

**CITY AND COUNTY OF CARDIFF
DINAS A SIR CAERDYDD**

Employment Conditions Committee: 16 October 2006

Report of the Assistant Chief Executive

Employment Equality (Age) Regulations 2006

Background

1. The purpose of the 'Age Regulations' is to implement the age-related provisions of the European Employment Directive (Council Directive 2000/7/8/EC of 27 November 2000) establishing a general framework for equal treatment in employment and occupation and vocational training. The other elements relating to discrimination on the grounds of sexual orientation, religion or belief and disability have already been enacted and the Council already has policies in place to address these issues. The Age Regulations came into force on 1 October 2006.
2. The legislation gives individuals important new rights, extends existing rights and removes traditional barriers. It is now illegal for employers to discriminate against employees or jobseekers because of their age and employers are required to ensure that all workers, regardless of age, have the same rights in terms of training and promotion. This report provides Members with an overview of the legislation and its implications for the Council as an employer and advises of the work that is either completed or already underway to ensure compliance with this new law.
3. Although the new regulations implemented on 1st October, 2006 are EU-derived legislation, the real reason not to discriminate on grounds of age does not come simply from the EU. The commercial realities of the available workforce are changing rapidly. Social change often precedes a change in the law. Demographics show a decline in birth rates and an ageing population in the UK. Figures from the CIPD show that:
 - By 2010, almost 40% of the workforce will be aged 45 or over.
 - By 2014, there will be more people over state pension age than aged under 16
 - By 2051 the number of people aged 85 will nearly quadruple to approximately 4 million, some 6 per cent of the UK's population.

Employers will find it increasingly necessary to design employment packages which attract and retain older workers and younger workers will also be more in demand.

4. Research has also shown that there are real business benefits in employing a mixed-age workforce, and employers who fail to accommodate this may find they are unable to recruit the necessary staff. The benefits for the Council in adopting a positive approach to age include having a wider pool of skills and experience to recruit from, improved staff retention and therefore skills and experience, higher morale and productivity, fewer absences and reinforcing the commitment to become an employer of choice.

5. There is considerable evidence of age discrimination having taken place in the UK and employers who do not take the legislation seriously may ultimately attract expensive claims. The Department of Trade and Industry estimate that:
 - Half a million 16-25 year olds are likely to have met age discrimination
 - 67% of job candidates of all ages think age is a factor in the interview process
 - 40% of workers think they have experienced age discrimination at work.
6. It is also important to remember than an employer will not have to employ people if they cannot actually do the work. An employer will be able to defend an age discrimination claim if they can show a genuine business need for the allegedly discriminatory act. The new regulations provide that direct, as well as indirect, age discrimination can be justified if the appropriate test is met. However, employers will need to objectively justify exemptions to the legislation by providing real evidence to support any claim.
7. There is no maximum limit on the amount of compensation where the claim is for age discrimination. An award can also include an amount for injury to feelings and there is no qualifying period of service to claim.

Issues

8. The regulations apply to all employers, private and public sector vocational training providers, trade unions, professional organisations, and employer organisations. The employment policies affected include:
 - a. Recruitment, Selection, Promotion, Secondments and Redeployment
 - b. Training and Development
 - c. Pay, Benefits and other conditions
 - d. Bullying & Harassment
 - e. Retirement and Redundancy
9. The Council already has a number of equality policies in place, including a policy for employees who wish to work beyond age 65. Additionally, the Council's employment policies either have or are in the process of being age- proofed. Each stage of the employment cycle is being examined as discrimination can occur throughout a person's working life. All those involved in making decisions about the employment and training of people need to understand the implications of age stereotyping.
10. Examples of requirements under these regulations are as follows:

Recruitment, Selection, Promotion, Secondment and Redeployment

11. Age, age-related criteria or age ranges should not be used in advertisements other than to encourage applications from age groups which do not usually apply. Where this is the case, it should be clearly stated. Location and wording of adverts (including media used) and language used in job descriptions and person specifications must be reviewed. There is a need also to ensure that qualifications sought are not disadvantaging people of different ages and that requesting 'x' number of years experience is not unfairly disadvantaging anyone on the grounds of age.
12. It is desirable to state that age criteria will not be taken into account in employment decisions but used only for monitoring purposes. This information is currently

recorded as part of the monitoring arrangements and is kept separate from the application process.

13. Interviewers and those concerned with selection must not be subjective on the basis of physical characteristics and unfounded assumptions, and must ensure that questions are job related and that their decisions are based on objective criteria, relevant to the job and merit. Visual images and photos should be checked to ensure that there is no age bias, opportunities for promotion and training should be made known to all employees and be available to everyone on a fair and equal basis. Employee references are covered by the regulations and should be fair and non-discriminatory. Where recruitment agencies are used, there will be a need to ensure they comply with the Council's equality and diversity policies including age.

Training and Development

14. All employees regardless of age should be eligible for training and development opportunities as there is the potential to waste talent if particular age groups, e.g. those near retirement, are automatically excluded. It will be important to monitor this carefully to ensure that no particular age group are being excluded or are being missed out. The style and location of training should be reviewed to ensure there are no barriers to a particular age group participating. There will also be a need to train supervisors and managers in age discrimination awareness and to check that performance management systems are working fairly and without age bias.

