

Employment Equality (Age) Regulations 2006

The TAEN Guides to the Age Regulations are primarily for individual employees, jobseekers and learners and aim to give a simple, clear explanation. They are neither a legal opinion nor a statement of Government views.

1 : Scope - do they apply to you?

The Age Regulations make it unlawful for decisions about your working life or learning and training to be based on your age.

Basic position

Your age is not a relevant factor. It is not a proxy (a short cut) for a view about your abilities, competencies and what you can or cannot do.

It is already unlawful to base employment and training decisions on your gender, race, sexual orientation or religion or to take account of a disability. Up to October 2006 it was lawful to take employment and training decisions based on your age. Now it is not.

Too young?

There is no set official lower age limit in the legislation. However the law only deals with work and training. 'Working age' is usually defined as 16+ so the Regulations will normally relate to most people when they start working life at age 16 or later.

However, they could apply to someone working under age 16 (in some parts of the country up to a quarter of 14-16 year olds have some kind of paid work).

The Regulations do not apply to education of young people or to schools (apart from in their role as employers).

The Regulations do not apply to areas other than work and training. So they have no effect on the many age-based rules defining the thresholds for what young people can do. Examples include voting age, the criminal justice system, driving, and some work places, for examples pubs.

The Regulations allow the three age ranges of National Minimum Wage to continue. So young people in the two lower bands will not be able to use the legislation to claim the full adult rate.

The UK Regulations are different from the law in some other countries, for example the USA, where there is no protection from age discrimination for people under 40.

Too old?

There is no upper age limit in the law. It can apply to you in your 80s or 90s. The former upper limit of 65 on employment rights is removed.

There are a number of reservations to this:

Recruitment

If an employer has a retirement age of 65 (or higher) then it will be lawful to refuse to recruit people who are over 64 and a half or six months before whatever the retirement age is. In practice, a ceiling on the right to be recruited therefore remains (see Guide 3 *Recruitment*).

Unfair dismissal

This is the most common cause of Employment Tribunal cases. The right to claim unfair dismissal after the age of 65 will in practice be limited. It will only apply when an employer ignores the procedures in the law for handling retirements at or after the Fixed Retirement Age (see Guide 7 *Retirement*). However, people of any age now have protection against being told to go at a few weeks' or no notice without compensation. Knowledge of this right, whatever your age, is therefore important.

Training and learning

There is no upper age limit on the right of people to gain equal access to training and learning opportunities. In practice, this may be constrained in several ways. For example, would Internet training for a group of retired people in a care home be regarded as outside the scope of the law?

The recognition that employers need to be able to get a pay-back on workforce training in the period prior to retirement may also impose an upper limit.

Finally, there are constraints on public spending support for learning that relate to both age and the vocational focus of training which may represent an upper age ceiling in practice (see Guide 5 *Training*).

Direct and indirect discrimination

The Regulations cover situations where your age has been the direct reason for a decision about your work or training.

They also cover circumstances and actions which indirectly exclude certain age groups.

These are harder to identify than direct discrimination, but can be widespread. One example is the use of a specific number of years to define required levels of experience for a job – while this does not say directly that any age group is excluded it does make it impossible in practice for those who are not old enough to have worked that long to apply, even though they may have the competencies required for the job.

Age has to be an important factor in a case, but it need not be the sole factor influencing an employer's behaviour as far as an Employment Tribunal or County Court is concerned.

Victimisation and harassment

Victimisation occurs when you have made a complaint of age discrimination to an employer or tribunal or have assisted a colleague with a similar complaint and are subsequently penalised for getting involved.

Harassment occurs when you are made to feel uncomfortable, unwanted, have been excluded or otherwise adversely affected by colleagues (or managers) on account of your age.

Both come within the scope of the Regulations. Recent Government research has shown that both are more widespread than is commonly recognised.

