

Exploratory Study on Age Discrimination in Employment

Study Brief

Introduction

The Equal Opportunities Commission (EOC) has decided to commission a research project entitled “Exploratory Study on Age Discrimination in Employment”. The study will provide an overview on age discrimination in the Hong Kong workplace and probe for the feasibility of legislation on age discrimination. Furthermore, it will solicit views from stakeholders on incentives for older people to be engaged in employment, their preferred modes of employment and employers’ concerns about the aged workforce.

Background

2. The EOC is consistently looking for ways to improve its work and services to the public. Views and concerns of various stakeholders are regularly probed in order that EOC’s work is able to meet the community’s needs and expectations. To achieve the mission of creating a pluralistic and inclusive society, the EOC will go against all forms of discrimination and advocate equality for all by going beyond the current remits of the four anti-discrimination ordinances. It is found that the public expects the EOC to play a proactive role in advocating human rights issues outside its jurisdiction and to lead discussions on controversial issues in the society at suitable times. One of the areas for consideration is the issue of age discrimination.

3. Age discrimination may be manifested in a number of areas, but the key public concern is in employment. Age discrimination in the workplace is usually targeted at two age groups: younger (under 20) and older workers (above 50). The young ones tend to be victims of adultism. They are typically stereotyped as pampered, immature, disobedient, and with no sense of purpose. The unemployment rate for this category of workers (who are also low achievers in education attainment) tends to be on the high side (see Chart 1).

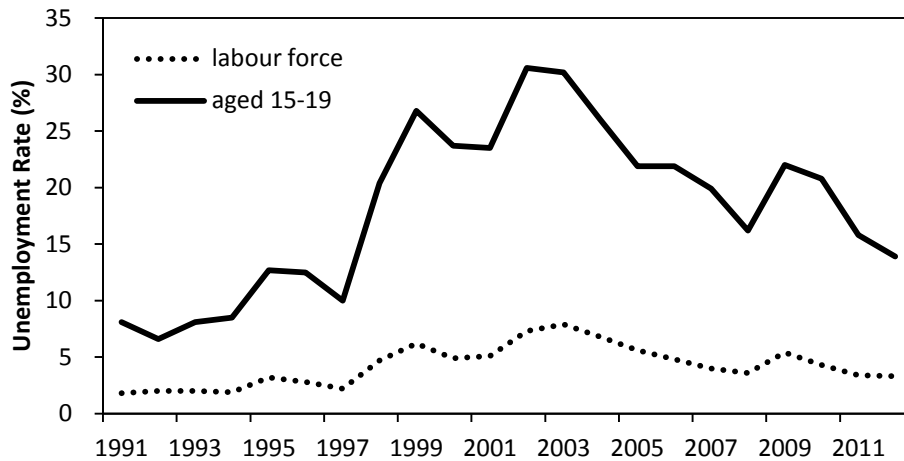


Chart 1

4. On the other hand, older workers are typically stereotyped as resistant to change, lacking in creativity, out-of-date in occupational skills and low in productivity. For jobs where experience is not perceived as essential, the risk of early retirement / layoffs tends to increase with age as employers are increasingly conscious to cost cuts. The unemployment rate for this category of workers may not be revealing the full extent of the problem (see Chart 2) as many workers who fail to find work after some time might simply have given up and been left out in official statistics.

