

BAGSO Responses to the Guiding Questions on the Focus Areas of the 11th Session of the Open-Ended Working Group on Ageing: Right to Work and Access to the Labour Market

National Legal and Policy Framework

1. What are the legal provisions and policy frameworks in your country that recognise the right to work and access to the labour market by older persons?

In Germany, there is no right to paid work. There is only an entitlement to support in the event of unemployment. The entitlement to further training ends at the latest when the statutory retirement age is attained (currently approx. 66 years for both women and men).

Access to the labour market is not legally restricted for older people. However, collective agreements, works agreements and employment contracts generally envisage retirement upon reaching statutory retirement age. The courts do not yet consider this to be discrimination against older persons, even in case pension income from the statutory pension scheme is below the level of social assistance benefits, forcing older people to make use of such supplementary income options.

For certain professions (e.g. pilots, midwives) are there statutory age limits. However, these are increasingly being called into question by the judiciary.

Studies show that older people working in a company are highly valued by the management. However, there is also great reluctance when it comes to recruiting them.

In Germany there is no legal or scientific definition of the term "older employee". It is usually used to refer to employees over the age of 55.

In special cases, older employees are entitled to special regulations and protection. Regulations on occupational health and safety are laid down in the Occupational Health and Safety Act [Arbeitsschutzgesetz, ArbSchG] and in other laws and ordinances, such as the Workplace Ordinance [Arbeitsstättenverordnung], the Ordinance on Industrial Safety and Health [Betriebssicherheitsverordnung] and the Ordinance on Work with Visual Display Units [Bildschirmarbeitsverordnung].

Partial retirement is a model for reducing working hours before retirement age. The remaining working time until retirement is halved. The employer increases the reduced salary and pays additional pension insurance contributions. There is no legal entitlement to partial retirement. In addition, regulations on partial retirement can be found in collective agreements and works agreements.

Employment after the standard retirement age

Since 2012, the statutory retirement age for women and men in Germany has been gradually raised from 65 to 67 by 2031.

The Benefits Improvement Act on Pension Insurance [Leistungsverbesserungsgesetz zur Rentenversicherung] adopted in 2014 (Article 41, SGB VI) stipulates that employment relationships can be extended once employees have reached the standard retirement age.

There is no limit on the amount that can be earned in addition to the regular old-age pension. The additional income does not reduce the pension. Like the pension, however, it is subject to income tax, and contributions to health and long-term care insurance have to be paid. Pension insurance contributions are only payable by the employer.

With the so-called Pension Package (2014), improvements concerning reduced earning capacity were implemented.

The statutory regulations allow various forms of continued employment for pensioners.

2. What are the challenges faced by older persons for the realization of their right to work and access to the labour market in your country?

There is a problem of (long-term) unemployment in old age. In 2016, 21% of all registered unemployed persons were over 54 years of age. In the age group 55 to 64, only around 35% of these unemployed persons take up new employment that is subject to social insurance contributions within the first two years of unemployment. The probability of re-employment decreases significantly with increasing age.

The employment rate among older people varies greatly depending on gender, education and health. In order to maintain employability until the age of retirement, personnel policy measures such as further training or health promotion play an important role. Yet, age-appropriate working conditions and health-promoting measures are not implemented everywhere. Health impairments are the greatest obstacle to placement on the labour market.

Advisory services for older job seekers and gainfully employed persons are insufficient. In employment agencies, there is not enough staff in the employment services for this target group and the duration of consultations is too short.

Many companies, in particular small and medium-sized enterprises and older people themselves, still have too little knowledge about the possibilities of (continued) employment before and after retirement age.

A further increase in the retirement age will cause problems especially for people with little education, in manual occupations or for persons with health impairments. In the event of reduced earning capacity, early retirement has so far only been possible with substantial pension cuts. People who retire from working life before reaching the standard retirement age for health reasons, for example, still have to accept considerable deductions from their pension. This effect is at risk of worsening, especially in the low-wage sector. People in so-called "dead-end jobs" still receive little support in taking up new career paths in good time.