Pay, Benefits and other Conditions

15. Terms of employment should not be based on age, but should reflect the value of individual contributions and standards of job performance. This is a vast area and the Council is working towards meeting this requirement. Specific policies that will need to be reviewed for age bias include sickness absence, annual leave, discipline and grievance, flexible working arrangements, etc.

Bullying & Harassment

16. All employees have the right to be treated fairly and with dignity and respect. Harassment occurs when someone engages in unwanted conduct which has the purpose or effect of violating someone's dignity or creating an intimidating, hostile or humiliating environment. Harassment, which can take the form of inappropriate comments, offensive jokes, nicknames or teasing etc. and ageist comments such as "experienced and mature", "you can't teach an old dog new tricks" or "too young and inexperienced" are now unacceptable and unlawful, and action may be brought against an individual and / or an organisation where this occurs.

Retirement and Redundancy

17. When releasing employees, the organisation's future needs for knowledge, skills and competencies should be taken into account – the 'corporate memory' needs protection. The current upper age limit for unfair dismissal and redundancy rights is being removed. This means that older workers will get the same rights to claim unfair dismissal or to receive a redundancy payment as younger workers. There is a

national default retirement age of 65, making compulsory retirement below 65 unlawful, unless objectively justified. Alternatives to retirement may be considered, such as shorter hours, part-time working, contractual arrangements, secondments and perhaps employment breaks.

18. Organisations should also consider the advantages of using retirees as mentors to pass on experience and develop other employees through use of their knowledge and expertise. In terms of redundancy, age based criterion e.g. LIFO, length of service, age can no longer be used. In response to concerns raised by industry and employers about changes they need to make to pension schemes, the DTI have announced that the pensions element of age regulations will be deferred until 1st December, 2006.
19. All employees regardless of age will be protected from discrimination (either direct or indirect), harassment and victimisation on the grounds of age either from other employees or third parties such as customers and clients.
20. The implications of this legislation are wide ranging. In addition to age proofing the Council's policies, a campaign to raise awareness of the issues is well underway. This includes:-
 - An explanatory leaflet to all employees via payslips in November
 - Posters, Core Brief and item in November's Employee Newsletter.
 - Existing Equality Awareness Training to include reference to new legislation.
 - Intranet and Staff Information available from October.
 - Production of a Manager's Guide and FAQ for employees
21. Additionally, a number of briefing sessions either have taken place or are planned over the next few weeks. Key groups briefed will include: HR and Equality Officers, Equality Champions, Service Area Managers, Trade Union Representatives and Elected Members (i.e. Works Council and Employment Conditions Committee.) A more detailed Age Diversity Policy will shortly be consulted upon, both with internal and external stakeholders and will be considered by this Committee in due course.

Investment for Reform/Benefit to service user

22. Tackling discrimination of any type helps to attract, motivate and retain staff. The Council can make the best use of skills and experience, it can lead to a more diverse workforce, new ideas and access to wider markets. Improvements in motivation and productivity will directly benefit service users.

Council Policies Supported

23. This report supports a range of Council Equality Policies and has direct links to the Serving the City part of the Corporate Plan

Advice

24. This report has been prepared in consultation with relevant Corporate Directors and reflects their advice. It contains all the information necessary to allow members to arrive at a reasonable view, taking into account the following advice.

Legal Implications

25. These are set out in the body of the report

Financial Implications

26. The report notes the benefits to the Council in adopting a positive approach to age and sets out the existing policies in this area. The programme to raise awareness including any associated training costs will be met from within existing resources. Raising awareness will be important in ensuring that the legislation is fully adhered to and that the Council does not become liable for claims for compensation

Human Resource Implications

27. Although the Council already has a strong equalities and diversity approach, this legislation requires a to review of all its employment policies to ensure compliance with the new requirements. The Council is committed to the removal of age discrimination in employment as it is wasteful of talent and harmful to both individuals and the organisation. The efficient and effective use of people's skills requires employment decisions to be based on competencies, qualifications, skills, potential and objective job related criteria. Competitive benefits can be gained from building on and extending the Council's good practice approach in a way that will go beyond a minimum approach to compliance.
28. Employment decisions based on age are not justifiable because it is not a genuine employment criterion, is a poor predictor of performance, and it is misleading to equate physical/mental ability with age. Treating all staff fairly or recognising individual talents and needs is equitable and makes good business sense. There is the potential for an increased level of staff submitting grievances, complaints, harassment issues on the grounds of age, which could ultimately reach Employment Tribunals and this has been the experience in Ireland where the regulations have been in place for some time. Clearly, there could be resource implications of needing to respond to these issues within prescribed timescales.

Trade Union Comments

29. The Trade Unions welcomed the introduction of these regulations and supported the Council's approach to ensuring full compliance with the law. They fully recognised the importance and value of employing a mixed age workforce and reiterated the need for managers and supervisors to be fully trained to support the implementation of these new regulations.

RECOMMENDATION(S)

30. It is recommended that:-
- (i) Progress with implementing the Employment Equality (Age) Regulations be noted.
 - (ii) The programme to raise awareness and understanding within the organisation of age discrimination be endorsed.

- (iii) Members of this Committee and Works Council be provided with the opportunity to attend a briefing session.
- (iv) The new Age Diversity Policy be submitted to this Committee in January 2007 for consideration.

JO FARRAR
ASSISTANT CHIEF EXECUTIVE

Background Papers

- Employment Equality (Age) Regulations 2006.