

Age Discrimination Code of Practice

Introduction – Equal Opportunities Policy

Loughborough University is committed to achieving an educational and working environment which provides equality of opportunity and freedom from unlawful discrimination on the grounds of race, colour, nationality, ethnic origin, gender, marital status, disability, religious or political beliefs, age, sexual orientation or offending background. The equal opportunities policy aims to remove unfair and discriminatory practices within the University and to encourage full contribution from its diverse community.

Loughborough University Commitments - Age

The University aims to ensure that all staff and applicants at Loughborough University are treated solely on merit, ability and potential in recruitment, selection, training, development and promotion.

Within the limits of a normal retirement age of 65 all employment opportunities at the University are open to all irrespective of their age., Appointments will be made purely on the basis that individuals' attributes and abilities best meet the requirements of a specific Job Description and Person Specification.

Discrimination, harassment or victimisation on the grounds of age will not be tolerated and action will be taken to eliminate such actions.

The University promotes these commitments by:

- Reviewing all employment policies and procedures to ensure that these meet legislative requirements
- Ensuring that employees and people seeking employment, are not treated less favourably in advertising, recruitment, terms and conditions, promotions, transfers, dismissals and training on the basis of their age
- Considering disciplinary action against staff who discriminate on the basis of age against employees, people seeking employment, visitors or contractors
- Ensuring that the guidelines for individuals to follow are clear if they feel they have been discriminated against, harassed or victimised and taking action where such issues are reported.

- Recognising an individual's right for their age to be treated as an item of confidential management information if they prefer this to be the case.
- Avoiding and eliminating discrimination, harassment or victimisation on the grounds of age, by including this in mandatory equality, recruitment and other training programmes, to heighten awareness, challenge discriminatory behaviour and encourage good practice
- Providing other appropriate training for staff on issues concerning age, which also clarifies their responsibilities
- Ensuring that procedures and processing of information are confidential and reassuring staff that this is the case
- Regularly reviewing and monitoring recruitment and selection procedures to make sure that they are fair and reflect current best practice

Responsibilities

At the institutional level the Vice-Chancellor and the Registrar have overall responsibility for ensuring the University complies with the Age Regulations.

The Human Resources Committee and its Sub Committee for Equality and Diversity are responsible for the development and implementation of this Policy.

Managers and supervisors at the University have a particular duty to ensure that none of the staff, for whom they are responsible, are subjected to disadvantage on the grounds of their age.

University staff, visitors and contractors all have a responsibility to promote fairness and to ensure that individuals do not suffer unlawful discrimination.

Personnel Services will provide information about equality policies on the basis of age, as well as strategies for preventing discrimination, including training, publications and events.

Employment Tribunals may hold individuals responsible for discrimination and harassment, if this occurs in the workplace, or at a time and place associated with the workplace, for example, a work related social gathering. Individuals who harass may also be ordered to pay compensation.

Complaints

Complaints about discrimination on the basis of age against staff are taken very seriously at Loughborough University and could, on full investigation, provide grounds for disciplinary action that may lead to dismissal or expulsion from the University. Furthermore, individuals may render themselves liable to prosecution under the Protection from Harassment Act, (1997).

Dealing with Discrimination

Staff are strongly advised not to delay if they feel they have a complaint. Before things get out of hand there may be steps that can be taken to resolve matters, for example, if you feel you are being harassed, you may contact a member of the Harassment Panel, (now called “Confide”), a trade union representative or Personnel Adviser. All complaints are dealt with in confidence and action will not normally be taken without the complainant’s consent.

Approved by Council: November 2006

Further reading

Employment Equality (Age) Regulations 2006

see <http://www.opsi.gov.uk/si/si2006/20061031.htm>

Discrimination and the Harassment and Bullying Policy

See <http://www.lboro.ac.uk/admin/personnel/harassmentandb/index.htm>

Contacts and Information – Age

Equal Opportunity Codes of Practice

The University has agreed the following Codes of Practice and equality and diversity guidelines, which are available from Personnel Services and are on the personnel website: <http://www.lboro.ac.uk/admin/personnel>

Disability and Employment Policy

Race Equality Policy

Religion and Belief Policy

Sexual Orientation Policy

Code of Practice on Equal Opportunities

Code of Practice on Inclusive Language

Two Ticks Disability Symbol Procedure

Code of Practice on ICT Pornography

Good Recruitment Guide

Code of Practice for the Employment of Research Staff

Gender in Appraisal

Policy Statement on the Employment of Ex-Offenders

Code of Practice on Disability and Employment

Lesley Mansell, Equality and Diversity Adviser - August 2006

Telephone: 01509 228026, Fax: 01509 222169, E Mail: L.A.Mansell@lboro.ac.uk

Age Regulations 2006 Appendices

Appendix A

Employment Equality (Age) Regulations 2006

On 1st October 2006 the Employment Equality (Age) Regulations make it unlawful to discriminate against employees, job seekers and trainees because of their age. The protection covers direct and indirect discrimination, harassment and victimisation.

