

Flexible Retirement Reform in an Aging Society

From International Experience to Chinese Practice

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1. Introduction

The Chinese population has been aging at a higher speed in the past decade. By the end of 2022, the total population of China was about 1.41 billion, which was 850 thousand less than that by 2021. There are 280.04 million people who are over 60 years old, which accounts for 19.8% of the population. Furthermore, there are 209.78 million people over 65 years old, which accounts for 14.9% of the population.[1] In 2017 there were only 150.8 million people aged over 65 years old.[2] That is to say, the amount of over-65-year-old people has increased 32.78% in 5 years from 2017 to 2022.

Many European countries suffered from the same demographic change in the 1970s as China does today. Nowadays, Europe is leading in the proportion of the elderly population (over 60 years) with 19%, followed by North America with 17%, Oceania with 13%, and Asia and South America with 9% each in 2021.[3] Germany is the country that contributed the most to the elderly population of Europe with 17.78 million, followed by Italy with 13.76 million, France with 13.16 million, and the UK with 12.24 million.

According to UN classification for aging societies, if 10% of the population of a country are over 60 years old, and 7% over 65, this country is an aging society. If 20% of the population are over 60 years old, or 14-21% of the population are over 65, this country qualifies as an aged society. If 30% of the population are over 60, or 21% of the population are over 65, a country is a hyper-aged society.[4] Although China and Europe are at different stages of an aging society, both of them have suffered from the pressure of an aging population on their social security funds and labour markets. Therefore, both countries have strong incentives to make necessary reforms of their retirement systems, as well as related labor and social laws.

Aging populations lead to less work force and less funding for social security schemes. A research report made by The Social Science Academy of China shows that all available pension funds will be exhausted before 2035 under the current retirement system.[5] Because general payroll tax rate has been very high in China already, it is almost impossible for government to raise the payroll tax rate. The only choice seems to be raising the legal retirement age. In 2013, The Central Committee of The Communist Party of China adopted *The Decision on Important and Fundamental Issues Concerning Fully Enhancing the Reform*, in which The Party declared to begin to study the feasibility of making a Gradually Deferred Retirement (GDR) policy. In 2016, The People's Congress passed *The Outline of the 13th Five-Year Plan for National Economy and Social Development (2016-2020)*, in which China claimed that a GDR policy should be carried out in order to tackle the aging trend of the labour force. Actually, the GDR policy has not been adopted officially until now due to concerns for social stability and high unemployment rate. In early 2023, the French government adopted a new pension policy, deferring normal retirement age from 62 to 64. The pension reform led to violent protests and trade union strikes all over the country. The Chinese government worries about possible protests by workers if it passed the GDR policy.

1. Statistical Bulletin of the People's Republic of China on National Economic and Social Development for 2022, http://www.stats.gov.cn/sj/zxfb/202302/t20230228_1919011.html.
2. Statistical Bulletin of the People's Republic of China on National Economic and Social Development in 2017, http://www.stats.gov.cn/sj/zxfb/202302/t20230203_1899855.html.
3. Europe has largest aging population in world, https://www.aa.com.tr/en/europe/europe-has-largest-aging-population-in-world/2542438#
4. The Ageing of Populations and Its Economic and Social Implications. New York: UN, Dept. of Economic and Social Affairs, 1956.
5. Bingwen Zheng (ed.), China Pension Actuarial Report 2019-2050, China Labor and Social Security Press, 2019, p. 17.

Furthermore, it has been even more difficult for the Chinese government to start a pension reform since the beginning of the trade conflict between the U.S. and China. The U.S. government has declared a series of sanctions upon the Chinese company Huawei and other High-Tech companies since 2017. With the negative influence of geopolitical conflicts and the three-year lockdown due to the COVID-19 pandemic, the Chinese youth unemployment rate surprisingly increased to 21.3% by the end of June 2023.[6] In order to save more job vacancies for younger people, the Chinese government is hesitant to start the GDR reform. Considering the speed and depth of aging in China, the pension reform should be delivered as early as possible. Otherwise, the pension fund will be exhausted before 2035 and the deficit of pension funds will increase to RMB 11280 billion in 2050, which means that the Chinese government will carry a very heavy financial burden to subsidize pension funds.[7] Therefore, the focus of retirement system reform should not only be raising the retirement age, but also developing a more equitable, sustainable and flexible retirement system.[8] On one side, flexible retirement will improve the balance sheet of pension funds and make sure it will not go bankrupt due to an aging population. On the other side, it will satisfy older workers' demand for their right to exit the labour market with a fair pension.

