

## EMPLOYMENT EQUALITY (AGE) REGULATIONS (NORTHERN IRELAND) 2006

### FACT SHEET No. 6 – REDUNDANCY AND NATIONAL MINIMUM WAGE

#### **Fair redundancy payments for workers**

The new Regulations remove the lower and upper age limits in the statutory redundancy payments scheme (at 18 and 65 respectively). Once workers have completed the employer's minimum qualifying period, those under 18 and over 65 will receive the same rights to redundancy payments.

In addition, the taper at the age of 64 is also being removed, so employees aged 64 will no longer see their redundancy entitlement reduced by a 12th every month until they are 65.

The new Regulations will affect workplaces from 1 October 2006.

#### **What about the current age bands?**

The current redundancy and unfair dismissal schemes both use multiplier with three age bands for calculating payments and this directs financial support to older workers and those with long service.

The public consultation on the draft Age Regulations (September to November 2005) proposed that the multiplier based on three age bands would be removed and replaced by a single multiplier but that the level of the multiplier had still to be determined.

Government carefully reconsidered the rationale for the current age based multiplier and came to the conclusion that the current system best meets the

overall policy aims of the redundancy and unfair dismissal schemes. An alternative system using a single multiplier on a cost neutral basis would leave a significant group of older workers substantially worse off than at present, and Government believed this would be unacceptable.

Consequently it has been decided to retain the current age-banded structure of the statutory redundancy payment scheme, because it fits better with Government's overall policy aims. Government is confident that retaining the age-bands is permitted under the EU Directive.

### **Are there any exemptions?**

If an employer is paying redundant employees under the statutory scheme, or under an enhanced version of the statutory scheme, they will be exempt from challenge on the grounds of age discrimination.

However, if the employer's scheme is significantly different from the statutory scheme, then they will not be exempt from challenge. An employer in these circumstances will need to consider whether their scheme can be 'objectively justified' and, if not, whether to amend it accordingly.

### **Understanding the new procedures**

Employers will need to ensure that their selection processes for redundancy are free from age discrimination.

For example, practices such as 'last in first out' and using length of service in any selection criteria may be discriminatory, if not 'objectively justified'.

### **Illustrative example**

An accountancy firm employs ten people of varying ages, but has to reduce to six employees.

Six of the oldest employees have been in the firm for more than five years and are fully trained and experienced. The remaining four are younger and have less than two years experience.

The firm decide to make the four youngest members of staff redundant, because they had not built up a full range of experience.

Although this effectively amounts to 'last in first out', it is likely to be justifiable because age is not the determining factor for dismissal.

### **National Minimum Wage**

Government is concerned that some employers may lay off their young workers, if they have to pay them the same rate as older employees.

It is important to encourage businesses to take on young workers. Nothing in the Regulations will alter the provisions of the National Minimum Wage. The exemption linked to the National Minimum Wage will allow employers to take on young workers and use the development bands of the minimum wage, without fear that this could be unlawful.

The exemption will apply where employers are paying:

- an employee aged 22 and over more than one aged under 22 - even where they are doing the same job - where the employee under 22 is paid less than the adult rate (currently £5.05 per hour); and

- an employee aged between 18 and 21 more than one aged under 18 - even where they are doing the same job - where the employee aged under 18 is paid less than the adult rate.

The exemption will not cover situations where the young employee is paid above the adult rate of the minimum wage, and will not allow employers to pay different rates to employees within the same age band (16 to 17 and 18 to 21).

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