



EMPLOYMENT
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FOR EMPLOYEES

An Employee's Guide to Age Discrimination



ABOUT THE AUTHOR

Seán is the principal of Employment Matters, a boutique employee-focused law firm based in Waterford City but servicing the entire South East as well as Dublin.

Seán is a qualified solicitor with a Masters Degree in Marketing from the UCD graduate school. Seán also holds a Diploma in Commercial Law from the Law Society and a Diploma in the Law of eCommerce.

We are a specialty law firm focusing its practice on the areas of employment law, especially in the areas of Unfair Dismissal, Redundancy Matters, Discrimination, Protected Disclosure, Health & Safety at work, Agency work and Fixed and Part term contracts.

Our clients come to us because of our experience, knowledge, expertise, track record in and out of court, and our reputation for integrity and client satisfaction.

We emphasize practical, reasoned advice in an effort to minimize or prevent legal difficulties. When a client is involved in a dispute, our primary concern is to achieve an expeditious and economic result. When formal litigation or other dispute-resolution proceedings are necessary, we provide aggressive, high calibre advocacy.

In particular, we are focused on providing you with employment law advice and consultancy to help employees prevent or resolve employment issues where conflict has arisen or where there has been a breakdown in the employment relationship.



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If you have any specific questions about any legal matter, you should consult your lawyer or other professional legal services provider. You should never delay seeking legal advice, disregard legal advice, or commence or discontinue any legal action because of the information contained here.



Introduction

Have you been made to feel like your surplus to requirements because of your age? Have you been dismissed simply because you reached retirement age yet still having a lot to offer your former employer?

The first thing to know is that age discrimination is wrong and it is against the law.

According to the Central Statistics Office in 2019, over one-third (34.1%) of individuals have cited Age as the ground for discrimination. The EU and Ireland have recognized the new realities of modern life. People are working longer and living longer. Older people are not just fit to shuffle off but have huge experience and productivity to offer in the workplace. A 68-year-old book-keeper could have as much if not more to offer than a 25-year-old doing the same job! So why treat people differently just because of their age?

According to the Central Statistics Office in 2019, over one-third (34.1%) of individuals have cited Age as the grounds for the discrimination they have suffered.

The Employment Equality Act 1998 makes it unlawful to discriminate against an individual on any grounds of their age.

The Act prohibits Age discrimination from:

- Employers
- Employment Agencies
- Employer organization
- Trade Unions
- Professional bodies

The advertising of a job by a company is also protected under the Equality Act 1998. This type of discrimination relates to equal pay, access to employment, conditions of employment, training or experience, promotion or regrading, or classification of posts.

For example, setting a minimum age requirement for an advertisement or setting a different rate of severance payments of employees based on their age on leaving their employment.

The most common cases we see in relation to age discrimination usually occur during the recruitment process, particularly during the interview stage. It is also common for age discrimination to occur when there is a redundancy situation within an organization. We have also had experience with Clients experiencing age discrimination when individuals are coming close to the retirement age of 66 years.

