



International  
Chamber of Shipping

Shaping the Future of Shipping

Guidelines for Shipowners to

# **Avoid Age Discrimination On Board Ships**



## **Guidelines for Shipowners to Avoid Age Discrimination On Board Ships**

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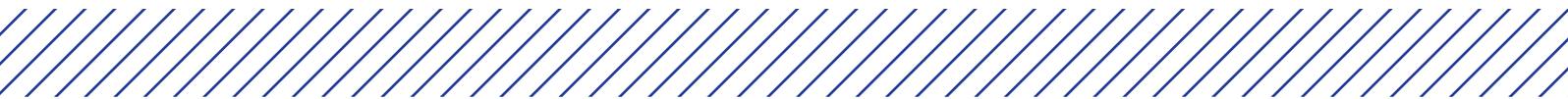
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# Introduction

## Background

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This guidance has been produced to help to eliminate age discrimination and to improve the working environment on board ships. Age discrimination (ageism) is a potential form of unfair treatment at work given that the age gap between employees in the workplace can now be as much as 50 years.

Under the International Labour Organization (ILO) Maritime Labour Convention 2006 each member state must satisfy itself that the provisions of its laws and regulations respect the fundamental right to the elimination of all forms of discrimination in respect of employment and occupation.

Age discrimination can seriously affect the physical and emotional health of employees and job applicants. It can lead to decreased motivation and increased sickness and can compromise cohesive and effective teamwork. It can also negatively affect companies resulting in potential organisational, economic and legal consequences.

A ship is often a seafarer's home for many months. It is therefore essential to ensure that there is a conducive living and working environment to avoid seafarers feeling isolated and vulnerable.

Factors to consider include:

- Protection against unfair treatment because of someone's actual age, the age they are thought to be, or the age of someone they are associated with;
- Protection against harassment because of age; and
- Different treatment because of age being allowed in limited circumstances, e.g. cadets.

These guidelines aim to assist shipowners, managers, and HR professionals to:

- Avoid age discrimination in all activities;
- Appreciate the benefits of a workplace free of age discrimination;
- Make workplaces inclusive so that staff feel they belong, irrespective of age, and are not disadvantaged or under-valued;
- Develop measures, policies and plans for active use to eliminate age discrimination and improve the working environment on board;
- Involve employees or their representatives in this process;
- Recognise examples of age discrimination;
- Know how to handle age discrimination should it occur;
- Identify potential grievances which may result in company grievance procedures being activated;
- Respect employees that raise concerns on behalf of other employees;
- Consider incorporating corporate age discrimination policies into collective bargaining agreements, where appropriate taking into account national laws and regulations; and
- Recognise that the shipowner should be made aware of discriminatory actions and that, if reasonable preventable actions are not taken, they may become liable.

## Business case for encouraging equality and preventing age discrimination

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Encouraging greater awareness and understanding of age discrimination, alongside tackling discrimination, can reduce complaints, disciplinary action or tribunal claims and avoid costs and disruption.

It can also improve morale. Employees who feel discriminated against are likely to be unhappy, less productive and de-motivated with negative impacts for the whole workforce.

Preventing age discrimination can also help a company to attract, motivate and retain staff, thereby enhancing its reputation as a shipowner of choice. Conversely, if staff feel discriminated against, undervalued or 'forced out', a shipowner will accrue costs to recruit, train and retain new staff and suffer a damaged reputation.

Additional factors to consider include:

- A changing global workforce that is staying at work longer instead of retiring;
- Having employees at all levels with different backgrounds and skills can develop a working environment conducive to more ideas and solutions; and
- A diverse workforce can help companies to understand and meet diverse customer expectations.

Age discrimination is unlawful in many jurisdictions and can create problems and upset within a business. Shipowners may unintentionally discriminate if unfamiliar with national laws and regulations. Key considerations include:

- Ageist remarks can be discriminatory even if not considered insulting. Their effect is what matters;
- Job applicants and employees should not be discriminated against due to their age, the age they are thought to be or the age of someone they are linked with;
- Stereotyping is a likely cause of age discrimination. Age-based assumptions should not be made about what job applicants and employees can do or how they will behave;
- An employee should not be pressurised or bullied into retiring. Often national laws do not proscribe a fixed retirement age;
- An employee's compensation and benefits should be based on their job and skills, not their age;
- Equal value should be assumed in training staff of all ages;
- Performance assessment and goal setting should be based on consistent and fair criteria;
- Workplace policies and practices should not unintentionally disadvantage an employee due to age; and
- National laws and regulations may permit different treatment due to age in limited circumstances, but exceptions can be difficult to administer.



## What is age discrimination?

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Age discrimination (ageism) can be a form of unfair treatment at work. It is unfair treatment if an individual is treated less favourably as a job applicant or employee due to being a different age or age group to another job applicant or employee.

It is not always about an older person being preferred over a younger person due to their age or vice versa. Age difference may be small, such as a few years between a person in their late 40s or another in their early 50s. Some might feel discriminated against if over 60; others if they are considered middle aged. Someone aged 21 might claim discrimination if treated differently to a colleague of 43.

There is no minimum length of employment for an employee to claim discrimination. Discrimination can occur from the application stage through to the termination of employment and beyond, including job references. A decision on what constitutes age discrimination will lie with an employment tribunal or court.



