

ILO input to the Twelfth Session of the UNGA Open-ended Working Group on Ageing:

Background Information Document 22/2/2022

In accordance with its mandate to promote social justice, employment and decent work, the ILO has been protecting and promoting **older workers' right to work and access to the labour market** since its creation in 1919.

The ILO [Centenary Declaration on the Future of Work, 2019](#) and the [2022 Global call to action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient](#), take into account the profound transformations of the world of work and the fact that the COVID-19 pandemic has affected older workers disproportionately. They call on the ILO to promote guidance, training and employment services that provide older workers with the facilities, advice and assistance they may need in order to expand their choices, optimize their opportunities to work in good-quality, productive and healthy conditions until their retirement, and enable active ageing.

The International Labour Standard focusing on **older workers** is the [Older Workers Recommendation, 1980 \(No. 162\)](#)¹ adopted by the ILO tripartite constituents as early as 1980. The main objective of this instrument is twofold: (i) to protect the right of older workers to equality of treatment in employment and occupation; and (ii) to ensure this right is protected effectively throughout the employment cycle. According to the Recommendation, older workers should, without discrimination on the grounds of their age, enjoy equality of opportunity and treatment with other workers as regards in particular access to employment, vocational training, eligibility to promotion, employment security, equal remuneration for work of equal value, social security and welfare benefits, appropriate conditions of work, including occupational safety and health measures, and access to housing, social services and health institutions, in particular when this access is related to occupational activity or employment. The Recommendation envisages adaptation measures to preserve health, prevent accidents and combat stress for older persons at work and envisages, inter alia, reduced hours of work and flexible working hours. It also envisages measures for the protection of employment of older workers and their preparation for and access to retirement.

In addition to Recommendation No 162, the [Employment Policy Convention, 1964 \(No. 122\)](#) and the [Employment Policy \(Supplementary Provisions\) Recommendation, 1984 \(No. 169\)](#) encourage countries to adopt policies and measures that promote the employment of particular categories of workers who encounter difficulties in finding lasting employment, including older workers with a view to achieving greater equality of opportunity in terms of access to employment, as well as equality of treatment concerning conditions of work and the protection of various categories of workers. As indicated in a recent [General Survey](#) by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) a national employment policy adopted in line with these instruments should respond to the specific needs of all workers and take into account the profound demographic changes taking place in the world of work. The proportion of older persons of working

¹ R162 is classified as "interim", part of the initial programme of work of the [Standards Review Mechanism Tripartite Working Group](#) and up for review at a time to be determined

age who are unemployed has increased in almost all regions of the world.² These workers encounter, in one way or another, obstacles to entering the labour market, which may in some cases constitute discriminatory or unfavourable treatment. These obstacles need to be taken into account in national employment policies to ensure that they are comprehensive and coherent and provide for the necessary inclusive measures, such as reasonable accommodation, where necessary.³ national employment policies should be designed and implemented in consultation with trade unions and employers' organisations and in cooperation with specific groups, such as older workers, women, those in the informal economy, persons with disabilities and other persons affected in order to foster ownership and cooperation.⁴

Older workers are often subject to multiple forms of discrimination, notably on the basis of gender and disability in addition to age. It is estimated that over 46 per cent of older persons globally live with an impairment. The [Vocational Rehabilitation and Employment \(Disabled Persons\) Convention, 1983 \(No. 159\)](#) and the [Vocational Rehabilitation and Employment \(Disabled Persons\) Recommendation, 1983 \(No. 168\)](#) reflect focus on respecting the principle of equality of opportunity and treatment for persons with disabilities and promoting their access to, retention and advancement in employment, particularly access to employment on the open labour market.

The [Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\)](#) applies to all workers without exception – including older workers – and prohibits discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin. Even though age is not a ground of discrimination prohibited as such under Convention No. 111, age is considered as a physical condition for which there are particular needs and in respect of which special measures of protection and assistance may be necessary in line with Article 5 of the Convention. The CEACR often examines age discrimination primarily from the point of view of age limits imposed in access to particular occupations, a compulsory retirement age and unjustified restrictions between men and women regarding entitlement to social security benefits. Age discrimination may also arise, for example, when seniority systems prolong the effects of previous discriminatory practices with regard to women and ethnic minorities, leading to multiple discrimination. In its 1996 and 2012 General Surveys, the CEACR noted that a steady and rapid progress in the adoption of legal provisions prohibiting discrimination on the basis of age among Member States, including affirmative action measures, in accordance with Article 5(2) of the Convention.⁵

