

**FOCUS AREAS OF THE 11th SESSION OF THE OPEN-ENDED WORKING GROUP ON AGEING:
Right to Work and Access to the Labour Market**

Pour une présentation complète des politiques de la France, veuillez-vous référer à :
Mise en oeuvre du Plan d'action international de Madrid sur le vieillissement (PAIMV/MIAPA) et sa stratégie de mise en oeuvre régionale (RIS). Troisième cycle de revue et d'évaluation (2012-2017) : rapport national de suivi

For a full presentation of France's policies, please refer to :
Report on the French Ageing Policy. 15 Years since the Second UN World Ageing Plan (Madrid International Plan of Action on Ageing – MIPAA) Madrid 2002

Disponible, en français et en anglais, **sur le site web des Nations-Unies:**
Available on the United Nations Economic Commission for Europe (UNECE) website:

<https://www.unece.org/pau/mipaareports2017.html>

National Legal 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?*

The Labour Code guarantees to every citizen the right of access to the labour market free of discrimination. However, a series of laws provide additional guarantees for older citizens.

In 2005, a first **agreement was reached between trade unions and business executives** (“inter-branch agreement”) **concerning the employment of senior workers** (*Accord national interprofessionnel du 13 octobre 2005 relatif à l'emploi des seniors*) was a first step in the direction of legal recognition of the specificity of senior labour. Between 2006 and 2010, the **National Action Plan for Seniors Employment** was enforced, with the aim of reaching an employment rate of 50% among people aged from 55 to 64 years and improving the conditions for older workers. In particular, the **inter-branch agreement of 2008** (*Accord du 11 mars 2008 relatif à l'emploi des seniors*) contributed to developing policies concerning life-long learning in order to make senior employees more efficient and to help them adjust to the input of new technologies. It also reinforced measures to fight age-related discrimination, to guarantee appropriate working conditions for elderly people, and to manage pre-emptively the careers of senior workers to help them consider professional retraining (see further below).

In addition, the French Law for the Funding of Social Security (*Loi pour le Financement de la Sécurité Sociale* - LFSS) for 2008 created a **system of fines** (amounting to 1% of the payroll) for companies with over 50 employees that fail to maintain a certain percentage of elderly workers, to recruit enough workers above 50 or to implement steps to improve work conditions, access to training programmes and transition between work and retirement.

Moreover, the LFSS for 2009 **protects elders from forced retirement** - leaving the choice entirely up to the employee up to their 70th birthday (article 61) - and allows them to keep working while receiving a retirement pension (article 59).

A law passed on the 1st of March 2013 creating “**generation contracts**” (*contrat de génération*) aims at encouraging the hiring and retention in employment of senior workers through financial aids to companies. Employers are also required to extend their offer of occasional training to their elder employees. An estimated 103 536 young and older people have benefitted from this contract.

The law on Social Dialogue and Employment of August 17th 2015 (*Loi du 17 août 2015 relative au dialogue social et à l'emploi*) created a “**new opportunity**” **professionalization contract** (*contrat de professionnalisation « nouvelle chance »*). This contract fosters the return to employment by promoting training. People benefiting from a “new opportunity” contract both receive vocational training and acquire work experience. The duration of the training was extended to 24 months to target long-term jobseekers and low-skilled workers.

A third plan for occupational health (*plan « Santé au travail »*) for 2016-2020 was launched on the 8th of December 2015 by the Committee for the Orientation of Work Conditions (*Conseil d'orientation des conditions de travail*). This plan focuses on the anticipation of health problems and wear due to work, and on measures to enable older people to work longer. Experiments are conducted in several regions in order to analyse favourable working conditions.

Finally, the law promotes alternative and innovative forms of work. A law from the 2nd of April 2015 (*ordonnance relative au portage salarial*) enables older people to **keep working as occasional independent consultants**.

For those with arduous working conditions, a 2014 law establishes a **preventive drudgery account** (*compte de prévention pénibilité*) encouraging early retirement and gradual retirement.

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?

