

Age and
Employment: How may willing older
workers keep on working?



Introduction

Eliminating discrimination

Labour rights promote equality among people, in the same way human rights do, at work. The sixth principle of the United Nations Global Compact states: "Businesses should uphold the elimination of discrimination in respect of employment and occupation." What it effectively means is that nobody should be discriminated against or judged on characteristics unrelated to their merit or to job requirements. Promoting such values also makes business sense: it complies with the law, and among other things enhances internal communication and relations with the community,¹ notably in the case of tackling age discrimination issues.

Age discrimination

Age discrimination at work can happen to anybody at any given age. Take the example of a senior citizen that may be discriminated against upon assumptions about his abilities to do a good job, or of a young person that may be discriminated against for his lack of experience. With an aging population and estimates of 25 million people over the age of 50 by 2020² and almost a third of the workforce over the age of 50 in 2020,³ further challenges are likely to arise, in spite of age discrimination law already in place and applicable to every employee in the UK. This case study aims to provide an accessible review of working conditions for older people; it first examines the legal boundaries of age discrimination; then goes on to raising awareness on the situation today; and finally reviews options older people that want to work.

By 2020, 25 million Britons will be over the age of 50 and will represent a third of the UK workforce.

What the Law says

The Employment Equality Regulations

Since the 2006 Employment Equality Regulations, it is illegal for all organisations in the UK to discriminate against their employees, workers and trainees, as well as job seekers, because of their age.⁴ The law applies to a variety of contexts: recruitment, terms and conditions, promotions, transfers, dismissals and training. It covers both direct discrimination (e.g. not being considered for a job against other applicants because of age) and indirect discrimination (e.g. apply a provision that disadvantages people of a certain age), to the exception of certain circumstances that should be objectively justified.

A wide range of applications

It also covers harassment, victimisation (e.g. victimise someone because of a discrimination complaint they made) and discrimination after the working relationship came to an end. In addition, it removed upper age limits for unfair dismissal and redundancy, effectively making compulsory retirement below 65 unlawful, except if it can be objectively justified; and giving employers the duty to consider employee requests to work beyond 65.⁵ In these cases, objectively justified means that employers should be able to show that the discrimination is both "proportionate" (e.g. there is no reasonable alternative available) and "legitimate" (e.g. the employer fears for the health and safety of the employee in his occupation).⁶ The implications of age discrimination law can extend to examples such as the phrasing for job advertisements and criteria for getting the job (e.g. if it specifies the applicant needs 10 years' experience while 2 or 3 years would be sufficient, this could be a case of indirect discrimination).⁷

The situation today

A common issue

Recent news about age discrimination cases reveals the wide range of industries in which it is a concern: from journalism,⁸ TV show hosting,⁹ to teaching¹⁰ and sports,¹¹ and reveal the most publicised cases are mostly linked to 'old' age rather than 'young' age. While it represents a basic human and labour right violation and is now punished by the law, a CIPD survey carried out before the 2006 change in regulation found that 59% of respondents said they had been disadvantaged in the workplace because of their age.¹² So, what is the impact of age discrimination on such a variety of industries, not all mentioned above, and such a number of people?

Older workers as an asset

The former Department for Business, Enterprise and Regulatory Reform, now the Department for Business, Innovation and Skills, estimated the cost of age discrimination for UK employers at £750 million in lost opportunities every year.¹³

At the other end of the spectrum, there are some organisations that fully take age into account, not in terms of discrimination, but in terms of opportunities; and attempt to take full use of the capabilities and experience of older generations. As outlined by Newcastle University's Charter for Changing Age, too often has the ageing population of the UK been regarded as a negative issue or a burden to be managed, while older generations positively impact our economy as consumers and employees. The Charter, which can be found online, notably states that ". The mental capital and skills of older people should no longer go to waste. Arbitrary ages of compulsory retirement or of exclusion from full participation in any social activity, including education, should in future be abolished."¹⁴

Good practices

The positive impact of older workers

A 2001 Department for Work and Pensions (DWP) Age Posi+ive paper showed that employing older workers was associated with plethora of positive effects: high retention rates, lower absenteeism, reliability, commitment, dedication, flexibility and innovation, people orientated skills, people development skills, ability to deal with change, leadership and generic knowledge of other industries.¹⁵ Age UK, the UK's largest charity for older people, explains that they continue to work mostly for two reasons: they might enjoy working, or they have the financial need to work.

Options for older workers

To do so, apart from continuing employment as usual, many options are available: flexible working for instance, may be a good deal for both the employer, who retains the skills and experience of a seasoned worker, and for the employee, who may enjoy different working hours and a complement to his pension.¹⁶ A 2008 DWP report found that workers aged 50 to State Pension Age were more likely to work part time than younger workers; and in addition, that self-employment was a lot more common for them as well.¹⁷ As far as self-employment is concerned, the PRIME (as in the Prince's Initiative for Mature Enterprise) charity, is dedicated to helping people over 50 to set up their own business,¹⁸ along with incentives such as a Working Tax Credit scheme designed to ensure minimum income for people. Volunteering or training, may also be options for older people that would like to get back into work after a redundancy, as a way to gain further skills and experience¹⁹; as well as getting in touch with specialist organisations such as TAEN²⁰ (The Age and Employment Network) or EFA (Employers Forum on Age)²¹ that promote employment of older people.