# How age discrimination may occur

There are four main types of discrimination:

Direct discrimination	Indirect discrimination
Harassment	Victimisation

## Direct discrimination

Direct discrimination occurs where someone is treated less favorably to others because of their actual age. It may involve a decision not to employ someone, to make them redundant or to reject them for promotion due to age. While in some limited circumstances such decisions may be lawful, in many jurisdictions they may be unlawful.

Direct discrimination does not need to be intentional.

## Indirect discrimination

Indirect discrimination is usually less obvious than direct discrimination and normally unintended. It occurs where:

- A provision, criterion or practice applies equally to a group of employees or job applicants, regardless of their age;
- It has or may place those of a particular age at a disadvantage compared to others of a different age or age group; and
- The shipowner cannot objectively justify it by showing it to be a proportionate means to achieve a legitimate aim.

### Claiming indirect discrimination

To claim indirect discrimination, an employee must show that the provision, criterion or practice puts, or would put, other employees/job applicants of the same age or age group at a disproportionate advantage to employees/job applicants outside the age or age group. The complainant must then show that they were disadvantaged.

### When is indirect discrimination allowed?

Unless a shipowner can show that the provision, criterion or practice is proportionate, appropriate and necessary (by justification and business need) indirect discrimination may have occurred. What is 'proportionate' varies on the case and can depend on business size and resources.

If the shipowner can show objective justification, there is no indirect discrimination.

Shipowners should check their policies, practices and procedures to avoid indirectly discriminating. Policies, practices and procedures that are non-discriminatory when introduced may become discriminatory over time due to changes in workforce demographics, law or work arrangements.



## Harassment

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Harassment is unwanted conduct and, in this context, must be related to age. This might occur due to:

- An employee's age;
- The age they are thought to be; or
- The age of someone else they are associated with.

To be defined as harassment, it must normally have the aim or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. This can include:

- Bullying;
- Nicknames;
- Threats;
- Intrusive or inappropriate questions and comments;
- Exclusion (ignoring, not inviting them to meetings or events etc); and
- Insults.

Harassment can be verbal, written, physical or unwanted jokes and/or gossip which are considered offensive. Arguing that behaviour was not meant as harassment or that comments were 'banter' may not be an effective defence. How a victim views unwanted conduct might be considered as important as how a harasser sees it and their intent.

An employee can complain about harassment if they witness someone else being harassed. The complainant can be of any age.

Personal views should not influence a situation or cause a shipowner to dismiss a concern they believe inoffensive. An employee concern or complaint should be taken seriously and handled correctly if the complaint is not manifestly vexatious or maliciously made.

## Victimisation

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Victimisation can occur when an employee suffers a 'detriment' i.e. something that causes disadvantage, damage, harm or loss, especially due to:

- Alleging discrimination;
- Supporting a discrimination complaint;
- Giving evidence about a discrimination complaint; and/or
- Bringing a grievance concerning equality or discrimination, including a discrimination tribunal claim.

A 'detriment', might include an employee being:

- Labelled a 'troublemaker';
- Excluded and ignored;
- Denied training or promotion; and/or
- Made redundant for supporting an age discrimination claim.

Employees should be protected from victimisation if they make, or support, or are suspected of supporting, an allegation of discrimination in good faith. However, an employee should not be protected when maliciously giving or supporting false information or evidence.



## Where age discrimination may happen

Recruitment	Training	Promotion
Pay and terms and conditions of employment	Performance management	Redundancy
Retirement	Dismissal	Flexible working

### Recruitment

Age discrimination can happen at any time during the hiring process from establishing applicant requirements, drafting an application form, advertising a job, interviewing, using social media, to offering a job. It is better to highlight experience(s) needed for a role than to request a specific period of experience. It is important to embrace new ways to attract potential employees including use of social media, but it should be used responsibly.

Only request a precise qualification if essential to the role and if its need can be proven. Applicants should be given the opportunity to alternatively demonstrate knowledge and aptitudes by citing equivalent qualifications, skills, and work experience.

Bias or stereotypical thinking about age should not influence assessment or decision-making. Steps should be taken when:

#### Writing essential documents

A shipowner should:

- Be careful when writing a vacancy advertisement, job description and person specification. Avoid suggesting applicants of a particular age group. This includes wording and illustrations which could suggest bias or a photograph of young people.

#### Advertising a role

A shipowner should:

- Avoid suggesting an applicant of a particular age would be best suited. Do not request 'mature' applicants, which implies young applicants are unwanted;
- Use different channels to avoid having only applicants from a narrow audience. An advert aimed at one age group may suggest a discriminatory perspective; and
- Be careful if advertising vacancies through existing staff. Relying on 'word of mouth' may extend workforce structural imbalance, particularly if it mainly comprises those of a similar age group and produces limited applicants.

## Pinpointing job skills, experience and qualifications

A shipowner should:

- Emphasise skills required and objectively assess and select applicants to reduce excluding an applicant due to their age;
- Explicitly state experience needed. Explain the type(s) of experience needed rather than requesting specific years' worth of experience;
- Only request a specific qualification if needed and if it can be objectively justified. As more people now attend university older people are less likely to have a degree;
- Avoid requesting recent graduates which may also be hard to objectively justify;
- Have no upper age limit to apply to be apprentices or trainees. People now work for longer and are more likely to change their career; and
- Avoid making assessments suggesting an applicant is overqualified. This can imply that someone younger is sought.

