The Prohibition of Age Discrimination in Labour Relations

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1. Which Statutory Instruments Addressing Age Discrimination have been enacted in your Country? If none, what Alternative Means of Protection are available?

Since 1 May 2004 the prohibition on age discrimination is regulated in the Dutch Equal Treatment in Employment Age Discrimination Act (Wet Gelijke Behandeling op grond van Leeftijd bij Arbeid) (WGBL). By means of this law the European Council Directive 2000/78/EC was implemented, insofar as this had not already been done by means of the Dutch Equal Treatment Act.

   The introduction of the Dutch Equal Treatment Act (Algemene Wet Gelijke Behandeling (hereinafter: AWGB)) in September 1994 was meant to ‘promote participation in a number of areas which are of great importance for the possibility of the individual to participate in public life, or at any rate to take away impediments caused by discriminatory actions’. The Dutch Equal Treatment Act lists eight grounds of discrimination, but it does not contain a prohibition on age discrimination.

2. Which Age Groups are protected?

Both young and old people. Not a specific age group.

3. Are there Rules of Preference connected to Age in Labour Relations?

No, not specific connected to the factor age.

   In the AWGB e.g. positive action policies are explicitly permitted when they concern women or persons belonging to a certain ethnic or cultural minority (Section 2, paragraph 3 AWGB). As a consequence, an employer is, in principle, allowed to strive for equal representation of females or people from ethnic minority groups in the organisation.
4. Is Age Discrimination prohibited in Active Labour Relationships only, or are Situations outside the Contractual Relationship, like Occupational Pension Schemes, included?

The WGBL pertains only to – contrary to the Dutch Equal Treatment Act – prohibited discrimination in labour situations, however in the broadest sense of the word. Although the Dutch legislature has discussed extending the prohibition on age discrimination to other areas, the WGBL is limited to the area of labour. The Minister of Social Affairs and Employment explained this decision by pointing out that age is a special ground of discrimination, which cannot be earmarked in advance as a suspicious criterion for making a distinction, contrary to, for instance, the grounds of discrimination of race and gender. After all, people do age, and making a distinction on the grounds of age can therefore be justified more easily. Extending the WGBL to other areas would make the possible exceptions to the prohibition on discrimination too complicated. For that reason, it was decided to first gain experience in the field of labour.

Section 3-6 of the WGBL stipulates the aforesaid:

Section 3 Employment
It shall be unlawful to discriminate (on age) with regard to:

a) the recruitment, selection and appointment of personnel;
b) job placement;
c) entering into or terminating an employment relationship;
d) the appointment and dismissal of public servants;
e) conditions of employment;
f) education and training during or prior to an employment relationship;
g) promotion;
h) working conditions.

Section 4 The liberal professions
It shall be unlawful to discriminate with regard to the conditions for and admission to the liberal professions, and to the opportunities to practise such professions or develop professional skills within them.

Section 5 Vocational training
It shall be unlawful to discriminate with regard to:

a) access to and provision of careers advice and vocational guidance;
b) access to and provision of training directed at entering and functioning on the labour market and the holding of tests in connection with and completion of such training.

Section 6 Membership of organizations
It shall be unlawful to discriminate with regard to membership of or involvement in an employers’ organization or trade union, or a professional or occupational association. This shall also apply to the benefits which arise from membership of such organizations and associations.

For clarity: it is generally accepted that the WGBL has effect in virtually every area of labour.
5. **What Type of Contractual Relationship is covered by Age Discrimination Provisions? (Labour Relations only or also Self-employed Persons?)**

Besides the labour relation in the broadest sense of the word, also self-employed persons are covered by age discrimination provisions.

Section 4 *The liberal professions*

It shall be unlawful to discriminate with regard to the conditions for and admission to the liberal professions, and to the opportunities to practice such professions or develop professional skills within them.

6. **What Types of Discrimination are prohibited (direct, indirect)? How are they defined?**

Both direct and indirect. Just like the Council Directive 2000/78/EC, the Dutch equal treatment legislation distinguishes between direct and indirect distinction. In case of age discrimination, both direct and indirect distinctions can be justified objectively. This is contrary to discrimination on other grounds where only indirect distinction can be justified objectively.

**Direct Distinction**

When the age criterion can be qualified as the direct reason for a distinction which has been made, it constitutes direct distinction on the grounds of age. An example of this is when age-dependent employment conditions are granted, such as extra vacation days for the aged employee. Another example concerns the age limits frequently applied in job advertisements.

