



Royal College
of Nursing

Who will care?

Protecting employment for older nurses

RCN guidance





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Published by the Royal College of Nursing, 20 Cavendish Square, London, W1G 0RN

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Foreword

It is widely known and accepted that the UK has an ageing population. The consequent increase in chronic and long-term conditions and the increased focus on a preventative approach to public health will change the demands for health care. The provision of good quality health care will be increasingly important in the future and nursing is vital to meeting this need.

However, we also know that 200,000 nurses are due to retire in the next decade and our own research shows that one in three community nurses are over 50 and one in five practice nurses are over 55. This all points to a nursing shortage time bomb.

Health care employers have an important role to play in addressing this. Their actions can help to ensure nursing is an attractive profession for new entrants and, more importantly, older and experienced nurses choose to stay working in the profession beyond the age at which they could retire.

I strongly recommend this guidance to our representatives and officers so that they can work with health care employers to provide better working conditions for older nurses and increase their retention in the nursing workforce. The demand for nursing care is only going to increase, so having enough staff with the right skills is a number one priority.

Josie Irwin

Head of Employment Relations

Introduction

This resource guide provides information for RCN representatives and officers to help them influence health and social care employers to apply good practice in the effective management of the older nursing workforce. In doing so, there are mutual benefits for all; health and social care employers will improve retention of older, experienced nurses, patients will have quality care from nurses who understand and can empathise with their needs, and nurses will feel valued at work and therefore more willing to consider working beyond retirement age.

Good employment practice is important for all nurses, wherever they work. However, in order to minimise workforce shortages, and to meet increasing demand for health care services, it would help if older nurses choose to work longer. Employers should encourage this in order to retain skills and expertise. This resource guide provides detailed information on:

- the nature of the changing demographic of the nursing workforce and why this is significant
- the employment needs of older nurses
- how organisations can respond strategically and support an ageing nursing workforce.

Section 1 explains the changes in the nursing workforce demographic and compares this with changes in the general population, noting the demands this will make on health care services. The employment needs of older nurses and the stereotypical assumptions that can build barriers to their continuing in work are described in Section 2. Section 3 provides information on how to influence employers to support older nurses and encourage their extended working lives. Discrimination legislation and other legal aspects are outlined in Section 4. Sources of information and other signposts can be found on page 20.

1

This guide will help you in your role as:

- **representative** – to influence partnership work in reviewing and developing policies, in supporting individual members and identifying member needs
- **officer** – to support and develop representatives, and in your work with employers and Strategic Health Authorities (for example, workforce planning).

If you are a nurse manager, HR professional or workforce planner, you will find this guide useful in helping you prepare your response, both strategic and operational, to the changes in your workforce profile.

RCN principles and values

The RCN supports the following principles and values which underpin this document:

- commitment to and the equitable provision of flexible working provides benefits for nurses, patients and employers
- access to training and continuing professional development (CPD) is important for nurses of all ages
- consultation with nurses is essential in developing employment policy and practice – they know best what they need to enhance service delivery and support their work-life balance
- the benefits of having a diverse nursing workforce are considerable and are shown in better service delivery and patient outcomes.

The changing demographic

The ageing population

Demographic change is affecting both the patient population leading to increasing demands for health and social care services, and also the pool of nurses available to provide the necessary care.

Many studies show how the population is ageing:

- in 2001 there were, for the first time, more people over the age of 60 than under the age of 16, and for the first time, in 2006 there were more 55-64 year olds than 16-24 year olds (Matheson J, 2010)
- by 2010, 40 per cent of the UK workforce will be aged 45 or over (Department for Education and Employment, 1999)
- by 2033, 23 per cent of the population will be over 65 years of age and the ratio of working age to state pension age could drop below three to one within four years (Matheson J, 2010)
- although the population is living longer, many older people are living with chronic and debilitating health conditions and impairments (Department of Health, 2008).

In parallel, data from the Nursing and Midwifery Council (NMC) shows that:

- nearly 200,000 registered nurses are aged over 50
- the net annual loss of nurses due to retirement is expected to be approximately 25,000 by 2015 (Buchan, 2005).

Data from the 2009 RCN workforce survey also shows the increasing age of the nursing population (IES, 2009):

- 12 per cent of RCN membership is aged 55 or over
- the average age of RCN members is 42 and has increased by nine years since 1987
- 27 per cent of community staff and 33 per cent of practice nurses are aged over 50 (compared to 19 per cent in hospital settings)
- the profile of NHS community nursing has seen the largest increase in those aged 45 and over (from 33 per cent in 2002 to 46 per cent in 2009)

- it is estimated that over 180,000 nurses are due to retire in the next 10 years (Bucchan and Seccombe, 2008).

Since 2002, there has been an overall reduction in the number of nurses aged under 26 and a simultaneous increase in numbers over the age of 56 years. Community and GP practice settings see this the most (Watson et al, 2003). Achieving current health strategies to place more health care services in community settings (for example, the *NHS Next Stage Review* (2008)) will be challenged by the impact of this changing nursing profile.

Implications for the workforce

Extending working life in an ageing society was an important issue for the Labour Government and seems to have equal importance to the new Coalition Government (DWP 2006) (HMG 2010). Greater and longer economic participation from all citizens will address many of the challenges an ageing population presents to pension and health care provision in general. Not only will it raise revenue by taxation, but will also improve health and wellbeing in later life, thereby reducing health care provision costs in the future. Individuals themselves, it is suggested, will benefit from the social, economic, physical and mental advantages of employment which will in turn lead to a better quality of life into retirement.

The *Labour Force Survey* conducted by the Office for National Statistics (ONS) in 2009 reported that 1.3 million people were working after their normal retirement age (data and trends are available here www.statistics.gov.uk/cci/nscl.asp?ID=6621). Earlier research by the Department for Work and Pensions (DWP) claims that those who work into retirement often report higher levels of job satisfaction (HMG, 2009). Yet there is still a perception that working life ends at retirement age, and opportunities for continuing in employment feel very limited to many as they do not suit the older workers' needs.

