

Global Labor and Employment Law Strategic Topics

Ageism and the Workplace

2019 Edition

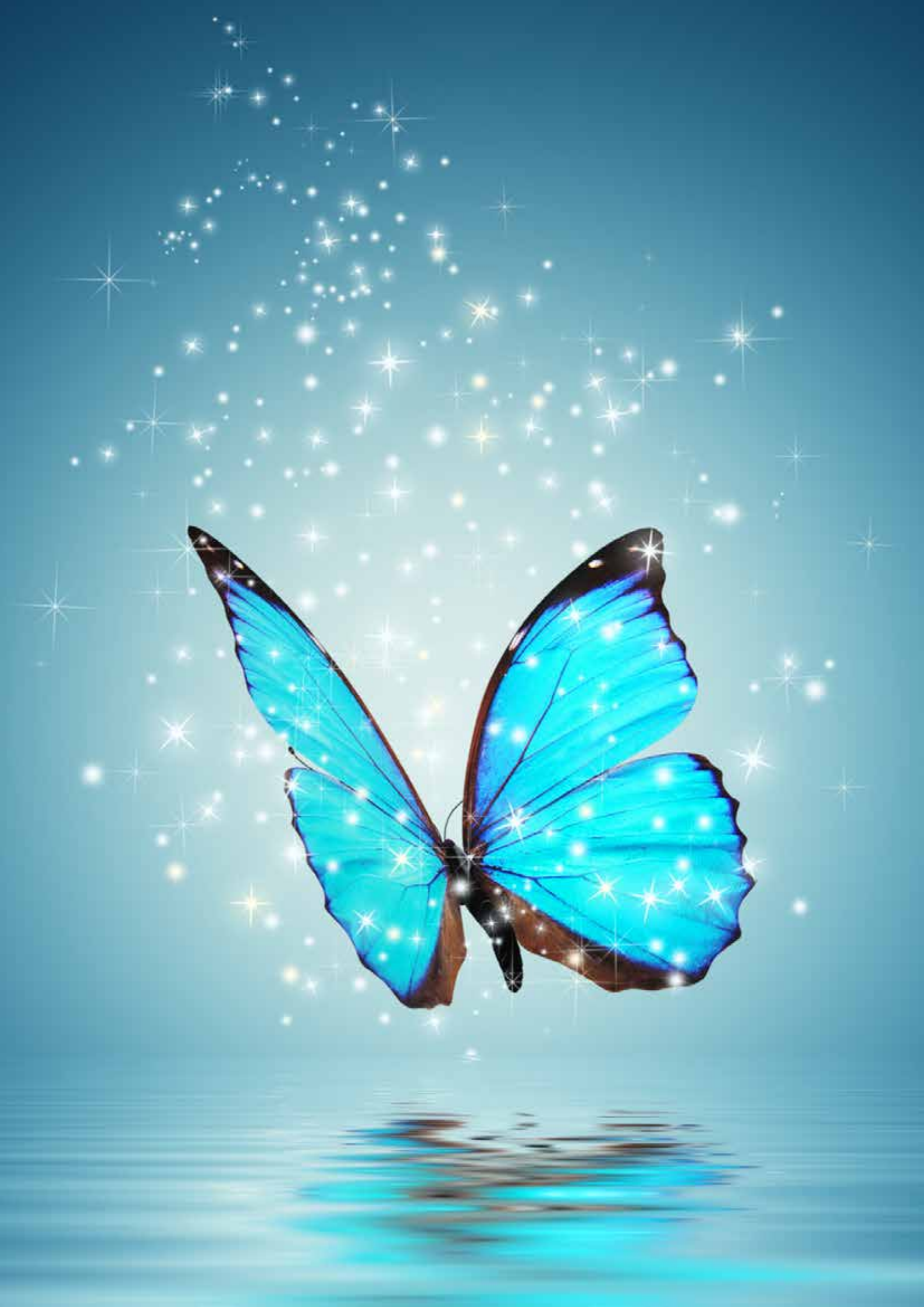




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Ageism and the Workplace

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Are you “Age Ready”? Preparing for Ageism and the Workplace

We are living longer, eating healthier, exercising regularly and enjoying a more active lifestyle into our 80s and beyond.

What does this mean for our state-run pension systems? It certainly means that more money will be required to finance people's retirement for more years than ever imagined.

What does this mean in terms of legislation? Retirement ages have been pushed back or abolished in many countries to keep people in the workforce longer. Creative legislation encourages employees to stay at work later in life.

What does this mean for ageing workers? It certainly means that more people may choose to work later in life and that elder workers will be searching meaningful, and perhaps reduced, work until they exit the workforce. Indeed, increased longevity creates the need for more money throughout one's life and also the desire to stay active later in life.

What does this mean for employers? These are important issues for employers as they will need to manage older workers and the end of careers more carefully. Understanding the desires of the ageing workforce and the needs of the business will be key in devising an end-of-career strategy for each employee.

Countries have different rules with respect to forced retirement, phased retirement and age discrimination. Some countries allow employers to force persons into retirement at a certain age; others do not. Some countries have very protective laws with respect to age discrimination; others do not. It is therefore of significance to an employer to be attentive to the end of the employment relationship of elder workers.

Based on the foregoing, companies need to devise strategies to manage the ageing workforce. Some of the key challenges are:

- ▶ How do we create a workplace which both attracts and allows the ageing workforce to be productive?
- ▶ How do we retain older workers while ensuring that younger talent can be promoted and given increased responsibilities?
- ▶ How do we make sure every generation in the workplace contributes in the best way possible for the best performance of the company?
- ▶ How to be “age-blind” - a true meritocracy regarding employees on a performance based system regardless of a person's age?
- ▶ How do we ensure a “soft landing” for elder workers?

These are many of the key challenges related to the aging workforce that employers are facing today.



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Albania



Soena Foto

Ageism and the workplace

The traditional view of retirement is changing fast. The combination of certain factors, such as an aging population, increase of life expectancy and cost of living at retirement, has contributed to the growth of an older workforce. As a response to these trends, the Government of Albania has introduced a new pension reform aiming to increase the age of retirement for both men and women.

Starting 1 January 2018, the retirement age for women will be increased by two months each year until 2057, when the retirement age will be 67. For 2019, the retirement age for women is 60 years and 10 months. The retirement age for men remains 65 through 2033 and will subsequently increase by one month every year until 2056, reaching age 67.

Both women and men should fulfill a minimum of 15 years of contributions in the compulsory social-security scheme to be eligible to benefit from the pension fund.

The social consequences of an aging population can be manifested in the workplace as age discrimination, which often creates artificial limitations – with

consequences for all. Artificial barriers can limit the effectiveness of older workers and cause employers not to consider or hire them. These negative consequences for older workers can impact their recruitment, training and working conditions.

Albania has undertaken certain legal initiatives to encourage older workers willing and able to work beyond traditional pension retirement age. The Albanian labor code sets a minimum required working age of 16, but there are no maximum age limits to work in Albania.

Moreover, according to labor law, it is prohibited to discriminate based on an employee's age as it regards to the recruitment process, workplace training, entitlement to remuneration and other work-related benefits. All employees have the right to submit claims with the Commissioner for Protection from Discrimination if they believe they have been subject to discrimination at work.

Further, the law on the promotion of employment sets certain priorities and incentives regarding the employment of special groups of people, including job-seekers above the age of 50. In this respect, employment agencies should give

priority to individuals of special groups, and employers can be subsidized by the respective state agencies for hiring employees above the age of 45 with no higher education.

According to public data published by the Institute of Statistics for the fourth trimester of 2018, the unemployment rate for youth, aged 16 to 30, is 22.3%, whereas the rate for people aged 30 to 64 is 9.2%. There is no public data on the employment rate of people over 64. Even though the above indicates a trend in employment of an experienced workforce, there is no data available on the actual percentage of people working beyond the retirement age in Albania – and the social and economic impact it can bring.

Considering the unemployment rate among younger workers, the needs to transform the workforce with new skills and an aging workforce, companies and governments are being challenged with solving substantial issues and providing clear policies to be implemented for incentivizing both the aging and youth workforces.

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Argentina

The challenges of ageism and the workplace and the need for comprehensive pension reform

Overview

Argentine Social Security Law No. 24,241 sets forth requirements that workers must meet to collect an ordinary retirement pension. Men must be age 65 and women must be 60. In addition, workers must provide evidence they have worked for at least 30 years. However, both men and women may choose to continue working and may turn 70 before obtaining the retirement benefit.

From a contributions standpoint, employers should withhold 17% from their employees' salaries. On the other hand, the tax reform in force since December 2017 amended employers' rates for social security.

In this sense, through 2022 employers belonging to the private sector will be subject to a single 19.50% employer social-security contributions rate. This rate will be unified gradually within five years to replace current rates (18% and 20.40%).

Demographic profile

According to the latest public information available (based on the 2010 census) of the National Institute for Statistics and Census (INDEC), the population over age 65 corresponds to approximately 10%. Considering the INDEC has not updated

population information for a long time, certain informal demographic research indicates that as of today the population over 65 has reached 12%. The population between ages 55 and 64 (those who would be able to access retirement in terms of age) corresponds to approximately 12%, too.

By the year 2040 it is expected the population over age 60 will represent 21% in Argentina.

Future challenges

The aging population will certainly be a red-flag topic in the economic and social challenges of the 21st century in the country.

But people are not only getting older. Argentina's population continues to grow but at a slower pace because of its increasingly declining birth rate, most of all in urban and economically developed areas. Voluntary or earlier retirements plans are usually offered due to a potential payroll reduction, a business restructuring or a change in employees' profiles to embark on a new stage, either in their personal or professional lives.

In practice, the proposal for early retirement is complemented with certain benefits, such as private medical coverage, work reinsertion programs and legal assistance for eventual retirement procedures, among others, which attempt to generate employees' connection to work.

In contrast, the local labor market usually demands highly trained applicants with contemporary skills that are often unrelated to an applicant's age. Labor reintegration and access to employment for people over 45 years old is not an easy task, either.

Conclusion

The Argentine social-security system is now facing a funding crisis in the global context of population aging. Local inflation is also hitting the social security system. The current pension regimes – settled in 1994 – have been developed for a demographic structure that no longer exists, thus a comprehensive reform of the pension system should be considered.

Unfortunately, the debate about the aging workforce in Argentina is not a pressing issue in the local political agenda, likely overshadowed by matters of more urgency.

Nevertheless, topics such as training in new technologies for elderly workers in the workforce, higher levels of private savings, both inside and outside the retirement system, and a review of the funds' mechanism to ensure the real value of future pensions are all matters that should necessarily be brought to the discussion table.

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Australia



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Ageism and the workplace

There are many legal obligations to keep in mind when managing an aging workforce.

There is no statutory retirement age in Australia. Subject to capacity and special rules for particular professions, employees may continue to work for as long as they choose. Government efforts, such as the Australian Skills Checkpoint for Older Workers Program, seek to encourage older workers.

Terms and conditions of employment

The minimum standards under the Fair Work Act 2009 apply to older employees as they do to other employees. Employees in this group are entitled to accrue and be credited leave entitlements and to receive the minimum pay and other terms and conditions prescribed by the law.

Flexible work requests

Employees have a right under the Fair Work Act to make requests for flexible work arrangements, particularly if they are age 55 or older. Employers may refuse such requests only on reasonable business grounds.

Discrimination law

The Age Discrimination Act 2004 and all state/territory anti-discrimination laws in Australia prohibit direct and indirect discrimination against employees on the basis of age.

Anti-discrimination laws often contain an exemption to this general prohibition, where the discrimination is due to the employee's inability to perform the inherent requirements of the job. However, employers should be careful to only make judgments of this type based on objective evidence.

In addition to the dedicated anti-discrimination laws, there are also prohibitions on adverse treatment or unlawful termination of employees due to age under the Fair Work Act. A termination of employment on the basis of age might also constitute an unfair dismissal, according to the act.

Generally, an employee is only able to bring a claim under one of these potential avenues.

Occupational health and safety and workers' compensation

Under the relevant legislation in each jurisdiction, employers in Australia are required to maintain a safe workplace and to ensure adequate workers' compensation coverage for their employees. In some cases, special thought may need to be given to managing aging workers' occupational health and safety issues, and the potential impact on workers' compensation obligations. At times, this may require a balancing of occupational health and safety, and discrimination-law obligations.

Superannuation

Employers are required to make compulsory superannuation contributions for employees regardless of their age, provided the employee earns at least a certain amount per month.

Workers may usually access their superannuation entitlements from age 65. Some people may be able to access funds earlier.

Privacy

Broadly, employee records are generally exempted from the requirements of the Privacy Act 1988. However, this is not the case in the public sector, and some contracts with the public sector may require private companies to comply with privacy-law obligations. In addition, in many jurisdictions, special health-record legislation applies. Care should be taken to ensure the information of all employees, including older workers, is handled in accordance with any applicable privacy law obligations.

Conclusion

Promoting the employment of older workers is important given the aging population, and we expect further laws to address the issue will be introduced in the future. We also anticipate a possible increase in age-related employment law claims.

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Belgium

Dealing with an aging workforce

The legal pension age in Belgium is 65, although specific regimes exist to allow earlier retirement. This limit applies equally to men and women. The legal pension age will, however, gradually increase to 66 in 2025 and 67 in 2030.

Employees who have reached legal pension age do not have to retire. They can continue to work or choose to combine retirement with another professional activity.