Because Europe has been aging earlier than China, Europe has got rich experience in dealing with the demographic challenge. European countries have carried out reforms in the retirement system and labour market for many years. In the 1980s, Norway and Finland have introduced flexible and partial retirement arrangements into their pension system.[9] Actually, flexible retirement is a very popular approach in the reform of retirement system in OECD countries. The term "flexible retirement" refers to the possibility to receive a pension benefit – full or partial – while continuing to engage in paid work, often with reduced working hours. This is also known as "gradual", "phased" or "partial" retirement. A second dimension of flexibility refers to the moment of retirement – allowing people to draw a pension before or after the official pension age. Some OECD countries already have introduced an age range within which workers are free to choose when they retire.[10]

Germany has become an aging society much earlier than China. In 1972, more than 14% of German people were over 65 years old. In 2015, more than 21.05% of German people were over 65. Germany has become a hyper-aged society since that year. The German Government has begun pension reform since the 1970s. Effective on January 1, 1973, a new legislation aimed at permitting flexible retirement and benefiting insured persons whose pensions were below the social assistance level, as well as population groups previously not covered at all. The new system replaced the fixed retirement age of 65 with a "flexible" formula that gave workers the option of drawing their pensions between 63 and 67.[11] During the 1970s, unemployment rates were very high in Europe. It's no wonder that new legislation emphasized flexibility of retirement as a means of encouraging older workers to quit the labor force and accept early retirement and thus make room for younger workers.[12] Because old workers would receive normal pension without actual deduction, many workers chose to retire earlier after the enactment of the new legislation. A study shows that the actual retirement age in Germany was 60.3

6. National Bureau of Statistics of P.R of China, see website: http://www.stats.gov.cn/sj/sjjd/202307/t20230718_1941320.html (last visited on November 18, 2023)
7. Bingwen Zheng (ed.), China Pension Actuarial Report 2019-2050, China Labor and Social Security Press, 2019, pp. 3-17.
8. Art. 3 of the Social Insurance Law of P.R.C. (2010) provides: Social security systems shall adhere to the principles of wide coverage, basic assurance, multi-level and sustainability, social security standards shall correspond to economic and social development standards.
9. Liu Li: "International Exploration of Flexible Retirement Policy and China's Observation" Social Science Front, no.7(2015), p. 193.
10. Flexible retirement in OECD countries, Pensions at a Glance 2017, Chapter 2, OECD.
11. Flexible Retirement Feature of German Pension Reform , 36 Soc. Sec. BULL. 36 (1973), p. 36.
12. Martin B. Tracy, Flexible Retirement Features Abroad, 41 Soc. Sec. BULL. 18 (1978), p.18.

for men and 59.9 for women in the early 1990s. While the official retirement age was 63 for men and 60 for women then. That means that male and female workers retired 2.7 and 0.1 years earlier.

