

Information Paper for the LegCo Panel on Manpower

Impact Assessment of Legislation against Age Discrimination in Recruitment

Purpose

This paper sets out the possible impact on the economy and the anticipated enforcement difficulties if legislation against age discrimination in recruitment was introduced.

Background

2. The Education and Manpower Bureau (EMB) commissioned an opinion survey in December 2001 to gauge the public's views on age discrimination in recruitment. The survey findings showed, among other things, that respondents considered the most effective way to deal with age discrimination was promotion through basic education. As to the effectiveness of legislation, respondents views were mixed. Findings of the survey were presented to Members of the Manpower Panel on 18 April 2002. EMB was then requested to provide an information paper setting out possible impact of legislation against age discrimination in recruitment on the economy and the difficulties of enforcing the legislation.

Legislation against Age Discrimination in Recruitment

Possible impact on the economy

3. Given the variety of jobs that may genuinely require employing workers of a specific age range, imposing legislation against age discrimination would tend to introduce rigidities on recruitment. To avoid being held vicariously liable for breaches of the law, businesses may have to maintain comprehensive record of all recruitment exercises.

They may also have to process and interview more applicants to comply with the requirement under the law. This could increase business cost. Such legislation would hinder the free play of market forces, and impose rigidities on employers' operations and so constitute a disincentive for business investment in Hong Kong. On a broader front, such legislation would affect the ability of the economy and the labour market within it to respond to externally induced fluctuations and as such could tend to hamper its growth potential over the longer term.

Enforcement Difficulties

4. In enforcing age discrimination legislation, the main difficulty would be to prove that the key reason a person did not manage to get a particular job is due to age. There are many factors which an employer could deploy to justify his/her action and the enforcement agent would need to prove otherwise.

5. Enforcement of legislation against age discrimination is also more difficult than the enforcement of anti-sex and disability discrimination. This is because for other anti-discrimination legislation the enforcement agency could compare the treatment between two very distinct groups, for instance, in the case of disability discrimination, a disabled person who claimed discrimination could compare the treatment he/she has received as against the treatment to that of a person without a disability. For age discrimination, the comparisons would be more complex, it would be very difficult to draw a line for meaningful comparison. Should we compare the treatment of a 50 year old job applicant to those under 50 or compare him/her with the treatment of those under 30? Furthermore, age discrimination could work against both the older age group or younger age group, an employer could be caught either way. Employers would not be certain whether they were complying with the law or not unless the law could clearly define the age group that the community wishes to protect. Therefore, there are good reasons why a high percentage of respondents considered legislation ineffective in combating age discrimination.

Conclusion

6. Given the foregoing, we are of the view that legislating on age discrimination is not the best way to address the problem. We firmly believe that to combat age discrimination, it is important to nurture the culture of respect and equality. To this end, we will continue our efforts in public education to foster changes in attitude.

Education and Manpower Bureau
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