EU age bias rules to apply to partnerships

By Caroline Byrne Bloomberg News

LONDON Partnerships like law firms 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 Britain, lawyers said.

There are 520,000 partnerships in Britain alone and the complexity and scope of the changes - the most sweeping 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 the London-based law firm Fox Williams, who has advised 20 partnerships in the past 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 its own culture, so firms are grappling with dozens of national differences.

French partners, for example, will have to retire at 65, while Britons can work into their 90s unless their colleagues can objectively justify removing 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 Lewis Silkin in London.

Salaried employees are not treated the same as partners in some countries. In Britain, the Employment Equality (Age) Regulations 2006 requires employees to retire by 65, while there is no retirement age for partners.

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.

British 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.

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

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

Davies, of Lewis Silkin, said he was 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 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, a senior partner, John Young, said.

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

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, a New York 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 had "breathing space" because none of its European partners was close to retirement age, the legislation provides grounds for both young and old partners to sue, regardless of the partnership agreement.