

Age Alert

Early Warning



Age Alert - Early warning - Advice note

'Given the age distribution of the local government workforce age issues are a matter of particular importance to SOCPO. The Pensions and Age Diversity Group aims to ensure that the interests of our sector are represented in policy making and we are currently working with the Department for Work and Pensions regarding the Age Positive Campaign and the implications of the Green Paper¹, which is concerned with the extension of working life and assuring sufficient income in retirement. In addition, we are closely involved with the Office of the Deputy Prime Minister to achieve more flexibility in the Local Government Pension Scheme.

This advice note is the first in a series to be produced by the SOCPO Pensions and Age Diversity Group. We are grateful to the Employers' Organisation and the Employers Forum on Age, for their help in producing this guidance. I hope that you will find it useful.'

Sue Walker
Head of Organisational Performance, East Hampshire District Council
and Chair of the Pensions and Age Diversity Working Group

Don't leave it too late!

'We all know why authorities should employ a diverse workforce in order to reflect the community it serves. We also know about the need to address the ageing workforce in local government. When you add to this the impending legislation and pension changes there's a lot for authorities to think about.

Much is being done, particularly in recruiting young people, but we know that as a sector we need to do more. We fully support the publication of this leaflet, which will act as an early warning for HR practitioners of the impending legislation and enable authorities to review their policies and practice so that age diversity will be a feature of local government in the future.'

Charles Nolda
Executive Director
Employers' Organisation for local government

Introduction

Age diversity is a real issue for local government employers. Local government traditionally has an older workforce, with around 60% of employees over the age of 39 and only 6% of employees under the age of 25 (see table). This means that the recruitment of younger workers is of vital importance for the future of local government. However, there is also a need to retain older workers' valued knowledge, skills and experience and develop effective workforce and succession plans for future needs.

As if this wasn't a big enough challenge, there's also the need to consider future legislation. Currently, there is a voluntary Code of Practice on age diversity, but as most authorities are aware, by December 2006, there will be a need to comply with age discrimination in employment legislation. Despite this awareness, there is still little understanding of the impact that future age laws will have on day-to-day employment practice.

Currently, many authorities - perhaps struggling to deliver on other diversity issues - are under the impression that age discrimination legislation will only require minor adjustments to policy. This could not be further from the case.

This leaflet has been developed as an 'early warning' for HR professionals in local authorities on the impending legislation, the wider local government context and some of the issues that authorities can start looking at now, in preparation for the challenges ahead.

Why is age diversity so important for local government?

The development and retention of a diverse age range within an authority is difficult to achieve. Younger workers are relatively scarce, as the age profile of the UK economy shows (see table below). Many younger workers also have a negative image of local government as a career. Initiatives such as the EO's National Graduate Development Programme and local initiatives² are helping to improve recruitment, particularly of young people, but much more can be done.

'Authorities need to engage with young people not only to attract them to work in areas where there are skills shortages and to replace retiring workers, but also to address disillusionment and disaffection with the democratic process.'

Charles Nolda, Executive Director, Employers' Organisation³

There have also been problems with the retention of older workers. Until recently, there had been an increased use of early retirement schemes, which led to an expectation amongst certain staff that they would be able to discontinue working in their 50s. The increased pressures and pace of work have also had an impact, leaving many staff feeling that they are unable to maintain high levels of output, leading to de-motivation and requests to retire early. Older workers may also feel frustrated, as there may be less opportunity for career advancement due to the high number of older workers within the sector.

Recognition that valuable skills need to be retained and Audit Commission reports such as 'Retiring Nature' have led to the introduction in some authorities of more flexible retirement schemes, but such schemes have to comply with the current requirements of the Inland Revenue and the Local Government Pension Scheme (LGPS). SOCP0 is currently working with the ODPM to achieve flexibilities in the Scheme but at the moment, there may be concerns from trade unions that employee's retirement options and incomes could be disadvantaged. Additionally, line managers may fear insurance or health and safety implications. Further advice notes will be issued as the situation becomes clearer.

As with other types of discrimination, stereotypical views about people of different ages need to be challenged in order for age diversity to work effectively. Older workers may be perceived to lack 'up-to-date' skills or younger workers may be seen as unreliable. The changes in perceptions required can only be achieved if an authority's culture is open to change.

Authorities cannot afford to do nothing about age diversity. As well as the recruitment issues and the need to retain valued knowledge, skills and experience, authorities should ensure that they reflect the community that they serve. Employees who are a mix of different ages with different backgrounds, experiences and values can help an authority to relate to its community and provide a positive example to other organisations in the area.

Percentage distribution of local government employees and those in the broader economy by age group in England and Wales, spring 2002:

Age Groups	Local Government	Whole Economy
Under 25	6%	15%
25 – 39	33%	39%
40 – 49	29%	23%
50+	31%	23%

Source: National Statistics, Labour Force Survey 2002

² Such as those described in the EO's publication 'Engaging with Young People'.

