

Fourth Study Commission

Public and Social Law

QUESTIONNAIRE 2009

AGE DISCRIMINATION

PORTUGAL

Introductory remarks:

The following Questionnaire deals with different topics of labour law, with a special focus on age discrimination. One of the main objectives of this questionnaire is, to obtain some impressions of the approach of national labour law systems regarding age discrimination. It is also important to keep in mind that there may be different provisions for different groups of employees for example civil servants and other persons working for government or public authorities under ordinary contracts of employment or farm laborers, persons working on board of ships or for religious communities or teachers. Exceptions or specific provisions regarding these groups should be mentioned. Statutory or other differences in treatment of men and women concerning age discrimination should also be mentioned

- 1.a. General, are there rules against age discrimination which have constitutional status? What do these rules say precisely, and how do they work at lower levels of law making?

Yes.

There are two references in our Constitution to the age discrimination.

The first is the article 59^o that imposes a fair retribution and a reasanoble amount of work conditions to all workers regardless of their age.

The other is the article 69^o that imposes a prohibition to young persons in scholar age to do any continued work, until 16 years of age..

- 1.b. Which international agreements and conventions dealing with age discrimination has your country ratified ?

In 2000, the UE adopted two important legal tools - Directiva n.º 2000/43/CE, e Directiva n.º 2000/78/CE.

These documents have been incorporated in our legislation using the Labour Code, approved by the Law nº7/2009, de 12 of February.

1. c. What are the main sources of law against age discrimination ?

The main sources of law against age discrimination are the articles 22º to 28º of the Labour Code. These legal articles are about general discrimination issues with a particular emphasis in gender discrimination; nevertheless there is a specific reference to age discrimination and the statutory provisions apply also to this kind of situations.

1. d. Are collective agreements bound by these provisions?

Yes. The article 26º imposes that if there are any collective agreement that creates a more generous rule to any kind of worker for reason of age is considered illegal and must be understood as if this kinder rule applies to all workers.

Any collective agreement in the private sector must be approved by a specific public service and if this administrative organ finds any discriminative rule, he must report to the Court for judicial appreciation. Then, a judge can decide to consider non-existent this rule discriminatory.

1. e Which groups are protected by these provisions, young employees, older employees or is it just forbidden to consider age as a decisive factor for working conditions ?

Generally, it is just forbidden to consider age as a decisive factor for working conditions.

2 Please specify, what are the criteria according to which it is determined that it is an unlawful age discrimination (i.e. relevancy of the age to the nature of the job)?

Excepting small or part time jobs, there is forbidden to work until 16 years of age; it's

imposed to study for at least 9 years so that everyone has, at least, the 9th. year of scholarship.

3. Do you have provisions stating minimum or maximum age for hiring employees?

The article 69^o of the Portuguese Constitution imposes a prohibition to young persons in scholar age to do any continued work, until 16 years of age..

The article 348^o of the Labour Code imposes that when one worker arrives the age of retirement, or completes 70 years of age, his contract became of short duration (six months). It's then possible to the employer to terminate the working relation at any time, with 60 of warning.

4. Do you have provisions stating minimum or maximum age for entering pension funds systems ?

No. The pension system is public and the retirement is due only at 65 years of age.

5. Have you got collective regulations or statutory provisions, which give certain protections or certain allowances only if the employee has achieved a certain age ? Describe them.

Only the antiquity at work, mainly the years spend working to the same employer , permits to obtains a certain amount of allowances.

6. Does the computation of wages depend on the age of the employee ? Describe this.

No. Only the number of years of work can determined a bigger wage.

7. Does the duration of holiday or the pay during sickness depend on the age of the employee or on seniority or both ?

Yes to public servants. Every 10 years (40, 50, 60 years old) determines one day more in the duration of holiday's. This statutory provision can be applied also in collective regulations proposed by private activity's sectors.

8. Are there any provisions for elder employees, which entitle them to a reduction of working hours ? Describe them.

Only in restricted professional sectors like teachers. This professional class has some provisions that recently are being restricted that allows for a teacher with 50 years or more to give a smaller number of teaching hours. This hours are spent in other activities of administration and management.

- 9.a. Is it allowed to terminate an employment relationship (dismiss), due to the employees age ? If Yes –which age ?

The article 348° of the Labour Code imposes that when one worker arrives the age of retirement, or completes 70 years of age, his contract became of short duration (six months). It's then possible to the employer to terminate the working relation at any time, with 60 days of warning.

- b. Is it allowed to terminate an employment relationship (dismiss), because the employee is entitled to get an old-age pension ? If Yes –at which age ?

See previous answer. The normal old-age pension is 65 years.

10. Have you got provisions in your labour law system, which have the purpose to promote the vocational integration of unemployed older employees or young employees and in order to do so weaken their statutory protection ?
For instance are there provisions which authorises the conclusion of fixed-term contracts of employment once the worker has reached a certain age? Do such provision exist for certain groups of employees ?

See previous answers. This provision only exists for old-age employees.

11. Have you got provisions which give special statutory protection in order to prevent the termination of employment contracts of older or young employees ?

In general terms, to prevent discrimination behaviors from the employers exists since 1979 a

governmental commission (Commission for the Equality at Work – Comissão para a Igualdade no Trabalho e Emprego) that have specific competences in unveiling eventual violations of any kind of discriminations, including those of age.

12. What are the rules governing the burden of proof ?

The burden of proof to a discrimination situation is different from the general rule. Therefore, the one that alleged discriminated issues only have to indicate the discriminated person and all the burden of proof impends in the employers that must prove that the detected difference of treatment don't is caused by any discrimination facto – article 25º, nº5 Labour Code.

13. Are there any administrative or criminal penalties ? Please give details.

Yes. Any situation of direct or indirect discrimination motivated by age implies a fine for the employer that is regulated in the most elevated legal scale for labour misdemeanors.

14. What are the most common cases at court regarding age discrimination?

The most common cases occurred when some worker is dismissed and comes to court arguing that the cessation of the work contract was due to age discrimination.

Final remarks : At the conference we also want to discuss the practical impact of age discrimination (How prevalent is age discrimination in your country? Are there any studies on this subject? Can you estimate the economic loss - if any - following age discrimination in your country, especially following the employment or non-employment (termination) of experienced elder workers?