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LAMB: Hello. If you've ever been turned down for a job because you were too old or missed out on promotion because you were too young, you'll be delighted to hear that from 2006 age discrimination will become illegal. The legislation will protect all workers, young, old and even middle-aged, and employers will have to change the way they handle everything from recruitment advertising to staff appraisals, perks to pensions. It sounds great but can Britain's workplaces really become egalitarian utopias where age is never an issue. Or as some experts are predicting, will the new law turn out to be a charter for disgruntled employees to cry ageism over every dispute at work. Turning workplaces into so-called age blind organisations is going to be a mammoth task for employers, not least because the government still hasn't decided what the legislation will actually say. I'm joined now by Sam Mercer. She's director of the Employers Forum on Age which represents over 160 big employers of all sorts. Also with us is Julian Taylor, an employment specialist with the solicitors Simmonds and Simmonds and Professor Richard Scase from the University of Kent Canterbury Business School. Sam Mercer, it strikes me this legislation is quite unlike any anti-discrimination law we've seen to date because it's going to affect everyone throughout their working lives.

MERCER: Yes that's one of the things that people really haven't taken on board. A lot of people think it's all about the over 50s and it's legislation to protect older workers. But this covers absolutely everyone, young, old, people in their thirties, people in their forties and that makes it a real challenge for employers. They're actually going to have to go through every single employment policy that they have and look for age bias and the problem is age bias lurks absolutely everywhere, whether it's your benefits, whether it's your pensions, your graduate recruitment schemes, you name it, there's going to be a problem.

LAMB: Julian Taylor, you advise companies on employment issues. We don't know what this law is going to say yet, but what are you advising them to do?

TAYLOR: Well as Sam said, there's a huge amount to do. We're working with clients at the moment to begin conducting audits of their existing policies and practices, looking for things like recruitment, application forms, the wording that's used in advertisements, access to training, benefits, retirement, that sort of thing. But I think even harder than that are the softer issues, the sort of cultural change that's necessary, particularly teaching people how certain forms of language can be particularly dangerous, that sort of thing. Even things like birthday cards could be causing problems in the future.

LAMB: Richard Scase, people don't think of themselves as middle-aged at 40 in ordinary life now, but in some offices you are old at 35. There is a mismatch there. Do you think this legislation might actually help to address that?

SCASE: I hope it will because there is indeed a mismatch. The old are the new young so to speak and lifestyles have changed quite considerably in this information age. People in their 40s and 50s think that they're in their 30s. People now live much longer, of course, middle-age means different things to different people. We now behave in a much younger way than we did in the past,

but we move into the workplace and of course we find quite a different attitude and this is amazing really. You can understand why perhaps age was important in an industrial society when physical strength deteriorated with age. But in a knowledge economy when people are working with their brains, it's mad to encourage people to take early retirement when we have such skills shortages facing the country over the next few years.

LAMB: Well maybe employers are only just waking up to the implications of our ageing workforce. For the first time in the UK there are now more people aged over 60 than children, and employers will have to take on more older people in future whether they like it or not. Wyre Davis has been to a Welsh firm where they're already tackling the issue.

DAVIS: I'm standing on an industrial estate in Aberystwyth in mid Wales holding something that's fast becoming one of those distinctive food fashion items. Pretty much anyone who buys yoghurt, especially organic yoghurt, can't fail to be aware of these distinctive classic black pots. Rachel's organic yoghurt is sold in virtually every supermarket in the country, but like many great success stories it had an almost accidental beginning. Tim Pink is the company's general manager.

PINK: Rachel and Gareth had a farm in Borth. They got snowed in one winter and they didn't want to throw the milk away that they had, so they turned it into butter, they turned it into cream. It sold very well locally and it basically grew from there. In 1992 it had outgrown the farm premises so we actually moved to an industrial estate.

DAVIS: And they've just announced a £3m extension to keep up with demand. But success isn't simply measured by the contents of a little black yoghurt pot. The company founded by Rachel & Gareth Rowlands is equally as proud of its age-positive employment policy. Quite simply any one of any age can work here as long as they're up to the job. Val Humphrey, the company's

purchasing and support manager, says the philosophy is simple and straightforward.

