

Age Discrimination Law in Northern Ireland - A Short Guide

This short guide provides some basic information about the law on discrimination on grounds of age in Northern Ireland. It does not attempt to describe every detail and should not be taken as an authoritative statement of the law. Further information is available from the Equality Commission. Details of some of our other publications and how to contact us are given at the back of this booklet.

The Equality Commission for Northern Ireland

The Equality Commission for Northern Ireland has responsibility for enforcing the **Employment Equality (Age) Regulations (Northern Ireland) 2006**, and working for the elimination of unlawful discrimination on grounds of age. It also has general duties with regard to promoting equality of opportunity and positive action, as well as a duty to keep under review the operation of the Regulations.

The Law

The Employment Equality (Age) Regulations (Northern Ireland) 2006 (the Regulations), make discrimination on grounds of age unlawful in the following areas:

- **employment and occupation;**
- **further and higher education;**
- **vocational training.**

What is Age Discrimination?

The Regulations define the following types of unlawful discrimination:

- **Direct discrimination** is where, on grounds of a person's age (or perceived age), an employer, without objective justification, treats that person less favourably than he treats, or would treat, other persons in circumstances that are the same, or not materially different. An example of this might be where the best candidate at interview aged 50 years is not appointed to a job because the employer feels he/she will not "fit in" with other staff that are in the 18-25 age group. Instead the employer offers the post to a less able, younger candidate.
- **Indirect discrimination** occurs where an employer, without objective justification, applies a provision, criterion or practice which, although it was applied to all persons equally, puts persons of the same age group as the individual at a particular disadvantage compared to other persons. An example of this might be where an employer, without objective justification, applies a minimum experience requirement to a job and therefore puts persons of a particular age group at a disadvantage.
- **Age victimisation** means treating someone less favourably because they have, for example, in good faith complained of alleged discrimination or have assisted someone else to do so.
- **Age harassment** occurs where, on the grounds of age, a person is subjected to unwanted conduct which has the purpose or effect of violating his or her dignity, or creates an intimidating, hostile, degrading, humiliating or offensive environment for him/her. An example of this might be where a young manager receives comments such as "you are wet behind the ears" from an older employee.
- **Discrimination for failing to carry out an age discriminatory instruction** occurs when an individual is treated less favourably than other persons because that person failed to carry out or complained about receiving an instruction to do an act which is unlawful under the regulations. This form of discrimination can not be objectively justified.

- **Discrimination after a relationship has come to an end** occurs when an individual is treated less favourably or harassed on grounds of age after the employment relationship has ended. An example of this might be an employer refusing to provide a former employee with a reference.

People who believe that they may have suffered unlawful discrimination may take legal action through an Industrial Tribunal or County Court.

Employment Provisions

The Regulations prohibit **all employers**, regardless of size, from subjecting job applicants and employees, including contract workers and former employees, to age discrimination and harassment. It is unlawful for an employer to discriminate in all aspects of the employment relationship, such as:

- **recruitment and selection;**
- **terms and conditions of employment;**
- **working environment (conduct and harassment);**
- **access to (employment related) benefits;**
- **termination of employment – such as dismissal and redundancy; and**
- **post-employment situations – such as the provision of references.**

Age Harassment

Age harassment is explicitly defined in the Regulations as unwanted conduct which has the purpose or effect of violating a person's dignity, or which creates an intimidating, hostile, degrading, humiliating or offensive environment for him/her. Such harassment is unlawful and discriminatory.

Age harassment can take many forms including physical conduct such as serious assault, verbal conduct such as jokes, banter and name calling or written conduct such as graffiti, posters, pictures or e-mails.

Complaints of age harassment may be made against the employer as well as the harasser. In certain circumstances, individual employees can be held personally liable to pay compensation awards.

Employers are liable for any age harassment committed by their employees in the course of their employment (**this includes work related social activities outside normal working hours**) even if they did not know about the harassment or would not have approved of it, had they known. Employers can be held liable for the discriminatory acts of their agents if the agent acts with the employer's express or implied authority. Employers can also be held responsible for a failure to prevent acts of harassment carried out by customers or clients against their employees. Employers can successfully defend an age harassment case only if they can demonstrate they took such steps as were reasonably practicable to prevent the harassment happening.

For further information on what reasonably practicable steps an employer can take, see Age Discrimination in Northern Ireland – A Guide for Employers and the Model Harassment policy. Both of these guides are available from the Equality Commission, or alternatively visit our website – www.equalityni.org.

Do These Provisions Apply Only To Employers?

No. Bodies and organisations other than employers are prohibited from discriminating including:

- **employment agencies;**
- **persons who appoint office holders;**
- **persons with statutory power to select employees for others;**
- **trade organisations – including trade unions and professional organisations;**
- **partnerships (in business/es);**
- **barristers;**
- **The Police Service of Northern Ireland and other police bodies;**
- **trustees and managers of occupational pension schemes;**
- **The Crown – which includes government departments and agencies;**
- **career / training guidance providers who assist others in accessing work and training;**
- **organisations which confer professional and trade qualifications;**
- **vocational training providers; and**
- **institutions of further and higher education (including universities).**

Exceptions

There are exceptions in the legislation. Some examples of exclusions and excluded activities include:

- **genuine occupational requirement;**
- **national minimum wage;**
- **provision of enhanced redundancy funds;**
- **life assurance cover;**
- **statutory exceptions including the armed forces, statutory authority and national security;**
- **length of service exemptions;**
- **objective justification.**

Direct and indirect discrimination may be permitted where an employer can demonstrate that his/her actions or provisions, criteria or practices are objectively justified. Objective justification cannot be used as a defence for victimisation and harassment or discrimination for failing to carry out an age discriminatory instruction.