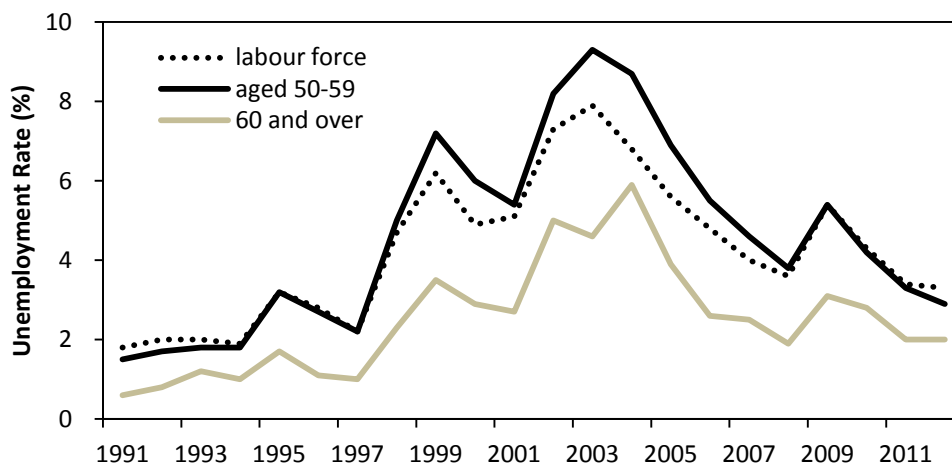


Chart 2

Types of Age Discrimination in Employment

5. Young workers over 18 may have a hard time finding a decent white-collar job because the maximum age for entering some professional occupations is set as low as 30 by employers. After these workers finish obtaining the necessary professional degrees, they may have only a few years, at most, to get into a position without being too old. The upward mobility in these same jobs starts to diminish once the workers

reach the age of 40. A worker who gets a job at age 30 may only work about ten years before his chances of promotion begin to dwindle.

6. In the employment cycle, it has been found that age is an important factor in recruitment processes in such a way that some companies have unofficial upper age limits. In advertisements of vacancies, age is often seen as a barrier for applying when an age interval is specified. Yet other information in the texts of advertisements can also discriminate younger job seekers as specifications of education, demands for qualifications, type of unreasonably lengthy experience, etc. may convey that an older person suits the job for the company than a younger one. While older workers benefit more often from higher wages than do younger workers, they face barriers in promotions and hiring. Employers may also encourage early retirement or layoffs disproportionately more for older or more experienced workers.

Surveys on Age Discrimination in Employment

Age Discrimination Perceived by the General Public

7. The then Education and Manpower Bureau once commissioned a survey on age discrimination in 2001.¹ The findings revealed that around 80% of the employers did not have stated guidelines in their companies to safeguard against age discrimination in recruitment whereas 87% considered that it was acceptable for employers of certain industries to recruit employees of specific age groups.

8. A 2006 international workplace survey by Kelly Services, a global staffing provider, sought the views of approximately 70,000 jobseekers in 28 countries including more than 300 in Hong Kong. It was found that more than a third of Hong Kong's job seekers believed they had been discriminated against in applying for a job. Of the surveyed job seekers, 29% of workers aged 45 or older felt they had been discriminated against on the basis of their age while 22% of younger workers aged up to 24 also believed they were victims of age discrimination.

9. In the last Equal Opportunities Awareness Survey conducted by the EOC in 2012, age discrimination was perceived to be serious by 41% of the respondents. It was found that 6% of the general public claimed that they had experienced discrimination in the preceding year, which tended to relate to age in employment

¹ Opinion survey on the public's views on age discrimination in recruitment, Legco Panel on Manpower, CB(2)1577/01-02(04), 18 April 2002.

(38%). Findings also showed that over 60% of the general public viewed the importance of introducing legislation in relation to age discrimination.

Age Discrimination Perceived by Minorities and Women

10. Survey findings of 805 employees in 2007² showed that the main reason of age discrimination was due to the lower efficiency of older employees, who were mostly discriminated in the recruitment process. Furthermore, blue-collar or elementary workers experienced more severe age discrimination than managers, administrators and professionals. In the light of discrimination on the grounds of disability and race, persons with disabilities and ethnic minority groups (especially local South Asians) will be doubly disadvantaged because they are mostly involved in low paid elementary works³ as well as they have to face undue discrimination at older ages.

11. According to a study undertaken by the Women's Commission in 2010⁴, more women than men indicated age as one of their main hurdles for finding an ideal job. More women (56%) than men (48%) thought that "employers would not like to recruit an applicant of my age".

12. These survey results are clear signs of the growing anxiety among local employees and job seekers that they are increasingly becoming victims of their age, especially for elderly employees. Over the years, there have been calls for legislation against age discrimination but widespread community support for that still seems to be lacking, despite the growing anxiety. One reason may be that age discrimination legislation is perceived as double-bladed: protecting older workers' employment might reduce jobs for the young. In reality, whether this perception holds true depends largely on the characteristics of individual occupations.