## Drafting an application form

A shipowner should:

- Not use the applicant's age or date of birth as a determinant of whether to consider a candidate unless age is a legal requirement. An unsuccessful candidate may claim a shipowner used their age to discriminate. (A shipowner may request an applicant's age group on a separate equality and diversity monitoring form when allowed by national laws and regulations. This should be anonymous, confidential and hidden from anyone sifting applications, interviewing applicants or deciding who is hired);
- In limited circumstances, specify applicants of a particular age. Specific age requirements within the ILO Maritime Labour Convention 2006 are highlighted later; and
- Utilise details of relevant skills, knowledge, capabilities and experience in previous employment carefully. Asking for dates may unintentionally establish an applicant's age. Instead, request recent information on relevant jobs, experience, skills and periods of unemployment in the last two years.

## Using social media

A shipowner should be aware that:

- Checking an applicant's background on social media, including their age, can be discriminatory and may breach data protection requirements;
- Using filtering websites and tools to only target applicants based on age may be discriminatory; and
- A social media network may attract one age group but may not be used by another.



### **Interviewing**

Interviewers or other recruiters should:

- Not be influenced by an applicant's age;
- Ensure personal information requested, either on the application form or at interview, is relevant to the company and the job;
- Be trained to avoid using discriminatory questions and making discriminatory assumptions, and to ask questions for example regarding their skills and experience;
- Challenge each other if they spot stereotyping; and
- Be careful when shortlisting applicants and avoid talking informally and unguardedly.

### **Seeking job references**

Referees should not give a negative job reference due to an applicant's age. The shipowner should not discriminate based on such information.

### **Offering a job**

A shipowner should:

- Select and appoint the best applicant. Do not exclude the best applicant due to their age, appearance, or the age of someone they are associated with; and
- Not offer less attractive terms due to age.

### **Using a recruitment agency**

A shipowner should:

- Ensure any recruitment agency used complies with national laws and regulations. Unless there is an 'occupational requirement' or a decision can be objectively justified such as the specific circumstances within the MLC 2006, a shipowner should not request applicants of a particular age and an agency should challenge the instruction given; and
- Request applicants of various ages where possible.

## **Training and promotion**

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A shipowner should:

- Not allow any age bias, stereotypical thinking or assumptions to affect decisions on training or promotion or to assume an employee's needs or ambitions based on their age, length of job experience, or time with a company;
- See equal value in training employees of all ages;
- Encourage an employee with necessary skills, knowledge and experience to apply for a more challenging role irrespective of their age; and
- Provide all employees with training or development irrespective of age, perceived age, or the age of someone they are associated with.

## Training

A shipowner should:

- Prevent age bias or stereotyping from influencing decisions on training;
- Respect an employee's needs or ambitions irrespective of their age, length of job experience, and length of time with the shipowner. Do not place greater value in training younger rather than older employees;
- Provide training for all workers not only for their current role, but also development opportunities, work experience, shadowing, or to transfer to a new or different role;
- Ensure that all employees know of training and personal development opportunities;
- Recognise that training should reduce under-performance;
- Give support and encouragement to older employees reluctant to discuss training needs for fear of being seen as under-performers or 'behind the times';
- Use constructive and regular career/work-life discussions to identify training needs; and
- Be reasonable, flexible and considerate about how training occurs recognising normal working hours, impact of travel away from home for several days or weeks, or extra distance required.

## Promotion

A shipowner should not:

- Deny an employee promotion due to their age, perceived age, or the age of someone they mix with. In some jurisdictions it may be discriminatory to:
  - Prevent a capable employee from assuming extra responsibilities because they are too young;
  - Discourage an employee with the necessary skills, knowledge and experience from applying for a more challenging job due to their age;
  - Overlook inviting a colleague of a different age group from their colleagues to regular socials. Such gatherings may affect workplace decisions regarding who gets development opportunities and promotion;
  - Allow any age bias or stereotypical thinking or assumptions to influence decisions on development opportunities or promotion; and
  - Hide job vacancies and promotion opportunities from relevant staff, irrespective of age.

## Pay and terms and conditions of employment

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A shipowner should:

- Have the same terms and conditions of employment irrespective of an employee's age, perceived age, or the age of someone they are associated with; and
- Note circumstances where different treatment because of age may be lawful. Examples include a national minimum wage and national living wage, redundancy pay, pay and job benefits linked to a certain length of service.

## Performance management

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A shipowner should:

- Conduct and approach an employee appraisal without preconceptions or bias about age and treat employees consistently when assessing performance and setting future goals;
- Not raise or discuss the employee retiring at an appraisal. However, the employee could be asked, irrespective of age, about their short, medium and long-term work plans, explaining that this assists workforce planning and shaping future business needs;
- Focus on performance matters irrespective of age. If there is a performance issue, the employee should reach and maintain an acceptable standard despite their age. Only if an employee fails to improve after reasonable steps to assist them are taken should dismissal be considered; and
- Not pursue a dismissal unless based on relevant facts.

### **The appraisal**

A shipowner conducting an employee's appraisal should:

- Ensure the appraisal is fair;
- Approach and conduct it without preconceptions or bias about age;
- Avoid raising/prompting a discussion on when an employee might retire, suggesting they retire or pressurising them to retire;
- Treat employees consistently when assessing performance and setting future goals, irrespective of their age;
- Make reasonable adjustments for disabled employees regardless of age;
- Ask the employee, irrespective of age, about their work plans in the short, medium and long term, explaining that this is to help plan the workforce in shaping the business's future needs;
- Outline the shipowner's future plans; and
- Manage performance irrespective of age.

