

## The 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.*

## 10 : Redress - dealing with a case of discrimination

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### Introduction

Upholding the Age Regulations when they are not being followed depends on the actions of individual workers, jobseekers, trainees, etc, and their representatives. In most cases they have to initiate an action if something is to be changed.

The legislation and procedures for handling a discrimination case are complex and not very user friendly. You should seek advice. This can be obtained, from amongst others, Citizens Advice Bureaux, Community Law Centres and from Autumn 2007 the Commission on Equality and Human Rights (CEHR). The CEHR will perform a role on age similar to the current roles of the existing Commissions on Gender, Race and Disability.

There are major limits on the resources, both in terms of practical advice and financial support, such as legal aid, available to help complainants in discrimination law cases. Cases which raise points of law which are unclear and need to be resolved are most likely to attract sustained support.

There are several possible starting points:

### **A. An employee who wishes to bring a tribunal case on any kind of discriminatory action - other than dismissals**

The employee is usually required to follow statutory Grievance Procedures which were introduced in October 2004. This applies in all instances except dismissal. It includes constructive dismissal (a misleading term to describe the action of an employer who has engineered – constructed - a situation where an employee has no option but to resign, i.e. is forced out due to the employer's fundamental breach of contract).

The employee initiates the procedure with a **letter** to the employer setting out his or her views. There are procedures about how this letter is written and advice should be sought. If the employer requests a **meeting** to discuss the letter the employee must attend if they want to take their case forward. There are procedures about the conduct of this meeting.

## Obtaining evidence

The strength of a case will be determined by the **evidence** that can be presented. In a direct discrimination case, it is necessary to show that the claimant has been treated differently (less favourably) from other people on account of age. In addition to the evidence directly related to the case (the facts), evidence related to the general working environment and practices is relevant. This can build a picture of an employer's conduct from which an Employment Tribunal can infer that discriminatory action took place.

The employee can submit to the employer a statutory **questionnaire** setting out the information he or she requires to present the case. A DTI model for the questionnaire is at: [www.dti.gov.uk/employment/discrimination/age-discrimination/index.html](http://www.dti.gov.uk/employment/discrimination/age-discrimination/index.html). The employer is obliged to respond or face the prospect of negative inference being drawn by a Tribunal if the case proceeds that far. The questionnaire must be sent to the employer within three months of the events on which the case is based or, once a tribunal case has started, within 21 days of the start of the case. It can be sent before deciding on whether to bring a case, the decision depending on the evidence supplied by the employer. However, it is of course inevitable that the act of sending a questionnaire will have an impact on the employee's relations with their employer.

## Taking a case forward

To start a tribunal case, the claimant must **lodge the case** with the Employment Tribunal within three months (three calendar months, less one day), of the discrimination complained about, regardless of whether the claimant has initiated a grievance procedure. If the statutory grievance procedures apply, the claimant must first send their employer a step 1 grievance letter. A tribunal case is lodged on the standard claim form (ET1). This can be obtained from the Employment Tribunal Service website.

Once a case is started, the employer will send the tribunal its response. The response form will be copied to the claimant. The case is then prepared by each side. From an early stage, ACAS will

contact the claimant and employer and offer to help negotiate a settlement if they wish to do so. A substantial number of cases are resolved through ACAS, though often not until a late stage in the case preparation.

The ACAS conciliator is a neutral and independent officer, who does not make any legal assessment or give legal advice to the parties. Negotiations are off the record. If no settlement is agreed at any stage, the case goes to a hearing in the tribunal. At the hearing, the tribunal decides whether a case of discrimination appears on the face of the evidence presented to have taken place. If so, the **burden of proof** then falls on the employer (the respondent). The respondent has to give an adequate explanation of why the action was not based on age.

There is no upper limit on levels of **compensation** in discrimination cases. The compensation awarded can take account of actual financial loss, and injury to feelings and health. In rare cases, costs can be awarded against the losing party.

## B. An employee who wishes to bring a tribunal case about dismissal

These cases are governed by a different procedure, known as the DPP – Dismissal and Discipline Procedures, which was also introduced in October 2004.

Unlike the grievance procedure, the requirement to initiate the relevant procedure rests with the employer. This is logical, because it is the employer who is taking an action against the employee. The employer must write to the employee, inviting him/her to a disciplinary meeting. The employer sets out the evidence. A meeting takes place. The employee can appeal the employer's decision against him or her. Both parties must follow the procedures laid down. If an employee wins an unfair or discriminatory dismissal case in the Employment Tribunal, the level of compensation is influenced by the way either party handled the case and followed the procedures.

Dismissal cases must be lodged in an Employment Tribunal within three months of the dismissal. Unlike discrimination

cases, there are guidelines and limits on the amount of compensation that can be awarded for unfair dismissal.

Where the complaint concerns certain forms of disciplinary action which is discriminatory, it is possible that the DDP will apply as well as the GP. There are special rules on this.

### **C. An employee who wishes to take action in relation to the retirement procedure**

Where the employer follows **the correct procedure** and timetable for the retirement procedure an employee cannot lodge a complaint. The only circumstances in which this might be possible is if the case also constituted possible discrimination under another heading such as gender (see Guide 7 *Retirement*)

Where the employer **starts the procedure late** less than six months before the date of fixed retirement age the employee can do two things:

1. Lodge a claim with an Employment Tribunal for compensation of up to eight weeks' pay.
2. Lodge a complaint that the real reason for informing the employee that they will retire at the fixed retirement age is not a planned retirement, but caused by some other motive such as the personal relations with the manager. If the Employment Tribunal find in favour of the claimant, then the action constitutes unfair dismissal.

Where the employer **fails to provide a minimum** of two weeks' notice of retirement and instructs an employee to go more or less immediately, this will automatically constitute unfair dismissal, even though the employee has reached the employer's fixed retirement age.

### **D. A person who is not an employee but may be a job seeker or another type of worker**

The statutory grievance procedure for employees does not apply. A case must be lodged with an Employment Tribunal using an ET1 form within three months.

### **E. A trainee or student**

A trainee who is also an employee would be obliged to send a grievance letter under the statutory grievance procedure set out above before starting a tribunal case. A student of a Higher or Further Education College would lodge a case with the County Court as they do not come within the remit of Employment Tribunals.

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**TAEN The Age and Employment Network**  
**207-221 Pentonville Road**  
**London N1 9UZ**

Tel: 020 7843 1590  
Fax: 020 7843 1599

Email: [taen@helptheaged.org.uk](mailto:taen@helptheaged.org.uk)

Website: [www.taen.org.uk](http://www.taen.org.uk)