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Age equality affects pensions too

Since the introduction of the Employment Equality (Age) Regulations 2006, it has been illegal to discriminate on the grounds of age in the workplace. This means that you cannot pay one employee less than another simply on the grounds of age; that would represent direct discrimination.

Unfortunately, the effect of the regulations are also that you cannot pay one employee more than another on the basis of years of service *if* that could be interpreted as indirectly discriminatory on the basis of age. For example if you paid a higher hourly rate for those with 20 years' service, that would automatically exclude anyone under age 36 and would therefore be discriminatory. On the other hand, justified 'discrimination' is allowed; for example if you pay a higher rate for anyone with more than five years' service because (for example) it takes that long to complete an essential training programme. Justified means that the decision is based on "a proportionate means of pursuing a legitimate aim".

In the pensions arena, there are some specific exemptions applying to occupational pension schemes (but not group personal pensions) which allow a limited level of age based variation in benefits. In general, this means that it is permissible to have minimum and maximum age for admission to the scheme, or to close it to new entrants—which will please many running defined benefit (final salary) schemes.

It is also permissible to have age-related contribution levels, provided that the aim of this is to help equalise members' benefits. It is similarly possible to reduce a spouse's pension where the recipient is younger than the member, at death.

And, of course, it is still permissible to use age-related criteria in actuarial calculations.

One important change is that it is no longer possible to ban those over the normal retirement age who decide to continue working from accruing benefits based on service beyond that age. In other words, as active members of the scheme, they can continue to build up a larger pension for the future.

Small Self Administered Schemes

The report of my death was an exaggeration.

(Mark Twain, New York Journal, June 2, 1897)

The same could be said of Small Self Administered Schemes (SSASs) which were expected to quietly die out after the 'pension simplification' changes of April 2006, in favour of the new Self Invested Personal Pensions (SIPPs).

In practice, nothing could be further from the truth.

Pension planning in any form is, of course, an essential part of any corporate plan; leave money in the business and it is subject to corporation tax, pay it out in salaries and both employer and employee pay more national insurance contributions—the employee also pays more tax.

But whereas SIPPs can look attractive and flexible because they belong to the individual and are fully portable, in practice they can, particularly for large groups, prove less cost-effective and can also introduce additional layers of complexity and administration where commercial property is to be purchased between the several members.

So why can SSASs be more attractive to employers? First, unlike a SIPP which is established by a provider such as a bank, insurance company or other operator, the scheme is set up under a Trust Deed and Rules, specifically for the employer. There is no 'scheme operator' as such. This means that the employer is in control and can appoint—and more importantly, sack and replace—professional trustees, administrators or other advisers at will.

Secondly, all the assets are held in the name of the trustees (although the benefit is attributed to each member, as appropriate) which makes administration far simpler. The individual members, as trustees, are able to make whatever decisions are required and to be guided by the trust deed and HMRC guidance. SIPPs tend to leave everything except investment decisions to the operator.



Flexible benefits can help reduce tax and NI

Few people would wish to cut their income, if you asked them, yet by making pension contributions instead of paying so much in salary (often called salary sacrifice) both employer and employee can save money. In both cases, there is no national insurance payable and the employee is not taxed on the value of the contribution (unless it breaches the annual allowance of £235,000 for 2008/9) but the payment is almost always a legitimate tax-deductible business expense.

In practice, while tax for the employer is effectively neutral, this means a saving on national insurance contributions of 11% for an employee earning up to £40,040 a year, or 1% above that level, while the employer saves 12.8% whatever the level of earnings.

From an employer's point of view, there are very good reasons for wishing to adopt this strategy because it is a way of enhancing the overall value of the package offered to the employee and actually increasing their effective remuneration, because they save national insurance contributions.

The main area where this is likely to be popular is with senior employees, executives and directors, where tax planning is of far greater importance.

An example may help. If we consider a fictional director of an engineering company, who pays himself £65,000 a year. From April 2008, he will pay £16,626 income tax and £4,053 national insurance contributions; a total of £20,679 a year. If he sacrificed £15,000 a year into pension contributions by the company, he will pay a lower total of £14,529 in tax and national insurance, saving £6,150 a year. This means that he is only £8,850 a year worse off.