Encouraging nurses to consider extending their working lives is a key solution to the potential nursing time bomb whereby there are not enough new entrants to nursing to replace those lost to the profession at retirement. Employers need to find innovative ways to retain the older nursing workforce by making them want to continue nursing, supporting their specific

employment needs and valuing the expertise and experience they have to offer. Attracting new entrants to nursing is also important but cannot meet the immediate workforce needs. Older, experienced nurses are crucial in supporting their “novice” colleagues who, when this relationship is managed effectively, can benefit considerably from their wisdom and experience.

In the current economic climate, many individual nurses are finding they have to consider extending their working lives. Many have become the main wage earner in a household affected by redundancy and unemployment. Others struggle with housing costs and negative equity or poor pension fund performance and so need to maximise their income with earnings from employment. Employers shouldn't miss the opportunity to embrace these workers and accommodate their needs, as organisations have much to benefit from retaining or re-engaging older workers.

Summary

- The nursing workforce is ageing – especially in social and primary care.
- By 2015 the NMC forecasts a net loss of 25,000 nurses per year.
- Patient demand is increasing as the general population ages.
- Retention is the key solution to the potential nursing shortage time bomb.
- Employment practice and a working environment that supports older nurses working longer are imperative.

2

Understanding the employment needs of older nurses

Older nurses share many characteristics and employment requirements with their younger colleagues but they also have specific needs and requirements. There are also a number of misconceptions about age and older workers. Where these are used to influence employment decisions about older nurses, they can significantly undermine their job satisfaction and willingness to stay with an employer or to stay in the nursing workforce.

When negotiating employment policies and in supporting older nurses, you should be aware of the following issues:

Myths and misconceptions about ‘old age’

Many wrongly assume that talent, skill, capability and motivation diminish in older workers. In fact, evidence does not bear this out.

Capability

Decline in capability does not necessarily lead to a decline in performance at work. Many research studies show that cognitive ability (reasoning, numeracy and memory) improves from age 25, levels off in the mid-40s and declines, but only very slowly, from the late-50s. However, verbal ability does not decline until the 80s, whilst ability to process information deteriorates from the age of 25. Experience at work and vocational proficiency more than compensate for any age-related decline (Griffiths in Unum, 2008).

Poor life style choices and experience of ill health in earlier/mid life are the key predictors of ill health that impact on employability. This applies equally to nurses of all ages. Physical capability is seen to decline as workers age; but there is no set pattern of deterioration that is true for all.

Older nurses are disadvantaged when stereotypical assumptions are made about their physical performance. Rather than being supported to use their

skills and experience most effectively, they often feel the emphasis is on what they might not be able to do.

Loyalty and commitment

The Government has reported research showing that organisations that were positive about older workers reported that those workers had increased loyalty, lower turn-over, lower short-term absence rates and higher levels of morale (HMG, 2005). However, although it is not borne out by the evidence, a common concern amongst managers and employers is that older workers are simply marking time until retirement and have no loyalty to their employer.

What do older nurses want at work?

Many studies tell us that work is good for us but it is equally important to qualify that by saying that it is only *good* work that brings the good effects. The diagram below has been adapted from work done by The Work Foundation on the elements that constitute good work (The Work Foundation, 2008).



The elements of “Good work” – adapted from work by The Work Foundation (2008)

There are many things that are covered by each element and much that relates to all workers no matter what their age. However, detailed below are some issues that relate specifically to older nurses.

Achievement and progress

Valuing expertise

Older workers want their experience and expertise to be acknowledged and valued. RCN Scotland's *Older...but wiser* project, reported on the challenges of an ageing nursing workforce in Scotland and campaigned for action from the Scottish Government to address the issue. At a number of conferences older nurses said they did not feel that their skills and experience were valued and that, as a consequence, they did not feel respected. They felt that others considered their training less robust than current training which emphasises the scientific aspects of nursing (RCN Scotland, 2009). Research on Canadian nurses supports this view and shows that two out of the top five human resource practices effective in retaining older nurses relate to respect and appreciation (Wortsman et al, 2006).

Achieving career goals throughout working life

Older nurses want to be able to access career planning support – either through dialogue with their line manager or by accessing appropriate support services. The years running up to normal retirement age are often a time when many consider different career options and opportunities. They do not wish to feel that their employer considers their aspirations to be any less important than those of their younger colleagues.

Being supported to work into and beyond retirement

Many nurses can be open and vocal about their wish to work past normal retirement age. Others may feel reluctant to express such a view for fear of not being taken seriously or not feeling able to request altered working arrangements that would enable their on-going employment and job satisfaction. Equally, others may not have considered that such a request was even possible and presumed that they were required to leave their job at a default retirement age. These nurses should be able to rely on line management and HR support and information about the options and choices available to them.

Healthy relationships at work

Anecdotally, older nurses report that, where myths and stereotypes about age and ageing influence their

colleagues' and their employers' thinking and decision-making, workplace relationships suffer. This, of course has a negative impact on job satisfaction and potentially, also on standards of care.

Healthy workplace relationships can only exist where people's diverse needs and abilities are recognised and valued. Line managers play a crucial role in this and in creating team dynamics. All staff benefit when mutually supportive and nurturing work relationships develop between colleagues of different generations. When diverse clinical experience, knowledge and competences are shared through generations, patient outcomes and standards of nursing care increase.

Older nurses also want to be able to enter into mutually respectful dialogue in order to resolve normal workplace tensions before they escalate into harmful, undermining behaviours or even bullying and harassment. For this to be achieved each individual in a team needs to pay attention to, and be aware of, the impact of their behaviour and be prepared to take responsibility for it and for this to be modelled and supported by senior staff.

