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Nadpis článku: Occupational health and safety (OHS) and risk factors of workers over 50 years old - the participation of older citizens in the labour market and proposals for measures in the industrial and commercial sectors – part 5

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Fifth part of article about results from project Occupational health and safety and risk factors of workers over 50 years old - the participation of older citizens in the labor market and proposals for measures in the industrial and commercial sectors is focused on age, discrimination and legal aspects.

BEZPEČNOST A OCHRANA ZDRAVÍ PŘI PRÁCI (BOZP) A RIZIKOVÉ FAKTORY PRACOVNÍKŮ NAD 50 LET - UPLATNĚNÍ STARŠÍCH OSOB V PRACOVNÍM PROCESU S NÁVRHY NA OPATŘENÍ NA ÚROVNI ODVĚTVÍ A PODNIKU - 5. ČÁST

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Abstract

Fifth part of article about results from project Occupational health and safety and risk factors of workers over 50 years old - the participation of older citizens in the labor market and proposals for measures in the industrial and commercial sectors is focused on age, discrimination and legal aspects.

Keywords: elderly worker, employers over 50 years, quality of working life, working conditions, safety and health at work, risk prevention, labor market, age, legislation, projects, results, Occupational Safety Research Institute

Abstrakt

Pátý díl článku ze série přinášející informace o výsledcích projektu "BOZP a rizikové faktory pracovníků nad 50 let – uplatnění starších osob v pracovním procesu s návrhy na opatření na úrovni odvětví a podniku" je zaměřen na otázku věku zaměstnanců, diskriminaci a na právní aspekty.

Klíčová slova: starší pracovníci, zaměstnanci ve věku 50+, kvalita pracovního života, pracovní podmínky, trh práce, bezpečnost a ochrana zdraví, prevence rizik, pracovní trh, projekty, výsledky, VÚBP

"The increase of economic activity and employment is a key strategy for resolving the economic challenges connected with an ageing population. The problem of an ageing population is not so much an impact on the economy as is the population's interaction with the labour market and the nature of the pension system. Ageing and the correlating drop in the work force can be compensated to a considerable degree by an increase in employment. The economic impact of an ageing population will be dependent to a considerable degree on how we utilize our gains in extending the length of life."

(From the National Programme of Preparation for Ageing for 2008 – 2012)

The quoted extract has declared the necessity of taking complex steps toward increasing employment among older people, toward extending working life and lowering unemployment among older people. The transition from economic activity to inactivity should be more flexible. When retiring, a person should not have to face just two options – those being between a complete absence from the labour market and completely remaining in the labour market.

A balance between the needs of employers and the needs of older employees and equal treatment of older employees in the labour market will not be achieved by a declaration of the solutions to the problem. The programme cannot be fulfilled without a corresponding legal modification of the labour-law relations and other related branches of law that must not include both, positive or negative discriminating norms. Such a balance is not achieved by case-related legal norms, rigidly modifying the status of an older employee within the labour-law relations or other legal relations, as the case may be.

The modification should be based on the principle that:

the main criteria for an older employee's work competence is not their age, but rather their ability to work.

The application of such a principle is only possible in the environment of equal treatment. A legal modification for equal treatment with respect to age is missing in the labour-law relations. The modification of the previous Labour Code came about by the cancellation of the Labour Code from 1965. The new Labour Code refers to a non-existing legal regulation – the Anti-Discrimination Law.

Equal treatment is included in the Employment Act and employers are obliged to comply with it even before creating a labour-law relation.

The treatment of older people in respect to their employment can show the following differences in particular:

- setting specific terms for accessing employment and specialized education and training for employment including terms of dismissal,
- specification of a maximum age to be accepted for a job based on requirements for the particular job position, requirements for professional training or based on the adequate length of employment before retiring.

The current Labour Code, with the exception of reimbursement for work injury or work related illness, does not include any reference to old age. The duration of a

labour-law relation is not restricted by the reaching of a certain age limit.

Continuance in present employment

An employee that has been employed at the same employer for a longer period of time has a chance at continuing in this employment to old age and even into their retirement age. Some reasons for terminating employment by the employer can be those signs that accompany old age, mainly:

- worsening of health conditions to a level that does not allow the employee to work,
- lowering physical and intellectual work performance resulting in unsatisfying work results.

If an employee does not decide his/herself to give notice, then the employer can do so only on the basis of legal reasons that apply to all employees without respect to age.

Employment in old age

It is entirely up to an employer which job applicant they accept. They focus their choice on the applicant's qualification or specific abilities or the necessary requirements they have. During this recruiting phase the employer is bound by the modification in the Employment Act banning any form of direct or indirect discrimination (because of age among others) towards a person applying their right to get employed.

Reality, however, is different. A job applicant of old age will never be rejected by an employer explicitly because of their age but the employer will surely find a different reason for refusing the applicant. **It is usually very difficult to prove age discrimination carried out by the potential employer.**

Flexible forms of work

Employment in jobs with flexible forms of work is a convenient opportunity for older employees. The chosen form of work can be "tailor-made" to the employee's interests, health, transportation needs, etc.

Old-age retirement and concurrent employment

An employee who has reached retirement age and is applying for retirement while still working has to fulfil the stipulation that the employment has to be temporary and defined for 1 year (in effect to December 31, 2009). Such an employee has to then terminate their current employment and start another – temporary – employment.

In conclusion

In theory any employee of old age is free to be employed till an age at which they are objectively and subjectively capable of working. Valid labour-law regulations enable it.

Reality, however, is such that more than a third of the unemployed are people over 50 years old; 10% of people, before they retire, have some experience with unemployment. Retirement is considered to be the best protection against unemployment or second-rate status at work. Older employees are often the first to be dismissed, even though research shows they have a more responsible attitude to work, can deal with company problems better, work with greater commitment and are less loaded with family problems.

Vzorová citace

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