When Germany turned into an aged society in the 1990s, early retirement become a heavy burden for pension funds. Thus, the German government introduced reforms to its flexible retirement system. First, the German government decided to raise retirement age and restrict early retirement strictly. In 1992, retirement age for female workers rose from 60 to 62, and to 65 in 2017.[13] In 2007, German lawmakers passed a new law that set the normal retirement age at 67 for both men and women. The retirement age will be gradually raised to 67 from 2007 to 2029. Second, the pension reform of 1992 introduced a new formula to calculate benefits for early retirees and deferred retirees. If a worker chooses early retirement, 0.3% of his/her pension for each month before 65 will be deducted. If he/she chooses deferred retirement, an extra 0.5% of pension will be paid as an incentive award for each month after normal retirement age. At the same time, the early retirement age was raised to 63.[14] The third reform was announced as a legislation to promote employment for older workers. As older workers are not as productive as younger workers, many employers will be reluctant to keep older workers in employment. The German government, therefore, promoted partial retirement and part-time work for older workers and employers. In 1992, the German Parliament passed the Partial Retirement Act, which allows pensioners to be employed only if their wage or salary will not exceed a limit line. Actually, the law was not so effective as expected. Soon, German lawmakers passed The Old-Age Part Time Act (ATZG, abbr. in German) in 1996, under which employers may apply for subsidies or tax credits from government if they use older workers (55-65) for part time work.[15] The law created a possibility for older workers to gradually retire. It is beneficial for older workers' health if they switch from full-time jobs to part-time jobs, and finally to fully retirement. But in reality, a 'block model' is much more popular than the part-time model, under which an older worker continues to do full time work in the first 2.5 years and completely quits his job in the second 2.5 years with normal wages and benefits.[16]

The Flexible Pension Act (Flexirentengesetz) went into effect on January 1st, 2017. According to the Law, 'flexible pension' is not an independent pension model. Actually, it is a package of different types of pensions and supplemented incomes. Under the flexible pension arrangement, people may choose (1) deferred retirement with a 0.5% allowance per month, (2) normal retirement with a job, (3) early retirement with a job (no wage limits since January 1st, 2023), (4) early retirement with a 0.3% deduction of the pension per month.[17] Therefore, 'flexible retirement' means flexible arrangements of pension schemes and supplementary incomes after retirement in Germany.

13. Dai Weidong&Gu Mengjie, German Retirement Age Policy Reform, Discussion and Enlightenment, Research on Germany, 02(2013),p.36.
14. Lin Xi&Lin Yi, Study on The Practical Form of German Retirement System - Based on The Perspective of Retirement Channels, Research on Germany, 03(2015), p.86.
15. Lin Xi&Lin Yi, Study on The Practical Form of German Retirement System - Based on The Perspective of Retirement Channels, Research on Germany, 03(2015), p.88.
16. Wolfgang Däubler, German Labor Law, translated by Qian Wang, Shanghai People's Press, 2016, pp. 398-400.
17. https://www.bundesregierung.de/breg-de/themen/arbeit-und-soziales/faq-rente-2196496

China has a quite different retirement system from Germany, although its Social Insurance Law of 2010 adopted the Bismark model. There are five social insurance items in total, which include old-age insurance, medical treatment insurance, work-related injury insurance, unemployment insurance, and maternity insurance as well. Moreover, there have been some flexible retirement arrangements in China already. But mandatory retirement still prevails for most employees in China. Chinese employers are entitled to terminate an employment contract when employees reach the legal retirement age, which is 60 for male and 50 for female blue-collar workers and 55 for female white-collar staff. In order to create more vacancies for younger workers, the retirement age is compulsory and all workers shall retire once they reach the normal retirement age. If an older employee continues to work after his/her retirement age, the employment will be interpreted as service contract, which means he will fall out of the coverage of labor law. It is clear that the Chinese retirement system has been ossified. It cannot strike a balance between the aging population and demands of the labor market. Although the Chinese government declared to raise retirement ages, no further measures have been adopted due to opposition from workers. Some local governments, such as Shanghai, turn to flexible retirement age so as to relieve the pressure from pension fund deficits and relieve the labor shortage as well.[18] However, there are still many legal problems unsolved if an employee continues to work after he/she reaches the retirement age. There have been a lot of disputes concerning retirement age between employers and older workers. Because legal rules haven't been modified, different courts of law occasionally rendered contradicting decisions. Therefore, it is necessary and important to increase research efforts on flexible retirement systems and implement reforms to labour and social insurance law.

This report is the outcome of a comparative study made by a number German and Chinese experts. We have held four workshops to discuss the influence of aging populations on employment and retirement and how a flexible retirement approach may be of help for China to save pension funds from financial difficulties and provide more choices to older workers under different situations. This report strongly recommends that China and other developing countries in a similar situation should better develop a flexible retirement system instead of mandatory retirement system in an aging society.

