

## **Age discrimination and the age regulations – some questions answered**

### **What is age discrimination?**

Discrimination happens when a person is treated less favourably on the grounds of their age, or perceived age. In practice that can mean:

- being forced to retire at certain age
- not being given a job you applied for
- being prevented from attending training courses
- being told that your age is a barrier to general advancement
- assumptions being made about your abilities due to age
- being selected for redundancy because of age.

### **Why does age discrimination matter?**

Ageism is the most common form of discrimination in the workforce:

- a 2004 survey of NATFHE members (one of the 'parent' unions of UCU) found that 31% of lecturers had experienced age discrimination
- as many as 9% had been harassed because of their age
- 40% of people who report being bullied at work cite age as a factor
- discrimination on the basis of age is just as unpleasant and destructive as any other prejudice.

### **Am I protected in law?**

From October 2006, new legislation (Employment Equality (Age) Regulations) makes age discrimination illegal:

- the new legislation affects colleges and universities both as employers and as providers of training
- employees will be able to take employers to tribunal
- students will be able to sue institutions that discriminate.

But you should know that

- only employment and training are protected
- some forms of discrimination will still be allowed in law

## **Why is the government legislating on this now?**

They had no choice. The European Equal Treatment Framework Directive 2000 required all members' states to introduce legislation outlawing age discrimination. 2006 was the latest possible date by which this had to be done.

## **What will become illegal?**

Theoretically, it will be illegal to discriminate directly or indirectly on the grounds of age in employment and training. Training is taken to include all FE and HE courses, so the regulations apply to students as well as staff.

However, there are so many weaknesses and exceptions in the Regulations that the protection they provide will be very weak. While it will clearly be illegal to advertise a job asking for applicants aged 25-35 for example, much else will be allowable. Unlike all other forms of discrimination law, even direct discrimination can be justified if the employer (for staff) or the training provider (for students) can show that it was 'a proportionate means of achieving a legitimate aim'. See also the next two answers.

## **What about length of service benefits?**

The Regulations specifically permit length of service benefits up to five years. So a six-point incremental scale (a starting-point and five progression points) presents no problem at all. After five years, length of service benefits will have to be justified by the employer on business grounds such as rewarding loyalty/experience, motivating or retaining staff. It remains to be seen how this will be dealt with in the courts but a few managements appear to be saying that a scale with more than six points is now problematic. If this is happening in your institution, the branch/local association should contact the regional office. More detailed advice will be issued on this topic once the Higher and Further Education Committees have had a chance to consider the position.

## **Can they still make me retire at 65?**

Yes. The government has introduced a 'default retirement age' of 65, which employers are free to adopt. Some institutions will choose not to do so, but most probably will. Employers cannot have a retirement age of less than 65, unless they can objectively justify a lower age, and it is hard to see what justification there could be for compulsorily retiring lecturers at 60.

If your institution does adopt the default retirement age, they must follow a process. The employer must write to each member of staff no more than a year and no less than six months before her/his 65th birthday, telling them of the intended retirement date, and of the right to request to continue working (special transitional arrangements apply from 1 Oct 2006 to 1 April 2007 - see Equality Extra for more detail.) Staff who wish to continue must put a request in writing, and then there must be a meeting, with the right to be

accompanied, and to appeal if refused. The bad news is that the employer has to give no reason for refusing, and as long as the process has been followed properly, forcing someone to retire at 65 will be deemed fair dismissal.

### **That seems very unfair. Can anything be done to challenge it?**

Heyday, a membership organisation formed by Age Concern, is taking a Judicial Review against the government, on the grounds that the Age Regulations do not properly implement the European Directive upon which they are based. They are challenging: the legality of forcing employees to retire at 65; the scope for justifying direct discrimination; the absence of a requirement for the employer to give reasons for refusing a request to continue working. The outcome of this Judicial Review will not be known for some months. UCU entirely supports Heyday's challenge.

### **If all FE and HE courses are covered by the regulations, what might be illegal age discrimination against students?**

The government is not giving any clear answers on this, and many issues will probably have to be sorted out in the courts. (Students who believe they are facing discrimination can take the college or university to county court). Having specific age limits on admittance to courses will obviously be problematic, but it may be possible to 'objectively justify' those; for example requiring a minimum age of 21 for access courses could be justified if the institution could show a need for encouragement of participation by mature students. Blanket fee remittance for pensioners on evening classes could be problematic – financial need for support might need to be the criterion used instead. Allowing benefits (eg access to student accommodation) to some age groups and not others could be highly problematic.

### **What about government funding for students? Aren't they guilty of age discrimination?**

Yes! The government has just moved the age limit for student loans from 55 to 60 from September 2006. Age discrimination, but at a different threshold! Government policy of concentrating FE funding on 16-19 year olds, thus leading to massive cuts in adult education, is profoundly discriminatory. They are confident they are acting within the law, because the European Directive states that it does not apply to payments made by state schemes and they claim this exempts both student support and funding for courses. There is a growing coalition, including UCU, prepared to campaign on this issue on moral grounds, and shame them into change.

### **What should we be doing in the branch/local association?**

Ensure that your management has proper procedures in place for dealing with retirement, including during the transitional period. Negotiate a policy on age equality. A model policy

has just been agreed between the AOC and the FE recognised unions, and has been sent out to colleges.

### **What will get better?**

Although the Regulations are so weak, employers seem very frightened by them. They might lead to a change in the general atmosphere and culture, so that overtly ageist remarks and attitudes are not acceptable.

### **Could anything get worse?**

Currently, 57% of employers (mostly small ones) do not have a fixed retirement age. Lawyers are advising them to adopt one for self-protection. They are also advising a blanket refusal of requests to continue working, so that discrimination on other grounds, such as sex or race, could not be claimed. So employers who used to let some workers stay on after 65 may cease to do so.

### **What can I do about age discrimination?**

New laws will make the most difference if employers are encouraged to draw up policies to prevent discrimination in their institution.

- You can raise the issue in your own union branch.
- You can encourage UCU members to meet and take up the issues.
- You can encourage your union representatives to meet management and make sure that they address this form of discrimination.

You can press your employer to establish an equality committee, or forum, with trade union representation, if they have not already done so. If they have, you can press for its remit to include age. One of its jobs should be to check that any existing and new agreements do not discriminate (even if inadvertently) on the basis of age.

- If you feel that you have been the victim of discrimination you should raise the issue with your union branch/LA officers.
- They can draw in support from UCU's regional and national structures.
- UCU is campaigning against all forms of age discrimination.
- UCU is trying to secure national and local agreements with the employers against age discrimination.
- You can join the UCU-supported campaigns to improve pensions provision and prevent any erosion of existing pension schemes.

## Where can I get more information?

The Equality Unit has a member of staff with special responsibility for age equality – see the Equality Unit page of the website at [www.ucu.org.uk/index.cfm?articleid=1940](http://www.ucu.org.uk/index.cfm?articleid=1940) for contact information.

- The detailed UCU guidance on the age equality resources page at: [www.ucu.org.uk/index.cfm?articleid=2307](http://www.ucu.org.uk/index.cfm?articleid=2307)
- The ACAS guidance, which is as close as you can get to official guidance at: [www.acas.org.uk/media/pdf/d/t/6683\\_Age\\_and\\_the\\_Workplace\\_AWK.pdf](http://www.acas.org.uk/media/pdf/d/t/6683_Age_and_the_Workplace_AWK.pdf)
- TUC advice at: [www.tuc.org.uk/equality/tuc-11775-f0.pdf](http://www.tuc.org.uk/equality/tuc-11775-f0.pdf)
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