

## AGE DIVERSITY- A MANAGEMENT ISSUE

*In this article Matthew Flynn reviews developments on tackling ageism in the workplace since the introduction of the Employment Equality (Age) Regulations in 2006*

October 2007 saw the Employment Equality (Age) Regulations 2006 (better known as the age discrimination regulations) reach their one year birthday. When the regulations first came into effect, many HR practitioners worried about the impact they would have on how workers, especially older ones, are managed. Nightmare scenarios were played out in the national media of employers being dragged before tribunals for allowing loutish birthday cards to be circulated, or using “coded” language in job advertisements.

In the first six-months of the regulations coming into effect, only 972 age discrimination cases were taken before tribunal, against around 14,000 sex discrimination and 1,900 race discrimination cases.<sup>1</sup> Part of the reason for the relatively low number of cases is the newness of the law. Case law has not fully defined how the regulations will impact on HR policies. Perhaps the biggest question which has still to be determined is whether having a mandatory retirement age contravenes European law. The government allows employers in most cases to set retirement ages over 65, but Age Concern/Heyday is taking a case before the European Court of Justice. Until case law is settled it is hard to know how many age discrimination cases will reach the employment tribunal.

Nonetheless many employers have used the introduction of the new regulations as an opportunity to review HR policies in order to make sure people of all ages have the same career opportunities. Employers of all sizes are coming to recognise that age discrimination is bad for business. Not only is it unfair: it also wastes talent, experience and knowledge, and it is also now illegal to treat somebody less favourably in the workplace because of his or her age. Employers with good age diversity policies have a head start in the competition for talent.

Last year, along with Professor Stephen McNair from the Centre for Research into the Older Workforce<sup>2</sup>, I was asked by the CIPD and TUC to write a good practice guide for employers and trade unions on age diversity policies. The two organisations recognised that ending age discrimination can represent a “win-win” for employers and their employees. Workers want to be treated fairly- judged by their skills and performance rather than age; and employers are recognising the cost of losing talented people whose career paths are blocked by being too old or too young for certain jobs.

Age diversity is also good for the national economy. One estimate is that a very modest increase of 0.25% in the 50-69 year old workforce would bring in an extra £10 billion of productivity by 2011.<sup>3</sup> For these reasons, CIPD and TUC saw the promotion of age diversity practices as a good opportunity for social partnership.

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<sup>1</sup> Figures from the April 2006- March 2007 Employment Tribunal Statistics. Sex and race discrimination case estimates were based on half the annual figures.

<sup>2</sup> [www.olderworkforce.org.uk](http://www.olderworkforce.org.uk)

<sup>3</sup> Meadows, P. 2004, *The Economic Contribution of Older People*, Age Concern Reports, London.

The good practice guide is based on research which Stephen and I conducted for the Department of Work and Pensions<sup>4</sup> and what was then the Department for Trade and Industry<sup>5</sup>. We spoke to 84 employers, both large and small, from a range of sectors, about what they are doing to better manage older workers. We discovered some innovative practices- many from unexpected workplace- which we categorised into seven categories:

1) Retirement policies: One of the greatest myths of the new age discrimination law is that it requires employers to set retirement ages. Although employers are permitted to compulsorily retire people after 65, there is no requirement for them to do so. Many employers have decided to abolish mandatory retirement altogether. In these organisations, retirement dates are agreed with employees. As a last resort, normal dismissal procedures, rather than mandatory retirement policy, are used to manage declining performance. One manager referred to the CBI's argument that employers need mandatory retirement in order to retire people "with dignity." He responded, "Dismissing someone because of his age is not fair. Treating people with dignity means treating them fairly."

One of the big changes the new regulations have brought is the extension of the "right to request" a delay in retirement for older workers who want to continue in their jobs. Many older workers would be amenable to staying in work longer if they could work part-time, combining employment with some retirement activities. The "right to request" has the potential for starting a dialogue between older workers and their employers on mutually beneficial phased retirement work arrangements. However, for it to work, older workers need to feel confident in discussing their desired work arrangements. Trade union representatives can help prepare and represent members, and some unions are guiding workplace representatives on phased retirement options.