18. Tentative Opinions on Flexible Deferral of Claiming Basic Pension by All Kinds of Enterprise Talents in Shanghai, Shanghai Municipal Human Resources and Social Security Bureau, Effective on October 1st, 2010.

2. Impacts of Flexible Retirement Reform on Labor and Employment Law

Flexible retirement reform will change the structure of the labour market, which will consequently impact labor and employment law. On the other hand, flexible retirement also needs support from labor and employment law. If China adopts a flexible retirement mechanism, labour laws and administrative regulations need to be amended accordingly.

2.1. Determination of Labour Relationship

2.1.1. The Impact of Flexible Retirement on the Determination of Labour Relationship

The first impact of the flexible retirement system upon labour law is regarding the nature of the legal relationship between over-aged workers (that is, older workers who have reached retirement age and continue to be employed) and their employers. The question is whether their relationship should be recognized as a labour relationship, employment relationship, or other types of legal relationship?

The reason why we need to discuss the impact of the retirement system reform on the determination of labour relationship is because the question whether there is a labour relationship between over-aged workers and their employers will affect the application of the law and thus the protection of their rights and interests. According to the basic theory of labour law, employees are subordinate to employers, and thus labor law needs to interfere into their relationship to provide protection for employees. On the contrary, if the employment of the elderly constitutes an employment relationship, then general rules of civil law will apply. Because the principle of the autonomy of will is fully implemented, older workers cannot receive protection from labour law.

Flexible retirement changes the existing compulsory retirement system. Reaching the retirement age no longer means completely withdrawing from the labour market. In this case, how to determine the nature of the legal relationship between the elderly who have exceeded the statutory retirement age and their employers, requires further analysis.

2.1.2. Changing Rules in China

In China, the identification of a labour relationship for older workers is not a brand-new issue. Around 2008, the promulgation of *The Labor Contract Law and The Implementation Regulations on the Labor Contract Law*, already arose intense discussions regarding the legal relationship between workers who have exceeded the statutory retirement age but continue to be employed.

The Labor Contract Law stipulates "beginning to enjoy pension insurance benefits" as one of the circumstances for the termination of the labor contract, whereas *The Implementation Regulations of the Labor Contract Law*, however, stipulate "reaching the statutory retirement age" as one of the circumstances for the termination of the labour contract. The unclear legal provisions have led to the concerning phenomenon of different verdicts for the same case in judicial practice.

In 2010, the Supreme People's Court issued the "*Interpretation on Several Issues Concerning the Application of Law in the Trial of Labor Dispute Cases (3)*".[19] This judicial interpretation chose "reaching the statutory retirement age and beginning to enjoy pension insurance benefits" as the rule for determining the relationship of over-age workers. According to this criterion, the relationship between a person who has already enjoyed pension insurance benefits (or received pensions) and an employer is an employment relationship, and such a person cannot enter the labour relationship again. It is worth noting that in China, the prerequisite for enjoying basic pension insurance benefits is reaching the legal retirement age, and the two are usually synchronized. However, since an older worker must have paid social insurance premiums for at least 15 years to enjoy a pension, it may also happen that a worker has reached the statutory retirement age, but is still not eligible for receiving a pension. The rules established by the judicial interpretation exclude the vast majority of retired and re-employed people who have reached the statutory retirement age and have begun to enjoy pension insurance benefits from the coverage of labour relationship. Only a small number of employed elderly people who have not yet begun to receive pensions due to special circumstances can establish a labour relationship.

2.1.3. Issues with Current Tests on Determining Labour Relationship

Under China's current rules, reaching the legal retirement age, enjoying pension insurance benefits and the identification of a labour relationship are bound together. Although the flexible retirement system has not yet been formed and implemented, whether one enjoys social insurance benefits is regarded through the determination of a labour relationship. The rationality of the definition standards for a labour relationship has begun to be questioned. The main argument supporting the current rules is that since the elderly have begun to enjoy the protection of social law, they no longer need the labor law protection associated with a labour relationship. The validity of this view itself is also questionable. Even under the current retirement system, China's current standards for determining the labour relationship of over-age workers are no longer reasonable. With the implementation of a flexible retirement system, this unreasonable distinction rule should be revised.