### **What a manager should do if an employee asks about retirement**

Employees may mention at appraisal that they are considering full or partial retirement, a change in role or a developmental opportunity. If an employee voluntarily does this without prompting, managers can discuss future plans during an appraisal. They can also arrange follow up meetings to discuss and agree changes. Irrespective of employee comments about future plans, the appraiser should not make any discriminatory remarks or actions.

The employee should be able to approach their appraisal without preconceptions about age.

### **Managing under-performance**

Regardless of the employee's age, a shipowner should:

- Ensure any employee dismissal for under-performance is based on relevant facts;
- Give an employee an adequate chance to reach and maintain an acceptable standard. Only if the employee fails to improve following reasonable steps to assist should the shipowner consider dismissal;
- Use non-discriminatory language;
- Be consistent in setting staff performance standards;
- Be consistent in managing sickness absence;
- Raise any performance problem with an employee immediately, not waiting until an employee's appraisal. Have a constructive conversation to explore under-performance and establish how to help;
- Help the employee to try to improve through either coaching and/or training, making an agreed change to their role, or seeking the help of an occupational health adviser if health is affecting performance;
- Agree an employee action plan, setting clear improvement targets giving the employee a fair chance to improve; and
- Give regular employee feedback, praising achievements and explaining how they can address other areas requiring improvement.

### **Taking consistent action to manage performance**

A shipowner should:

- Agree a written workplace policy to manage employee under-performance for all staff.

## **Redundancy**

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A shipowner should:

- Ensure the need for any redundancies is genuine and the process used to determine them is fair based on factors such as skills, work performance and abilities needed in a re-structured organisation;
- Not usually base a decision on age;
- Not solely select part time staff for redundancy, which may discriminate against employees of a certain age;
- Not pressurise older employees to opt for redundancy and/or retirement to reduce the organisation's headcount;
- Not select younger staff for redundancy instead of older, longer-serving staff to avoid increased payout costs, or if it thinks younger staff will get another job easier; and
- Not select staff for redundancy solely or mainly based on 'last in, first out' which may discriminate against younger employees. However, a shipowner may objectively justify 'last in, first out' as part of redundancy selection criteria.

### **Deciding redundancy payments**

National laws and regulations for redundancy payment schemes may allow redundancy payments based on



age and may be capped at a maximum number of years of service.

National laws and regulations may allow a company to have its own redundancy payment scheme offering more money if it can be objectively justified and pay more than the statutory amount. Discrimination may occur if a scheme is not proportionately in line with a statutory scheme or if payments are capped for older workers.

## Retirement

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Employees may no longer have a set retirement age and can decide when to stop working. However, national laws and regulations and individual benefits will determine what will influence the decisions.

Shipowners may not know the respective retirement laws in different countries. Therefore, they should not assume an employee is retiring, suggest they retire or try to force retirement and should fully research relevant national legislation.

A shipowner should not detrimentally treat an employee considering retiring.

In many jurisdictions, employees can now decide their retirement age as there is no longer a legal standard or default age. An employee may not have to retire when reaching the State pension age and can set a retirement age meeting legal requirements. The pension scheme and national laws and regulations will determine if an employee can take some or all of their pension upon retirement.

## Dismissal

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A shipowner should:

- Only dismiss an employee for a genuine reason and after a fair process;
- Apart from in very limited circumstances, never dismiss an employee due to their age, if thought to be too young or too old, or due to an ageist workplace culture. Neither must they be dismissed due to the age of someone they mix with;
- Not suggest an employee should retire before or during a dismissal process;
- Refrain from using ageist language during a dismissal process; and
- Not base a dismissal on age, other than where lawful.

## Flexible working

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A shipowner should:

- Consider an employee's flexible working request meeting the qualifying period defined by national laws and regulations;
- Agree to flexible working if it can be accommodated;
- Drop service eligibility requirements and allow job applicants and employees to request flexible working on commencing employment; and
- Properly evaluate all flexible working requests and not make subjective judgements.

## Other considerations

Shipowners, managers, HR personnel, employees and their employee or trade union representatives should ensure that they also understand:

- Age discrimination and where differential treatment due to age may be allowed;
- The risks of age stereotyping;
- Why not to use ageist language or be biased for or against particular age groups; and
- How age can interact with other characteristics, such as sex and disability.

### Risks of using ageist language

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Derogatory and abusive terms, and comments about an employee or job applicant due to their age are often discriminatory. It is how a recipient perceives the words more than the user's intention that determines whether it is discriminatory.

### When different treatment because of age may be allowed

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Exceptions where different treatment due to age can or may be lawful include:

- Occupational requirements;
- Positive action;
- Pay and extra job benefits linked to time with the shipowner;
- National minimum wage;
- Redundancy and redundancy pay; and
- Employing people under 18.



## Where discrimination may be allowed

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In some jurisdictions, national laws and regulations may allow discrimination due to age where objectively justified.

With ordinary direct discrimination, the shipowner would need to prove its action concerning an employee was a proportionate means of achieving a legitimate aim.

For indirect discrimination, a shipowner would need to prove its provision, criterion or practice affecting the employee/employees of a particular age/age group proportionately achieve a legitimate aim.

