

Disability Law Service

Offering free, confidential legal advice and
representation for disabled people

Age Discrimination Law

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The Age Discrimination Regulations have been in force since 1 October 2006.

Who does it apply to?

You can use the age discrimination regulations if you are discriminated against because you are considered to be too young or too old. It applies equally in both circumstances.

Like most other discrimination legislation it applies to 'employment under a contract of service or of apprenticeship or a contract personally to do any work' (reg 2(2)). Therefore it would apply equally to employees and workers.

It also specifically refers to contract workers (reg 9(5)). They have specifically been given rights against their principals who they actually carry out the work for.

It also applies to those applying for or attending vocational training.

Who has legal obligations under the Regulations?

The Age discrimination legislation relates to employment and vocational training. This means that you could take a case against your employer/vocational training provider. However, unlike some other discrimination legislation, it does not apply to the providers of goods and services/or housing providers.

However, you may be able to use human rights arguments in these areas to give you protection. Human Rights arguments can only be used against public authorities or public bodies, for example: a local authority. If you seek advice on human rights, you should contact the Equality and Human Rights Commission. Information about the organisation can be found in the contact list at the end of this factsheet.

Other organisations also have obligations such as trade unions, partnerships, employment agencies and qualifications bodies. Trustees and managers of occupational pension schemes and barristers also have obligations.

What circumstances does it apply to in the employment context?

- When applying for a job
- In the terms on which employment is offered
- In opportunities for training, promotion or other benefits
- In the way you are treated by your employer and colleagues
- In being selected for redundancy or by being dismissed
- When you have left your job, but still have a relationship with your previous employer, for example by requesting a reference.

Have I been discriminated against?

Direct Discrimination

Someone directly discriminates against another person if, on the grounds of their age, they treats them less favourably than they treat or would treat other persons and

they cannot show that the treatment is a proportionate means of achieving a legitimate aim, (reg 3(1)(a)).

Unlike most areas of discrimination law, direct discrimination can be justified under the Age Discrimination Regulations. Previously in disability discrimination law, it was possible to justify direct discrimination, however this defence has since been removed.

An example of direct discrimination would be if an employer decided not to hire anyone under a certain age even if they had all the relevant skills and experience to do the job.

Another example would be if an employer did not promote an experienced sales person, assuming that a younger person would have a better impact.

An example in vocational training would be if a person aged 60 applied for a vocational training course and was refused because they were too old.

Indirect Discrimination

Indirect discrimination occurs when a provision, criterion or practice is applied equally to persons of not the same age, but which puts or would put members of a particular age group at a particular disadvantage when compared with other persons and that an individual of that particular age group has been put at a disadvantage. Such treatment, provision, criterion or practice will be unlawful unless it has a proportionate means of achieving a legitimate aim, (reg 3(1)(b)).

An example of indirect discrimination would be if an employer wanted to hire only persons who have a GCSE in Maths. This would have disproportionate impact on the older candidates because they are more likely to have an O level in Maths instead of a GCSE.

Another example would be an employer who requires a certain level of physical fitness. This is likely to have a worse impact on older candidates.

Another example would be if an employer required that a candidate had ten years' experience in a relevant field. This would have a worse effect on younger candidates.

Therefore the employer would have to show that this requirement was justified.

Can the discrimination be objectively justified?

As previously stated both direct and indirect discrimination can be objectively justified. An employer must be able to show that the direct or indirect discrimination is a proportionate way of achieving a legitimate aim.

A legitimate aim would include:

- genuine business need
- economic efficiency
- health and safety concerns
- encouraging and rewarding loyalty.

Proportionality means that the employer must show that it is necessary to directly or indirectly discriminate on grounds of age. It must show that there is no alternative way of achieving the legitimate aim. Further it must show that the discriminatory effect is significantly outweighed by the benefits of the legitimate aim.

We now apply the objective justification test to some of the examples above.

In the example of an employer who decided not to hire anyone under a certain age even if they had all the relevant skills and experience to do the job. This would not be objectively justified as there is no legitimate aim.

The same would apply to the employer who wants a GCSE in Maths and not an O level in Maths. An O level should suffice to show that the candidate has a certain level of understanding in Maths and therefore there is no legitimate aim to this policy.

In the case of an employer who requires a certain level of physical fitness whether the requirement could be objectively justified would depend on the job in question. If it were irrelevant to the particular job, for example: an admin job, then the employer could not justify it, as it has no legitimate aim. If it were relevant to the job, for example: the position of a fire fighter, then the employer is likely to be able to justify it. The health and safety of others would be the legitimate aim of this policy and is likely to significantly outweigh the discriminatory effect.