² Leung, Kwok; Ip, Olivia (2007). Employee Confidence, Job Satisfaction and Age Discrimination Survey.

³ Census and Statistics Department, HKSAR (2013). 2011 Population Census – Thematic Report: Ethnic Minorities.

⁴ Women's Commission, HKSAR (2010). What do Women and Men in Hong Kong Think about the Status of Women at Home, Work and in Social Environments?

Discussions on Age Discrimination Legislation

13. There have been discussions on age discrimination legislation over the years. In 1995, a working group on age discrimination in employment was set up in the Legislative Council. It examined administrative and legislative provisions relating to age discrimination in Australia and New Zealand which appeared most relevant to the Hong Kong situation.⁵ In the enforcement of the Age Discrimination Act, both places relied on an independent body to administer the implementation by issuing guidelines, investigating complaints and undertaking conciliation. The experiences showed that it was hard to find actual evidences of discrimination as there was often a lack of witnesses or written records.

14. In 1996, the Government published a consultation paper “Equal Opportunities: A Study on Discrimination in Employment on the Ground of Age” in order to solicit public views on the issue. The consultation paper proposed three possible options for comment: (1) The Government will retain the status quo, and take no particular measures other than to monitor the situation closely; (2) To introduce age discrimination legislation; and (3) To adopt a non-legislative approach that involves a combination of public education and self-regulation.⁶ Of the 68 submissions, 25 entities supported age discrimination legislation that should be modeled on its counterparts in Australia and New Zealand, while those opposed the legislative approach considered it prudent to obtain experiences from the operation of the Sex and Disability Discrimination Ordinances before considering any additional equal opportunity legislation.

15. Thereafter, the Labour Department issued a document “Practical Guidelines for Employers on Eliminating Age Discrimination in Employment” in 2006. The guidelines set forth the best practices which employers and employment agencies are encouraged to follow. The key message is that unless age is a genuine job or occupational requirement, consistent selection criteria should not make reference to age.

⁵ Implementation of Legislative Provisions to Deal with Age Discrimination in Employment in New South Wales, Australia, and New Zealand, Research and Library Services Division, Legislative Council Secretariat, March 1996.

⁶ Paper for LegCo Manpower Panel Equal Opportunities: Discrimination in Employment on the Ground of Age. For Discussion on 28 October 1996, CB(1)178/96-97(04).

Demographic Changes and Mitigation Practices

Local Situation

16. Increasing life expectancy⁷ (viz. 80 years for men whereas 86 years for women) and persistently low fertility rate set the clear trend for Hong Kong's demographic change: the community is ageing fairly rapidly. Now, approximately 1 in 5 are at or above the age of 60. In two decades, about 1 in 3 will be in that category.

17. In the private sector in general, our low birth rate, longer education period for the young, coupled with a healthier workforce should in normal circumstances enable the market to work its way to a healthy age balance in the workplace, without the need for legislation. However, rapid globalization in the past two decades has changed the scene fundamentally. Older employees, unless they are at the high end of the job market, are now more easily displaceable in an increasing number of trades.

18. Although there is no mandatory retirement age in Hong Kong, the common practice is that 60 should be the "retirement" age, probably reflecting the age limit set by the Government for civil servants and subvented organizations for their employees. However, extending the retirement age for civil servants / employees of subvented organizations could not help reduce the risk of layoffs for older workers in the private sector whose employment practices are very different from that of the Government.

Overseas Practices

Singapore

19. The Singapore Government recognizes that to ensure continued economic growth it needs to keep older workers in the labour force longer and is taking steps to enhance the employability of older workers. The introduction of Re-employment Legislation in 2012 required companies to re-employ workers up to the age of 65 on terms and conditions agreed between the company and workers.

⁷ United Nations, Department of Economic and Social Affairs, Population Division, World Population Prospects: The 2012 Revision, New York, 2013. [Http://data.un.org/Data.aspx?d=PopDiv&f=variableID%3A68](http://data.un.org/Data.aspx?d=PopDiv&f=variableID%3A68)

Japan

20. The amendment of the Employment Measure Act in 2007 stipulated that firms must provide equal opportunities to workers in relation to recruitment irrespective of age, thereby making a former “duty to endeavor” into a “legal duty”. However, its effectiveness is doubted due to broad exemptions including occupational qualifications, allowance to set age limits in compliance with status, and age limits set in order to maintain typical Japanese employment practices (e.g., recruitment of new graduates).