Protected age characteristics can be complicated and will depend on the specific country so it is important to check national laws and regulations to see if such treatment is lawful. These include:

- Where a shipowner can lawfully prove a need for discriminating due to age;
- Pay and any extra benefits linked with tenure with the shipowner;
- Where being a particular age or within a particular age range, or not a particular age, is a legal 'occupational requirement'. (The MLC 2006 lists certain age-related occupational requirements found at the end of these guidelines); and
- Some redundancy circumstances, e.g. keeping longer serving staff longer, and making more recent staff redundant. This can discriminate against younger employees but national laws and regulations may allow a shipowner to prove a business reason to retain trained, skilled staff essential to the restructured business.

## What is a proportionate means of achieving a legitimate aim?

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A shipowner should demonstrate:

- A legitimate aim such as a good business reason. Cost alone is regarded as insufficient;
- That actions are proportionate, appropriate and necessary;
- That the business need is balanced against its discriminatory effect on employees; and
- Consideration of how to avoid or reduce discriminating. Where possible, less discriminatory alternatives should be adopted.

Proving a legitimate claim at a tribunal can be difficult. If a claim is made, a shipowner may need to show how the legitimate aim assists society in some way such as assisting young people to get jobs, or older people stay in work. In an indirect discrimination case, a shipowner may not have to show a wider benefit.

Successfully handling a discrimination complaint is not always sufficient. Shipowners should consider how to prevent future recurrence. This could include consulting trade unions or employee representatives and organising equality training.

## Positive action

A shipowner may take 'positive action' if it can show reasonable evidence that job applicants and/or employees belonging to an age group:

- Are at a disadvantage;
- Are in low numbers in the organisation; and/or
- Have other needs due to their age.

Positive action must be proportionate and not discriminate against others. It does not mean giving applicants jobs or promotion solely due to age. Actions may include training for an age group or offering chances to use new skills to assist development.

However, positive action can only apply when deciding who gets a vacancy if applicants are rated equally capable of doing a job. A shipowner can only select an applicant from an under-represented organisational age group as a tie-breaker for an individual vacancy. It would be discriminatory to give applicants jobs, promotion or better terms and conditions due only to their age.

## Occupational requirements

In very limited circumstances, and depending on national laws and regulations, a shipowner may be able to insist on employees or job applicants of (or not of) a particular age or age group.

An 'occupational requirement' can be a defence in a direct discrimination claim, but it is insufficient for a shipowner to simply prefer not to employ someone due to their age. It should be:

- Crucial to the post, and not just one of several important factors;
- Relative to the nature of the job; and
- 'A proportionate means to achieve a legitimate aim'.

The shipowner should reassess occupational requirements when a job is advertised and be aware that circumstances can change.

Shipowners should think carefully, and seek legal advice, before claiming an occupational requirement.

### Examples of occupational requirements

- To be 18+ to be a ship's cook;
- To receive a medical certificate for a maximum of a year if a seafarer is under 18;
- To ensure seafarers under 18 cannot be employed, engaged or work on a ship;
- To prohibit night work for seafarers under 18 unless in an established training programme and schedule, or if the specific duty or recognised training programme requires seafarers covered to perform duties at night and it is agreed, after consulting the social partners, that the work will not adversely affect health or wellbeing; and
- Prohibition of employment, engagement or work of seafarers under 18.



## National minimum wage and national living wage

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National laws and regulations may allow for different rates of minimum pay based on age and apply even when people on different rates do the same job.

## Redundancy

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There may be circumstances where a potentially discriminatory redundancy selection decision could be allowed. Keeping longer serving staff and making redundant staff with less time may discriminate against younger employees. However, a company may be allowed to take such action if it can prove a good business reason. For instance, it might be key for a restructured company to keep its most experienced fully trained and skilled staff.

### Enhancing redundancy pay

There may be circumstances where a potentially discriminatory decision in improving redundancy pay could be allowed. Basing the amount of redundancy pay on the number of years worked with a shipowner may encourage older employees to seek redundancy and younger employees to remain. A shipowner may be able to provide a good business reason (or reasons) for doing this, however. Possible reasons include to reward long service and create opportunities for new talent; to encourage voluntary redundancies or avoid compulsory redundancies; and to give organisational restructuring a positive feel moving forward.

### Capping redundancy pay

Shipowners should avoid schemes which cap redundancy pay for employees perceived to be nearing retirement. As many countries have now removed standard retirement ages, it is now often more difficult for a shipowner to justify fixed retirement ages. A long-serving employee may argue that a redundancy cap is discriminatory as they wish to work beyond their considered retirement age.

## Risks of age stereotyping

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Assuming job applicants' and employees' capabilities and likely behaviours due to age may result in age discrimination. Whether intended or not, it can often cause:

- Poor decision-making when recruiting, promoting or deciding who is trained;
- De-motivation of existing staff who notice the stereotyping;
- Less trust among colleagues; and
- Discrimination claims.

Unconscious bias can occur without detection.

Stereotyping can be avoided by:

- Judging people on their job performance or quality of their job application, not assumptions due to age;
- Having different age groups in a team/project – shared goals can unite people; and
- Encouraging different age groups to swap ideas, knowledge and skills.