What Grounds Do the Regulations Cover?

The Regulations apply to employment and vocational training. They prohibit unjustified direct and indirect age discrimination, all harassment and victimisation on grounds of age, for people of any age, young or old.

- Recruitment
- Terms and conditions
- Promotions
- Transfers
- Dismissals
- Training

As well as applying to retirement they:

- remove the upper age limit for unfair dismissal and redundancy rights, giving older workers the same rights to claim unfair dismissal or receive a redundancy payment as younger workers, unless there is a genuine retirement;
- introduce a national default retirement age of 65, making compulsory retirement below 65 unlawful unless objectively justified give all employees the right to request to work beyond 65 or any other retirement age set by the company.
- allow pay and non-pay benefits to continue which depend on length of service requirements of 5 years or less or which recognise and reward loyalty and experience and motivate staff;
- remove the age limits for Statutory Sick Pay, Statutory Maternity Pay, Statutory Adoption Pay and Statutory Paternity Pay, so that the legislation for all four statutory payments applies in exactly the same way to all;

- remove the lower and upper age limits in the statutory redundancy scheme, but leave the current age-banded system in place.
- provide exemptions for many age-based rules in occupational pension schemes (they are contained in Schedule 2 to the Regulations).

It is unlawful on the grounds of age to:

- decide not to employ you
- dismiss you
- refuse to provide you with training
- deny you promotion
- give you adverse terms and conditions
- retire you before your usual retirement age (if you have one) or retire you before the default retirement age of 65 without an **objective justification**

Who Do the Regulations Apply To?

- All employers, private and public sector
- Vocational training providers
- Trade unions
- Professional organisations
- Employer organisations
- Trustees and managers of occupational pension schemes

Who Is Not Covered?

- Members of the regular armed forces, full-time and part-time reservists
- Unpaid volunteers

What is Not Covered?

They do not cover the provision of goods and services.

Service Related Benefits

Employers may continue to award benefits to employees using the criterion of length of service. However, for any worker whose service exceeds 5 years, any disadvantage experienced by that worker, when compared with another person in receipt of a service related benefit, must reasonably appear to fulfil a business need. For example, by encouraging loyalty or motivation or to reward the experience, of some or all workers.

The National Minimum Wage

It is lawful to follow the age bands and minimum wage levels set out in the national minimum wage legislation.

Unfair Dismissal, Redundancy and Statutory Sick Pay

The regulations remove the current age limit for unfair dismissal, statutory redundancy payments and statutory sick pay. It will continue to be lawful for the amount of redundancy payments to be calculated using employee's age, length of service and weekly pay. It will also be legal to make enhanced payments.

What Behaviours Do The Regulations Cover?

Direct discrimination - treating people less favourably than others on grounds of your age

Indirect discrimination - applying a provision, criterion or practice which disadvantages you due to your particular age unless it can be objectively justified

Harassment - unwanted conduct that violates people's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment;

Victimisation - treating people less favourably because of something they have done under or in connection with the Regulations, e.g. made a formal complaint of discrimination or given evidence in a tribunal case on the basis of age.

Recruitment

Genuine Occupational Requirement (GOR) - this may apply if it can be demonstrated that the job holder must be of a certain age in relation to the nature of the work and the context in which it is carried out. However the definition is intended to be very narrow and employers must still be able to show that it is a requirement of the job in order to adhere to the ethos of the organisation and that it is proportionate to apply the requirement.

Responsibilities

Employer Responsibilities

Employers cannot instruct staff to carry out a discriminatory practice.

Burden of proof - the onus is on the employer to show that any difference in treatment was justified once an Employment Tribunal or Court is satisfied from the facts that there is a case to answer.

Relationships, which have come to an end - it is unlawful in certain circumstances for an employer to discriminate against a former employee, after the working relationship between them has ended. If it can be shown that the act is closely linked to the former relationship this may be discriminatory, for example if the employer refuses to give a reference because of someone's age.

Staff Responsibilities

Staff could be personally liable for discrimination arising out of harassment and this may also constitute a disciplinary offence.

Occupational Pensions

The regulations will generally allow occupational pension schemes to continue as before.

Positive Action

All selection for recruitment or promotion must be on merit, irrespective of age, otherwise it may be deemed to be discriminatory.

Such positive action measures that are legal include:

- Afford persons of a particular age or age group access to facilities for training which would help fit them for particular work
- Encourage persons of a particular age or age group to take advantage of opportunities for doing particular work.
- An advertisement might encourage applications from people in an age band that is under represented in a particular workforce.

References

ACAS – Equality and Diversity: Age Discrimination in Employment and Vocational Training

http://www.acas.org.uk/media/pdf/s/3/Age_and_the_Workplace.pdf

Department for Business, Enterprise and Regulatory Reform (Formerly DTI) – Equality and Diversity: Age Discrimination in Employment and Vocational Training 2006

<http://www.dti.gov.uk/employment/discrimination/age-discrimination/index.html>

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Lesley Mansell, Equality and Diversity Adviser
Personnel Services, Loughborough University