**Indirect Distinction**

If the distinction appears to be neutral but actually favors or disfavors persons belonging to one or more age groups when compared to persons belonging to one or more other age groups, this constitutes indirect distinction on the grounds of age. An example of this is a job advertisement for a student or school leaver. Students or school leavers are usually between 18 and 28 years old. Other age groups will not be considered or least not as quickly, and are therefore placed at a disadvantage.

In the field of employment, indirect distinction on the grounds of age specifically occurs by applying the criterion of length of service when granting secondary elements of remuneration. If, for instance, being granted extra vacation days depends on the length of service, this will mostly benefit the older employees. The length of employment of an older employee is often greater than the length of employment of his younger colleague.

In the event of dismissals due to economic reasons, the employee also benefits from a long length of service. Before March 2006 the so-called ‘last-in-first-out’ principle used to be applied in these kind of dismissals. It was used in order to determine the selection for redundancy upon a collective dismissal. The employees employment for the shortest period were dismissed first. The justification for this approach was the thought that the younger employees had a greater chance of finding a new position elsewhere. An objection against the ‘last-in-first-out’ principle was that after such a collective dismissal mainly older staff remained. Therefore the ‘last-in-first-out’ principle was replaced by the so-called principle of ‘proportionality’. According to this principle the redundancies are allocated per position among five age groups(15 -25 years, 25-35 years, 35-45 years, 45-55 years and from 55+).
Each age group will bear a proportional part of the dismissals due to economic reasons. Because of this method a greater diversity of ages will exist within the company after the dismissal.

Upon granting a severance payment in dissolution proceedings, the aspect of age and the number of years in service play both a part. The severance pay is calculated in accordance with a fixed formula, the so-called Cantonal court formula (Kantonrechtersformule). According to this formula, the salary is multiplied by the number of years in service. Moreover the years of service are weighted. The years of service until the age of 35 count as 0.5, the years of service from the age of 35 until 45 count as 1, the years of service from the age of 45 until 55 count as 1.5 and the years of service from the age of 55 and older count as 2. By weighting the years of service, the more difficult position of the older employee on the labour market is taken into account. The outcome of the multiplication of the salary by the number of weighted years of service will be corrected by multiplication by means of an adjustment factor (correctiefactor). The culpability of the employer or the employee with regard to the termination of the employment agreement is expressed in this multiplication. If neither party can be blamed for the situation, the adjustment factor will be neutral (i.e. 1).

7. Does a Prohibition against Harassment based on Age exist?

Yes, it has been laid down in Paragraph 1, Section 2 WGBL

*Harassment*

1. The prohibition on discrimination laid down in this Act shall also include a prohibition on harassment.
2. Harassment as referred to in the preceding subsection means conduct related to age that has the purpose or effect of violating the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment.

8. Are there Exemptions from the Prohibition? How are those Exemptions defined? Are they provided for solely in Statutory Provisions or are Social Partners, Employers, or other Entities allowed to develop additional ones?

Yes the exemption in the sense that the WGBL does not apply to admission ages as determined and laid down in pension schemes, nor to the determination of different admission ages and pensionable ages for employees or groups or categories of employees. The WGBL is also not applicable to actuarial calculations for pension schemes whereby age is taken into account.

Further, positive discrimination has been exempted by the WGBL from the prohibition on distinction on the grounds of age, provided that the positive distinction is laid down by law and is based on employment or labour market policy for the purpose of promoting labour force participation of certain age categories. An example is the Dutch legislative bill ‘Investing in Young People’. This bill pertains to the labour force participation of youngsters. This bill creates an obligation for municipalities to make an offer to young people between the age of 18 and 27 if they are unemployed or studying. The offer is aimed at entering the labour market and therefore consists of work or schooling, or a combination of both.
9. Are there Specific Grounds justifying Age Discrimination? Do General Grounds of Justification apply to Age Discrimination?

Yes, there are both general and specific grounds of justification age discrimination (see section 7 WGBL).

