

**Fourth Study Commission
Public and Social Law**

QUESTIONNAIRE 2009

AGE DISCRIMINATION

ISRAEL

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?

In Israel we do not have a written constitution as of yet. However, there are laws that are known as basic laws that enjoy a constitutional status. The idea being that in time these laws will form the constitution. Under the basic law "Human Dignity and Liberty", all persons are entitled to dignity. The courts gave a broad interpretation for the right of a person to dignity. Under this interpretation, one would be protected against age discrimination.

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

None.

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

The main source of law is the Employment (Equal Opportunities) Act. Article 2 of the mentioned law prohibits an employer to discriminate

among his employees or those seeking employment on account of their age.

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

Yes. Article 21 of the Collective Agreements Act states that a collective agreement cannot derogate from the rights of an employee laid down by law vis-à-vis article 2 of the Employment (Equal Opportunities) Act.

- 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.

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)?

Irrelevant conditions. In case law considered to be discriminatory are:

The public image of a job requiring it to be carried out by younger people, such as a flight attendant, was considered to be unlawful discrimination.

A general argument stating that age is a relevant factor to the nature of the job, due to age-related health problems, was also determined as unlawful discrimination since it was not based on personal physical examinations of each individual worker.

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

Yes. Under section 2, of the Youth Labor Act, it is prohibited to employ youth under the age of 15. The act also restricts the employment of employees between the ages of 15 and 18.

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

No. However, a worker must be a member for a certain time, usually ten years, in order to be eligible for a pension.

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 period of service with the same employer or at the same work place is credited for additional rights. Under many collective agreements, workers enjoy rights of additional pay, which is determined by the number of years in the same work place or with the same employer. This is also the case relating to social benefits such as leave and sick pay.

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

No, the exception of the Minimum Age Act by which workers under the age of 18 have a lower minimum wage in comparison to workers over the age of 18.

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

It depends only on the seniority at the workplace or with the same employer.

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. Teachers of the age of 50 are entitled to give a reduced number of teaching hours without an impact on their rights.

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

Yes. The Retirement Age Act enables an employer to terminate the work relationship when the employee has reached the age of 67. According to case law an employer may refuse to allow workers over 67 to participate in a public tender for a position.

- 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?

No.

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?

No.

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

Section 2 of the Employment (Equal Opportunities) Act forbids discrimination based on age, including dismissal.

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

The burden of proof in cases of discrimination is different from the general rule. Once discrimination was been prima-facie established, the employer has to prove that he did not act in a discriminating manner.

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

Yes. Under section 15 of the Employment (Equal Opportunities) Act, discrimination, including age discrimination, is a criminal offense and incurs a fine.

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

The most common cases occur when a worker is dismissed or an applicant is not hired and comes to the court arguing that the reason for dismissal or the reason for not being hired 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?