

news

Age-Day (now 1 December 2006!) – Focus On DC Schemes

While the effect the anti-age discrimination legislation will have on defined benefit (DB) schemes has covered more column inches to date, defined contribution (DC) schemes have some knotty issues too. In this News, we focus on the impact the Employment Equality (Age) Regulations 2006 ("the Age Regulations") look set to have on these schemes.¹

Age discrimination

Recap

- The pensions aspects of the Age Regulations are now due to come into force on 1 December 2006 ("Age-Day"), implementing the age provisions of the EC Framework Directive for employment and occupation.
- As for DB schemes, DC schemes will only need to comply with the Age Regulations for benefits and contributions relating to pensionable service from 1 December 2006.
- Unless a discriminatory practice is specifically exempted by the Age Regulations, schemes will need to objectively justify any direct or indirect age discrimination, or make changes.

Contributions

Exemptions

- There are two key exemptions for occupational DC schemes:
 - contributions can be at the same rate for all employees, regardless of age, despite the fact that providing the same amount of pension benefit each year tends to cost more as employees get older.
 - contributions can be different for different age groups, provided the aim is to equalise benefit at different ages or make the benefit more nearly equal.

Age-banded contributions

Scheme analysis

- Schemes with age-banded contributions need to establish whether they fall within the exemption.
- Some will have evidence from when the scheme was established, but most will need to discuss this with their actuary.
- If schemes are outside the exemption they should consider e.g. adding extra age bands, or moving to flat rate contributions.

¹ Issues relating to defined benefit pension schemes are addressed in our Sackers Extra Alert "Action on Age-Day" dated 14 August 2006 and in our Sackers Extra News, Age-Day – Focus on DB issues.

Service related contributions

Limited exemption

- Contribution rates that increase with service tend to discriminate against younger workers.
- Currently, employers can set up to five year service qualifications for awarding benefits, but as yet no such exemption applies to trustees.

Personal Pension Schemes

Differences

- Most of the exemptions in the Age Regulations only apply to occupational pension schemes – for example, there is no exemption for setting minimum and maximum ages for employer contributions to personal pension schemes.
- However, the exemption for age-banded contributions applies in the same way to personal pension schemes.
- Paying flat rate contributions is not exempt but may be justifiable as being essentially the same as providing more pay in the same proportions for all employees.

Scheme closures

E.g. DC only for new joiners

- Where schemes (or sections of schemes) have been closed to new joiners, older employees may continue to accrue benefits on a more generous basis than younger employees.
- Helpfully, the Age Regulations appear to include an exemption here which will come as welcome relief for the many employers who have moved from DB to DC in recent times.

What next?

- It is important that employers and trustees consider whether any changes need to be made now, and keep developments under review.
- Following the delay in implementation of the pensions aspects of the Age Regulations we await further amending regulations with interest.