
STATUTORY INSTRUMENTS

2006 No. 2931

**The Employment Equality (Age)
(Amendment No.2) Regulations 2006**

Length of service exemptions for trustees or managers and employers

5. After paragraph 3 of Schedule 2 (exception for rules, practices, actions and decisions relating to occupational pension schemes) insert—

“Length of service exemptions

3A.—(1) Subject to sub-paragraph (2), nothing in Part 2 or 3 of these Regulations shall render it unlawful for—

- (a) any rule, practice, action or decision of the trustees or managers (“A”) of a scheme regarding—
 - (i) admission to the scheme (“admission terms”); or
 - (ii) the accrual of, or eligibility for, any benefit under the scheme (“benefit terms”),

where the admission terms or the benefit terms put a member (“B”) of the scheme at a disadvantage when compared with another member (“C”) if and to the extent that the disadvantage suffered by B is because B’s length of service with an employer (“D”) in relation to the scheme is less than that of C;

- (b) any rule, practice, action or decision of an employer (“E”) in relation to a scheme regarding the admission terms or benefit terms where it puts a member (“F”) of the scheme at a disadvantage when compared with another member (“G”) if and to the extent that the disadvantage suffered by F is because F’s length of service with E is less than that of G; or
- (c) any rule, practice, action or decision of an employer (“H”) regarding payment of contributions in respect of a worker (“I”) to a personal pension scheme or to a money purchase arrangement (“contribution terms”) where it puts I at a disadvantage when compared with another worker (“J”) if and to the extent that the disadvantage suffered by I is because I’s length of service with H is less than that of J.

(2) Where B’s, or as the case may be, F’s or I’s length of service exceeds 5 years and a length of service criterion in the admission terms or as the case may be, the benefit terms or contribution terms puts B or F or I at a disadvantage—

- (a) where sub-paragraph (1)(a) applies, A—
 - (i) must ask D to confirm whether the length of service criterion reasonably appears to D to fulfil a business need of D’s undertaking (for example by encouraging the loyalty or motivation, or rewarding the experience, of some or all of his workers), and
 - (ii) may rely on D’s confirmation;
- (b) for the purposes of paragraph (a)(i), D must—

- (i) calculate B's length of service;
 - (ii) provide A with details of B's length of service; and
 - (iii) respond to A's request within a reasonable time;
- (c) where sub-paragraph (1)(a) or (b) or (c) applies, it must reasonably appear to D or, as the case may be, E or H that the length of service criterion applies in such a way that it fulfils a business need of his undertaking (for example by encouraging the loyalty or motivation, or rewarding the experience, of some or all of his workers).
- (3) When calculating B's or, as the case may be, F's or I's length of service D or, as the case may be, E or H shall calculate—
- (a) the length of time the member or worker has been working for him doing work which he reasonably considers to be at or above a particular level (assessed by reference to the demands made on the member or worker, for example, in terms of effort, skills and decision making), or
 - (b) the length of time the member or worker has been working for him in total,
- and it is for D or, as the case may be, E or H to decide which of paragraphs (a) or (b) to use.
- (4) For the purposes of sub-paragraph (3), D or, as the case may be, E or H shall calculate the length of time a member or worker has been working for him in accordance with paragraphs (4) to (7) of regulation 32 (exception for provision of certain benefits based on length of service) and any reference in those paragraphs to—
- (a) "A" shall be read as if it were a reference to "D" or, as the case may be, "E" or "H"; and
 - (b) "worker" shall, where sub-paragraph (1)(a) or (b) applies, be read as if it were a reference to "member".
- (5) For the purposes of this paragraph, a "member" shall include a "prospective member".