

SUHAKAM Input for XI Session of the Open-ended Working Group on Ageing

Focus Area: Right to Work and Access to the Labour Market

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?

There are no specific legal provisions in Malaysia that recognizes the right to work and access to the labour market by older persons. However, there are existing laws on employment, pension and social security that are also applicable to older persons. In 2011, the Malaysian Government adopted the National Policy and Action Plan for Older Persons which addresses issues of older persons relating to health, lifelong learning, security and protection, governance and shared responsibilities. Currently, the Government is developing an older person law, which is expected to address issues arising from the aging Malaysian society including increasing work opportunities for older persons.

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?

The challenges faced by older persons in Malaysia in terms of realising their right to work and access to the labour market include discrimination, upskilling, adequate pay, equal pay for work of equal value and access to healthcare. Discrimination often arises from the general negative perception particularly among the employers that older employees are less productive, slower and less flexible compared to younger employees.

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?

According to the Malaysian Department of Statistics, a total of 1.36 million people aged 15 to 64 years old were engaged in informal work in 2017. Out of the total, 524,400 were women. However, this may not reflect the full picture as there are unrecorded number of older persons above the age of 64 working in the informal sector including street vendors or home-based industries.

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?

The Government introduced the Employment (Part-Time Employees) Regulations 2010 which elaborates the definition of “part-time employees” as employees whose average hours of work per week are between 30% -70% of the normal hours of work per week of a full-time employee employed in a similar capacity in the same enterprise. Hence, older persons with jobs falling within the scope of this definition would only need to work on Mondays, Tuesdays and Wednesdays to be considered as a “part-timer” and deemed to

have access to labour market. Apart from that there are laws and by-laws that regulate and require facilities for disabled people to be installed in public buildings, which may equally benefit older persons in terms of their accessibility to workplace.

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

In Malaysia, there is an online platform called Hire Seniors which provide job placement private services for both employers and senior citizens.

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 2018, the Government announced that the employers' mandatory Employees Provident Fund (EPF) contributions would be reduced from 6% to 4% in order to encourage the hiring of those above the age of 60. In addition, the Government introduced tax incentives for companies that hire senior citizens, with a salary limit of RM4,000 a month.

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?

Other than the said EPF and tax incentives, policies that ensure older persons enjoy just and favourable conditions of work especially in terms of accessibility and inclusivity, as well as to protect against discrimination can always be improved.

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?

No. Age is not one of the prohibited grounds of discrimination including in relation to employment under Article 8(2) of the Malaysian Federal Constitution. Nevertheless, Article 8(1) guarantees equality before the law and equal protection of the law for all persons. Meanwhile, Article 5 guarantees the right to life for all persons, which the courts have since to include the right to livelihood and to seek and earn from lawful employment.

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?

The Department of Labour under the Ministry of Human Resources would carry out labour inspection to investigate the complaints received. However, the scope of complaint must involve an employer and employee relationship i.e. under contract of service. For older persons working in informal sectors, there is no special mechanism for them to lodge their complaints and seek redress unless there is a contract of service.