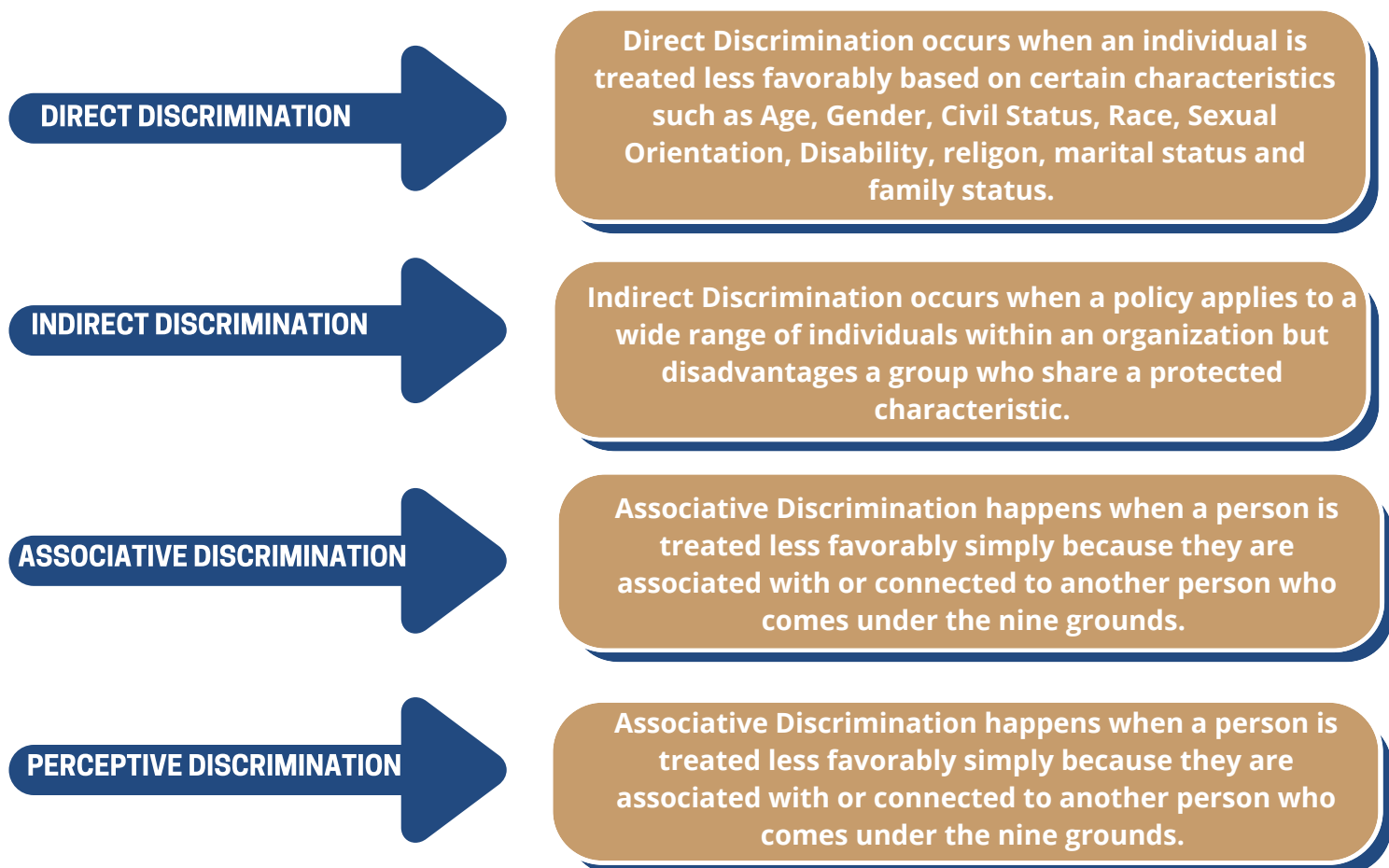
If you have been affected by Age Discrimination, we are here to offer you advice and help to guide you through taking a case to the Workplace Relations Commission ("WRC").

WHAT ARE YOUR RIGHTS?

The team at Employment Matters are passionate about protecting the Employment Rights of our clients in relation to Age Discrimination.

Age discrimination occurs when an individual is treated less favorably than another individual based on certain characteristics secured by the Employment Act 1998.

These situations can arise through:





CATHERINE'S* STORY

"When I was let go from work just because I was 65, I was initially embarrassed and annoyed, I didn't know where to turn, I thought that was it and then I began to look at my options. My self-confidence was bruised but I knew I had been treated badly. I contacted employment-matters and they were great.

Eventually, when my case was reported on in the Irish Times I knew I had done the right thing. I got compensation from my employer but that was not what this was about. I got my confidence back and am now back working full time with a better employer. I couldn't have done that without the support of employment matters"

Catherine 67, Waterford*

Our Client, Catherine*, worked as a Bookkeeper/Secretary for a well-run retail outlet for over 10 years. Catherine* was a loyal employee, she got on well with her colleagues and management. Catherine* loved her job and had always received positive feedback regarding her work.