2.1.4. Labour Law Protection for Older Workers in Germany

In Germany, whether continued employment after reaching the retirement age can constitute a labour relationship has not been widely discussed as a special issue. In other words, whether the re-employment of elderly people who have reached the statutory retirement age can constitute a labour relationship is not a confusing question under German law.

Germany's retirement system is different from China's current compulsory retirement system and is already developing in a flexible direction. The statutory retirement age in Germany is not a mandatory retirement age. Workers can choose to retire early before reaching this age, continue to work after reaching this age, or re-employ themselves after retirement. Under such a retirement system, receiving pensions and working can coexist, and older workers can reach an agreement with their employer to maintain or re-enter the labour relationship; they can also form an employment relationship under civil law based on the autonomy of both parties.

It can be seen that Germany has provided a more flexible and appropriate solution to the identification of a labour relationship for over-aged workers, that is, to distinguish the labour relationship from the statutory retirement age and social insurance benefits. This approach is not only more in line with the basic principles of labour law, but also provides both employers and employees with space for independent choices.

19. On December 29, 2020, the Supreme Court of China has revised this Interpretation (3). The same article has become the Article 32 of the Interpretation of the Supreme People's Court on Issues Concerning the Application of Law in the Trial of Labor Dispute Cases (I).

2.2. Occupational Safety and Health

2.2.1. Occupational Injury Risks for Older Workers

The physical condition of older people puts them at a higher risk of occupational injuries. In addition to general labour risks, the elderly also face some special occupational risks due to their age. For example, the reduction in muscle strength of the elderly increases the risks of heavy manual labor; the same goes for the risks associated to the reduction in bone density; the high incidence of cardiovascular diseases such as hypertension and strokes makes them unable to engage in overly strenuous work activities; the elderly are more likely to suffer from hearing loss due to exposure to noisy environments, and hearing loss will further lead to a higher accident rate. Eye problems such as presbyopia and cataracts prevent them from engaging in many types of work. The decline in spatial perception of the elderly can also easily cause accidents.

The types of jobs older adults do also make them more susceptible to injuries at work. The reality is that it is often difficult for the elderly to find high-quality jobs. China's employment statistics show that most of China's employed population over 60 years old are engaged in agriculture, forestry, animal husbandry, fishery and water conservancy production, and some are engaged in the transportation industry.[20] These industries have higher risks of occupational injuries. The results of a statistical study in the United States also confirm this observation. It shows that the industries with the highest injury rate among older workers are concentrated in agriculture, forestry, fishery, construction and transportation.[21] It can be seen that the fields in which older people are often employed carry higher risk of occupational injuries.

2.2.2. The Existing Labor Protection for the Elderly in China and Germany

As analyzed in the first part, China's existing retirement system does not leave much room for the application of labour laws to the employment of the elderly. Therefore, China has not established a special labour protection system for older workers. *The Safety Production Law* has set the basic standards for workplace safety and health for all workers. In 2021, *the Labor Standards Law* was included in the legislative plan of the Standing Committee of the 13th National People's Congress, and a draft developed by academics was published. The academic draft has a special chapter which provides labor standards for older workers. Regrettably, the draft was not passed. In the legislative plan of the 14th National People's Congress published in September 2023, the draft of *Labor Standards Law* was classified in the category of legislative research projects which means the conditions for enactment are not yet fully met and further research and investigation are required. In view of this, it may still take time to set minimum labor standards for older workers.

Germany's labor protection for older workers is mainly reflected in special regulations on working hours, rest times and vacations. German law stipulates that companies can sign fixed-term contracts with workers over the age of 52, and senior workers have the right to request a reduction in working hours after they have worked for 6 months. Germany has also set up special holidays for older workers, such as elderly care leave, training leave, etc., so as they can better balance work and later life.