³ 'Engaging with Young People', Employers' Organisation (2002)



The new legislation - a quick summary

Age laws will follow the structure of UK race and sex discrimination laws and will:

- Cover all employees, agency workers and the self employed
- Provide for unlimited compensation
- Be effective immediately (no qualifying period of service)
- Include job applicants

The law will be structured around:

Direct Discrimination - Discrimination on the grounds of age will only be lawful where an employer can prove 'the difference of treatment is objectively and reasonably justified'.

Indirect Discrimination - The law will be broken if a decision unjustifiably 'disproportionately disadvantages' employees of a particular age/age group. Employers will only be able lawfully to discriminate if they can prove their decision was 'objectively justified by a legitimate business aim'.

Harassment & Victimisation - Employers could also face claims if people encounter verbal harassment because of their age or are victimised for alleged age discrimination.

But....

What makes life additionally interesting, is that we still do not know the full scope of the legislation. Following the first stage of the age legislation consultation ('Towards Equality & Diversity' 2002), it is clear that complying with future age laws will need considerable investment and resource. Numerous aspects of employment policy will require amendment and employers will have to check thoroughly all their processes to be certain they are free of age bias.

'Employers who believe they can prepare for age discrimination legislation simply by removing age from job adverts and date of birth from application forms are in for a rude shock.'

Sam Mercer, Campaign Director, Employers Forum on Age.

The big unknown - retirement age?

Under the Equal Treatment Directive, the Government can choose whether to include or exclude mandatory retirement from the legislation. The UK Government's final decision is still unclear, but ministerial and other statements towards the latter end of 2002 seem to indicate that Government is 'minded' to allow employers to continue to set a mandatory or contractual retirement age. However, if that is the case, then employers will be required to 'justify' their actions. It only goes to say, that no one has so far been able to come up with an adequate justification. This underlines how complex and difficult it will be to comply with the new legislation! It seems entirely possible therefore, that from December 2006, it may no longer be possible to enforce a contractual retirement date.

The removal of the right to set a contractual retirement age will have a considerable impact on many other aspects of employment policy. Current thinking is that employers would be able to find a number of 'reasonable justifications' for age limits in recruitment, promotion and training policy should a mandatory retirement age be allowed. However, if there is no mandatory retirement age, then there are likely to be far fewer justifications for age limits in these policy areas.

Even if there is no mandatory retirement age it will still be possible to set an age within a pension scheme beyond which people cannot join or remain contributing to the scheme.

Flexible retirement

Many employers both in the public and private sector have struggled with restrictive Inland Revenue and pensions rules which have particularly discouraged part-time or flexible employment towards the end of working life and may actually have encouraged greater take up of early or 'ill-health' retirement options. The Green Paper⁴ has, however, signalled a shift in Government thinking on retirement policy. It now seems likely that in the future employers will be able to adopt much more flexible retirement policies than existing regulations allow e.g. it may become possible to permit people to downshift or move to part-time working whilst drawing their LGPS pension at the same time.

A workplace operating a flexible decade of retirement and without contractual retirement will therefore have to be managed quite differently. Employers will have to invest substantially in effective performance management systems, re-training and redeployment programmes, job re-design, etc and put in place a raft of new strategies to help them cope with the changed working environment.

The future changes outlined above do not mean that there are no options for flexible retirement currently. Many authorities, including the Nuneaton and Bedworth case study (see example on page 7) already enable employees to continue working after age 65. There are however, a number of issues that need to be considered such as:

- Employees who are over the age of 65 are unable to claim unfair dismissal or redundancy payments and are not entitled to Statutory Sick Pay
- The authority should check with their insurers to ensure that the employee is protected for personal injury
- There may be implications for the employee's local government pension⁵
- The employee may need advice and support, such as through the provision of pre-retirement seminars, financial planning advice, etc.

⁴ Simplicity, security and choice: working and saving for retirement, Department for Work and Pensions (2002)

⁵ See the Employers' Organisation leaflet 'Managing an Older Workforce: Flexible Retirement' (see Further Information).





Preparation for the Future

So what can authorities do now in preparation for the new legislation? The following are some suggested areas for action that will support you in that process.