HUMPHREY: It doesn't matter how old somebody is. What you're really interested in, as a manager, is someone who is keen and enthusiastic and will literally embrace ideas and training opportunities that you actually throw at them. If people come in and have certain qualities and aptitudes, I actively encourage people to move into better areas that suit their experience.

DAVIS: Now one example is 52-year old Keith Bell. Having worked in the haulage and storage industry around the country before joining Rachel's at a relatively late age, he brought considerable experience to the company and since then he's been promoted to store manager and has benefited from countless training opportunities.

HUMPHREY: I've done an NVQ Level 2. I'm currently also doing a team leader course. We go on all sorts of courses. It's given me an opportunity to do a lot more than I've ever done before.

DAVIS: Most people are not thinking about training staff of your age are they?

HUMPHREY: No they're not. I personally have looked for that and have been given the chance to do it which is fantastic. We were often approached for advice because we have had greater experience.

DAVIS: As altruistic and admirable as Rachel's policy is, it's also driven by economic necessity. Aberystwyth is a relatively small rural town and it takes at least an hour to get from here to the nearest big urban conurbation. So with available and suitable labour in short supply, the company quickly had to look beyond the boundaries of the traditional job market. Nonetheless says Phil

Evans, Human Resources manager here and 55 years old himself, salary, training and promotion opportunities are equal and open to all.

EVANS: Most people would come in on a production level and the wage is the same for any age group. If they came in as a team leader, again the pay band is the same.

DAVIS: Do those people add as much to the company again as a younger person has done?

EVANS: Oh definitely so. When you've got the team which consists purely of young people with a few older people in that team, youngsters mature a lot more quickly.

DAVIS: We're now in the potting room at Rachel's dairy. This is where all the yoghurt and other produce is actually put into pots and put onto pallets ready for the market. And someone who's seen it all at this company, having been here for sixteen years, is 63-year-old Anne Davis, now choosing to go part-time.

A. DAVIS: I really felt that it would be nice to wind down a bit after working full-time and sometimes quite a lot of hours. I enjoyed my jobs, still do enjoy my job. I thought it'd be nice to take some time out and start looking for other things to do.

DAVIS: There's been no pressure from the company for you to change your hours, it's been your decision?

A. DAVIS: Oh none whatsoever. They would have been quite happy for me to have stopped on two or three or more years full-time. The company just doesn't care how old you are as long as you've got the ability to do the job and you do it well, that is fine.

LAMB: Wyre Davis reporting there. Julian Taylor, Rachel's Organic have clearly done a lot more to create an age diverse workforce than most other employers. As you mentioned earlier, everyone else is going to have to follow suit and cultural change is going to be the big one. What exactly are they going to have to do to bring that about?

TAYLOR: I think training is probably going to be the starting point. Age-awareness training to make staff and, in particular, managers aware of what the risks are. I think what a lot of people don't appreciate is that language is probably going to be a big problem and if there is, a phrase has been used like someone being over the hill or their best years behind them, that's clearly discriminatory and that will be used against them. There will be jokes as well sort of turning to someone and saying, "granddad where's your walking stick?" That sort of thing.

LAMB: You mentioned birthday cards earlier?

TAYLOR: Yea birthday cards. If I'm the manager of someone and I send them a birthday card, so many birthday cards make comments about age and often quite negative comments about age and it's very easy to see how those will be thrown back and used in some form of age-discrimination complaint in the future.

LAMB: You can see how that wouldn't necessarily be a bad thing doing away with those sort of comments, but a lot of organisations now match young people to work with other young people, they use perhaps older advisers to help older clients. They would argue that that's good business sense, it works well, people are comfortable with it. But presumably that's going to be illegal.

TAYLOR: I think that's right in most situations because it very much is selecting someone on the grounds of age and if you use an analogy with the

race discrimination legislation, it would be very difficult for a company to say they're not going to employ black people because they tend to work mainly with white clients. I think that would clearly get them into trouble. It seems to me it's a very similar situation.