Repairing the errors of the past through "positive action"

To tackle the issue, in addition to the Employment Equality Regulations, legal measures, referred to as "positive action," have also been implemented, to compensate for the impact of past discrimination, human and labour rights' violations; and provide opportunities for training and work experience to people of certain age groups. It is worth noting however that "positive action" is different from "positive discrimination" and that under no case some age groups are more favourably treated than others at recruitment.²²

Best practice: NHS

The NHS provides an example of best practices when dealing with an ageing workforce. NHS employers are being provided both with information on the business sense behind utilising older workers and with examples of good practices in NHS organisations.²³ The NHS encourages them to think and act beyond compliance with regulation. As a result, a number of PCTs have removed the retirement age, in order to better retain talent and encourage willing workers to stay in work longer. Other initiatives have included enhancing work flexibility, as a teaching PCT now offer a choice of flexible retirement options, such as flexi-hours, reduced hours, or reducing responsibilities while retaining the same position. Some have also fully harnessed the asset older workers represent by encouraging intergenerational learning, under the form of older nurses mentoring young workers and in addition, recording what has been learned in an e-portfolio to encourage knowledge transfer and the recognition of the value and human capital older workers represent.²⁴

Conclusion

Equality is a fundamental value behind human and labour rights. As businesses should strive to enhance equality, they should consequently seek to eliminate discrimination at work, following the principles laid down in the law and in the United Nations Global Compact. This case study makes the case for the recognition of older worker as a valuable asset for companies and presents numerous benefits in retaining older workers, including low absenteeism reliability, dedication and flexibility, along with experience. Hence, by managing older workforce following best practice in terms of flexibility for instance, organisations like the NHS comply with the law, fully take on the opportunities brought by an older workforce, best prepare for the future and contribute in enhancing labour rights by eliminating age discrimination and encouraging equality among workers. ,

¹ <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle6.html>

² <http://www.acas.org.uk/index.aspx?articleid=1046>

³ <http://www.businesslink.gov.uk/bdotg/action/layer?topicId=1082249786&r.s=e&r.l1=1073858787&r.lc=en&r.l3=1074003268&r.l2=1073877851&r.i=1073792251&r.t=RESO>

⁴ <http://www.acas.org.uk/index.aspx?articleid=1044>

⁵ <http://www.acas.org.uk/CHttpHandler.ashx?id=589>

⁶ <http://www.equalityhumanrights.com/your-rights/age/when-is-age-discrimination-lawful/>

⁷ <http://www.equalityhumanrights.com/your-rights/age/what-is-age-discrimination/>

⁸ <http://www.guardian.co.uk/media/greenslade/2010/apr/19/national-newspapers-newspapers>

⁹ <http://www.telegraph.co.uk/culture/tvandradio/bbc/7552489/Women-at-BBC-to-blame-for-ageism-says-Selina-Scott.html>

¹⁰ <http://news.bbc.co.uk/1/hi/education/8601867.stm>

¹¹ <http://www.workplacelaw.net/news/display/id/27466>

¹² <http://www.cipd.co.uk/subjects/dvsequil/agedisc/ tacklingagedisc.htm>

¹³ <http://www.acas.org.uk/index.aspx?articleid=1046>

¹⁴ <http://www.ncl.ac.uk/about/changingage/charter.htm>

¹⁵ Good practice in the recruitment and retention of older workers: summary. Produced by the Department for Work and Pensions, Crown, 2001. ISBN: 0 84185 498 0.

Available at: [http://research.dwp.gov.uk/asd/asd5/rports2005-2006/agepos16\(1\).pdf](http://research.dwp.gov.uk/asd/asd5/rports2005-2006/agepos16(1).pdf)

¹⁶ http://www.ageconcern.org.uk/AgeConcern/info_guide_11.asp

¹⁷ Older workers statistical information booklet, Quarter two 2008, Department for Work and Pensions.

ISBN: 978-1-84763-685-0. Available at:

<http://research.dwp.gov.uk/asd/asd5/rports2007-2008/agepos27.pdf>

¹⁸ <http://www.primebusinessclub.co.uk/>

¹⁹ http://www.ageconcern.org.uk/AgeConcern/info_guide_11.asp

²⁰ <http://www.taen.org.uk/>

²¹ <http://www.efa.org.uk/>

²² <http://www.equalityhumanrights.com/your-rights/age/when-is-age-discrimination-lawful/>

²³ <http://www.ageingworkforcenews.com/2009/02/united-kingdom-nhs-employers-puts-forth.html>

²⁴

<http://www.nhsemployers.org/PayAndContracts/NHSPensionSchemeReview/Age/Pages/Age-Legislation-BeyondCompliance.aspx>