The Council Directive 2000/78/EC states that `differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

As stated, the aforementioned objective justification test has been included in the WGBL in:

Section 7 Exceptions to the prohibition on discrimination (Objective justification)
1. The prohibition on discrimination shall not apply if the discrimination:
   a) is based on employment or labour-market policies to promote employment in certain age categories, provided such policies are laid down by or pursuant to an Act of Parliament;
   b) relates to the termination of an employment relationship because the person concerned has reached pensionable age under the General Old Age Pensions Act (AOW), or a more advanced age laid down by or pursuant to an Act of Parliament or agreed between the parties;
   c) is otherwise objectively justified by a legitimate aim and the means used to achieve that aim are appropriate and necessary.
2. The preceding subsection shall not apply to cases of harassment as referred to in section 2.

Ad b)
The prohibition on distinction on the grounds of age is not applicable to dismissal on the grounds of reaching the pensionable age of 65. The legitimate purpose of ending the employment relationship upon reaching pensionable age is that it is effectuated that, without fear of favor, an objective criterion is provided which is applicable to the entire working population, whereby it no longer needs to be assessed if the employee is still able to perform. The age of 65 has broad public backing and also connects to the system of social security; there is also a replacement income. It is also discussed in the parliament. The discussion lead to the conclusion that the question whether the method is appropriate and necessary can be answered affirmatively (see Parliamentary publications: Parliamentary Papers 1 2003/04. 28 170, No. c.). Also the Dutch Supreme Court concluded as above said in Hoge Raad 1 November 2002, NJ 2002/622.
10. **What Legal Consequences derive from violating Age Discrimination Law? Who is entitled to bring a Cause of Action under the Discrimination Law?**

**Legal consequence:**

Section 13 *Invalidity*

Conditions that are in breach of this Act shall be invalid.

**Who is entitled to bring a cause of action?**

Section 12 of the AWGB specifies that complaints can come from

- individuals; or
- organisations that act on behalf of individuals; or
- work councils; or
- representative bodies.

In addition section 12 specifies that certain organisations, which campaign against Discrimination, can ask the Equal Treatment Committee (for further explanation on the Equal Treatment Committee see question 12) to investigate cases of alleged discrimination (class actions). The AWGB thus provides for an association or foundation to take legal action to protect the interest of other persons, as far as these interests are in accordance with the association’s constitution or statutes. The possibility of bringing a class action is extremely important because victims of discrimination are often reluctant to take other forms of action, out of fear that this may lead to a deterioration of their (working) conditions. A class action can help to restore the unequal balance of power between the parties involved in cases of unequal treatment.

Moreover, everyone who is responsible for taking decisions on matters of discrimination, including judges, can submit a request to the Equal Treatment Committee in order to get an expert judgment.

11. **With whom lies the Burden of Proof in Discrimination Cases?**

Section 12 *WGBL Burden of proof*

1. If a person who considers that he has been wronged through discrimination as referred to in this Act establishes before a court facts from which it may be presumed that discrimination has taken place, it shall be for the respondent to prove that the action in question was not in breach of this Act.

2. Subsection 1 shall apply mutatis mutandis to legal actions as referred to in article 305a of Book 3 of the Civil Code and to appeals instituted by interested parties within the meaning of section 1:2, subsection 3 of the General Administrative Law Act.

12. **What Types of Proceedings are applicable for enforcing Age Discrimination Provisions? (Civil, Criminal, or Administrative Proceedings)**

In addition to implementing the principle of equal treatment and prohibition on discrimination as laid down in the Constitution and International Treaties, the Dutch Equal Treatment Act (AGWB) also established an enforcement committee in 1994. This so-called *Equal Treatment Committee* (CGB) may investigate and judge, either at its own initiative or at the request of a party concerned (at no charge), whether a distinction exists. Representation by a lawyer is not
required. In addition to natural persons, legal entities also may request the Equal Treatment Committee to give a judgment, for instance parties to a collective bargaining agreement or employers who wish to know if they are guilty of making an unjustified distinction by applying a certain arrangement. Under the WGBL, the Equal Treatment Committee also may be asked for its judgment with regard to the prohibition on distinction on the grounds of age. One-third of the judgments given by the Equal Treatment Committee concern age discrimination. The Equal Treatment Committee can only examine for compatibility with the equal treatment legislation. The judgments given by the Equal Treatment Committee are not legally binding. However, in practice, the judgments of the Equal Treatment Committee are usually adhered to. A Court on the other hand may also take into account the requirements of reasonableness and fairness and the general principles of proper administration. Should the Court deviate from the judgment of the Equal Treatment Committee, this must be supported by reasons.

