

The different forms of discrimination

Regulations 3, 4, 5 & of the Employment Equality (Age) Regulations 2006 set out the forms of discrimination which are covered by the new legislation. An overview of these is set out below.

Direct discrimination (Regulation 3)

Where an employer treats an employee less favourably than other persons on the basis of his/her age or his/her apparent age, unless that treatment can be objectively justified.

Indirect discrimination (Regulation 3)

Where an employer applies a provision, criterion or practice, which the employer applies equally to other persons and that provision, criterion or practice puts an employee's age group (or apparent age group) at a particular disadvantage and that employee suffers that disadvantage, unless the employer can objectively justify the use of that provision, criterion or practice.

Victimisation (Regulation 4)

An employer treats an employee less favourably than it treats or would treat other persons by virtue of something done by that employee (or something the employer knows the employee intends to do, or something the employer suspects the employee intends to do or has done) under or in connection with the Regulations, including:

- the employee has brought proceedings against the employer or any other person under the Regulations
- the employee has given evidence or information in connection with proceedings brought by someone else against the employer or another person under the Regulations
- the employee has done anything under or with reference to the Regulations to the employer or another person
- the employee alleges that the employer or another person has acted contrary to the Regulations.

The above discrimination does not apply if the employee has made allegations or gives evidence which he knows is false or does not do so in good faith.

Instructions to discriminate (Regulation 5)

If an employer treats an employee less favourably than he treats or would treat other persons in the same circumstances because:

- the employee has not carried out an instruction to do an act which is unlawful under the Regulations
- the employee complains to the employer or someone else of being given an instruction to do an act which is unlawful under the Regulations.

Harassment (Regulation 6)

Having regard to the circumstances (including the employee's perception), an employer engages in unwanted conduct which has the purpose or effect of violating the employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the employee.

Vicarious liability

Other than direct acts by the employer, an employer can also be responsible for acts of its employees which contravene the Regulations unless the employer can demonstrate that the employer took such steps as were reasonably practicable to prevent the employee from doing the discriminatory act, or from doing in the course of his/her employment acts of that description.

Defences and exceptions

Both direct and indirect discrimination can be objectively justified (please refer to the separate section on this, which can be accessed [here](#)). There are also a number of exceptions to the Regulations, details of which can be accessed [here](#).