



Redundancy

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REDUNDANCY & AGE DISCRIMINATION

This bulletin outlines some of the age discrimination issues that can occur in redundancy situations.

Redundancy Selection

Any selection criteria linked directly to age will be unlawful (subject to justification, but this is likely to be very difficult). Selection criteria based on length of service or last in, first out (LIFO) are likely to be indirectly discriminatory against particular age groups. It is therefore advisable that such criteria are not used. It may be that length of service or LIFO are used in conjunction with other selection criteria e.g. skills, disciplinary warnings etc, however even used in this context there is the potential that it could indirectly discriminate and will still need to be objectively justified.

Where such criteria are to be retained, the employer will need to assess what their aim is in using such criteria, whether that is in fact a legitimate aim/s and whether it is a proportionate means of achieving that/those aims.

Redundancy Payments

Though the lower and upper age limits for statutory redundancy payments have been removed, the age bands for redundancy pay will be maintained, as the Government believes that there is an objective employment policy justification for their retention. Employees still require two years continuous employment to qualify for statutory redundancy pay, however there are no age restrictions on entitlement.

The justification put forward for keeping the age bands is that “younger, prime age and older workers” fall into distinct economic categories within the employment market, with older workers much more likely to become long-term employed. This justifies maintaining a higher multiplier for those workers, whereas enhancing the benefits to younger workers is not, in the Government’s view, justified by their position in the employment market. It remains possible that the retention of the age bands could be subject to a challenge.

The age bands and multipliers under the statutory scheme are:

- under 22: half a week's pay for every year of employment
- 22 - 40 years old: a week's pay for every year of employment
- aged over 41: one and a half week's pay for every year of employment

A week's pay is subject to the statutory maximum amount of £380. The cap on the length of service that can be taken into account in the redundancy calculation is 20 years.

Enhanced Redundancy Schemes

The Regulations contain an exemption in relation to enhanced redundancy schemes. Where the scheme uses age bands, it will be lawful providing it closely follows the statutory scheme. In order to enhance the statutory scheme the employer can do any or all of the following:

- remove the cap on a week's pay (e.g. calculated on full pay)
- increase the week's multiplier, providing the same increase is applied to each band (e.g. raise from ½, 1, 1 ½ to 1, 2 & 3)
- multiply the total amount of the payment.

The exemption also applies where an employer makes a redundancy payment to an employee with less than two years continuous service and when the employee takes voluntary redundancy.

Where employers use a scheme based on age related criteria or length of service which does not follow the statutory scheme or the exemption, the scheme will need to be capable of objective justification if challenged.

If the Government's retention of the age bands were to be successfully challenged, this would also impact on enhanced schemes which mirror the statutory scheme. It may therefore be advisable for employers to move away from age related schemes altogether and devise schemes which do not rely on age bands at all.