

## **ECU/UCEA Age Discrimination Working Group Guidance**

### **Age Discrimination Legislation 2006**

#### **Guidance Note 4: Flexible Working for All Ages – an ECU publication**

##### **Scope of Guidance**

The Employment Equality (Age) Regulations come into force on 1<sup>st</sup> October 2006. These regulations introduce the 'right to request' to continue working for those employees approaching the normal retirement age.

This guidance note promotes the extension of flexible working options to staff of **all** ages. Within that context, it specifically examines how flexible working may benefit both the employer and employee.

The guidance note is written for heads of HEIs. It will also be of interest to directors of HR, to equality and diversity staff and to staff and union representatives.

##### **The Regulatory Framework – Age Discrimination and Flexible Working**

The Age Regulations do not give a statutory right to request flexible working. However, this guidance note briefly reviews the recent research into work-life balance policies and highlights the benefits to organisations of extending flexible working options to all staff.

Earlier Guidance Notes in this series explain broadly the provisions of and exceptions to the Regulations. Further information about the Regulations is available from [dti.gov.uk/employment/discrimination/index.html](http://dti.gov.uk/employment/discrimination/index.html) and on the ECU website [www.ecu.ac.uk](http://www.ecu.ac.uk). For UCEA subscribers, update 06/53 also provides further information on the Regulations.

In recent years work-life balance (WLB) has been rising up the political agenda and the Government has promoted a more family-friendly culture to enable employees to balance their family responsibilities and work commitments.

The statutory right to request flexible working was introduced in April 2003. Initially, the 'right to request' was only available to staff who cared for a child or children under six years old or, in the case of a disabled child, under 18. The Work and Families Act 2006 extends this right to request to employees with caring responsibilities for adults, for example, elderly parents. The new right for carers is set to come into force in April 2007.

What this means in practice is that there are now an increasing number of 'groups' of people who have a legal entitlement to ask to work flexibly. The individuals in these groups could be of any age. It would be potentially discriminatory to extend flexible working options to particular age groups of staff. However, research shows (see below) that many older staff approaching retirement might well wish to carry on working but in a more flexible way.

For these reasons we believe that the introduction of the Employment Equality (Age) Regulations taken together with the extension of flexible working rights point institutions towards the usefulness of considering extending flexible working to all staff.

## **Flexible Working – Business Case**

There are costs involved in implementing and maintaining WLB / flexible working policies and these need to be carefully set against the benefits that flexible working can bring to an institution.

The HEFCE-funded Flexible Employment Options project examined the use of flexible working in the higher education sector. Their business case identified a number of important benefits which included:

- Becoming an 'employer of choice'
- Reduced stress levels
- Reduced absenteeism
- Reduces staff turnover
- Meeting the needs of an increasingly diverse workforce

The project participants recommended that flexible working is extended to all staff in the institution, rather than just to parents, carers and older people, to prevent claims of discrimination and to promote a fairer working environment for all staff<sup>1</sup>.

Extending flexible working to all staff may assist the employer with workforce planning issues.

Flexible working brings benefits to all age groups. Employees may want flexibility to allow them to manage their work-life balance, to devote more time to their family, pursue a personal interest or to deal with other personal commitments. The Employers Forum on Age reports<sup>2</sup> that 85% of employees say their needs change during their career cycle and 92% believe employers should tailor benefits and work arrangements to meet their changing needs.

## **Flexible Working and Older Employees**

Flexible working may offer particular advantages to older people considering their retirement. Whilst the new retirement process requires employers to offer the same terms, conditions and benefits to employees who continue to work after the normal retirement age, there is evidence to suggest that the option of flexible working may encourage employees to extend their working lives.

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<sup>1</sup> The FEO project website is a particularly good resource; it provides information on the business case for flexible options along with practical advice on implementing such policies. See 'Useful Links' at the end of the document.

<sup>2</sup> Generation Flex: current attitudes to the recruitment debate 2002. See 'Useful Resources' section of this paper.

The Employers' Forum on Age (EFA) note that 93% of employees would extend their working lives if offered flexible working arrangements<sup>3</sup>. Similarly, Malcolm Sargeant's survey of retired NATFHE and PCS members revealed that 'a large proportion (74.8%) of the respondents stated that they would have liked to continue working on a full-time basis, 37.1% on a part-time basis and 28.3% who would have liked to continue on a casual basis.'<sup>4</sup>

For the employer, the specific benefits to the institution of older staff working flexibly are considerable. They include:

- Likely increase in the retention of experienced staff with valuable skills
- Greater flexibility and choice for employees
- The creation of a wider pool of expertise for recruitment and for other roles such as mentoring and coaching
- A strategic and effective response to demographic change

It is important to note that clear and concise information about the options and pension implications needs to be available to staff.

