

Fourth Study Commission
Public and Social Law

Questionnaire 2009
AGE DISCRIMINATION
SLOVENIA

Introductory remarks:

The following Questionnaire deals with different topics of labour law, with a specific 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 the Constitution of Slovenia there is no directly stated rule against age discrimination in connection with employment relationship.

In the Article 14 of the Constitution is imposed that everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of nation, origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status, disability or any other personal circumstance.

The Article 49 of the Constitution states that everyone shall choose his employment freely and that everyone shall have access under equal conditions to any position of employment.

However, the Employment Relationship Act, which came into force on the 1st of January 2003, imperatively legitimizes the principle of non discrimination of employees also including age discrimination in all stages of employment relationship. Direct and indirect discrimination based on age are forbidden.

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

The main EU documents in this area are Directive of anti discrimination 2000/43/EC and Employment equality directive 2000/78/EC.

EU law has become an integral part of slovene law when Slovenia entered the EU on the 1st of May 2004. The mentioned Directives have been incorporated in national legislation using the Employment Relationship Act, approved by the Amending Act, which came into force on 28th on November 2007.

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

The main source of law against age discrimination is Article 6 of Employment Relationship Act. Stated provision is about general discrimination issues, but it also contains a specific reference to

age discrimination.

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

In accordance to the Article 7 of Employment Relationship Act collective agreements in labour law can impose any rule provided it lays down rights which are more favourable for the employee than those laid down in this act.

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

Generally it is 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 unlawful age discrimination (i. e. relevancy of the age to the nature of the job)?

Under Article 19 of Employment Relationship Act a person does not have capacity to conclude the employment contract until 15 years of age.

Under Article 214 of stated act a child under the age of 14 may exceptionally participate against remuneration in shooting of films, in preparation and performance of artistic, scene and other works in the area of cultural, artistic, sporting and advertising activities. A child, who has reached the age of 13, may carry out light work also in other activities, however, not longer than 30 days during school holidays in an individual calendar year.

Apprentices, secondary-school and university students, who have reached 14 years of age, may perform practical education within the framework of educational programmes with the employer.

In Employment Relationship Act it is provided a special treatment for worker, who are less than 18 or more than 55 years of age.

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

Work of children under the age of 15 is prohibited. There is no provision stating maximum age.

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

The pension funds system is public and general minimum or maximum age for entering is not prescribed.

According to Pension and Invalidity Insurance Act minimum age to acquire right to old-age pension depends on years of pension qualifying period, but there is no provision stating maximum age.

Under Article 59 of stated act a person over 65 years of age, who is not entitled to pension and whose own income does not exceed specific amount, shall be granted the right to state pension.

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

Older workers (workers over the age of 55) shall have the right to enter part-time employment relationship and/or begin to work part-time (if partially retired), may not be ordered to work

overtime or at night without written consent and is given special protection against termination of employment contract for a business reason.

Exception to the protection against termination of employment contract for a business reason:

- older worker, who is assured the right to the unemployment benefit until the fulfilment of minimum conditions for old-age pension;
- older worker, to whom employee offers an employment contract for a suitable work;
- in the case of the employer's termination.

Workers under the age of 18 may not be ordered to carry out heavy, dangerous and night work, their working time is limited to eight hours a day and forty hours a week, are entitled to break during the working time, to daily rest of at least twelve consecutive hours, to weekly rest of at least 48 consecutive hours and to prolonged annual leave.

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.

Under Article 129 of Employment Relationship Act the worker is entitled to extra payment for years of service.

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

Under Article 159 of Employment Relationship Act an older worker (a worker over 55 years of age) shall have right to at least three additional days of annual leave.

The pay during the sickness does not depend neither on the age of the employee neither on seniority. It depends on the wages of employee in previous year.

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

There are no provisions that would an elder employee entitle to a reduction of working hours, it is only forbidden for employers to order an elder worker to work overtime without his prior written consent.

Under Article 202 of Employment Relationship Act an older worker (a worker over 55 years of age) has right to enter part-time employment relationship and/or the right to begin to work part-time, if partly retired.

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

The fact that the employee has reached retirement age (one of retirement ages) does not empower the employer to terminate employment relationship.

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?

It is not allowed to terminate an employment relationship only because the employee is entitled to get an old-age pension.

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?

There are no provisions that would weaken statutory protection of young and older workers.

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

According to Article 89 of Employment Relationship Act age is unfounded reason for termination of an employment contract.

According to Article 114 of Employment Relationship Act the employer may not terminate the employment contract for a business reason to the older worker (worker over 55 years old) without his written consent, until he completes minimum conditions to get an old-age pension.

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

The burden of proof in discrimination cases is different from the general rule. According to Article 6 of Employment Relationship Act it shall be for the employer to prove that different treatment is justified by the type and nature of work, when employee presents facts which indicate assumption that the prohibition of discrimination was violated.

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

Any situation of discrimination implies administrative penalty for employer – a fine for labour misdemeanors.

Intentional violations of fundamental rights of employees also represent a criminal offence and is punished by money penalty or imprisonment up to one year.

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

There are only few cases regarding age discrimination at court, mostly in cases against unlawful dismissal.

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 workers?).