Older workers' participation in both formal education and on-the-job training is considerably lower than that of younger workers, mainly because employers are more reluctant to incur training costs for workers who are expected to remain in their firms for a shorter period of time. The [Human Resources Development Recommendation, 2004 \(No. 195\)](#), calls on Members to promote access to education,

² In this regard, the CEACR took note of measures targeting older workers in ILO Member States including: incentives to encourage work at an older age, such as lifelong learning policies and the implementation of targeted efforts to promote the participation of older workers in training and skills-updating schemes to help them adapt to emerging skills requirements; incentives to keep people in the workforce longer, such as raising the retirement age (reversing early retirement policies) and making work options and pensions flexible, for example by increasing opportunities for part-time or temporary work, and offering partial retirement options. Financial and hiring subsidies are also available in certain countries to encourage employers to hire older workers. Finally, national initiatives are also being implemented to promote a change of attitudes in society concerning the value of older workers. [General Survey on Promoting Employment and Decent Work in a Changing Landscape](#), International Labour Conference 109th Session (2020 and 2021) Report III Part B paragraph 797.

³ 2020 General Survey p. 18

⁴ 2020 General Survey para 94

⁵ General Survey on [Giving globalization a human face](#) ILC, 101st Session (2012), Report III Part B paras 813-815

training and lifelong learning for people with nationally identified special needs, such as older workers (Paragraph 5(g) and (h)).⁶

The CEACR recalls that people who are subject to multiple forms of discrimination, including older workers, are more likely to be working under precarious conditions in which disguised employment relationships are prevalent, or where the employment relationship is uncertain.⁷ The [Employment Relationship Recommendation, 2006 \(No. 198\)](#) recognizes that older workers, among others, are more vulnerable where there is lack of clarity concerning the existence of an employment relationship leading to inequality of opportunity and informality.⁸ With a view to promoting inclusion, the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169) and the [Transition from the Informal to the Formal Economy Recommendation, 2015 \(No. 204\)](#) invite Members to take measures to facilitate the transition to formality, while responding to the needs of all categories of persons who have difficulties in finding lasting employment, including older workers.⁹

Home work is often considered to be an alternative way for older workers to access the labour market. The ILO [Home Work Convention, 1996 \(No. 177\)](#), aims at guaranteeing basic rights for those who carry out work in a place other than the workplace of the employer for a remuneration. However, as noted by the CEACR, homeworkers are often in a vulnerable situation as they lack recognition and visibility, are rarely unionized and have difficulty in contacting a workers' representative in the event of problems. They are not often aware of their rights and the lack of personal contact with colleagues and management makes it more difficult for occupational safety and health or skills-development issues, for example, to be taken into account.¹⁰

The **transition to retirement** is a key moment for older workers. The [Social Security \(Minimum Standards\) Convention, 1952 \(No. 102\)](#) as well as the [Invalidity, Old-Age and Survivors' Benefits Convention, 1967 \(No. 128\)](#) and its accompanying [Recommendation](#) provide the general framework governing pension rights. While they establish the age at which persons should be able to claim pension rights at 65 years, these instruments allow countries to establish a higher age "with due regard to the working ability of elderly persons in the country concerned" (C102) or "with due regard to demographic, economic and social criteria, which shall be demonstrated statistically" (C128). Pursuant to C128, if the retirement age is established at 65 years or higher, the age needs to be lowered for persons engaged in arduous or unhealthy occupations. These provisions are importantly complemented by the [Older Workers Recommendation No.162](#) which invites countries to take measures with a view to making retirement voluntary while establishing a framework allowing for a gradual transition from working life to retirement. In the same logic, older workers who are fit for work should be able to defer their claim to an old-age benefit beyond the age normally qualifying workers for such a benefit, for example for the purpose of satisfying all qualifying conditions for benefit or with a view to receiving benefit at a higher rate.

Once in retirement, old age pensions often constitute the main if not the sole source of income of older persons. ILO standards establish minimum benchmarks of adequacy for all types of social security schemes be they contributory, tax-financed or mixed social security schemes by reference to the previous earnings of beneficiaries or level of earnings in the country. They also establish the core principles governing social security systems such as the entitlement to predictable pensions at conditions prescribed by law. The [Social Protection Floors Recommendation, 2012 \(No. 202\)](#) further

⁶ 2020 General Survey para 746

⁷ 2020 General Survey para 207

⁸ 2020 General Survey para 784

⁹ 2020 General Survey para 783

¹⁰ 2020 General Survey para 479

developed the normative framework for the development of universal, comprehensive and adequate social protection systems, with social protection floors as a fundamental element thereof. Such nationally-defined social protection floors should guarantee access to at least essential health care and basic income security for older persons, which should allow life in dignity, and whose level should be defined and regularly reviewed with tripartite participation (paras. 5 and 8).

