

Duane Morris LLP - UK Revises Age Discrimination Law; Impact Is Global

The Age Discrimination Legislation that became effective on 1 October 2006 has been held by many commentators to be the biggest shake-up in employment law for at least 30 years in the UK and should be of interest not only to UK companies, but also to all companies with employees working in the UK.

With government statistics on an aging population and reduced workforce, the Parliamentary Under-Secretary of State, Department for Work and Pensions explained that the government's reasoning for the legislation was twofold: 1) it was compelled to adopt the legislation following an EU Directive, and 2) ageism was a common form of discrimination in the workplace, which the government believed was bad for business.

From 1 October 2006, age discrimination in employment and vocational training is illegal, with measures applying to both public and private sector workers and covering old and young employees.

The sort of recommendations that employers now have to comply with include removing age limits from recruitment adverts, offering training to all employees of all ages, and looking at, and reviewing retirement policies.

This also means that a termination for reasons in issues such as redundancy applying the "first in, last out" rule may be indirectly discriminatory. Many commentators have added that the media and advertising industry where age discrimination has been accepted as a matter of fact for decades will be forced to amend their practices.

The salient points of the legislation are as follows:

- It is unlawful to discriminate against employees under the age of 65 on the basis of their age.
- Employers may not specify on recruitment that applicants should be below or above a particular age.
- Employers may not dismiss or deny training opportunities or promotion to employees because of their age.
- Employers may not refuse to employ workers or offer them adverse terms and conditions because of their age.
- Indirectly discriminating by means of a criterion, benefit or practice that has the effect of disadvantaging people of a particular age is forbidden unless this can be justified.

However, unlike laws pertaining to other forms of discrimination, the Age Discrimination Legislation provides a defence both for direct and indirect discrimination. To the extent that the employer can show objectively a justification in order to obtain a legitimate aim, i.e., there is a sound business reason for the discrimination, and there is no reasonable alternative to the action being taken, and it is therefore proportionate, then it is permitted.

Further the law does not apply to workers over the age of 65 who are merely given a right to request an extension to work beyond age 65 that the employer has to consider. There is now a requirement for the employer to notify an employee six months before retirement.

Whilst the aim of the legislation is to encourage a cultural change to enable older workers to become valued within the workforce, it is also likely that many younger employees will use the legislation to bring claims.

Employers are however entitled to provide benefits tied to length of service only insofar as the benefit relates to employees with less than five years' service. To the extent that there is a differentiation in benefits for employees with more than five years' service, the employer must be able to show that it is to fulfil a business need as to why the greater benefits to longer-serving employees is provided, such as rewarding loyalty.

Employers should be aware that the regulations apply from recruitment to promotion, training, pay and benefits, termination and retirement and therefore should review all their Terms and Conditions, removing all age-related material where it is unnecessary.

An employer is also responsible for the behaviour of its employees and should ensure that all employees avoid stereotypes or actions that could be discriminatory, or viewed as harassment, when interacting or communicating with one another, as the legislation also bans direct and indirect harassment or victimisation on the grounds of age.

For Further Information

If you have any questions about this Alert or would like more information, please contact [Tola Ogundimu](#) or any of the other [attorneys](#) in the firm's [Employment Law and Management Labour Relations Practice Group](#).