LAMB: Sam Mercer, I know you've developed an age neutral job application form for employers to use. How will that work?

MERCER: Well that looks at people's competencies and it says you need to go much further than just taking the date of birth off an application form, because all somebody does is have a look at the education or the career history and does the maths. It's an absolute natural inclination. What we've been doing is saying to people, "look at competencies, look at the schools and abilities that people need to do the job", because that's actually the important thing and for many organisations they don't actually need a complete career history. It's totally irrelevant for the job involved.

LAMB: The experience of countries abroad which already have this sort of legislation does rather suggest there may be a bit of a sting in the tale in the sense that I know in the Netherlands, for example, some organisations have phased out night shifts for older workers and they've now found they've had to reintroduce them because it's illegal for them to do that.

MERCER: I think that's where age legislation gets really interesting because I would argue that age discrimination isn't always a bad thing. In many cases, night shifts, weekend working, perhaps not asking older workers to do certain things, has evolved and everybody's happy with that.

LAMB: So this is a bit of a blunt tool, isn't it?

MERCER: Absolutely. I mean maybe we don't actually want to take away all those things. Treating people differently isn't always a bad thing.

LAMB: Richard Scase, what do you make of the argument that the career pipeline will get clogged up if older people don't move on and retire?

SCASE: Yes I think that is certainly the case if older people don't retire, then of course the pipeline for younger people moving up gets restricted. But of course we don't have so much promotion now as we had in the past because we have flat organisations and people are on performance-related reward systems. I think the other point to make is that the culture of the workplace is now very youth focused because the workforce has got younger over the last few years because some older people, older employees, over the age of 50, leave their jobs, they take early retirement, they experience economic inactivity through disability and this kind of thing. So we now have a culture of youth which now has to be tackled with this legislation. The labour force will get older over the next few years and as a result of this legislation has to respond to this. But at the moment the culture of youth has to be tackled so that older workers, older employers, feel comfortable in this new workplace.

LAMB: The pensions crisis will mean that millions of people will now face the prospect of having to work for far longer than they expected to. Richard Warren is a driver for the street cleaning department at Brighton and Hove Council. He's 57 and with no occupational pension to fall back on. He's facing many more years of work before he'll be able to retire.

WARREN: I left school as you do at fifteen when I was younger and went into low-paid unskilled work and followed that through and actually I was probably 20, 22, never even thought about the future. And then when I did, there was no money from the low-paid jobs that I was working in, catering and building work and so on and so forth to actually put anything aside for a pension. And also I believe, I'm a strong trade unionist and I believed that I would end up with the state at least making sure that I was comfy in my old age. And of course as I progressed on, this dream seems to have dropped completely out of the

window. It's the people like me in manual work that are going to have the big big difficulty because they'll have to make a transition across to another workplace that can keep them inside or out of the weather or stop the lifting and heavy stuff. And it's a frightening thought at 65 I may have to go and learn something else and I would quite believe that I will have to work until I'm 70 or I can't work. I feel angry, I feel annoyed that any leisure time that I look forward to may now be given up and lost and I may die working going out the door and going to work.

LAMB: For other people, the question of working for longer isn't just about money and they're frustrated by the fact that employers won't give them the opportunity to carry on working even though they're willing and able to do so. Here's Patricia Alsala.

ALSALA: I was working for a high-tech electronic engineers company for 20 years and we were acquired by an overseas firm. They started to export the jobs overseas, cut the staff and I was approaching my 65th birthday. So they said, "oh you're going to retire", and I said, "no I'm not." So in the end they made me redundant, fair enough. Then it was a matter of searching for another job which I found a devastating experience because every door I knocked on they said, "yea we'd love to have you but our retirement age is 65 and you're already that." Eventually I got the job I have now which is as manager of the Advice Service for Age Concern, Colchester. When I contemplated the possibility of not being able to find a job I was utterly devastated because I can't imagine life without work. I don't want to go down to the senior citizen centre, I don't want to play bingo, I love my grandchildren but I don't want to spend all my time with them, no more than they want to spend all their time with me. I don't even want to take a cruise around the world.

