

FOURTH STUDY COMMISSION 2009
ANSWERS FROM FINLAND
AGE DISCRIMINATION

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 labourers, 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, in Finland the Constitution, chapter 2 section 6 provides that everyone is equal before the law. No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person. Equality of the sexes is promoted in societal activity and working life, especially in the determination of pay and the other terms of employment, as provided in more detail by an Act.

The rules of constitution are guidelines for passing laws. The Constitution orders the primacy and subordination of lower-level statutes:

If, in a matter being tried by a court of law, the application of an Act would be in evident conflict with the Constitution, the court of law shall give primacy to the provision in the Constitution (Constitution, chapter 9 section 106).

If a provision in a Decree or another statute of a lower level than an Act is in conflict with the Constitution or another Act, it shall not be applied by a court of law or by any other public authority (Constitution, chapter 9 section 107).

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

European Union Directives:

- Council Directive on Anti-discrimination 2000/43/EC of 29 June 2000 implementing the principle of equal treatment
- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

International Labour Organisation, ILO

- Discrimination (Employment and Occupation) Convention, 1958 No. 111
- Equal Remuneration Convention, 1951 No. 100, equal remuneration for men and women

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

The main sources are the Constitution of Finland, Non-Discrimination Act, Act on Equality between Women and Men, Employment Contracts Act, Government officials Act and Municipal officials Act.

The definition of discrimination, prohibition on sanctions and burden of proof in cases concerning discrimination are laid down in Non-Discrimination Act:

Nobody may be discriminated against on the basis of age, ethnic or national origin, nationality, language, religion, belief, opinion, health, disability, sexual orientation or other personal characteristics. The prohibition of discrimination based on gender is covered by the provisions of the Act on Equality between Women and Men (609/1986).

Discrimination means:

- 1) the treatment of a person less favourably than the way another person is treated, has been treated or would be treated in a comparable situation (direct discrimination);
- 2) that an apparently neutral provision, criterion or practice puts a person at a particular disadvantage compared with other persons, unless said provision, criterion or practice has an acceptable aim and the means used are appropriate and necessary for achieving this aim(indirect discrimination);
- 3) the deliberate or de facto infringement of the dignity and integrity of a person or group of people by the creation of a intimidating, hostile, degrading, humiliating or offensive environment (harassment); and
- 4) an instruction or order to discriminate. (Non-Discrimination Act, section 6)

Employment Contracts Act (chapter 2 section 2) states the prohibition of discrimination, and equal treatment: The employer shall not exercise any unjustified discrimination against employees on the basis of age, health, disability, national or ethnic origin, nationality, sexual orientation, language, religion, opinion, belief, family ties, trade union activity, political activity or any other comparable circumstance.

Government officials Act and Municipal officials Act have similar chapters.

1. d. Are collective agreements bound by this provision?

Yes, they are. Collective agreements generally can provide benefits but they can not be against laws concerning the prohibition of discrimination.

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?

It is forbidden to consider age as a decisive factor for working conditions. For young employees there are more acts protecting particularly them.

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)?

According to Young Workers' Act, section 2 person may be admitted to work if he has reached the age of 15 and is not liable to compulsory school attendance.

Furthermore, a person may be admitted to work if he has reached the age of 14 years or will reach that age in the course of the calendar year and if the work in question consists of light work that is not hazardous to his health or development and does not hinder school attendance for at most half of the school holidays, and temporarily during schoolwork or otherwise, for individual work performances of a short duration.

For a special reason, a person younger than laid down in paragraph 2 may be permitted, pursuant to section 15, to work temporarily as a performer or an assistant in artistic and cultural performances and other similar events.

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

About minimum age, see answer 2.

We do not have in general a maximum age for hiring employees.

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

Finland has two statutory pension systems, which complement each other: earnings-related pensions and national pensions. Pension provision consists mainly of the employment-based earnings-related pension and the residence-based national pension, which provides a minimum income.

Almost all gainful employment is covered by pension provision. Earnings-related pension rights are accrued through employment and self-employment. There are several earnings-

related pension providers. There are separate pension acts for private-sector employees, self-employed persons, farmers, seamen and public-sector employees.