## Age discrimination perceptions and reality

 Perception	Reality 
Older staff will have higher sickness rates.	Research does not support this.
Older people staying in work stops young people getting a job.	Strategic forecasts suggest more older staff will be required to stay in work.
Talking to older employees about future work plans risks shipowners being accused of age discrimination.	A shipowner can ask employees, regardless of their age, about short, medium and long-term work plans. A shipowner must not, however, design different questions due to age.
It's ok for a shipowner to ask a candidate 'Could you manage an older team'.	Wrong – instead ask: 'Tell me about your management experience'. And 'Have you managed any difficult situations?'
A shipowner filling a demanding post can interview only people between 30 and 45 years of age in order to hire someone with greater experience.	No, it can't. Applicants must be selected for interview based on skills, knowledge and experience required.
Older employees are difficult to train and less able to learn new skills.	There is no supporting evidence. Following well organised, planned and coherent training, employees adapt regardless of age.
A shipowner will not get investment back in training staff over 55 and under 25 as both will move on in the near future.	As technology accelerates, most skill sets will need frequent updating while training life will decrease. Thus, all staff need retraining.
Employee performance reduces as they get older.	There is no performance deterioration in most work for people up to 70. Older staff getting the same training as young colleagues is important.
Younger employees lack people skills as they are always on a mobile phone.	Older people equally use their mobile phones, there is no basis for such an assumption.
Younger employees are not team players.	Older employees may just as equally be or not be team players.
Older employees may resist change.	Some older employees may welcome change.
An employee must retire once they are entitled to receive their pension.	Many national laws no longer set a retirement age so employees can decide when to stop working, and whether they take or defer their pension.
Recruitment agencies can only forward applications from those under 50 if they know the shipowner won't interview anyone older.	Apart from very limited circumstances where applicants should be a particular age, or age range, an agency must not filter applications nor reject details due to age. If it does, both agency and shipowner could discriminate.



## Ageist language

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Derogatory and abusive terms or comments about an employee or job applicant are likely to be discriminatory if they are because of their:

- Age;
- Perceived age (whether the perception is correct or not); and/or
- Association with someone of a particular age group.

They might include: a younger employee calling an older colleague ‘Gramps’ or ‘old timer’; an older employee telling a young employee they are ‘wet behind the ears’; or a shipowner telling a job applicant ‘you’re not a good fit for our culture’ or ‘you’re over-qualified’ meaning ‘you’re too old’. The job applicant could challenge the shipowner to clarify what it means.

In discrimination, how the recipient perceives words and actions may matter more than the intention of the deliverer.

Banter often describes a disparity between what was intended by one person and how it has been perceived by another. Shipowners should manage such situations with care. Sometimes a situation, where a ‘joke’, ‘banter’ or remark has caused offence or upset, can be handled by a manager informally discussing it with an employee and explaining that they have caused offence to ensure they do not do it again. In a situation where someone has used a word by mistake, or there was a misunderstanding, or a comment made without thought, a manager may choose to handle it informally.

In situations where a term is used deliberately and maliciously, or to embarrass and humiliate, the shipowner should formally review the matter.



## Impact of other protected characteristics

Age can link with other protected characteristics. Such as gender and disability.

### Gender

For a certain role, a shipowner may say the successful applicant will have to regularly work late and/or at weekends and/or travel abroad, and/or socialise after working hours. Unless good business reasons, which are proportionate, appropriate and necessary are shown, such requirements may be discriminatory because of age and/or gender. This might be as older women may have family caring commitments outside of work and find it difficult to meet such demands.

Older women may be more likely to be treated unfairly due to their age than older men. They may be overlooked for promotion, training and full-time work due to a lack of capacity for flexible working or may be treated unfairly due to the menopause.

### Disability

A person's age will increase a risk of developing a disability, particularly once over 50. A job applicant or employee must not be discriminated against because:

- They have a disability;
- Of something linked to their disability e.g. time off work or difficulty coping with a certain task;
- They need 'reasonable adjustments' to remove or minimise disadvantage at work caused by their disability (whether in applying for a job or to stay in work);
- They are thought to have a disability; or
- They are associated with someone with a disability.

### Managing the menopause at work

The menopause is a natural ageing process for women, usually in their late forties or fifties. Shipowners should be aware of its effects including:

- Insomnia, fatigue, mood swings and surges of feeling hot;
- Struggling to remember things, concentrate and focus at work; and
- Taking longer to recover from illness.

Such effects can lead to an employee losing their confidence, and suffering from stress and anxiety. Many women who take time off work due to these effects do not tell their shipowners the real reasons for their absence.

Shipowners and employees may find the menopause difficult to discuss as it is a sensitive and personal matter. A shipowner should train managers and/or develop a policy to ensure understanding how the menopause can affect women at work. Employees should be given confidence to talk to their shipowner regarding such issues.



## **Raising and handling complaints**

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Employment grievance policies provided to employees should outline how to handle complaints of alleged discrimination, including raising concerns with the company and trade union representatives.

### **Avoiding an age discrimination claim**

If a party believes they have been discriminated against, they should first follow the procedures outlined in the MLC 2006. It is always best if an employee can resolve a matter informally by first talking to the Master and then if necessary raising through the onshore grievance procedure.

# Case study examples of different types of discrimination

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## Ordinary direct discrimination

Master Lena wishes to fill a role for which the applicant must complete difficult training. She instructs her HR manager to discount younger team members, thinking they will not want the hard work. She tells HR to ignore older members, arguing they will not adapt to change. Instead she suggests Bruce, who is in his mid-thirties and in her eyes more likely to be ambitious with a sense of responsibility. Her actions may be discriminatory.

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## Direct discrimination by association

Superintendent Kostas decides not to invite employee Amil and her partner Helio to a business party as Helio is much older than her. Kostas feels Helio would not embrace the party atmosphere. This may be discriminatory.