The Court can attach several different legal consequences to the decision that an arrangement or behaviour was contrary to the WGBL. Termination of an employment agreement in violation of the WGBL is voidable. If the voidability is awarded, the employment must be continued. The employer who does not accept the offer to resume work may be faced with a claim for continued payment of wages and a claim for reinstatement. Provisions in breach of the WGBL are void.

13. Is a Government Agency responsible for enforcing Age Discrimination Provisions? What Competences are assigned to that Agency?

As stated before (under 12), this is the Dutch Equal Treatment Committee. The Dutch Equal Treatment Committee is an independent organization that was established in 1994 by the Dutch government to promote and monitor compliance with this legislation. The Committee receives a request for an opinion about alleged differentiation, it investigates whether the equal treatment law has been violated. In some respects, the CGB is similar to a court. An important difference is that the CGB searches for information itself. Other differences are that filing a petition is free of charge and that people do not need a lawyer.

Furthermore, the CGB does not necessarily need to receive a petition in order to investigate whether the equal treatment law has been violated. It also conducts so-called ‘investigation on its own initiative’. In the course of time, the CGB has acquired a great deal of knowledge. Therefore, it regularly gives advice to among others the government about issues regarding equal treatment.

14. Are Unions, Interest Groups or Non-governmental Organizations provided the Right to bring Suit to enforce Age Discrimination Provisions?

As stated before, section 12 of the AWGB specifies that complaints can come from

- individuals; or
- organisations that act on behalf of individuals; or
- work councils; or
- representative bodies.

In addition section 12 specifies that certain organisations, which campaign against discrimination can ask the Commission to investigate cases of alleged discrimination (class actions). The AWGB thus provides for an association or foundation to take legal action to protect the interest of other persons, as far as these interests are in accordance with the
association’s constitution or statutes. The trade unions promote and represent the interests of the employees. They attempt to identify and remedy any form of unequal treatment, not only in the event of collective bargaining negotiations, but also for instance in the event of mergers and acquisitions.

One of the tasks of the trade unions regarding unequal treatment on the grounds of age, is illustrated by their involvement in reorganizations. Reorganizations can lead to collective dismissals. Under the Dutch Collective Redundancy Notification Act (Wet Melding Collectief Ontslag) the employer must notify - supported by reasons - the trade unions of an intent to terminate the employment contracts of at least twenty employees before requesting dismissal permits at UWV Werkbedrijf. The purpose thereof is timely consultation and negotiations with the trade unions. After negotiations the conditions for re-employment, dismissal, and discharge is laid down in a redundancy plan. In such a redundancy plan special arrangements can be included with regard to older employees. Often a distinction is made with regard to the financial concessions to which the older employees are entitled, compared to the younger employees. Until 2007, the Equal Treatment Committee and the Court applied a strict assessment, as a result of which these older workers’ arrangements would quickly constitute a prohibited distinction on the grounds of age. However, the Equal Treatment Committee has become less strict because of the following reasons:

- The weak position of the older employee on the labour market is accepted as a legitimate purpose for an older workers' arrangement in a redundancy plan.
- For the older workers' arrangement to be appropriate, it is important that the chosen age limit can be based on the supposed labour market position of the older employees threatened by dismissal.
- Consequently, the older workers' arrangement should have more than a financial purpose only. The fact that parties to a collective bargaining agreement have given their consent to the age limit as set by the employer. is reason for the Equal Treatment Committee to be restrictive in carrying out their assessment. As a result of the consent of the parties to a collective bargaining agreement, it can be assumed that the interests of the employees have been taken into account and that the solution which has been found can be considered as adequate.
- If the employer can proof that he has developed within his company a broad and good policy regarding the employability of employees in various age groups (so-called Levensfase bewust personeelsbeleid).

15. Effects of prohibiting Age Discrimination on the Recruitment Process (Exemplary Headings for Orientation Purposes)

- formulation of employment offers/ advertisements;
- application files;
- job interviews;
- guidelines for selection;
- notice of refusal.

When making a distinction on the grounds of age in the event of a job vacancy, the reason for making this distinction must be given. This motivation requirement is supposed to result in a restricted use of distinction on the grounds of age in the event of vacancies.