## **Action Plan**

Institutions should:

- Establish if flexible working options / WLB policies can be extended to all staff. Investigate the business case for your institution.
- Consult widely about the potential options. This could involve setting up a working group to include HR, union/staff representatives, financial representatives, lawyers, pension representatives, line managers, occupational health representatives and the insurance department representatives.
- Open communication channels between HR and the various pension schemes operating in the institution to discuss the implications of flexible working for older employees (see forthcoming Guidance Note on pensions in this series)

For further information on first and next steps see Flexible Employment Options Project and Flexible Retirement publications in the Useful Resources section.

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<sup>3</sup> Generation Flex: current attitudes to the retirement debate, 2002. See 'Useful Resources' section.

<sup>4</sup> Age Discrimination in Employment: survey of retired members of the NATFHE and PCS, Malcolm Sargeant, Centre for Legal Research, Middlesex University Business School, December 2003.

## Useful resources

**For further information about the costs and benefits of flexible working, practical advice on implementing flexible working schemes and information on what other organisations are doing, please see:**

**Oxford Brookes University – Work Life Balance: Good Practice Guide.** Oxford Brookes University undertook a project on WLB through the Centre for Diversity Policy & Research and have developed a good practice guide for managing WLB and flexible working. This is available to download at

[http://www.brookes.ac.uk/services/hr/eod/wlb/good\\_practice\\_guide.pdf](http://www.brookes.ac.uk/services/hr/eod/wlb/good_practice_guide.pdf)

**Flexible Employment Options Project** website contains useful information about the project itself, business case for flexible working along with practical advice and training for managers.

[www.staffs.ac.uk/feo](http://www.staffs.ac.uk/feo)

**CIPD** website has some useful surveys about recruitment and retention which include information on flexible working provision

[www.cipd.co.uk/onlineinfodocuments/surveys](http://www.cipd.co.uk/onlineinfodocuments/surveys)

**The Employers' Forum** has a number of publications available to download which include information about the pros and cons of flexible retirement and the issues to consider.

[www.efa.org.uk](http://www.efa.org.uk) .

[Generation Flex: current Attitudes to the retirement debate, July 2002](#)

[Flexible Retirement: a snapshot of employer practices, June 2002](#)

Another useful publication is the [Flexible Retirement: a snapshot of Employer Practices 2006](#) which updates the June 2002 study (above). This is available under 'publications' at

[www.agepositive.gov.uk](http://www.agepositive.gov.uk)

[Extending Working Life: a review of the research literature](#) by C. Phillipson and A. Smith, DWP, Research Report 299, 2005

[Valuing Age: a guide for public service employers managing demographic change in the workplace](#) at <http://www.ceep.eu/media/right/publications>

This booklet is a guide for public service employers managing demographic change in the workplace and provides good examples of flexible working in action.

[Work life balance, management practices and productivity](#) by N. Bloom, T. Kretschmer and J. Van Reenen, Centre for Economic Performance 2006. This discusses the empirical research undertaken on WLB policies and productivity.

## Other useful links

Equality Challenge Unit – Age Guidance pages. Also, the recent update (02/06) The Employment Equality (Age) Regulations: Taking Action Now which can be found on the 'updates' page. [www.ecu.ac.uk](http://www.ecu.ac.uk)

Department for Trade and Industry [www.dti.gov.uk](http://www.dti.gov.uk)

Department for Work and Pensions [www.dwp.gov.uk](http://www.dwp.gov.uk)

[Age Equality – June 2006](#) , UNISON fact sheet on the Employment Equality Age Regulations available at <http://www.unison.org.uk/acrobat/B2525.pdf>

The Employment Equality (Age) Regulations -  
<http://www.opsi.gov.uk/si/si2006/draft/20064266.htm>

The Work and Families Act 2006  
[http://www.opsi.gov.uk/ACTS/acts2006/ukpga\\_20060018\\_en.pdf#search=%22Work%20and%20Families%20Act%202006%22](http://www.opsi.gov.uk/ACTS/acts2006/ukpga_20060018_en.pdf#search=%22Work%20and%20Families%20Act%202006%22)