The amount of one's pension depends on the length of career (a complete career is 45 years), remuneration and family composition, with different rules applied depending on the status. Employees have the right to be paid a minimum pension provided they have worked two-thirds of a full career.

Belgium is having to deal with a rather low employment rate of its more-senior citizens, especially when compared with the European average. Several measures have been adopted to encourage longer careers.

Key measures adopted to encourage the continued employment of older workers

Two types of measures have been adopted: some encourage employment and facilitate work for older employees, while others allow older employees to reduce their level of activity to make it easier for employees to work longer. The following is an overview of key measures that have been adopted:

- ▶ CBA No. 104 is one of the most visible measures that address aging employees. This measure imposes an obligation for employers with more than 20 employees to draw up an employment plan to retain and encourage employment of workers older than 45. This plan will need to include actions items, such as selection and recruitment, skills and qualification development, career guidance within the company, internal mobility programs, working time and condition adjustments for older employees, and health and safety measures.
- ▶ Another instrument adopted to ensure the continued employment of older employees is outplacement. Outplacement consists of a set of accompanying services and advice on behalf of the employer to dismissed employees to improve their chances of finding a new professional activity within a short period of time. This benefit must be offered to dismissed employees who are 45 or older or to employees entitled to a notice period of at least 30 weeks.
- ▶ Employers with older staff can, subject to certain conditions, benefit from social-security reductions.
- ▶ Employees themselves are also financially incentivized to work longer through additional pension entitlements.
- ▶ The conditions to continue working during legal pension have been modified to reduce restrictions.
- ▶ The conditions to benefit from the system of unemployment with company contribution (usually referred to as "pre-pension") – which is available to dismissed employees who have reached a certain age or retire early – have become stricter.
- ▶ Time-credit, i.e., leave that can be taken by employees to reduce working time while continuing to work has been made available to older employees, although the age to benefit from this regime has been increased.
- ▶ Recently, the Government has announced that a new mechanism of part-time pension will be introduced to provide older employees who wish to continue working. This will allow employees to continue to accrue pension rights.

Conclusion

The Belgian pension social-security coverage is currently such that the social-security contributions paid by active employees are used to pay current pension entitlements. However, we are confronted with an overall aging population that lives longer. To tackle this issue, legal pension age will gradually increase and efforts are being made to keep the older workforce active as long as possible. These efforts are contradicted by the fact that possibilities to retire early still exist. Although these possibilities have considerably been reduced over recent years, it is not certain that these measures will be sufficient to resolve the issues in relation to the sustainability of the pension system caused by an aging workforce. Belgium has recently been encouraged by the International Monetary Fund to continue its efforts in this respect.

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Brazil



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Ageism and the workplace

Currently in Brazil there are approximately 209.6 million people, with 69.38% who are economically active and 9.52% who are elderly. According to projections, however, this makeup will change a lot. For example, in 2060, Brazil will have an economically active population of 59.80%, while the elderly population will be 25.49%. This means the workforce in Brazil is significantly aging.

Due to this trend, the Brazilian Government is facing difficulties in sustaining the payment of retirement benefits. Nowadays a government may grant a retirement based on either a contribution period or one's age. Contribution-based retirements are granted for women after 30 years of social-security contributions and 35 years for men. Age-based retirements are granted to women aged 60 and men aged 65 who have made at least 180 months of contribution payment.

In Brazil, the public retirement plan has a payment ceiling (with some exceptions). Therefore, several private companies have been offering private pension plans so employees are able to complement their retirement payments in the future.

Considering this complex situation, the Brazilian Government has recently presented a proposal to change certain rules of the public retirement plan. The main objective of the Social Security Reform, as it is called, is to keep payments sustainable for the future, since costs are getting higher year after year. This proposal needs to be further discussed and approved both by Congress's Senate and Chamber of Deputies, which may take months.

There is no age limit to work in Brazil. Some unions establish a stability period in their collective agreements, limiting the termination right before retirement. It is common in Brazil for employees to keep working even after retirement in the public pension system.

A law initiative was presented in 2017 to motivate the hiring of elderly employees. The initiative determined a minimum number of positions to be fulfilled by employees older than 55. Companies with more than 100 employees should have elderly employees make up at least 5% of their hires. Currently this initiative is being discussed by a commission on social issues.

Even though there is no law in place to motivate elderly people to work, some companies in Brazil have already started internal programs to stimulate the hiring of this group of employees.

As the aging workforce is something real in Brazil, it will be very important that the Government and private companies develop rules, programs and internal policies aiming not only to equalize the costs of retirement benefits but also to motivate, develop and keep elderly professionals in the employment market.

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Canada

Ageism and the workplace

Historically, Canadians' target retirement age has been 65. For a variety of reasons (e.g., increased life expectancy, cultural changes, financial limitation), people are starting to work longer. While individuals staying in the workforce grant employers extended access to valuable human capital, it also increases competition for workers looking to enter it. It also creates challenges for employers to accommodate reduced turnover.

Age discrimination prohibited by human rights

Pursuant to human rights legislation across Canada, employers are prohibited from discriminating against employees on the basis of age. That said, in the past some jurisdictions in Canada exempted employees over 65 from this protection. While this exemption has been generally repealed across Canada, there remain certain circumstances under which employment relationships may still be impacted as employees get older. The most common of which include:

- ▶ Nonmandatory retirement packages
- ▶ Bona fide occupational requirements
- ▶ Canada Pension Plan (CPP), registered retirement savings plans (RRSPs) and insurance benefits

Nonmandatory retirement programs

While current legislation in Canada generally prohibits employers from mandating employee retirement, this does not mean employers cannot have voluntary retirement programs that are triggered at a certain age. These programs can be used to not only reward long-standing employees; they also incentivize healthy turnover. However, as these programs by definition target older employees, care must be taken to ensure its design does not discriminate against any employees in a manner that is prohibited by human rights legislation.

Bona fide occupational requirement

While there is a general prohibition against discrimination on the basis of age, in some occupations employers may wish to impose mandatory retirement on workers who reach a certain age on the basis that a particular age range is a bona fide occupational requirement. For example, policies that require police officers and firefighters to retire at age 60 are frequently used. However, it should be noted that in light of recent case law, it is no longer acceptable to rely on presumed group characteristics associated with aging. An employer seeking to justify mandatory retirement must show that accommodation would present undue hardship. It should be noted that the

threshold for "undue hardship" is very high and should not be asserted unless a fulsome legal analysis is conducted.

Social security, RRSPs and benefits age thresholds

While not strictly related to mandatory retirement, some employment benefits may change or be terminated upon reaching a certain age. For example:

- ▶ Deductions from employee's pay for CPP contributions cease at 70.
- ▶ RRSP contributions can only be made until December 31 of the year in which the employee turns 71.
- ▶ In some jurisdictions employers may reduce or discontinue employee insurance benefits when an employee turns 65.

The way forward

Given the changing landscape, employers must adjust their human-resources strategy to incorporate employees working longer so they can reap the benefits of longer access to valuable capital from older workers. That said, some components of the employment relationship may need to be adjusted when an employee reaches a certain age. Before implementing such a change, however, it is strongly recommended that employers obtain legal advice to minimize the risk of age-discrimination claims that are contrary to human-rights legislation.

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Colombia



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Ageism and the workplace

In Colombia, according to the National Administrative Department of Statistics (DANE), the working-age population ranges between 15 and 64, and more than the 39% of the productive workforce is over 40 years old.

Age discrimination?

In 2004, the Congress of Colombia issued Law 931, with the aim of protecting the right to be treated under equal conditions at work, irrespective of the age.

Thus, no natural or legal person, public or private, can require applicants to meet a certain age. The requirements to access a position must refer to merits or qualities of experience, profession or occupation.

The Ministry of Labor can penalize companies or institutions that limit the right to work due to one's age, with fines equivalent to fifty minimum legal monthly salaries.

In the public sector, the prohibition of requiring a specific age range for candidates is applicable up to the age of forced retirement. As a general rule, the age of forced retirement in the public sector is 65, except in positions of popular election, in which there is no age limit.

Article 12 of Law 790 of 2002 established special protection for employees of the public sector that prevents their dismissal when they are qualified to obtain their pension in the following three years.

Currently, in the private sector there is no regulation on this protection. However, the Constitutional Court has extended the reinforced labor stability to those employees of the private sector who will reach their age of retirement in the following three years and who have not met the number of labored weeks required to obtain their pension in the public pension system.

Both the Council of State and the Constitutional Court agree that the purpose of the protection of pre-pensioners is to guarantee the work stability of those employees who, after their dismissal, do not have the mechanisms or means to join the labor market again or live with a minimum essential income. In this sense, once the pre-pensioner demonstrates the termination of the contract will affect his minimum income and his possibility of obtaining a pension, the judge will order the reinstatement to his previous job.

Retirement age

In Colombia there are two general pension systems: the public (RPM) and the private (RAIS). In the first one, two requirements must be met: (i) 1,300 labored weeks and (ii) 57 years of age for women and 62 for men. In the second one, age is irrelevant; the only requirement is to have enough savings to obtain a pension equivalent to 110% of the minimum wage for the time of the individual's probable life. The truth is that people are living longer and the workforce is getting older.

In addition, more than 40% of the Colombian workforce is informal, which means it might not be covered by a pension system and cannot afford to retire.

A pension reform is expected in the coming years that will very likely increase the standard retirement age.

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Costa Rica

Challenges for the labor market

Like many other countries in the region, Costa Rica has entered a process of demographic transition characterized by a decrease in its younger demographic groups. This is a consequence of two main factors (both of which are related to significant improvements in the health care system): a decrease in fertility rate and an increase in life expectancy.

The described phenomenon has entailed significant changes in the economically active population (EAP), and it is estimated that by 2050, the EAP pyramid will be almost rectangular.

Such aging of the EAP requires the implementation of certain preemptive measures, both to guarantee that social security services will be able to withstand these changes and so that the jobs offered adjust to these new market requirements.

The higher life expectancy and better aging conditions have affected the social security (CCSS) pension system, which will become further impacted by a reduced number of contributing members and a higher number of pensioners.

That's why the CCSS's system has already taken measures for self-sustenance, such as raising the age of retirement, augmenting the contribution rate and limiting the amount of pension that the CCSS will grant. Additionally, given that

there are several other pension systems within the country, several bills that seek both to streamline the conditions throughout the different systems and limit granted amounts have been discussed in Congress.

These changes have been taking place during the last decades; however, the CCSS authorities continue to insist in the need for further measures. For example, the age of retirement was increased to 65, with a requirement of 300 installments (around 25 years), but a need to elevate this age further (to 70 years) is still being analyzed. Also, the contribution rate has been raised progressively, and even reductions in the pension amount have been considered but not approved.

Currently, the CCSS grants pensions of about 60% of the average salary of the last 20 years of work (up to a maximum of around US\$2,500). Given that the amount the CCSS recognizes is not equivalent to 100% of the income employees used to receive, citizens of pension age start to reconsider retirement and opt to stay longer in their jobs to ensure both incomes (i.e., their salary and their pension). The above also affects the younger population, who struggle to find a job given that fewer positions are left available.

Under this context, companies make some common mistakes when dealing with an aging workforce. For example, when an employer hires a worker that is

already retired and receives a pension, the tendency is to treat the contract as if the pensioner was an independent contractor and not an employee of the company (in order to lower some costs). However, if the person renders his or her services under a subordinate relationship (which entails having a schedule and a fixed and periodical payment, among other characteristics), he or she is probably going to be deemed as an employee by the local authorities. The employer will then be obliged to recognize all the benefits related to an employment relationship: e.g., vacation time, holiday bonus, social security contributions, plus fines and interests.

Also, when an employee already fulfills the requirements to retire, some companies expect them to do so. Nonetheless, this is a personal decision and the employer cannot interfere or make deadlines for the worker. Urging employees to retire may be deemed as discriminatory on an age-related basis.

To avoid discrimination claims, it is important that the company has an objective reason to proceed in case it wishes to dismiss an employee that is close to retirement. As employers, companies need to have clear internal policies that regulate all these matters and duly inform their personnel in order to avoid any actions that may be seen as discriminatory.

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Czech Republic



Ondřej Havránek

Ageism and the workplace

Predictions of assumed development

According to The 2018 Ageing Report by the European Commission, the worker participation rate for the 55-to-64 age group is growing in the Czech Republic as well as in other European Union (EU) countries. This rate was 38.1% in 2000 and increased to 58% in 2015 in the Czech Republic, which roughly corresponds to the EU average. The participation rate of older people (55-64) is estimated to rise by about 11.3% for men and 14.3 % for women, respectively, in the Czech Republic by 2070. This trend is mostly caused by pension reforms, which have raised the statutory retirement age. Currently, the statutory retirement age in the Czech Republic has been continuing to rise and will be 65 years old for those who were born after 1970.

Prohibition of age-based discrimination

As in other EU countries, discriminatory conduct that is based on age or health-related conditions is strictly prohibited in employment relationships.

Special care

Age also provides grounds for special care that is provided by the employment authorities during employment intermediation. Employees who are older than 50 may receive unemployment benefits for up to 8 months, and employees

who are older than 55 are even entitled to receive such benefits for a period of 11 months. Employees up to age 50 are entitled to these benefits for only 5 months.