1. Put systems in place to analyse and interpret age profiles in your authority.
2. Use the information from age profiling exercises to persuade colleagues and senior managers of the need for action.
3. Check all your employment policies for age neutrality and ensure they match the reality of day-to-day practice.
4. Work with your pensions Administrating Authority to build flexible retirement policies into your human resource strategies.
5. Ensure that measures are in place to share knowledge and experience across the authority so that valuable skills are retained, when employees retire.
6. Explore the latest best practice in motivation - if people are going to have to work longer - how are you going to keep them happy and delivering to targets?
7. Review your appraisal and performance management systems to ensure that they do not make assumptions about an employee's age and their capacity to perform well.
8. Liaise with Occupational Health to make sure that the working environment is fit for older workers and that stress-related illness does not have roots in age-related bullying or harassment.
9. Find out how other authorities are attracting and retaining younger workers - but make sure that any steps you take amount to positive action and not positive discrimination.
10. Develop your equality and diversity training to include awareness of age discrimination and the implications of the forthcoming legislation.
11. Use dates of birth only for monitoring purposes and administration and ensure that employees are provided with written assurance of how this information is used.
12. Before releasing employees through redundancy, retirement or capability, ensure that all possible alternatives have been investigated, such as opportunities for re-skilling or alternative working arrangements.



What's happening now?

Some authorities are already operating policies and schemes that support age diversity, as these case studies show:-

Flexible Retirement in Practice

Nuneaton and Bedworth Borough Council introduced a flexible retirement policy in 2001 in order to alleviate increasing recruitment problems and retain essential skills as long as possible, whilst also avoiding unnecessary recruitment costs and the costs of training new employees.

An employee who is nearing the age of 65, but wishes to continue working must in the first instance, discuss their wishes with their manager. The employee may be able to take advantage of a range of flexible working solutions, such as a reduction in working hours or a change of duties or responsibilities. The employee's pension situation is also clarified.

(Extract from Flexible Retirement: A Snapshot of Large Employers' Initiatives, Department of Work and Pensions /EFA (July 2002))

Bridging the Gap for Unemployed Young People

Nottinghamshire County Council's initiative Bridge to Work acts as an umbrella to encompass a range of learning and employment initiatives aimed at helping unemployed people in the county.

A New Deal Employment Co-ordinator has been appointed to promote the New Deal Employer Option to the County Council's managers. Potentially suitable vacancies are identified and ring-fenced and the recruitment process has been simplified to make vacancies more accessible. Support is provided to both clients and managers during the recruitment and selection process and for six months after placement.

75 New Deal clients have been appointed to County Council vacancies, on the same terms and conditions as other employees. The retention rate at six months is 85% and career progression through Scales 1, 2 and 3 is now evident, demonstrating the commitment and enthusiasm of the young people employed. The initiative has improved the authority's overall age profile and helps to meet its objectives of equal opportunities promotion and social inclusion.

(Extract from Engaging with Young People - A Good Practice Guide. See further information on back cover)

Further Information

Code of Practice on Age Diversity in Employment available from the Age Positive website at www.agepositive.gov.uk/codeOfPractice.cfm?sectionid=90.

Simplicity, security and choice: working and saving for retirement, Department for Work and Pensions (2002) www.dwp.gov.uk/consultations/consult/2002/pensions/index.htm.

'Managing the Careers of the Over 40's'. A range of leaflets produced by the Employers' Organisation and SOCPO (2000).
'Managing an Older Workforce'. A range of leaflets produced by the Employers' Organisation (2001).
Both sets of leaflets are available at www.lg-employers.gov.uk/advice/older-workforce.html.

Engaging with Young People, Employers' Organisation (2002) www.lg-employers.gov.uk/psd/ewyp/index.htm

The National Graduate Development Programme for local government www.lg-employers.gov.uk/graduate/index.html.

The Employers Forum on Age

The Employers Forum on Age (EFA) is an independent employer-led network, funded by membership subscriptions. The EFA works with both public and private sector organisations and operates on two fronts - providing high-quality membership services and campaigning on behalf of its members on age and employment issues.

EFA Membership services

The EFA provides a full range of membership services, which include:

- A Policy Review Toolkit, fact sheets, guides, and up-to-the-minute research
- Workshops, seminars and networking events
- Customised training & consultancy

Currently lobbying activity includes:

On the legislation

- Workable and effective age discrimination legislation - that reflects employer needs
- An early decision on 'mandatory retirement'
- Appropriate guidance for employers, so they can comply with age laws

On flexible retirement

- A commitment from Government to introduce new Inland Revenue rules that allow employers to implement flexible retirement policies
- The inclusion of flexible retirement options within the legislation

On younger workers

- The phasing out of a 'development rate' based on age within the National Minimum Wage (NMW) - which directly discriminates against 18-22 year olds
- To raise awareness of the fact that age discrimination affects employees of all ages

Further information & contact details

Membership of the EFA is open to all employers who are interested in tackling age issues and in preparing for age discrimination legislation. For an application form, or to find out more about the work of the EFA, call 020 8876 7597 or e-mail efa@ace.org.uk. A considerable amount of additional information about the EFA is available at www.efa.org.uk.

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