LAMB: That was Patricia Alsala. Sam Mercer, Richard can't afford to stop work, he knows he can't carry on doing manual work forever, so he's going to have the very difficult task of finding a different job in his late 50s, early

60s. Patricia came up against straightforward age discrimination when she was made redundant and when she was job hunting. But they both highlight this very important issue of mandatory retirement. Now do you think the new legislation should strip employers of their right to set an obligatory retirement age?

MERCER: It's an incredibly difficult question because there are really good arguments that go both ways. Having one fixed retirement age when you have all different types of jobs really doesn't make sense. Some jobs that are very physically demanding are obviously, people would need to retire earlier. Jobs where you're just sitting in an office, then perhaps you don't need to retire on physical grounds. I think that in the long run, as we age, as we live for much longer, people aren't going to want to have a 30-year, possibly a 30-year retirement. Retirement ages really aren't going to have a future. But in the short-term they're going to be extremely difficult for employers to work out how they're going to manage without a retirement age. And I don't think we should underestimate just how worried employers are about this. They've got to get their performance management up to scratch and that's going to be an immense challenge and it can't happen in a year or two.

LAMB: Julian Taylor, what do you make of this mandatory retirement question because the EU Directive, that all this legislation will stem from, doesn't seem to rule it out, it doesn't seem to argue that we have to do away with it?

TAYLOR: Yes I think there are a number of issues with the European legislation but there are clearly two sides to the argument and it's going to be interesting to see where it ends up.

LAMB: Because this is ageism in its purest form, isn't it?

TAYLOR: Well certainly that's one side of the argument. The other side is if you don't have the ability to have a retirement age imposed by the

employer, the employers lose a lot of flexibility and I'd certainly come down on that side of the fence, that to take away all of this completely, certainly at this stage, is going to create huge problems for employers and a lot of cost.

LAMB: But doesn't it make a nonsense of age discrimination legislation if you keep a mandatory retirement age?

TAYLOR: Well I think there are balances everywhere in life between different sorts of discrimination, different rights and obligations and I think this is just another example of it. I think clearly it is a form of ageism to retain some form of retirement age, but I think there are significant downsides in losing it as well.

LAMB: Well we're joined on the line now by a man who has direct experience of doing business in the United States where anti-age discrimination legislation has been in place to protect people over the age of 40 since 1967. Bill Morrow is now chief executive of Vodafone UK and he's recently been researching ageing workforces. Bill I know you find the UK very ageist compared to the US. Why's that?

MORROW: Well it's interesting when you consider the fact that you compare countries like the United States, even Japan where I worked for six years and coming in I was quite surprised to find that the UK doesn't celebrate those that are in their senior years as much as these other countries and cultures and it draws the question as to why? So Vodafone actually kicked off a commission to study here in the UK to examine what's happening in the life of the business and there was some interesting results from that. For example, 69% of the employers believe that companies will fail if they don't employ a diverse workforce out here and in fact three quarters of the employers believe that they should do more to help the young and the old to work better together. So I think there's an acknowledgement that something needs to change, but it's not quite as visible as what you see in some of the other countries.

LAMB: How age diverse is your UK workforce?

MORROW: Well we have quite a span. We have employed people as young as 17 and our oldest employee is 69 years old right now.

LAMB: But you still have mandatory retirement I believe for both men and women at 65?

MORROW: That is correct but we do offer some flexibility obviously again. When somebody's 65 years old, if they choose to work and we have jobs for them, then of course we like them to stay on. At the same time if they want to retire earlier than 65, we have programmes to be able to work that out as well.

LAMB: Of course under the existing legislation, they lose their right to claim unfair dismissal if you keep them on past your mandatory-retirement age. So they don't really have any rights do they, you can get rid of them whenever you want?

MORROW: Technically that is correct but again what we feel is important is that we work with the employees because again when you look at diversity that's out there, the importance that it has on the workplace is becoming more and more important.

LAMB: So what's your feeling about mandatory retirement? Do you want to hold on to it or would you be happy to see it go?