Taiwan

21. The Employment Service Act of 1992 introduced a key institutional innovation of local employment commissions, which play an integral role in providing legal resources for victims, mediating disputes, raising awareness and are becoming indispensable for the courts in their provision of fact-finding services. Effective from May 2007 onwards, employers might no longer discriminate applicants based on birthplace, age, or sexual orientation. These were additions to the 12 attributes covered under the original “anti-discrimination” rules of the Employment Services Act. In short, employers are prohibited from discriminating against any job applicant or employee on the basis of age.

China

22. In 2008, the government implemented the Employment Promotion Law which provided victims of discrimination with the means to seek legal redress in mainland China. The law clearly states that employment discrimination is within the purview of courts, and that workers are entitled to initiate civil lawsuits when faced with discrimination. However, age discrimination is not covered in the Employment Promotion Law.

United States

23. The Age Discrimination in Employment Act (ADEA) protects employees at 40 and above. The ADEA also addresses the difficulty older workers face in obtaining new employment after being displaced from their jobs. An age limit may be legally specified for jobs where age has been shown to be a “bona fide occupational qualifications reasonably necessary to the normal operation of the particular business” (BFOQs). In practice, BFOQs for age are limited to the obvious (e.g., hiring a young actor to play a young character in a movie) or when public safety is at stake (e.g., age limits for pilots and bus drivers).

United Kingdom

24. It has been unlawful for employers and others under the Equality Act 2010 to discriminate against a person on the basis of age. Unlike in the US, where legislation gives protection to older workers, the UK rules apply to all age groups. Unlawful age discrimination in employment and vocational training happens when someone is treated unfavorably because of their age, without justification, or is harassed or victimized because of their age. Exceptions include genuine occupational requirement, positive action, service-related benefits, etc.

Australia

25. Legislation to prohibit age discrimination was gradually introduced in all Australian states and territories in the 1990s. At national level, the Age Discrimination Act 2004 protects individuals from discrimination on the basis of age in many parts of public life, including employment, education, accommodation and the provision of goods and services. The Australian Human Rights Commission has a particular focus on addressing barriers to equality and participation faced by people of all ages.

Canada

26. There is legislation prohibiting discrimination at both the federal and provincial levels. The Canadian Human Rights Act of 1977 lists a number of prohibited grounds of discrimination, including age. This legislation applies to a range of people including employers and vocational training advisors, and covers direct and indirect discrimination, discrimination because of association, victimization and harassment over the entire employment cycle.

A Summary of Age Discrimination Legislation in Hong Kong and Overseas Countries / Regions

Country / Region	Age Discrimination Legislation	Mandatory Retirement Age (MRA)	Remarks
<i>Asian Societies</i>			
Hong Kong	No	No	The Labour Department published the Practical Guidelines for Employers on Eliminating Age Discrimination in Employment in 2006, which forms a part of the programme of public education, publicity and self-regulation.
Singapore	No	Yes The MRA is 62. Employers are required to offer re-employment to eligible employees up to the age of 65.	Companies are encouraged to sign a Fair Employment Practices Pledge which stipulates the employment of people on the basis of merits.
Japan	Yes The Employment Measure Act (EMA) stipulates that firms must provide equal opportunities to workers in relation to recruitment irrespective of age.	Yes The MRA will move up from 61 in 2013 to 65 in 2025.	The effectiveness of EMA is doubted due to broad exemptions.
Taiwan	Yes Employment Services Act	Yes The MRA is 65.	Employers are prohibited from discriminating against any job applicant or employee on the basis of age.
China	No	Yes (only for government employees, including employees at state-owned enterprises; the MRA is 60 for men and 50-55 for women)	The Employment Promotion Law remains limited to protecting against five types of employment discrimination: gender, ethnicity, disability, individuals with infectious diseases, and rural migrants.

