

The Educational Institute of Scotland

EIS EQUALITY

AGE DISCRIMINATION

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Introduction

Research into Age discrimination has shown consistently that it is likely to affect everyone at work at some time. Young and older workers experience it. Younger workers may have difficulty gaining employment if experience is required and they may also be considered unreliable. Older workers can face difficulties when trying to gain access to work or when in work can be overlooked for promotion and CPD opportunities. Discrimination on grounds of age is as demeaning and as damaging as other forms of discrimination.

Age discrimination affects women workers specifically in a number of ways. Research has indicated that women are regarded by employers as 'old' when they reach 35, but the perception in respect of men is they are 'old' at 40. Many women enter and re-enter the workforce according to the demands of family, either young children or elderly relatives. They are, therefore, disadvantaged in terms of promotion, training and access to full time work. (This has effects on wages, pensions and subsequent quality of life.)

Many women seek to advance a career much later in life than their male counterparts. Having been stereotyped and discriminated against in their early career, this is likely to happen again when they try to advance their career later in their paid working life.

A late entrant to teaching or any teacher who consciously decides not to pursue a management career until later in her/his working life is likely to suffer discrimination and stereotyping. Caring either for young children or for elderly relatives is normally carried out by women but there are a number of men who undertake such roles as well and they too are affected by discrimination.

Anti-racist and disability organisations suggest that there is a significant difficulty for older black/ethnic minority people and people with disabilities in terms of career progression. Many suffer multiple discrimination.

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Legislation

It should be noted that the Single Equality Bill will review the current legislation. The Bill will extend the existing duty on public bodies to age and to sexual orientation. It will also extend the legislation to cover goods and services. However, there are no plans to eliminate from legislation the default retirement age.

The Employment Equality (Age) Regulations 2006 came into force on 1 October 2006.

“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

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- 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.”

(ACAS advice for individuals 2008 www.acas.org.uk)

Age discrimination can be justified in limited circumstances. If there is an ‘objective justification’ that is ‘a proportionate means of achieving a legitimate aim’, then employers can discriminate both directly and indirectly. This requires the employer to provide clear evidence that the discrimination is proportionate to the aims of the employer and that the employer has no alternative but to take discriminatory action. This may include business needs, the health, safety and welfare of an individual employee or specific training requirements of a job. The employer must prove the discriminatory act is a real need and not merely to save money.

Harassment on grounds of age is unlawful. It can occur both in the workplace and at times or places associated with the workplace. This can include social events. It cannot be objectively justified.

There are a number of general exemptions e.g.

- National minimum wage
- Positive action
- Age-related employment e.g. bar work
- Recruitment of people near or over 65 years of age
- Possible dismissal on grounds of retirement
- Genuine occupational requirement

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Stereotyping and Discrimination

Discriminatory assumptions which occur can be about a person's ability to do the job, her/his interest in training, CPD or promotion prospects, the view that older workers are more dispensable or more willing to accept early retirement/ redundancy than younger ones.

Discriminatory assumptions are made about younger workers as well. Assumptions about responsibility, reliability, ambition and child care affect men and women differently. e.g. it may be that a young man is expected to be ambitious but a young woman not to be; and sometimes young women because of child care responsibilities can be viewed as unreliable.

Often older workers are regarded by employers as more reliable and conscientious. However, there is also an assumption that they are more prone to illness, stubborn, set in their ways, less co-operative, difficult to train and resistant to change.

Another mistaken belief is that younger workers may have odd days off while older workers may take longer periods of sick leave. Overall statistics show that patterns of sick leave vary and there is no difference between age groups. The 'odd' day pattern of absences may reflect an employer who does not have flexible 'time out' days for family commitments or where there are deep-rooted problems with workplace ethos e.g. bullying or harassment.

In relation to Scottish education, a view has been expressed that the problem with it is that the profession is too old and inflexible and needs an injection of 'young blood' in order to effect changes necessary to provide Scotland with an education system worthy of the name. This is to ignore the fact that teachers respond throughout their career to changes and, indeed, are often responsible for advocating change. The 'flexibility' that is required is less to do with creative talent or ability to learn and more about working arrangements. It is wrong to assume that young teachers/lecturers are ignorant of their rights. However, they may be more likely to be in a vulnerable position, trying to secure permanency. It is not the case that older

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workers are less co-operative. Greater experience often results in higher levels of interpersonal skills and knowledge.

Recruitment, Selection and Career Development

Advertisements for teaching posts should not and do not carry age restrictions. However, a bias in favour of younger applicants can occur in more subtle ways. The language describing the job or person specification can substitute for an overt statement of requirement.

Given the current age profile of the teaching profession and the many mature graduates who are applying for teaching posts, stereotyping is unlikely to remain an option in the selection process.

Older graduates or people returning to work after a career break have many experiences and often have shown tenacity and courage throughout their lives. It is wrong to assume, therefore, that they are not interested in training, new developments or a career path. Many women who have career breaks as a result of family commitments and child care return to work seeking to establish a career. They will also be looking to enjoy their work and contribute the valuable skills gained through their experiences.

Recommendations to local association negotiators

- All equal opportunities policies, including those for recruitment, selection and career development must be free of age discrimination.(You may find Appendix 1 useful)
- Appropriate staff development should be available at all stages and ages in teachers' careers
- Support for women returners should be provided
- Support for mature graduates/entrants into teaching should be available.
- The age profile of the profession locally and the gender and age profile of promoted posts should be monitored
- Fully-funded in-service training, delivered by a variety of methods to suit a variety of learning needs, should be agreed
- All staff and senior management must be trained on age discrimination.

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APPENDIX 1

Part 6 from Employers Forum on Age “ Defining Ageism”

Checklist

Some examples of questions that EFA believes need to be answered to fully comply with the age laws (for more examples refer to the EFA Insider Guide to Age Laws):

Have you removed age linked language and images from job adverts?

Have you reviewed and removed unjustified age bias from job descriptions and person specifications?

Can you show that promotions or development opportunities are not age linked?

Have managers and employees been made aware of the risks of discriminatory behaviour?

Have you agreed a retirement age?

If your flexible working (retirement) options aren't open to everyone, can you justify this?

Can you analyse and age profile all the different phases of your recruitment process?

The employers' challenge

The results show that ageism is a much trickier prejudice to deal with than racism or sexism.

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The working population is sensitive to ageist behaviours, but how ageist or not they perceive behaviours to be depends on gender, age, sector and personal perceptions.

The challenge therefore remains for employers to:

- take responsibility for educating all employees about ageism and the benefits of stamping it out
- understand the need to affect culture change; for this to happen everyone has to be involved
- encourage everyone to understand that we should all be treated equally, irrespective of age.

<http://www.efa.org.uk/>

This document is also available by request on tape, in Braille, large print, various computer formats and in community language translations.

Please contact EIS Equality Department on 0131 225 6244.

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