

## Guide

### **The Employment Equality (Age) Regulations 2006**

The TAEN Guides to the Age Regulations are primarily for employees, jobseekers and learners and aim to give a simple, clear explanation.

## **Redundancy**

Under the Age Regulations it is unlawful to select for redundancy on the basis of age. Controversially, certain age bands for determining levels of redundancy pay are allowed.

### **Selection for redundancy**

Selection for redundancy, using either a 'last in, first out' (LIFO) or 'first in, first out' (FIFO) approach may be unlawful, because both are likely to have a negative impact on more workers of a certain age group.

Older workers can be worst-affected by the FIFO approach, sometimes used in exercises downsizing and de-layering management. Alternatively, organisations that use LIFO may disproportionately penalise younger workers among the most recent arrivals.

If you are placed at a particular disadvantage in one of these ways, compared to colleagues of a different age group, you may be able to challenge the selection criteria. Your employer would have to justify the practice to an employment tribunal, proving they had a legitimate aim and that this system

was necessary as a result. It would not be enough, for example, for your employer to say that LIFO rewards staff loyalty. The tribunal would expect evidence that this was actually the case. If the aim can be achieved in another way, which does not discriminate against a certain age group, the tribunal will find that this should be used instead.

Any age discrimination challenge to redundancy selection, will depend on evidence about the procedures used, the explanation for their use, workforce patterns and human resource management in the business.

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## Redundancy pay

However, the Age Regulations do permit age and length of service to be applied to redundancy pay calculations in certain specific circumstances. Statutory minimum redundancy pay (where a week's pay is capped at £350 per week - correct until February 2010 - is calculated as follows:

- half a week's pay for every year of employment under the age of 22;
- a week's pay for every year between the ages of 22 and 40;
- one and half week's pay for every year over the age of 40, up to a maximum of 20 years.

Employers can maintain minimum periods of work to qualify for redundancy pay, so that short term employees are excluded.

Even though the amount of redundancy pay increases with the length and years of service, the Age Regulations specifically allow for statutory redundancy payments using this system. Enhanced contractual redundancy schemes which mirror the bands and proportions (even if they increase the number of weeks, or do not cap the payment at £350) are also specifically permitted by the legislation.

However, where employers offer better redundancy pay than the statutory minimum using a different system, employees who are penalised due to their age are in a stronger position. This would only be permitted by an employment tribunal if the employer could justify that practice using the same strict objective test: by proving it meets a legitimate business aim, and there was no less discriminatory solution.

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## Dismissal on grounds of age

This is unlawful if your employer cannot justify it on objective grounds. To succeed in a claim, you will need to show that your dismissal was not for the reason given by your employer (eg misconduct, poor performance, incapability or redundancy), but in fact on grounds of age.

In order to succeed, you must gather evidence which supports your claim. If you can show enough evidence of age discrimination to a tribunal, you should win, unless your employer can prove it was for another reason, or justify the decision objectively. As mentioned above, this is a strict test. Unless your employer can demonstrate that your dismissal was necessary to meet a legitimate business need, the tribunal will make a finding of unlawful discrimination and unfair dismissal.

For further information please refer to the Guides on How to Make a Claim and Redress.

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**If you are concerned you may have experienced discrimination fill in the online questionnaire (EqualityXpress) at [www.rjw.co.uk/equalityxpress](http://www.rjw.co.uk/equalityxpress). Russell Jones & Walker Solicitors will then contact you with their opinion on your claim. The service is free and 100 per cent confidential.**

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The information in this guide was prepared by the award winning employment department at Russell Jones & Walker Solicitors

Care has been taken to ensure that the information provided in this Guide is accurate up to the date of publication (1 June 2009). However, we do not accept responsibility for mistakes or omissions. In particular, the information provided is for general educational purposes only and is not intended to be legal advice, taking into account your particular circumstances. Please do not use this information to disregard any legal advice, nor to delay in seeking legal advice or representation because of any material contained in it.

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