MORROW: Well it's interesting. I think people need to have something psychologically to shoot for. So whether or not they're contributing personally to their own pension schemes as it's important for companies to be able to look at a kind of an end point of what they're going to do and then offer the flexibility beyond that. So I think you do need both.

LAMB: Well anyone approaching what we now think of as retirement age and who wants to carry on working, might reasonably wonder how many more years of work they really have left in them. Now new tests to measure your so-called biological age, as opposed to your chronological age, claim to be able to answer that question. We sent our 39-year old reporter, Mike Johnson, to HB Health, a private clinic which offers these tests to discover what they might reveal.

ELLIS: Hi, Mike Johnson?

JOHNSON: Yes it is.

ELLIS: Hi. I'm Anita.

JOHNSON: For the next hour or so I'll be in the capable hands of clinical nutritionist, Anita Ellis, for a whole battery of tests to measure my physical condition.

ELLIS: Basically we'll start off with a peak flow test. This tests your lung capacity. So what I'm going to do is ask you to take some really deep breaths and breathe in right the way up through the lungs, right from the pelvis right the way up, grip tightly around the mouthpiece of the spirometer and breathe out. Okay?

JOHNSON: Here we go. (breathing). There's one. And so it went on. Hand-grip strength, blood pressure, pulse rate, percentage body fat, vision, skin elasticity, even a scratch and sniff test to see if my sense of smell had degenerated too quickly. With the results of all my exams fed into a computer, it was time for the final verdict on my biological age. It was delivered by the clinics resident doctor, Lynette Yong.

YONG: We've discovered you're a little bit older than you are at 43. So it's a four year difference. The one thing that's really made you older than you are is something called your forced expiratory volume and your forced vital capacity. They are measures of lung function.

JOHNSON: I do have asthma so that's presumably what that's all about.

YONG: Yes, that will be a major factor in bringing your age up. The other thing that's brought it up is your hand grip strength is older than you actually are, quite significantly. But we also know that you don't do any exercise, you don't do any physical training. We need to get you on an exercise programme. We probably need to look at your nutrition.

JOHNSON: So should I be worried by all this?

YONG: You shouldn't be worried, you should be encouraged. It's a positive thing, the more you know, and the earlier you know, the more you can take steps to do something about it and what could be better.

JOHNSON: So I was supposed to feel newly empowered to combat my early onset of ageing. No doubt I would then feel the need to spend some serious money doing it at HB Health. A diet for my bank balance as well as my body. But before I opened my wallet I wanted to know how accurate my result was likely to be.

YONG: These tests are an approximation. I think as a motivational, as an educational tool, as a rough guide, it's great. A lot of tests need to be altered, they need more detail, there's a lot of discrepancy. So I think as a rough guide it's great but to use it for more serious purposes, I'm not sure we're there yet.

JOHNSON: But using these tests for more serious purposes is exactly what some are proposing. Professor Robert Wheale works at the Institute of Gerontology at Kings College London. He believes that with people living longer and a pensions crisis looming, some sort of accurate age test will become essential in the future.

WHEALE: It seems to me that the time of fixed-retirement age is over and it seems reasonable to assess people's biological age which would tell us how fit they are to do the job and if they are fitter than average then they might choose to work longer than otherwise and they'd have something to back up their desire with.

JOHNSON: But he also points out that these tests could just as easily be used to end rather than prolong people's careers.

WHEALE: It could be the other way round. So it's not only a test to be used necessarily by ourselves but it could be used by the employer too.

JOHNSON: And the employer could make the decision you've got to stop working even if you don't want to.

WHEALE: Well this is quite possible because at the end of the day we've got to be fit for the job we hire ourselves to, and if we think we are fit but in fact we're not, then somebody will have to come to some sort of decision.

LAMB: Professor Robert Wheale ending that report by Mike Johnson. Richard Scase, what do you make of age testing? If the only way that employers can force older workers out in the future is by proving that they're not capable of doing the job anymore, do you think we're going to see these tests over here?

SCASE: Well I don't think these tests are testing what's relevant really for most organisations because they're testing things like physical characteristics, but in our economy it's brains and it's the ability to think, it's ability to understand, it's ability to work with your head. High Court Judges of course work forever because their brains don't deteriorate, or so they tell us.