Provision of appropriate health and wellbeing support

Older nurses want to be able to self refer to good occupational health (OH) services that can offer appropriate services and support. Some older nurses need particular support in arranging their work differently to take into account their changing physical capabilities. They therefore benefit when OH staff demonstrate an understanding of their situation and seek to support their on-going employment without recourse to damaging stereotypical views on age.

Meaningful activity

Older nurses want their contribution to the service and team they work in to be valued and recognised. They do not want to feel like they are expected to be grateful for being "allowed" to keep working, especially if that work becomes meaningless, boring and de-valued. This can result where employers and managers are influenced by the myths and misconceptions about older workers already described.

They also want to be enabled and encouraged to take advantage of suitable opportunities – be they training, career development, secondment or projects, without negative assumptions being made about their commitment or enthusiasm.

Sense of competence

Feeling able and equipped to do the job

All nurses need the right equipment and a suitable working environment in which to work. However, for older nurses, the need for an appropriately accessible workplace and/or adapted equipment/technology or working practices can be especially important. Many organisations are now recognising the benefits of accessible premises for patients but are slow to realise the necessity, arguably a legal imperative for some, of good access for staff. For those older nurses who do experience a decline in their physical abilities, poor access to the working environment is often the main barrier to their continuing employment. Disabled employees have rights to reasonable adjustments which can include altering the way in which work is done as well as adaptations to the physical environment. However age in itself is not an inherent risk for all and employers must recognise that the myths and assumptions about age and physical ability can be counterproductive in this area. Staff will not benefit from better access or the provision of adapted equipment/technology if they feel that negative or discriminatory assumptions have been made about their needs.

Continuing development

Evidence tells us that older workers, even up to the age of 70, can be as productive as younger workers when they receive the same level of training (DTI, 2003). As stated above, older workers continue to be loyal, motivated and ambitious but are often overlooked when it comes to the allocation of training and development. Research also shows that older workers are just as capable of learning new skills but are often wrongly considered to be too set in their ways to welcome new working practices.

Many older nurses consider the later stages of their working lives as a time to learn new skills and to develop careers, at a time when they can focus on their own requirements rather than that of their dependent families. This can be a time when they seek to take on more responsibility and seniority at work.

Even where older nurses do not wish to seek promotion they are still keen to keep their skills and knowledge up to date at work. Many however, can find fitting in with rigid training programmes difficult to balance alongside other commitments, particularly if they are carers.

Autonomy/choice

Having a degree of autonomy/choice over how one works is a vital component of good employment for any nurse, no matter how old they are. However, many older nurses have specific needs in relation to when they work because they have caring commitments outside of work. The peak age for caring is between 45-64 years of age and therefore carers can be seen to be amongst the most experienced members of the workforce. Many older nurses are sandwiched between extended caring responsibilities for their immediate families (many more supporting older children through university, training and the early stages of their working lives, or looking after grandchildren) and their parents and elderly relatives (Seddon, 2004). Older nurses in this situation need to be able to access flexible working arrangements and their caring commitments to be respected just as much as the family responsibilities of their younger colleagues.

However, it is important to note that many carers do not feel able or comfortable to disclose their caring obligations to their employers. They worry that their loyalty and commitment to work and colleagues will be questioned, although the evidence shows the opposite to be true.

Conclusion

The nursing workforce is ageing and employers need to respond by developing strategies which encourage and enable older nurses to work for longer. To do this, they will need to look at a range of employment policies and practices and to ensure that work available to older nurses meets their specific needs and fulfils the criteria of “good work”.

Summary

- Myths and misconceptions about age and older workers have a powerful negative impact on older nurses if they influence managers’ decisions about employment and/or service issues
- Retaining older nurses relies on them having access to “good work” that takes account of their specific employment needs
- Many nurses want or need to work past “normal” retirement age

- Employers should provide flexible working opportunities for older nurses for example, to support caring responsibilities
- Older nurses can and should benefit from access to CPD opportunities
- An inaccessible working environment is a barrier to the retention of older nurses
- Employers should encourage and support staff to make informed retirement decisions.

3

What employers need to do to support an ageing nursing workforce

Sections 1 and 2 have outlined the changing nursing workforce and have described its unique characteristics and employment needs. This section will outline how you can influence employers to develop relevant policies and ensure they are put into practice.

REMINDER – The main messages for you to use to convince employers of the need for a specific approach to retaining older workers are:

- there will be a future nursing shortage in all areas, but especially community settings, as older nurses retire without sufficient numbers entering the profession to replace them
- research shows that the presence of older nurses in health care teams produces positive health care outcomes for patients (Robert Wood Johnson Foundation, 2006)
- the advantages of a multigenerational workforce – where younger employees benefit from the skills, wisdom and experience of older colleagues (Manion, 2009).

Policy review to ensure support for older nurses and prevent age discrimination

All current employment policies should be reviewed to ensure that they are inclusive of the needs of older nurses, are compliant with age regulations and equality legislation and do not discriminate either directly or indirectly against older workers.

It may also be necessary for new policies to be agreed in partnership, for example, flexible retirement policies (see below).

Adherence to equalities legislation and regulations is a statutory responsibility. NHS employers will also have specific duties regarding race, gender and disability and it is likely that this will be increased to cover other equality strands in the future (see Section 4 for further details). Where employers have or are considering having a Single Equality Scheme approach to discrimination legislation compliance you should strongly urge that age is a key part of this work.

Particular attention should be paid to the following policies:

- recruitment, selection and promotion (including job evaluation)
- training
- redundancy
- availability of pay and benefits
- retirement
- shift/working patterns
- flexible working.

Identifying age bias in these areas will involve consideration of, amongst other things:

- language used (for example, job advertisements that mention GCSE qualifications)
- ongoing service requirements in policies and practices – for example, CPD support that is limited to those who will continue in employment for a further period of some years
- payments or benefits that favour those with long or short service
- inflexibility around service provision or employment participation (for example, non-availability of short shifts, compulsory rotation of day and night shifts).