20. The number of urban employed people aged 60-64 who are engaged in agriculture, forestry, animal husbandry, fishery and water conservancy production accounts for 30.2% of the total employed population. The number of urban employed people aged 65 and above who are engaged in agriculture, forestry, animal husbandry, fishery and water conservancy production accounts for as high as 52.2%. Data source : "China Population and Employment Statistics Yearbook-2022".
21. J. O. Crawford, R. A. Graveling, H. A. Cowie, K. Dixon, The health safety and health promotion needs of older workers, Occupational Medicine, Volume 60, Issue 3, May 2010, P189.

2.3. Employment Promotion for Older Workers

2.3.1. Demand of Employment for Older Population

From the perspective of employers and the labour market, older workers have accumulated experience and special skills during their work life. This experience is valuable and can even re-balance physical disadvantages due to age. In addition, with the general improvement in the education level of the population, the proportion of people with higher education in the elderly population will become higher and higher in the future. Effectively developing the human resources of this part of the more educated elderly population will bring value to the labour market that cannot be ignored.

As for the older workers themselves, a considerable number of them have the willingness and ability to find employment, and participating in the labour force also has many benefits for the elderly. From an economic perspective, re-entering the labour market helps older adults to improve their income. From a physiological and mental perspective, research shows that the cognitive decline of the elderly who interact in groups is better than that of more lonely elderly people. That is to say, higher social participation is beneficial to the elderly in maintaining their cognitive level, and employment also provides them with opportunities to realize self-worth, which is conducive to their happiness in life.

2.3.2. China's Measures to Promote Employment for the Elderly

For a long time in the past, the issue of employment promotion for the elderly has not received sufficient attention in China. *The Employment Promotion Law* is a special law in China to promote employment, but the elderly are not the main target group of this law. Under the compulsory retirement system, the idea of "retirement" is closer to an obligation than a right. That is, the elderly who have reached retirement age are obliged to withdraw from the labor market, thereby alleviating the shortage of available jobs.

As the issue of aging populations becomes increasingly severe, the Chinese government proposed a national strategy of "positively responding to aging". Following this, the issue of employment promotion for the elderly began to receive more widespread attention. Although China has begun to promote the employment of the elderly, the relevant work is still at the level of policy advocacy and has not yet been institutionalized and legalized. As the *Report on the Progress of Strengthening and Promoting Aging Work of the State Council* in August 2022 pointed out: "The results of the seventh national census show that... the young and elderly population aged 60-69 is about 148 million, accounting for 55.83% of the elderly population. The human resources of the young and elderly need to be developed, and the regulations and policies to ensure the re-employment of the elderly need to be improved. Measures to support the elderly in voluntary services need to continue to be improved."

At the provincial and local level, however, some local legislation to encourage the elderly to re-employ has appeared in China. For example, *The Jiangsu Province Employment Promotion Regulations promulgated in 2022* stipulates: "Local people's governments at or above the county level should formulate policies and measures to encourage the elderly to re-employ, provide employment services, employment training and other support, and safeguard the legitimate rights and interests of the elderly in re-employment. Enterprises can apply for work-related injury insurance for over-age employees in accordance with relevant national and provincial regulations."

2.3.3. Germany's Measures to Promote Employment for the Elderly

Germany has carried out education and training for older workers and implemented on-the-job training programmes to help older workers improve their work skills and enhance their competitiveness in the labour market.

Furthermore, Germany encourages the elderly to delay retirement through social insurance policies and introduced time parameters into the pension formula. For every month that workers delay retirement compared to the normal retirement age, their pensions will increase by 0.5%. If they retire early, their pension will be deducted.

In addition, Germany's part-time employment form is also an important means to promote employment of older workers. Since 2012, improving the steadiness of the mini-job system has become the focus of reform. After the reform, mini-job workers can enjoy exemption from personal income tax. The mini-job system also allows unemployed workers to continue to enjoy unemployment insurance as long as they work no more than 15 hours a week. Germany's *Part-time Employment and Fixed-Term Labor Contract Act* is a separate legislation targeting the part-time employment system, which makes Germany's rules on part-time work more comprehensive and provides more complete protection for part-time workers.