Termination of employment and retirement age

In many countries it is quite common that when one reaches the statutory retirement age, his or her employment is automatically terminated. However, under Czech employment law, reaching the statutory retirement age does not generally have any impact on the existence of any employment relationships (save for some functions in the public sector, where work automatically terminates at the end of the calendar year in which the respective official reaches 70).

Generally, it is up to the employee whether he or she decides to resign or continue working after having reached the statutory retirement age. Unilateral termination of an employment relationship by an employer is allowed only due to the following: organizational or medical reasons, one's failure to fulfill requirements or a breach of working duties.

Of course, one can expect that the number of terminations due to medical reasons will exponentially increase as older employees participate more in the labor market. When determining medical grounds for termination, it should be assessed as part of routine, periodic or extra-occupational medical checkups and physical examinations.

Occupational medical physical examinations

Having routine, periodic physical examinations depends on the age of the employee. Professional drivers, for example, who are older than 50 must undergo regular medical checkups every year.

Professionals in occupational medicine (health and safety), as well as employers and employees, should focus on health management in the workplace to promote the employability of older workers by improving both physical and psychological conditions at work.

The autonomous framework agreement on active aging and an intergenerational approach that was negotiated by European social partners (BusinessEurope, UEAPME, CEEP and the ETUC) are addressing needed measures to facilitate the active participation of older employees in the labor market until they reach statutory retirement age.

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Finland

The trend toward longer careers

Finnish pension renewal supports aging employees' participation in the labor market.

The general population in Finland is aging, as it is in many European countries. Major generations of people are retiring, while at the same time there are less working-age people. This has created a need to renew the Finnish national pension system to meet its objective: to provide a minimum income for retired employees. A key factor in this pension system renewal has been to support aging employees' longer participation in the labor force.

Finnish pension renewal entered into force 1 January 2017. The grounds for the renewal were the need to secure employment pension funding and to guarantee pension security and fairness among generations. Encouraging aging employees to stay in the labor market longer is also justified by the fact that life expectancy has kept increasing.

The renewal was implemented by amending the Employees Pensions Act to include a gradual increase of employees' pension age from 63 to 65. During the same renewal, the general retirement age was raised from 68 to 70. Concerning the rules and regulations on aging employees, the retirement and pension

age changes are only one aspect. It is also fundamental to protect aging workers from discrimination and ensure equal opportunities to participate in work life. The basis for prohibition of any unfair treatment toward aging employees is the Finnish Constitution, according to which everyone is equal before the law and no one shall, without an acceptable reason, be treated differently from other persons, e.g., due to age. The Non-discrimination Act further requires that no one can be discriminated against, directly or indirectly, based on a person's age.

Despite consistent efforts to engage employees in longer careers, in practice employers easily favor younger employees for various reasons, which creates a need for the broader protection of aging employees. The Act on the Financing of Unemployment Benefits limits larger employers from terminating the contracts of aging workers when there is a need to reduce the workforce. The act indicates that if an employer – whose yearly paid salaries are used as a base of unemployment benefit payments – exceeds a certain limit (€2m), terminates or lays off an elderly employee and no exemption grounds exist, the obligation to pay a liability component for the unemployment benefits caused by the termination might be realized. This liability occurs if an employee becomes unemployed or laid off for a long period.

To secure aging employees' equal rights, Finnish employment legislation dictates that a person cannot be forced to retire, whereas employees can flexibly choose their retirement age within the set age limits. However, the Employment Contracts Act regulates that an employment contract will automatically terminate without a notice or a dismissal at the end of the month when the employee – born in 1962 or later – turns 70. This termination does not prevent the creation of a new temporary employment contract between the employer and the employee, but there is no obligation to do so even if the employee requests it.

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France



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Ageism and the workplace

As a general matter, France prohibits discrimination on the basis of age. Some exceptions allow an employer to unilaterally force an employee to retire. New measures favor phased retirement.

The Legal Retirement Age Under French law

There are two main rules for retirement age:

The “legal” age

The minimum age at which a person can retire is 62 (for people born in or after 1955), provided he or she has made sufficient contributions to the retirement system.

To obtain a full pension at this age, the retiree must have contributed during a certain number of quarters – from at least 166 quarters, i.e., 41.5 years (for people born in or after 1955) to 172 quarters, i.e., 43 years (for those born in or after 1973).

If the requisite number of quarters is not reached, it is still possible to retire at this age but with a decreased amount of pension.

The “full pension” age

Even if someone has not contributed enough quarters, people can retire at 67 (for those born since 1955) without the amount of pension being decreased. In this case, pension will be calculated on the basis of the actual number of quarterly contributions.

People in specific situations (disability, harsh work, or began working before age 20) can retire earlier.

Can the employer force an employee to retire?

There is no maximum age to work in France. Under French law, a provision of an employment contract or a collective agreement that says that an employee will be terminated at a certain age would be age discrimination.

However, employers are authorized to “force” an employee to retire at 70.

Between age 67 (i.e., the age of full pension) and 70, the employer may ask the employee each year, three months before his or her birthday, whether the employee would like to retire.

In the case of refusal, the employer must keep the employee. Otherwise, the termination would be considered as null and void, as it is based on age discrimination.

As a practical matter, this means that employees will be working longer.

Incentives for the aging workforce

For several years now, the French government has tried to encourage employees to work longer:

- By allowing people to retire progressively: subject to conditions, an employee can benefit from a part of his/her pension while continuing to work as an employee part-time;

- By requiring employers to implement specific provisions regarding the end of careers and supporting the coexistence of generations within companies
- By making it possible to combine pension with work by allowing employees to trigger their full pension and continue to work, thus combining pension and salary
- By fully taxing termination indemnities for older workers to discourage amicable terminations with elder employees

As a result, the rate of employment of those aged 50 to 64 has increased by 8.2% over the last 10 years, according to the French Statistics Institute (INSEE). However, this increase mostly concerns people between 55 and 60.

Best practices for an aging workforce

The aging workforce can be challenging: loss of competencies with the departures of experienced employees, loss of historical information, conflict between generations, lack of adaptability etc.

Employers need to design a strategy and rethink the end of an employee's career without counting on a “magic age”.

The management of the end of careers for elder workers may well become the new “me too” movement.

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Georgia

Recent pension reform in Georgia

On 1 January 2019, the Law of Georgia on Funded Pension entered into force. The law is a basis for the introduction of new pension reform in Georgia. It covers significant matters related to the rights and obligations of the workforce and, inter alia, applies to employers and employees.

One of the significant characteristics of the pension reform is the pension-savings scheme.

Participation in the scheme is mandatory or voluntary, ultimately depending on the age of the employee.

Specifically, employees – other than those who turned 60 (or 55 for females) before the law was enacted – become participants in the scheme upon receiving their first salary. Employees who turned 60 (or 55 for female employees) before 6 August 2018, as well as self-employed persons, may become participants voluntarily by making the first pension contribution.

Additionally, if an employee turned 40 before the enactment of the law and does not wish to participate in the pension-saving scheme, he or she can submit a written request to the LEPL Pension Agency and be removed from the scheme. Otherwise, he or she will remain involved in it.

Therefore, employees over 40 can voluntarily withdraw from the scheme and employees above 60 (55 for females) can voluntarily join and participate too.

The goal of the scheme is to entitle the participant to receive the accumulated sum in addition to currently existing, fixed state pension amounts, after reaching the retirement age.

The scheme is financed as follows:

- ▶ 2% of taxable salary is paid by an employer
- ▶ 2% of taxable salary is paid by the employee
- ▶ 2% of the taxable salary is paid by the state if the total early income does not exceed GEL 24,000; 1% of the taxable salary if early income is from GEL 24,000 to GEL 60,000

As a result, the employee receives the value corresponding to the total pension assets available in his or her individual retirement account by means of a lump-sum payment or a programmed withdrawal.

Under the laws of Georgia, retirement age is 65 (60 for females). Therefore, under the Law on Funded Pension, employees, in principle, have the opportunity to shape their retirement income.

Explanatory notes that supplement the bill suggest that the accumulative pension mechanism has had a positive influence on pension security in general. It is evident by the analysis of international practices. Furthermore, the savings system enables a person to plan future pension income and not be reliant solely on the social-security package offered by the state. The savings made by the employee is proportionate to the accumulated remuneration earned during the working period – and should ensure stable well-being during retirement.

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Germany



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Ageism and the workplace

People are living longer, in good health, and often want to work longer. So the aging workforce raises new challenges for companies: on the one hand, employees, especially those with special know-how, shall be employed longer. On the other hand, unemployment among younger people and the need to transform the workforce with new skills in the globalized economy are creating substantial challenges for employers. In the following we outline pension law in Germany and possible solutions in respect to the aging workforce.

Regular old-age pension

Age limit for the regular old-age pension in Germany has been gradually raised from 65 to 67 since 2012 and goes through 2029. For all those born after 1 January 1964, the standard age limit of 67 applies. Furthermore, the general waiting period of five years must be fulfilled.

There are also special forms of regular old-age pension, e.g., there is the old-age pension for long-term employees if they have reached age 65 and have fulfilled a waiting period of 35 years, whereby an early claim to the pension (with deductions) is possible at the age of 63.

There is also an old-age pension for severely disabled persons if they have reached age 63 and are severely disabled – within the meaning of the law at the start of the old-age pension – and have completed a waiting period of 35 years.

An early claim to the pension (with deductions) is possible as soon as they reach 60.

There is also the old-age pension for very long-term employees if they have reached the age of 63 and have completed a waiting period of 45 years.

Pension entitlement as a reason for termination?

As there is no age limit for employees in Germany, the pension entitlement does not automatically lead to the dissolution or termination of an employment relationship. A termination by the employer or a termination agreement is required. However, termination by the employer is – as far as the law against unfair dismissal applies – only possible if a justified reason for termination exists. The retirement age on its own does not constitute a legally valid reason for dismissal. In collective agreements, even dismissals of older employees are often excluded.

It is therefore advisable to include a termination clause in the employment contract that is linked to the retirement of the employee. These clauses are legally valid and can therefore effectively limit the duration of the employment relationship until retirement.

Continued employment vs. early retirement

There is often a legitimate interest on the part of both employees and employers to employ beyond retirement age. It is

possible to postpone the termination of the employment relationship once the retirement age has been reached by temporarily continuing the employment of the aging worker; if necessary, it can be postponed several times. There is also the possibility of continuing the employment within the framework of a freelance relationship.

In the event that aging workers are sent into retirement earlier, there is the possibility of part-time retirement, often in the so-called “block model.” This is when the employee, for example, works full-time for three years but earns only half of the salary, and then does not work for another three years in spite of continuous employment. The employee will continue to receive the other half of his salary. As the employer can grant additional top-up amounts of up to 20%, this model is quite popular in Germany.

In addition, there is the early-retirement agreement. This is when the employee leaves working life earlier but receives a so-called early retirement compensation of at least 65% of his previous salary from his former employer until the start of his pension. Compared to a severance payment, this model is advantageous as it provides certainty that the money will continue to be paid until official retirement.

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Greece

Ageism and the workplace in Greece: a struggle between increased retirement limits and high youth unemployment

Following various reforms aimed at harmonizing provisions on retirement-age limits and rationalizing the social-security system, the Greek Government has set general retirement ages as follows:

- ▶ 62 years old, with a past service of 40 years
- ▶ 67 years old, with a past service of 15 years

The above limits should not be considered as thresholds where, once reached, the employee is obliged to withdraw from his or her position. On the contrary, an employee has the right to continue being employed.

On this issue, Law 3198/1955 (article 8, paragraph b) provides that white-collar employees reaching full retirement age may either resign or be made redundant by receiving 40% of the termination indemnity they would have been eligible for in the event of a redundancy (those not covered by a supplementary social-security scheme are eligible to 50%).

The above-mentioned provision was set to encourage the renewal of the workforce, which was done in the early 1950s when Greece was facing high unemployment rates and youth drain due to immigration flows toward more dynamic economies in Europe.

Historically, Greek legislation has appeared discouraging to retired people who choose to continue working while receiving a state pension.

This position was confirmed once again during the latest social-security reform that took place in 2016 (during the financial crisis) by Law 4387/2016. More specifically, in article 20, any retired person assuming employment is subject to 60% decrease of one's pension for the period of time that he or she remains professionally active.

During the period between 2012 and 2018, the legal framework (Law 4093/2012) provided a reduced general minimum gross monthly salary of 510,95 euros for those under age 25, aimed at making youth employment more attractive. Today this provision is no longer in force.

The framework above outlines issues related to discouraging the continued employment of people eligible for retirement. Yet, due to the current crisis in Greece, another social problem has emerged. There is a growing unemployment rate for people 40 to 50 years old (or more) who are not able to rejoin the active workforce due to a lack of appropriate skills.

The Greek Government has tried to support these demographic groups by announcing various subsidy programs, according to which employers are eligible to subsidies usually equal to the cost of an employer's social-security contributions (which, in Greece, are set very high, with simple employment positions starting at a rate of 25.06%). In other cases, programs were aimed at providing job positions in the public sector or local municipalities for a limited period of time.

The Greek legislation is trying to solve a particularly serious problem: this entails, on one hand, youth unemployment rates, which in some areas exceed 40%; on the other hand, there are currently very low pensions, which in many cases do not exceed the monthly amounts of 600 euros. Apparently, a stable and fair solution will not come through legislation but instead by boosting entrepreneurship, creating new job positions and consequently establishing a viable social-security system.

