

news

Age discrimination – Take 2

Revised Regulations were published recently giving schemes just over six months to prepare for age discrimination laws taking effect on 1 October 2006¹. The Regulations have a significantly different take on pensions to the first draft last year, and while there are still some exemptions, schemes need to analyse what practices they can continue and which will need to change.

Background

A reminder

- The EU Framework Directive for equal treatment in employment and occupation (the "Directive") prohibits direct and indirect age discrimination².
- But because pensions and age are inextricably linked, there are some exemptions from liability.

Age discrimination

Exemptions

- The Directive allows pension schemes to:
 - set ages for admission and entitlement to benefits; and
 - use age criteria in actuarial calculations;
 so long as neither results in sex discrimination.

Age discrimination

UK Government's approach

- The first draft of the Regulations last year contained a raft of exemptions covering almost everything UK pension schemes do.
- But arguably some went beyond the parameters of the Directive, and the new Regulations suggest more analysis has been done on what exemptions can be justified.

Age discrimination

Justification

- Unusually in the discrimination law context, direct as well as indirect age discrimination can be justified.
- But this still means either pension scheme practice must fall within an exemption from liability, or be a proportionate way of achieving a legitimate aim.

¹ The age discrimination legislation will apply to pensionable service from 1 October 2006, and not past service.

² Broadly, indirect discrimination occurs when a practice applies equally to everyone, but puts people in a particular class at a disadvantage to other people.

Exemptions under the Regulations

General

- Schemes can retain joining ages, waiting periods for joining (probably only up to 5 years) and retiring ages.
- "Standard" formulas for calculating benefits under defined benefit (DB) schemes are protected.

Issues include

DB schemes

- On early retirement:
 - scheme rules will need to reduce pensions for early payment³;
 - prospective service to normal retirement date (NRD) cannot be added (except on ill-health retirement);unless employees already have a right to this come 1 October 2006 (but it is not clear whether this distinction is sustainable in the long-term).

Issues include

Defined contribution (DC) schemes

- Age-related contributions to DC schemes are only automatically exempt if they are designed to provide equal benefits.
- In occupational DC schemes paying equal rates of contributions at all ages is likewise permitted.
- In contrast, paying equal contributions at all ages to personal pension schemes is not covered by the exemptions.

Age discrimination

NRD

- Although schemes can retain an NRD, employees working beyond this appear to be entitled to continued pension benefits.
- Employers therefore need to decide how to provide benefits beyond NRD.

Conclusion

- The Regulations still demonstrate the Government's intention to avoid age discrimination adding further costs to employers.
- But there are some significant gaps in the protection which schemes need to consider with their advisers.

³ "Early payment" means payment before what the Regulations define as an "early retirement pivot age", namely, the earliest age at which benefits become payable without reduction

This edition of Sackers Extra News was prepared by our Employment Team to draw your attention to important employment aspects of pensions law. If you would like further information about age discrimination please contact:

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