harassment can be unintentional. Often, once a manager understands the problem, he or she will be willing to try and put things right.

Should I use the grievance procedure?

Yes. If your manager is unable to help you, or refuses to help you, you must use your organisation's grievance procedure if you intend to proceed with your complaint. All organisations are required to have a grievance procedure by law. You also have a legal right to be accompanied by a trade union representative or a work colleague at any hearing into your grievance.

Can I appeal against my employer's decision?

Yes. If you are not satisfied with the result of a grievance procedure, you have a right of appeal which should be heard, if the organisation's size allows it, by someone different from the person who conducted the original grievance hearing. You have a right to be accompanied by a trade union representative or a work colleague during the appeal hearing.

Can I make a claim to an employment tribunal?

When you have tried all these things, or if your employer does not have a grievance procedure, or if you feel too intimidated to use the internal procedures, you may be able to bring a complaint to an employment tribunal under the age regulations. You do not have to hand in your notice to bring such a complaint. As part of your employment tribunal claim, you can require your employer to answer a set of questions about discrimination in your workplace. A questionnaire is available on the DTI website (www.dti.gov.uk) and from jobcentres and citizens advice bureaux.

You and any witnesses have a right not to be victimised for following up a grievance or complaining to an employment tribunal under these regulations provided the complaint was made in good faith.

If you have been dismissed because you objected to conduct towards you, you may be able to bring a complaint of unfair dismissal to an employment tribunal.

Complaints to an employment tribunal must normally be brought within three months of the act you are complaining about. Care should be taken to ensure that the three month point is not exceeded during any internal grievance/appeals process.

Do I have to retire on my expected retirement date?

You now have the right to request to continue working beyond your expected retirement date. If you do so your employer must give consideration to your request if you have made it in time and if they turn it down you have the right to appeal to the employer. If you do not make the request to continue working no less than three months before your expected date of retirement you may lose your opportunity to continue working.

Does my employer have to let me carry on working?

No. You will not automatically be allowed to work beyond your expected retirement. Your employer does not have to agree to your request or give you a reason for turning it down.

If you want to continue working beyond your expected retirement date, but perhaps with alternative or variable working patterns take the initiative and discuss this with your employer at an early stage. Your employer does not have to agree to vary your job but early discussion could help highlight the mutual benefits of a different pattern of work or combination of duties.

Take advantage of training and development opportunities in the years approaching retirement. It will help you to make a stronger case for continuing to work.

How do I find out when I am expected to retire?

Your employer should inform you of their intended retirement date for you and your right to request to continue working at least six months, but no more than 12 months, before the intended date. If your employer does not do this you may have the right to eight weeks pay as compensation.

Do I have the chance to talk to my employer about my retirement?

Yes. If you ask to continue working, your employer should hold a meeting with you to consider your request. You have a right to be accompanied by a work colleague or trade union representative at the meeting. The trade union representative must also be a work colleague. You must be told the result of your request as soon as is reasonably practicable after the meeting. You can appeal against the decision if your request is not met. You will need to give your employer notice of the appeal as soon as is reasonably practicable after you have received his decision.

Is there still an upper age limit on unfair dismissal claims?

No. There will no longer be an upper age limit on unfair dismissal claims. The statutory redundancy payments scheme is also being adjusted to remove upper and lower age limits as is statutory sick pay and maternity pay.

Where can I find further information?

If you need more details on this issue visit our website at www.acas.org.uk where you can find out about the latest information on employment relations matters, order publications, book training or access our free e-learning packages.

You can also call our helpline on **08457 47 47 47** if you have a question about new employment legislation or your rights at work.

Information in this booklet has been revised up to the date of the last reprint – see date below.

Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice.

Acas aims to improve organisations and working life through better employment relations. We provide up-to-date information, independent advice, high quality training and we work with employers and employees to solve problems and improve performance.

We are an independent, publicly-funded organisation and many of our services are free.

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