
STATUTORY INSTRUMENTS

2006 No. 1031

The Employment Equality (Age) Regulations 2006

PART 4

GENERAL EXCEPTIONS FROM PARTS 2 AND 3

Exception for provision of certain benefits based on length of service

32.—(1) Subject to paragraph (2), nothing in Part 2 or 3 shall render it unlawful for a person (“A”), in relation to the award of any benefit by him, to put a worker (“B”) at a disadvantage when compared with another worker (“C”), if and to the extent that the disadvantage suffered by B is because B’s length of service is less than that of C.

(2) Where B’s length of service exceeds 5 years, it must reasonably appear to A that the way in which he uses the criterion of length of service, in relation to the award in respect of which B is put at a disadvantage, 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) In calculating a worker’s length of service for these purposes, A shall calculate—

- (a) the length of time the 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 worker, for example, in terms of effort, skills and decision making); or
- (b) the length of time the worker has been working for him in total;

and on each occasion on which he decides to use the criterion of length of service in relation to the award of a benefit to workers, it is for him to decide which of these definitions to use to calculate their lengths of service.

(4) For the purposes of paragraph (3), in calculating the length of time a worker has been working for him—

- (a) A shall calculate the length of time in terms of the number of weeks during the whole or part of which the worker was working for him;
- (b) A may discount any period during which the worker was absent from work (including any period of absence which at the time it occurred was thought by A or the worker to be permanent) unless in all the circumstances (including the way in which other workers' absences occurring in similar circumstances are treated by A in calculating their lengths of service) it would not be reasonable for him to do so;
- (c) A may discount any period of time during which the worker was present at work (“the relevant period”) where—
 - (i) the relevant period preceded a period during which the worker was absent from work, and
 - (ii) in all the circumstances (including the length of the worker’s absence, the reason for his absence, the effect his absence has had on his ability to discharge the duties of his work, and the way in which other workers are treated by A in similar circumstances) it is reasonable for A to discount the relevant period.

(5) For the purposes of paragraph (3)(b), a worker shall be treated as having worked for A during any period during which he worked for another if—

- (a) that period is treated as a period of employment with A for the purposes of the 1996 Act by virtue of the operation of section 218 of that Act; or
- (b) were the worker to be made redundant by A, that period and the period he has worked for A would amount to “relevant service” within the meaning of section 155 of that Act.

(6) In paragraph (5)—

- (a) the reference to being made redundant is a reference to being dismissed by reason of redundancy for the purposes of the 1996 Act;
- (b) the reference to section 155 of that Act is a reference to that section as modified by the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999⁽¹⁾.

(7) In this regulation—

“benefit” does not include any benefit awarded to a worker by virtue of his ceasing to work for A; and

“year” means a year of 12 calendar months.

⁽¹⁾ S.I.1999/2277. See Schedule 2, Part 1, paragraph 2.