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Guatemala



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Retirement

Conditions and legal age

In Guatemala, retirement is treated differently for public and private employees. For public employees, the following regulations apply for each retirement plan:

- Voluntary (1): when an employee has 20 years of service regardless of his or her age
- Voluntary (2): when an employee reaches age 50 and proves a minimum of 10 years of service
- Mandatory: when an employee has reached 65 and proves a minimum of 10 years of service

For private employers, there is not an obligation to provide employees with a private fund for retirement. Notwithstanding the above, the Guatemalan Social Security System (which is mandatory) provides a very basic retirement plan, health assistance, motherhood care and assistance in occupational accidents. To access these programs, the employee and the employer must pay an amount that is withheld and paid on a monthly basis; 4.83% of the total salary is paid by the employee and 12.67% is the mandatory amount paid by the employer.

To access the private retirement regime, an employee needs to reach age 60 and have made 240 months of contributions.

As a balance between both retirement regimes, in 2007 Guatemala approved the Economic Fund for Old Age Act, a fund that provides assistance to persons older than 65 who have never accessed the national social security retirement plan.

The May 2018 report of the Economic Commission for Latin America and the Caribbean (ECLAC) underscored the need to revisit retirement pension plans, citing the tendency of employees to continue working after reaching the legal age for retirement. The main reasons indicated are:

- Weak pension systems that do not provide a sufficient pension to cover all their needs after retiring
- Private medical insurance provided by private corporations that offer jobs after retirement
- Lack of sufficient pensions to support economic obligations for dependents (such as minors or disabled family members)

The Guatemalan reality is that there is a legal regime for workforce retirement, but it is not effective since employees have the need to continue working. They are not fully satisfied with the retirement pension provided by their plans.

Based in our analysis and in compliance with the Social Security administrative procedure, we consider as companies' best practices the following:

- The companies as employers have the compliance obligations in social security contributions. The employer is the responsible to correctly withhold and pay such contributions, so it is necessary to have a full record of these obligations compliance. Such records will be helpful in case of any claim by the employees or the Social Security authorities.
- Action: Other best practice not regulated in law or administrative regulations is to grant a proof (letter) with description of all the contributions paid to the social security during the labor relationship. Some companies provide this proof at the end of the labor relationship.
- Plan: To schedule trainings to all the employees near to the retirement age, in order to provide them information about the process and documents required by the social security authorities. Additionally, to perform internal politics in which include the procedure to promote retirement among employees in legal age and the procedure through Directors and Human Resources will provide a corporate structure for a healthy transition, including recruitments on time to cover vacancies.

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Hong Kong

Ageism and the workplace

Unlike Japan and Singapore, there is no statutory retirement age in Hong Kong. Nevertheless, an unofficial retirement age of 60 has, in practice, emerged from the age limit set in the civil service.

A compulsory retirement policy can be justified as being reasonable and rational since it facilitates the provision of employment opportunities for younger members of the workplace. It offers a basis on which to provide for pensions and other retirement benefits, and allows for career planning, staff development and succession planning. The Hong Kong Government recommends that from time to time employers should review their policy on retirement.

As a best practice, a compulsory retirement policy should not in itself stop an employer from considering a job application from a staff member who is close to retirement age, but wishes to continue to work. Such an application should be considered on its own merit; retirement policy and one's age should not be a discriminatory factor.

The pension system in Hong Kong

The Mandatory Provident Fund System was introduced to help the workforce save for old age. Employees and employers

who are covered by the system are each required to make regular mandatory contributions calculated at 5% of the employee's relevant income, subject to the minimum and maximum relevant income levels. Withdrawal of accrued benefits is only allowed when members reach the age of 65, as stipulated in the Mandatory Provident Fund Schemes Ordinance. However, accrued benefits may be paid before members reach age 65 in the event of an early retirement at age 60 (or after), a permanent departure from Hong Kong, total incapacity, terminal illness or death.

Government efforts to encourage older workers

The Hong Kong Government has plans to promote the employment of older persons by extending the retirement age of civil service, providing subsidies to employers for hiring mature persons, implementing training programs, developing job fairs for mature workers and offering public education for an age-friendly workplace. Currently, under the Hong Kong Labor Department's employment program for the elderly and middle-aged, job-seekers are provided with on-the-job training. Employers hiring those aged 60 or above may receive an allowance of up to \$4,000 a month per employee for 6 to 12 months, or \$3,000 for hiring people between the ages of 40 and 60.

Further, the Government also set out recommended best practices to prevent age discrimination in the workplace. Unfortunately, they were created solely to educate the public and employers – they have no legal effect.

Conclusion

Overall, the aging population in Hong Kong is generating a wide range of challenges and opportunities for employers. As people are living longer, they are maintaining better health and vitality, as well as strong social and professional networks. Many want to continue working past the traditional retirement age, yet they often face discrimination and other age-related barriers to job opportunities.

The Hong Kong Government projected that more than 36% of the Hong Kong population will be 65 or older by 2064 – a significant increase from 15% in 2014. Meanwhile the median age of the Hong Kong population will be 50 in 2034. With the shrinking labor force, companies need to make the most of the talent that is available. Hong Kong simply cannot afford to leave this already experienced and skilled labor pool untapped.

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Hungary



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Being a pensioner in the Hungarian job market

Overview

Generally, the legal age of retirement in Hungary is 65 for those born in or after 1957.

Women who can prove they have spent 40 years in an employment relationship may also retire.

According to the Hungarian labor code, termination of the employment relationship with a notice is restricted if the employee is within five years of his or her personal retirement age. This restriction means that if the employer has a vacant position available at the workplace suitable for this employee, such a position must be offered to him or her. Termination with a notice may only be possible if no such position is available or if the employee refuses the job.

Once the employee qualifies as a pensioner, however, the employer is not required to provide a reason for termination of an indefinite employment relationship.

Employees within five years of their personal retirement age enjoy the statutory advantage of being entitled to a higher amount of severance than other employees, subject to the length of their employment.

Actions to encourage pensioner employment

The replacement of qualified aging workers is a challenge, as the lack of workforce is a major issue in the Hungarian labor market. This especially applies to certain sectors, such as health care, and to certain geographical areas in Hungary struggling with a severe lack of workforce. As the expertise of the aging workforce may be especially useful in these circumstances, hiring or further employing pensioners may be a useful way to cope with these challenges.

The Hungarian Government supports this, as new regulations entered into force 1 January 2019 that encourage older employees and their employers to continue the employment relationship. According to such regulations, the pensioner employee's paid salary is not subject to social contribution tax, vocational training contribution, pension contribution or in-kind health care contribution. As a result, the pensioner employee receives more net income. It is important to note that such credits are not applicable for civil-law-type agreements (i.e., employment must be established or continued).

The new regulations may have some negative impact on pensioners, however. Contrary to the previously effective rules, they will not receive a 0.5% pension increase after every month of working once reaching the age limit. Also, they will not receive sick pay in the case

of accidents during the employment relationship. This, should not be a significant issue however, as they would receive such money only if they suspended payment of their pension. In contrast, though, employment relationships in the public sector terminate automatically once employees reach their retirement age, with few exceptions.

Based on these overall changes, we can see the new Hungarian regulations strive to keep the elderly in the job market, better than before. However, some say the support is insufficient – they miss the targeted state support of training for the aged, and they also find the extent of state aids and credits way less than needed. Whereas the aged workforce now have perhaps more opportunities than ever to find jobs if they want to, their presence will not tackle the serious issue of a lack of workforce. Measures taken to draw older citizens into the labor market should not be the only way to cope with this challenge. After seeking all potential forms of engaging the workforce (e.g., man-power lending, cross-border postings and transfers to Hungary are more and more frequent), the Hungarian Government recently accepted a heavily debated law (labeled a “slave law” by the opposition) that raises the maximum rate of annual overtime hours – applicable to the aging workforce, too.

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India

Ageism and the workplace

In this epoch of longevity, the aging workforce is posing unprecedented challenges for companies. With the increase in life expectancy, the ratio of young and old workers in organizations has been negatively impacted. As older employees have specialized workplace needs, e.g., flexible working hours and higher pension requirements, it gets difficult for companies to accommodate all of them. Therefore, with the aging of the workforce, companies must simultaneously strategize and create policies that cater to their specialized needs so they can utilize the talent and experience of these older employees to their benefit.

Legal framework

Unlike central and state government workers, there is no statutory age of retirement for private-sector employees. Every employer has its own retirement age policy, and retirement age typically varies between 58 to 65. Unless there is an agreed age of superannuation between the employer and the worker, the Industrial Employment (Standing Orders) Act, 1946 prescribes 58 as the age of superannuation under the model's standing orders. However, the act becomes applicable only when the establishment has a certain number of employees. For the pension scheme under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF), superannuation is defined to mean attainment by an employee who is 58. Under the Payment of Gratuity Act, 1972, the age of superannuation is decided in the employment contract. As evidenced above, there is no consistent age of superannuation in India, and private-sector employees are mostly governed by

the age fixed by the employer under their respective contracts. An employer may continue with services of an employee even after the individual has reached the age of superannuation, as there is no fixed age limit for working.

Benefits under labor laws

The EPF Act provides multiple benefit schemes for employees of covered establishments, including pension and insurance. Out of the employer's contribution under the EPF Act, 8.33% of the employee's salary is remitted by the employer to the pension fund until the time an employee reaches 58. The employer also contributes 0.5% of the employee's salary toward the insurance scheme under the EPF Act, and the contribution continues as long as the employee remains in employment even if the pension contribution is not payable. In addition, the establishments covered under the Payment of Gratuity Act are required to pay gratuity at the time of superannuation to those employees who have rendered continuous service for a period of five years. Such payment is calculated depending on the tenure of service and last drawn salary. Employers can voluntarily choose to provide better retirement benefits to their employees than those provided under law.

No protection from age discrimination

The Indian Constitution affords protection to citizens from discrimination on the basis of religion, race, caste, sex and place of birth. However, there is no codified law that protects individuals from discrimination on the basis of age. Even though incidents reported for age discrimination are few, this acts as a deterrent for older employees,

as employers may prefer employing younger persons over them, thereby leaving senior workers with no recourse. However, in cases of the wrongful termination of older employees without following procedures under the law or the employment contract, the older employee can challenge the termination before the courts. This challenge can be made on the ground of wrongful termination but not on the basis of age discrimination.

The way forward

It is imperative that companies design their internal policies to encourage and keep older employees motivated to work. Older workers are an asset to the organization, given their experience and skills in their field. Companies today must organize reskilling sessions for their older employees to help them in learning new technical skills. To attract older talent, companies can introduce flexible scheduling options, reward programs and part-time job opportunities. As there is no codified law in India that bars older employees from working, older workers can continue to work as long as they wish and as their employer allows – although a prescribed machinery will provide a more efficient framework to the system.

India today stands at a juncture where a substantial part of the total population is relatively young. Considering the potential challenges of this, a more comprehensive legal framework might cater to the changing needs of the workforce. It may also help the Government to deal with the ever-changing situation with a more organized approach.

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Italy



Stefania Radoccia

The flexibility of exit and the Italian system

The Italian pension system has been subject to legislative changes in recent years due to a need to adapt its structure to life expectancy – and it is constantly evolving.

For 2019, the legal age of retirement for employees is 67 (one more year than in 2018), with 20 years of contribution. There is also the possibility of early retirement based on the contribution system for employees aged 64 who have 20 years of “effective” contribution: in that case, male employees need to have at least 42 years and 10 months of contribution seniority, while female employees need 41 years and 10 months. Moreover, employees who carry out particularly exhausting and heavy activities (i.e., construction workers, seamen and even kindergarten teachers), with 30 years of contributions, can access the old-age pension at age 66 and 7 months.

Different “slides” toward pension

According to the decree law No. 4/2019, in force since 29 January 2019, for a temporary period from 2019 to 2021 employees aged 62 with a minimum

contribution of 38 years may be entitled to early retirement, called “pension quota 100.” The requirements must be obtained by 2021, but once they are met access to the project can also be granted from 2022 on. However, the amount received by employees will be lower than the one that would be received with the old-age or the early retirement pension.

The aforementioned decree also provides for two important instruments for early retirement: the so-called “women’s option,” for female employees aged 58 (or 59 if self-employed), with at least 35 years of contribution, and the social pension advance (the so-called “Ape”), extended for one year. The purpose of this kind of “slide” toward pension is to accompany certain categories of employees through to retirement – for example, the unemployed, caregivers (i.e., people living with a disabled person), the disabled and people carrying out heavy tasks.

Aging employees

For employees who wish to continue the work relationship beyond the maturation period of the old-age pension, an incentive system is provided for them, calculated up to age 70 and subject to adjustments for life expectancy.

Until that age, the employee and his employer are protected by Italian law (for instance, Article 18 of the Statute of Workers); thereby, any withdrawal by the employer is subject to rules of protection from individual dismissals.

However, there is no established right for the employee to continue the employment relationship until the maximum limit of flexibility is reached.

In other words, Italian law does not give the employee a right to continue the employment relationship, nor does it allow him to choose between terminating or continuing the employment relationship.

Therefore, the incentive to continue the employment relationship is triggered if parties agree to establish it on the basis of a mutual evaluation of interests.

Conclusions

The debate on flexibility of exit, in the face of the continuing impasse of generational turnover in the national labor market, shows that the issue of the aging workforce is destined to be subject to numerous further changes in the coming years.