3. What data, statistics and research are available regarding older persons engaged in informal work, particularly older women, including conditions of their work and economic value?

Informal work and unpaid care activities have increased among middle-aged and older people. According to data from the German Ageing Survey from 1996-2017, informal work or unpaid care activities initially increase during the second half of life, e.g. through the caring for grandchildren or provision of nursing and support services. They decrease again in later life. As before, more women than men deliver unpaid care – and at an earlier stage in life as well.

Figures from the Federal Statistical Office indicate that the annual volume of unpaid work, including travel time, amounted to 89 billion hours in Germany in 2013. This corresponds to a value of 826 billion euros if the average net hourly wage of a housekeeper is taken as a basis.

Availability, Accessibility, Acceptability and Quality

4. What steps have been taken to ensure the access of older persons to the labour market including through physical accessibility, access to information about employment opportunities, training and the provision of appropriate workplace accommodations?

The local employment agencies and existing online support platforms help jobseekers of employable age to find suitable jobs and provide information on employment opportunities. However, this only applies to jobseekers who have not reached retirement age. Individual local initiatives have therefore developed services specifically designed for retired people who need or want to earn money.

To enable participation in working life in the long term, employers can apply for subsidised aids for company and site-related adaptations.

Continuing training practice varies from company to company. The employer is not obliged to offer continuing vocational training. Paid educational leave (or unpaid educational release or educational periods) is governed by the laws of the Federal States. In some, employees are entitled to five working days of further training per year. They can apply for educational leave for political and vocational training measures that they organise themselves. However, the number of educational offers that are tailored to the needs of older people, especially older employees, is still insufficient.

5. What steps have been taken to ensure the availability of specialised services to assist and support older persons to identify and find employment?

In addition to the steps mentioned in item 4, there are also support programmes to ease returning to work after periods of childcare or nursing care. However, the existing support measures only affect jobseekers until retirement age. There are still too few specialised services to assist and support older people.

6. What good practices are available in terms of ensuring the older persons' enjoyment of their right to work and their access to the labour market?

Over the past 20 years, the employment rates of 55- to 64 year-olds have grown steadily. Labour market participation of 60- to 64-year-olds has increased more than in any other age group: over the past ten years, it has risen from 33% (in 2007) to 58% (in 2017).

But even when retirement age has been reached, the proportion of working people has more than doubled over a short period of time. In 2007, 7% of those aged 65 to 69 still worked, compared to 16% in 2017. This is due to a gradual change in attitudes, but also to the growing need for additional income.

The possibility of working longer generally depends significantly on qualifications, the type of activity, occupational strain and access to continuing training. However, there are still too few advisory and assistance services for both employees and employers.

7. What protections are available to ensure older persons enjoy just and favourable conditions of work, including fair wages and equal remuneration for work of equal value, safe working conditions, both in the formal and informal sector?

Legally speaking, laws, collective agreements, works agreements, company regulations and employment contracts are primarily determinative for working conditions.

Under the Remuneration Transparency Act [Entgelttransparenzgesetz] introduced in 2018, employees in companies with more than 200 staff members have an individual right to information and can demand information on their colleagues' salaries.

Employed relatives of persons in need of care can, if necessary, take advantage of occupational time-off or reduce their working hours under the Nursing Leave Act [Pflegezeitgesetz] or the Family Care Time Act [Familienpflegezeitgesetz].

Equality and non-discrimination

8. In your country, is age one of the prohibited grounds for discrimination in relation to work and access to the labour market, including in older age?

Yes, disadvantages and discrimination in working life on the grounds of age are also recognised by the Federal Anti-Discrimination Agency. In order to make the labour market as a whole less susceptible to discrimination, the Agency launched a support programme against discrimination

on the labour market in 2019 and supports local and regional projects .

Remedies and Redress

9. What mechanisms are necessary, or already in place, for older persons to lodge complaints and seek redress for denial of their right to work and access to the labour market?

Complaints can be lodged with the Federal Anti-Discrimination Agency. The trade unions are also important partners.

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