The employer who requires ten years' experience in a relevant field might be able to justify that requirement if it could show that it was very beneficial to have such

experience in a particular job. The employer would have to show that there was a legitimate aim (for example: sufficient business needs) and also that the measure was proportionate. It would need to show that alternatives would not be effective, for example: candidate assessments, and also that the discriminatory effect is significantly outweighed by the benefits of the legitimate aim.

Victimisation

Victimisation occurs when someone is treated less favourably than others because they have used the Age Discrimination Regulations to enforce their rights, for example: they have brought proceedings under the regulations.

Harassment

Harassment occurs when on the grounds of age, a person is subjected to unwanted conduct which has the purpose or effect of:

- violating the complainant's dignity; **or**
- creating an intimidating, hostile, degrading, humiliating or offensive environment.

An example of harassment would be an ageist office culture where ageist jokes are common.

Specific Exemptions

The national minimum wage has different rates depending on the age of the employee. It is therefore not discriminatory for an employer to apply these rates. However, it could be unlawful if the employer paid above the minimum wage but paid people of different ages a different rate.

The national default retirement age is 65. Therefore an employer can lawfully compulsorily retire you at 65. However, if your employer had a lower retirement age then it must show that its retirement age is appropriate and necessary.

Further, the regulations extend unfair dismissal protection to those over 65. If an employer can not show that the

employee was fairly retired the dismissal could be deemed unfair.

Other laws may make it lawful for an employer to treat people of different ages differently. For example: someone needs to be 18 before they can serve alcohol at a bar. It would therefore be lawful for a bar manager not to hire a 16 year old to do that job.

It may be lawful for an employer to treat people differently if there is a 'genuine occupational requirement' for a job holder to be of a particular age. For example: an older actor would be required to play the role of a pensioner in a film.

Like other discrimination laws, there are certain other exemptions. For example: volunteers are generally excluded from the protection.

Positive Action

The Age Regulations allow for positive action in a limited range of circumstances. Positive action is to compensate for disadvantages linked to a particular age group. Positive action would include providing facilities for training which

would help fit employees for particular work; or encouraging persons of a particular age to apply for a job, (reg 29 (1)).

Positive Act should not be confused with positive discrimination. For example: an employer might advertise stating that it particularly welcomes applicants over the age of 60 as this group is under-represented in the workforce. However, it must hire the best candidate for the job regardless of age.

Taking Action: What is my first step?

Generally it is good practice to use the grievance/appeal procedure whenever you have a serious dispute with your employer. This is now a legal requirement before bringing a complaint of discrimination. Further, if you are dismissed, then generally you **must** appeal before complaining to the Tribunal. The employer's Human Resources department will advise you of the appeal procedure.

If you are not dismissed but are aggrieved then generally you **must** bring a grievance about your concerns before complaining to the Tribunal. See below for time limits.

On 6 April 2009, the statutory grievance procedures will be repealed in England, Scotland and Wales (but not in Northern Ireland). This means that, from then on, employers will no longer have to follow them when an employee raises a grievance. Employers will not have to follow the statutory grievance procedure where the action which causes the employee to raise a grievance (the 'trigger event') occurs on or after 6 April 2009.

This also means that you will not get an extension in your time limit and your claim should be put in within three months. However, do note that contractually you may be required to follow your employer's grievance procedure.

The Grievance

Send a grievance letter (preferably recorded delivery) to your employer. The letter should state your complaint about the discrimination or any other action that you believe was unfair. This letter should be sent within three months of the action about which you are upset. It is

strongly advised that this letter be sent no later than two months after the discriminatory act.

After sending the letter, you have to wait at least 28 days before issuing a claim. Providing that you state your grievance or complaint, in writing, to your employer **within three months** from the date on which you were discriminated against the time limit for bringing a claim to the Employment Tribunal will be extended by a further three months.

Upon receipt of the grievance the employer should arrange a meeting with you with a view to resolving your concerns.

Circumstances where you do not have to send a grievance letter include the following: (this is not an exhaustive list)

- If you are not an employee, or you suffered discrimination after your contract of employment had ended. If you are uncertain as to whether you are an employee then speak with an advisor;
- In certain circumstances where your dismissal is part of a collective dismissal – certain redundancies

affecting more than 20 employees, unofficial strikes etc;

- If your complaint is only the fact that you were dismissed and not the events leading to the dismissal. If it is not clear whether this applies to your case then you will need to seek further legal advice;
- If you genuinely believe and can demonstrate that sending the grievance letter or waiting for expiry of 28 days would result in a significant threat to a person, including yourself, and/or further harassment, if you are already being harassed at work, then the Tribunal should excuse your failing to commence or complete the grievance procedure.

If you are not required to send a grievance you **must** submit a claim to the Tribunal **within three months** from the date on which you were discriminated. You are strongly advised to speak with an adviser to ensure that you have correctly calculated your deadline for submitting a claim.

