

Sanderson

LEGAL UPDATE



AN INTRODUCTION TO THE NEW AGE REGULATIONS 2006

The Act: Employment Equality (Age) Regulations 2006 ('Age Regulations')

Effective from: 01 October 2006

Produced by:
Sanderson Recruitment
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“Age discrimination costs the economy between £19 billion and £31 billion a year in lost output.”

“A survey by the Chartered Institute of Personnel and Development found that 59% of respondents felt they had been disadvantaged because of their age.”

Sanderson Recruitment plc is raising awareness of the new Age Regulations. These will ensure that people of all ages are valued in the workforce, by challenging stereotypes and overcoming discrimination on the basis of age.

This document is written for hirers of permanent and contract resource in order to promote age diversity, to inform them about the new regulations, and help to reduce the risk of claims.

Working for age diversity

Age discrimination occurs when someone treats a person less favourably because of that person's age; where age is used as a basis for prejudice and unfair treatment.

It is estimated that age discrimination costs the economy between £19 billion and £31 billion a year in lost output. Older people increasingly make up a bigger proportion of the population. To be successful in an increasingly competitive market place, organisations need to attract and retain valuable employees from all age groups and develop the talents of all their employees.

Sanderson is committed to the removal of age discrimination in employment because it is wasteful of talent and harmful to both individuals and organisations.

An overview of the risk

Organisations must take the new Age Regulations seriously. Age discrimination is a significant problem in the workplace. Earlier this year, a survey by the Chartered Institute of Personnel and Development found that 59% of respondents felt they had been disadvantaged because of their age.

If a complainant makes a case to an Employment Tribunal then it is up to the accused to prove they did not discriminate; the burden of proof ends up with the employer proving that they have not been discriminatory. If a claim of age discrimination is successful, **there is no upper limit of damages**. One employment law specialist believes that the average £60,000 to £70,000 currently awarded to victims of disability discrimination at work could pale into insignificance when the first batch of age discrimination cases come before tribunals next year (2007).

“From 01 October 2006 it will be unlawful to discriminate, harass or victimise a person on the grounds of their age in relation to employment and vocational training.”

A summary of the regulations

From 01 October 2006 it will be unlawful to discriminate, harass or victimise a person on the grounds of their age in relation to employment and vocational training.

This includes all workers (job seekers and employees, contractors and agency workers) in the public and private sectors, of ANY age. As with other discrimination legislation, employers are responsible for their own actions as well as the actions of their employees, and also for the actions of third party agencies working on their behalf.

Age discrimination means making a decision about people based on their age. This includes assuming that somebody is too old or too young to do a job, making derogatory comments or excluding people because of their age.

The Age Regulations:

- ban age discrimination in terms of recruitment, promotion or training
- ban unjustified retirement ages of below 65
- remove the current age limit for unfair dismissal and redundancy rights.

They also introduce:

- a right for employees to request working beyond retirement age and a duty on employers to consider that request
- a new requirement for employers to give at least six months notice to employees about their intended retirement date so that individuals can plan better for retirement, and be confident that “retirement” is not being used as cover for unfair dismissal.

This following information is aimed at those responsible for the recruitment of contract and permanent staff. As such this report focuses on the impact of the new regulations on recruitment and selection policies and procedures.

For more information on how the regulations affect redundancy, retirement and pension policies and procedures, please refer to your organisation’s legal advisors or to ACAS – www.acas.org.uk

“Focus on skills and abilities, and not on age.”

Age Regulations 2006 – the impact on recruitment and selection

The new Age Regulations have a major bearing on the recruitment and selection of staff. Policy and procedures need to prove that the focus is on skills and abilities, and not on age. Employers are advised to remove all age-related requirements which cannot be justified. Interviewers and those concerned with selection must not be subjective on the basis of physical characteristics and unfounded assumptions, and need to ensure their decisions are based on objective criteria, relevant to the job and merit.

Those responsible for recruitment and selection should aim for:

- a workforce which is age diverse
- applications from all age groups
- objective job descriptions, based solely on skills, relevant experience and capacity to do the job
- selectors trained in equal opportunities selection techniques
- statistics that show that candidates of all age groups are short-listed, interviewed and appointed
- no complaints about age discrimination.

We have listed below a number of actions that those responsible for recruiting staff need to take to ensure they are in line with the Age Regulations:

1. Advertising

- Remove age limits from job adverts, so no-one is discouraged from applying because of their age.
- Choose your words carefully. Use language and pictures to appeal to wide age groups.
- Avoid phrases like ‘young graduates’ or ‘mature person’ - these are discriminatory.
- Avoid indirect discrimination by using hidden messages in your adverts – phrases such as ‘experienced’, ‘dynamic’, ‘potential’, ‘reflective, with boardroom presence’ could all be perceived as discriminatory. Focus instead on the nature of the job and the skills required.
- If you are certain you require a number of years experience for the job, you have to be able to justify this.

- Publicise your vacancies to attract people of a variety of ages – consider national and local newspapers, free papers, internet, jobcentres, and community and business networks.

Examples of adverts that are in line with the new regulations and those which are not:

Bad

Acme Ltd requires a mature professional with over 10 years of corporate experience to run our Marketing division. The successful candidate will be a graduate with the necessary gravitas and presence we expect from this senior management role. We are a heavyweight player in the industry and require a serious minded individual in this role.

Good

Acme Ltd requires a self-assured professional to run our expanding Marketing division. The successful candidate will have a background in commercial marketing environments and be accomplished within that arena. As part of the Management team of a heavyweight player in the industry, we expect you to be decisive, credible and level-headed.