Monitoring and impact assessment

Whether or not policies achieve their intended aims can only be objectively determined if appropriate monitoring is conducted. You should particularly encourage employers to monitor, by age, the uptake of flexible working, job evaluation outcomes, training, recruitment, resignations and retirements. Employee surveys should also analyse all relevant information according to age bands.

The following serves as a cautionary tale to employers who fail to take age discrimination seriously.

Age case could see £1million pounds in damages

Leeds Teaching Hospitals NHS Trust is faced with damages that could amount to around £1million in relation to an age discrimination case brought by a manager responsible for breast screening services in the Yorkshire area.

Linda Sturdy, aged 56 had been assured she was the most qualified and experienced person for the job of leading breast screening services for 124,000 women in Leeds, Wakefield and Pontefract. Sue was subsequently denied the job after she told another manager that she was only three years away from retirement. The role was given to another person aged 43. Ms Sturdy helped set up the breast screening services in 1990 and had provided consistent high-quality performance in the role since then.

An employment tribunal has ruled she faced age discrimination, was victimised for making a formal complaint and suffered further for refusing to accept a more junior role before being sacked.

Hearings next week and later this year will decide compensation. Her legal team is claiming damages worth nearly £500,000 – one of the biggest awards for age discrimination in the UK since it was outlawed in 2006. Legal costs, tax and other costs to the NHS will drive the bill closer to £1m.

Source: *The Yorkshire Post*, 8 April 2009

Results of the case reported
<http://www.dailymail.co.uk/news/article-1279919/NHS-manager-wins-180-000-compensation-victimised-age.html>

and

http://news.bbc.co.uk/1/hi/england/north_yorkshire/8002740.stm

Putting policies into practice – line manager support

Training and support for managers responsible for these policies and their implementation is very important. The employment practices of line managers have a powerful influence on an organisation's culture. They will determine whether or not staff even seek to access the available policy provisions.

Some commentators recommend age awareness training for all staff but this has been found to have limited effectiveness if it is generic and not targeted to specific issues. However, managers, especially those involved in recruitment, need an understanding of age discrimination legislation and may also benefit from training and support on the benefits of age diversity in the workplace. They should also be supported in evaluating their own biases and decision-making processes so that they can try to overcome them in their work.

Training on how to manage a range of flexible working arrangements to best balance service delivery and staff needs is also an imperative. The RCN is only too aware that hours of work and/or how shifts are allocated can be a source of serious disagreement, if not conflict, between team members. If managers do not have the knowledge and competence to deal with this important issue, none of the individual and organisational benefits of flexible working will be realised.

Employment practices that support the concept of “good work”

Achievement and progress

“How do you get the best out of workers of any age? You show them that you recognise their skills and abilities, you take time to find out what their aspirations are, and you ensure that they feel fulfilled and supported in their work... The starting point is not to fall into the trap of making assumptions about older employees based on their age.” (Beagrie, 2004)

Representatives and officers will want to work with employers to develop appropriate ways to ensure that the achievement and progress of older nurses is

acknowledged and valued. One way of so doing is to invest in mentoring programmes that couple experienced nurses with novice colleagues and to publish the evaluations of such work and the impact it has on outcomes and retention (of both the older and younger worker). Such a scheme requires proper training and support for mentors and those being mentored and should not be confused with regular supportive working arrangements.

Managers should also be encouraged to use the experience and expertise of older nurses in managing change in the workplace; explicitly seeking their views and opinions to shape services. This will demonstrate respect for their experience and not allow intractable stereotypes or negative assumptions to block development or change.

Competence in supporting life course planning

Regular contact between staff and their line managers is an important factor in recognising and valuing achievement and progress, and in many health care organisations there is a commitment to one-to-one discussions, annual appraisals and personal development plans (PDPs).

Managers should be encouraged not to shy away from discussing career aspirations and retirement plans with their older nursing staff in these meetings. Some report reluctance in discussing such matters, for fear of causing offence or risking accusations of discrimination, or because they do not feel competent in dealing with the matters that come up (Barnes H, Smeaton D and Taylor R, 2009).

Employing organisations may have retirement policies that could inform and underpin these discussions. As an alternative, they could provide support and signposting information for managers to feel competent in these discussions; whilst also making it clear that they are not being expected to become careers advisers and pensions/retirement experts. You can assist this by referring managers and employers to the information available from the RCN and the support members can get from the RCN's Member Support Services (careers advice, benefits and pensions expertise and so on). Further information is available at www.rcn.org.uk/support/services

The Institute of Employment Studies' report on employer support for later life planning suggests that there are three key times when managers should have conversations with staff about their later life aspirations:

Age 50-55: flagging up conversations – initiated by either side – “where are we at?”, “what help do you need?”

Age 55-60: fact-finding conversations – often initiated by the line manager – “where are you going?”, “how might we do this?”

Age 60- 65 (and over): – decision conversations – led by the line manager but controlled by the employee – “just checking your plans”, “what support do you need?”

For more information see *Should I stay or should I go?* (IES, 2010)

Healthy relationships

Managers should seek to build team dynamics in which the experience and training of older nurses is respected and misconceptions about capability and commitment are challenged.

The RCN's *Working with care* activities can also be used as a way of improving team harmony and inter-working practices as one of its stated aims is to “help to produce a supportive culture or team climate where bullying and harassment are unlikely to occur”. It may also lead to a working environment where teams feel more able to share skills and expertise proactively (RCN, 2005).

As representatives of the RCN, you have an important voice and can tackle discriminatory attitudes to older nurses, both through individual representation of nurses with employment difficulties and through strategic negotiations with employers.