Country / Region	Age Discrimination Legislation	Mandatory Retirement Age (MRA)	Remarks
<i>Western Societies</i>			
United States	Yes The Age Discrimination in Employment Act (ADEA) protects employees at 40 and above.	No However, the Social Security retirement age is 67.	The ADEA also addresses the difficulty older workers face in obtaining new employment after being displaced from their jobs.
United Kingdom	Yes Equality Act 2010	No The state pension benefits age is 65 for men and 60 for women.	Exceptions include genuine occupational requirement, positive action, service-related benefits, etc.
Australia	Yes Age Discrimination Act 2004	No The official retirement age is 65.	It protects individuals from discrimination on the basis of age in many parts of public life, including employment, education, accommodation and the provision of goods and services.
Canada	Yes Canadian Human Rights Act	No The retirement pension age is 65.	The legislation applies to a range of people including employers and vocational training advisors, and covers direct and indirect discrimination, discrimination because of association, victimization and harassment over the entire employment cycle.

Increasing Voices on Calling for Legislation

27. Ageing has been on the political agenda for many governments in the developed world. The main reason for concern, other than health care costs, is the unsustainable budgetary burden, brought about by state pensioners with increasing longevity but supported by a shrinking working population. Moves to extend statutory retirement age and reduce state pension entitlements have proven to be politically hazardous. This scenario is, however, not applicable in Hong Kong. There is no state pension scheme here and the Mandatory Provident Fund (MPF) is supported by employment earnings, with no direct transfer from taxpayers.

28. With the exception of public service workers and a few trades in the private sector (e.g., public transport), Hong Kong's employees are lightly unionized. They have little bargaining power over systemic layoffs, whether due to age or other reasons. Legislative protection therefore seems to be their only resort. On the other hand, if the primary reason for laying off older workers is economic (e.g., competitive cost saving), then using the current EOC model in administering discrimination legislation is not going to be effective in countering such practice because it is time consuming, has no retrospective effect (on employment), and penalties are limited.

29. Age discrimination in employment is more complex than sex, family status, disability or race discrimination. This is because the dividing line is blurred (at what age does a layoff become "discriminatory"?), the incentive is high (long serving employees tend to accumulate higher pay), and the willingness to conciliate would be low (given the high hurdle of proof for complainants, respondents are unlikely to entertain attempts to conciliate). Nevertheless, age discrimination legislation is prevalent among developed nations / regions. It is not clear how effective the legislation have been in discouraging age discrimination. However, the fact that it is so common points to the popular demand, by electorates in democracies, for some form of legislative protection against indiscriminate layoffs. This is probably also true for Hong Kong, in due course if not now.

30. Furthermore, there is the common expectation among human rights activists / groups that EOC's scope of work should be further extended to cover, among other areas, age discrimination. Irrespective of its actual effectiveness, it may be argued that age discrimination legislation would set a moral barrier against indiscriminate layoffs of older workers and also against discriminatory refusal to hire younger workers.

31. In the light of increasing momentum in calling for legislation on age discrimination, the EOC has determined to undertake an exploratory study on age discrimination in employment. The study will provide an overview on age discrimination in the Hong Kong workplace and probe for the feasibility of legislation on age discrimination. It will also solicit views from stakeholders on incentives for older people to be engaged in employment, their preferred modes of employment and employers' concerns about the aged workforce.

32. The EOC encourage proposals provided by research teams having in-depth comprehension and expertise experience in the study of issues about age discrimination, as well as possessing an established networking with relevant stakeholders.

Specific Objectives

33. The study is expected to be a fact-finding exercise with specific objectives as follows:

- (a) To conduct a literature review of local and overseas policies, preventive measures and mitigation practices relating to age discrimination in employment. Overseas policies in Singapore, Japan, Taiwan, United Kingdom and Australia are examined in details.
- (b) To identify what types of age discrimination are encountered by stakeholders and how serious the situation is in Hong Kong. The discriminated groups are targeted at teenagers, early twenties and middle-aged people at 40-60. The occupations may cover elementary works in businesses of building, security and catering, as well as professional works in areas of academia and engineering.
- (c) To identify outcomes how age discrimination impacts employers and employees in the entire employment cycle.
- (d) To evaluate the feasibility of legislating on age discrimination including pros and cons of legislation, areas of coverage, delineation of official / mandatory retirement age, and strategies of stepwise rolling out the legislation.
- (e) To solicit views from stakeholders on incentives for older people to be engaged in employment, their preferred modes of employment and employers' concerns about the aged workforce.

