

Right to work and access to the labour market

Definition

1. *How is the right to work and access to the labour market for older persons defined in the national legislation in your country? If such a definition is not available, how should it be defined considering relevant existing national, regional and international legal frameworks?*

Right to work in the Spanish legislation is defined in article 35 of our Constitution. “ **All the Spaniards** have the duty to work and the right to work...” The definition is both duty and right. And explicitly is prohibited gender discrimination.

Aso, there is a general prohibition of any kind of discrimination in article 14, which proclaims equality among everybody. Therefore, older persons cannot be discriminated in their right to work.

2. *What are the key normative elements of the right to work and access to labour market for older persons? Please provide references to existing standard son elements such as:*
 - a) *Prohibition of all forms of discrimination against older persons on the basis of age, alone or combined with other grounds, in all matters related to employment.*
 - b) *Elimination of all forms of ageism and age discrimination from the workplace and organizational cultures.*
 - c) *Provision of reasonable accommodation to older persons in the workplace.*
 - d) *Affirmative action programs to promote the hiring of older persons.*
 - e) *Access to career development, technical and vocational guidance programs, placements services and vocational and skills development.*
 - f) *Access to flexible or gradual retirement schemes and flexible working practices for older workers.*
 - g) *Promotion of older persons’ self-employment and entrepreneurship.*

- h) Favorable, fair, and safe working conditions when undertaking formal, informal or unremunerated work.*
- i) Access to prompt remedies and redress when older persons' right to work and access to the labour market is denied*

- a) as it was said in paragraph 1, Spanish legislation is based on an explicit recognition of equality and non-discrimination, as solemnly declares article 14 of the Constitution: "Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance". Older persons are protected of all forms of discrimination in all matters related to employment. For this reason, labour legislation is based on the equality of all workers and is expressly reflected in specific provisions that prohibit discrimination. Any assumption of age discrimination is contrary to the labour law.
- b) In relation to safety and health at work for the older people and the measures to facilitate their return to the labour market, it must be emphasized the fundamental efforts of the Labour and Social Security Inspectorate in this area. Article 25 of Law 31/1995 on Occupational Risk Prevention states that the employer will specifically guarantee the protection of workers who, due to their own personal characteristics or known biological status, including those who have a recognized physical disability situation, psychic or sensory, may be especially sensitive to the risks derived from work. Employer must consider these aspects in the risk assessments and adopt the necessary preventive and protective measures. Older workers are included in this special protection of workers, especially sensitive to certain risks. Consequently, the assignment of workers to jobs whose conditions are incompatible with their known personal characteristics is a very serious infraction.
- c) To promote the hiring of older persons, Law 5/2013 have a wide rank of measures to promote the employment continuity of older workers and promote their active ageing. It is important to mention the relief contract and partial retirement which regulates the Social Security of workers hired part-time, as well as partial retirement. Its purpose is to introduce flexibility in retirement, so that the access criterion of age is

complemented by the criteria of gradualness and progressivity, avoiding an abrupt break between active life and retirement, with the social benefits of all kinds that such a measure produces.

- d) Finally, older workers can access -through unions or individually- to labour proceedings before the Court in case their right to work was denied in any matter related to employment or working conditions.

State obligations

3. *What are the measures that should be undertaken by the State to respect, protect and fulfil the right to work and access to the labour market for older persons, regarding the normative elements as provided above?*

Labour and Social Security Inspectorate, at a first stage, and, if it was the case, Labour Jurisdiction are the two pillars in which remain the action of the State for the protection of the right to work and access to the labour market of older persons.

Special considerations

4. *What special measures and specific considerations should be considered in developing the normative content of the right of older persons to work and access to the labour market, such as protection and regularization of older workers in informal sector, equal remuneration for work of equal value particularly for older women as well as recognition of unpaid work often carried out by older women?*

As was mentioned in paragraph 2 a), Spanish legislation prohibits any form of discrimination, explicitly in remuneration of women. And article 14 of Spanish Constitution proclaims the equality among all the Spaniards. Labour legislation develops such general equality mandate in all the matters of their scope, namely in equal remuneration for work of equal value.

5. *How should the responsibilities of non-State parties such as private sector be defined in the context of the right to work and access to the labour market for older persons?*

Spanish parliament, according with article 35.2 of Constitution, approved in 1980 the Statute of Workers (updated today by Royal Legislative Decree 2/2015), which regulates duties and obligations of companies and entrepreneurs, as employers, in order to guarantee their employees the working conditions established in the Statute. And, as was mentioned before, in such regulation, older workers have different accommodations for their fully the enjoyment of their right to work and access to the labour market.

Implementation

- 6. What are the best practices and main challenges faced by your country in the adoption and implementation of the normative framework on the right to work and access to the labour market for older persons?*

One of the best practices are carried out in some private companies implementing programmes dealt with the access to labour market of older persons, combining their experience and knowledge with younger generations, teaming up clusters in which older persons share their background with young people.

The main challenges are the barriers in small and medium enterprises for the implementation of normative obligations dealt with continuous training to their older workers.