As it was coming up to Catherine's* 66th birthday, she was approached by a Director for an impromptu meeting. The Director informed Catherine* that she was turning 66 years old on the 23rd March*, he insisted that she retire and that her role would be considered on a fixed-term rolling contract basis for a further two years.

Catherine* had absolutely no intention of retiring any time soon and she made that point clear to her Employer during the meeting. Catherine was shocked and disappointed with the lack of regard that management had shown towards her simply because of her Age. She reached out to her Employer and informed them in writing that this was unacceptable treatment and that she had no intentions of retiring on her 66th birthday.

Catherine fought her corner and sent multiple emails requesting clarification on the situation. She did not receive a response. Catherine* then asked her Employer to clarify what their position was in writing.

Catherine* felt worthless, humiliated, and depressed after her experience. Although she was 66 years old, she was still more than capable of carrying out her duties. Catherine* wanted to ensure that her former employer did not get away with how they had treated her.

Catherine contacted Employment Matters and booked a consultation with our Legal Team to discuss details regarding her treatment in this case.

She instructed us to work on her behalf by signing the Instructions and Authority documentation. We got straight to work drafting her submissions, initiating a data access request, and communicating with her former Employer's Council.

We made an application to the Workplace Relations Commission ("WRC") where we represented our client and proved to the adjudicator that Catherine's* Employer had undoubtedly dismissed Catherine* on the grounds of her Age and that she had been discriminated against due to that factor.

The adjudicator awarded Catherine* €12,000 due to the treatment she received at the hands of her employer.

*All names and exact dates have been changed to protect our client's anonymity.

WHAT TO DO NEXT?

Unfortunately in Ireland, Age Discrimination is commonplace.

If you are faced with Age Discrimination at work, you must act quickly to make a claim in the WRC.

You have six months from the time you were dismissed to make a claim.

If you or someone you know has been the victim of Age Discrimination don't suffer in silence, Employment Matters is here to help you.

As an employee-oriented Law consultancy, our team has a wide range of experience dealing with cases similar to Catherine's* story.

Call us now on 1890 88 90 90 or send us an email to info@ormondesolicitors.ie to book a no-obligation consultation and to discuss the validity of your claim.





DO YOU STILL HAVE A QUESTIONS?

GET IN CONTACT WITH US THROUGH THE FOLLOWING WAY'S

Our dedicated team of Employment Law Specialists are waiting to help you with your query.

The first consultation is of no obligation so call us today on:



1890 88 90 90



info@ormondesolicitors.ie



<https://www.employment-matters.ie/>



<https://www.facebook.com/employment-matters.ie>

The background of the entire page is a dark, textured surface with several interlocking gears. The gears are rendered in a light, almost white color, creating a strong contrast with the dark background. The gears are of various sizes and are positioned in a way that suggests they are part of a larger mechanical system. The lighting is dramatic, highlighting the edges and teeth of the gears.

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Employment Matters is a trading name of Sean Ormonde & Co. Solicitors.



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ABOUT US

How do we know what we're talking about? Well, last year alone we cost Employers all over Ireland over €1 million in payments to disgruntled employees.

Over the last eight years, we've pretty much seen it all, and we know every trick in the book. We've represented employees in the Employment Appeals Tribunal, the Equality Tribunal, the Rights Commissioner Service, the High Court, the Circuit Court and the Labour Court. We've met judges, barristers (both senior and junior counsel), Tribunal chairs, rights commissioners, equality officers, adjudicators, winners, losers, the cook, the baker, the candlestick maker!

We've fought cases under the Unfair Dismissals Acts, Equality legislation, Data Protection Acts, for breach of contract and payment of wages. We've taken injunctions and prevented dismissals, negotiated settlements and compromises and achieved significant compensation awards costing employers a lot of money along the way.

