

Employment Knowledge Hub

KICC – Health & Wellbeing Event

Date: Friday 7 April 2017

Session summary

Brachers Solicitors and our associated HR consultancy, KentHR were delighted to participate in the KICC health and wellbeing event focussed on workforce health and wellbeing matters including looking at mental health issues, occupational health, an ageing workforce and strategies for developing a healthy business.

This sheet pulls together the main issues which arose from the ageing workforce workshops.



Background context

- The concept of an aging workforce is generally considered to cover those who are 50+
- The main source of workforce growth is likely to be those aged over 50 (ACAS 2011)
- Businesses in Kent are still experiencing a skills shortage and looking at ensuring roles are attractive to older workers will help in retaining skilled staff within our organisations.

Age Discrimination Law

Age is a protected characteristic under the Equality Act 2010 (EqA 2010). Part 5 of the EqA 2010 protects a wide range of individuals within the field of employment, occupation and vocational training against age discrimination, harassment and victimisation.

It protects both job applicants and those “in employment” under a contract of employment, a contract of apprenticeship or a contract personally to do work.

Under the EqA 2010, it is unlawful for an employer to:

- Discriminate directly by treating a job applicant or employee less favourably than others because of age without objective justification.
- Discriminate indirectly by applying a provision, criterion or practice (PCP) that disadvantages job applicants or employees of a particular age group without objective justification (see Indirect discrimination).
- Subject a job applicant or employee to harassment related to age (see Harassment).
- Victimise a job applicant or employee because they have made or intend to make an age discrimination complaint under the EqA 2010, or because they have taken action or intend to take action in connection with the Act (see Victimisation).
- It may be possible to show that the conduct did not amount to age discrimination because it was objectively justified in that it was a proportionate means of achieving a legitimate aim.

Key strategies

It came out strongly from both workshops that maintaining effective communication with employees is key and in particular being able to have discussions about:

- **Longer term plans** – most attendees asked employees at annual appraisal time about their longer term plans and ambitions. Some asked on a more regular basis e.g. in quarterly or monthly one to one meetings.
- We agree it is possible to ask employees about their plans but you need to be careful not to be seen to be singling out particular individuals or groups. A regular dialogue with all employees about their plans is the best option.
- **Some employees may want to adjust their work or working arrangements as they approach the age at which they may wish to retire.** Employees with at least 26 weeks’ continuous employment can make a request for flexible working. If they do so, employers have a three-month decision period

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(which can be extended by agreement) within which to provide an outcome to the request.

Key challenges

Following the removal of the default retirement age, employers were concerned about potentially having to deal with sickness/attendance or capability issues to a greater extent. This concern has not proved to be the reality for the majority of attendees but where issues do arise, fair processes need to be followed meaning:

1. In the case of absence or attendance issues, it will be necessary to balance employees' interests with those of an employer.
2. **Up to date medical information will be key** and this is often missed by employers. Employers should also be aware that individuals may satisfy the statutory definition of disability under the Equality Act 2010, meaning that an organisation may be under a duty to make reasonable adjustments.

3. **For capability/performance issues, it is up to employers to set the standards expected** but the emphasis will be on supporting employees to a reasonable extent in reaching the necessary standards.
4. **Training, adjustments to work and feedback are all likely to need to be considered.** Prior to reaching a decision to dismiss, alternatives to dismissal will need to be considered and this may include offering an alternative role the employee would be capable of carrying out.
5. **The longer service an employee has, the more an employer may be expected to do before reaching a decision to terminate employment** on grounds of sickness or capability/performance

Useful information

1. [Be an apprentice](#)
2. [ACAS Age Discrimination](#)
3. [Government Legislation](#)
4. [Equality and Human Rights](#)
5. [Managing an aging workforce](#)

Key benefits

The attendees to the workshop sessions really valued the following:

- **It was perceived to be a benefit to have a balanced workforce** not least because this was likely to reflect customer or client base. Although a number of attendees reported having greater numbers of younger and older workers, they perceived there were insufficient numbers of employees in their 40 and 50s which could impact on the effective transition of skills and experience and succession planning.
- **Increased flexibility** was considered to be an advantage for both employers and employees in retaining skills and experience which might otherwise be lost.
- **Wellbeing strategies can help increase productivity throughout a workforce.**

Key learning points

1. **It remains a challenge to recruit and retain good staff within Kent** and employers are increasingly looking at ways in which they can do this including considering **apprenticeships** (not just for younger employees) and **adjusting working arrangements**.
2. **Effective succession planning can take some years** and it is rarely too early to plan for this.
3. **Mental health issues are affecting employees at all stages of their careers** and employers need to have a clear strategy and be aware of the need to **make adjustments for disabled employees**.
4. When issues arise e.g. capability or attendance matters, care needs to be taken over the process followed.

Brachers and KentHR offer a wellbeing package to support employers in developing a more productive and engaged workforce. Please contact Catherine Daw or Veronica Fox on 01622 690691 if you would like more information.