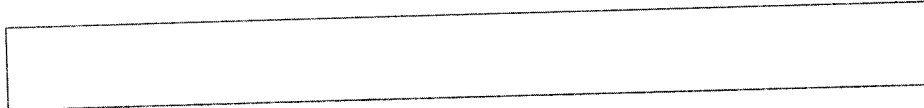


## Age equality at work

**Employment lawyer James Davies, of Lewis Silkin LLP, explains what the new age discrimination laws will mean for both employers and employees.**

The new age discrimination laws, Employment Equality (Age) Regulations 2006, come into force on 1 October 2006.



They add age to the grounds on which employers are already prohibited from discriminating - sex, race, nationality, religion or belief, sexual orientation and disability.

The regulations will impact on all stages of the employment relationship from recruitment to dismissal.

Employers will be prohibited from taking age into account in deciding who to offer a job to unless the employer can justify doing so. Employers will need to be careful of giving an impression that age is relevant as they could be forced to prove that they did not discriminate.

For example, a job advertisement which refers to an "energetic, fun and dynamic" candidate could be used to support a claim that the company was after a younger candidate. Similarly, an advertisement for a "mature candidate with boardroom presence" could suggest an older candidate was sought.

**It will probably result in ageist jokes and banter becoming as unacceptable in workplaces as sexist or racist behaviour is today**

Recruiters must also avoid job conditions which indirectly discriminate against younger or older candidates. Seeking a candidate with ten years' experience would disadvantage younger applicants. Specifying a recent graduate would disadvantage older candidates. In either case the employer could try to justify this but would probably struggle.

Ageist harassment will also be unlawful. This will probably result in ageist jokes and banter becoming as unacceptable in workplaces as sexist or racist behaviour is today.

Promotion and training opportunities must be afforded to workers irrespective of age. Employers cannot discriminate in the benefits that they pay. For example, it is likely to be unlawful not to offer medical insurance to older workers merely on the basis that it would cost more.

### **Exceptional cases**

At the end of the relationship, employers will not be able to discriminate on the grounds of age. This will probably result in many claims from older workers dismissed in their 50s or

early 60s who will believe that their age played a part in their employer's decision.

Employers will need to ensure that performance and ill health is managed in a consistent, transparent and well-documented fashion so that they can show that the dismissed employee's age was not a factor.

There will be an exception for retirement. On the face of it requiring an employee to stop working merely because he or she has reached a particular age would be discriminatory.

However, the regulations acknowledge that employers will be able to retire staff from the age of 65 provided that they follow a set procedure which involves the employer giving at least 6 months' notice and the employee having the right to request to stay on.

The employer can refuse this request without giving any reason. An employer who wishes to set a retirement age below 65 would have to justify doing so. It is highly unlikely it will be able to do so other than in exceptional cases.

Claims will be brought in employment tribunals in the same way as other discrimination and employment claims currently are. Claims must normally be brought within three months of the act complained of.

Compensation is largely based on loss of earnings and is unlimited. An additional award can be made for injury to feelings. This will normally range from several hundred pounds to about £25,000 in the most serious of cases.

**A more comprehensive guide to the legislation can be downloaded from the Lewis Silkin website.**

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