

CLIENT ALERT

Long Service Ticking Timebomb – Less Than a Month to Go

Sep.15.2006

Now is the time to make final preparations for the new Employment Equality (Age) Regulations 2006 which come into force in less than one month. The legislation protects employees of all ages, old and young.

Key situations which you should keep an eye out for include:

- Job advertisements which specify a required number of years' experience, since experience can be equated with age. Also be careful how you describe the successful candidate. Advertisements which require employees to be 'dynamic' or 'energetic' as well as advertisements requiring a 'youthful appearance' or 'mature outlook' may be deemed discriminatory.
- Watch out for workplace 'banter'. Although it is currently common for there to be workplace banter surrounding employee birthdays, this should not be encouraged; an employee may claim that the 'over the hill' card she received on her 50th birthday evidenced that age was the real reason for her selection for redundancy.
- Although the statutory redundancy payment structures remain the same, selection for redundancy may prove more onerous. Consider whether your selection procedures need changing in the light of the new legislation.
- If an employee raises a complaint that they were discriminated against on the grounds of age, be aware that if they are consequently dismissed, not promoted or subject to any other detriment as a result of this complaint, they will have a successful victimisation claim.

In certain circumstances, it will be possible to justify discriminatory actions. You must be able to show that the discrimination was proportionate to your organisation's aim. This is known as objective justification. The discriminatory effects will be balanced against the objective's importance. You may be able to show, for instance, that the discrimination is necessary for implementing aims such as training needs, manpower planning or to encourage loyalty in your workforce. However, the defence is limited, and you must always be able to show that you could not have achieved the aim in a less discriminatory way. Note that this defence is not available to claims of harassment or victimisation. There is also a 'genuine occupational requirement' exemption. This has extremely limited application. In practice, its application may be confined to models and actors.

You should also consider your contractual retirement age carefully. Retirement ages at or above the age of 65 remain lawful. However, if your organisation has a retirement age of under 65, this will now need to be changed.

As ever, ensure that selection criteria for recruitment, promotion, training opportunities and redundancies are non-discriminatory, transparent, well documented, and applied in a fair and consistent manner.

To ensure that you do not fall foul of the legislation, it is important that you have a good age discrimination policy and educate your workforce on equal opportunities. Check existing policies and look at monitoring your organisation's benefits structure and training opportunities.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Emmanuel Plasschaert

Partner – Brussels

Phone: +32.2.282.4084

Email: eplasschaert@crowell.com

Thomas P. Gies

Partner – Washington, D.C.

Phone: +1 202.624.2690

Email: tgies@crowell.com