British Hospitality Association

The business case for employing older workers

Employing older workers delivers improvements in productivity and enhances reputation.

<table>
<thead>
<tr>
<th>Avoid Financial Loss</th>
<th>Delivers Financial Benefits</th>
<th>Is a strategic approach to long term performance</th>
<th>Helps companies learn, innovate &amp; manage risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reduced cost of training and recruitment associated with high staff turnover</td>
<td>Increased productivity associated with a more engaged workforce</td>
<td>Older worker employment strategy not only:</td>
<td>Older workers can identify market opportunities associated with older people (growth market)</td>
</tr>
<tr>
<td>Cost of skills gap</td>
<td>Skills gaps addressed (increasing capacity for growth)</td>
<td>Extends recruitment pool; But also…</td>
<td>Older workers use life experiences to mentor younger colleagues</td>
</tr>
<tr>
<td>Avoids risk of age discrimination claims¹</td>
<td>Supports recruitment of top talent</td>
<td>Creates a market by generating customers (older people with greater spend on leisure industries)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Improves customer service levels and improves customer experience</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The consensus from employers to date is that they bring life experience, good customer service skills, loyalty and reliability. Many are happy to work on a flexible/seasonal basis. Older workers not only create the customer base (older people with income have more money to spend on leisure) they also attract older customers. Statistics suggest that the over 50’s currently hold 80% of the nation’s wealth, and to give you an insight into the growth potential of this market, the number of people of state pensionable age will increase by 32% over the next 25 years. This should provide a sufficient driver for action; people are more likely to frequent an establishment if they can see people like themselves are working there, and are confident that staff will better understand their needs.

Hospitality employers need to learn from those who have improved the age diversity of their workforces. Age profiles do vary across the sector. There is, for example, a difference between age profiles in hotels, banqueting and in public sector catering, though bars and restaurants remain the preserve of the young. But low visibility of older people who are doing a great job in all sectors needs to be tackled. To encourage older workers to apply for jobs they have to know they are there in the first place. Employers that are doing well on this agenda, like McDonalds, JD Wetherspoon, and others need to share their experiences and encourage colleagues across the sector.

Case Studies

**McDonald's** found a positive correlation between high performance, productivity and job satisfaction. They found the higher the mean age of the workforce, the higher the service quality, customer visits, sales, profits and job satisfaction.

**JD Wetherspoon** stopped using a retirement age in 2006. They wanted to retain valuable skills and experience and give staff the choice of working for longer. They find no evidence of high levels of sickness absence for employees over 65 or any succession planning issues. They have experienced improved customer satisfaction and now have staff retention levels well above the industry norm.

The Law: End of Default Retirement Age

The UK Government has confirmed that it will phase out the Default Retirement Age (DRA) for all sizes of employer from 6 April 2011, so that people have more choice when to stop working. This change means that:

¹ According to the Employment Tribunal and EAT Statistics 2009-10 there were (between 1 April 09 -31 March 2010) 5,200 age discrimination claims
From 6 April 2011 Employers will not be able to issue any notifications for compulsory retirement using the DRA procedure.

Only people who were notified before 6 April 2011, and have reached 65 (or their employer's retirement age when this is higher) before 1 October can be compulsorily retired using the DRA. (These employees will be able to request to work beyond their notified retirement date in accordance with the DRA procedures and employers will be able to agree an indefinite extension or a fixed extension of up to 6 months)

Beyond these transitional arrangements, employers will not be able to compulsorily retire their employees unless the retirement can be objectively justified in their particular circumstances.

There is no statutory upper age limit on the right to claim unfair dismissal or to receive redundancy payments.

When the Government removes the default retirement age it will make compulsory retirement at any age unlawful unless objectively justified.

Implications

- People will have more choice as to when they stop working. Workers will retire when they are ready to, enforced retirement will only be possible if it is objectively justified.
- In BHA members' sectors some staff already work beyond the present statutory retirement age. Generally these staff have been given a yearly extension, often using risk assessment for the measure as to whether the extension is granted. This method will no longer be appropriate or legal.
- You must avoid discriminating against all workers on the grounds of age.
- This legislation will be applicable to all employers and all company sizes and sectors
- These changes do not affect an employee's pension age and entitlements, which may well be separate from the age at which they retire.
- The removal of the DRA not only raises practical issues for employers in managing the older worker but also across the workforce more generally. It covers a wide range of areas such as succession and workforce planning, performance management and ensuring consistency and fairness in their policies and practices. It is important to remember too that the removal of the DRA will have implications for all employees in terms of career expectations and advancement.
- Options for flexible working should be explored to support older workers that wish to continue working but perhaps wish to reduce hours or take on less responsibility
- The proposed changes will have far reaching implications for the way many businesses work. Employers who fail to make the necessary changes and approaches to employee retirement may face claims of unfair dismissal and discrimination.
- Performance Management Procedures must be implemented fairly across the entire workforce.
- Appraisal, competence and disciplinary procedures will need to be used by management for all employees regardless of age.

