

# Preparing for the introduction of age discrimination...

Update prepared by Carla Benest (Partner, Jersey)

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At our recent Age in the Workplace conference, 71% of respondents to a survey agreed that their business needed to make changes to current practices in light of the new age discrimination legislation, with 12% of respondents not knowing if changes needed to be made. This update highlights areas that Jersey businesses may need to consider in preparation for 1 September.

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From 1 September 2016, the Discrimination (Jersey) Law 2013 (the **Discrimination Law**) will prohibit discrimination on the grounds of age. Many employers already have policies in place dealing with equal opportunities, anti-harassment and diversity; those policies should be checked to ensure they refer to age. However, the legislation has a much wider impact than that and employers should review all contracts of employment, policies, procedures and benefits to ensure compliance with the Discrimination Law.

## Contracts of employment, handbooks and benefits

When reviewing your employment documentation ask yourself, could any of these provisions disadvantage younger or older workers? If so, action may need to be taken. Particular attention should be paid to

- **Retirement clauses.** Does your business operate a contractual retirement age? If that age is below the current pensionable age (set under the Social Security (Jersey) Law 1974) can it be justified as a proportionate means of achieving a legitimate aim, ie objective justification. If not, compulsory retirement at that age will give rise to a claim.
- **Notice periods.** If the contractual notice period employees must serve increases with length of service, this could arguably discriminate against older workers. Can the added restriction be objectively justified?
- **Benefits.** Does your business increase pay or holiday entitlement or provide pension eligibility based on certain criteria? Check whether benefits are based on length of service or age. If they are based on age, they may need to be objectively justified in order to be lawful. Those based on length of service might benefit from an exemption under the legislation provided certain criteria are met.

## Policies and procedures

A large proportion of organisations' policies already prohibit all forms of discrimination irrespective of whether or not the protected characteristic is currently unlawful under the Discrimination Law. However, it is useful to check that all policies and procedures do now specifically prohibit age discrimination.

In addition, businesses should also review general policies, practices and procedures for age bias.

When reviewing each policy, it can be useful to ask yourself these questions:

- What is the purpose of this policy?
- What is it achieving?
- Do any age groups benefit? Do any not?
- What are the differences by age group?

## Recruitment

Age should not generally be used as a factor in recruitment, promotion and/or training criteria. Businesses should check all recruitment materials and procedures including job specifications, person specifications, adverts, interview questions and publicity to ensure that they do not contravene the Discrimination Law.

For example, consideration should be given to the words used to describe the desired candidate, such as 'Mature', 'Youthful' or 'Lively'. Although these words do not overtly exclude persons above certain ages, they may have that effect in practice. Asking for a minimum or maximum number of years' experience could also give rise to a claim, unless it can be objectively justified. The same goes for qualifications that are required in respect of a role. Qualifications change over time so businesses need to ensure the qualifications requested are not disadvantaging people at different ages. If you wish to be specific about the qualifications required, ensure that these can be objectively justified.

## Promotion and training

The Discrimination Law applies to job-related training and development opportunities. Employees of all ages should have access, irrespective of age, to the same prospects. Employers should therefore review the requirements, style and location of training to ensure that there are generally no barriers to any particular age group participating to ensure it is suitable for people of all ages. And, any criteria or milestones expected in respect of promotion should be reviewed to ensure that they are not based on age, unless such criteria could be objectively justified.

If you are in doubt as to whether any of your documentation or practices comply with the Discrimination Law do get in touch.

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