

Employment Equality (Age) Regulations 2006

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6 : Redundancy

Under the Regulations it is unlawful to select for redundancy on the basis of age. But, controversially, age bands for determining levels of redundancy pay are retained.

Selection for redundancy

Age is often an important influence on selection, not least for those with occupational pensions who can be offered an early retirement package from the age of 50 (55 from 2010) which is not open to those under age 50 (see Guide 8 *Pensions*).

Selection for redundancy, using either a LIFO (last in, first out) or FIFO (first in, first out) approach can have an indirect age discriminatory effect. Downsizing and de-layering of management is often focused on those in the second half of their careers – a FIFO approach.

Alternatively, organisations which adopt a LIFO (last in, first out) approach may penalise younger employees because they will have been the most recent arrivals. An employer wishing to use either would have to justify the practice as being in pursuit of a legitimate aim if challenged.

Any challenge to redundancy selection will depend on evidence about employer procedures, explanations given, workforce patterns and corroborating evidence about human resource management in the business.

Redundancy pay

Age and length of service continue to be applied to redundancy pay calculations:

- The 20-year ceiling on the number of years which have to be taken into account in the calculation remains unchanged.
- The former upper and lower age limits of age 65 and age 18 for calculating the period in work have been removed.
- Employers can maintain minimum periods of work to qualify for redundancy pay so that short-term employees are excluded.
- There is no change in the existing age bands for the multiplier used in the calculations of statutory redundancy pay. Employees aged under age 21 receive half a week's pay for each year of service; those aged 21-40 receive one week's pay; and those over age 41 receive one and a half week's pay for each year of service.
- In addition, a week's pay is currently capped at £310 per week for the purpose of the calculation.

The continued use of these age-related multipliers may well be regarded as unfair by those aged under 41. Government lawyers believe it is compatible with the EU Directive, though it represents a change on the position taken during the consultations about the Age Regulations. The argument used to justify it is that older workers may have greater difficulty finding a new job.

However there is no agreed position in law on whether levels of redundancy pay are primarily to recognise length of service or to recognise potential financial difficulty post-redundancy. The redundancy pay conditions in the Age Regulations could be challenged as incompatible with EU law.

Many employers pay more than the statutory minimum for redundancy. They may not use multiples which are in a different ratio to the statutory minimum bands or on different age bands. If these are challenged the employer will have to justify them or align them to the structure of the statutory minimum.

Dismissal on grounds of age

This is unlawful. To bring a case it would be necessary to prove that what had been presented as a dismissal on grounds of misconduct, poor performance or redundancy, was in fact driven by age. This will require assembling all relevant evidence, as in cases of dismissal on grounds of gender or ethnicity.

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