

UCEA/ECU Age Discrimination Working Group Guidance

Age Discrimination Legislation 2006

Guidance Note 3: Performance Management – A UCEA Publication

Scope of guidance

This Guidance Note addresses the implications of the Employment (Age) Equality Regulations, due to be implemented on 1 October 2006, for performance management arrangements in the higher education sector. For the purpose of this Guidance Note, performance management encompasses the range of processes and policies that relate to an individual's performance in their role. The planning and provision of staff training and development is an activity integral to all good performance management practice and this Guidance Note should be read alongside the separate Guidance Note 5: Training and Development.

The regulatory framework

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 and on the ECU website www.ecu.ac.uk. For UCEA subscribers, update 06/53 also provides further information on the Regulations.

General

Under the new legislation, institutions need to ensure that policies, processes and procedures are free from age bias. When dealing with performance management, it is particularly important to be aware of the risk of making age-related assumptions about the capability, productivity, physical ability and sickness levels of staff. For example, assumptions that older employees are heading towards retirement and therefore don't need to develop their skills, be set challenging objectives, or will not be interested in career progression, should be avoided as should assumptions that younger staff will be less reliable or less able to lead or manage others. Maintaining an effective working relationship with employees of all ages includes supporting career development within a framework of effective performance appraisal. All managers with performance management responsibilities need to be trained accordingly.

Performance management documentation

Documentation relating to the performance management process should be reviewed to ensure that it includes no potentially discriminatory elements. For example, competency or skills frameworks should not use length of service or age as a way of indicating level of skill or competence. Instead descriptions should relate to the actual technical or behavioural skills required. Similarly care should be taken to avoid using wording that contains hidden assumptions about age. For example, rather than specifying that 'maturity' is required to do a particular job, it might be better to state that 'the ability to cope well with pressure' or 'the ability to motivate and lead others' is what is necessary.

If the performance management review involves reference to a job description or person specification, care should be taken to ensure that the descriptions do not include any potentially discriminatory elements. For example:

- Ensure job descriptions and person specifications (e.g. descriptions of 'minimum' and 'desirable' characteristics) are objective, based solely on skills, relevant experience and capacity to do the job.
- Use specific details to explain job requirements, for example, instead of saying 'needs to be physically fit', the person specification might say 'needs to be able to occasionally stack heavy books onto library shelves'
- Avoid using criteria that might be deemed to be indirectly related to age. For example, the inclusion of particular types of qualification may be indirectly discriminatory to older employees who have not had the opportunity to acquire this qualification but may have acquired the necessary skills and knowledge through direct work experience.

See Guidance Note 2: Recruitment, Selection and Promotion for further guidance.

Reviewing performance and setting performance standards

The assessment of an individual's performance during the review period and the setting of objectives or work standards should not be influenced by their age. For example, lower standards should not be set on the basis that an individual is close to the normal retirement age. This could indirectly discriminate against a younger member of staff for whom no such adjustment is made. On the other hand more difficult targets should not be set for an older person simply because they are 'likely to find things easier'. The objectives set should be a positive reflection of the requirements of the job, rather than based on subjective assumptions of what they can or can-not achieve. One way of ensuring this is to ask staff to identify their own strengths and weaknesses and to discuss their own ideas for career development with them. Where personal development plans form a part of a performance review process, such plans should be completed in the same way for all employees, and appropriate support given to enable employees to achieve them. Guidance Note 5: Training and Development, provides further guidance on this.

Career progression

Institutions will need to consider how to make the most of the experience and expertise of older employees and should look creatively at ways that they can progress in their careers. Guidance Note 2: Recruitment, Selection and Promotion, provides guidance on promotion issues. This emphasises the need to focus on the skills, abilities and potential of the candidates. Impartial evidence that can be used to support individual cases for promotion can be gathered from the performance review process.

Options other than promotion should also be considered in performance reviews. Examples include developing a more open job description with a wider variety of tasks, a sideways move to another job, assigning responsibility for a particular project to the individual, or giving them a mentoring role to develop and coach less experienced colleagues and share valuable knowledge.