Employees are entitled to retire on an old-age pension between the ages of 63 and the beginning of the month following the 68th birthday, on an old-age pension taken early at the age of 62, or a postponed old-age pension at the beginning of the month following the 68th birthday (Employees Pensions Act, section 11).

National pensions offer a basic income for persons who are entitled only to a very small earnings-related pension or to none at all. They are awarded and paid by Kela – The Social Insurance Institution of Finland. Types of national pension available at different ages are: disability pension for persons aged 16-64 years, unemployment pension for persons aged 60-64 years, old-age pension for persons over 65 years and early old-age pension for persons aged 62-64 years.

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.

Yes.

Employees between the ages of 58 and 67 who have transferred to part-time work are entitled to receive a part-time pension provided that the employee has been in full-time gainful employment for at least 12 of the preceding 18 months immediately prior to the start of the part-time retirement; or the employee has earnings under the earnings-related pension acts or corresponding acts for 15 calendar years immediately preceding the part-time retirement at an amount corresponding to the earnings as mentioned. Earnings from work in EU or EEA countries are comparable to work referred to previously mentioned earnings. The employee may not receive other common pensions at the same time (Employees Pensions Act, section 16).

The lower age limit for the part-time pension will be raised to 60 years from the current 58 years. These changes will take effect 1 January 2011 and they concern persons born in 1950 and later.

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

The computation of wages does not depend on the age of the employee. However senior employees often have thorough knowledge of work and this raises their income level. Some groups e.g. civil servants are paid seniority allowance based on working years.

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

The duration of holiday often depend on working years. After 15 working years civil servants get more holidays. The pay during sickness mostly depends on salary.

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

See answer 5.

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

Because of prohibition of age discrimination it is not allowed to terminate an employment relationship due to the employee's age. Employees are entitled to retire on an old-age pension, see answer 4. At the age of old-age pension employment relationship may end. Working after 68th birthday may still be possible.

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?

Generally it is not allowed to terminate an employment relationship, when the employee is entitled to get an old-age pension. See also answers 4 and 9.a.

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 provisions exist for certain groups of employees?

These kinds of provisions are not in accordance with Finnish legislation. See answers 4, 9.a and 9.b.

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

Finnish legislation does not generally have such provisions. Collective agreements include some provisions giving to the employees which have worked 15 years in the same employer's service better right to keep the employment relationship in force than those having worked less than 15 years.

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

During the hearing of a case, when a person who considers himself to have been a victim of discrimination as referred to in Non-Discrimination Act section 6 (see answer 1.c.) establishes before a court of law or other competent authority information from which it may be presumed that the prohibition of discrimination has been infringed, the defendant must demonstrate that the prohibition has not been infringed. This provision does not apply to criminal cases (Non-Discrimination Act, section 17). In this way the burden of proof in discrimination cases can be transferred to employer's side (Non-Discrimination Act, section 17).

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

Yes there are.

Compensation: A supplier of who has infringed the provisions of Non-Discrimination Act section 6 on the basis of age shall pay the injured party compensation for the suffering caused by such discrimination or victimization. Compensation shall not exceed 15,000 euros, depending on the severity of the infringement (Non-Discrimination Act, section 9).

Liability for damages and compensation: If the employer intentionally or through negligence commits a breach against obligations arising from the employment relationship shall be liable for the loss thus caused to the employee. If the employer has terminated an employment contract contrary to the grounds laid down in Non-Discriminations Act, it must be ordered to pay compensation for unjustified termination of the employment contract (Employment Contracts Act, chapter 12 section 1 and 2).

Criminal penalties: An employer, or a representative thereof, who when advertising for a vacancy or selecting an employee, or during employment without an important and justifiable reason puts a job seeker or an employee in an inferior position

(1) because of race, national or ethnic origin, colour, language, sex, age, relations, sexual preference or state of health; or

(2) because of religion, political opinion, political or industrial activity or a comparable circumstance

shall be sentenced for work discrimination to a fine or to imprisonment for at most six months.

(The Penal Code of Finland, chapter 47 section 3).

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

The most common cases deal with terminating an employment contract. The employer

terminated a valid employment contract and the employee considers himself to have been a victim of age discrimination.

Marja-Liisa Judström

Referendary Counsellor

The Supreme Administrative Court of Finland