



## Age Discrimination in the Workplace

In this HR article, accompanied by a free webinar recording, we discuss new guidance that has been published by Acas about age discrimination in the workplace. The new Acas guide, published in February 2019 offers employers essential advice on how to comply with the Equality Act, which protects employees against discrimination based on age. We give employers an overview and summarise the key points.

### Why you need to be aware of the Acas guidance on age discrimination

Acas (Advisory, Conciliation and Arbitration Service) are a leading UK authority on workplace practices. They produce advice and guidance on workplace relations and provide statutory Codes of Practice. Tribunals will typically expect employers to follow the advice Acas publish.

### Age discrimination and liability

Age discrimination, or ageism, is against the law (except in limited circumstances) and [employers have an obligation to ensure that their workplace environments are inclusive](#).

Generally speaking, discrimination is less favourable or unfair treatment because of a protected characteristic. The UK have nine protected characteristics, set out in the Equality Act 2010; one of which is age. No minimum length of service is required to bring a claim for age discrimination. Acas

reminds employers that discrimination because of age '... is unlawful from when a role is advertised through to the last day of employment and beyond, including job references.'

### Acas guidance on age discrimination

The new Acas guide clarifies what age discrimination is, the types of age discrimination that can occur, common risk areas and further considerations. It provides advice on what steps to take to prevent age discrimination from happening and on how to deal with age discrimination if it does happen. Therefore, employers who wish to avoid vicarious liability and make the workplace inclusive, should familiarise themselves with the new guide and make adaptations accordingly.

### What is meant by 'age', 'different age' and 'age group'

Generally, employees are protected against unfair treatment because:

- They are a particular (usually different) age - e.g. '66'
- Are in a particular (usually different) age group - e.g. 'below 25'
- Are thought to be a particular age
- Are associated with someone belonging to a particular age group

This means age discrimination (or ageism) is not always about an 'old person' being preferred over a 'young person' because of their age, or vice versa. The age difference can be small e.g. a person in their late 40s will only be a few years younger than someone in their early 50s.

### How age discrimination may happen

There are four main types of discrimination under the Equality Act:

1. **Direct discrimination** (someone is treated less favourably than others)
2. **Indirect discrimination** (where a provision, criterion or practice (PCP) applies equally to all, but disadvantages a person and a group of others who share a particular protected characteristic)
3. **Harassment** ('unwanted conduct' which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them)
4. **Victimisation** (someone suffers a detriment because they have made, or may support an allegation of discrimination)

### Where risks of age discrimination may happen

Acas have identified the following areas in which age discrimination is most likely to occur:

- Recruitment
- Training

- Promotion
- Pay and terms and conditions of employment
- Performance management
- Redundancy
- Retirement
- Dismissal
- Flexible working.

Throughout the Acas guidance, employers are advised not to allow any bias or stereotypical thinking about age to influence their approach.

### Where age discrimination may be allowed

The Acas guidance recognises that discrimination (less favourable treatment) due to age has the potential to be lawful and identifies the main ways in which employers are likely to encounter this when deciding how to treat employees.

### Lawful discrimination

In limited circumstances ordinary direct discrimination and indirect discrimination may be lawful if the employer can **objectively justify** it (the law calls this 'a proportionate means of achieving a legitimate aim').

The employer must show that the less favourable treatment or PCP (see 'indirect discrimination' above) was appropriate, necessary and must be objective – which usually involves a business need. What is 'proportionate' will vary from case to case and can also depend on the size and resources of the business. For example, a large employer with many staff may find it easier to approve flexible working requests, which may come mostly from older staff, than a small firm with few staff.

### Further HR Guidance

- Watch the HR Solutions webinar recording '**Acas Guidance on Age Discrimination**', at [www.hrsolutions-uk.com/resources/videos-webinars-archive](http://www.hrsolutions-uk.com/resources/videos-webinars-archive).
- View the Acas guidance 'Age Discrimination: Keypoints for the Workplace', at [www.acas.org.uk/media/pdf/o/1/Age\\_discrimination\\_key\\_points\\_for\\_the\\_workplace.pdf](http://www.acas.org.uk/media/pdf/o/1/Age_discrimination_key_points_for_the_workplace.pdf)
- **HR Knowledge Base:** as part of your techUK membership you can get access to the HR Knowledge Base, which is the go-to resource for thousands of business owners and managers across the UK. The HR Knowledge Base includes HR documents, templates, legal updates, news and hot topic articles as well as access to free webinars and HR seminars. To find out more call 0844 324 5840 or visit [www.hrsolutions-uk.com/registrations/](http://www.hrsolutions-uk.com/registrations/).