According to the Défenseur des Droits and the International Labour Organisation, age is felt to be the biggest factor of discrimination in access to the job market. Over 80% of workers reported a **fear of being discriminated against**, as they grow older. The latest DARES¹ report on senior employment (March 2019) revealed that in 2018 52,1% of those aged 55 to 64 were employed (the OCDE average is 63%). 77,2% of those aged 55 to 59 were either in employment or looking for a job, while only 33,5% of those between 60 and 64 were. 6,7% of those aged 65 to 69 were employed, due to the implementation of policies allowing them to concurrently benefit from their pensions and keep a part-time occupation.

Senior unemployment has been impacted by the 2008 crisis, with an increase of 179% in the number of jobseekers aged 55 and over. The study also highlights the difficulties for seniors jobseekers to go back to employment: 60,2% of senior jobseekers have been unemployed for over a year. According to a recent study (13/06/2019) by the Centre of studies on work and employment (*Centre d'Etudes de l'emploi et du travail*), only 35% of jobseekers aged 55 to 59 find another offer, compared

¹ Direction de l'animation de la recherche, des études et des statistiques, a statistics body affiliated to the ministry of Labour

to 50% of those aged 50 to 54. Finally, they are more likely to experience long-term unemployment since it takes them 14 months on average to find a new contract.

Those who do work are more likely to occupy a **part-time job**. Part-time work is more common amongst workers above 55 years old : 25,5 % of senior employees compared to 18 % for those between 30 and 54 years old. This rate rises to 40% for those aged 64 (DARESS, 2018). Short-term employment is also more frequent (27% of senior workers). Medical reasons are a determining factor (factory workers are 5 times more likely to opt for a part-time job compared to executives). Moreover, 7% of those aged 60 to 64 combine a part-time job and retirement.

Another challenge they face is the **unwillingness of employers to hire older people**: a private insurance company study finds that 48% of employers consider older workers to lack flexibility, 33% of them believe they are too slow to adapt to market transformations, and 40% reproach them with not being tech-savvy enough (Malakoff Médéric Humanis, 2018).

Finally, they face more **discrimination when it comes to access to training**. Although companies are required to offer occasional training to their employees, retired people who go back to work on a contract-basis are at higher risk of exclusion from internal training programmes. However, the creation of the **Individual Learning Account** allows workers to benefit from training even after 65. Although the account is automatically closed when a person exercises their right to retirement, it can be reopened if they to return to work, and they can use all the remaining hours (24 hours per year for full-time employment).

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?

While it is difficult to find thorough data on informal labour, France Stratégie and the Conseil d'Orientation pour l'Emploi estimated in a report dating from February 2019 that 3,9% of the French population had engaged in some sort of informal labour in the past year, for a total of 1,9 million people. Young people (15-24 yo) and **older people** (65 and older) **are more likely to engage in informal labour** (France Stratégie, 2019).

The Agence centrale des organismes de la Sécurité sociale (Aross)² 2013 report on informal labour revealed that 21,4% of older people in their sample had participated in informal labour. The phenomenon seems **more prevalent amongst women**, whose retirement pensions are more meagre.

The company Oui Care notes that while the use of informal labour has globally decreased in 2018, it has increased by 8% in the elder care industry, with 18% of people having informally employed someone to take care of an older relative (Oui Care, Market Audit, 2018).

In developed countries, men are as likely as women to engage in informal labour, although their tasks might be different (women are over represented in babysitting, cleaning, etc). The 2017 European Barometer estimates that 5% of the men in their sample had taken part in informal labour, compared to 3% of women.

² Aross (2013), La lutte contre le travail illégal.

Finally, there is a strong correlation between experiencing long-term unemployment and engaging in informal labour³, implying that older people, who are more likely to experience long term unemployment, are therefore more likely to engage in informal work.

In 2014, informal labour represented 10,8% of the GDP, according to the Conseil Economique, social et environnemental (CESE).

Availability, Accessibility and Adaptability

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?*

Several measures have been implemented to guarantee access to information about employment and training.

Block release training and retraining (*Reconversion ou promotion par l'alternance*) allows older people to combine practical training and theoretical learning in universities in order to facilitate career changes.