However, stating the reason for making the distinction does not automatically mean that the distinction is justified. Applying the objective justification test should therefore be seen as separate from the aforementioned statutory requirement. This also entails that the reason for
making the distinction should be mentioned even if the prohibition of distinction is not applicable. An example of this is the vacancy policy of the organization called UWV Werkbedrijf. In the Netherlands, UWV Werkbedrijf is actively involved in the labour force participation of unemployed people. For that purpose they act as intermediaries – as do temporary employment agencies – between employers and potential employees. Moreover, they have access to an extensive nation-wide vacancy database. From time to time, UWV Werkbedrijf will state an age limit in job advertisements, as a result of which certain age categories are given priority. This kind of distinction on the grounds of age is not governed by the prohibition of distinction. For the prohibition is not applicable in the event of employment policy or labour market policy for the purpose of promoting labour force participation of certain age categories.

The job applicant who is refused because of his age does not have any possibilities available to him to force an entry into employment after all. In the Netherlands, total freedom of contractions is recognized, as a result of which no party can be forced to enter into an agreement. However, the job applicant may sue for damages due to the discriminatory act of the employer. He will need to provide evidence of the damage he has incurred.

16. **Effects of prohibiting Age Discrimination on Working Conditions (Exemplary Heading for Orientation Purposes)**

- composition of remuneration, partly depending on age or length of service;
- seniority – related bonus payments;
- length of vacation, depending on age;
- privilege to demand shorter working hours, depending on age;
- maintenance of contractual remuneration despite job transfer due to age-related diminishing capabilities;
- further education on the job available;
- the development of a broad and good policy regarding the employability of employees in various age groups (*levensfase bewust personeelsbeleid*).

17. **Effects of prohibiting Age Discrimination on Termination of Employment (Exemplary Headings for Orientation Purposes)**

- dismissal protection due to old age or length of service;
- age-dependent loss of capability as a valid reason for dismissal;
- age-dependent composition of compensation for termination of employment contracts;
- age-dependent justification for concluding fix-term contracts.

**Statutory Notice Period**

With regard to the termination of an employment agreement, the employer must observe a statutory notice period. As the length of service of the employee increases, the notice period also increases from one month to at most five months. Older employees will therefore often enjoy more protection due to their length of service.

**Dismissals due to Economic Reasons**

In the event of dismissals due to economic reasons, the employee also benefits from a long length of service. The last-in-first-out principle used to be applied in order to determine the selection for redundancy upon a collective dismissal. Those employees with the shortest
employment contract were dismissed first. The justification for this approach was that many young employees had a short length of service and that a dismissal had less impact on them than it would have on older employees with a longer length of service. The younger employees had a greater chance of finding a new position elsewhere. One of the objections against the last-in-first-out principle was that after a collective dismissal, mainly older staff remained. For that reason, as of 1 March 2006, the last-in-first-out principle was replaced with the principle of proportionality (afspiegelingsbeginsel). Since then, the forced redundancies are allocated per position among five age groups, from 15 to 25 years, from 25 to 35 years, from 35 to 45 years, from 45 to 55 years and from 55 years and older. Each age group will bear a proportional part of the dismissals due to economic reasons. Incidentally, within each age group, the last-in-first-out principle is once again applied. As the forced redundancies are carried per position by the entire personnel, a greater diversity of ages is left behind within the company after the dismissal.

Severance Payment

Upon granting a possible severance pay in dissolution proceedings, the aspect of age also plays a part. The severance pay is calculated in accordance with a fixed formula, the so-called Cantonal court formula (recently changed in January 2009). According to this formula, the salary is multiplied by the number of years in service, by means of which loyal service is rewarded. The years of service are weighted. The years of service until the age of 35 count as 0.5, the years of service from the age of 35 until 45 count as 1, the years of service from the age of 45 until 55 count as 1.5 and the years of service from the age of 55 and older count as 2. By weighting the years of service, the more difficult position of the older employee on the labour market is taken into account. The outcome of the multiplication of the salary by the number of weighted years of service will be corrected by multiplication by means of an adjustment factor. The culpability of the employer or the employee with regard to the termination of the employment agreement is expressed in this multiplication. If neither party can be blamed predominantly, the adjustment factor will be neutral, therefore: 1.

Redundancy Schemes

Redundancy schemes which are agreed upon between the employer and the employee cannot have the same characteristics as those of an early retirement scheme. An early retirement scheme exists when the reason for dismissal is not the disfunctioning of an employee, or that jobs are lost, but it is motivated by the intent to have older employees retire early. The Dutch legislature wants employees to work up to their pensionable age. If the employer accommodates the early retirement of older employees and subsequently compensates their loss of income until their pensionable age, many older employees will not return to the labour market. In order to prevent this, a penalty may be levied by the tax authorities regarding the early retirement scheme. The employer is liable for a penalty of 26% on the agreed severance pay.

