



CLIENT ALERT

Age discrimination – are you ready?

The government has issued the final draft form of age discrimination regulations which are now before Parliament for approval. They are due to come into force on 1 October 2006.

What claims could I face?

Discrimination

The regulations will give job applicants and your employees the right to claim unlimited damages for:

- less favourable treatment by you; and/or
- indirect discrimination

on the grounds of age, except where you can justify these.

Harassment and victimisation

Employees will also be able to bring claims for unlimited damages if:

- you or one of their colleagues harasses them on the grounds of age; and/or
- you victimise them by treating them less favourably than others because they have made claims or allegations relating to breaches of the new legislation (or helped colleagues to do so).

Service-related benefits

Some benefits (such as holiday and sick pay) which you give on the basis of employees' length of service will be unlawful and employees will be able to claim compensation.

Retirement – age discrimination

Employees whom you dismiss by reason of retirement before they are 65 will be able to bring claims of age discrimination (with no cap on compensation) unless you can objectively justify a lower retirement age. In other words, there will be a "default" retirement age of 65.

Retirement - unfair dismissal

You could also face unfair dismissal claims from employees who are over 65 or normal retirement age (a change from the current rules).

To defend these claims, you will need show you followed detailed retirement procedures within specific timescales, involving:

/..

Retirement - unfair dismissal cntd.

- notifying each employee of his or her right to work on after 65 (or normal retirement age if higher);
- meeting with the employee;
- giving him/her the right to appeal against any decision you make to reject a request to work on.

If an employment tribunal upholds your employee's claim on the basis you did not follow the correct procedures, it will usually order you to pay any compensatory award (up to £58,400) and a basic award (of at least £1,160 but which could be up to £8,700). These are current figures, but the limits usually go up each February.

From 1 October 2006 to 31 March 2007, you will have a duty to comply with modified, transitional retirement procedures.

Redundancy payments

Employees will be able to claim a statutory redundancy payment (SRP) from you if you dismiss them by reason of redundancy, no matter what their age. This is up to £8,700 per employee (but could be more if you have an enhanced redundancy policy). Currently, employees of 64 have limited rights to SRP and those under 20 or of 65 or over cannot claim SRP.

What should I be doing now?

You can best protect your organisation against the risk of the claims outlined by:

- ensuring your recruitment procedures, employment contract terms and policies will be lawful after 1 October 2006 – e.g. service-related benefits, equal opportunities and redundancy policies;
- putting in place retirement procedures for your organisation;
- training your managers and other staff on the new rules including harassment on the grounds of age.

Please contact us if you would like Thorntons to undertake a review of your employment documentation, draft retirement procedures for you or give you training, or if you have any employment-related queries.

Derek Reid, Partner

Email dreid@thorntons-law.co.uk

Noele McClelland, Partner

Email nmcclelland@thorntons-law.co.uk

Celia Müller, Senior Solicitor

Email cmuller@thorntons-law.co.uk

THORNTONS EMPLOYMENT LAW UNIT

50 Castle Street, Dundee DD1 3RU

Tel 01382 229111

www.thorntons-law.co.uk



THORNTONS
— solicitors —

This Client Alert is intended to give general guidance on the law. You should take professional advice before acting on the material contained in this Client Alert as it may not be appropriate to your circumstances.