In 2002, a law requiring the recognition by universities of prior informal and work-based learning (**Validation des Acquis de l'Expérience** - VAE) and other professional qualifications was passed. The law effectively organises VAE at a national level - through a 8 to 12 month-long procedure - and allows anyone with a minimum of one year of professional experience - related to the content of the targeted certification - to apply for all or part of this diploma, listed on the National repository of professional certifications (RNCP).

The **annual skill assessment meeting** (*bilan de compétences*) allows the employee and employer to discuss future wishes in terms of access to training and career evolution.

Finally, another law, passed in 2004, grants individuals the right to lifelong-learning (**Droit Individuel à la Formation** - DIF), entitling all employees to take stock of their skills, aptitudes and motivations to define a professional or training plan and access a maximum of 120 hours of training/educational sessions over a 6 year period - during work or free time. DIF is entirely funded by the employer. From January 2015, DIF was replaced by the **Individual Learning Account** (*Compte Personnel de Formation* - CPF), meant to follow each person in his/her professional career throughout their lifespan, up to 150 hours over 9 years. An additional protocol voted in 2017⁴ specifically targets jobseekers aged 50 and older : should they have failed to reach the threshold of hours worked enabling them to benefit from training, Pôle emploi fills in for them (up to 500 hours) to grant them access to training plans.

Regarding workplace accommodations, **regular health check-ups** at work are mandatory for all workers and should take place every six months to two years, depending on working conditions. Article L241-10-1 of the Labour Code enables **occupational health doctors to suggest individual measures** based on health tests results, including modifications of the workstation or transfers to another position in the firm if necessary.

³ Hazans, Mihails. (2011). Informal Workers Across Europe: Evidence from 30 European Countries.

⁴ protocole d'accord relatif à l'assurance chômage du 28 mars 2017

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

Pôle Emploi, the French governmental agency which registers unemployed people, provides a series of services to older people, including **programmes of individual or collective operational preparation to work** (*préparation opérationnelle à l'emploi individuelle – POEI and préparation opérationnelle à l'emploi collective – POEC*) as well as learning programmes (*action de formation préalable au recrutement*).

Moreover, Pole Emploi provides older people with information concerning the contracts specifically designed for them, most of whom operate based on tax exemptions for companies hiring people 45 and older:

- the **CDD senior** is a fixed-term contract whose length cannot exceed 36 months. It is available to people over 57 who have been unemployed for at least 3 months.
- the **Parcours emploi compétence** is a subsidised employment contract for people over 50.
- the **professionalisation contract** (*contrat de professionnalisation*) enables workers to obtain a professional qualification. Companies who hire jobseekers who are 45 and older under this form of contract are eligible for grants (up to 2 000 euros).
- the **single inclusion contract** (*Contrat Unique d'Insertion*, running for at least 6 months) encourages companies to hire elder people in exchange for monthly benefits from the state.

On a local scale, Pôle Emploi has launched a series of group activities (*club de chercheurs d'emploi seniors*) in order to connect senior job seekers.

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?*

In 2009, the government launched a **catalogue of good practices** based on the recommendations of the European Agency for Corporate Social Responsibility. The agency recommended the use of advising councils including retired employees and the occasional hiring of retired people depending to deal with occasional peaks in activity.

The PLFSS for 2010 identified a series of **priorities for senior labour**, such as improving the hiring of older people (with quantified targets), implementing tutoring systems in order to benefit from the experience of senior workers, promoting VAE in order to facilitate professional reconversions, planning career evolution meetings within companies, and taking into consideration occupational health risks. **Regular meetings with the Anact** (*agence nationale pour l'amélioration des conditions de travail*) are thus organised to identify risks, implement standardised physical and psychological tests and organise training for heads of human resources.

On the regional scale, the **Directe** (*Direction des entreprises, de la concurrence, de la consommation, du travail et de l'emploi*) organises **regular meetings for seniors** (club senior). It has also published a practical guide to keep older people informed of their rights and give them advice regarding various sources of legislation (*guide pratique réflexes seniors*).

Besides the services and activities provided by Pôle Emploi, a number of societies are oriented towards senior employment. *Force Femmes* specifically targets women over 45 while *Avarap* (*Association pour la VALorisation des Relations Avec les Professionnels*) helps former executives come back to employment.