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## Direct discrimination by perception

Runa is rejected for a Cruise Director's role as her bosses think she looks too young and about 20. In fact, she is 30. Her bosses' decision may be discriminatory.

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## Indirect discrimination

Ship spa manager Kierstin tells recruiters she needs two cruise receptionists who should look 'fit and enthusiastic' as the spa requires younger customers. This may indirectly discriminate against older staff unless it can be objectively justified.

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## Harassment

Ship administrator Sangita, 60, feels humiliated and undermined in the office due to her age. Despite her extensive experience and secretarial qualifications, her manager Panos regularly tells other staff she is 'a dinosaur and the company needs 'fresh blood''. Panos's behaviour may be harassment.

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## Training discrimination

During employee job performance reviews, Chief Mate Aleksander discusses staff career ambitions and training opportunities, but does not discuss them with staff over 55 as he considers it a waste of time. He argues over 55s are past their best and wish to coast towards retirement. His age-biased actions may be discriminatory.

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## Victimisation

Chief Engineer Kuba tells cadet Rangit he admires his work and progress. Rangit then feels confident to tell Kuba that some older colleagues regularly tease him about his age and leave condoms on his bed which he wants stopped. Kuba tells Rangit to toughen up, the company has no time for complainers. A fortnight later Kuba punishes Rangit for complaining by cancelling his leadership training course. This may be victimisation.

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## Recruitment discrimination

A firm advertises for graduates that gained a degree in the last five years. This may be discriminatory as proving a business need may be difficult.

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### Promotion discrimination

Johan excels at his job and applies for promotion. His shipowner rejects his application as he knows that away from work Johan has elderly parents and feels the promotion and caring responsibilities would be too much for him. The shipowner made the decision without talking to him about his concerns or reviewing possible options such as flexible working. The shipowner's decision is likely to be discriminatory.

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### Potential pay discrimination

Ahmed, 50, and Mohammed, 35, work at the same firm in the same role. While Ahmed is paid more than Mohammed based on his 8 extra years of experience, Mohammed brings in more business. The firm would need to objectively justify the difference in their pay, otherwise it is likely to be discriminatory.

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### Performance management discrimination

During performance management reviews, Luciana sets targets for Able Seafarer Suzuki, 29, to improve in his role after poor results. Meanwhile, Able Seafarer Joe, 63, has had similar poor results. However, Luciana decides to ignore Joe as she assumes he will retire soon. Suzuki could claim discrimination due to his age.

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### Lawful pay rise linked to time

Jen's shipowner gives all employees a pay increase after each year with the shipowner for up to five years as their growing experience enables them to do their job better.

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### Retirement discrimination

Olive, 66, advised his company where he successfully worked for the last 15 years that he wished to continue working and developing. However, the mood changed upon arrival of new Superintendent, Michelle. He believes she is trying to force him to retire. She regularly says 'There's no point in training you to use the new equipment, Olive, as you're 66 for goodness sake'. And 'You don't want a new role at your age, do you?' and 'You'll be retiring soon, I expect'. Michelle's behaviour may be discriminatory.

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### Dismissal discrimination

Helene begins running a ship's hair and beauty salon. She regularly bullies employee Ginette, aged 58, stating 'she looks too old for the salon', 'she's putting off customers' and 'we need younger, prettier staff'. Finally, she dismisses her claiming she's no longer the right employee for the salon. This is likely to be discriminatory.

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### Flexible working discrimination

Ferry boson Liang, 50, asks Master Pierre if he could reduce from fulltime to four days a week, to look after his grandson on the other day. Liang is hopeful as he knows other staff, particularly young mothers in administrative roles have flexible working arrangements such as job shares and home working. However, his request is immediately rejected, with Pierre stating: 'If you want to continue to work here, you must do a complete week - final'. Liang believes Pierre has discriminated against him due to his age.

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# ILO Maritime Labour Convention 2006 requirements

<p><b>Regulation 1.1</b> – Minimum age</p>	<p>To ensure that no under-age persons work on a ship.</p> <p>No person below the minimum age shall be employed or engaged or work on a ship.</p> <ol style="list-style-type: none"> <li>1. The minimum age at the time of the initial entry into force of this Convention is 16 years.</li> <li>2. A higher minimum age shall be required in the circumstances set out in the Code.</li> </ol>
<p><b>Standard A1.1</b> – Minimum age</p>	<ol style="list-style-type: none"> <li>1. The employment, engagement or work on board a ship of any person under the age of 16 shall be prohibited.</li> <li>2. Night work of seafarers under the age of 18 shall be prohibited. For the purposes of this Standard, night shall be defined in accordance with national law and practice. It shall cover a period of at least nine hours starting no later than midnight and ending no earlier than 5 a.m.</li> <li>3. An exception to strict compliance with the night work restriction may be made by the competent authority when: <ul style="list-style-type: none"> <li>o (a) the effective training of the seafarers concerned, in accordance with established programmes and schedules, would be impaired; or</li> <li>o (b) the specific nature of the duty or a recognized training programme requires that the seafarers covered by the exception perform duties at night and the authority determines, after consultation with the shipowners' and seafarers' organizations concerned, that the work will not be detrimental to their health or well-being.</li> </ul> </li> <li>4. The employment, engagement or work of seafarers under the age of 18 shall be prohibited where the work is likely to jeopardize their health or safety. The types of such work shall be determined by national laws or regulations or by the competent authority, after consultation with the shipowners' and seafarers' organizations concerned, in accordance with relevant international standards.</li> </ol>
<p><b>Guideline B1.1</b> – Minimum age</p>	<ol style="list-style-type: none"> <li>1. When regulating working and living conditions, Members should give special attention to the needs of young persons under the age of 18.</li> </ol>
<p><b>Guideline B2.4.4</b> – Young seafarers</p>	<ol style="list-style-type: none"> <li>1. Special measures should be considered with respect to young seafarers under the age of 18 who have served six months or any other shorter period of time under a collective agreement or seafarers' employment agreement without leave on a foreign-going ship which has not returned to their country of residence in that time, and will not return in the subsequent three months of the voyage. Such measures could consist of their repatriation at no expense to themselves to the place of original engagement in their country of residence for the purpose of taking any leave earned during the voyage.</li> </ol>