LAMB: But for manual workers?

SCASE: For manual workers this is another issue. But I think this comes back to the compulsory retirement issue. For lots of people, a very large number of people, they do very boring, uninteresting, low-paid jobs. Compulsory retirement in a sense protects them. We know lots of people who count every day to their retirement so they can get their pension and begin to enjoy their lives and I think that aspect of the debate has been ignored in the discussion.

LAMB: Bill Morrow, how do managers monitor performance amongst older workers in the US?

MORROW: Well you know I think when you look at what their... they have to be very careful because of the law that's been in place for so long over there. They look at it strictly based on what they have been set with objectives up front. So it doesn't matter what the age, what the sex or what the race may be it's completely transparent to everybody and I think that's what you already see on a number of businesses here in the UK. I wouldn't suspect that they're going to see too much change on that. I think it's the points mentioned earlier, it's going to be much more visible up front. What you can joke, what you can communicate about and what you can discriminate against.

LAMB: Julian Taylor, turning to a slightly different point. We now have a lot of discrimination legislation. Is there a possibility we're going to see some of these laws actually acting against each other?

TAYLOR: I think that can certainly happen. One of the big concerns is to try to remove the glass ceiling that's sometimes seen as preventing women, people from ethnic minorities, moving to senior positions within companies. For that to happen there has to be some sort of turnover at the senior levels which means often it's white men who hold those senior positions and they need to be moving on for that to happen. There's a very good example of this in the US that Ford had a few years ago. Their chief executive embarked on a diversity drive and he expressed a concern that the company was run by too many white Anglo-Saxon middle-aged men. Now as a result of that there was some changes that took place within the company, diversity was increased, but it was these white middle-aged men who were moved on. They brought a class action and I think it cost Ford over \$10m to settle that. So it does illustrate the sorts of conflicts that there can be.

LAMB: Bill Morrow, there has been a lot of litigation in the US over age discrimination, hasn't there? I believe the number of cases has gone up over 40% in the last five years.

MORROW: That's right. In fact I can remember even in the early 80s when I was there being trained by Washington DC attorneys of what I could say and what I could do at work and it came to the point of being ridiculous to where you couldn't comment on somebody's hair or you couldn't comment on somebody having grandchildren because it was perceived as something close to age discrimination, and as we saw in time kind of move on, companies finally got the point that there's some value when they look at the attitude with which they approach age or race or sex discrimination and once they kind of cross that boundary I think then they can start to see the true benefit behind the intent.

LAMB: Julian Taylor, are we going to see an avalanche of court cases when this legislation comes in?

TAYLOR: I think there's going to be a large amount of litigation. We talked earlier in the programme about how the fact that there's protection for everyone. Discrimination protection we've had in the past has been limited to certain groups, but this is something that everyone will be able to use and I think they will use it.

LAMB: As we heard in the Queen's speech earlier today that the new commission for equality and human rights will be in charge of all this, but that's not actually going to materialise until 2007, so there's going to be a gap isn't there, when people will presumably fall back on calling their lawyers?

TAYLOR: That's right. I think there's a two-year lead in until this legislation comes in, but once it does come in in late 2006, I think lawyers will be a first port of call over issues like this, particularly where people are moved out of jobs.

LAMB: Do you think this new law will change our entire work culture or are we going to look back in 25 years time and think isn't it amazing that in 2004 everyone retired at about the same time?

TAYLOR: I think it will change things. If you look back to the gender or the race legislation that came in in the 70s, that's had a huge affect and often it's hard to think back to a time before that. So I think it will change attitudes.

LAMB: Many thanks to all my guests. I'm afraid we're going to have to leave it there for this week. Visit the Radio 4 website if you'd like to hear all or indeed part of the programme again. That's [bbc.co.uk/radio 4](http://bbc.co.uk/radio4). You can always email us at nicework@bbc.co.uk. I'll be back with another live edition of Nice Work at the same time next week when we'll be finding out what staff really want from their managers. Join me then.