Over the last decades, in addition to contributory mechanisms which represent the majority of old age pension schemes, non-contributory schemes financed from general taxation, emerged as a key tool complementing contributory mechanisms in expanding coverage and seek to secure life in dignity for those without any other form of coverage. For example, tax-financed pension schemes can ensure at least a basic level of income security in old age for (former) workers in other contractual arrangements; some countries, provide a universal pension for older people that guarantees a basic level of income security. Contributory pensions complement such universal pensions. Other countries provide non-contributory old-age pensions for those who have not earned sufficient entitlements under the social insurance scheme, or do not reach a minimum level of income security.¹¹

One of the challenges for access to social security for older workers are persistent coverage and adequacy gaps regarding their access to health care and social security. Depending on national contexts, workers in certain forms of part-time, temporary or self-employment are more likely to face protection gaps than others. The resolution and conclusions¹² adopted by the International Labour Conference in June 2021 call for ensuring adequate social protection for workers in all types of employment (paras. 13(d), 13(j) and 17(g)) as part of its framework for action for universal social protection.¹³

In the context of the COVID-19 pandemic, the [Employment and Decent Work for Peace and Resilience Recommendation, 2017 \(No. 205\)](#) provides that employment strategies should respect human rights and fundamental principles and rights at work (Paragraph 7(e) to (g)), including the promotion of equality of opportunity (Paragraph 7(h)), as well as the elimination of all forms of discrimination and violence (Paragraph 11(f)). The particular vulnerability of certain categories of workers to the most serious decent work deficits is recognized in Paragraph 7(i) of the Recommendation which contains a non-exhaustive list that includes older people.¹⁴

Older workers have the same fundamental rights at work as all other workers, including the right to freedom of association and collective bargaining, guaranteed by [the Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#) and the [Right to Organise and Collective Bargaining Convention, 1949 \(No. 98\)](#). Concerning the right to associate, the CEACR emphasizes that legislation should not prevent former workers and retirees from joining trade unions, if they so wish, particularly when they have participated in the activity represented by the union¹⁵. In the same token, ILO Committee on Freedom of Association (CFA) has considered that right to decide whether or not a

¹¹ 2020 General Survey para 868; ILO (2021) [World Social Protection Report 2020-22: Social protection at the crossroads – in pursuit of a better future](#).

¹² [‘Resolution and Conclusions Concerning the Second Recurrent Discussion on Social Protection \(Social Security\), adopted at the 109th Session of the International Labour Conference’](#), June 2021.

¹³ “Universal social protection entails actions and measures to realize the human right to social security by progressively building and maintaining nationally appropriate social protection systems, so that everyone has access to comprehensive, adequate and sustainable protection over the life cycle, in line with ILO standards” (para. 2).

¹⁴ 2020 General Survey para 401

¹⁵ 2012 General Survey, para 71.

trade union should represent retired workers for the defence of their specific interests is a question pertaining to the internal autonomy of all trade unions¹⁶.

With respect to pensions and the effective right to collective bargaining, the CFA has found that supplementary pension schemes can legitimately be considered as benefits that may be the subject of collective bargaining and that the parties involved in collective bargaining should be able to improve the legal provisions on retirement and pension schemes by mutual agreement. In one case, the CFA found that “Giving by law a special incentive encouraging one of the parties to denounce/cancel collective agreements by which pension funds were set up constitutes interference with the free and voluntary nature of collective bargaining. Moreover, the Committee considers that after the collective agreements by which pension funds were set up were denounced by one of the parties, it pertained to the parties themselves to determine whether and under which terms and conditions the funds would be dissolved and what would become of their assets. Nothing in Convention No. 98 enables the Government to step in and unilaterally determine these issues, much less to unilaterally determine that the assets of a private pension fund, established by collective agreement, would be appropriated and automatically transferred to a public pension scheme. These measures are contrary to Article 3 of Convention No. 87 and Article 4 of Convention No. 98.”¹⁷ The CFA has also found that “The bargaining partners are best equipped to weigh the justification and determine the modalities (and, as far as employers are concerned, the financial practicability) of negotiated compulsory retirement clauses before the legal retirement age, be it by reason of the difficult nature of the job, or for health and safety reasons.”¹⁸

¹⁶ [Compilation of Decisions of the CFA, sixth edition, 2018](#), para 413.

¹⁷ [Compilation of Decisions of the CFA](#) paras 1310, 1309 and 1436.

¹⁸ *Ibid* para 1306