

Age discrimination compliant documentation

by Practical Law Employment

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The Equality Act 2010 prohibits discrimination because of age and harassment and victimisation related to age. Employers need to ensure that contracts and policies are compliant with the law. This checklist sets out the issues for consideration when reviewing documentation and other material for compliance.

Recruitment literature

- **Choice of wording.** What recruitment literature does the employer have? Check brochures for prospective employees, job advertisements, job descriptions and person specifications, specifically for language which could be construed as age-related. For example, avoid specifying a minimum or maximum length of experience. Avoid if possible words like “dynamic”, “lively”, “mature” or “experienced”, that may be misinterpreted as requiring either an older or younger person.
- **Pictures.** Consider whether any pictures used in the literature convey a message which might be considered discriminatory.
- **Instructions to agencies.** Check written communications to recruitment agents and ensure that they do not convey discriminatory instructions.
- **Qualifications.** Check whether qualifications specified in job adverts or person specifications disadvantage any particular age group and, if so, consider alternative ways of asking for experience.
- **Application forms.** Requests for dates of birth or age should be removed from the application form and included in diversity monitoring forms to be retained by Human Resources. Requesting details of dates of education or employment may lead to assumptions based on age so should be avoided if possible. Employers should use a separate equal opportunities form that is detached by HR on receipt and plays no further part in recruitment.
- **Photos.** Does the employer require photos with completed application forms? Consider what purpose these serve.
- **Interviews.** Is there any written guidance for interviewers or interview panels? If so, check that guidance is provided on age-related questions. If not,

consider preparing guidance alongside training for interviewer and interview panels.

- **Recruitment policy.** Ensure that a policy is in place to promote equality based on age (as well as disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation).
- **Offer letters.** Does the company use a standard offer letter? Check for references to contractual terms or other policies that may be discriminatory (see Contracts of employment and Policies and Procedures, below).

Contracts of employment

- Check standard form and existing employment contracts, paying particular attention to:
 - **Retirement clauses.** Check whether there is a contractual retirement age (CRA) and, if there is, consider whether it can be objectively justified as a proportionate means of achieving a legitimate aim (see [Practice note, Discrimination in employment: retirement: When can an employer justify having a fixed retirement age?](#)).
 - **Notice period.** If the notice period that the employee must serve increases with length of service, this could discriminate indirectly against older workers if greater than the statutory minimum. Can the added restriction be objectively justified? If the notice that the employer must give increases with length of service and is greater than the statutory minimum, this could indirectly discriminate against younger workers. Can the lower job security be objectively justified?
 - **Benefits based on length of service.** Check pay scales for qualifying periods to increased holiday entitlement (or other benefit, such

as pension eligibility). To justify any length of service criterion of more than five years, it must reasonably appear to the employer that it fulfils a business need.

- **Insurance cover.** Check whether insurance cover is dependent on reaching a particular age and whether it is expressed to cease at a certain age, paying particular attention to private medical insurance, permanent health insurance, life assurance and car insurance. Employers may cease providing insurance at the age of 65 in certain circumstances (see [Practice note, Age discrimination: Insurance benefits](#)).
- **Golden handshake and change of control clauses.** Check senior executives' contracts for benefits payable upon termination. These sometimes taper entitlement to any benefit in the 12 months before retirement age. This type of provision might be directly discriminatory.
- **Bonus schemes and share schemes.** Check in particular whether the scheme differentiates between "good leavers" and "bad leavers" and whether retirement is used as a "good leaver" criterion. (See [Practice note, Age discrimination and employee share schemes](#).)
- **Amending terms.** What do the contracts say about changing terms and conditions? If the company would like to amend contracts (or contractual policies) to address potentially discriminatory situations, consultation with employees (whether directly or via a union or staff association) must usually be undertaken before the employees are asked to sign new contracts. (See [Practice note, Changing terms of employment](#).)

Policies and procedures

- Check all policies for evidence of age or service related discrimination, paying particular attention to:
 - **Retirement policy.** For standard wording that can be adapted to an employer's requirements, see [Standard documents, Retirement policy for employers with no fixed retirement age](#) and [Retirement policy for employers with a fixed retirement age](#).
 - **Redundancy policy/procedure.** Any reference to age or length of service as a criteria for selection for redundancy should normally be avoided. Does the scheme for redundancy payments match the statutory scheme in terms of its age

bands and multipliers? If not, any use of age or length of service as a factor in the calculation must be objectively justified. Record in writing all justifications for retaining the scheme, including results of staff surveys, monitoring or focus groups.

- **Benefit schemes.** Are there any staff discount, perk or benefit schemes which depend on length of service of over five years? Does it "reasonably appear" that these benefits fulfil a business need? If so, record in writing all justifications for retaining the scheme.
- **Equal opportunities and diversity policies.** These policies, including any anti-harassment or bullying policy, must prohibit discrimination, harassment or bullying because of age.
- **Career progression.** Check whether any policies governing promotion or career progression require a certain number of years experience, as this may be discriminatory unless objectively justified.
- **Amendment of policies.** Are the policies contractual? If so, treat the same as contracts of employment (see [Contracts of employment](#)). In any event, consultation with a union or staff association as appropriate may be advisable.

Other documents

- **Secondment agreements.** Check secondment agreements, in particular termination provisions and any retirement provisions.
- **Other workers.** Check all agreements with freelance workers, independent contractors and agency workers.
- **Staff handbooks.** Check for any evidence of service-related and age bias as with Policies and procedures.

Website content

- **Mission statements and company image.** Sometimes employers publish their recruitment and diversity policies, mission statements and statements about the culture of the company on their external website. Any material which suggests a culture that may directly or indirectly discriminate ("young, dynamic company") may need to be amended or taken down.
- **Intranet.** Check the employer's intranet to ensure that any materials appearing on it, including staff handbooks and policies, are age-compliant and correspond with any amended paper copy.

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