Partnerships Struggle With EU Age Discrimination Law (Update2)

By Caroline Byrne

Sept. 28 (Bloomberg) -- Partnerships such as solicitors and buyout firms are struggling to comply with new European Union age discrimination laws that will expose them to lawsuits for unlimited damages starting next week.

Equity shares or any other financial benefits tied to age rather than performance will be grounds for a claim beginning on Oct. 1 in the U.K., lawyers said. There are 520,000 partnerships in Britain alone and the complexity and scope of the changes, the biggest of their kind in the EU's history, have left many stunned.

''My experience is they are regarding the legislation with incredulity," said Tina Williams, senior partner at London-based law firm Fox Williams, who has advised 20 partnerships in the last three months.

The Employment Equality Directive requires all 25 EU countries to pass their own legislation by the end of 2006 making it illegal to discriminate on the basis of age against salaried employees and shareholders in partnerships. Each country can draft laws tailored to their own culture, so firms are grappling with dozens of national differences.

National Differences

French partners, for example, will have to retire at 65, while Britons can work into their 90s unless colleagues can objectively justify ousting them on grounds other than cost. Germans have no upper age limit, although they can be forcibly retired if their pension is ''adequate," said James Davies, head of employment law at London-based Lewis Silkin.

Salaried employees are not treated the same as partners in some countries. In the U.K., the Employment Equality (Age) Regulations 2006 requires employees to retire by 65 while there is no retirement age for partners. The legislation applies equally to young and old citizens.

Young Europeans who are passed over for a promotion, or are angry that older partners are paid more because of seniority, can also sue on the grounds of age discrimination, lawyers said.

U.K. law firm partnerships may be hit the hardest. While Italian, German, and French lawyers tend to work into their 70s or 80s, British lawyers retire at 55 or 60, with partners pressured to leave earlier to make way for young stars, said Ronnie Fox, a partner at Fox Lawyers in London.

'Stale, Pale, Male'

As the U.K. firms merged their way across Europe in the 1990s, the British imposed that practice on their new German and French colleagues through partnership deeds, causing rifts and laying the grounds for lawsuits, Fox said.

''Quite a lot of the continental firms have been taken over by U.K. firms," said Fox. ''That means a considerable amount of friction."

Davies, of Lewis Silkin, said he is gearing up for numerous ''stale, pale, male" claims from men in their 50s who, unlike their U.S. counterparts, have never before been able to sue on the ground of age discrimination.

Lovells, a London-based law firm with a retirement age of 62, is among thousands of firms debating what to do. Two options are being considered: increase the mandatory retirement age to 65 to match that of salaried employees, or abandon the upper limit for all partners, senior partner John Young said.

Objective Criteria

Hedge funds and buyout firms that tie equity shares to seniority are equally vulnerable, Oliver Brettle, a London employment partner for White & Case LLP, said.

While equity shares can be justified on experience, partners will also need what the law terms ''externally verifiable, objective criteria that proves a legitimate aim," Brettle said. That or get sued.

''If you are paying people simply because they are older, not because they have more clients or billings, then it will be harder to justify it," Brettle said.

White & Case, the New York-based law firm with more than half of its 2,000 lawyers in Europe, is also weighing how best to change its partnership agreement, which has a retirement age of 65 worldwide.

While Brettle said the firm has ''breathing space" because none of its European partners are close to retirement age, the legislation provides grounds for both young and old partners to sue, regardless of the partnership agreement.

Europeans can't agree to be discriminated against on the basis of age, sex or race, so whatever agreement partners signed, it can't be enforced if it discriminates, Davies said.

The changes also throw up numerous, unanswered questions, lawyers said, including exactly where U.S. or foreign partners working in Europe are based, and in which country and under what law they will be allowed to sue.

''If it is discrimination, it depends on where the act took place and it's going to be a nightmare because who knows?" Richard Linsell, a law partner at London-based Addleshaw Goddard, said. ''What if it is a large international firm and the decision was taken in the United States?"

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