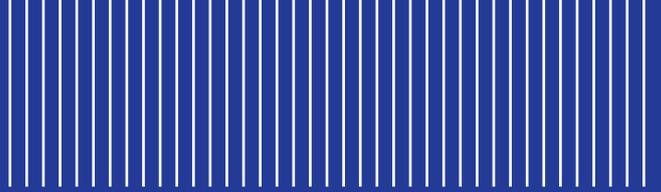


<p><b>Guideline B2.5.2 – Implementation by Members</b></p>	<p>If, after young seafarers under the age of 18 have served on a ship for at least four months during their first foreign-going voyage, it becomes apparent that they are unsuited to life at sea, they should be given the opportunity of being repatriated at no expense to themselves from the first suitable port of call in which there are consular services of the flag State, or the State of nationality or residence of the young seafarer. Notification of any such repatriation, with the reasons therefor, should be given to the authority which issued the papers enabling the young seafarers concerned to take up seagoing employment.</p>
<p><b>Standard 1.2 – Medical Certificate</b></p>	<p>Unless a shorter period is required by reason of the specific duties to be performed by the seafarer concerned or is required under STCW, a medical certificate shall be valid for a maximum period of two years unless the seafarer is under the age of 18, in which case the maximum period of validity shall be one year;</p>
<p><b>Guideline B2.3.1 Hours of work and hours of rest – Young Seafarers</b></p>	<ol style="list-style-type: none"> <li>1. At sea and in port the following provisions should apply to all young seafarers under the age of 18: <ul style="list-style-type: none"> <li>• working hours should not exceed eight hours per day and 40 hours per week and overtime should be worked only where unavoidable for safety reasons;</li> <li>• sufficient time should be allowed for all meals, and a break of at least one hour for the main meal of the day should be assured; and</li> <li>• a 15-minute rest period as soon as possible following each two hours of continuous work should be allowed.</li> </ul> </li> <li>2. Exceptionally, the provisions of paragraph 1 of this Guideline need not be applied if: <ul style="list-style-type: none"> <li>• they are impracticable for young seafarers in the deck, engine room and catering departments assigned to watchkeeping duties or working on a rostered shiftwork system; or</li> <li>• the effective training of young seafarers in accordance with established programmes and schedules would be impaired.</li> <li>• Such exceptional situations should be recorded, with reasons, and signed by the master.</li> <li>• Paragraph 1 of this Guideline does not exempt young seafarers from the general obligation on all seafarers to work during any emergency in Standard A2.3, paragraph 14.</li> </ul> </li> </ol>
<p><b>Standard A3.2 – Food &amp; catering</b></p>	<p>No seafarer under 18 shall be employed or engaged or work as a ship's cook</p>

**Guideline B4.3.10**  
**– Safety and**  
**health education**  
**of young seafarers**

1. Safety and health regulations should refer to any general provisions on medical examinations before and during employment and on the prevention of accidents and the protection of health in employment, which may be applicable to the work of seafarers. Such regulations should specify measures which will minimize occupational dangers to young seafarers in the course of their duties.
2. Except where a young seafarer is recognized as fully qualified in a pertinent skill by the competent authority, the regulations should specify restrictions on young seafarers undertaking, without appropriate supervision and instruction, certain types of work presenting special risk of accident or of detrimental effect on their health or physical development, or requiring a particular degree of maturity, experience or skill. In determining the types of work to be restricted by the regulations, the competent authority might consider in particular work involving:
  - (a) the lifting, moving or carrying of heavy loads or objects;
  - (b) entry into boilers, tanks and cofferdams;
  - (c) exposure to harmful noise and vibration levels;
  - (d) operating hoisting and other power machinery and tools, or acting as signallers to operators of such equipment;
  - (e) handling mooring or tow lines or anchoring equipment;
  - (f) rigging;
  - (g) work aloft or on deck in heavy weather;
  - (h) nightwatch duties;
  - (i) servicing of electrical equipment;
  - (j) exposure to potentially harmful materials, or harmful physical agents such as dangerous or toxic substances and ionizing radiations;
  - (k) the cleaning of catering machinery; and
  - (l) the handling or taking charge of ships' boats.
3. The competent authority should take practical measures or through appropriate machinery bring information concerning prevention of accidents and protection of health on board ships to the attention of young seafarers. Such measures could include adequate instruction in courses, official accident prevention publicity intended for young persons and professional instruction and supervision of young seafarers.
4. Education and training of young seafarers both ashore and on board should include guidance on the detrimental effects on their health and well-being of abuse of alcohol and drugs and other potentially harmful substances, and the risk and concerns relating to HIV/AIDS and other health risk related activities.





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