

age discrimination

In July, the government published draft regulations aimed at tackling the problem of age discrimination in the workplace. The regulations will come into force on 1st October 2006 and will have a significant impact on charities' employment policies and recruitment procedures.

In brief, the regulations will apply to all workers and to all job applicants, giving individuals of all ages new rights not to be discriminated against on the grounds of age. The regulations will prohibit direct and indirect age discrimination, harassment and victimisation on age grounds.

Direct discrimination will occur where someone treats another less favourably, on the grounds of their age, than they would treat other persons in a comparable situation, and there is no objective justification for doing so. Indirect discrimination will occur where an apparently neutral provision or practice puts persons of a certain age group at a particular disadvantage compared with other persons, a person of that age group suffers that disadvantage and, again, there is no objective justification for this.

Employers will only be able to justify different treatment on the grounds of age if they can show that the differing treatment fulfils a legitimate aim and the particular circumstances make it appropriate and necessary. In practice, justifying age discrimination, particularly direct discrimination, will be difficult.

Charities will need to adapt their employment policies and recruitment procedures to ensure compliance with the new legislation and may consider it prudent to start reviewing policies and procedures now. The following are examples of areas where changes are likely to be needed.

Recruitment

It will generally be unlawful for job advertisements to refer to age limits, and terminology such as 'young' and 'mature' should be avoided. If recruitment agencies are used, then their terms of reference should not include characteristics related to age. Minimum or maximum age limits for recruitment will generally be unlawful.

Application forms should not include a request for information on an applicant's

An age old issue

With new age discrimination legislation due in next year, there are a number of factors for charities to consider if they are to ensure compliance with the new rules. Gena Parrott lays out the changes, and says that it is in charities' best interest to start preparing now

date of birth. Decisions about recruitment, selection and promotion should not normally be based on age, but on the skills and competencies required, and charities should ensure that anyone involved in the recruitment process has received training on the charity's obligations under the legislation.

Training

Any training programmes run by charities should be equally accessible to employees of all ages.

Salary and Benefits

Employment contracts, staff handbooks and employment benefits should all be checked and charities should remove all provisions that are discriminatory. A major issue for charities will be any benefits that they provide that are related to length of service. Charities will need to identify these and establish whether the specific exemptions laid down in the regulations apply. Otherwise, benefits linked to length of service may constitute indirect discrimination. 'Last in, first out' policies in a redundancy situation may also be discriminatory as they are likely to affect a greater number of younger employees with less service.

Victimisation and Harassment

Victimisation and harassment on age grounds will become unlawful, and charities should emphasise to all employees, particularly managers, that this behaviour will not be tolerated. Charities may decide to amend staff handbooks to reflect this, or to provide training for managers on identifying and dealing with this behaviour.

Retirement

Under the regulations, there will be a

default retirement age of 65 and compulsory retirement ages below 65 will generally be unlawful. Charities that currently have a compulsory retirement age below 65 will either need to change the age or justify it. Charities will need to make certain procedural changes, as under the regulations they will have an obligation to inform employees of their intended retirement date and that they have the right to request to work beyond that age. Charities will have a duty to consider seriously, within a specific timeframe, any request from an employee to work beyond their compulsory retirement age.

Genuine Occupational Requirement

The regulations provide that an employer is entitled to use an age requirement in employment where there is a genuine and determining occupational requirement for this and the requirement is proportional. Some charities, such as Help the Aged, may deliberately employ older employees believing that they empathise with the problems faced by older people. However, unless this 'genuine occupational requirement' condition can be satisfied, which may prove difficult, policies such as these will be discriminatory.

The above are areas where charities may need to consider making changes to bring their policies in line with the new legislation. Charities also need to be aware of the possible risk that, one day, volunteers may be considered as workers and possibly covered by the protection afforded by the age discrimination legislation. This will be particularly pertinent to charities as volunteers are often considerably older.

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