

The Insider Guide to Age Laws
is available exclusively to members
of the Employers Forum on Age.

For more information
about joining the EFA
visit www.efa.org.uk
or call **0845 456 2495**

The **Employers Forum on Age**
www.efa.org.uk

Floor 3, Downstream, 1 London Bridge, London SE1 9BG
T 0845 456 2495

The Employers Forum on Age (EFA) is the first ever employer-led initiative to promote the business benefits of an age diverse workforce. The EFA is the leading authority on age issues in the workplace and offers expert advice and support to employers on managing the skills and age-mix of their organisation. The EFA provides an external voice for employers, while promoting this crucial business issue. The EFA is supported by forward thinking employers.

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The Insider Guide to Age Laws

An Introduction to the Essential
Companion to Age Regulations



Age discrimination in employment is unacceptable, on 1st October 2006 it will be unlawful. To enable employers to comply, the EFA have developed a guide to help you understand the full impact of the Employment Equality (Age) Regulations 2006 (the Age Regulations) on all aspects of employment policy.

The EFA's insider guide contains advice on the key aspects of policy and practice identified by members of the EFA. We have also included as much relevant case law as possible with 'real-life' scenarios, so that employers can easily recognise areas of risk.

In rare circumstances age laws will allow employers to justify using age as a reason for discrimination. To assist employers who wish to explore justifying (possibly discriminatory) policies, we examine what might constitute a 'legitimate aim' and what type of evidence might be required. But this comes with a health warning; we do not encourage any employer to maintain policies or practices which discriminate on the basis of age.

The Inside Guide to Age Laws is only available to members of the EFA – here is a taster:

Summary of Age Regulations

When people join you

- > The direct use of age limits is unlawful.
- > Indirect ageism (where people of a particular age group are disadvantaged) is also unlawful.
- > Employers will be able to try and justify both direct and indirect discrimination.
- > The law allows employers to refuse to recruit people within six months of their retirement age, or 65 if you don't have one.

While people are with you

- > Age harassment and victimisation are unlawful and can never be justified.
- > It will be unlawful to unjustifiably exclude someone from training on the grounds of their age.
- > Pay and benefits based on age will be unlawful (unless justified).
- > Employers will be able to continue to pay as per NMW pay bands and scales, but no more (unless justified).
- > Employee benefits based on service up to five years will be exempt while benefits over five years must be justified.
- > Most, but not all, age related elements of occupational pension schemes will be exempt.

When people leave

- > A 'national default retirement age' will allow employers to 'compulsorily' retire people at 65 without justification. Employers will have to objectively justify a retirement age below 65.
- > Irrespective of whether you set a retirement age below 65, at 65, or above 65 you will have to follow the 'Retirement Process'.
- > Individuals have 'a right to request' to stay on past retirement age and employers have a 'duty to consider that request'.
- > Upper age limits for unfair dismissal are removed.
- > Selection for redundancy on age or service grounds will be unlawful unless objectively justified.
- > The statutory redundancy payment scheme (SRPS) remains in place. Only enhanced redundancy compensation schemes that 'mirror' the statutory scheme will be automatically lawful.

Training

Promotion

Appr

Compliance and beyond

Think you're ready for the age laws?
Can you answer yes to these questions?

	Y	N
Have you reviewed and removed unjustified age bias from job descriptions and person specifications?	<input type="checkbox"/>	<input type="checkbox"/>
Can you justify any periods of experience required?	<input type="checkbox"/>	<input type="checkbox"/>
Have you removed age linked language and images from job adverts?	<input type="checkbox"/>	<input type="checkbox"/>
Can you provide evidence that training nominations and promotions take up and outputs are not age related?	<input type="checkbox"/>	<input type="checkbox"/>
Have you put in place a zero tolerance approach to inappropriate language or assumptions based on age?	<input type="checkbox"/>	<input type="checkbox"/>
Have you checked all your service related benefits to ensure that they are either covered by the five year exemption or can be justified under the general provision?	<input type="checkbox"/>	<input type="checkbox"/>
If you operate an enhanced redundancy compensation scheme have you checked that it mirrors the Government SRPS?	<input type="checkbox"/>	<input type="checkbox"/>
Have you agreed a retirement age?	<input type="checkbox"/>	<input type="checkbox"/>
Have you trained colleagues in the issues surrounding the Retirement Process?	<input type="checkbox"/>	<input type="checkbox"/>
Have you put in place additional pension arrangements for employees who stay on beyond the maximum age of your existing scheme?	<input type="checkbox"/>	<input type="checkbox"/>

If you answer 'no' to any of these questions you should contact the EFA at www.efa.org.uk

The EFA's "Insider Guide..." provides a checklist for each key policy area, and suggests further action you can take to protect your business.

Inside track

To help you minimise the risk of age claims, the EFA recommend you:

Avoid using age wherever you can. Discrimination law enables an individual to bring a claim if they can demonstrate that their 'age' may have had an impact. It will be up to you to defend yourself. Avoid practices where someone may 'infer' age was an issue, e.g. asking for date of birth on an application form.

Assess your risk before attempting an 'objective justification'. The costs associated with losing a case should influence your approach.

Be careful in your treatment of existing employees, once a person is working for you they can easily see who is or isn't getting promoted, trained, or participating in a leadership development programme

Transparency is vital, you not only need to be fair, you need to be seen to be fair.

Record keeping is important. Failure to keep records has led to Irish employers being penalised – the assumption being they are hiding discrimination.

Training, especially for managers is incredibly important, not only to avoid claims but to support you when defending claims.

Age could be linked with both sex and disability discrimination. Make sure that you don't expose yourself to claims on other grounds, particularly when you retire people.

Impact assessment checklist

Try to avoid using age wherever possible, if you think you can/need to justify a discriminatory policy, first:

Ask yourself if age (or time-linked experience) really matters.

Explain why age (or time-linked experience) matters.

Check that you are not using age (or time-linked experience) as a proxy for something else (such as qualifications or fitness).

Confirm that your reasoning is not based on assumptions, but on hard facts and figures (evidence).

Be sure that you can't achieve the same business aim another way.