Provision of appropriate health and wellbeing support

Recent work by the European Agency for Safety and Health at Work reminds us of the need for risk assessment to be able to respond to a diverse workforce. They recommend that risk assessments are developed that allow the adaptation of the work to the worker. This is especially important for those older nurses who do experience a decline in the physical capabilities.

Safety representatives will want to ensure that risk assessments and monitoring of incidents take age into account sufficiently.

Occupational health

Concern has been expressed by some commentators that some occupational health services are not adequately equipped to deal with the issues presented by an ageing workforce. It will be important for employers to ensure that the services they provide or procure for staff are able to respond appropriately to the demographic of their workforce and support other age specific initiatives regarding health and wellbeing. Some services have offered mid-life screening services and been involved in mid-life or pre-retirement education. You should encourage employers to set appropriate service level agreements and ask that service usage is monitored by age.

Other aspects that will be important include:

- ergonomics and the provision of appropriate equipment and aids
- job design
- reasonable adjustments to take disability into account.

Safety representatives will want to see evidence that the needs of older nurses are addressed in safety committees and that incidences and risks are monitored by age.

Meaningful activity

Good employers know not to make assumptions about their workforce. Staff surveys can be used to gather intelligence about job satisfaction rates and setting up a stakeholder group of older workers may also help to provide useful feedback on trends and concerns amongst the older workforce.

Many employment surveys have shown that flexibility and work-life balance are two main factors that contribute to older nurses' job satisfaction (see section on autonomy and choice below for more information on flexible working).

Sense of competence

Older nurses want to feel able and adequately equipped to do their jobs. Employers will need to ensure that older staff have equal access to training and development opportunities as their younger colleagues. The

introduction of new ways of working or new equipment can be times when managers make negative assumptions about the capabilities of older staff and this should be firmly resisted.

Where older nurses have additional learning support needs, these should be provided sensitively and confidentially, bearing in mind that there may be a legal obligation to do so under equalities legislation.

Older nurses who do experience a decline in physical abilities may benefit from tailored work place assessments to identify the provision of specialist equipment (for example, ergonomic chairs, digital hearing aids, adaptive technology). Line managers should be encouraged to utilise expertise from occupational health and occupational therapy as well as agencies, such as the Department for Work and Pensions' (DWP) Access to Work, to procure such equipment.

Autonomy and choice

As stated above, the ability to control when and for how long they work can be of paramount importance to older nurses.

Flexible working and work-life balance

Many employers now have work-life balance policies, but you should encourage employers to specifically target older nurses – both in their application and promotion. It is also essential that the needs of carers are included – and that this specifically mentions those who care for elderly parents as well as disabled or younger dependants.

The RCN publication *Spinning plates* (2009) gives information on the various types of flexible working arrangements that are effective and the necessary information to encourage their wider use (RCN, 2009)

“flexibility for people over 50 with caring or health needs can help (employers) retain valuable skills and experience which will become increasingly difficult to replace.” (Opportunity Age, meeting the challenges of ageing in the 21st century, HM Gov)

Carers UK has also reported that informal flexibilities are of most value to carers when coupled with access to more formal arrangements (Yeandle et al 2006).

Once again the line manager's role is vital. Several studies have shown that the benefits of flexible working are realised where managers understand the needs of

their staff and are willing and able to manage a variety of different working arrangements. In contrast, flexible working policies which are not implemented because of resistance of line managers are a powerful demotivator. Having said this, however, it is clear that not all requests can be granted and that all parties need to be willing to compromise to ensure service and staff needs are met.

In your role representing older nurses you may need to advocate for these changed ways of working and provide evidence and reassurance about their effectiveness. You may also be able to broker arrangements and assist communication with other employees.

The Equality and Human Rights Commission has recently outlined the key management skills necessary to manage people flexibly:

- communication skills
- planning and organisation
- managing by output
- trust and delegation.

EHRC, 2009

Supporting informed retirement decisions

When staff have good information about their pension options and where their life-course plans have been discussed and supported regularly, they are more likely to choose to extend their working life. This contradicts the common assumption that all older nurses are simply marking time until retirement without commitment or loyalty to their employer and that discussing retirement will encourage nurses to leave early.

Retirement policies developed in partnership and underpinned by the real experiences and needs of employees will assist retirement decision-making.

As well as information on legal and contractual issues a good retirement policy will also include practical matters such as:

- a commitment for managers to discuss future aspirations and retirement plans in regular one-to-one meetings with staff
- specific actions regarding life-course planning and

retirement to be included in performance development reviews. This can be a two-way process whereby a manager may agree to explore flexible opportunities available to a member of staff as much as a staff member may choose to consider additional training or work opportunities

- signposting details for pension information. Some employers have a designated pensions officer in the payroll department but their expertise may not cover the breadth of information employees need, so this should also cover the Department for Work and Pensions' (DWP) pensions service, independent financial advice provision and retirement planning services
- options for flexible retirement /working arrangements
- a timeline for retirement decisions where an employer has a default retirement age (see section four) including possible appeal processes
- accurate information on any local retirement customs or awards that may be available, so that all employees can benefit, not just those "in the know".

Case studies and model retirement policies for the NHS can be found in the NHS Pension scheme flexibilities resource pack on the NHS Employers website (www.nhsemployers.org).

Employers can be encouraged to provide tailored retirement planning seminars. Some offer these just to staff in the months running up to retirement but it is arguably more important for staff 10 years from retirement to consider their plans at that stage – not when time has run out. Ideally such courses will be offered in-house by professionals who are knowledgeable about relevant pension schemes and health care working practices.

Flexible retirement

Many pension schemes now offer facilities where staff can make a partial drawdown of their pension if they work reduced hours. This can provide extra income to compensate for lower earnings when an older nurse moves to part-time working.