The state financially supports the **Regional Companies for Integration** (*Clubs régionaux d'entreprises partenaires de l'insertion - CREPI*) through fundings from the CGET (*Commissariat général à l'Égalité des territoires*), the Ministry for National Cohesion (*Ministère de la cohésion et des territoires*) and the General Delegation for Employment and Vocational Training (*Délégation générale à l'emploi et à la formation professionnelle*). Specific programmes such as professional networking events for seniors are regularly held for jobseekers above 45 (« *réseau emploi senior* »).

The state also funds a number of local actions such as the *Cité des Métiers* in Paris, which organises workshops for those aged 45 and older, or *Rives de Seine Entreprise et Emploi*, a local organisation which provides workshops and meetings for senior workers.

The National Association of Human Resources Directors (*association nationale des directeurs des ressources humaines, ANDRH*) has suggested the creation of a "senior index" (*indice des seniors*) based on the model of the index for gender equality in the workplace.

Finally, a website dedicated to the information of older people is available at the following address : <https://www.pour-les-personnes-agees.gouv.fr/>.

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?*

In France, the enjoyment of favourable and just conditions of work is guaranteed to everyone through legislation. Article L3221-4 of the Labour code (*Code du Travail*) claims a principle of wage equality between workers whose work is comparable. This includes and protects elderly people. Should they feel like their salary demands are not being met, they can appeal to staff representatives.

Article L1132-1 determines the components of discrimination during the hiring process. Articles L1133-1 and L1133-6 regulate wage gaps in the private sector. Finally, the Penal Code (*Code pénal*) establishes criminal sanctions in the event of discrimination (articles 225-1 to 225-4).

Moreover, a 2018 law has merged together staff representatives, work councils and health and safety committees into a single instance, **the joint consultative committee** (*Comité social et économique*), which is in charge of ensuring the well-being of workers, including older people.

Finally, regular health check-ups and health inspection are meant to ensure safe working conditions, including for seniors. In case of disagreement with the employer, workers can appeal to the health and safety inspection (*Inspection du travail*) or ask unions to contact health and safety inspection on their behalf. The aim is to avoid difficult working conditions, long hours, night shifts....

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?*

As an EU member state, France is obliged to implement European legislation. In 2009, the Lisbon Treaty introduced a horizontal clause with a view to integrating the fight against discrimination into all EU policies and actions (article 10 TFEU). The **Charter for Fundamental Rights of the European Union** of 2000 recognises “the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life” (article 25), thus establishing a principle of non-discrimination on grounds of age which is the reference for the legal framework regarding equality and non-discrimination engagements in France. Moreover, **the European Social Charter** expects member states to “enable elderly persons to remain full members of society for as long as possible, by means of adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life”.

An impetus for reform in member countries of the European Union was given by the EU Council Directive 2000/78/EC (27th of November 2000) which establishes a general framework for equal treatment in employment and education, and includes age as a ground for discrimination.

EU legislation relating to discrimination was translated into French national law in 2008 (*Loi n° 2008-496 du 27 mai 2008 portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations*).

Within the national legal framework, the article 225-1 of the **Penal Code** recognizes as a discrimination any distinction based on age as a criterion. As mentioned above, the Labour Code forbids discrimination in relation to work.

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?*

Since the law guarantees a principle of non-discrimination against workers, they can appeal to **industrial tribunals** (*prud'hommes*), **Labour Inspection** (*Inspection du travail*, a specialised body of civil servants in charge of the surveillance of employment and labour laws in firms), or to **the DIRECCTE** (*Direction Régionale des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi*, a regional body affiliated to the Ministry of Labour in charge of insuring good work conditions).

Since the passing of the organic law of 2011 (*loi organique du 29 mars 2011 relative au Défenseur des droits*) anyone can appeal to the **Défenseur des Droits** (Defender of Human Rights), an independent authority with a constitutional status nominated by the President for a six-year term, and assisted by six experts. This institution relies on a territorial network of 450 delegates, who inform, orientate and help the claimants free of charge. When necessary, the *Défenseur* has the prerogative to appeal to any competent authority, make comments before Courts, and make recommendations.

Since France is a member of the European Union, older persons can also appeal to the **Court of Justice of the European Union** as the court of final appeal.