

AGE DISCRIMINATION LEGISLATION

A report of a presentation to the ERA by MICHAEL SIMPSON of Co-operative Legal Services

This legislation, dating from 2006, was initially to protect people from being discriminated against on the grounds of their age. It seeks to protect people against :

- Direct discrimination – Treating someone less favourably on the grounds of age which may include deciding not to employ someone, dismissing them, denying promotion opportunities or retiring them before normal retirement age.
- Indirect discrimination – this applies to practises, providing or criteria which would put people of a particular age (ie either older or younger than average) at a disadvantage.
- Harassment: This applies to an environment which fosters any kind of intimidation, hostility, degradation or offence against someone on the grounds of their age or any violation of their dignity. This might include a culture where jokes and comments were consistently made against older people for example.
- Victimisation: This applies to people who are subjected to any detriment because they have made or intend to make a complaint about discrimination or harassment.

Not everyone believes that the laws are fair, in particular the fact that someone can still be forced to retire at 65 when many of them would like to continue working. Currently any employer can retire someone at 65 as long as they give the employee six months' notice of the proposed retirement date [and comply with the statutory retirement procedure] or [and advise the employee of the right to request working beyond the intended retirement date. If the employer receives a written request from the employee then the employer must convene a meeting with the employee to consider the employee's request. If the employee's request is refused then the employer must confirm this in writing and state the date on which the dismissal is take effect.] The employee has the right to appeal against the employer's decision and to request that they are allowed to continue working, but there is no obligation for the employer to agree to this.

At the time of the seminar the charity Age Concern was involved in a court case with the UK Government claiming that the 'compulsory' retirement age of 65 was unfair. Since then the Advocate General at the European Court of Justice has given an Opinion that the legislation is not unfair and can remain unchanged. The ECJ is due to give a judgment in early 2009 and, if it follows the Opinion, it is highly likely that the High Court will find that the compulsory retirement provision is objectively justified.

Michael Simpson of Co-operative Legal Services said that this aspect of the legislation made a mockery of what the laws were brought in to achieve.

The age discrimination Regulations do not include the sale of goods and services, so older people cannot use the Regulations to fight the non-availability of motor or travel insurance for example.

The legislation appears to have had a significant effect on recruitment advertising. There has been some interesting case law on age discrimination and the number of age discrimination cases is increasing.