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Japan

Ageism and the workplace in Japan

Basic regulations

In Japan, employers usually set mandatory retirement ages in their employment agreements with workers. Courts also have approved a system for mandatory retirement.

In Japan, the Act on Stabilization of Employment of Elderly Persons regulates work for elderly persons. According to the act, if an employer fixes a mandatory retirement age for workers, the age shall not be below 60 (with limited exceptions for hazardous work). If an employer fixes the mandatory retirement age below 65, the employer must take one of the following measures in order to secure stable employment for elderly persons until age 65: (i) raising the mandatory retirement age; (ii) introducing a continuous employment system (i.e., a system to continue employment for an elderly person currently employed after the mandatory retirement age, if the person wishes to be employed); or (iii) abolishing the mandatory retirement age.

In practice, option (ii) (introduction of a continuous employment system) above is by far the most popular way to comply with the act.

The regulations that aim to incentivize employers to continue employing elderly persons until age 65 are deeply linked to the age workers can start receiving the old-age pension. Currently, with limited transitional measures permitted by the act, an employer basically must keep employing every elderly employee who reaches the mandatory retirement age of 65. An exception would be if there are grounds for lawful dismissal.

Elderly employees as fixed-term employees

In practice, the continuous employment system to comply with the act (option (ii) above) is structured as one-year, fixed-term employment, and it renews until the elderly person reaches 65. Thus, elderly persons after the mandatory retirement age are fixed-term employees, in many cases.

In this regard, the Labor Contract Act provides that if terms of a fixed-term employment agreement for a worker is different from the terms of a counterpart employment agreement for another worker who does not have a fixed term, it is ultimately not an issue. It takes into account the content of duties, the extent of changes in the content of duties and work locations, and other circumstances. In light of this regulation, to significantly reduce a fixed-term employee's salary after mandatory retirement age without changing any content of duties would cause legal dispute.

Offer of fixed-term employment with lower terms

Similarly, some court precedents show that an employer's offer of fixed-term employment to an employee who has reached the mandatory retirement age must be within a reasonable range, in terms of job description and salary. A significant change in duties (such as from a high-level management planning job to an office-cleaning job) could result in a tortious act by the employer.

Future trends

As mentioned above, currently an employer is obliged to secure employment until age 65, according to the act. However, the age is expected to become older in accordance with the expected age raise of eligibility for old-age pensions. It sounds like stricter regulations for employers, but there is a clear labor shortage in Japan due to an aging population. Attracting elderly persons and using them as a core workforce should be one of the necessary ways to keep employers' businesses going strong in Japan.

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Latvia



Liene Cakare

Ageism and the workplace

Brief statistics

As suggested by the International Monetary Fund's IMF Country Report No. 18/267 from September 2018, the labor force in Latvia has been shrinking and aging significantly. While the labor force in 1990 was 1.4 million, it decreased to about 1 million in 2015 and is expected to decline to about 800,000 by 2050. At the same time, a significant aging of the labor force took place. The share of old-age workers, defined as workers age 55 or older, was about 14% in 1990; it increased to about 20% in 2015 and is expected to reach 30% by 2050.

Protection under the law

The binding provisions of labor law for the Republic of Latvia impose an obligation on the employer to examine the preferences of employees for continuing employment in the case of a reduction. Such examination must be performed between employees who perform the same or similar work if there is a plan to dismiss one or more of these employees.

First, preference to continue employment is given to those employees who have higher performance results and higher qualifications. Therefore, if a pensioner has higher performance results and a higher qualification than a younger employee, the pensioner cannot be dismissed.

However, if performance results and qualifications do not substantially differ, preference to remain in employment is given to protected groups of employees, which, inter alia, include employees for whom less than five years remain until reaching the age of retirement.

It should be emphasized that none of the preferences given to a protected group of employees has priority over others. Hence, the employer decides whether to dismiss an employee for whom less than five years remain until the age of retirement or an employee of another protected group of employees.

Case law of the national court

The Constitutional Court of the Republic of Latvia has delivered a judgment on pension cuts (case No. 2009-43-01), which combines a series of cases relating to the reduction of old-age and retirement pensions granted in accordance with applicable regulations by 10%, as well as a reduction of a working pensioner's old-age and retirement pensions by 70%. The court in essence ruled that while the amount of social security may vary if a state's financial situation changes, the legislator has not assessed the alternatives and has not provided for a more proportionate solution. Therefore, contested legal norms are inconsistent with the Constitution of the Republic of Latvia.

Incentives for employing older workers

Starting in autumn 2018, any employer who employs persons older than 50 years may apply for participation in the European Social Fund project "Support for longer working life," provided at least one of these criteria is met: (1) an employee's health has recently deteriorated to the point where he or she no longer is able to perform duties; (2) the employee has not attained a higher education level than general or vocational secondary education or is employed in low-skilled jobs despite having higher education; (3) the employee is unable to work normal hours due to having to care for a family member; (4) the employee works part-time and has income below 80% of the minimum wage.

The objective of this support measure is to facilitate employment and competitiveness of older employees to mitigate their unemployment.

By participating in this measure, employers will have the possibility to use financing to improve the job quality for this group of employees, for instance, by adjusting the workplace in accordance with ergotherapist's recommendations, organizing health-improvement activities, giving career consultations and other assistance.

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Lithuania

Ageism and the workplace

Legal age of retirement

To receive an old-age pension, a person has to meet two basic requirements that are set in Lithuania's Law on State Social Insurance Pensions. First, a person should reach a certain age. Since 2012, the retirement age has been increasing every year to reach the age limit of 65 for both women and men by 2026. In 2019, the retirement age for women is 62 years and 8 months; for men it is 63 years and 10 months. Second, entitlement to the old-age pension requires a minimum obligatory social insurance record of 15 years. Starting in 2018, the obligatory pension social-insurance record requirement for a full pension is 30 years and 6 months. This will be increased in every subsequent year until it reaches 35 years in 2027.

No maximum age limit to work

Even though national laws set the legal retirement age, it does not mean that a person is no longer allowed to work. The Constitution, the labor code, the Law on Equal Opportunities and national case law establish that discrimination based on age is prohibited. In addition, national laws do not set any maximum age limit in the private sector, therefore employers are forbidden to force workers to retire at a certain age. Consequently, after reaching legal retirement age, a person can continue working successfully if he or she wants.

Special rules for employment-contract termination

The labor code sets a rule that an employer is entitled to terminate the employment contract by giving the employee a written notice one month in advance. This can occur when the employment contract is terminated on the employer's initiative and is not the fault of an employee. However, longer notice periods are set for older persons. Employees who will reach retirement age in less than five years will have to be provided with a written notice at least two months in advance. If less than two months are left until an employee's retirement age, the notice period expands to three months in advance.

Moreover, in the event of employee reductions due to changes in the work organization or other reasons related to an employer's activity, the priority right to retain one's job must be granted to those employees who will reach the legal age of retirement within three years or less.

Options for the elderly

Based on the data published by the Lithuanian Labor Exchange, recently more and more people age 50 and over, who unsuccessfully tried to find a new job or were fired, decide to take another path – and start individual growth activities.

Today additional support is available for various groups with difficulties in the labor market, with the 50-plus group included.

The Lithuanian Labor Exchange helps the elderly return to the labor market by offering various courses, retraining or a wage subsidiary to the future employer. According to the Employment Service under the Ministry of Social Security and Labor, retraining as well as improving new skills is by far the best option for the elderly who desire to continue working. For example, during the three-year European Social Fund project, Support for Unemployed Elderly, which took place in Lithuania from 2015 to 2017, 6,300 out of 14,100 participants age 54 and older had been successfully retrained.

What could be improved

Besides setting extra time for a notice of dismissal, Lithuanian labor laws do not provide exclusive protection to the elderly. Most of the assistance to stay or come back to the labor market is offered by various organizations, and the Lithuanian Labor Exchange provides numerous ways to find another career path. A proposed amendment to the law could be to establish that unpaid leave should be provided at the aged employee's request, though the duration of which should be reasonable and still protect the interests of the employer.

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Luxembourg



Laurence Chatenier

Ageism and the workplace in Luxembourg

Introduction

Life expectancy increases, health improves – and seniors are increasingly in the job market.

According to the National Institute of Statistics and Economic Studies of the Grand Duchy of Luxembourg (STATEC) and the Organisation for Economic Co-operation and Development (OECD), the employment rate of people between ages 50 and 64 has risen sharply over the last 30 years. However, in 2018, the Luxembourg employment rate of people between ages 55 and 64 (39.65%) is significantly below the European average rate (61%).

Age for retirement

The legal age for retirement in Luxembourg is 65 years old, provided the employee has contributed to a legal pension scheme for 10 years within the European Union (with a minimum of one year to the Luxembourg pension scheme). The amount of pension will be calculated according to salary and years of contribution (with a maximum of 40 years). Employees can benefit from early retirement at age 57 or 60 if certain conditions are met.

Pre-retirement schemes

Several pre-retirement schemes funded by both the Unemployment Fund and employers are in place in Luxembourg. Under certain conditions, these measures allow employees to stop working, or to work on a part-time basis, at age 57, for instance. As a balance, the employer signs a specific agreement with the Government and commits to hiring unemployed people. Since these measures have a significant cost for the Government, a 2017 law drastically amended these various pre-retirement schemes, aimed at increasing the employment rate of seniors in the country.

Equal treatment about age

From a labor-law standpoint, the Luxembourg labor code indicates the employment contract will cease automatically when the employee receives a pension or reaches age 65, provided that he or she is entitled to a pension.

This automatic termination of the employment contract does not grant any right to a termination or leaving indemnity.

In addition, in the case of dismissal with notice, an employee with the right to a pension will not receive any dismissal indemnity. A similar Danish case had been submitted to the European Union Court, and the judges deemed such a provision as noncompliant with Directive 2000/43/CE on the equal treatment about age, introduced by law in Luxembourg in 2006.

Draft bill in progress

To increase the employment rate of senior employees, a draft bill (No. 6678) was introduced in 2014. It aims at reinforcing the prohibition of age-related discrimination in fostering diversity in employment. The draft law introduces into the labor code a new legal framework for an “age-management plan” within any company with more than 150 employees. Failure to comply would entail an administrative fine, which may be up to EUR 10,000. This age-management plan must be submitted to the staff delegation and will, if approved, be signed by both the employer and the staff delegation, then submitted for approval to a government committee. Such a plan should include at least three measures proposed by the draft law (e.g., recruitment of older employees in the company, implementation of preventive measures for health, development of career goals and transition from activity to retirement). However, this draft bill only covers companies with more than 150 employees and would not impact older employees working in smaller companies.

Conclusion

Since this draft law has been pending since 2014, we must conclude that promotion of the aging workforce is not a priority in Luxembourg.

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Mexico

Ageism and the workplace

Mexico's big challenge

Mexico currently does not have any applicable legislation nor regulations regarding the imminent changes that the world is facing toward the aging workforce. Nonetheless, the National Commission for Retirement Savings System (CONSAR) and the National Population Council (CONAPO), both part of the Federal Government, issued, respectively, an investigation regarding the present and future challenges of government, public and private retirement saving funds as well those that companies and taxpayers are facing.

According to their research, the Mexican Government is aware of the changes that must be implemented in the near future regarding trends in the aging workforce. Public policies concerning retirement plans will need to be reconsidered, since new generations (millennials, Gen Z and others that emerge in the coming years) will have a healthier life, more access to new technology and thus will have more time to be considered within the labor workforce.

Pursuant current legislation, workers in Mexico can request their retirement in two ways: a) early retirement and b) elderly retirement.

Early retirement is considered at age 60. Early retirement is requested voluntarily by an employee who, after reaching 60, has paid social-security contributions for a minimum number of years and is therefore entitled to receive a pension. To request an early retirement from the Mexican Social Security Institute (IMSS), the employee must have a minimum of 1,250 weekly contributions recognized before the IMSS.

The legal age of elderly retirement is 65 years old. After this age, an employee in Mexico is entitled to receive a retirement pension plan. To be entitled to these benefits, the employee must be 65 years old and have at least 1,250 weekly contributions recognized by the IMSS.

Mexican legislation does not limit the age of retirement. Each employee must request his or her retirement (early or elderly) to the IMSS. Nonetheless, there is a common practice among Mexican employees to request their retirement plans at the typical age. Thus, elderly employees within the formal sector often do not prevail.

In this sense, employers do not have any encouragement to terminate elderly workers. Moreover, some Mexican enterprises have created workplaces exclusively for the elderly. As a result, we can forecast a common practice within the private sector to promote personnel above age 60 and even 65.

According to CONSAR, the minimum age of retirement in Mexico (60) is among the lowest for retirement in the world. CONSAR suggested that to increase such minimum age, it must be performed gradually, up to a period of 10 years. CONSAR's proposal states that every two years the minimum age must increase by one year. In a 10-year period, the age should rise up to 65 years old.

According to the information issued by CONAPO, CONSAR estimates that in 2039 the retirement age may raise to 66 years old, 67 in 2049, 68 in 2059 and 69 in 2069.

Based on statements from the labor authorities, issues regarding the aging workforce will not face amendments in the short term. At this time, the Government is focused on more popular labor agendas, such as raising the minimum wage,

facilitating collective bargaining and reconsidering rules related to third-party outsourcing.

Nevertheless, companies in Mexico are aware of the upcoming changes of the aging workforce as well as the changes that new generations, such as millennials, are demanding.

