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# Guidance on the implications of the new age discrimination legislation

Guidance for LMCs



## **Guidance on the implications of the new age discrimination legislation**

The Employment Equality (Age) Regulations are due to come into force from October 2006. The regulations are complex, cover all areas of employment and apply to both 'workers' and partners. They will make it unlawful to discriminate against any person on the grounds of their actual or perceived age. Employers need to ensure that they make themselves fully aware of all the relevant provisions.

The most immediate consideration needs to be given to any retirements due to take effect on or shortly after 1 October this year and this guidance focuses on this aspect. Further information is available from the ACAS guidance (which contains a flow chart and sample letters) and the DTI guidance. Both can be found through this link:

[www.dti.gov.uk/employment/discrimination/age-discrimination/index.html](http://www.dti.gov.uk/employment/discrimination/age-discrimination/index.html)

### **Retirement**

Some of the key provisions of the new regulations are detailed below:

- The regulations set a default retirement age of 65 [to be reviewed in 2011]. This means you can retire employees or set retirement ages within the practice at or above 65. Any retirement age below 65 will now have to be objectively justified. Employers will not be able to retire employees below the employer's normal retirement age or below the new default retirement age of 65.
- Although a national default retirement age of 65 will be introduced, over 65s will have new rights protecting them from discrimination on grounds of age. Furthermore the current upper age limit for unfair dismissal and redundancy rights is being removed.
- Retirement is recognised as a potentially fair reason for dismissal; a retirement dismissal will be a fair dismissal if it is genuinely on the grounds of retirement and it takes place on or after the national default retirement age. However, express contractual terms regarding an automatic termination of employment upon an employee reaching the employer's normal retirement age will no longer be effective. If an employer intends to require an employee to retire upon reaching normal retirement age, they will need to give at least 6 and no more than 12 months notice to employees of their impending retirement.
- When writing to the employee, it is good practice to set out how you will manage the retirement process. Remind them of your obligation to give consideration to any request to work after the normal retirement age and, in order not to raise the expectations of the employee, explain that you are entitled to refuse the request.
- If the employee has been properly notified and wishes to continue working, they must request to do so more than 3 months before the intended retirement date and the employer will have a duty to consider this request at a meeting. The meeting must be held 'within a reasonable period' of time after the employer has received the request and the decision must be given 'as soon as is reasonably practicable' after the date of the meeting.
- If an employee disagrees with the decision made concerning working past the retirement age of 65, they have the right to appeal as soon as reasonably practicable after receiving notification of the appeal. The appeal meeting can be held after the retirement takes effect.
- The individual has a right to be accompanied at the meeting and any appeal by a colleague or trade union representative.

Failure to follow the process can result in awards of compensation and could make the dismissal automatically unfair.

The incoming legislation on age discrimination has implications on decisions to return to work after retirement and also on drawing pensions. Fuller guidance on these aspects will be issued by the BMA.

### **Transitional Provisions**

There are transitional provisions in place to allow employers to give valid notice of impending retirement to employees who will reach their normal retirement age between 1 October 2006 and 1 April 2007.

Where notice is to be given before 1 October in relation to a retirement after 1 October 2006 but before 1 April 2007 then notice must be at least four weeks. A provision exists for notice to be less if contractual notice is less but practices are advised to provide at least four weeks in all cases. Practices, therefore, need to be ready to issue such notice by the end of August 2006. On 1 October, or as soon as possible afterwards, practices will have to write to the employee telling them of their right to request to work longer. The employee can make such a request after their contract has been terminated but not more than four weeks afterwards. A meeting to discuss the request and any subsequent appeal must then be held within a reasonable period. The employee has a right to be accompanied.

Where notice is to be given after 1 October in respect of an employee retiring before 1 April 2007 the practice must write to the employee notifying them of the intended retirement date and giving the longer of contractual or statutory notice. They also at that point should inform them that they have a right to request working longer. An employee who wants to exercise such a right should make a written request, where possible, four weeks before the intended retirement date or as soon as reasonably practicable after being notified of the right to request to work longer. The request can be made after the contract has ended but no more than four weeks after termination. A meeting to discuss the request, and any subsequent appeal meeting, must be held within a reasonable period. The employee has a right to be accompanied.

Anyone retiring on or after 1 April will be subject to the full retirement procedure as set out above.

### **Recruitment**

The new regulations also have implications on recruitment processes; in the same way as there are already laws in place to outlaw discrimination on grounds of gender, ethnicity, disability, sex orientation and religious belief, similar rules will now apply from the 1<sup>st</sup> October 2006 on the grounds of age in the recruitment process.

Employers may now wish to consider any criteria that they require for particular jobs which include a certain number of years' minimum experience. These are likely to be indirectly discriminatory unless they can be objectively justified. Furthermore, employers may face difficult decisions when deciding whether to take on an employee who requires a period of training and whether the decision not to recruit such a person on the grounds of their age can be objectively justified.

### **Redundancy**

Under the new regulations, the two year qualifying period to obtain a statutory redundancy payment will remain although the upper and lower age limits will be removed. Employers will also, when they are aged 64, no longer see their redundancy entitlement reduced by a twelfth for every month until they are 65. Furthermore, the Department of Trade and

Industry's guidance states that practices such as 'last in, first out' which use length of service in the selection process may be discriminatory if it cannot be 'objectively justified'.

BMA members can obtain further advice and information about the introduction and implications of the new legislation by contacting askBMA.