

United Nations General Assembly Open-ended Working Group for the purpose of strengthening the protection of the human rights of older persons

Eleventh working session

New York, 6-9 April 2020

Guiding Questions for Focus Area:

Right to Work and Access to the Labour Market

Abstract:

Americans are now living longer and playing an integral part in contributing to U.S and global economy. Their contribution spans from farming in rural America to technology advancement and by 2026, almost quarter of the workforce will comprise of Americans over the age of 55. ¹

This transformation in the workforce comes with its own set of opportunities and challenges from reskilling and upskilling an aging population to the social acceptance to educating employees and helping them create an infrastructure with new opportunities adapted to this changing workforce. Aging population are taking diverse path post-retirement, they are choosing to start a second career, becoming self-employed or become part-time workers. This creates many opportunities for employers to tap into and create mutually beneficial scenarios.

National Legal and Policy Framework

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

- The Age Discrimination in Employment Act of 1967 (ADEA) protects applicants and employees 40 years of age and older from discrimination on the basis of age in hiring, promotion, discharge, compensation, or terms, conditions or privileges of employment. The ADEA is enforced by the Equal Employment Opportunity Commission (EEOC).²
- Additional laws and regulation include³:

Law:

- 29 USC §621 - Age Discrimination in Employment

¹ (Report of the Special Committee on Aging United States Senate 2017)

² (U.S Department of Labor n.d.)

³ (U.S Department of Labor n.d.)

- 29 USC §6101 - Age Discrimination Act of 1975

Regulations

- 29 CFR Part 37 - Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act (WIA)
- 29 CFR Part 1625 - Age Discrimination in Employment Act - Interpretations
- 29 CFR Part 1626 - Procedures. Age Discrimination Act

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?

- Older people are treated differently in hiring, firing, promotion, and layoff decisions, and systematically offered inferior benefits, job assignments, and training opportunities.
- Age discrimination in the hiring process and may be undermining their ability to transition between jobs or reenter the workforce
- Women face more age discrimination than men⁴
- Evidence suggests that women may experience more age discrimination due to physical appearance⁵
- Older workers may lack information on what would be the most valuable skills and affordable means to acquire them.
- With limited funds at an older age, workers may not be able to afford some programs or may feel that time required to acquire the new certificate or degree is too long. It can take anywhere between 2 to 4 years on average.

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?

⁴ (David Neumark 2017)

⁵ (I. B. David Neumark 2017)

Figure 1:⁶ Breakdown of labor force participation per age group

	Ages 25 to 54 Years		55 Years and Older		65 Years and Older		75 Years and Older	
	Sub-Population Share	Labor Force Participation Rate	Sub-Population Share	Labor Force Participation Rate	Sub-Population Share	Labor Force Participation Rate	Sub-Population Share	Labor Force Participation Rate
Overall	100.0%	81.3%	100.0%	40.0%	100.0%	19.3%	100.0%	8.4%
Sex								
Female	50.9%	74.3%	53.8%	34.7%	55.4%	15.6%	58.2%	6.0%
Male	49.2%	88.5%	46.2%	46.2%	44.7%	24.0%	41.8%	11.7%
Race								
White	76.2%	82.1%	83.0%	40.2%	84.6%	19.6%	85.9%	8.5%
Black	13.4%	78.9%	10.4%	36.8%	9.2%	16.7%	8.6%	7.4%
Native Indian or Alaskan	1.3%	74.3%	0.7%	36.3%	0.7%	17.2% ^a	0.5%	6.8% ^a
Asian	6.9%	78.6%	4.7%	43.1%	4.5%	20.1%	4.1%	8.2%
Hawaiian or Pacific Islander	0.5%	79.4%	0.2%	46.8% ^a	0.2%	31.9% ^a	0.1%	16.9% ^a
Other	1.8%	80.9%	1.0%	39.7%	0.8%	19.4%	0.7%	9.1% ^a
Hispanic Ethnicity								
Hispanic	18.9%	78.9%	9.4%	41.3%	8.2%	18.1%	7.6%	8.5%
Non-Hispanic	81.1%	81.9%	90.6%	39.9%	91.8%	19.4%	92.4%	8.4%
Educational Attainment								
Less than High School Degree	9.7%	66.2%	12.4%	23.0%	14.4%	11.0%	18.4%	4.3%
High School Diploma	26.7%	77.0%	31.9%	34.6%	32.8%	15.7%	36.7%	6.5%
Some College, No Degree	16.4%	80.5%	16.6%	40.7%	16.0%	19.5%	14.7%	10.0%
Associates Degree	10.7%	84.8%	9.2%	46.7%	7.8%	21.7% ^a	6.2%	9.1% ^a
Bachelor's Degree and Higher	36.5%	87.9%	29.9%	50.4%	28.9%	27.5%	24.0%	12.7%

Source: CRS estimates based on Current Population Survey data collected in 2016. Estimates are based on the 12 months of data for 2016, and represent the estimated rates and shares for the average month in that year.

Notes: a. 95% confidence intervals are outside a +/- two percentage point band of the estimate.

