



## FACTSHEET FOR EMPLOYERS AND MANAGERS FROM ABHR LIMITED



Please note the information below is a summary of the Age Regulations and does not provide the whole of the statutory provisions. While every care has been taken in compiling this factsheet; ABHR can not be held responsible for any errors or omissions; the notes are not intended to be a substitute for specific legal/professional advice, which can be sought direct from ABHR Limited.

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# Age Regulations

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From the 1st October 2006 the Employment Equality (Age) Regulations were introduced making it unlawful to discriminate against workers, employees, job seekers and trainees because of their age.

There is already legislation to protect people against discrimination on the grounds of sex, race, disability, gender reassignment, sexual orientation, religion or belief.

The Age Regulations apply to all employers and cover recruitment, terms and conditions, promotions, transfers, dismissals, training and in certain cases post-employment activities such as references.

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

1. Discriminate **directly** against anyone because of their age ie: refusing to interview or recruit an individual due to their age – unless objectively justified. (Justifying is an incredibly difficult and complex process. Evidence needs to be provided not just assertion).
2. Discriminate **indirectly** against anyone – that is to apply a criterion, provision or practice which disadvantages people of a particular age unless it can be objectively justified.
3. Subject someone to **harassment** – unwanted conduct that violates a person's dignity.
4. **Victimise** someone because they have made or intend to make a complaint on the grounds of age.

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## WHAT DOES THIS MEAN IN PRACTICE?

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### Recruitment

- Any recruitment decisions should be based on the skills required to do the job.
- Age/date of birth should be removed from application forms and included in the equal opportunities monitoring form.
- If used, application forms should be monitored to ensure that they are not asking for unnecessary information about periods and dates of work – asking for age-related information could allow discrimination to take place.
- Job descriptions should outline the duties required and a person specification should give the skills, knowledge and experience required to carry these out.
- Avoid references to age in both the job description and person specification. For example, avoid asking for 'so many years experience'. This may rule out younger people who have the skills required but have not had the opportunity to demonstrate them.
- Make sure that qualifications requested do not discriminate or disadvantage people of different ages.
- Job adverts should avoid using certain language that might imply that you would prefer someone of a certain age, such as 'mature, young or energetic'.
- Remember you can always decide not to recruit or promote someone if the applicant does not have the necessary skills or abilities.

- As well as considering the language you use in adverts think also about any hidden messages that may be present in any promotional literature that you may have, particularly pictures.
- If you recruit graduates then make sure you make it clear that you are interested in the qualification and not the age of the applicant.
- CV's may come in with people's age mentioned on the document, remember to remove this knowledge when recruiting and focus on skills and ability alone.
- Recruitment shortlisting processes such as skills matrixes should be retained for ideally up to 12 months in case requested for.
- Interviews should avoid questions related to age or throwaway comments.
- Focus on the applicant's competence and where more than one demonstrates the required competence the applicant who is more competent or offers the best skill mix should be appointed.
- Again, in all instances, record your decisions and retain these records ideally up to 12 months.

## Employment Agencies

- If you use a recruitment agency, ensure that the agency acts appropriately and in accordance with any company equality and diversity policies.

## Training

- Any training provided should have no age entry or any age terms linked to the training. For example; covering of costs.
- Opportunities for promotion and training should be made known to all employees and be available to everyone on a fair and equal basis.

## Performance Appraisals

- All performance appraisal systems should be checked to ensure that they are working fairly and without bias. Unfortunately many people have preconceptions about age and these can influence judgements.
- Treat all employees the same when setting objectives or measuring performance.

## Redundancy

- Redundancy selection processes should be free of age discrimination.
- The upper and lower age limits for receiving a redundancy payment have been removed.
- SRP is no longer tapered after an employee's 64th birthday.

## Retirement

- The regulations set a default retirement age of 65. This means you can retire employees or set retirement ages within your company at or above 65. However, you do not have to have a fixed retirement age.
- Employees have the right to request to continue working beyond their retirement date and employers have a duty to give consideration to such requests. (There is a statutory procedure for handling such requests).
- The upper age limits on unfair dismissal and redundancy have been removed.

## Other Areas

- Other areas to be monitored are;
  - o Sick absence
  - o Leave and holidays
  - o Discipline and grievances
  - o Staff transfers
  - o Flexible working
  - o Use of computers
  - o Benefits

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## EXCEPTIONS AND EXEMPTIONS

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There are exceptions or exemptions from the age regulations in the following areas:

- Pay and other employment benefits based on length of service
- Pay related to the National Minimum Wage
- Acts under statutory authority
- Enhanced redundancy payments
- Life assurance
- Occupational pension systems – not covered in this factsheet

### Pay and other employment benefits

- Any benefit earned by 5 years service or less will be exempt. Employer may use pay scales that reflect growing experience or limit the provision of non-pay benefits to those who have served a qualifying period, subject to the 5 year limit.
- The use of length of service of more than 5 years for all types of employment benefits is lawful if:
  - Awarding or increasing the benefit is meant to reflect a higher level of experience of the employee, or to reward loyalty, or to increase or maintain the motivation of the employee;
  - The employer has reasonable grounds for concluding that using length of service in this way fulfils a business need. (In order to meet these requirements employers would need evidence from which they can conclude there is a benefit to the organisation. This could include information the employer might have gathered through monitoring, staff attitude surveys or focus groups for example.)

### National Minimum Wage

- Nothing in the regulations will alter the provisions of the National Minimum Wage.

### Statutory Authority

- Age criteria are widely used in legislation, notably to qualify for various licences. These will continue.

### Enhanced Redundancy Pay

- The statutory redundancy scheme has not substantially changed. (Except in respect of the years worked when an employee was below 18 or over 64).
- Whether an employer's own enhanced redundancy payment scheme will be affected by the Regulations depends upon the nature of the scheme.
- The best approach to adopt if an enhanced redundancy payment is to be made is to mirror the statutory scheme.

### Life Assurance

- If a worker retires early due to ill health, the employer may continue to provide life assurance cover until they reach the age of which they would normally have retired had they not fallen ill (ie: 65).



Tel: 0115 974 3519 Mobile: 07962 667623

E-Mail: [info@abhr.co.uk](mailto:info@abhr.co.uk) Web: [www.abhr.co.uk](http://www.abhr.co.uk)

56 Newstead Drive, West Bridgford, Nottingham, NG2 6LG.

Company Registration: 5568451. VAT Registration Number: 870370822.