34. Research teams are welcome to cover other specific issues which would facilitate the fact-finding exercise. Such suggestions and related research design should be included in the research proposal and will be counted towards the team's score in the tender assessment exercise.

Research Proposal

35. Research teams who are interested in taking up the survey project are required to submit a proposal to the EOC in accordance with paragraph 36 below. The proposal should include, but not limited to, the following:

- information to be collected to achieve the survey objectives,
- detailed sample design,
- pilot survey to verify testing instruments and procedures,
- process of data collection, including recruitment of respondents, and designing discussion guidelines, etc.,
- quality control measures in both field work and office editing,
- data processing and data analysis,
- precision of results,
- working schedule of the entire project,
- number of interviewers / facilitators and their qualifications,
- qualification and experience of the research team and of the principal investigator, and
- quotation and method of payment.

Specification of Services

36. The researchers are required to specify survey focus, sampling design, design of discussion guidelines, fieldwork and quality control, data processing and data analysis, and final report according to the following conditions:

- *Survey Focus:* Considering the survey objectives, the research team should identify and define the variables, and decide on the types of data to be collected.
- *Sampling Design:* The study may involve the method below. Alternative sampling methods are welcomed when they are deemed appropriate.

Focus Group Discussion Survey: Participants are recruited from: (i) people who have experienced age discrimination in employment; and (ii) the general public to reflect representative views on the feasibility of legislating on age discrimination and related coverage. Furthermore, the participants will be invited to give views on incentives for older people to be engaged in employment, modes of employment and employers' concerns about the aged workforce. Grouping might be based on: (a) working sectors (e.g. elementary workers, professionals); (b) employment status (e.g. employers or employees); and (c) minority groups (e.g. ethnic minorities, persons with disabilities). Other relevant categorization options are welcome for consideration.

The research team has to discuss regularly with EOC staff in developing an appropriate sampling method and designing robust discussion guidelines, which should be approved by the EOC.

- *Fieldwork and Quality Control:*
 - (a) All interviewers / facilitators should have a basic knowledge of equal opportunity issues and be thoroughly trained before they commence.
 - (b) All interviews / focus group discussion sessions should be conducted in a sensitive manner about equal opportunity issues. The EOC will provide additional briefing for the successful bidder.
 - (c) A detailed quality control process needs to be identified.
- *Data Processing and Data Analysis:*
 - (a) All survey data must be processed on computer. Data can be aggregated as composite scores whenever necessary.

- (b) Information on data processing, measurement of variables and the use of statistical analysis should be provided.
- (c) Detailed plans of tabulations and statistical analyses of the survey should be prepared for EOC's consideration.
- *Presentation of Survey Results:*
 - (a) A bilingual [Chinese and English] full report of the survey, including a glossary of definition of terms and technical jargons, should be produced. The format of the report should be agreed by the EOC. The full report should include the following as its contents: research objectives, methodology, findings, discussions, and recommendations and implications.
 - (b) A validated and clean data file in a mutually agreed format on computer diskettes should be submitted to the EOC.
 - (c) An oral presentation of the research results to the EOC should be made plus the attendance at a media briefing, if so requested by the EOC.
- *Timing:* It is expected that the project will be completed within a timeframe of 12 months.
- *Copyright:* Copyright of the survey report, data collected and information derived from the survey shall remain the property of the EOC.
- *Budget:* All expenditure items should be grouped under appropriate categories and justifications must be given to support purchase of equipment items.
- *Evaluation:* Survey progress is subject to monitoring by the EOC. It is imperative to submit progress reports and/or present results orally as means of process evaluation.

Submission of Proposal

37. It is noteworthy that the exploratory study is of a small scale, with well-defined scope and sufficient references for information. Cost and quality of the project will be considered concurrently.

38. One original and one duplicate copy of the proposal in bilingual (English and Chinese) setting should be submitted by hand or courier to the EOC Office on or before 28 April 2014. The envelope should be marked with the project title and “Attention: Miss Lau”. The research team, that has submitted a proposal, may be required to give an oral presentation to members of the EOC.

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