

Hotel Business

REFURBISHMENT • PROPERTY • RECRUITMENT • FOOD & DRINK • TECHNOLOGY • NEWS & VIEWS

EMPLOYMENT LAW

Discrimination laws come of age

New legislation is coming into force this October to protect all workers from age-related prejudice. If you don't prepare now, you could unwittingly be leaving yourself open to legal action, warns Hazel Oliver

New age discrimination laws come into force on October 2006, and managers in all types of business will be expected to understand and implement the law from day one. It covers both old and young workers who are disadvantaged at work because of their age. Because everyone has an age, anyone can make a claim! So, what are the main issues that hotel managers need to be thinking about now?

New Recruits

The rules apply from the hiring stage to the end of employment. Bosses will need to be particularly careful about stereotyping what potential employees can and can't do because of their age. There are a number of common perceptions in the hotel industry. For example, it is often considered that managers need to be over a certain age to give customers confidence, front of house staff need to be young to present a youthful and dynamic image, and porters need to be below a certain age to carry out the job effectively. All of these examples could be considered to be direct age discrimination. Although it may be justified, this is quite a difficult test to satisfy. Hiring decisions that are

based on assumptions about a person's capabilities at a certain age are unlikely to pass this test.

Particular care must be taken with advertisements, which can suggest that the employer selects on the basis of age. Specifications such as 'management candidates need to be over 30' is an obvious example. However, the suggestion of discrimination may arise more indirectly. An advert that requires someone to be 'energetic and enthusiastic' suggests that the employer is looking for young workers, while use of the word 'maturity' indicates a preference for older candidates. Requiring a specific number of years' experience may also show prejudice against younger workers, who are less likely to meet this requirement. It will be preferable to list the actual types of experience required, rather than assuming that years in a particular role automatically provides a certain level of practical experience.

Staff Retention

Many employers will want to reward loyalty and motivate staff by providing service-related benefits. This will tend to disadvantage younger workers, who will tend to have less service. However, there is



some good news. Benefits that are based on service up to five years are allowed by the regulations. This can be at a particular level in the business, so if a person is promoted the clock will effectively start again. Even if it is based on service longer than five years, this is still allowed if it reasonably appears to the employer that this is necessary to fulfil a business need, such as rewarding experience or encouraging loyalty or motivation. Although it will be necessary to think through the reasons for providing benefits in this way, the new law will not prevent such systems from remaining in place.

What is more challenging is the issue of ensuring equal opportunities in the workplace, and in particular, the dangers of harassment. At the moment, ageist jokes and comments are commonplace, and are generally not thought of as inappropriate. However, this will be treated seriously under the new law, and the employer will be liable unless all practicable steps have been taken to prevent this from happening. This means that it is essential that managers ensure there is an up-to-date equal opportunities policy which covers this issue. All employees (and

particularly managers) need to receive training on avoiding stereotyping and what will be regarded as inappropriate under the new law. This should be happening straight away, as behaviour before the new law comes into force may be used as evidence of the employer's attitudes in a later claim.

Ending Employment

It is still possible to retire employees at a compulsory age without being accused of discrimination. However, this cannot be less than 65 years. If a company decides to have a lower retirement age, it will need to justify why this is necessary, which is likely to be very difficult. This may mean that businesses will need to increase their retirement age to 65, or abolish it altogether. It will also be possible for workers to request to stay on past retirement, and there are a number of procedures that must be followed in order to make sure that

this is fair. Companies should be reviewing this issue now, so that the right procedures are in place in time for October.

At the moment, managers in business with a lower retirement age may often use this to end the employment of under-performing older workers, rather than going through a proper performance improvement procedure. If the retirement age is raised to 65, it will be necessary to deal with performance issues of older employees in the usual way, rather than using retirement to create what is often thought of as a more 'dignified' exit.

There is no doubt that the new law is going to set a challenge to all businesses, and the hotel sector is no exception. The answer is to plan now to help prevent the risk of claims from both younger and older workers.

• Hazel Oliver is a partner in the employment and incentives team at Lewis Silkin