The Regulations include the right to request to work beyond the normal retirement age. Institutions should not, therefore, assume that employees are going to want to retire when they reach 65 or the normal retirement age. For staff nearing retirement age, options for remaining in work longer, including flexible working and flexible retirement schemes, may be relevant to the discussion, particularly where such options could facilitate the career progression being considered.

Dealing with poor performance

Levels of performance need to be monitored for employees of all ages. Institutions should not make exceptions for older workers who are not performing to expected standards and allow performance to slip on the assumption that the individual is going to retire soon anyway. Adopting a less stringent approach to the appraisal of older workers may give the older employee the impression that their work is not valued, and may also be discriminatory, for example if the same performance issues are dealt with differently in the case of younger employees. Unsatisfactory performance should be dealt with in the same way regardless of the employee's age using the relevant policy and procedures (e.g. Capability Policy).

Sickness absence

As with other areas of performance management, sickness absence should be managed in the same way for all employees, regardless of their age. Assumptions regarding age and health need to be avoided, such as a belief that older workers take more time off work sick. The most recent Labour Force Survey¹ shows that in 2005 a higher proportion of younger employees took sickness absence than older employees and other research indicates that older workers have lower levels of short-term sickness absence than younger employees². Health and well being are influenced by many factors which are not necessarily age-related such as life-style, nutrition, exercise, genetic/hereditary factors and accidents. Where a judgment is required, for example, in the case of long-term absence or persistent short-term absence, advice should be sought from an occupational health or medical practitioner.

Age and disability

It is the case that the likelihood of developing a disabling condition does increase with age. Where a disability impacts on the ability of a member of staff to work effectively, they should be consulted regarding the reasonable adjustments that could be made to the workplace to enable them to continue working. Advice should also be sought from an occupational health practitioner if necessary. Institutions may wish to review their occupational health service and other support offered to staff in the light of this legislation and the forthcoming positive duty to promote disability equality.

Action Plan

Institutions should:

- Review all performance management related practices, policies and procedures to establish the following:
 1. Does the process take account of age discrimination legislation and good practice?
 2. How will staff with line management or supervisory responsibilities be made aware of the legislation and their responsibilities under it?
 3. Do all staff receive performance reviews irrespective of age or stage in career?
 4. Does the performance review process encourage older employees to continue with their development irrespective of their age?
 5. Are older workers given the same opportunities as younger people to undertake training and to consider other career development opportunities?

¹ Labour Force Survey (LFS), Office for National Statistics, 2005. See <http://www.statistics.gov.uk/cci/nugget.asp?id=1577>

² HSE – Survey of Workplace Absence Sickness and (Ill) Health (SWASH), 2005. See <http://www.hse.gov.uk/press/2006/e06073.htm>

- Set in place the data monitoring systems that will support the review of performance management processes and outcomes by age.
- Consider whether it would be appropriate to include age in a wider equality impact assessment.
- Provide information and training to staff responsible for performance reviews to ensure that no age or service related criteria are used to influence the performance management process and decisions except where these have been judged by the institution to be objectively justifiable. Consider whether your training also covers adequately the need to avoid victimisation or harassment on the grounds of age.
- Integrate age related policies and practices into a broader approach to equality and diversity.

Resources

UCEA/ECU Age Discrimination Working Group Guidance: 'Guidance Note 1: Pay and Benefits – a UCEA publication', available at www.ucea.ac.uk and www.ecu.ac.uk.

UCEA/ECU Age Discrimination Working Group Guidance: 'Guidance Note 2: Recruitment, Selection and Promotion – a UCEA publication', available at www.ucea.ac.uk and www.ecu.ac.uk

UCEA/ECU Age Discrimination Working Group Guidance: 'Guidance Note 4: Training and Development – An ECU publication', available at www.ucea.ac.uk and www.ecu.ac.uk

Age and the workplace - a guide for employers. ACAS. (available at www.acas.org.uk)

DTI Age Legislation Fact Sheet No. 2 Objective Justification (available at <http://www.dti.gov.uk/files/file29240.pdf>)

Valuing Age: A Guide for Public Service Employers Managing Demographic Change in the Workplace, CEEP at <http://www.ceep.eu/media/right/publications>

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