

Input from the International Association of Geriatrics and Gerontology (IAGG) on Right to Work and Access to the Labor Market

Eleventh working session: Open-ended working group for the purpose of strengthening the protection of the human rights of older persons

Introductory, Framing Remarks

First, let me be clear that the IAGG supports the Convention on the Rights of Older Persons and applauds the urgency GAROP brings to its enactment, particularly in light of the pattern of discrimination laid bare during the pandemic.

Access to labor markets and work is an economic issue for people of all ages. Work is also important to defining one's purpose in life, standing in the community, social connectedness, and health. Importantly, many older adults wish to remain productively engaged and have expertise and skills beneficial for organizations and work settings experiencing a shortage of individuals with necessary job skills. Nevertheless, work is not possible (or beneficial) for every person of any age; for example, those with a function impairing disability may be unable to work. Thus, a complementary goal of income support for those who cannot work is necessary.

As people live longer, aligning people's functional abilities, life expectancies, and goals grows more complex. Currently, many older people are active, wish to and are able to remain productively engaged over longer periods of the life course. However, many people in the older cohorts in every country experience functional declines. Whether people can work in their later years depends upon their health and functional status, the nature of available work (physical and demands, level of autonomy, automation), legal protection/limitations in formal and informal sectors, organizational practices, and policies (e.g., mandatory retirement age, training opportunities).

The lowest income countries have the highest labor force participation rates (LFPR) for people 65+, as calculated by the International Labor Organization (ILO) – which includes all engaging in any paid work, including part-time, informal sector, and agrarian work. The LFPR 65+ rates are lowest in the highest income countries, with middle-income countries following the same general pattern¹. The extremely high LFPR for people in lowest income countries is of concern since access to the labor market WITHOUT additional income protection is not beneficial to health and well being for many older adults.

National Legal and Policy Framework (including non-discrimination, remedies, redress)

In the U.S., the **Age Discrimination in Employment Act of 1967 (ADEA)** protects certain 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. This Act was passed immediately following the comprehensive Civil rights Act of 1966 and was originally intended to function identically. However, decisions by the federal courts, including the Supreme Court, have significantly weakened ADEA's effectiveness. Significant limitations include: the requirement that age discrimination be intentional; the only form of discrimination identified; and does not apply to job applicants.

Employment discrimination claims can be made through several alternate administrative agencies. Many states have an agency responsible for legal enforcement of human rights; some localities do also. At the federal level, the Equal Employment Opportunity Commission (EEOC) retains monitoring, reporting, and enforcement responsibilities for age discrimination as well as

other employment rights. The resources available to this agency differ by different administrations as their mandate can be interpreted narrowly or broadly.

Availability, Accessibility, Acceptability of Employment for Older Workers

The U.S. does not use a rights-based framework in addressing employment for older workers, but instead the remnants of a worker protection frame. Therefore, there is no emphasis on an affirmative right to work or monitoring of the availability of supports for work for aging adults. The Bureau of Labor Statistics counts the numbers of people working and looking for work by demographic characteristic and region and reports monthly, but has no standards or indicators signaling patterns in un/under-employment for older adults or any other category of worker.

The Senior Community Service Employment Program (SCSEP) is the nation's oldest program to assist low-income, unemployed individuals aged 55+ find work. SCSEP matches eligible older adults with part-time training assignments for non-profit organizations. Participants build skills and self-confidence, while earning a modest income. The program is perennially threatened for elimination. While both of these programs have high enrollment, neither has high success in job placement.

Despite the modest federal investment in older workers, LFPR65+ has been increasing steadily, albeit at a lower rate for women than for men². Reasons for the increase differ: rise in age for full claiming in Social Security; drop in guaranteed benefit pensions; inadequacy of retirement savings; increased healthy longevity; desire to remain in work force.

The increase in LFPR tells only one side of the story. The other side is increasingly clear evidence that older workers are systematically forced from the workforce by their employers³ with a recent re-analysis of the Health and Retirement Survey data indicating that more than half of workers over 50 who are securely tied to the labor market will eventually be forced out by their employer (though often re-labelled as retirement). Furthermore, workers who lose their jobs after the age of 55, remain unemployed for the longest period of any age group.

In sum, labor force participation and income security for older people has benefits for individuals, families and societies, and will only be uniformly enforced if there is a Convention on the Rights of Older Persons.

¹ (Staudinger, U. M., Finkelstein, R., Calvo, E., & Sivaramakrishnan, K. (2016). A global view on the effect of work on health in later life. *The Gerontologist*, 56(2), S281-S292. doi:10.1093/geront/gnw032)

² <https://www.brookings.edu/blog/up-front/2019/04/04/is-the-continued-rise-of-older-americans-in-the-workforce-necessary-for-future-growth>

³ <https://www.urban.org/research/publication/how-secure-employment-older-ages>