

Malcolm Sargeant (Ed.)

The Law on Age Discrimination in the EU

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The Law on Age Discrimination in the EU

Studies in Employment and Social Policy

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The Law on Age Discrimination in the EU is the thirty-fourth title.

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PREFACE

This book is intended to be an important contribution towards an understanding of age discrimination within the European Union.

The Directive 2000/78/EC on establishing a general framework for equal treatment in employment and occupation, which includes age, applies to employment and occupation, so much of the material here also applies to the same area. Where national measures have a wider application, other fields have been taken into account.

I would like to thank the talented group of people that have written the chapters in this book. It is important to stress, though, that each chapter reflects the views of the author of that chapter. There is no collective view contained here of the measures that have been taken or of the Framework Directive itself.

I would like to dedicate this book to all those NGOs and individuals throughout the EU who are committed to, and working towards, the ending of age discrimination in all walks of life, and not just employment.

Malcolm Sargeant

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CHAPTER 1 AGE DISCRIMINATION

Malcolm Sargeant

INTRODUCTION

Article 1 of Directive 2000/78/EC,¹ establishing a general framework for equal treatment in employment and occupation, declares that its purpose is

to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

Article 2.1 states that

the principle of equal treatment shall mean that there shall be no direct or indirect discrimination whatsoever on any grounds referred to in Article 1.

Direct discrimination occurs when a person is treated less favourably than another in a comparable situation, on the grounds of, in this case, age. Indirect discrimination occurs when an apparently neutral provision, criterion or practice would put persons of a particular age at a particular disadvantage, as compared with other persons; unless that provision, criterion or practice can be objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.²

It is clear, however, that age discrimination is itself to be treated in a less favourable way than all the other grounds of discrimination. Article 6 is titled 'Justification of differences of treatment on grounds of age', and allows for the possibility of justifying both direct and indirect discrimination, if

they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational objectives, and if the means of achieving that aim are appropriate and necessary.

-
1. Council Directive 2000/78/EC OJ L 303/16 2.12.2000. See appendix, which contains the text of the Directive.
 2. Article 2(a) and (b) of the Framework Directive.

Thus the restrictive exception relating to all grounds of discrimination in Article 2 of the Directive is expanded on the grounds of age. Direct and indirect discrimination may be objectively justified by a legitimate aim if the means of achieving that aim are appropriate and necessary. Such aims might, according to Article 6.1, include legitimate employment policy, and labour market and vocational training objectives.

ACCEPTANCE OF DISCRIMINATION

An issue for those who are opposed to discrimination on the grounds of age is that, often, decisions based on age are deemed to be acceptable, as is summed up in this paragraph taken from a report by the Irish Equality Authority:

Biological ageing is a continuous process. However, societal attitudes, assumptions and barriers create social ageing . . . For instance, the link between chronological age and what is and is not expected of a person at that age is socially conditioned. These social constructs can be taken as the received wisdom by people generally because they have not been examined reflectively or critically or remain unchallenged.³

It is clearly true that many people find age discrimination acceptable and normal. In one survey carried out by the Employers Forum on Age in the UK,⁴ the following was reported:

- a third of people thought that it was not discriminatory to pay someone based on age;
- 36 per cent thought that people should be managed differently because of their age;
- 39 per cent believed that if someone's perceived age does not match the company's image the person should not be employed;
- 39 per cent think that it is reasonable to assume that the oldest person in the room is the most senior; and
- 40 per cent thought that employing people of similar ages to ensure that they fit into the team was fair.

There are also examples of this acceptability quoted in subsequent chapters in this book. Ulla Liukkonen (*see* Chapter 9) quotes an example from a survey, in the context of the Finnish National Programme for Ageing Workers, where one respondent stated 'they (older workers) are necessary because of these old machines we have'.

If some forms of discrimination are deemed to be acceptable for commercial reasons or reasons of 'common sense', then it is difficult to build a case for opposing age discrimination. If it can be objectively justified in some circumstances, then why not in all circumstances?

The problem in the case of *Mangold* (*see below* and various chapters in this book) is not that the measures to encourage older people (over 52 years) into work by

3. *Implementing Equality for Older People* (2004), The Equality Authority, Ireland.

4. The report is called *Defining Ageism* and can be found on the website of the Employers Forum on Age at <www.efa.org.uk>.