To support older nurses you will need to ensure they are aware of the options available to them and you may also need to ensure that line managers are aware of new possibilities and do not consider retirement to be the "cliff edge" that it was once. NHS Employers has produced useful guidance on flexible retirement in the

NHS which is available in the Pay and Conditions section of their website (as referenced above)

Details of the provision in the NHS Pension Scheme are reproduced below. You should encourage older nurses to seek out information about the pension scheme they belong to.

Phased retirement options from the NHS Pension Scheme

The following information is taken from page 23 of the NHS Pension Scheme Guide available here – www.nhsbsa.nhs.uk/Documents/Pensions/SD_Guide_V3_BW.pdf

Helping you achieve a work-life balance

Both sections of the NHS Pension Scheme allow you to choose to retire between the minimum pension age and age 75 but there are also features to help you make the transition between work and retirement as you approach the normal retirement age.

1995 Section

Flexible retirement

The 1995 section of the scheme allows you to retire and take your pension between age 50 (55 for some members) and 75. You can choose the time that suits you best. There is also a facility to protect your pension if you wish to step down to a less demanding job.

Voluntary protection of pay

If you are over the minimum pension age and your pay reduces by at least 10 per cent you can apply for the higher rate of pay to be protected for pension purposes. You must do this within 15 months of your pay reducing. When you leave, your benefits will be based on this rate of pay, or your actual rate of pay if that is better for you.

2008 Section

Flexible retirement

The 2008 section of the scheme has been designed to provide a great deal of flexibility around retirement. You can choose to retire between age 55 and 75 but you do not actually have to leave the NHS to start drawing some of your pension and taking a lump sum. After you reach the minimum retirement age you can consider moving towards retirement by reducing your working time or perhaps switching to a less demanding role. Your reckonable pay will still consider any higher earnings you may have had in the 10 years prior to you finally retiring. You can also take the whole of your benefits by leaving the NHS. You may be able to return to employment and re-join the scheme, or you could choose to keep working beyond the normal retirement age and earn a larger pension.

Draw down

If you reduce your pensionable pay by at least 10 per cent and you have reached the minimum retirement age of 55, you may partially retire and take some of your benefits. You can take a minimum of 20 per cent and a maximum of 80 per cent of your own pension entitlement and continue to build up future membership. The benefits would be reduced if they are paid before your 65th birthday. Your pensionable pay must remain reduced for at least a year, otherwise you will cease to be eligible for the pension that you have taken. You can drawdown your benefits twice before retiring completely.

Conclusion

The consequences of ignoring the impact of demographic change on the nursing workforce are considerable; not just in terms of workforce numbers, skill mix difficulties and staffing shortages, but also the negative impact on patient outcomes that would result from a loss of personnel, experience and talent (Robert Wood Johnson Foundation, 2006).

Research has shown a link between nursing staffing levels and patient mortality. In response to one such piece by online service Dr Foster Intelligence, Dr Peter Carter, RCN Chief Executive & General Secretary, said:

“It’s very simple – when hospitals do not have enough nurses, patients are put at risk... hospital trusts must make sure that by having enough nurses they keep all their patients safe.”

(www.rcn.org.uk/newsevents/press_releases/uk/rcn_comments_on_the_link_between_nurse_staffing_levels_and_patient_mortality)

Key actions to influence the workplace

In addition to the issues raised throughout this guidance, RCN representatives can help by:

- suggesting a joint management and staff forum for addressing issues relating to the changing demographic
- identifying examples of best practice in similar organisations and seeking further information
- encouraging the development of good monitoring and evaluation systems for age-related policies
- ensuring an employer’s human resources strategy and business plan includes a commitment to retaining older workers and supporting the retirement decision-making process.

Representatives can also encourage all RCN members to influence the workplace by:

- tackling negative stereotypes about older people – whether workers or patients – when they encounter them
- taking the initiative and being proactive in finding out what flexible working or phased retirement arrangements are available to them
- being flexible in thinking about new ways in which work and shifts can be organised and challenging traditional methods of working
- giving feedback to their employer on arrangements already in place
- being supportive of other colleagues’ needs to work particular shift patterns
- telling their RCN representative about schemes that they have heard about that work well elsewhere, so that they can champion their introduction.

4

Legal aspects

This section outlines the legislation you need to be aware of when considering policies and practices that affect an ageing nursing workforce.

The Equality Act 2010 came into force on 1 October 2010. It aims to simplify and streamline the numerous pieces of primary legislation that cover equality and discrimination in the UK before this date.

Public Sector Equality Duty

A further aspect of the Equality Act, the Public Sector Equality Duty (PSED), came into effect on 5 April 2011. This replaces the separate equality duties public bodies had in relation to race, disability and sex. It extends the duty to cover age, sexual orientation, religion or belief, pregnancy and maternity, and gender re-assignment.

Public sector equality duty is made up of two parts – general and specific.

The general duty requires public bodies to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation
- advance equality of opportunity between different groups
- foster good relations between different groups.

The specific duty gives ministers the power to impose certain legal requirements designed to help public bodies meet the general duty. Whereas the previous government used the specific duties to require public bodies to produce comprehensive equality schemes and objectives, the coalition government has consulted on proposals that will require public bodies to publish data according to local needs rather than government requirement. They will also be expected to publish at least one equality objective and report on progress at least annually. The outcome of the consultation exercise is not yet known. Further details on PSED can be found on the Equality and Human Rights Commission (EHRC) and NHS Employers websites.

Public sector employers who already have equality schemes and equality impact assessments for new and

existing policies and practices in place will be well prepared for this new duty.

Main aspects of the Equality Act

The act lists nine protected groups – age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity. Most aspects of the Equality Act apply equally across all groups.

Full information about the Equality Act can be found and the remainder of this section will cover in more detail the particular aspects that may effect older nurses:

- age discrimination
- carers
- disability discrimination.