It is likely that there will be cases about what constitutes harassment. In our present workplace culture some of what passes as casual age-based behaviour between colleagues would not be acceptable if it was related to race or gender. The issue for the courts will be the extent of the distress and hurt to the applicant.

Definition of 'age'

The Age Regulations apply to cases based on your actual age and to actions based on perceptions of how young or old people think you are. The case may concern a comparison between younger or older people, rather than your exact age (see Guide 9 *Comparators*).

Definition of ‘workers’ and ‘employment’

The definition of ‘workers’ is broad. It includes full-time and part-time workers, trainees and apprentices, contract and agency workers, the self-employed, partners in partnerships, office holders, barristers and advocates, job applicants and ex-employees.

There is case law about the definition of contract workers and the liability of the suppliers of contract workers.

Employers, trade associations, trade unions, qualification awarding bodies, providers of training and employment agencies are all covered by the law.

The law applies to enterprises of all sizes and to those undertaking paid work. It includes those employed in the UK but working much of the time overseas.

In or out of work

You do not need to be an employee to be covered by the law. You may be a job seeker or have left your previous employment. Most decisions related to ‘retention’ and ‘advancement’ will relate to those in work. Many decisions on ‘recruitment’ and ‘training opportunities’ will relate to those not in work.

Work and training only

The Regulations do not cover age-based practices outside employment and training, generally known as ‘goods, facilities and services’. Age-based rules about insurance premiums, travel, car hire, health check-ups, etc cannot be challenged, even though some of these may have an impact on the cost of employing you if you are younger than 25 or older than 60.

If an employer suggests that they cannot employ you or keep you in a job because of these extra costs (unless you agree to pay for them yourself) then you should seek advice. The extra cost is not in itself a

reason for not employing you. However there may be test cases at Employment Tribunals on this.

Unpaid work

The Regulations do not include voluntary, unpaid work. A volunteer for a not-for-profit enterprise can be laid off on grounds of their age. The only circumstances where this might be challenged is if a volunteer has a formal contract of employment with defined hours, etc.

No ‘duty to promote’ age equality

The Regulations do not include a duty on public or private bodies to promote age equality. In this they are different from race, gender and disability laws which put in place a duty on public bodies to be proactive in promoting those forms of equality. The Age Regulations are limited to describing what is unlawful, rather than taking a positive, promotional approach. It places all the onus for enforcement on action by individuals.

The disability law includes the concept of ‘reasonable adjustments’ by employers to facilitate the working conditions of disabled people. There is no equivalent in the Age Regulations. However, both the Age Regulations and Disability Discrimination Act (which has recently been updated and strengthened) may apply in some cases and the Age Regulations and ‘reasonable adjustments’ will be relevant to some older people with disabilities.

Action on behalf of a third party

The Regulations cover actions by an employee or agent on behalf of someone else such as the employer. Saying that you are acting on instruction is not an excuse. This is called ‘vicarious liability’, for example the liability of an employer for the actions of their employees, even if the employer was not aware at the time of what was happening.

Exemptions

The scope of the Age Regulations will be influenced by the exemptions (potentially allowable age-based actions), listed in summary in the *Introduction* to the TAEN Guides and dealt with more fully in Guide 2 *Exemptions*.

TAEN's Guides

Along with other non-governmental organisations, TAEN participated in over five years of discussions and preparations with the UK Government and others on the transposition of the EU's *Equal Treatment Directive 2000* (on which the Age Regulations are based) into UK law.

TAEN's Guides to the Regulations divide them into a series of manageable, separate chunks. There is overlap between the topics. In some cases this is dealt with by repetition in more than one guide. In other cases there is cross reference from one guide to another.

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TAEN is a member of the Age and Advice Network, a group of organisations who can provide information, advice and help on questions of age and employment.

TAEN is a membership organisation whose Members are drawn from across the labour market. They include public, private and voluntary sector employers and organisations, Government agencies, business and regional agencies, trades unions, law firms, employment and career guidance service providers, research and training bodies, professional institutes and educational institutions.

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