Dismissal on the Grounds of reaching a certain Age

In Dutch case-law, only a few examples are known in which the dismissal on the grounds of reaching a certain age – lower than the pensionable age – was upheld. Dismissal of a fireman upon reaching the age of 55 was justified objectively because of the physical and mental requirements of the work of a fireman. The protection of the employee and third parties was – according to the Court – a legitimate purpose with regard to functional dismissal on the
grounds of age. Moreover, applying a fixed age limit was practical and necessary in order to prevent any discussions regarding individual suitability at a later age. The dismissal of pilots due to reaching the dismissal age of 56 as included in the collective employment agreement, could be justified objectively according to the Dutch Supreme Court. The early dismissal was to allow pilots to move forward in their careers. The planning of pilot careers – starting with their training and ending with early retirement – was based on the knowledge that it would thus be possible for all pilots to reach the highest level before their early retirement. This was judged to be a legitimate purpose by the Supreme Court. Moreover, by applying a fixed age limit, security was also provided regarding the latest date on which the employment contract would end. There was no alternative for this regular and predictable moving forward of the employees. For that reason, this method was judged to be appropriate and necessary.

18. **Is there a Mandatory Retirement Age set by Law? Are Social Partners competent to set (or alter) Age Limits for Retirement? If so, which Age Limits are admissible and which Grounds of Justification are acknowledged for imposing a Mandatory Retirement Age?**

*Pensionable Age of 65 (will become 67!)*

There will seldom be an objective justification for dismissal on the grounds of reaching a certain age, with the exception of reaching pensionable age. A dismissal permit which is requested when reaching the pensionable age will be granted, provided that the application thereto is submitted before or on the day that the employee reaches the pensionable age. Likewise, an application for dissolution will nearly always be granted if it is based on reaching pensionable age. No compensation will be granted in such a case, unless the employer has acted in a culpable way. The prohibition on distinction on the grounds of age is not applicable to dismissal on the grounds of reaching the pensionable age of 65 (in 2020: 66, in 2025: 67). The legitimate purpose of ending the employment relationship upon reaching pensionable age is: *that it is effectuated that, without fear of favour, an objective criterion is provided which is applicable to the entire working population, whereby it no longer needs to be assessed if the employee is still able to perform.* The age of 65 has broad public backing and also connects to the system of social security; there is also a replacement income. As a result, the questions whether the method is appropriate and necessary can be answered affirmatively.

Aside from the aforementioned substantiation of the legitimate purpose for the dismissal upon reaching pensionable age, it is also important that by applying a fixed age limit, it is effectuated that employees are able to move forward on the labour market in a regular way. Any position which becomes vacant due to an employee reaching the pensionable age can thus be filled by a younger employee.

It is possible to make arrangements either by law or in a collective bargaining agreement or an individual employment agreement with regard to the continuation of the employment relationship after having reached the age of 65. Such arrangements are also not governed by the prohibition on distinction on the grounds of age.

The discussion has been going as to whether the pensionable age should be raised to 67. In October 2009 the government had decided to fix the pensionable age at 67. The legislation still needs to be drafted. The intention is that in 2020 the pensionable age will be 66 and in 2025 67.
19. **Are there Incentives to induce Older Employees to leave even before they reach the Mandatory Retirement Age?**

Yes, flexible pension schemes. For instance the civil servants of municipalities have the possibility to apply for a flexible pension at the age of 62.9 years.

20. **Please mention any Additional Topics Characteristic to the Anti-discrimination Legislation in your Country**

The WGBL explicitly states – following on from Article 11 of Council Directive 2000/78/EC – that it is forbidden 'to place persons at a disadvantage due to the fact that they have invoked this law judicially or extra judicially or provided assistance thereto'. The wording of this provision prevents people from refraining from acting against unjustified distinction for fear of possible disadvantageous consequences. This is all the more valid for persons who are only indirectly involved in a specific situation, for instance a colleague who does not dare to act as witness for the benefit of an employee who is discriminated against. Pursuant to this provision, he is also protected under the WGBL. A possible termination of the employment relationship by the employer due to the fact that provisions of the WGBL have been invoked, or that assistance has been given in the event of such invoking, is voidable.
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