What do (you) employers need to do?

Employers now need to:

1. Review proposed imminent retirements

2. Consider whether you are willing to run the risk of retaining a compulsory retirement age following the abolition of DRA. To do this you will need to identify
   a. a business need which is deemed acceptable by the courts (for example health and safety or succession planning); and
b. strong and reliable evidence to demonstrate why the EJRA is a reasonable and proportionate way of meeting the identified business aim despite its discriminatory effect

3. Review any existing retirement policies

4. Plan for the future – Managing your workforce without a DRA?
   a. Workforce Planning
   b. Performance Management (Training & Development)
   c. Flexible Working and Retirement

If, in the past you have given older workers beyond 65 a yearly extension, using for example risk assessment as the measure as to whether the extension is granted, you need to recognize this will no longer be appropriate or legal.

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**Managing a Workforce of All Ages**

The removal of the default retirement age (DRA) puts a renewed focus on the issue of workforce management and dealing with declining performance. There is considerable evidence that improving workforce management techniques whether you are a large or small employer – is good for business.

Smaller businesses in the sectors often lack confidence in workforce management and till now some have used the retirement process and default retirement age (DRA) as a ‘fail safe’ for removing poor performers. This is often on the basis of a misguided view that it is more dignified to ‘retire’ a long-serving employee rather than deal with issues of under-performance or declining capacity.

This attitude can end up being unfair to all employees, as workers of any age may feel that they don’t get an opportunity to discuss their performance, improve or perhaps change their working pattern and behaviour.

**Often employers ask; “How can I deal with an older worker who is under-performing?”**
Another problem that employers raise is that workforce (or performance) management is complicated and burdened with paperwork.

- Workforce management need not be an elaborate appraisal process – it is a conversation that focuses on competence, ability and potential without making assumptions about age
- It applies to all employees regardless of their age – just reviewing the performance of older workers could raise concerns about unlawful age discrimination
- All conversations should provide both the employer and employee an opportunity to talk about their hopes and plans for the future

It is important that this type of conversation is not seen as a one-off event. There needs to be an ongoing dialogue as things may change from both you and your employee’s perspective.

You need to distinguish between a poor performance because of laziness or poor conduct and diminishing performance where apparent inefficiencies might be addressed through adjustments, training or up-skilling or redeploying skills and experience in another role.

You should tackle any issues about performance as they are happening, don’t raise issues with an employee that are months old and that will come as a surprise if you discuss performance at the end of the year.

If you don’t see improved performance then you may want to consider fair dismissal as a route – both ACAS and BHA will be able to help you.

A checklist of basic principles

The basic principles of dealing with under-performing employees are simple and apply regardless of the age of the employee

- What is the problem?
- What needs to improve?
- Agree a timescale for improvement
- Identify where new skills may need to be learnt
- Consider if any other issues are causing the problem e.g. any health or disability issues, new or heightened caring responsibilities
- Take advice on occupational health issues – your trade body should be able to help
- Agree changes or adaptations e.g. reduced hours, different shifts - possibly on a trial basis
- Regularly review progress
- Keep simple records
- Clearly state what will happen if there is no improvement (i.e. that you may have to consider the option of fair dismissal)

Ensure everyone who has a role in managing staff knows these principles, is trained to discuss under-performance and supported in managing staff

Here are some top tips about workforce management

Schedule a regular conversation with all employees

Before you meet each staff member think about the requirements of their current job and whether your business needs are being met. For instance are they doing the work in the way you want with due regard for health and safety. In effect are you happy with your employee’s work and way of working?

1. Will you need them to work differently in the future - what skills will you need this employee to have or develop for the future?
2. Do you know what your employee’s aspirations and expectations are for the future? By building this into the conversation you give all workers an opportunity to say what their plans are, for instance whether they are thinking about retirement.

3. Does your employee understand what the job requires; do they comply with specifications and meet deadlines?

4. Then you need to consider what you need to do if you’re not happy with their work - what particular aspect of their work is causing a problem – have you raised this with them? If not, now would be a good time to make them aware that you have some concerns.

5. Discuss with them what you need to see changed and think about how you can help your employee to work better in the future - perhaps your worker would benefit from some up-to-date training.

6. Consider whether there are any adjustments or alterations you need to make – checking against your own health and safety workplace assessments.

7. Consider if it might be possible to change their working pattern – for instance reducing hours, moving them to a different role where you will be able to retain skill and experience.

8. Agree with your employee if there are actions or changes they need to take – sometimes this is called a performance improvement plan – and make sure that you take written notes of your meeting.
Managing without a Retirement Age: Your Q&As

Should I be worried?

No. Older workers make a huge contribution to the success of the hospitality industry. The hospitality sector needs to retain talented older workers.

