

EMPLOYMENT EQUALITY (AGE) REGULATIONS (NORTHERN IRELAND) 2006

FACT SHEET No. 1 – AN OVERVIEW

New demographics

In Northern Ireland, the proportion of the population aged 50 or over will increase substantially in future years. In 2001, this figure was nearly 29%. It is predicted that the figure will rise to 35% by 2021 and 44% by 2041.

The age structure of the labour force has changed considerably in recent decades. The numbers of workers aged less than 35 years is falling while the number of workers aged 50 or over has increased, partly through rising female participation, and partly through the reduction of early retirement.

Future economic competitiveness will rest to a considerable degree on the employment, performance and productivity of an ageing workforce. Businesses, therefore, increasingly need to recognise the benefits of age diversity in the workplace.

Treating staff fairly and recognising individual talents and needs is not just the right thing to do, but makes good business sense as well. Employers who recruit from the widest possible pool of applicants are able to choose the very best candidates. This has a positive impact on productivity.

New age discrimination legislation

The Employment Equality (Age) Regulations (NI) 2006 will give individuals important new rights, extend existing rights and remove traditional barriers. They will also place new responsibilities on employers and providers of vocational training who will have to incorporate the legislative changes into their HR policy procedures.

The Regulations will help ensure that people are no longer denied jobs or harassed because of their age, and in most cases, workers of all ages will have an equal chance of training and promotion.

The Regulations will come into operation on 1 October 2006.

The Regulations prohibit unjustified discrimination on grounds of age in employment and vocational training. They apply to all employers, vocational training providers, trade unions, professional organisations, employer organisations and trustees and managers of occupational pension schemes. They cover employees of any age – whether young or older – and other workers, office holders, partners of firms and others.

The Regulations cover recruitment, terms and conditions, promotions, transfers, dismissals and training. They do not cover the provision of goods and services.

The Regulations prohibit:

- ❑ direct discrimination on grounds of age, unless this is objectively justified (*regulation 3*);
- ❑ indirect discrimination (i.e. applying generally a criterion, provision or practice which disadvantages people of a particular age or age group) unless it can be objectively justified (*regulation 3*);
- ❑ victimisation, for example for making a complaint about age discrimination (*regulation 4*);
- ❑ instructions to discriminate (*regulation 5*);
- ❑ harassment on grounds of age (*regulation 6*).

What are the main provisions of the new legislation?

The main provisions under the Regulations are:

- ❑ employers cannot discriminate on grounds of age in recruitment, promotion, transfer or training, or in the terms and conditions of employment (*regulation 7*);
- ❑ discrimination may be lawful if there is a genuine occupational requirement for the job to be filled by a person having a characteristic related to age (*regulation 9*). Positive action to redress inequalities is allowed (*regulation 31*);
- ❑ providers of vocational training cannot discriminate on age grounds in relation to that training or access to it (*regulation 21*);
- ❑ in relation to retirement, employers will be able to retire employees at 65 or at their normal retirement age if they have one (if below 65, that retirement age will have to be objectively justified) (*regulation 32 and Schedule 7*). They will need to provide six months notice of retirement (*Schedules 5 and 7*). They do not need to consider applicants who are within six months of retirement (*regulation 7*);
- ❑ employers will be able to use the development bands of the national minimum wage to pay at or above the national minimum rates provided those in the lower age group(s) are paid less than the adult minimum wage. Employers will not be able to pay different rates within the same age band (*regulation 33*);
- ❑ employers who want to make more generous redundancy payments than under the statutory scheme may do so provided they use one of the methods specified in the Regulations to calculate the amount of redundancy payment. An employer can use a different method of their own to calculate the amount of redundancy payment, but if it is based on length of service, they will have to objectively justify it (*regulation 35*);

- ❑ service related benefits such as incremental pay systems and long service awards are exempted if they depend on 5 years' service or less, or the employer reasonably considers they fulfil a business need (*regulation 34*);
- ❑ enforcement and remedies are generally through the industrial tribunals, in line with other workplace anti-discrimination legislation (*regulations 41 to 43*);
- ❑ many occupational pension scheme rules are exempted from the Regulations, but some will only be lawful if employers/trustees can objectively justify them in their own circumstances (*Schedule 1*);
- ❑ employees will have the right to request working beyond retirement age and the employer has a duty to consider such requests (*Schedule 5*);
- ❑ upper age limits on unfair dismissal and redundancy will be removed as well as the lower age limit for redundancy pay (*Schedule 7*).

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