2) Recruitment, selection and promotion: In a modern economy there are few jobs in which age should be a barrier to work for an adult seeking employment. While most employers know that it is almost always unlawful to include desired age ranges in job advertisements, it is seldom recognised how implicit language could dissuade talented people from applying for jobs. Requiring five years experience for a job in which it only takes one to become fully competent excludes a whole group of young workers. Barring job applications from people who are "close" to retirement is also usually irrational (as well as unlawful) since older workers usually have higher retention rates than younger ones. We met a manager of a department store who told us that his competitor had a mandatory retirement age of 60. He recruited all the staff he needed by poaching his rival's older employees who had been forced to retire.

3) Pay, benefits and pensions: Basing pay on employees' age is almost always unlawful. Pay systems based on length of service also have the potential to get an employer into legal hot water (since longer serving employees tend also to be older) although five-year pay bands are permitted under the regulations. Many employers are shifting the focus of their pay systems away from "time served" toward demonstrated competencies. Perhaps the best known example of this is the NHS Agenda for Change in which unions and the

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<sup>4</sup> McNair, S., Flynn, M., & Dutton, Y. (2007), *Employer Responses to an Ageing Workforce: a qualitative study*, DWP, London

<sup>5</sup> McNair, S. and Flynn, M. (2005). *The Age Dimension of Employment Practices*, Employment Relations Research Series, London, Department for Trade and Industry, [www.dti.gov.uk/er/emar](http://www.dti.gov.uk/er/emar)

employer have developed a Key Skills Framework for cataloguing the different types of taught, experiential, tacit and acquired skills people develop over their lifetimes.

4) Appraisal, performance management and training: It is common for employers to allow older workers whose performance is declining to “run out the clock”. Overlooking work problems is often thought to be a way to be kind to older workers. However, performance problems are often a reflection of training needs or dissatisfaction with work. By avoiding a conversation about performance, an employer might be missing the chance to map out ways for work to be made more satisfying for the older worker. Older workers are less likely than younger ones to ask for training (often to hide a latent skills need), and appraisal sessions are venues for needed employer interventions.

5) Health and safety: Physically demanding jobs can become more difficult for people as they get older, but small adjustments can often be made to help older workers in labour intensive jobs stay in work. Some construction firms, for example, give older workers mentoring responsibilities which allows them to pass on experiential and tacit knowledge to younger colleagues. Incidences of stress also increase with age, but an employer’s intervention could help older workers better manage stress- for example by giving older workers with eldercare responsibilities the same opportunities to work flexible hours as young parents.

6) Redundancy and termination: When selecting employees for redundancy, it is almost always unlawful to base decisions on workers’ ages, and service related criteria (such as “last in/first out”) could also be discriminatory. Identifying the labour and skills needs of the organisation, taking into account employees’ performance, attendance, skills and competencies is a fairer and more justifiable approach to managing job attrition.

7) Harassment and victimisation: Employers have a duty to protect workers from age related harassment- unwanted conduct which violates dignity or creates a hostile work environment. Some employers we spoke with discussed procedures they have for ensuring complaints are dealt with quickly and fairly. One chief executive talked about the leadership role she has taken on the issue to ensure that victims of harassment have the confidence of knowing that complaints are dealt with seriously.

Blatant forms of age discrimination exist, but often they take the form of historical practices, false assumptions and “conventional wisdom.” Addressing ageism in the workplace allows employers the opportunity to change practices which are not only unfair, but also a waste of talent. Getting rid of age discriminatory practices can be a win-win for businesses and their employees.

You can find links to the full age diversity guide on Matthew’s website [www.matthewflynn.org](http://www.matthewflynn.org).