

What is objective justification?

The new laws recognise that differences of treatment on the grounds of age can sometimes be justified. However, this does not mean that unfair discrimination will be allowed to continue. Employers will not be able to make arbitrary decisions, which are not supported by evidence.

It would be wrong to deny employers the opportunity to take an age-based approach where it is appropriate. Objective justification is the tough test that employers will have to use to substantiate any exemptions to the laws.

The objective justification test, for either direct or indirect discrimination, should be a proportionate way of achieving a legitimate aim.

What is proportionate?

The discriminatory effect of any age-based practice should be significantly outweighed by the importance and benefits of its legitimate aim, and the employer should have no reasonable alternative.

If the legitimate aim can be achieved by less, or non-discriminatory means, then these must take precedence.

What constitutes a legitimate aim?

A wide variety of aims may be considered legitimate, but they must correspond with a reasonable need on the part of the employer. Economic factors such as business needs and efficiency may be legitimate aims, but arguing that it could be more expensive not to discriminate will not in itself be a valid justification.

Examples of a legitimate aim could be: the vocational integration of individuals of a particular age; the particular training requirements of the job; or the need for a reasonable period of employment before retirement.

However, it will be for the employer to show that the aim is valid. The legitimate aim cannot be related to age discrimination itself. For example, a high street fashion store who wishes to employ younger staff in order to complement their brand image will not be able objectively justify this, because it is not a valid aim.

Ultimately though, it will be for the courts to decide what constitutes a legitimate aim.

In practice, to pass the test of objective justification, it will be necessary to provide evidence if the age-based practices are challenged. The employer's assertions alone will not be sufficient.

Illustrative example

A large construction firm in the South East hires most of its workers for on site labouring work. The work is physically demanding and often dangerous, requiring a good level of physical fitness and sound motor skills.

The firm has set a maximum age for their on-site workers, but accepts workers of any age for on or off-site administrative and less physically demanding roles.

The firm feels that, if challenged, it can objectively justify this approach. However, the HR Director suggests that some older workers are just as capable – if not more in some cases - of meeting the physical demands of the job than some younger workers.

Consequently the firm adopts a 'performance appraisal' approach to recruitment, where appropriately skilled workers of any age must show that they are physically fit enough to meet the demands of the job, rather than using an objective justification based upon an arbitrary age.

The full regulations can be found now at

www.dti.gov.uk/employment/discrimination/age-discrimination/index.html

Further detailed guidance on the laws can be found at www.acas.org.uk from late April

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