2.4. Equality and Anti-Discrimination

2.4.1. Employment Discrimination Issues Under Flexible Retirement Systems

The implementation of a flexible retirement system must be supported by an effective anti-discrimination mechanism to avoid discrimination that hinders the employment and re-employment of older workers. Employment discrimination that older workers may face includes gender discrimination, discrimination against people with disabilities (elderly people are easily disabled due to injury, illness or simple degradation of physical functions), simply age discrimination and other types of discrimination.

Age discrimination in employment is a common phenomenon in various countries. An empirical study shows that under the same conditions, employers will prefer younger job seekers. In Germany, under other conditions being equal, a 14-year age gap will reduce the chances of older job seekers being hired by 22%. The problem of age discrimination in employment in China is even more serious. In China, workers over 35 years old face many restrictions when seeking employment. Among workers over 35 years old, the age of 55 is the peak point for age discrimination. Some scholars conducted empirical research on judicial cases involving age discrimination in China and found that most of these workers are over 55 years old.[22] It is obvious that age discrimination is very serious regarding the employment of older workers in China.

From the perspective of occurrence, age discrimination is not only reflected in employment opportunities during the job-searching process, but may also be reflected in differential treatment in salary, benefits, job transfers, promotions, dismissals, etc. Age discrimination in employment can be divided into direct discrimination and indirect discrimination. Direct discrimination occurs when an employer directly uses age as the reason for differential treatment. For example, a recruitment notice clearly states that only job seekers under the age of 35 will be hired. With the legislation of many countries explicitly prohibiting age discrimination, this direct and apparent age discrimination became more rare. However, indirect age discrimination, which is more subtle and difficult to identify, is increasing very quickly. The key to identifying indirect age discrimination is whether the employer's discriminatory behavior has caused a significant differential impact.

22. Xiaoqian Liu, Workplace Age Discrimination from the Perspective of Employer's Strategy: An Analysis of Dismissal Cases on the Basis of Age, Human Resource Development of China, Issue 3, 2020, p. 86.

2.4.2. Legal Regulations on Age Discrimination in China and Germany

(i) China

In China, "prohibition of age discrimination" is not clearly defined in legal provisions. China's *Employment Promotion Law* in its 2007 legislative draft stipulates that workers shall not be discriminated on the basis of ethnicity, race, gender, age, religious belief, etc. However, when the law was officially promulgated, "age discrimination" was deleted. This employment discrimination matter shows that legislators are cautious about regulating age discrimination in employment. Academics generally believe that this provision adopts a catch-all legislative style, and the word "etc." provides the court with room for discretion to include age discrimination. *The Law on the Protection of the Rights and Interests of the Elderly* stipulates that the elderly have the right to participate in political, economic, cultural and social life, but there is still no clear statement prohibiting age discrimination. Frankly speaking, the articles of the law on the social participation of the elderly are relatively general and superficial, lacking more substantial provisions.

Although the prohibition of age discrimination can be deduced from legal provisions through legal interpretation, due to the lack of clear prohibitive stipulations, age discrimination is still very common in practice. Under the flexible retirement system, age discrimination in the employment of the elderly will become a more acute and prominent problem, and the law should not continue to avoid regulating age discrimination.

(ii) Germany

Germany's General Equal Treatment Act is a separate law regulating discrimination in general, and its regulatory scope is quite broad. In the definition of "discrimination", the law lists various forms of discrimination such as direct discrimination, indirect discrimination, harassment, sexual harassment, etc., and provides a broader interpretation on the object of protection, including not only employees, but also apprentices, like-employees, job seekers, and those unemployed.

Of particular note are the provisions on defense grounds for employment discrimination in Germany's *General Equal Treatment Act*. The law adopts a method of combining principal legislation and legislation on important exceptions. For direct and indirect discrimination, the employer's defense should in principle meet the "important and decisive professional prerequisites". In exceptional cases, such as age discrimination, the defense grounds for such situations are specifically stipulated, that is, if differential treatment based on age is objective, appropriate and justified by a legitimate purpose, then such differential treatment is allowed. For example, to promote the employment of older employees, or special occupational requirements for specific workplaces, etc, German labour courts at all levels and the European Court of Justice have further interpretation on the basic tests for age discrimination defenses in judicial decisions. For example, defenses cannot be based on the business interests of a single employer. Only defenses based on public interests may be lawful. Working years can be a justification for differential determination of wages, but the employer must prove a correlation between years of service and job skills. Public safety and third-party safety can be used as defenses (such as age restrictions for pilots).