If, after reading this guide, you think that you may have a claim for discrimination you should seek further advice from one of the organisations listed on the back pages.

There are serious consequences for you if you do not comply with the procedure. This could include not having your complaint heard by the Tribunal and/or having any award you would receive from the Tribunal reduced. It is therefore important that you get legal advice if you believe you may not have fully complied with the procedure, or your employer has failed to comply with the procedure.

Other types of claims

Unfair Dismissal

If you have been dismissed for a reason relating to your age or another unfair reason, in addition to a claim for discrimination, you might also have a claim for unfair dismissal. In most cases, you can only bring a claim for unfair dismissal if you have worked for your employer for over 12 months continuously. When hearing an unfair dismissal case, a Tribunal will look at whether your employer's decision to dismiss you was reasonable and whether a fair procedure was followed. Your claim must be submitted within three months minus one day from the date of dismissal.

How do I make a claim?

Courts known as Employment Tribunals deal with employment claims. Your claim should be submitted to the Tribunal on a form known as an ET1, which is available from JobCentres, or on the internet at:

www.employmenttribunals.gov.uk

The Employment Tribunal will usually only consider your claim if it receives your ET1 application form **within three months** of the date of the act of discrimination, however if you sent a grievance letter or raised an appeal then the time limit may in certain circumstances be extended by a further three months, (**please refer to explanation above as to revocation of this discretion to extend**). It is very important, therefore, to seek advice as soon as you think you may have been discriminated against. If you are out of time in bringing your claim, it might still be possible to bring a claim before the Employment Tribunal if you have exceptional reasons for the delay. You would need to obtain legal advice as quickly as possible about pursuing this.

How much will it cost?

The Tribunal does not at present charge a fee for starting a claim.

It is also unlikely that you will be asked to pay the employer's legal costs if you lose your case. Similarly if you win your case the employer is unlikely to be asked to pay your legal costs.

You do not have to be represented by a solicitor or legal adviser in the Employment Tribunal. However, discrimination cases can become quite complex and your chances of success may be better if you do have legal advice and representation. Most Employment Tribunal hearings are open to the public to attend. The Equality and Human Rights Commission has guidance on making a claim.

What happens if I win my age discrimination case?

If you are successful in your claim, the Employment Tribunal may award you a declaration of age discrimination (that is, formal confirmation that you have

suffered age discrimination), recommendations to your employer to take corrective action in response to the declaration and compensation for any financial loss you have suffered as a result of the discrimination. In some circumstances, this may include compensation for future losses. Additionally, the Tribunal can also award you compensation for injury to feelings. In extreme cases, where the discrimination has been so serious that it has actually caused you to become ill, a Tribunal can also award compensation for personal injury.

If your claim includes unfair dismissal, the Tribunal may order that you be reinstated in your old job (given your old job back) or that you be re-engaged (given a different job with your former employer).

Where can I get help?

If your income is low and you do not have much money saved you may be able to get free advice and assistance from a specialist employment law solicitor under what is known as the 'Legal Help Scheme'. This scheme covers the cost of some of the legal work involved in pursuing an Employment Tribunal claim. However, it does not cover all

costs. In particular, it does not cover the cost of a barrister or solicitor actually presenting your case for you at the Employment Tribunal hearing. To find a specialist employment law/disability discrimination solicitor in your area who can provide help under the free **Legal Help Scheme**, you can contact **Community Legal Advice** on **0845 345 4345** or search its database on the internet at **www.communitylegaladvice.org.uk**. Unfortunately, full legal aid is not available for Employment Tribunal cases.

If you have a credit card, mortgage or contents insurance you may be insured for legal expenses. This means that the insurance company may pay the fees of a solicitor who advises you and represents you in the Tribunal. Some solicitors may also be prepared to represent you on a 'no win, no fee' basis. For more information about solicitors you should contact the Law Society on **020 7242 1222** or online at **www.lawsociety.org.uk**.

If you are a member of a Trade Union your union representative should be able to advise you about your claim and may be able to represent you.

Law Centres and Citizens Advice Bureaux may also be able to help you free of charge. Details about the **Law**

Centre nearest to you are available from the **Law Centres Federation**. Details of your local **Citizens Advice Bureau (CAB)** can be obtained via the **National Association of Citizens' Advice Bureaux (NACAB)**. Contact details for these organisations can be found at the back of this guide.

Useful organisations

The Disability Law Service

The Disability Law Service is a registered charity offering free confidential legal advice on disability discrimination in employment to disabled people. It is able to take on certain cases on behalf of disabled employees or job applicants. In addition to employment law advice, it can also offer advice in the following other categories of law: community care, education, consumer/contract, welfare benefits.