These new generations are requesting new compensation models, such as:

- ▶ More incentives rather than more compensation
- ▶ More opportunities rather than work
- ▶ Benefits that add value to the employee's life

As CONSAR stated, the methodology in data research for determining public policies regarding retirement regulations will face alteration. Thus, these flexible benefits will be considered as a factor regarding policies and the applicable methodology for retirement. As an example, some employees will decide to increase their contributions to retirement funds rather than receive a present extra benefit, or perhaps they will decide to receive more benefits rather than more contributions to their future funds. Time will provide the answer to these unknowns.

We can visualize in a not-so-distant future that Mexican labor, tax, social security, retirement and legislative authorities must adopt new legislation and regulation regarding retirement plans to adapt to changes in the aging workforce and trends of newer generations.

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Netherlands



Joost van Ladesteijn

Ageism and the workplace

The aging workforce has been a major focus of the Dutch Government and its social partners for over a decade. As a result of measures promoting the participation of older employees and the positive employment trend resulting from economic growth, the number of employees over age 65 has almost tripled over the past 10 years.

Dutch state pension age and related measures

Every employee residing or working in the Netherlands is legally insured under the General Old Age Pensions Act (also known as AOW). Every employee accrues 2% of the maximum pension for each insured year, after which a pension is paid monthly once they reach the state pension age. The state pension age will gradually rise to 67 by 2022. From 2022 on, the age will be adjusted every five years in relation to the increase in life expectancy. The official retirement age is independent from the state pension age, as it relates to the retirement age of private pension schemes. The official retirement age also continues to rise and is currently at 68 years.

The state pension age allows the possibility to dismiss an employee employed prior to the state pension age without going to court for the solution of the employment contract or approval of the public employment service. In practice, a pension dismissal clause is often agreed upon, in which case the employment contract ends by operation of law when the employee reaches the state pension age. By excluding pensionable employees from part of the employment law rules, employers are given an incentive for hiring or keeping older employees. For example, the pensionable employee:

- i. Is not entitled to the legal severance pay on resignation
- ii. Can be dismissed more quickly in the case of occupational disability
- iii. Is entitled to a shorter notice period
- iv. Is one of the first eligible for dismissal in the event of a reorganization

Sustainable employability

The Dutch Government believes the primary responsibility for promoting sustainable employability of employees lies with individual employers and social partners. The arrangements made by these parties can take many

forms and aim to limit the workload for older workers. Examples are learning and training programs for employees, reduction of working hours, extra leave days, the possibility of demotion for older employees or a generation pact. Most collective agreements include provisions on these matters. However, the Government has recently stated that despite the collective agreements in various sectors, too little is done to keep employees deployable, motivated and challenged throughout their career.

Furthermore, education and development funds from a company's social partners may apply for subsidies for their support of sustainable employability.

Conclusion

According to the Government, taking measures to encourage sustainable employability is the primary responsibility of employers and their social partners. The measures taken by the Government to combat the consequences of the aging workforce are a stimulating factor for hiring and keeping older employees. However, there are still big steps to be taken by both the Government and the social partners to maintain the health, safety and productivity of older employees.

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New Zealand

Old Zealand – the aging of the Kiwi workforce

New Zealand has a rapidly aging population. Figures released from Statistics New Zealand record that the labor force over age 65 was 171,000 in 2017 – and is expected to potentially double to 379,000 in 2038.

This dramatic change will cause significant disruption throughout our society and economy. So how will the employment-relations landscape cope, and what changes are needed to cater to this aging workforce? Some questions to consider:

Does KiwiSaver and superannuation create pay bias?

Even though there is no mandatory retirement age in New Zealand, both Government-funded superannuation and the private KiwiSaver scheme incentivize employees to retire at 65.

Do businesses need an age-parity policy?

Among the many thorny issues with means-testing, employees currently can receive superannuation while continuing to work past 65. As a result, superannuation is being relied upon by an increasing portion of the over-65 population to supplement earnings from full- or part-time work. This potentially allows employers to take advantage of that subsidy for older workers to keep their wages down, much in the same way it has been claimed that the Working for Families scheme restrains wages for other workers.

Similar to gender-pay parity, employers need to ensure they are not paying someone less simply on the basis of his or her being older. An age-parity policy may help in achieving this. Otherwise, employers risk facing an unjustified disadvantage or a discrimination claim.

Why aren't we incentivizing KiwiSaver for employees after they reach 65?

KiwiSaver contributions are normally quarantined until participants reach 65. After this time any further contributions can be immediately withdrawn by the employee, and the employer is no longer required to make compulsory contributions. These reduce a key incentive behind the KiwiSaver scheme.

Similar to deciding on whether to pay a living wage or minimum wage, employers need to address whether they will continue to make these contributions even though they are not legally required to.

How do you protect employees from age discrimination?

Although only about 60 employees a year raise complaints about age discrimination, this problem is believed to be widely underreported.

An employee who alleges unlawful age discrimination may bring a claim before either the Human Rights Commission or by raising a personal grievance before the Employment Relations Authority – but not both. However, age-discrimination cases are rarely litigated, partly because they are difficult to prove. In one 2010 case the employee alleged he was overlooked for a redeployment opportunity because he was too old. That claim was unsuccessful because even though his age was a factor in the employer's decision, it was not directly or indirectly causative of the employer's actions.

More recently the Supreme Court found that the right against age discrimination prevailed over a Cathay Pacific pilot's contractual obligation to retire at a certain age. That result was reached even though the related parties elected it would be governed by Hong Kong law, which had no similar age protection.

Does age need to get onto the diversity and inclusiveness agenda?

A laudable goal for all employers is to achieve diversity and inclusiveness within the workplace. With an aging population, organizations may need to extend these policies to cover age diversity as well.

Do age-specific health and safety practices increase the risk that you are an age discriminator?

A common issue encountered when hiring older workers is additional health and safety risks. Physical frailties may make it increasingly dangerous for an older worker to undertake some tasks.

But could your desire to enhance health and safety in the workplace for older workers open you up to an allegation of age discrimination? Instinctively, it would be presumed that health and safety concerns would override protection against age discrimination. But to date there is no case-law guidance on this point. In the absence of specific legislative guidance on this topic, employers need to draft their health and safety policies with this in mind.

Conclusion

It is inconceivable that the Government will impose a mandatory retirement age in New Zealand, so employing older workers will become an increasingly common feature in virtually all workplaces. This will require employers to adopt policies and strategies to deal with their aging workforce. Employers need to start thinking about how they will strike the right balance between age discrimination, age diversity, and health and safety.

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Norway



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Ageism and the workplace

The age of retirement

In Norway the age of retirement begins at 62, depending on an employee's retirement plans.

The general limit for how long an employee may work before reaching retirement is regulated by the Working Environment Act (WEA), section 15-13A. This section states that employment may be terminated due to an employee's age when the employee reaches the age of 72, unless an agreement has been made.

This age limit was increased by the Government in 2015 from age 70 because it saw a need for the aging workforce to continue working. This follows from the fact that people are healthy and living longer.

For employees working in the public sector, the general retirement age is 70. This follows the WEA rules on age limits for public officers. It is also permitted for an employer and employee to enter into a specific retirement agreement, as long as it is not to the detriment of the employee.

Before reaching the retirement age

The WEA, section 13-1, states that direct and indirect discrimination on the basis of age is prohibited. This applies to the hiring process, employment and termination.

An employer may not terminate an employee because of his or her age alone, unless the employee has reached the retirement-age limit. The age of an employee is not considered a justifiable cause to terminate him or her.

Retirement pension

Retirement pension is a governmental pension scheme that grants income from the National Insurance to those who have reached old age (62 years of age or higher) in Norway.

To be entitled to retirement pension in Norway, one must have had pensionable income or have been covered by the National Insurance for three years. The size of the pension is primarily based on the employee's pensionable income.

Retirement pension is a lifelong payment and will be paid up to and including the month of death. This is in contrast with other pension schemes, such as the defined benefit pension and defined contribution pension, which may not cover a lifelong income.

Safeguarding the aging workforce

The WEA, chapter 4, regulates requirements for the work environment. It states the employer must ensure that the work environment is satisfactory and that employees are given necessary training in

the employer's routines, etc. This means that an employer must facilitate ways for employees to attend courses or other training if they are necessary to perform their work satisfactorily.

Even though elderly employees might need a course in digitalization or other new trends, they do contribute with important experience from their work life, which is often of great value to the employer. Therefore, it is possible to have great knowledge-sharing with new recruits, which should benefit the employer.

Trends and practice

It is often more difficult to find a new job after having reached a certain age in Norway, in spite of the prohibitions in the WEA, section 13-1. It is not clear why this is, but one might guess that if an employee is close to his or her retirement age, it may not seem timely to invest resources in him or her for the business.

This trend is also visible in the case of redundancy. The employer must take into consideration how various employees stand in the labor market and how easy or difficult it might be for them to find a new job in the case of termination. In these cases, elderly employees may need to consider early retirement in lieu of a suitable severance pay if they are terminated.

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Peru

Challenges for the aging Peruvian workforce

Peru today

In Peru, companies that promote inclusion are characterized by having a plural workforce; they adapt to the needs of new markets in consideration of our state of constant change and innovation.

Companies that are committed to diversity know that this evolving landscape generates a need to hire employees who possess innovative skills and an ability to adapt to the digital age – all things needed to deal with business situations that were unimaginable just a few years ago.

Nowadays, Peruvian companies are opting to hire highly adaptable employees with strong abilities to develop new ideas. This includes using technology, understanding the different needs for short- or long-term projects, and working in collaborative and digital environments.

Labor laws

Despite the aging workforce's experience, in Peru companies can easily dismiss older workers, claiming low performance.

According to Peruvian legislation, companies can design individual action plans, giving employees a minimum period

of 30 days to optimize their performance and to adapt themselves to the skills required by means of specific, supervised and controlled tasks.

If the employee does not accomplish the tasks or the parameters contained in the action plan proposed by the employer, the employee could be justifiably dismissed by the company.

Additionally, companies are allowed to terminate the labor relationship when the employee reaches 70 years old, which is the age to be forced into retirement, according to law. To obtain retirement protection, the employee needs 20 years of contributions to social security.

Another situation that concerns the aging workforce is related to labor continuity. More and more jobs offer short-term projects, while older workers may expect to stay in a position for an extended period of time. Peruvian legislation allows companies to hire employees for short periods (five years maximum) during the development of a specific service or project.

The challenges for the aging workforce is considerable, since work today demands a high capacity to adapt in a short-term period to changes that our working world requires.

The future of ageism and the workplace

According to a 2017 report by the International Labor Organization, all Member States must implement a framework to create conditions for strong labor growth, including policies that will help employers and employees make fair transitions and adjustments to new fields of work activity.

Peru's progress in incorporating this framework into its labor agenda is pending. Currently the only regulation it has refers to the possibility of terminating the labor relationship with an older worker in the case of low performance. This is unfortunate in that it does not take into account all the other contributions that this type of workforce can provide to companies.

A legal framework to encourage adapting and incorporating an aging workforce in Peru will likely not be realized anytime soon. This generation has an important challenge: developing the skill of adaptability to constant changes and developing technological agility. Labor laws are not promoting this possibility, and for this reason companies must provide inclusive rules to take advantage of the resources that the aging workforce can provide us.

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Poland



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Ageism and the workplace in Poland

Big challenges for the pension system

The statutory retirement age in Poland was recently subject to significant changes. In 2012 the Polish Parliament passed a law in which statutory retirement will gradually be increased to age 67 for men (in 2020) and for women (in 2040) by adding one month to the limit every four months. This amendment entered into force 1 January 2013. Pursuant to an act that entered into force 1 October 2017, this amendment was reversed, and the statutory retirement age was lowered to 60 for women and 65 for men. This law restored the retirement age effective before 1 January 2013.

According to the European Commission's publication *The 2018 Ageing Report: Economic and Budgetary Projections for the EU Member States (2016-2070)*, the Polish population is going to decrease by approximately 7 million people through the year 2070 due to a decline in fertility rates. At the same time, according to the Eurostat projections presented in the

report, life expectancy at birth in Poland should increase in the years 2016 to 2070 – by more than 10 years for men and 8 years for women. This means that such an increase of life expectancy will be also a challenge for the Polish pension system.

If the statutory retirement age after 2017 remains constant, the average contributory periods for men and women will be relatively stable. On the other hand, the duration of retirement will increase steadily, reflecting increasing life expectancy at retirement. This could cause serious problems for the pension system in Poland.

Currently, it appears the Polish pension system is being saved by foreign workers. According to the Polish Social Security Office, there are more insured foreigners each year (meaning those who pay retirement or pension contributions in Poland). In 2008 there were only 65,000; in 2014, there were 124,000; in 2017, Poland had 378,000; and there were 541,000 in 2018. The majority of foreign workers are citizens of Ukraine. Yet, according to the European Commission's report, the Eurostat projections show that immigration should play only a minor

role in the future population changes of Poland, and close to zero annual net migration will be observed through 2040.

Furthermore, the report indicates that the old-age dependency ratio is going to increase from about 24% in 2016 to 65% in 2060. This means that in 2016 the population of working people was more than four times larger than those age 65 or older. In 2060, however, this relation will amount only to one and half times that.

With this in mind, the adequacy of pensions to ensure a decent standard of living in old age may become an even more serious issue.

