



Raworths LLP Employment Newsletter October 2006

Employment Equality (Age) Regulations - Age Discrimination

On 1 October 2006, the Employment Equality (Age) Regulations or Age Discrimination Regulations finally came into effect bringing with it some of the biggest changes to employment law in many years. It is predicted that as a result of these regulations there will be a further 8,000 applications to employment tribunals each year.

To avoid contributing to the statistics, it is important to remember the three main areas of employment which could lead to a breach of the regulations:

Conduct

Don't forget; it is not just you as employers who have to be aware of these Regulations but also your employees. It is important that you train your staff to understand what behaviour could lead to a claim being made as you could also be liable, along with the employee, if any claim is made under the new Regulations.

Recruitment

As a prospective employee, it is possible to bring a claim for age discrimination if there has been discrimination at the recruitment stage. In order to avoid this, remember to:

- Avoid language in your advertisements that is potentially discriminatory; such as "young", "dynamic" and "energetic". Don't forget this works both ways - is it possible to discriminate against younger applicants so words such as "mature" should be avoided;
- Place your advertisements as widely as possible so as not to potentially isolate any age group;
- Avoid asking for certain qualifications or a required length of experience. Instead, list the skills required to carry out the job satisfactorily;
- Resist requesting the age of applicants unless you can show that this information is necessary and can be justified. Instead record this information on a separate diversity monitoring form.

Retirement

It is now unlawful to insist on a mandatory retirement age of under 65 unless it can be objectively justified. Only in very rare cases will it be possible to objectively justify a retirement age under 65. An example of where it may be possible is in the airline industry. Commercial airline pilots have to retire at 60 which is justified on the grounds of the welfare of the passengers!! This is because the risk of the pilot having a heart attack once they reach 60 significantly increases.

As well as being able to work until 65, employees now have the right to request to work on past this age. The employer has a duty to consider each request but is under no obligation to grant an extension. When retiring an employee, remember to notify them no later than six months and no earlier than 12 months before their

proposed retirement date of their retirement date and the right to request to work on and also of their right to appeal your decision.

One to watch:

Heyday, an organisation representing employees who are approaching retirement, have launched a judicial review against these new Regulations stating that the Regulations, in fact, contravene the European Equal Treatment Directive they purport to incorporate. They argue by giving employers the right to refuse employment beyond the age of 65 for any reason whatsoever, creates a new retirement age of 65 and leaves people over 65 without the right or choice to work, they argue.

Heyday have been granted an early hearing of 6 December 2006. The result of this could be that in the upper limit of 65 is scrapped altogether, creating a situation as in America where a forced retirement age has not existed since 1986!! It is cited by Heyday that this led to a 10-20% increase in the number of over 65's in work. Considering that each year 560,000 people in England reach the age of 65 and therefore lose their right to work, if like America, the UK was to abolish forced retirement, potentially 100,000 more people could remain in work each year.

Work and Families Act 2006

Amongst all the new age related Regulations is a raft of significant amendments to family friendly rights that also came into effect on 1 October 2006.

The main changes are:

For women whose expected week of childbirth or date of adoption falls on or after 1 April 2007 statutory maternity and statutory adoption pay has been extended from 26 weeks to 39 weeks;

All employees who qualify for ordinary maternity leave now, are entitled to additional maternity leave;

Employees now have to give 8 weeks notice before they return to work and not 28 days' as it was previously;

Employers now have the right to make 'reasonable contact' with the employee whilst on maternity or adoption leave (potentially allowing 18 months' leave in total!);

The amendments introduced a new concept called 'keeping in touch' days. This enables mothers to return to work for up to 10 mutually agreed days during their statutory pay period without bringing their leave to an end or losing their statutory payments for that week.

But watch this space there are more significant changes under this Act in March 2007!! A final note...

Minimum Wage Rates

From the 1 October the national minimum wage increased:

For workers over 22 from £5.05 to £5.35

For workers aged 18-21 from £4.25 to £4.45

For workers aged 16-17 from £3.00 to £3.30

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