



Middlesex
University

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Older workers find it much more difficult to get a new job than younger workers;

A number of countries still have compulsory retirement systems which eject people from the workforce because they have reached a certain age;

Older people face extra difficulties outside the employment sphere

Is belonging to one of the following groups an advantage or a disadvantage?



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Group	advantage (%)	disadvantage (%)
Being disabled	3	79
Being a Roma	3	77
Being aged over 50	5	69
Being of a different ethnic origin	4	62
Being homosexual	2	54
Different religion	3	39
Being a woman	11	33
Being under 25	39	20
Being a man	49	4



Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

Such differences of treatment may include, among others:

- (a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;**
- (b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;**
- (c) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.**

Legitimate aims



- (1) Promoting access to employment for younger people (*Palacios de la Villa, Hütter, Küçükdeveci*);
- (2) The efficient planning of the departure and recruitment of staff (*Fuchs*);
- (3) Sharing out employment opportunities fairly between the generations (*Petersen, Rosenblatt, Fuchs*);
- (4) Ensuring a mix of generations of staff so as to promote the exchange of experience and new ideas (*Georgiev, Fuchs*);
- (5) Rewarding experience (*Hütter, Hennigs*);
- (6) Facilitating the participation of older workers in the workforce (*Fuchs*, see also *Mangold v Helm*);
- (7) Avoiding the need to dismiss employees on the ground that they are no longer capable of doing the job which may be humiliating for the employee concerned (*Rosenblatt*); or
- (8) Avoiding disputes about the employee's fitness for work over a certain age (*Fuchs*).

- C-411/05 *Félix Palacios de la Villa v Cortefiel Servicios SA*
- Case C-341/08 *Domenica Petersen v Berufungsausschuss für Zahnärzte für den Bezirk Westfalen-Lippe*
- Cases C-250/09 and C-268/09 *Vasillvanov Georgiev v Tehnicheski Universitet*
- Cases C-159/10 and 160/10 *Gerhard Fuchs, Peter Köhler v Land Hessen*

- encouragement of recruitment is a legitimate aim especially when the promotion of access of young people to a profession is involved.
- the mix of different generations of employees can also contribute to the quality of the activities carried out by promoting the exchange of experience.
- establishing an age structure that balances young and older civil servants in order to encourage the recruitment and promotion of young people, to improve personnel management and thereby to prevent possible disputes concerning employees' fitness to work beyond a certain age, while at the same time seeking to provide a high-quality justice service'.

Lump of labour fallacy



The lump of labour fallacy is essentially a belief that the number of jobs available in an economy is fixed. The phrase is said to have originated in the nineteenth century in an article by a UK economist David F. Schloss (1891). One result of this assumption is that employment opportunities can be created for young people by removing older workers from the labour force. This can result in such policy measures as mandatory retirement or early retirement schemes; putting a ceiling on the number of working hours per week; or measures to reduce the number of women working. There is no evidence of a correlation between youth unemployment and older workers' employment.

- the University operates a retirement age which is at the end of the academic year in which the University officer reaches the age of 67. The University considers that this is important to ensure inter-generational fairness, to complement rights of academic freedom and autonomy, to ensure that the University continues to work towards a diverse workforce and to refresh the academy in providing opportunities for career development to those at an early stage of their academic career.

- The EJRA is considered to provide a proportionate means of:
- safeguarding the high standards of the University in teaching, research and professional services;
- promoting inter-generational fairness and maintaining opportunities for career progression for those at particular stages of a career,
- facilitating succession planning by maintaining predictable retirement dates,
- promoting equality and diversity,
- facilitating flexibility through turnover in the academic-related workforce, especially at a time of headcount restraint,
- minimising the impact on staff morale by using a predictable retirement date to manage the expected cuts in public funding by retiring staff at the EJRA; and
- avoiding invidious performance management and redundancy procedures to consider the termination of employment at the end of a long career, where the performance of the individual and/or the academic or other professional needs of the University have changed.



- Recent court rulings..have suggested that companies can justify operating retirement ages on certain grounds. These include preserving the dignity of older workers by not having to performance manage them out of the business as well as ensuring a flow of promotion opportunities for younger employees. However these rulings have provided little in the way of reassurance. Business wanting to know with confidence that a retirement age is legitimate will have to go through a long, costly legal procedure in order to justify each retirement.

Dignity and inter-generational fairness