Age discrimination: your rights

Legal protections exist - but cases are hard to prove

By Emma Woollacott, May 19, 2014

Do you believe you've been sidelined at work because of your age? You're not alone. The 2011 European Social Survey revealed that fifty percent of European workers reckoned that employers favour people in their 20s, rising to 57 percent of those aged 55 to 64.

Occasionally, age discrimination is blatant. Just last week, for example, a Nottingham restaurant and karaoke bar was forced to apologise after online job advertisements called for "girls only, aged 20 to 35" - a clear breach of the law.

Often, though, ageism is more subtle - for example, the culture alleged to prevail at the BBC, with older presenters sidelined. Three years ago, Countryfile's Miriam O'Reilly won her age discrimination case at an employment tribunal after being dropped from the programme, claiming she'd been asked if it was "time for Botox". Often, it's no more than a prevailing culture of 'youthfulness', which can lead to older workers feeling invisible.
Interestingly, and perhaps because it's rarely blatant, age discrimination appears to cause its victims far more problems than other types, such as racism or sexism. A recent US survey shows that it leads to poor physical and emotional health, along with greater loneliness.

"We know how harmful discrimination based on race and sex can be, so we were surprised that perceived discrimination based on more malleable characteristics like age and weight had a more pervasive effect on health than discrimination based on these more fixed characteristics," says lead author Angelina Sutin of the Florida State University College of Medicine.

So if you believe you're being discriminated at work because of your age, what should you do?

Legislators are aware that age discrimination can be hard to pin down. For this reason, the Equality Act 2010 outlaws four different types. First, and most obvious, is direct discrimination: treating someone less favourably because of their actual or perceived age, or because of the age of someone with whom they associate.

Second is indirect discrimination, where an employer has a policy, practice or procedure which applies to all workers, but particularly disadvantages those of a particular age. Requiring job applicants to have worked in a particular industry for ten years, for example, could amount to discrimination against younger people.

Also covered are harassment - when an individual's dignity is violated, or an intimidating, humiliating or offensive environment is created - and victimisation, where an employee who has made or supported a complaint about age discrimination is treated unfairly.

Unfortunately, though, age discrimination is often very hard to establish, says employment lawyer Ivor Adair of Slater & Gordon.

"It is often the case that employers simply don't do it in an obvious way, it's much more subtle. Sometimes they themselves may not realise they are harassing someone on the grounds of their age, because they think it's OK, for example, to make jokes," he says.

"Sometimes it's the general workplace culture where the old or even the young are not favourite for whatever reason - for example, constant references to being a youthful team, or dynamic, or whatever. However, that by itself probably wouldn't be enough. What would be helpful would perhaps be someone being treated very differently from someone else of a different age with no clear reason."

Employers, though, do sometimes have a let-out, known as 'objective justification'. "Unlike sexual, racial or disability discrimination, direct age discrimination can be justified so long as the employer has a good clear reason," says Adair. "But it can't be simply the employer's own business reason, it should have a wider application."

In other words, if an employer is trying to argue that an older worker isn't physically fit enough
for a job, it has to be able to provide objective evidence and show that its behaviour is proportionate.

Recent research from Slater & Gordon revealed that workers as young as 40 felt their career was stalling because of their age. Nearly half of those surveyed said they were more likely to get overlooked when it came to promotions because of their age, with one in ten feeling ignored by their manager and one in seven saying they'd seen younger staff get promoted ahead of them since they hit 40.

Surprisingly, sixty percent of those surveyed were unaware that there was legislation to protect them from age discrimination in the workplace. And even when people do realise, they can be slow to complain. "There may be a hesitancy about raising the issue of age. It's one of the newer types of discrimination and may not have settled into our culture yet," says Adair.

Naturally, if you believe you're being discriminated against because of your age, your first step should be to talk directly to your employer about it. A union may often be able to help. But, says Adair, it's a good idea to start collecting evidence early - and to get advice just in case.

"What they need to do is speak to an employment lawyer - and do it quickly, because it may be much more difficult later on," he says. "There's all sorts of strategic decisions on what you say when, so getting early advice when you start to see the situation developing would be very sensible."