

Official statistics demonstrate a new wave of age discrimination claims

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Official statistics, released by the Office for National Statistics, show that 15,336 employment claims included a complaint of age discrimination between March 2020 and March 2021. This marks a six-fold increase in the number of age discrimination claims presented in 2019.

This sharp increase may be explained by the fact that over 50s have suffered the largest decrease in employment of any age group during the pandemic. However, factors such as an ageing population, succession planning and the need to recruit and retain top talent suggest this increase may be here to stay.

The prevalence of age discrimination in the workplace has been identified by Stuart Lewis, founder of Rest Less, an online community for the over 50s. In the words of Lewis:

‘Age discrimination is still widely seen as a socially acceptable form of prejudice’.

Further, a recent published study, The Unretirement Uprising, by 55/Redefined found that:

- two-thirds of over-50s predict age will work against them in recruitment processes;
- 70 percent feel it is difficult to start a new career over 50; and
- almost a third of retirees felt forced to retire.

The Tribunal’s approach to age discrimination

The Tribunal’s approach to age discrimination has recently been outlined in:

Citibank NA and others v Kirk

In the case, the Employment Tribunal ruled that while a marginal age difference of nine months meant it would be ‘prima facie implausible’ that age was a factor in unfavourable treatment, a small age difference could nonetheless still be a relevant factor.

R Sunderland v Superdry plc

Superdry was recently ordered to pay £96,208 to a former employee for unfair dismissal and age discrimination. The claim stemmed from complaints that Superdry failed to promote the claimant and overworked her, whilst younger individuals were recruited, promoted, and recognised. The claimant felt this undermined her standing in the team. The Tribunal concluded that the former employee had been treated unfairly largely because of her age.

Considerations for insurers

The combination of an increase in age discrimination cases, together with the fact that compensation for age discrimination is uncapped, means there could be a significantly increased exposure for management liability insurers, including employment practices liability. Equally, insurers should carefully consider the policy terms in relation to discrimination awards.

Read our more in-depth account of the rise in age discrimination claims:

[Coming of age](#) →

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