Bad

Acme Ltd is a young, forward-thinking organisation and we are currently seeking a dynamic individual, educated to GCSEs, with sales skills, customer facing commercial experience and an enthusiastic manner. It is essential you will have worked for at least 2 years in a corporate company and be motivated and ambitious to take on new challenges within our lively, fast-paced environment

Good

Acme Ltd, an organization with a unique and imaginative presence, is currently accepting applications from candidates with a proven track record of engaging customers and a passion for sales. A keen appreciation of commercial environments would be extremely beneficial, as would an enterprising and adaptable outlook. Our friendly environment welcomes versatile, self-confident people.

“Focus on skills,
not on out-of-date
stereotypes.”

2. Experience and qualifications

- Do not specify a minimum length of experience such as 10 years, as this disadvantages younger workers. The quality and relevance of experience is important - not the number of years.
- Avoid language with age-specific connotations, such as “mature”, “lively” or “attractive”.
- Avoid phrases like ‘only people with GCSEs need apply’. That would rule out many older people who left school before GCSEs were introduced, even though they may have the necessary skills.

3. Application forms

Asking for age-related information on an application form could allow discrimination to take place. Remove the date of birth/age from the main application form and include it in a diversity monitoring form to be retained by HR/personnel. In addition review your application form to ensure that you are not asking for unnecessary information about periods and dates.

- Remove date of birth and put it on a separate monitoring form that interviewers don’t see.

4. Interviewing and Selection

- Train the staff responsible for interviewing and selection in equal opportunities
- Focus on skills, not on out-of-date stereotypes. For example, a manager can be an older or younger person.
- Do not make assumptions about the capability or medical fitness of someone based purely on their age.
- Use people of different ages on the interview panel, to reduce the possibility of bias towards one age group.
- Ask job-related questions and be careful not to base decisions on prejudice and stereotypes.
- Be careful how you describe your company. Labelling it as ‘young and energetic’ could discriminate.
- Use selection criteria to mark candidates against. This can help with decision-making and record the fairness of the process.

“Check that your recruitment agency partners are fully informed on the new regulations.”

5. Monitoring

Monitor statistics to check how effective your recruitment process is.

- Count the number of candidates of different age groups who applied, were short-listed, interviewed and appointed.

6. Graduate and specialist recruitment

If you have special recruitment programmes for graduates or managers, make them open to all ages.

7. Recruitment agencies

You need to be sure that your recruitment agencies act appropriately and in accordance with your company's equality and diversity policies.

- Check that your recruitment agency partners are fully informed on the new regulations and do not exclude people because of their age.

Exceptions: when is age discrimination lawful?

It will only be lawful to specify a particular age range for a job where the employer can show either that this is objectively justified or that there is a genuine occupational requirement for the person to be of a certain age.

For example:

1. Positive discrimination - A company with a disproportionately young workforce, aware that older people rarely apply for jobs with them, could advertise saying “we particularly welcome applications from people over the age of 45, as this age group is currently under-represented, but appointment will be made on merit alone.”

“Employers need to comply with the new legislation by checking that all their policies and procedures are in line with the new requirements.”

2. Existing law - An employer can refuse to employ someone under 18 to serve alcohol, in order to comply with licensing requirements, or under 17, if they require a driving license.

Other reasons could include:

- health and safety of employees and customers
- the need for an employee to be in the post for a reasonable time before retirement
- business needs and efficiency.

It will be for the tribunals and courts to decide on a case by case basis, whether a measure is justified or not.

An action plan to prepare for the new laws

Employers need to comply with the new legislation by checking that all their policies and procedures are in line with the new requirements, and seeking advice where necessary.

Each stage of the employment cycle, from recruitment to redundancy, should be examined as discrimination can occur throughout a person's working life. All those involved in making decisions about the employment and training of people need to understand the implications of age-stereotyping.

1. Review your employment policies and practices.
2. 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.
3. Draw up and implement an Age Diversity policy.
4. Communicate your policy to all managers, employees and third parties, giving training where necessary.
5. Monitor the results.

“Sanderson does not exclude people because of their age. We have audited and updated our internal policies and procedures in line with the new regulations.”

About Sanderson Recruitment plc

Sanderson is a specialist recruitment consultancy. We find, select and recruit professional staff in IT, Human Resources and Finance for businesses across the UK. Established in 1975 Sanderson is now the largest independent specialist recruitment organisation in the UK.

Sanderson’s procedures to promote age diversity

Sanderson does not exclude people because of their age. We have audited and updated our internal policies and procedures in line with the new regulations. We have made the following changes to our service on our clients’ behalf:

- Sanderson has removed date of birth and age from the CVs we send.
- We have removed any mention of age from our job advertisements.
- We do not use age as a selection criterion.
- We have fully informed our staff about the Age Regulations.
- We have trained our recruitment staff in equal opportunities selection procedures.
- We will work with our clients to ensure that their recruitment and selection programme is not discriminatory.
- We have an age positive written selection procedure.
- We monitor statistics to be sure that we are short-listing, interviewing and placing candidates from all age groups.

Next steps

This report provides a basic overview on the Age Regulations with regard to recruitment and selection. The Age Regulations are complex. For more detailed information on the full extent of the new law and assistance with implementation we recommend you seek expert advice from specialist lawyers. Sanderson’s in-house legal team can put you in touch with relevant experts.

To contact Sanderson, call 0117 9706666
or email mail@sandersonplc.com.

Useful contacts

Further information and useful contacts:

Employers Forum on Age
www.efa.org.uk

Department of Work & Pensions
www.agepositive.gov.uk

Third Age Employment Network
www.taen.org.uk

DTI (for legislation)
www.dti.gov.uk/er/index.htm

ACAS
www.acas.org.uk