As one solution, Parliament has recently adopted the Act on Employee Capital Plans. It constitutes a new form of saving under the pension system. The employer and the participant of the Employee Capital Plan shall finance basic payments from their own funds. They may also declare the financing of additional payments. All employees will be automatically signed up for the system, but they can voluntarily resign. The future will show if this solution is enough.

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Portugal

Ageism and the workplace

Like most Western countries, Portugal is facing a demographic challenge, with a decrease in the birth rate and a high increase in the aging population, which necessarily affects the workforce. To address this, the country underwent a social-security reform as early as 2007, and discussions are already under way for new modifications in the legal framework.

The minimum legal age for retirement (i.e., access to a retirement pension from the mandatory social-security retirement system without any penalties) is now indexed to the average life expectancy of the population and is updated on a yearly basis. For employees retiring in 2019, the age is 66 years and 5 months.

After a period in which it was banned, it is now again possible to request early retirement when certain requirements are met (e.g., 60 years of age and 40 years or more of paid contributions to social security). However, it is highly discouraged, as the retirement pension shall suffer a penalty in the value of 6% for every year preceding the minimum legal age for retirement.

The value of retirement pensions under the social-security system depends on the amount of contributions paid (on a basis of 34.75% of all monthly wages) and the length of the professional career, but a minimum of 15 years of contributions is required to have access to a pension. Presently there is a general penalty of

14.67% applicable to all new pensions to better support the sustainability of the pension system.

For employees in the private sector, there is no age limit to continue working, but permanent (indefinite) employment agreements, which are the rule, automatically become fixed-term employment agreements when employees turn 70. Therefore, companies may from that moment on terminate employment with 60 days' notice, without further compensation. Employees in the public sector retire at 70 by force of law.

Pre-retirement

There is a legal incentive in place to promote the progressive withdrawal of older employees, called pre-retirement. Under this regime, the company and any employees over age 55 may agree to either reduce the workload of the employee or fully suspend the rendering of work. In the latter case, the company must still pay a monthly wage to the employee, with a minimum value of 25% of the last full wage, although social-security contributions are to be made as if the employee was earning his wage in full. The employee may then take on a separate job, in accumulation with his pre-retirement status.

As to workload reduction, it shall be in the terms agreed upon by both parties, but no wage reduction is allowed. Companies are still required to update the wages of employees in pre-retirement in the same

terms as for other employees, but the employee may only revert to his former status in the case of a default in wage payments.

There is another feature of the labor market in Portugal that is worth noting. As Portugal has progressively experienced a major growth in the availability of a qualified workforce after entering the European Union in the 1980s, a significant number of qualified employees now over 50 have benefited from the scarce supply and high demand of candidates for their jobs back in the day (wages cannot be lowered by agreement).

Considering that the situation has changed significantly and there is now a solid offering of young qualified professionals, new wages have, in general, been lowered. Companies tend to have an additional incentive for workforce renewal in the form of lower wages, which has led to a slow awakening to the reality of adjusting to an aging workforce at all levels.

However, there has been some activity in this regard, with the recent adoption of guidelines to adapt occupational health and work safety procedures to the aging workforce, as well as legislation for work absences for the care of elderly family members. This sets the path for other changes that, no doubt, will be brought about by the new demographics of the country.

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Russia



Daria Zakharova

Ageism and the workplace

Retirement age

Until recently the standard statutory retirement age in Russia was 55 for women and 60 for men. Starting 1 January 2019, the retirement age for men would gradually increase from 60 to 65 and from 55 to 60 for women by 2028.

Certain categories of employees enjoy a lower retirement age. This includes individuals in specific professions (miners, public transport drivers, pilots, police officers, teachers); people who work in especially difficult conditions (in the hazardous environments in Russia's far north, for instance); disabled persons; and women with multiple children.

The retirement age generally does not depend on length of service, except for some preferential categories where individuals only need to work a certain number of years in their field rather than reach a designated minimum age for retirement (as is the case for teachers and doctors).

Work after retirement age

There is a general legal framework for equal treatment in employment relations irrespective of age. There is no prohibition to work after the retirement age – regardless of pension rights. Reaching a

specific age threshold by no means can be a ground for termination or a ground for re-conclusion of an employment agreement on different terms and conditions. However, it should be noted there are age limitations for holding certain positions. For instance, the maximum age for holding the position of judge is 70. The maximum age for holding the position of a rector, pro-rector, or head of a higher educational institution is 65. Upon reaching this age, respective employees should be transferred to other positions consistent with their qualifications.

Similar rules apply in the case of an employee's poor health. Adverse treatment on such grounds is not permissible under Russian law for any employee, including employees of retirement age. But if a medical commission decides the employee cannot work under current working conditions, the employer should offer the employee another suitable position. Only if there is no such vacant position, the employer may terminate the employment agreement with the employee.

Special treatment of senior employees

Employers do not bear any additional costs when employing senior employees. Age is not included in the factors that increase the amount of an employer's contributions payable to social funds. The

law also does not provide for any special privileges, such as additional annual paid leave or a higher amount of overtime compensation, as compared to other employees. The only statutory provision that may be considered an advantage for senior employees is the obligation of an employer to grant additional leave up to fourteen calendar days upon the employee's request. However, such leave is not paid. When recruiting pensioners, the only matter of special concern is the right of an employer to conclude a fixed-term employment contract; this is only because of the employee's retirement age and regardless of the nature of the job, working conditions and other circumstances as provided by law.

Practice and trends

Under the law, pensioners and workers below the retirement age are generally treated equally. The equal-treatment framework provides senior employees all opportunities to continue working after the retirement age and to get both salary and retirement-age pension simultaneously. The above perks, however, do not truly encourage senior employees to work longer. To address Russia's current demographic and economic situation, the Government initiated the retirement-age increase to offset labor shortages and keep the pension system balanced.

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Serbia

Ageism and the workplace

In accordance with Serbian labor law, an employment relationship may be established with a person who is at least 15 years old. The upper age limit for employment is not prescribed, however, according to the law employment terminates when the employee reaches age 65 and has a minimum of 15 years of employment – unless a different number has been agreed on between the employer and the employee.

The law does not contain any provisions that encourage or discourage older employees to continue working after acquiring the right to retirement. There are no limitations for the retired person to establish a new employment relation after retirement. In that case, the employer is obliged to pay the employee all contributions arising from the employment (as well as the appropriate tax). Additionally, a retired person may also remain engaged on the basis of a contract on temporary work or service.

When it comes to the rules of termination, there are no specific provisions regarding aging employees. According to the law, any direct and indirect discrimination of employees for reasons related to age is prohibited. Therefore, in the case of termination with an older employee, all the general provisions of the law apply.

According to the Serbian Law on Pension and Disability Insurance, a male employee is entitled to retirement when (i) he reaches 65 and has at least 15 years of employment, or (ii) he reaches 45 years of employment. A female employee that reaches 15 years of employment acquires the right to retirement when she reaches the age of 62 and 6 months. This age limit is being increased every year, and by 2022 the age limit for retirement for both men and women should be 65. Currently, earlier retirement is possible for (i) men who reach age 57 and 8 months and have at least 40 years of employment, and (ii) women who reach 56 years and 4 months and have at least 38 years of employment. By 2023, the age limit for earlier retirement for both men and women will be 60 and require at least 40 years of social-security contributions.

In the case of retirement, the employer is obliged to pay the employee a severance payment in the amount prescribed by its employment rules, which cannot be lower than average salaries in Serbia.

As it is across the European Union, Serbia is facing changes to the structure of its population. However, the workforce of those aged 50 to 64 is especially facing difficulties in the labor market; often they lack knowledge or skills due to advancing processes. In Serbia, pursuant to the data of the Statistical Office, in 2018

approximately 938,000 employees are over 50 (out of a total of approximately 2.8 million employees in Serbia). Persons older than 50 also represent a so-called “harder to employ” category of unemployed persons. According to data from June 2018, there are approximately 190,000 unemployed persons above 50 (out of a total of 645,400 who are unemployed).

The Republic of Serbia has been undertaking activities in order to resolve the aging workforce issue. In this direction, a National Employment Action Plan for 2019 has been enacted that provides incentives for employers who employ persons over 50 that have a status of redundant employee. Depending on the location, these one-time payments vary from approximately EUR 1,200 up to EUR 2,500 per employee. In addition, an employer may request from the National Employment Agency to participate in funding professional training for employees who lack certain knowledge or skills required for performing their work at the employer. The main purpose of these trainings is to prepare currently employed persons for their employer's new business needs instead of terminating their employment.

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Singapore's approach toward an aging workforce

Singapore's retirement and re-employment laws were introduced to address concerns arising as a result of a rapidly aging workforce.

The first retirement laws were implemented in 1993 under the Retirement Age Act (RAA) to restrict companies from retiring their employees before the age of 60. This retirement age was revised to 62 in 1999.

In 2012, the RAA was renamed the Retirement and Re-Employment Act and introduced the requirement for companies to offer eligible employees re-employment after the retirement age of 62, up to age 65. This re-employment age ceiling was revised to 67 in 2017.

Under the current retirement and re-employment laws in Singapore, employees are eligible for re-employment after the retirement age of 62, up to age 67, if their work performance is satisfactory, as determined by their employers, and if they are medically fit to continue working. The period of employment under the re-employment contract must not be less than one year, and any variation of employment terms under the re-employment contract must be based on reasonable factors, such as the employee's performance, new duties or responsibilities.

If an employer is unable to offer re-employment to an eligible employee, the employer must (i) transfer its re-employment obligations to another employer, subject to the consent of both the employee and the new employer or (ii) as a last resort, after considering all available re-employment options, offer the employee a one-off employment assistance payment to be determined in accordance with prescribed guidelines, which take into account wage increases in recent years. In addition to the one-off payment, employers are encouraged to assist these employees in securing alternative employment.

The Government has also introduced several initiatives to encourage employers to adopt age-friendly workplace practices and processes, and to encourage employees to upgrade their skills, which is critical in this age of technology and automation. For example, under the Special Employment Credit scheme, employers who hire employees aged 55 and older will receive a wage offset of up to 8% of an employee's monthly wages and an additional offset of up to 3% if they voluntarily re-employ employees 65 and above. This helps employers manage their overall costs and encourages them to voluntarily re-employ older employees.

Employers can also receive grants under the WorkPro scheme to implement age-management practices, redesign workplaces and refine processes to create easier, safer and smarter jobs for older

employees. They are also encouraged to implement and sustain flexible work arrangements for all employees.

For employees, the SkillsFuture scheme provides opportunities for lifelong learning and offers credits that can be applied toward courses to upgrade their skills. The Adapt and Grow initiative offers career and employment support, including career-matching services, career support programs and professional conversion programs.

Given our aging population, coupled with declining birth rates and increased life expectancy, older employees are an underutilized group who can significantly contribute to Singapore's economic growth and productivity. With improvements in health care and education, older employees today are able to work in a wider range of jobs than before.

Singapore has been taking steps to integrate older employees in the workplace. The Tripartite Workgroup on Older Workers (comprising representatives from the Government, labor unions and employers) was set up in May 2018 to look into concerns of older workers and ways to protect their interests. This group has recently agreed on the need to raise the statutory retirement and re-employment ages beyond 62 and 67, respectively, and will now work toward a tripartite agreement on the extent and timing of implementation.

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Slovakia

Ageism and the workplace

Throughout the world, rising life expectancy and declining fertility rates have resulted in population aging, with an older workforce as a consequence. In Slovakia, this development will have an enormous impact on the social, pension and health care systems, which is why activating the older workforce is of utmost importance for the health of the economy. The Slovak authorities have tried to support older workers through recent labor law changes, based on the Ministry of Labor, Social Affairs and Family's Strategy of Active Aging. They have also applied financial-aid programs, using European Union (EU) funds. Health care and agriculture are the sectors currently experiencing the most serious problems of an aged workforce and lack of young employees.

Retirement in Slovakia

State pension entitlement in Slovakia is based on reaching legal retirement age and having paid pension insurance contributions for at least 15 years. As of 2019, the legal age of retirement is specified in years and calendar months, and is known five years in advance. For instance, a person reaching age 62 and a half in 2019 will be entitled to retirement with state pension. Subsequently, for each calendar year until 2023, the entitled retirement age is extended by two calendar

months. As of 2024, the retirement age should be determined based on a formula that reflects, inter alia, the average life expectancy for the corresponding reference period.

Dismissal of older workers

The Slovak labor code does not recognize a general maximum age restriction on the ability to work. Conversely, employees who work for one employer longer than the legal threshold are entitled to higher payments (severance payments, longer termination period) than those with shorter employment records with the same employer. Further, employees are protected against any discrimination in employment relations under the Slovak anti-discrimination rules. Age may not be the sole reason for dismissing an older employee.

Encouraging older workers to continue working

The Slovak authorities have an interest in maintaining their older workforce. This is achieved through support in the form of several financial instruments. Those who continue to work after reaching retirement age are eligible for increased retirement payments.

Efforts to motivate the aged workforce to continue working after retirement were introduced via recent amendments to law. These forbid older workers from

receiving early retirement payments while they continue work, which is full-time, part-time or based on specific agreements, unless their salary is below a stipulated threshold. Workers who have achieved early retirement age and meet the required conditions should choose either to work or to retire early. However, an employment relationship, concurrent with an entitlement to retirement payments in an ordinary retirement regime, is permitted and is more favorable for the retired employee.

