

# OCCUPATIONAL HEALTH AND SAFETY AND OLDER WORKERS: NEED FOR A SPECIAL LEGAL FRAMEWORK?

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- ▶ **1 - Historical framework of Occupational health and safety Law**
- ▶ **2 – The recognition of special categories of people to be protected**
- ▶ **3- The need for a special legal framework on older workers**
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# HISTORICAL FRAMEWORK OF OCCUPATIONAL HEALTH AND SAFETY LAW

- Origin of Labour Law
- International Labour Organization (ILO)
- European Union Legislation – before the Framework Directive (Directive nr. 89/391/CEE) and after the Framework Directive
  - ▶ minimum standards
  - ▶ universality
  - ▶ harmonization of national legislation.



principle of subsidiarity

- Specific Directives:

workplace, working equipments, individual protection equipments, specific risks, specific activities, and specific groups of workers

- National legislation

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PORTUGAL

## LEGAL FRAMEWORK

### ▶ Non discrimination

- Council Directive 2000/78/EC, of 27-11-2000: equal treatment in employment
- art. 21 of the Charter of Fundamental Rights of the EU

### ▶ Active ageing:

- European Council of Nice, in 2000; European Council of Stockholm, 2001; Barcelona European Council, 2002
- Council Decision 2003/578/EC, of 22-07-2003: guidelines for the employment policies of the MS: need to increase the employment rate for older workers
- European Year for active ageing - 2012

### ▶ Ageing in occupational health and safety

- Art. 15 Framework Directive: *particularly sensitive risk groups must be protected against the dangers which specifically affect them*
- Community Strategy on Health and Safety at Work 2002-2006
- Community strategy for 2007-2012 on health and safety at work
- review prepared for the European Parliament's Committee on Employment and Social Affairs, on the vulnerable groups of workers, among which were included women, migrant, younger and older workers

# EU Strategic Framework on Health and Safety at Work 2014-2020

- recognized the low employment rate of older workers and thus, the need to promote active ageing, through Member States' actions on *new forms of work-life balance and active ageing policies*, within the Flagship Initiative "*An Agenda for new skills and jobs*".
  - Concerning the ageing of the workforce, the EU Strategic Framework recognized the demographic changes as one of the biggest challenges, replaced the concept of "active ageing" by the one of "active and healthy ageing" and acknowledged older workers as a special category of workers who shall deserve further investigation and funding.
- ▶ Concept of "*healthy and safe working environment*"
- ▶ Goals: address the ageing of the workforce, emerging new risks, prevention of work-related and occupational diseases;

## Active and healthy ageing

# THE RECOGNITION OF SPECIAL GROUPS OF PEOPLE TO BE PROTECTED

particularly vulnerable workers, providing for a special treatment of those who are sensitive, such as pregnant, puerperal and lactating women, minors and disabled workers.



**not a closed list!**

Particular sensitiveness – vulnerability

General risks

Personal characteristics

Objective risks and risk factors

Moment of definition

### ▶ 3- The need for a special legal framework on older workers

#### Causes:

- ▶ Europa 2020 Strategy proposes that by 2020 the employment rate of workers aged 20-64 shall be of 75%, which “*includes getting more older people into work*”
- ▶ sustainability of social security
- ▶ increase in the retirement age
- ▶ Recognition of older worker's qualities

#### Why are they special?

- exposed to more severe and fatal work-related accidents and occupational diseases
- their health is increasingly diminished: *physical health, such as muscle strength, bone density, aerobic capacity, menstrual disorders*
- More predisposed to certain risks (ionizing radiation, psychosocial risks...)
- Recovering from an injury is harder

#### 4- The special treatment reserved to older workers and occupational health and safety: a proposal

- ▶ Health surveillance
- ▶ Risk evaluation
- ▶ Adjustment of the work station
- ▶ Interdiction or conditioning of certain activities or of certain methods of work organization
- ▶ Working time arrangements
- ▶ Geographic mobility
- ▶ Functional mobility (redeploying)
- ▶ Reintegration and rehabilitation
- ▶ Physical exercise promotion

#### ▶ **Mandatory retirement?**

ECJ - Richard Prigge, C-447/09

#### ▶ **Dismissal?**



# CONCLUSION

OHS VS individual rights

Concrete workers vs risk groups

Criteria: age? health?

*Art. 15 Framework Directive: particularly sensitive risk groups must be protected against the dangers which specifically affect them*

Thank you for your attention!

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