

Fourth Study Commission
Public and Social Law

QUESTIONNAIRE 2009
AGE DISCRIMINATION
SWEDEN

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?**

The Instrument of Government, adopted in 1974, is one of Sweden's four fundamental laws and contains rules on the realisation of democracy in Sweden and on the division of power between the Riksdag, Government, municipalities and county councils and courts. It also sets out the fundamental rights and freedoms enjoyed by the people of Sweden. Chapter 1, Section 2 of the Instrument of Government provides that public institutions shall combat discrimination of persons on grounds of, among other things, age.

The Discrimination Act of 2008 contains more detailed provisions as regards discrimination, including on the grounds of age, in working life and related areas (see below).

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

The Discrimination Act of 2008 implements provisions dealing with age discrimination contained in Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19/07/2000, p. 22, Celex 32000L0043), and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 02/12/2000, p. 16, Celex 32000L0078).

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

The main source of law against discrimination on the ground of age is the Discrimination Act of 2008 which entered into force on 1 January 2009.

The Act supersedes

- *the Equal Opportunities Act (1991:433),*
- *the Act on Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or other Belief (1999:130),*
- *the Prohibition of Discrimination in Working Life on Grounds of Disability Act (1999:132),*
- *the Prohibition of Discrimination in Working Life because of Sexual Orientation Act (1999:133),*
- *the Equal Treatment of Students at Universities Act (2001:1286),*
- *the Prohibition of Discrimination Act (2003:307), and*
- *the Act Prohibiting Discriminatory and Other Degrading Treatment of Children and Pupils (2006:67).*

The purpose of the Act is to combat discrimination and in other ways promote equal rights and opportunities regardless of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.

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

According Chapter 1 Section 3 of the Discrimination Act, a contract or agreement that restricts a person's rights or obligations under the Act is of no legal effect in that regard.

Chapter 5 Section 3 of the Act provides that if someone is discriminated against by a provision in an individual contract or in a collective agreement in a manner that is prohibited under the Act, the provision shall be modified or declared invalid if the person discriminated against so requests. If the provision is of such significance for the contract or agreement that it cannot reasonably be demanded that the contract or agreement shall apply in other respects without material changes, the contract may also be modified in other respects or be declared invalid in its entirety.

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?

The prohibitions apply generally. The Act therefore covers everyone, regardless of age, i.e. without imposing a lower or upper age limit.

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 the Discrimination Act, discrimination on the grounds of age may be direct or indirect.

Direct discrimination

*Direct discrimination is defined as a person who is disadvantaged by being treated less favourably than another is, has been, or would be treated in a comparable situation, on the grounds of e.g. age. Direct discrimination revolves around the terms **disadvantaging**, **comparison** and **causality**.*

Disadvantaging: *The extent to which the less favourable treatment has resulted in a negative effect.*

Comparison: *The manner in which the person claiming to have been discriminated against has been treated must be compared to how others are, have been, or would be treated. Only if the comparison shows a departure from how someone else in a comparable situation is treated, can the treatment be considered discriminatory.*

Causality: *The third necessary condition for direct discrimination is that there is a causal link between the disadvantaging and the ground for discrimination. It should be noted that it is not necessary that the disadvantaging was caused by the discrimination. It is sufficient that the disadvantaging is linked to the ground for discrimination.*

Indirect discrimination

*Indirect discrimination is defined as someone who is disadvantaged by the application of a rule, a criterion or a procedure that appears neutral but that may put people of a certain age at a particular disadvantage, unless the rule, criterion or procedure has a legitimate aim and the means that are used are appropriate and necessary to achieve that aim. Indirect discrimination revolves around **disadvantaging, comparison and balance of interests.***

Disadvantaging

Disadvantaging arises when someone applies a rule, a criterion or a procedure which may seem neutral but which following closer scrutiny in practice typically treats people belonging to any of the groups protected by the legislation less favourably. Here, disadvantaging is expressed in terms of it being more difficult for those people than others to satisfy the rule, criterion or that the procedure results in a negative effect for them.

Comparison: *In order to decide whether a requirement may result in a disadvantage for people in a certain group, a comparison must be carried out between the group of people to which an individual belongs, and another group. The comparison should focus on the share of those who can, or cannot, satisfy the criterion in the groups compared. If the comparison demonstrates a significant difference in both groups' ability to typically satisfy the requirement, then this indicates discrimination.*

Balance of interests: *There is some scope for applying a criterion, a rule or a procedure, even though it has a negative effect and may result in certain people with a connection to any of the grounds of discrimination being treated less favourably. This so-called balancing of interests is decisive when determining whether a certain procedure should be considered to be permitted or prohibited as indirect discrimination.*

In order for a measure, which typically has negative effects for a certain group, to be permitted, two requirements have to be satisfied. Firstly, the purpose must be objectively and reasonably justified and must be considered to be worth protecting in its own right. It has to be important enough to justify its preference to the principle of non-discrimination. Secondly, the measure (the means to achieve the aim) must be appropriate and necessary. If there are other non-discriminatory alternatives or means to achieve an aim which is justified in its own right, the less favourable treatment will, in principle, amount to indirect discrimination in violation of the Act.