One Client of ours was dismissed by his employer, a well-known hotel chain, for allegedly head-butting a work colleague at the staff Christmas party. We took on his case, although after viewing the CCTV footage provided to us under the Data Protection Acts we weren't particularly confident. However, following three days of hearing in the EAT our Client was awarded €35,000 for unfair dismissal. From his employer's perspective, they've been stung for €35,000 as well as three days of legal fees and the disruption to their business having their HR Director, General Manager, Head of Security and others at the hearing and away from their jobs for three days. Best of all for our Client though was how we made the HR Manager look pretty silly in cross-examination. She was ridiculed for not knowing or admitting to know the importance of a fair procedure in an employment context.

She was humiliated.

To our Client that was pay-back to a degree for how low and small she made him feel when they decided not to listen to his explanation for what had actually happened. You see our Client hadn't headbutted anyone. In fact, he'd been sober that night. But he wasn't particularly liked at work and when there was a scuffle with another member of staff, management saw their chance. They could get rid of our Client who had been a thorn in their side. So, it didn't matter what our Client said or did. No-one was going to listen to him, he'd headbutted someone and had to go...until we showed up.

Last year we represented employees in over 80 cases that went to hearing. We achieved awards of over €1 million, that's in awards alone. One million euro! That's not to mention the other costs of defending the case including of course legal fees and the intangible costs associated.

As I mentioned above though the tables are turning against claimants who are unrepresented or badly represented. It seems to me that the Government in introducing the new WRC process succumbed to the lobbying of big business and presumably part of that was to do with trying to make Ireland as attractive a destination as possible to foreign companies. The key to that often is to water down employment rights and make the employment market and in particular hiring and firing less off-putting for employers. And that is what the WRC has done in my view. So how is that you might ask? Well in my view the following is important in revealing how the system works against Claimants.

Hearings are conducted in the WRC in private. Now you might think that this is a good thing and certainly that's the way it was sold by the Government at the time but in reality there is no logical explanation for this and in fact it could be argued to be unconstitutional.

You see leaving aside the constitutionality of things (whether justice should be seen to be done) what employers hate more than anything is bad publicity.

Any case in the EAT, the Equality Tribunal or the Courts was bad for business. A carmaker doesn't want to alienate half their customers by being accused of discriminating against women. Under the new system, that threat is now gone.

The hearing are held in private and to compound this, the decisions are anonymised. What that means in reality is that even the worst offenders can take a chance at the early WRC adjudication stage and damn the consequences if they lose. We are seeing more and more of these cases running where previously they may have settled.

Secondly, while not a change per se, the fact that the WRC doesn't award costs is certainly more advantageous to the Employer than the Claimant. You see the Employer probably has a lawyer on retainer and they are doing lots of other things for which that lawyer is probably getting well rewarded so its easy for the Employer to get his lawyer into the saddle for a WRC hearing. Not so much for you, a claimant who may not have had to use a lawyer at any time in the past, how do you choose one? who do you choose? who will properly represent you?

Do they know what they are doing?

It should also be mentioned here that of course it's generally cheaper for an employer to retain a solicitor than it is for you because of course the employer gets to claim their VAT back making it about 23% cheaper for them than for you.

Another thing we see frequently is that employers will invariably roll out the big guns in Dublin, magic circle type firms. We've dealt with them all Arthur Cox, William Fry, A&L Goodbody, Matheson and Mason Hayes & Curran in the last year alone. We have also dealt with the mid-tier boutique firms like Daniel Spring & Co., Beauchamps and Byrne Wallace. These firms are all excellent, but do they know any more about the WRC than we do?

Some people come into and tell us that they met a lawyer who balked at the prospect of going up against the big boys and that makes me wonder why? So who do you want on your team? some guy who has never set foot in the Labour Court? or an expert who is well known there and who is respected by the other side?

Unfortunately, litigation is expensive. We're not saying we've got some silver bullet that's going to make all of your problems go away, that there's some magic dust that we'll sprinkle and it'll get the other side to pony up regardless of culpability.