

20 FACTS YOUR BUSINESS NEEDS TO KNOW

10 Key Points

1. Age Regulations came into force on 1 October 2006. Pension schemes will be covered by the regulations from 1 December 2006. This will give schemes more time to adjust to the rules.
2. The regulations prohibit discrimination in employment and vocational training. This includes access to help and guidance, recruitment, promotion, development, termination, perks and pay.
3. The regulations cover people of all ages, both old and young.
4. All employers, providers of vocational training, trade unions, professional associations, employer organisations and trustees, and managers of occupational pension schemes will have new obligations to consider.
5. Goods, facilities and services are not included in these regulations.
6. Upper age limits for unfair dismissal and redundancy are removed.
7. A national default retirement age of 65 is in force, making compulsory retirement below 65 unlawful (unless objectively justified). This will be reviewed in 2011.
8. All employees will have the 'right to request' to work beyond the default retirement age of 65 or any other retirement age set by the company and all employers have a 'duty to consider' request from employees to work beyond 65.
9. Occupational pensions are covered by the regulations from 1 December 2006. However, the regulations will generally allow pension schemes to work as they do now. See regulations for more details.
10. The regulations do not affect state pensions.

Please note: Acas is the nominated agency to provide advice and guidance on age issues - to contact their Helpline call 0845 7474747 or go online at www.acas.org.uk

10 Answers to your Questions

The following answers are for information only. Employers are advised to refer to the regulations or contact ACAS.

1. Who does the law cover?

- All workers including self employed, contract workers, office holders, the police and members of trade organisations.
- People who apply for work and, in some instances, people who have left work.
- People taking part in or applying for employment related vocational training including all courses at Further Education and Higher Education institutions.

2. Who isn't covered by the regulations?

- Members of the regular armed forces, full-time and part-time reservists.
- Unpaid volunteers.

3. What does vocational training cover?

- All forms of training and retraining courses, practical work experience and guidance that contributes to employability, training provided by employers or private and voluntary sector providers, and all forms of vocational training at further, higher and other adult education institutions.

Continued Overleaf...

4. What do the regulations cover?

- They cover direct and indirect discrimination, harassment and victimisation.
- Employers can be held responsible for the actions of employees in all four cases.

5. Are there any circumstances when treatment on grounds of age will be lawful?

- Exemptions will be allowed on Genuine Occupational Requirement (GOR), a statutory requirement - for example bar staff serving alcohol must be at least 18 - or if there is an objective justification.
- The 'test of objective justification' means employers will have to show evidence that they are pursuing a legitimate aim and that it is a proportionate means of achieving that aim.

6. My employees' pay and benefits vary according to length of service. Can this continue?

- Benefits based on length of service requirement of 5 years or less, the '5 year exemption', will be exempted and will be able to continue.
- After the 5 year exemption, employers must be able to show that there will be an advantage from rewarding loyalty, encouraging the motivation or recognising the experience of workers by awarding benefits on the basis of length of service.

7. How does the legislation impact on the National Minimum Wage?

- Employers will be able to follow the age bands and minimum wage levels used in the national minimum wage legislation.

8. What should I know about the default retirement age?

- The default retirement age is set at 65 for men and women. It means mandatory retirement before that age is unlawful unless a lower age can be exceptionally objectively justified. It does not mean you need to set a retirement age at 65 either - you can operate with no retirement age, or set a retirement age of 65 or higher. All employees will have the 'right to request' to work beyond any retirement age.

- Employers will have new time-bound responsibilities to inform employees of their 'right to request' and they will have a 'duty to consider' all such applications.
- Where an extension of work is agreed, the 'right to request' and 'duty to consider' will remain in place when retirement is next considered.

9. What will the new regulations say about occupational pension schemes?

- Occupational pension schemes will be included from 1 December 2006 (although the draft legislation allows occupational pension schemes in general to work as they do at present).
- Personal pensions not provided by the employer (except the employer's own contribution) are not covered by the draft regulations.
- Employers will be able to provide different pension schemes to employees of different ages or with different lengths of service and use minimum and maximum ages for admission to pension schemes and for the payment of pensions.
- Check the DTI website for further announcements - see website address below.

10. What should I do now?

- Be prepared.
- Review your employment policies and practices.
- Seek advice if you have concerns. If you do not have access to your own legal advice, Acas is the nominated agency to give advice and guidance on age issues. To contact their Helpline call 0845 7474747 or go online at www.acas.org.uk

For good practice help and information, visit the Age Positive website www.agepositive.gov.uk

To view the age regulations, visit the DTI website www.dti.gov.uk/employment/discrimination/age-discrimination/index.html

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