Disability Law Service

39-45 Cavell Street

London E1 2BP

Telephone: **020 7791 9800**

Fax: **020 7791 9802**

Email: **advice@dls.org.uk**

Website: **www.dls.org.uk**

Equality and Human Rights Commission

The Equality and Human Rights Commission is a national organisation set up by the Government to monitor and tackle discrimination. It operates a telephone helpline for people with discrimination problems. The Equality and Human Rights Commission also publishes many useful guides and leaflets, which can be obtained via its helpline. In some cases, the Equality and Human Rights Commission will advise and represent people who have discrimination claims.

Equality and Human Rights Commission England

Equality and Human Rights Commission Helpline

Freepost RRLG-GHUX-CTR

Arndale House

Arndale Centre

Manchester M4 3EQ

Telephone: **0845 604 6610**

Minicom: **0845 604 6620**

Fax: **0845 604 6630**

Website: **www.equalityhumanrights.com**

Opening times: Monday, Tuesday, Thursday, Friday 9am–5pm; Wednesday 9–8 pm (last call taken at 7:45pm)

Equality and Human Rights Commission Wales

Equality and Human Rights Commission Helpline Wales

Freepost RRLR-UEYB-UYZL

3rd Floor

3 Callaghan Square

Cardiff CF10 5BT

Telephone: **0845 604 8810**

Minicom: **0845 604 8820**

Fax: **0845 604 8830**

Website: **www.equalityhumanrights.com**

Opening times: Monday, Tuesday, Thursday, Friday 9am–5pm; Wednesday 9am–8pm (last call taken at 7:45pm)

Equality and Human Rights Commission Scotland

Equality and Human Rights Commission Helpline Scotland

Freepost RRLL-GYLB-UJTA

The Optima Building

58 Robertson Street

Glasgow G2 8DU

Telephone: **0845 604 5510**

Minicom: **0845 604 5520**

Fax: **0845 604 5530**

Website: **www.equalityhumanrights.com**

Opening times: Monday, Tuesday, Thursday, Friday 9am–5pm; Wednesday 9am–8pm (last call taken at 7:45pm)

Community Legal Advice

Community Legal Advice can give contact details of solicitors and other organisations that can advise and assist you, subject to eligibility, under the free Legal Help Scheme.

Community Legal Advice

Telephone: **0845 345 4345**

Website: **www.communitylegaladvice.org.uk**

Opening times: Monday – Friday 9am–6.30pm

The Law Centres Federation

The Law Centres Federation can provide details of local Law Centres which can give legal advice and assistance with employment claims.

The Law Centres Federation

293-299 Kentish Town Road
London NW5 2TJ

Telephone: **020 7387 8570**

Website: **www.lawcentres.org.uk**

National Association of Citizens Advice Bureaux

The National Association of Citizens Advice Bureaux (NACAB) can provide details of local Citizens Advice Bureaux (CAB) which can give legal advice and assistance with employment claims.

National Association of Citizens Advice Bureaux

Myddleton House
115-123 Pentonville Road
London N1 9LZ

Telephone: **020 7833 2181**

Fax: **020 7833 4371**

Website: **www.nacab.org.uk**

The Law Society

The Law Society can provide details of solicitors who can advise on discrimination and employment cases.

The Law Society

The Law Society's Hall

113 Chancery Lane

London WC2A 1PL

Telephone: **020 7242 1222**

Website: **www.lawsociety.org.uk**

Age Concern

Age Concern is an organisation set up to help older people. It can offer advice and assistance in relation to discrimination you have suffered.

Age Concern England

Astral House
1268 London Road
London SW16 4ER

Telephone: **0800 00 99 66**

Website: **www.ageconcern.org.uk**

Help the Aged

Help the Aged is an organisation set up to help older people. It can offer advice and assistance in relation to discrimination you have suffered.

Help the Aged

207-221 Pentonville Road,
London N1 9UZ

Phone: **020 7278 1114**

Seniorline: **0808 808 6565**

Fax: **020 7278 1116**

Email: **info@helptheaged.org.uk**

Website: **www.helptheaged.org.uk**

Legal Disclaimer

Although great care has been taken in the compilation and preparation of this work to ensure accuracy, DLS cannot accept responsibility for any errors or omissions. All information provided is for education/informative purposes and is not a substitute for professional advice. Any organisations, telephone numbers and links to external web-sites have been carefully selected but are provided without any endorsement of the content of those sites.

For further advice on these matters please contact:

Disability Law Service

Telephone: **020 7791 9800**

Minicom: **020 7791 9801**

Fax: **020 7791 9802**

Email: advice@dls.org.uk

Or write to us at: 39 – 45 Cavell Street, London E1 2BP

Community
Legal Service



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