Age discrimination – what the law says

Protection from age discrimination in covering employment and vocational training was first legislated for when the Employment Equality (Age) Regulations came into force on 1 October 2006. The Regulations covered many aspects of working life from recruitment to retirement and pension matters. The legislation generally made it unlawful to discriminate against a person on grounds of their age. However there were some exemptions. These regulations were superseded by the Equality Act 2010 (see above).

All aspects of employment (or prospective employment) are protected from age discrimination, including recruitment, employment terms and conditions, promotions, transfers, dismissals and training.

Many of the protections remain the same however, there is one significant difference.

The previous age regulations stated that there was to be a set process for managing retirements – especially requests to continue working after normal retirement age, – and that there can be no compulsory retirement before the age of 65 (known as the default retirement age). The coalition government has announced its intention to phase out the default retirement age from April 2011. This means that employers who wish to compulsorily retire staff must have set proceedings in motion by April 2011 to allow for the required notice periods to pass. It will still be possible for individual employers to operate a compulsory retirement age, provided that they can objectively justify it.

The last date on which an employee should have been given notice of retirement under the Default Retirement Age (DRA) was **5 April 2011**.

Under the DRA, employers must give a minimum of six months notice of retirement but no more than 12 months notice. Retirements notified on or before 5 April 2011 can continue through to completion provided that the following conditions are met:

- the DRA procedure, as set out in the previous Employment Equality (Age) Regulations 2006, is followed correctly (including the employee's right to request to stay on is given serious consideration by the employer)
- the person retiring has reached 65 or the normal retirement age (if this is higher) before 1 October 2011. Therefore an employee must be 65 by the 30 September if they are to be retired using the DRA.

Employers can not issue notifications of retirement using the DRA after 5 April 2011.

The provision allowing short (two weeks) notice of retirement, was repealed on 6 April 2011, and such short notice notifications are no longer permitted.

ACAS encourages employers to remember the following points (ACAS 2011):

- Workers will retire when they are ready to, enforced retirement will only be possible if it is objectively justified
- You must avoid discriminating against all workers on the grounds of age
- This legislation will be applicable to all employers and all company sizes and sectors
- These changes do not affect an employee's state pension age and entitlements, which may well be separate from the age at which they retire.

So legislation means that it is unlawful for employers, on the grounds of age, to:

- deny someone employment
- dismiss someone
- refuse to provide training
- deny someone a promotion.

The Equality Act 2010 extends age discrimination protection to goods, services and facilities and this will have a considerable impact on the provision of health and social care for older people. It also changes the public sector equality duty and extends this duty to age (see above).

What this means for employers

This will mean that all public sector organisations will have to include age in their equality schemes and report on measures they have taken to address inequality – not just as a service provider, but also as an employer.

Monitoring and analysing workforce data and measures to support older workers will be key. As a minimum, employers should already be complying with the Age Regulations Act 2006.

Comment

Older workers are aware of age discrimination legislation (see page ??) but it is interesting to note the limited number of complaints about age discrimination cases that have been successful at tribunal. Age Concern has reported a large rise in the number of cases taken out, but states that only 56 out of 1,778 cases concluded in 2007/2008 were successful at tribunal stage. A large majority (800) were settled before a hearing as a result of Advisory, Conciliation and Arbitration Service (ACAS) arbitration; 147 were unsuccessful and 616 were withdrawn. Whilst this might be smaller numbers than expected, there has been a significant rise in the number of cases lodged since Age Regulations came into force. The employment tribunal statistics for the period April 2007 to March 2008 show there were 2,949 age discrimination claims started in this period, compared with only 972 in 2006/2007 (Age Concern 2009). This figure rose again for 2009/2010 by 37 per cent as 5,200 cases were lodged. (Tribunal Service, 2009)

It is perhaps not completely surprising that numbers increase slowly as knowledge levels and case law increases after legislation is introduced. It may also be taking time for workers to understand how age discrimination manifests itself in organisations and to understand that there are now remedies for behaviour that has previously been tolerated (albeit reluctantly). Employers should be encouraged to consider the matter widely and not simply focus, as some have done, on recruitment practices, job application forms and advertisements.

Links for further information

NHS Employers

www.nhsemployers.org/employmentpolicyandpractice

DIRECT GOV

www.direct.gov.uk/en

ACAS

www.acas.org.uk

EHRC

www.equalityhumanrights.com/your-rights/age

Equality Commission (Northern Ireland)

www.equalityni.org

Carers – what the law says

Good employers will want to ensure that carers are protected from discrimination and are also supported in their caring responsibilities; this includes the provision of flexible working arrangements.

The Employment Act 2002 gave working parents of disabled children under 18 the right to request flexible working arrangements. The Work and Families Act 2006 sets out the right of parents of children under six (or 18 if the child is disabled) to request flexible working. Employees who have worked for their employer for at least 26 weeks can apply to make a permanent change to their terms and conditions.

Since April 2007, employees also have a statutory right to ask their employer for flexible working if they are caring for an adult who is a relative or lives at the same

address as them. Carers also have the right to take (unpaid) time off work for dependants in cases of emergency.

Legislation defines a carer as someone who cares for, or expects to care for, a husband, wife or partner, a relative such as a child, uncle, sister, parent-in-law, son-in-law or grandparent, or someone who falls into neither category but lives at the same address as the carer.

All carers have a right to a statutory assessment of their needs and local authorities have a duty to inform carers of this right. This is usually undertaken by social services and should also take account of their employment situation and needs. However, other agencies, such as NHS organisations, are obliged to support local authority provision of co-ordinated support to carers.

The Equality Act 2010 introduces a concept of discrimination by association that may provide protection from discrimination for some carers. This will help where a carer believes they are being directly discriminated against or harassed because of their links and/or relationship to a person in one of the protected groups e.g. because they are caring for a disabled person.