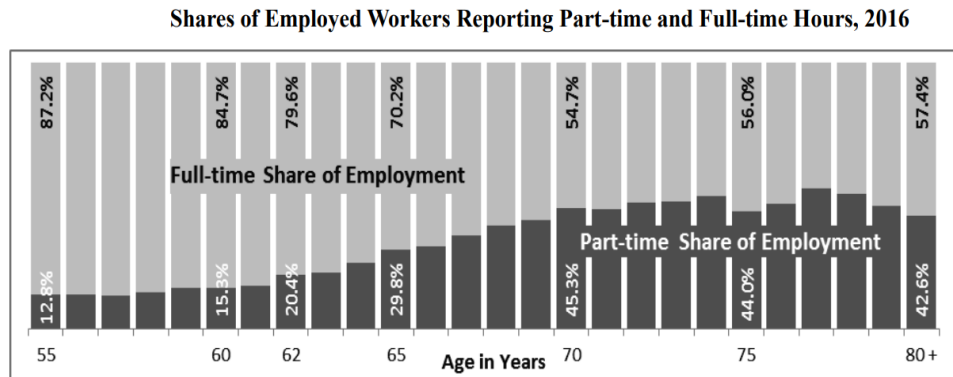
- Figure 1 demonstrates that older workers' participation patterns across demographic are very similar to the younger workers, barring the educational background.

Part-time work increases significantly between the ages of 60 and 70. Some may transition to part-time work following full-time work, while others move from not working to part-time work (e.g., returning to work after raising children or a period of unemployment). A smaller number prefer full-time hours but may only find part-time work. Data from May 2017 reveal that 13.4 percent of part-time workers ages 55 and above would prefer full-time hours⁷

⁶ (Report of the Special Committee on Aging United States Senate 2017)

⁷ (Report of the Special Committee on Aging United States Senate 2017)

Figure 2 Transition from full-time to part-time work for older people



Source: CRS calculations using unpublished BLS data.

Notes: A worker is considered to be employed part-time if he or she reports usually working 34 hours or fewer per week.

- Figure 2 shows that part-time work increases significantly between the ages of 60 and 70. Some may transition to part-time work following full-time work, while others move from not working to part-time work (e.g., returning to work after raising children or a period of unemployment). Another path older workers are taking is to transition to another occupation, or remaining longer in their current occupation.

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?

- Senior Community Service Employment Program (SCSEP): SCSEP is the only federally mandated job program explicitly targeting low-income older adults. The Department of Labor program provides training, job placement assistance, and other support services to unemployed low-income adults ages 55 and above. The program places older adults with local partner organizations where they can gain work experience and acquire job skills and subsidizes their wages until they exit the program.⁸
- Americans with Disabilities Act (ADA) requires that employers provide reasonable accommodations to employees and job applicants with disabilities, unless doing so would cause undue hardship. The three major categories of reasonable accommodations outlined in the law are⁹:

- (i) “modifications or adjustments to a job application that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or

⁸ (Report of the Special Committee on Aging United States Senate 2017)

⁹ ibid

(ii) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

(iii) modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities

- While ADA has had a positive impact overall, approximately 28,000 such ADA claims were filed in 2016; and they were disproportionately from individuals age 50 and above. Most common claim type involves discrimination as a result of orthopedic disabilities, followed by heart and cardiovascular issues, diabetes, depression, and cancer

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

Federal Programs such as:

- WIOA Adult and Dislocated Worker Programs¹⁰: Under Title I of the Workforce Innovation and Opportunity Act (WIOA) provides funding to states and localities to offer career and training services to adult (ages 18 and above) and dislocated workers. Career services and training programs include a broad range of services, such as skills assessments, job search assistance, career counseling, on-the-job training, occupational skills training, and adult education and literacy programs, among others.
Trade Adjustment Assistance (TAA) Program¹¹: Via the TAA program, the federal government provides funding to states and localities to provide assistance to workers who have lost their jobs due to foreign competition. Benefits provided by the program include training and reemployment services, income supports for workers currently in a training program but no longer receiving unemployment benefits, wage insurance for older workers taking jobs that pay less than their previous jobs, and health care coverage tax credits

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?

At public and private sector level initiatives are being developed to reskill and upskill workers. These include:

- American Association of Community Colleges 50+ initiative provides education and training programs for older adults to help them increase skills
- United States Department of Labor launched the Aging Worker Initiative that provides grants to ~ten organizations that proposed to develop education and training programs as well as job referral services for aging workers

¹⁰ (Carl E. Van Horn 2015)

¹¹ (Report of the Special Committee on Aging United States Senate 2017)

- Pitney Bowes, a global technology company offers the Retirement Education Assistance Program. an educational subsidy to support skills needed by older adults to handle new technology.
- Proctor & Gamble and Siemens offer reverse mentoring programs where younger employees teach managers and executives, who tend to be mid-career or older workers, about new technologies.
- Central Florida Community College (CFCC) offers “Program for 55 and Better,” which includes job search assistance, training, and work experience. Older adults can leverage this program to engage in activities to maintain their current employment, start on a different career or find temporary or part-time work, or become an entrepreneur. CFCC also partners with area employers to encourage the hiring of older workers.
- Michelin has a focus on supporting older workers, nearly 40 percent of the company's workforce is 50-plus, and they have an average tenure of nearly 24 years. Initiatives for older workers include a strong emphasis on wellness, training, and intergenerational mentoring. The company also has a new program aimed at extending employees careers by supporting a gradual ease into retirement, including transitions into part-time work. This phased process helps workers adjust to retirement, and also allows them to pass on their knowledge and expertise, as mentors to younger employees.

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?

- The Equal Pay Act requires that men and women in the same workplace be given equal pay for equal work.

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, ADEA, and the ADA prohibit compensation discrimination on the basis of race, color, religion, sex, national origin, age, or disability

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?

- An individual alleging a violation of not receiving equal pay may go directly to court and file a complaint.
- Individuals can file claims with the EEOC if they experience this discrimination on the basis of age

References

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