

**Fourth Study Commission  
Public and Social Law**

**QUESTIONNAIRE 2009**

**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 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?

Article 14, paragraph (1) of the Constitution of Japan provides that, "All of the people are equal under the law and there shall be no discrimination in political, economic or social terms because of race, creed, sex, social status or family origin." This provision is construed to prohibit age discrimination, except for applying different treatment on reasonable grounds.

Irrational discrimination is also prohibited in law making.

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

Our country has ratified:

- the International Covenant on Economic, Social and Cultural Rights
- the Convention on the Rights of the Child
- the Convention concerning Private Employment Agencies (ILO C181)
- the Convention concerning Minimum Age for Admission to Employment (ILO C138)

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

We have:

- the Labor Standards Act
- the Employment Measures Act
- the Act on Employment Security, etc. of the Elderly, etc.

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

Collective agreements in violation of the Labor Standards Act and those setting the retirement age in violation of the Act on Employment Security, etc. of the Elderly, etc. are deemed to be void.

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 Labor Standards Act protects both young employees and older employees.
- The Employment Measures Act protects all employees, irrespective of their age groups, and also forbids considering age as a decisive factor for working conditions.
- The Act on Employment Security, etc. of the Elderly, etc. protects elderly employees.

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)?

We do not have any established criteria on this point.

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

The Labor Standards Act states the minimum age. We have provisions on civil service examinations which state the minimum and maximum age limits for being qualified to take various examinations.

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

The National Pension Act provides for the minimum and maximum age limits. The Employee's Pension Insurance Act and the Private School Personnel Mutual Aid Act provide for the relevant maximum age limits.

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 Act on Securing the Payment of Wages provides that in cases where the employer is given an order for commencement of bankruptcy proceedings, the government shall pay part of the debt arising from unpaid wages on behalf of the employer. The Order for Enforcement of said Act further provides that the amount to be paid in such cases shall be determined by the age category.

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

In principle, the amount of wages, etc. is determined by an agreement between the employer and the employee.

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

The Labor Standards Act provides that an employer shall grant annual paid leave of 10 working days to workers who have been employed continuously for 6 months from the day of their being hired and who have reported for work on at least 80 percent of the total working days, and shall also grant annual paid leave, calculated by adding a certain predetermined number of days to 10 days, for each additional year of continuous service.

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

There are no such provisions.

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

The Act on Employment Security, etc. of the Elderly, etc. provides that when an employer sets a retirement age for workers, such retirement age shall not be below 60 years. Said Act also provides that an employer who has a provision setting a retirement age below 65 years shall, in order to secure stable employment for elderly workers until they reach the age of 65, take any of the following measures: (i) raise the retirement age; (ii) introduce a system for continuously employing elderly workers after their reaching the retirement age, at their request; or (iii) abolish the provision on the retirement age.

The Labor Contract Act provides that a dismissal shall be invalid if it lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, and that with regard to a fixed-term labor contract, an employer may not dismiss a worker until the expiration of the term of such labor contract, unless there are unavoidable circumstances.

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?

The Labor Contract Act provides that a dismissal shall be invalid if it lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, and that with regard to a fixed-term labor contract, an employer may not dismiss a worker until the expiration of the term of such labor contract, unless there are unavoidable circumstances.

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?

(i) The Act on Employment Security, etc. of the Elderly, etc. provides that when elderly persons, etc. who are to separate from service wish to be reemployed, the employer shall endeavor to take necessary measures for assisting them with reemployment.

(ii) The Labor Standards Act provides that the maximum term of labor contracts, except for those without a definite term, shall be three years in principle, and five years in the case of labor contracts concluded with workers aged 60 years or older.

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

See our answer to Question 9a.

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

There are no rules governing the burden of proof of age discrimination.

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

The Labor Standards Act provides that a person who has violated the provision on the minimum age for hiring minors shall be punished by imprisonment with work for not more than one year or a fine of not more than 500,000 yen. Said Act also provides that a person who has violated the provision referred to in the second paragraph of our answer to Question 10 [the provision on the maximum term of labor contracts] shall be punished by a fine of not more than 300,000 yen.

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

Common cases include disputes over the determination of the amount of wages by age, the selection of employees to be dismissed due to their ages, and the introduction of the retirement age system.

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?)