Objective justification will be established if an employer can show that what it has done is **a proportionate means of achieving a legitimate aim**. This means that:

- the decisions or provisions which an employer makes or the criteria or practices which are applied must actually contribute to the pursuit of the legitimate aim. For example, if the employer uses an age-related practice in order to promote health and safety (the legitimate aim), then the employer should have evidence which shows that the practice actually promotes health and safety.

- the importance and benefits of the legitimate aim should be weighed up against the discriminatory effects. For example, a discriminatory criterion which helps to protect employees' safety is more likely to be regarded as proportionate than one which results in a marginal improvement in production efficiency.
- the employer should not discriminate more than necessary. For example, where a legitimate aim can be achieved equally as well by a measure that has a substantial discriminatory effect and one that has a lesser discriminatory effect, or none at all, the latter should be used.

In the event that an individual complains of discrimination, it will be for an employer to convince an Industrial Tribunal that it acted in order to achieve a legitimate aim.

Positive Action

The Regulations permit two types of positive action for the purpose of preventing or compensating for disadvantage linked to age suffered by persons of the targeted age or age group. These are:

- **affording persons of a particular age or age group access to facilities for training which would help to fit them for particular work;**
- **encouraging persons of a particular age or age group to take advantage of opportunity for doing particular work.**

Please note that lawful positive action of this nature is not the same as positive discrimination. Employers should seek advice from the Commission and/or seek independent legal advice before taking any positive action measure.

Goods, Facilities and Services

The Regulations do not generally prohibit discrimination by those who provide goods, facilities and services to the public. However, those who provide employment-related services to the public, such as employment agencies, career guidance services, vocational training providers and institutions of further and higher education, including universities, are prohibited from discriminating on the grounds of age.

Further and Higher Education

It is unlawful for the governing bodies of institutions of further and higher education, including universities, to discriminate:

- **in the terms on which they offer to admit a person as a student;**
- **by refusing or deliberately not accepting an application for a person's admission as a student;**
- **in the way it affords a person access to any benefits;**
- **by refusing or deliberately not affording a person access to them; or**
- **by excluding the person from the establishment or subjecting that person to any other detriment.**

It is also unlawful for an institution of further and higher education to harass a person who is a student at the establishment, or a person who has applied for admission, on the grounds of age.

Vocational Training

It is unlawful for any training provider to discriminate against someone who is seeking or undergoing training:

- **in the arrangements they make for the purpose of determining to whom they should offer training;**
- **in the terms on which the training provider affords them access to any training;**
- **by refusing or deliberately not affording them such access;**
- **by terminating their training; or**
- **by subjecting them to any other detriment during their training.**

Training providers can not set age limits for entry to training unless they can objectively justify them or rely on an exception or exemption.

Further information for employers and others

The Equality Commission can provide information, advice and training on the age legislation and recommended good practice. Please contact our Enquiry line - 028 90 500 600.

The following relevant publications are available free of charge from the Commission and on our website:

Age Discrimination in Northern Ireland - A Guide for Employers
Age Discrimination in Northern Ireland - A Guide for Employees
Harassment & Bullying in the Workplace
Model Equal Opportunities Policy
Model Harassment Policy and Procedure

Making a Complaint

People who believe that they have been subjected to discrimination on the grounds of age in employment have a right to make a complaint to an Industrial Tribunal. Complaints about discrimination in the other fields, such as vocational training and further and higher education, are heard by the County Court.

Anyone who believes that they may have been the victim of unlawful age discrimination should seek advice as soon as possible as **time limits apply to legal proceedings.**

Under the age legislation, complaints relating to discrimination in employment should be made to an Industrial Tribunal within **3 months** of the date of the alleged act of discrimination. In certain exceptional cases the Tribunal might extend this deadline but simply not knowing that there is a deadline is insufficient reason for an extension.

All employers should have procedures to deal with workplace grievance and disciplinary matters. Failure to use or complete an employer's grievance procedure could lead to a Tribunal reducing any award of compensation by up to 50%.

The Equality Commission can provide further guidance on time limits. For further information on grievance procedures, please contact the Labour Relations Agency - www.lra.org.uk

Complaints about discrimination in the field of further and higher education must be made to the County Court within **6 months** of the date of the act of the alleged discrimination. The County Court may extend time limits in exceptional circumstances.

The Equality Commission can provide free and confidential **advice and assistance** to people who believe that they have been discriminated against for a reason relating to age. Assistance by the Commission ranges from simply giving advice to arranging for legal representation in some cases. The Commission **does not** decide whether discrimination

Further information and advice

The Equality Commission provides information and guidance on a wide range of equality areas for which we are responsible - age, religious belief and political opinion, sex discrimination, equal pay, racial discrimination, sexual orientation, disability discrimination and the statutory duties on public authorities. Our information and advisory services are free and confidential.

All our publications are on our website - www.equalityni.org - and are available in a range of accessible formats on request. Please contact our Enquiry line to order publications.

The Equality Commission for Northern Ireland

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You can also use **Typetalk** to contact us.

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