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

Minimum age

Regulations relating to the employment of minors have long been an important part of work environment legislation. In Sweden today, with nine years' compulsory schooling and almost universal upper secondary schooling, these regulations are less important than they used to be. The protective rules of the Work Environment Act have also been framed so as not to impede young people's contacts with working life.

A person under the age of 18 is a minor (Section 1). A minor may not be employed before the calendar year in which he or she is 16, and he must have completed his compulsory schooling (Section 2). This applies both to a minor with employee status and to a minor working as an entrepreneur or in a family business. However, a minor aged 13 or over may do light work which is not harmful to his health, development or schooling.

The Work Environment Authority can issue regulations making further exceptions to the 13-year rule, but only for very light work which would otherwise involve major problems of implementation. The Authority can also issue regulations laying down conditions for, or totally prohibiting, the employment of minors on work which entails substantial risks (Section 3).

Furthermore, the Work Environment Authority is empowered to issue regulations on the medical examination of minors where necessary (Sections 2-3). The Authority can also issue regulations on the length and arrangement of minors' working hours (Section 5).

Work on board ship is subject to special minimum age provisions of the Seafarers Act and the Maritime Safety Act which are much the same as those otherwise applicable.

Maximum age

There is no general rule regarding the maximum age for hiring employees.

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

There may be statutory or collective agreement provisions to this effect. One of the exceptions to the prohibition against age discrimination in working life is that the prohibition does not prevent the application of age limits with regard to the right to pension, survivor's or invalidity benefits in individual contracts or collective agreements (Chapter 2 Section 2 point 3 of the Discrimination Act).

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.

The prohibition against age discrimination in working life is not absolute; it does not prevent measures that contribute to efforts to promote equality between women and men. However, the scope for providing such protection or allowances is limited, because such measures may not concern matters such as pay or other terms of employment (Chapter 2, Section 2 point 2 of the Act).

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

No, see above under question 5.

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

Not according to the "Holiday Act". There are examples of other provisions, contained in collective agreements, but see above under question 5.

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

No statutory rules to this effect. Other provisions may be contained in collective agreements.

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

There are no rules in to the effect that upon reaching a certain age there is a fair reason for dismissal. Instead the legislature has chosen a solution to the effect that the employees are entitled to remain in employment until reaching 67 years (Section 32 A of the Employment Protection Act). There is also a simplified procedure to terminate an employment relationship at this time. This means that the age of 67 in practice has become an age limit. The rule in Section 32 A does not mean that employees are obligated to work until 67 years, which is why it is common for employees to retire before that age, based on agreement in individual employment contracts or collective agreements.

9 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?

Old-age pension entitlement does not per se permit termination of employment relationship. Please see above under question 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 ?

The main principle in the Employment Protection Act of 1982 is that contracts of employment are valid for an indefinite term. However, Section 5 point 4 of the Act provides that a contract of employment for a fixed term may be concluded when the employee has attained the age of 67. The same section provides for the possibility to conclude fixed-term contracts of employment for e.g. seasonal employment, which in practice is often used when hiring students over the summer holidays.

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

No. c.f. answer to question 5

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

If a person who considers that he or she has been discriminated against demonstrates circumstances that give reason to presume that he or she has been discriminated against the defendant is required to show that discrimination or reprisals have not occurred. (Chapter 6, Section 3 of the Discrimination Act)

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

Compensation

Chapter 5 Section 1 of the Discrimination Act provides that a natural or legal person who violates the prohibitions of discrimination has to pay compensation for discrimination for the violation of the personal integrity that the infringement gives rise to. When compensation is determined, particular attention should be given to the purpose of discouraging such infringements. The compensation is payable to the person whose personal integrity has been violated by the infringement.

An employer who violates Chapter 2, Section 1, first paragraph (prohibition against employer's discrimination of an employee, a person enquiring about or applying for work, a person applying for or carrying out a traineeship, or a person who is available to perform work or is performing work as temporary or borrowed labour) shall also pay compensation for the loss that arises.

Financial penalty

Section 4: Employers who do not comply with a request under Section 3 (obligation to provide information about circumstances at the workplace etc to the Equality Ombudsman, EO, unless specific reasons in the individual case exclude such obligation) may be ordered by the EO to fulfil their obligations subject to a financial penalty. A decision to order a financial penalty may be appealed to the Board against Discrimination.

If the EO has declared not to apply to the Board for a financial penalty to be ordered, a central employees' organisation with respect to which the employer is bound by a collective agreement may make an application concerning active measures in working life under Chapter 3, Sections 4–13.

The application should state the measures required of the party concerned by the application, the grounds referred to in support of the application and what investigation has been made of the matter.

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

Swedish legislation concerning age discrimination is new. There are so far only a few known cases regarding age discrimination and it is therefore to soon to make any kind of prediction on what the most common case type will be.

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