

Age and the law



Discrimination law has developed since the first Race Relations Act in 1965. The UK first introduced age discrimination legislation covering employment and vocational training when the Employment Equality (Age) Regulations came into force on 1 October 2006.

The Regulations covered all aspects of the employment relationship from recruitment and selection, to training, redundancy and retirement. The legislation generally made it unlawful to discriminate against a person on grounds of their age and covered direct and indirect discrimination. However there were some exemptions.

The Equality Bill was passed by Parliament and received Royal Assent in April 2010 to become the Equality Act 2010. The Equality Act brings together nine separate pieces of legislation, including the Age Regulations, into one single Act simplifying the law and strengthening it in important ways to help tackle discrimination and inequality. It extends protection against discrimination to the provision of goods, facilities and services, and places a new duty on certain public bodies to consider socio-economic disadvantage when making strategic decisions about how to exercise their functions.

[The Equality Act](#) is likely to apply to you in several ways: as an individual, as an employment service support or training provider and, depending on your own role, as an employer, or an agent of your employer.

Who is covered by the age provisions of the Equality Act?

Who has the right?

1. In employment

- Employees and ex-employees
- Self employed
- Office holders (for example company directors)
- Contract and agency workers
- Job applicants
- Former employees

2. In education

- Applicants of adult education and training
- Students of adult education and training
- Former studies of adult education and training

3. Other areas

- People using career guidance services
- People applying for professional qualifications
- Members of Trade Unions or other professional bodies
- Members of occupational pension funds

What is covered?

1. Recruitment

Under the legislation employers are generally not allowed to refuse to hire someone because of their age.

2. Redundancy

It is unlawful for employers to use age as a factor when selecting redundancies, unless the employer can justify this. (See below)

3. Unfair dismissal

People over the age of 65 can make claims for unfair dismissal.

4. Retirement

If your employer retires you on the ground of age you may have a claim for age discrimination and/or unfair dismissal. The strength of that claim will depend on all the circumstances.

5. Training

If you are completing work-related training whether you are employed or not you may make a claim for age discrimination if someone discriminates against you.

6. Education

If you are enrolled in higher education or any other education which provides you with relevant skills for work, you are covered by this legislation.

Where can age discrimination be justified?

There are some situations where an employer or training provider may be permitted to discriminate on the grounds of age. To do this, however, they must show, with evidence, that the discrimination is a proportionate means of achieving a legitimate aim. Put simply, this means that the aim they are trying to achieve could not be achieved in any less discriminatory way and the benefits of achieving the aim outweigh the harmful effects of the discrimination.

It is up to the tribunal to decide what they consider to be proportionate in the circumstances.

There are some limited exceptions to this which allow employers or training providers to discriminate on the grounds of age without the need for justification, although they may still be open to challenge on them.

These Include

- Benefits linked to length of service.
- Where there is a genuine requirement for a person of a certain age, for example in an acting job.
- Where the law stipulates an age requirement. For example in an establishment which serves alcohol and therefore requires staff of 18 years and over.
- Where the employer relies on the National Minimum Wage, and therefore is allowed to pay differently aged workers different pay based on the legal framework

Training and the law

Basic position

Employers, training agencies, qualifications bodies and all further and higher education institutions providing training must comply with the age provisions of the Equality Act 2010. This means it is unlawful to treat individuals less favourably because of their age:

- in selecting who should be provided training
- in the terms on which training is provided
- by refusing access to training
- by the adverse treatment of learners during training
- by terminating the training

unless the employer can justify the reason for the treatment objectively.

You can challenge a failure to consider you for training in employment because of your age even if you have not actually made an application for training and been rejected.

What is vocational training?

Vocational training includes all types and all levels of training which are related to:

- employment
- vocational guidance
- facilities for training
- practical work experience (Jobcentre Plus); and
- assessment related to the award of any professional or trade qualification.

If someone believes the training is non-vocational, it is still a good idea to check by seeking independent legal advice.

When can a training provider justify restricting training on the grounds of age?

There are certain, very limited situations where training providers may be able to restrict access to training on the grounds of age:

- 1. Where age is a genuine occupational requirement.**

If an age related characteristics is a requirement of the job. This may apply to theatre, film or modelling training, for example.

2. Where an employer would not see any return on the money they invest in training an individual because he or she is too close to retirement.

A 50-year-old is still potentially 15 or more years away from retirement, so there would not really be any distinction between younger age groups to justify restricting that individual from undertaking one week's induction or other specialist training. In practice, this restriction could be hard to justify unless an individual was only one or two years away from retirement or the employer would not see a return in the remaining employment years as a result of the length and cost of the course.

3. 'Positive action' targeting training at an under-represented age group) would be lawful.

An IT course targeted at older workers could potentially be justified if the older workers have lower levels of IT skills and qualifications than younger ones, or are under-represented in such programmes generally. The aim is to

prevent or compensate for disadvantages linked to age suffered by persons of that age or age group.

Funding of training

The Government has made it clear that state funding for training and education is not covered by the legislation and so individuals cannot claim for age discrimination if such funding is restricted or denied to them.

Recruitment and the law

The age provisions of the Equality Act make less favourable treatment on grounds of age in recruitment unlawful (direct discrimination).

They also outlaw imposing a provision, criterion or practice which is applied equally to all individuals but which puts people of a particular age or age group at a disadvantage when it comes to being recruited compared to people of another age or age group (indirect discrimination).

In both cases, however, if the employer can 'objectively justify' the treatment or the provision, criterion or practice it will not be considered unlawful.

Application forms and selection criteria

Application forms which request date of birth or a photograph may lead to, or give the impression of, decisions being made on the basis of age, whether those decisions are conscious or subconscious. It is not unlawful for an employer to request either of these, however. This has not as yet been tested by case law.

Some employers who wish to monitor the diversity of the workforce and job applicants do request such information on a separate monitoring form, similar to race and ethnic origin monitoring forms.

Genuine occupational requirement

It is permissible to seek candidates of a particular age group only where it is established that being within that age group is a genuine occupational requirement of a particular jobs. For example, when an actor for a role needs to reflect the age of the person he or she is playing.

Take this quiz to test your knowledge of age, the law and recruitment. (Answers on the next page)

Age, the law and recruitment quiz

1. **It is unlawful to ask a job applicant for their date of birth.** True or False
2. **It is unlawful to ask for a specific number of years of experience in a job advertisement.** True or False
3. **It is unlawful to use words and phrases such as 'youthful enthusiasm', 'creative', 'energetic', 'dynamic', 'mature', in person specifications and job advertisements.** True or False
4. **If you see an 'ageist' job advertisement, you can bring a claim even if you have not applied for the job.** True or False
5. **It is unlawful to publish job advertisements online only.** True or False
6. **The Equality Act makes it unlawful for employers to ask job applicants about their health or whether they have a disability except for in limited circumstances.** True or False

Quiz Answers

1. False (It is not unlawful but it may be unwise to do so)
2. False
3. False
4. False
5. False
6. True