What this means for employers

Good employers should ensure that their policies reflect the rights of staff members who are carers, and that this includes those caring for older relatives, not just younger children. This is especially important for policies that cover flexible working provisions and work-life balance.

Managers should be made aware of the rights carers have and also be encouraged, and where necessary, supported, in sensitive communication for those who have or who may have such responsibilities.

It is possible that an NHS employer will be asked to lead or contribute to the statutory assessment of a staff member who has a carer's needs (as a provider of services). Whilst this may not happen often, employers must ensure that they are able to differentiate between their role as a service provider and an employer in these assessments. More importantly they must work to ensure that one role/function does not undermine the other – for example, a service provision that makes certain requirements that the employer function cannot

meet – and vice versa. Employers should be encouraged to see this as an opportunity to strengthen their commitment to staff with caring responsibilities.

Links for further information

Carers UK

www.carersuk.org/home

Disability – what the law says

Disability discrimination legislation outlaws the unfavourable treatment of, and discrimination against, disabled people. Prior to the Equality Act 2010, the main piece of legislation that provides this protection is the Disability Discrimination Act (DDA) 1995 and its numerous amendments.

The definition of a disabled person is someone with “a physical or mental impairment and the impairment has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities”.

Important amendments to the DDA 2005, that are carried forward in the Equality Act 2010, mean that the definition covers a wider range of people:

- anyone diagnosed with cancer, HIV or multiple sclerosis, whether or not they are showing signs of their illness
- people with severe disfigurements and “hidden” disabilities like dyslexia and epilepsy, depending upon the severity of the impairment
- people who have severe back pain or arthritis, if it impairs their ability to do normal activities
- people who have had a disability in the past, even if they have recovered, for example those who have had episodes of mental ill health.

In addition, coverage for mental ill health conditions has increased as the medical evidence test for disability in such cases has become more straightforward.

Separate secondary legislation and codes of practice exist for Northern Ireland. For example, schedule 8 of the DDA sets out the modifications which apply to its application in Northern Ireland. The Special Educational Needs and Disability (Northern Ireland) Order 2005 (SENDO), as amended, covers disability discrimination in the field of education. SENDO extends protection to young disabled people in schools and disabled persons in further and higher education.

What this means for employers

The Equality and Human Rights Commission (EHRC) believes that discrimination legislation encourages:

“employers and employees to work together to break away from rigid employment practices, identify what adjustments and support might be needed, and find flexible ways of working that may benefit the whole workforce”. (www.equalityhumanrights.com/your-rights/disability)

This is especially true when it comes to disabled workers.

Discrimination against a disabled person in their employment covers:

- all terms and conditions of employment
- provision of promotion, transfers, training or other benefits
- refusal to provide such opportunities on grounds of disability
- dismissing or subjecting an employee to unfavourable treatment on grounds of their disability.

Employers are also required to make reasonable adjustments to a member of staff’s employment that would facilitate their ongoing employment and protect against unfavourable treatment. These might include changes to policies or procedures, or the introduction of new equipment, or physical changes to premises. Some examples of reasonable adjustments are:

- making adjustments to premises
- altering the person's working hours
- allowing absences during working hours for medical treatment
- giving additional training
- providing special equipment or modifying existing equipment
- changing instructions or reference manuals
- providing additional supervision and/or support
- redeployment – including to higher grade positions.

Employers should ensure that all their employment policies and practices are impact assessed for potential disability discrimination. This should be done in consultation with disabled staff stakeholder groups but must also include recruitment practice for disabled job seekers.

The Equality Act 2010 brought in a number of changes to disability discrimination protection. One of the most important is the bar placed on employers asking unnecessary health-related questions in the recruitment process before a job offer is made. Extension of protection against discrimination is also offered to those associated with a disabled person and this may greatly assist carers (see above).

It is important for employers to realise that the majority of disabled people become so during their working life. Therefore policies and practices will need to be regularly reviewed to accommodate the changing needs of staff with fluctuating or deteriorating health. It is also important for managers and employers to understand that disability does not have the same impact or effect for all people.

In the Public Sector Equality Duty (see above) NHS employers also have a duty to promote disability equality, both to service users and employees.

Links for further information

EHRC

www.equalityhumanrights.com/your-rights/disability/

Equality Commission (Northern Ireland)

www.equalityni.org/sections

Direct Gov

www.direct.gov.uk

NHSE Disability Equality Scheme Checklist

www.nhsemployers.org

Resources

The RCN provides a range of services that may be of particular relevance to older nurses, for example, Member Support Services offer expert advice on retirement issues, pensions, welfare benefits, and dedicated services for disabled members. See www.rcn.org.uk for more details.

Employers Forum on Age (EFA) is the UK's leading authority on age. Founded in 1996, the EFA is an independent network of leading employers who recognise the value of an age diverse workforce. In addition to supporting employers, the EFA influences Government, business and trade unions, campaigning for real practical change. See www.efa.org.uk for more details.

The Age and Employment Network (TAEN) works to promote an effective labour market that serves the needs of people in mid and later life, employers and the economy. Visit www.taen.org.uk for more details.

Age UK is the new name for the combined forces of Help the Aged and Age Concern. The Age UK Group works to improve later life for everyone by providing life-enhancing services and vital support. Visit www.ageuk.org.uk for more details.

NHS Employers has a range of materials on its website relating to retirement and flexible working arrangements. The NHS Pension Scheme retirement flexibilities resource pack provides NHS organisations with the information they need to better understand the strategic context of the NHS Pension Scheme. It also addresses the need to attract and retain the right mix of skills and experience in the health care workforce. It can be found at www.nhsemployers.org

NHS Employers also has guidance for NHS organisations on the application of equalities legislation. www.nhsemployers.org

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July 2011

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0345 772 6100

Published by the Royal College of Nursing
20 Cavendish Square
London
W1G 0RN

020 7409 6100

Publication code 003 849

ISBN 978-1-906633-74-5