Do I have to continue to provide insured benefits?

No. Group risk insured benefits (including income protection, sickness and accident insurance, as well as private medical insurance) will be exempt from the principle of equal treatment on the grounds of age so that it will remain possible for employers to cease to provide or offer these benefits once a worker has reached the age of 65 or the State Pension age for men, even if he or she decides to continue working beyond that age. The age at which group risk insured benefits can be withdrawn will increase in line with increases to State Pension Age.

Without fixed retirement ages won’t older workers have to resign to finally leave?

Older workers can still plan to retire positively in the absence of a fixed retirement age. As they are coming up to the point when they plan to retire, they would have to give their employer notice that they intend to leave work. Many older workers will want to consider their options for working on or retiring as they approach an age from which a pension may be payable, whether that's the State Pension, an occupational pension or a privately arranged pension.

If I discuss retirement with an older worker can I leave myself open to a claim of age discrimination?

Not if properly handled. Employers may reasonably want to know about an employee’s future aims and aspirations. The important thing is not to single out older workers. If you are going to ask older workers about their plans it is good practice to also ask other, younger workers, about their plans as well, perhaps as part of an annual appraisal meeting.

How do I get rid of poor performing older workers?

Many employers find that managing employee performance without fixed retirement ages is not a problem: they use fair dismissal procedures and performance discussions for all their workers. Leaving someone to perform poorly in the years running up towards retirement and then letting them finally retire can be costly to the business. Line managers and supervisors need to be able to assess employees of all ages on their performance and ability, and take appropriate action. If a worker is no longer able to do their current job, or an alternative job, then a change in their hours or responsibilities might help them to cope better and enable you to retain valuable skills and experience. Where an employee develops a disability as defined by the Equality Act 2010, an employer may need to make reasonable adjustments to enable them to continue to do their job. If performance can’t be improved, use the same fair dismissal procedures as for workers of any age. Ignoring shortfalls in performance because it is assumed that an employee is near retirement may be discriminatory, particularly if the performance of younger workers is handled differently. Generally employees know when they are no longer able to carry on and self-select to leave or 'retire'.
Good Age Practice

It is already unlawful to discriminate against workers because of age. Employers should ensure they have policies in place which prevent discrimination in:

- recruitment and selection
- pay
- training and development
- selection for promotion
- discipline and grievances
- bullying and harassment

**Recruiting and Retaining Older Workers: what should you do?**

*Think about these simple, practical steps on managing age positively:*

**Recruitment:** Avoid ageist language in adverts. Focus on job needs. Publicise your vacancies in ways most likely to attract responses from a range of age groups. Try to separate personal details such as date of birth when sifting applications. Don’t make assumptions. Monitor the number of candidates of different age groups.

**Training and Development:** Ensure promotion opportunities are available to all. Ask managers to encourage older and younger workers to take part in training. Monitor take-up. Make certain younger managers are confident about positively managing workers older than themselves.

**Flexible Working:** Consider what forms of flexible or part-time working you can offer. Tell workers of all ages you are open to requests to work flexibly and how they can discuss their options.

**Performance Management:** Have performance discussions with all your workers. Where performance does not meet the business needs consider whether training, or a change in hours, working pattern, or job, can help the individual cope better.

**Fair Dismissal:** Ultimately where performance cannot be improved, ensure the same fair dismissal procedures are applied to workers of all ages.

**Redundancy:** Do not lose skills relevant to your business needs. Consider alternatives to redundancy. Use job-related criteria. Do not target specific age groups.

**Retirement:** Make sure your workers know that you are open to discussions about working on and options for flexible or full retirement. Ensure line managers and supervisors understand how to support these discussions; and that employee benefits and pensions are reviewed and support employees after normal pension age.

**Culture:** Challenge ageist attitudes, demonstrate there is no place for age discrimination in your workplace.
Conclusion

- The abolition of Default Retirement Age means that BHA member employers must revise and adapt their HR policies and actions in readiness for staff wishing to continue working beyond 65.
- There are concerns regarding opportunities for the promotion of younger employees as there is a potential for older workers to block succession (good performance management, workforce planning and ongoing conversations with staff throughout their working lives can resolve these issues).
- There may well be some challenges to the introduction of this fundamental change in employment legislation. It will take time and commitment to implement and there will be some extra costs.
- BHA recommends that the members take a positive approach to this initiative and use the legislation to retain older staff who add extra value and customer service to their organisations.

Tell us your story

Employers may be nervous about managing without a retirement age. They needn’t be. Many employers stopped using a retirement age years ago. If you have abolished retirement in your business, tell us your story. Why did you do it and how have you benefited?

More help needed?

BHA will be developing additional good practice advice and support on our website (address).

For further information, please email (address)

Where can I find additional information?

www.businesslink.gov.uk/agepositive