

Age Discrimination

Most people are aware from the press and government publicity that the new Age Discrimination Regulations will come into force on 1st October 2006. These will affect all employers and partnerships regardless of the age range of their employees.

The new age discrimination legislation requires that a worker should not suffer a detriment because of their age. This discrimination can be either direct or indirect, though unusually for this type of legislation an employer will be able to justify direct as well as indirect discrimination if it can show and produce evidence that the discriminatory act was a 'proportionate means of achieving a legitimate aim'. How the Employment Tribunals interpret a legitimate aim or proportionate means of achieving it has yet to be seen but there is recognition that in some circumstances, legitimate business practices will disproportionately affect the young or the old.

Employers are already familiar with the concept of discrimination, and

work practices have changed to ensure that employees are not discriminated against, harassed or victimized because of their sex, race or disability. Many employees have equal opportunities policies and training to ensure managers and staff understand these issues.

However, employers still struggle with the idea of indirect discrimination, where an employer will be at fault if a policy is introduced which disproportionately affects a particular group. For example, if a company requires all candidates for a management role to be recent graduates this may have an indirect discriminatory effect on older workers as most graduates are in their early 20s or, alternatively if a company requires applicants to have at least 10 years' experience, this may indirectly discriminate against younger workers who may not have the necessary skills and capability to do the job.

The new rules will apply to everyone at whatever stage of their working life, from recruitment to retirement

and will challenge people's preconceptions about both youth and older age. All businesses need to review the decisions they make, whether considering the best candidate to recruit as an office junior, promoting a long-serving employee over another of how to deal with an employee coming up to retirement as these can be potential pitfalls. As a society, we do not yet feel that there is anything wrong with making decisions by reference to age and therefore it will require some adjustment to accommodate this new way of thinking.

Solnick LLP will be holding briefings on Age Discrimination Regulations on the 28th July and 14th September which are specifically aimed at managers with HR responsibilities who are looking for practical advice and training on how their business can comply with, and where possible, benefit from the new rules and avoid expensive pitfalls. If you are interested in attending one of these talks please contact Caroline Leaver of Solnick LLP on 020 8996 4717.