However, the business is saving £1,920 a year in national insurance contributions, which would increase its net profit. So it can use this money to invest in the director's pension, increasing the gross contribution to £16,920. Looked at another way, the business is no worse off, but the employee, who now has pension contributions worth £1,410 a month, is only £578 a month worse off. A net personal pension contribution of this amount would be worth just under £965 a month.



Removing pensions from the balance sheet

Companies with defined benefit (final salary) pension schemes are faced with a major problem; the liabilities of the scheme can no longer be 'hidden away' off balance sheet, but are there for all to see. This can grossly distort the actual financial position of the company, since schemes can go into deficit and then back into deficit at a moment's notice, thanks to fluctuations in equity and other markets.

One solution is to limit the scope of the scheme as much as possible; if the scheme still allows for the accrual of future benefits, there is little option but to stop this and implement an alternative.

For most employers this will mean closing the defined benefit scheme and replacing it with a defined contribution version.

This is likely to prove controversial and some employers have opted for a 'watered down' defined benefit scheme based on 'average earnings', rather than 'final salary'. However, in either case, there is likely to be some resistance and employers must ensure that there is a well structured and comprehensive communications programme that allows employees to see the benefit to them of co-operating in the switch (or, more realistically, not opposing it).

A second stage is to reduce the number of deferred members, that is people who have left the company, but are still entitled to benefits (increasing in line with 'limited price indexation') when they come to retire.

It may be appropriate to use inducements in the form of enhanced transfer values in order to encourage deferred members to take their benefits into another scheme, or an individual arrangement, perhaps a personal pension or "Section 32" transfer plan. There are, of course, costs associated with this strategy, but these are predictable and can be accommodated within the profit and loss account for one year, removing them from the balance sheet.



Interviewing candidates

Interviewing is seldom seen as part of the marketing mix. We think it should be. Recruitment is a complex procedure and fraught with legal pitfalls, as well as the obvious difficulty of finding out much valuable information about a number of people in the limited time available.

Naturally, you will be well prepared for your meeting, knowing the precise nature of the role to be filled—as, hopefully, will be the line manager you jointly interview with. But whether your organisation favours a formal approach to interviewing candidates, or prefers a more relaxed environment, part of the process must be to “sell” the company to potential candidates. There are a number of reasons for this which are far from obvious.

Clearly, if you have the right person sitting in front of you, it is important that should you make an offer, they are well disposed towards the company and therefore willing to consider joining you. But every candidate you meet is also a potential advocate for the business *even if they are never likely to purchase the product or service you offer*. This is because we all operate in an overall and inexorably linked economic environment. In other words, what we say and do in an interview can affect our actual customers, even if we are not aware of this.

For example, a candidate for administrator within a medical equipment maker may be unlikely ever to become a customer. So if they are not offered a job, why should we be concerned about their perception of the business? In our view, the reason is that they may well talk with friends and relations who could be influencers in terms of medical supplies purchasing, or local government or even have a friend who you might find suitable for some other appointment.

If that other person is given a negative view of your business by an unsuccessful candidate, they might well feel that the business is untrustworthy and not wish to do business with them, grant a necessary license or cause some other disadvantage to the firm. It is not necessarily that they will do so maliciously—this would be seen as “sour grapes”—but a simple lack of enthusiasm can transmit itself in subtle ways.

One defence against this possibility—because there will always be more unsuccessful candidates than successful ones—is to ensure that you present the right image as a potential employer.

This need not mean that work is “a laugh a minute” or that the atmosphere is so relaxed that no real effort is required; these impressions could be counter-productive for the right candidate. What *is* important is that candidates understand just how caring the firm is and how it looks after its employees, without being paternalistic.

The provision of a flexible benefit package, one that reflects the different needs of various individuals without putting the business itself at a disadvantage, is one way of showing candidates how serious you are about making sure employees benefit from working for you just as much as the firm will benefit from having their services.

By doing so, you are giving off a positive message about the business that can have far wider application. Even unsuccessful candidates who think well of you—and feel well treated throughout the process—will be your advocates in the future.

So having a prepared statement about how employees are able to take advantage of the flexible benefit package you offer can be an essential part of your interviewing process. Benefits that are likely to appeal may include:

- Flexible working;
- Pensions, including salary sacrifice;
- Medical insurance.
- Job sharing;
- Life insurance;

Whatever your requirements, we can help you to create a flexible benefits package that puts you ahead of your competitors, ensuring you get the best staff.



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