Employment services for older workers

Job-seekers older than 50 are considered disadvantaged, and those employing them have the right to state financial aid. Such financial aid should prevent discrimination based on age.

There are also certain programs for the lifelong education of older people, supported by EU funds.

Conclusion

The world's aging workforce is also seen as a problem in the Slovak Republic. Slovak labor laws are helping to minimize the negative economic effects of the demographic trend of an aging society and encourage older people to work longer.

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Spain



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Ageism and the workplace

Introduction

Increasing employment and prolonging the professional lives of employees have become a reality today. As a result, the management of an older workforce is currently a priority to employers.

Recruitment

Although there is a tendency to extend an employee's working life, companies also need to maintain high work productivity and recruit a younger workforce, with new skills needed for this economy. This circumstance makes it especially difficult for older employees to enter the labor market.

In response, the Spanish Government approved a series of urgent actions to stimulate employment of the older population. From a Social Security perspective, the primary measure was the implementation of a 100% reduction in social contributions during the first year if an employee over age 45 was hired for a new entrepreneurship project.

Additionally, different regional governments adopted actions to facilitate the incorporation of senior employees into the labor market, applicable only to indefinite contracts.

Dismissals

The age of an employee is not a valid ground to justify dismissals in Spain, as it could be considered discriminatory. In this sense, dismissals could only be correctly justified based on issues, such as a reduction of an employee's performance or a lack of adaptation to the technical modifications in the employee's position.

Companies that perform a collective dismissal, including employees age 50 or older, are required to make an economic contribution to Social Security if certain conditions are met (i.e., if the company has benefits, more than 100 employees).

Retirement

One of the most important characteristics of the retirement pension is its voluntary nature. No one can be forced to retire if he or she does not want to.

When the conditions to access retirement are met, the employee is entitled to exercise his or her right to retire but would not be obliged.

a. Ordinary retirement

Employees need to meet the following requirements to receive their retirement pension: (i) they contributed for at least 15 years (2 years must be included within the 15 years immediately preceding the date of retirement), and (ii) they have met the minimum retirement age.

A substantial reform was performed in Spain in 2013, and the retirement age changed from 65 to 67 years old, therefore promoting the aging workforce's reality nowadays: people are living longer and want to keep working. A transitory regime for the smooth implementation of the new retirement age was designed, and the date of retirement for employees depends on the years of contribution acknowledged by the Spanish Social Security authorities. For example, in 2027, the retirement age will be 67 years or 65 if the individual has been contributing for 38 and a half years.

Notwithstanding the above, there are some exceptions in which the employee can retire earlier, although the pension to which the employee would be entitled would be lower than if the employee took ordinary retirement.

b. Early retirement

Early retirement means advancing voluntary retirement before reaching the ordinary age, provided that some requirements are met.

Today there are two types of early retirements:

► Voluntary early retirement

Voluntary early retirement is possible if the employee is 2 years younger than the legal age for retirement, with 35 contribution years.

► Forced early retirement

Forced early retirement can arise in different cases, such as: (i) collective dismissals; (ii) objective dismissals; (iii) force majeure; and (iv) in the event of the employer's death, retirement or incapacity.

In cases of forced early retirement, the employee shall not be more than 4 years younger than the established legal age for retirement, with 33 contribution years.

c. Pre-retirement

This type of retirement is not addressed in the Social Security regulations; it is basically an agreement between the company and the employee to terminate the employment relationship under conditions that allow the employee to reach the legal retirement age with economic guarantees, equal or similar to those he had when he was active.

There are no specific requirements to adhere to this type of retirement, beyond those that are established by agreement between the employee and the company (i.e., no stipulated age is requested).

Conclusion

In their workforce planning, employers should take note of the increasing retirement age and consider whether partial or early retirement are appropriate options. The challenge remains to support an aging workforce while also creating opportunities for young workers entering the marketplace.

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Sweden

Ageism and the workplace

As life spans get longer, more employees are in sound-enough health to remain in the labor market and continue their careers. This means the workforce inevitably ages. In light of the need to transform workforces with new skills to keep pace with the globalized economy, the aging workforce raises questions on how to retain old knowledge while simultaneously introducing a new generation and skill set to the labor market. Under current Swedish legislation, the otherwise employee-friendly regulations governing employment protection do not apply to employees once they reach the age of 67. This implies there is a growing workforce facing the labor market without the employment protection normally granted employees. This has sparked a discussion raising concerns for age discrimination as well as a need for change in Swedish legislation.

Employment protection

The Swedish Employment Protection Act governs the types of employment and rules on the termination of employment agreements. The main rule is employment continues for an indefinite period unless otherwise explicitly stated. It also states that an employee can only be employed on a temporary basis for a maximum of two years during a five-year period before

the contract is automatically converted into indefinite employment, providing for full employment protection under the act. Exceptions apply to employees once they reach the age of 67.

Notice periods

Under the main rule, either the employee or employer may terminate an indefinite employment agreement. However, both parties must observe the relevant notice period. The notice period may be specifically agreed upon in the employment agreement, but it cannot be shorter than the minimum notice period applicable in collective-bargaining agreements (if the employer is bound by such) or mandatory provisions in the act, which vary based on service length. In addition to observing the relevant notice period, an employer must establish an objective ground for the dismissal to be compliant with the act.

Grounds for termination

Objective grounds are not statutorily defined nor fully defined by case law, but they can be either redundancy reasons or personal reasons. Once an employee approaches the age of 67, it is sufficient that the employer notifies the employee in writing at least one month in advance of employment ceasing. This expiration occurs during the month the employee turns 67. As such, if the employee remains

employed after reaching age 67, he or she is not entitled to a notice period based on tenure should the employer give notice. Employees over the age of 67 do not have the right to re-employment under the act, and there are no limitations as to what extent an employee can be engaged in a temporary contract (i.e., the previously described two-year rule does not apply).

Legislative changes

The Government has proposed to push back the age limit for employment protection in two steps to cover employees, initially, until the month they turn 68, and thereafter until the month during which they reach 69. The first step, e.g., employment protection until 68 years of age, is suggested to be implemented by 1 January 2020. Granting employment protection until the age of 69 is suggested to come into force by 1 January 2023. The amendment is yet to be passed by Parliament. Recent changes to the governmental composition in Sweden may however result in additional changes to the proposed legislative updates.

As a longer career implies an increase in contributions an employee may put toward his or her pension savings, the proposed changes aim not only to create incentives for longer careers in general; they aim to improve living standards once employees embark on their retirement journeys.

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Switzerland



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Ageism and the workplace

Ongoing demographic change is constant. Besides the increasing number of millennial workforces, overall people are more and more over 50 years old. Workforces are getting older. In a progressing globalized and transforming environment Swiss companies however remain highly reliant on them in order to avoid shortage of skilled and experienced workforces.

Health & Safety

Elderly employees (usually above the age of 50) require higher diligence, care and consideration in everyday processes. Swiss law, however, only provides few respective statutory provisions. The Federal Council has for example not made use of the possibility reducing the average maximum weekly working time (of normally 45 hours). Still, there apply certain special rules in order to avoid or mitigate age-related increased physical and psychological risks. For example, elderly workers are not allowed to carry heavy loads and special consideration must be given to the room climate and illumination (e.g., at temperatures above 30 or below 15 degrees, excessive drafts, insufficient light). Main focus however should lie in an overall tailored flexible work and working time model (e.g., part-time, flextime, break time, overtime compensation), based on their individual needs (e.g., targeted training, specialization, new challenges).

Termination

Elderly workers are often more affected by job losses than their younger counterparts. High wage and social costs lead to a significantly reduced attractiveness in the labor market. Nevertheless, it is crucial for them to maintain the established standard of living and to cover the associated costs. This leads to a special need of protection. Consequently, the Federal Supreme Court has developed a leading practice according to which an elderly employee (over 58 years) with a longer service period (at least 10 years) is subject to a higher employer duty of care. According to recent case law and legal practice, also other combinations of increased age and service years may lead to such a special protection. Employees therefore may most presumably already be better protected as from the age of 55, provided that they have a correspondingly higher seniority within the company. Conversely, also employees who are 63 or 64 years old and therefore close to ordinary retirement age, even with fewer years of service (e.g., 5 or 6 years) benefit from this duty.

Based on the requirement of careful exercise of the law, the Highest Court has derived an information and consultation obligation and a duty to seek joint solutions before pronouncing a termination against such elderly employees. Together with the employee, the employer has to clarify the causes, to look for possible alternative solutions

(e.g., other work allocation, internal transfer, retraining, early retirement) and to give at least a "last chance" in case of low performance or misbehavior situations. Altogether it is necessary to carefully weigh the contrary interests for the maintenance or dissolution of the employment relationship against each other, whereby only the circumstances of the individual case can be decisive. Often less severe practice is applied in justified restructuring or mass redundancy situations, where reasonable hardship cases are taken into consideration. No prior consultation is required in exceptional extraordinary termination cases (for good cause). If the employer does not or only inadequately fulfills these obligations, an abusive termination may be present. The termination nevertheless remains valid, but leads to a compensation claim of the employee in the amount of up to six monthly wages.

Company Guidelines

Companies are required to organize their employment culture, structure, processes, staffing, personnel development as well as their termination cases in accordance with age-specific risks, needs, qualifications, skills and abilities, always in compliance with statutory regulations and current legal practice. Companies committed to a respective sustainable age management will be rewarded with higher talent attraction, retention, productivity, less absenteeism as well as lower labor and litigation costs.

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Rob Riley



United Kingdom

Ageism and the workplace – employment issues

According to the Office for National Statistics, more than 1.27 million people over the age of 65 were working in the UK as of November 2018. This has almost tripled since 1992's 478,000, when figures for people over 65 were first collected.

Higher living standards and better health care mean the number of over-65s in the UK is set to increase further. This same group is also likely to continue working, so employers need to focus on how to manage and cater to the needs of older employees.

With an aging workforce, there is an increased risk of age-based discrimination and unconscious bias, which employers must seek to challenge. Age is a protected characteristic under the Equality Act 2010, meaning employees cannot be directly or indirectly discriminated against due to age, although indirect discrimination can be objectively justified as a "proportionate means of achieving a legitimate aim." Direct age discrimination is when an employee is treated less favorably because of his or her age, i.e., if someone is dismissed because he or she has reached age 65. Indirect discrimination occurs when the employer applies a provision, criterion or practice to everyone, such as a workplace policy, that results in a disadvantage for employees of a particular age.

Unconscious age-based discrimination within the workforce may be seen in areas such as recruitment, training and promotion, performance management and retirement. Employers should review their internal policies and decision-making to ensure policies that apply to all members of staff do not place older workers at a particular disadvantage.

A major step in tackling age discrimination was the abolition of the UK default retirement age in 2011. Employers can no longer dismiss employees when they reach a certain age unless the age issue can be objectively justified. Employers can still set a compulsory retirement age, but justification is difficult and requires a very strong business case. Consequently, an employee can generally work for as long as he or she wants and is able.

To adapt to an aging workforce, the state pension age is increasing. Starting in 2020, both men's and women's state pension ages will be 66, increasing to 67 between 2026 and 2028, and then linked to life expectancy thereafter. The Government will keep this under review at least every five years. However, not everyone who reaches state pension age actually retires. Whether for economic reasons or the desire to be productive, many continue to work. Therefore, there has been a greater focus on more frequent career discussions with all employees to facilitate communication about retirement or succession planning. Keeping notes of such meetings and any questions asked will be important to establish a defense to any claims of discrimination.

One way of managing an aging workforce is to develop flexible employment policies to support employees' potential desire to extend their career and accommodate their needs. This may include redesigning jobs to accommodate physical needs, offering job shares or shift work, and implementing phased retirement options. Flexible working arrangements will also benefit younger workers, who often seek more control over their working hours.

The right to request flexible working was extended in the UK in 2014 from those employees with parental or caring responsibilities to all employees. Employers are now under a duty to deal with these requests in a "reasonable manner." Flexible working arrangements can be enabled by technology to assist older employees in developing new ways of working, but as a matter of course employers should ensure that all workers' skills are relevant and continually updated. This will benefit the entire workforce.

The Government's advisory service, ACAS, has recently released new guidance for employers on dealing with age discrimination in the workplace. Training should also be conducted throughout an organization on unconscious age-related bias to tackle the risk of unlawful discriminatory practices toward older workers.

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EY digital guide on labor and employment law challenges in business transformations

Available in a digital format, the guide focuses on matters of key strategic importance for multinational companies on a country-by-country basis.

As all multinational corporations know, workforce issues in transformational projects are a significant challenge. Each country has different labor and employment laws, and more than ever, companies now need to understand these laws to manage cost and risk, proactively identify possible hurdles, and facilitate efficient, timely and agile implementation of global or regional projects.

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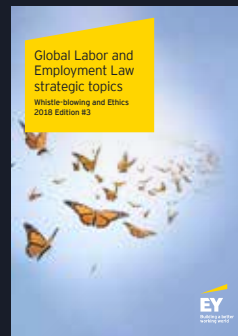
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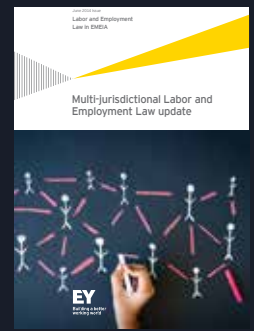
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