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Is it wrong to reward length of service or more experience with higher pay?

Discrimination in pay is about more than the ‘*gender pay gap*’.

Employers should also be alert to the risk of discrimination complaints in relation to pay based on other equality grounds, such as religious belief, race, sexual orientation or disability.

Age perhaps is the most likely area, outside gender, where the greatest risk of discrimination in pay lies. Basing pay or benefits, or particular elements such as holiday leave, on criteria like length of experience or length of service introduces that risk. Gaining experience and seniority takes time, and it stands to reason that older employees would be more likely to benefit from such criteria than younger employees. That does not mean that these practices are necessarily unlawful, but it does open employers up to the risk of age discrimination complaints from aggrieved employees under the *Employment Equality (Age) Regulations (NI) 2006*.

Every year around 8% of the discrimination complaints made to the Equality Commission are about age discrimination.

We recently supported the case of a 27-year-old woman who worked as part of her company’s customer services team. After 18 months in the job, she found that she had been paid less than older staff members who were doing exactly the same role as her and recruited around the same time as her.

These older staff members had started at a higher salary than her, with the result that, after proportional pay increases, when she was promoted to a management role as Team Leader, she was earning less than the older staff she was managing.

The woman said the company had never advertised the salary for the job as dependent on experience. She said the company told her that it operated two pay scales and that to be on the higher scale an employee needed to have 10 years’ relevant experience. She was then told that this was not the case, and that the starting salary did relate to length of experience, though it was considerably less than 10 years. The exact term was never specified.

Her employer settled this case, without admission of liability, for £14,000.

So what should employers do?

The general equality principles that apply to equal pay between men and women also apply to pay for people of different ages - and, indeed, for people in all the equality groups, such as race, disability, sexual orientation and the like.

So, broadly, all employers should be *equal opportunities employers*, meaning that they should make genuine efforts to comply with the spirit and letter of the anti-discrimination laws.

The main point to remember in relation to pay, salaries and benefits, is that employers should start with a presumption that their employees should receive *equal pay for equal work* (that is, work that is the same or of equal value) under a pay scheme that is reasoned, structured and transparent and certainly not under one that is secretive, arbitrary and ad hoc. Demonstrate a commitment to this principle by having an *equal pay policy*. A model equal pay policy is available in the Equality Commission's [Code of Practice on Equal Pay](#).

Employers should carry out periodic *equal pay reviews*, examining whether there are pay disparities between employees who are doing equal work. Look especially for patterns that may reveal whether these disparities tend to advantage or disadvantage men and women, younger people and older people or between people with other different characteristics, such as community background, race, sexual orientation, disability. Guidance on carrying-out such reviews can be available in the Equality Commission's [Equal Pay Review Kit](#).

Identify the source of any disparities by examining all aspects pay packages, such as starting salaries, pay progression scales, overtime rates or bonuses. Consider whether any disparities are lawfully justified and immediately eliminate disparities that have no lawful justification and keep all others under regular review.

Paying higher salaries, or particular elements of pay or benefits, for example, more holiday leave, to employees with greater experience, or longer service, is not necessarily unlawful but it is potentially discriminatory on grounds of sex and age, in particular, and should not be done without lawful justification. Employers should think very carefully about this and seek legal advice if necessary.

In some cases that justification might come from a specific statutory exception, for example, when paying staff in accordance with the relevant age-bands of the National Minimum Wage rates. In those situations, employers should assure themselves beforehand that the conditions for relying on a statutory exception are properly met.

In other cases, the justification might come from a specific business aim that the employer wishes to attain such as to reward the loyalty of longer serving staff, or where there is a need to pay higher starting salaries to attract suitably qualified staff at a time of labour shortages (the so-called 'market-forces' justification). In the latter situations,

employers must exercise care – the aim must be a genuine one and the means of achieving it should not be more than what is reasonably necessary to achieve the aim.

It is also best not to allow pay disparities to continue indefinitely, even those that may initially have been lawfully justified. Employers should design their pay schemes so that lower paid staff may 'catch up' with higher paid staff with whom they are doing equal work as their experience and length-of-service grows – as a rough rule-of-thumb, an equalisation period of up to five years is likely to be easier to justify than a longer period.

Our Advice and Compliance team is available to answer your questions about this and any other workplace equality issues. We can help you devise policies or alter our template policies to suit your organisation and we also offer free expert training on many of the basics. If you have a specific query that isn't answered on our website, phone 028 90 500 600 or email edenquiries@equalityni.org

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