

**Guiding Questions:** Equality and non-discrimination

- 1) Does your country's constitution and/or legislation (a) guarantee equality explicitly for older persons or people of all ages and (b) forbid discrimination explicitly on the basis of age? If so, how is the right to equality and non-discrimination defined?

The U.S. Constitution and many statutes have explicit language protecting people of all ages and many lawsuits have expanded that interpretation over the years. However, there have also been legislative and judicial actions which have restricted some of those protections. The US Constitution does not explicitly prohibit discrimination based on age but many state statutes do.

Under a much litigated federal statute, the Age Discrimination in Employment Act (ADEA), it is illegal to discriminate based on age but the law only forbids age discrimination against people who are age 40 or older. It does not protect workers under the age of 40, although some states do have laws that protect younger workers from age discrimination. The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment. Further, it is unlawful to harass a person because of his or her age. An employment policy or practice that applies to everyone, regardless of age, can be illegal if it has a negative impact on applicants or employees age 40 or older.

- 2) Does your country produce information about discrimination against older persons in the following or other areas? If so, what are the main findings?

The US and advocates within the US frequently produce information about discrimination in the areas highlighted. We have attached some recent reports and their findings related to hunger, employment and health care.

[http://www.aarp.org/content/dam/aarp/aarp\\_foundation/2014-pdfs/SNAP-Access-  
Barriers-Faced-By-Low-Income-50-59-Year-olds-  
AARP%20Foundation....pdf?intcmp=AE-FOU-IL](http://www.aarp.org/content/dam/aarp/aarp_foundation/2014-pdfs/SNAP-Access-Barriers-Faced-By-Low-Income-50-59-Year-olds-AARP%20Foundation....pdf?intcmp=AE-FOU-IL)

[http://www.aarp.org/content/dam/aarp/research/surveys\\_statistics/econ/2013/Staying-  
Ahead-of-the-Curve-Age-Discrimination.pdf](http://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2013/Staying-Ahead-of-the-Curve-Age-Discrimination.pdf)

[http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/09/08/for-some-  
states-a-focus-on-older-workers](http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/09/08/for-some-states-a-focus-on-older-workers)

[http://www.frbsf.org/economic-research/publications/economic-letter/2017/february/age-  
discrimination-and-hiring-older-workers/](http://www.frbsf.org/economic-research/publications/economic-letter/2017/february/age-discrimination-and-hiring-older-workers/)

3) Is there information available about inequality of opportunities or outcomes experienced by older persons in the following areas?

- Availability of, access to and quality of health care services
- Financial services

Older people in our country can have a difficult time accessing services and services that enable them to live in the community because of structural financial issues. For example, only people whose with complex medical needs and very low incomes will be able to secure federal funding to pay for home supports, generally speaking. That means that many older people are forced to receive care in more institutional settings and be disconnected from their families and communities in order to be able to secure long term care. AARP's surveys have consistently found that the overwhelming majority of people want to age in their own homes and not be forced into institutions like nursing facilities. There are many barriers to aging in place, however. According to AARP research, issue with transportation, side walk accessibility, housing accessibility and affordability, as well as access to grocery stores and doctors create issues with access to needed services.

<http://assets.aarp.org/rgcenter/ppi/liv-com/ib190.pdf>.

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4) Are there any areas where differential treatment based on old age is explicitly justified?

*Examples:*

- Access to goods
- Mandatory age of retirement
- Age limits in financial services and products
- Age-based benefits

Under the Social Security program, your benefits increase the later you start to draw down the benefit. If you qualify for Social Security, you can claim benefits as early as age 62. However, the age at which you can receive 100 percent of your benefit is your full retirement age, and that age varies depending on your birth year. For example, if you're turning 62 this year, your full retirement age is 66 years and two months. If you decide to hold off on claiming your benefits, you'll get delayed retirement credits that increase your payment for every month you delay, up until age 70.

Under ERISA § 204, 29 USC § 1054, an employee benefit plan generally may not reduce or discontinue benefit accrual or the rate of benefit accrual on behalf of any employee because of the employee's attainment of any age. The accrued benefit may not be reduced because of any increase in the participant's age or service. An accrued benefit is typically expressed as a monthly benefit, commencing at Normal Retirement Age, payable over the life of the participant.

ERISA also prohibits pension plans from excluding employees from participation in the plan after an employee has attained a certain age. ERISA § 202(a)(2), 29 U.S.C. § 1052(a)(2). ERISA does permit a cap on the number of years of service a defined benefit pension plan may take into account for determining the benefit. ERISA § 204(b)(H)(ii), 29 U.S.C. § 1054(b)(H)(ii). In other words, it is permissible for a plan to stop providing accrual