2.5. Collective Labour Law

2.5.1. Retirement System Reform and Application of Collective Labour Law in Germany

The above analysis is based on the framework of the individual labour relationship. It should be noted that whether it is about labour protection, employment promotion or anti-discrimination, collective labour law applies as well.

As the main actor in collective labour relations, German trade unions have exerted great influence in the reform of the retirement system. The implementation of delayed retirement in Germany has been fiercely opposed by labor unions because of the unemployment problem of older workers. Many elderly people are unemployed before reaching the normal retirement age. If the age for starting to receive pensions is further raised, their situation will worsen. Following protests from trade unions, the German government had to take transitional measures to gradually raise the retirement age. It can be seen that in the reform of the retirement system, trade unions, as representatives of labour interests, can exert crucial influence on policy formulation and implementation.

Another problem accompanying the reform of the retirement system is that more and more older workers remain in the labor market, and German legislators have not provided systematic protection for older employees. Germany has filled this legal gap through collective agreements. Eligible older employees (who have reached the specified seniority) can be covered by collective agreements that include protection for older employees. When they reach the age of 40, 50, or 55, their employer cannot fire them without special circumstances, and their wages or salary are also secured to a certain extent. In other words, the collective labour relations law can make up some of the deficits of employment law in the protection of older workers by expanding the coverage of collective agreement to them.

2.5.2. Activating Collective Labour Relations Law under the Flexible Retirement System

(i) Adjust and strengthen the functions of trade unions and implement a collective consultation system

Regarding the reform of the retirement system and the protection of older workers, trade unions should further strengthen their functional positioning as representatives of the interests of workers. In the process of policy formulation, trade unions should play an active role in defining the true interest of older workers; after the policy is implemented, a balance of interests can be achieved through permanent consultation between labour and management.

(ii) The supplementary function of collective agreements in protecting older workers

For older workers, special collective agreements can be concluded in accordance with the *Labor Contract Law*, so as to redress the imbalance of bargaining power that exists in negotiations between older workers and their employers.

3. Social Insurance Law Adjustments to Accommodate Flexible Retirement

The origin of the Chinese retirement system may be traced back to the *Labour Insurance Regulation of 1951 of the People's Republic of China*. Article 15 of the Regulation provides that male workers or staff may retire when they reach the age of 60. After retirement, the labour insurance fund will pay them a retirement allowance (i.e., pension) until they die. The allowance rate varies from 50% to 70% of the basic wage. When a worker or staff qualifies for retirement but the enterprise still needs his service, the worker or staff may continue to work at his post. The enterprise shall pay the worker or staff normal wage, plus an extra 10-20% payment as his retirement allowance. Female workers and staff may retire when they reach the age of 50. Differently from male retirees, there are no deferred retirement arrangement for female workers in the Regulation. Article 15 also provides conditions for early retirement. Workers or staff may apply for early retirement in case that they work under low temperature (under 0 degrees Celsius) or high temperature (above 38 degrees Celsius), or are exposed to a dangerous working environment, e.g. at a chemical or armory factory, etc. The early retirement age is 55 for males and 45 for females. Unfortunately, the labour insurance system was abolished by the government during the Cultural Revolution in the 1960s.

After the Cultural Revolution, it was impossible to resume the labour insurance system because the social environment was quite different. In order to provide a temporary way out for older workers and staff to exit the labour market, the State Council implemented two temporary measures on retirement for workers and cadres in 1978, which were approved by the Standing Committee of The National People's Congress. One is The *Interim Measures for the Retirement and Resignation of Workers*. Another is *The Interim Measures Concerning the Resettlement of Aged, Weak, Sick and Disabled Cadres*. Article 1 of the workers' retirement Interim Measures provides that the normal retirement age is 60 for male workers and 50 for female workers. Early retirement age is 55 for men and 45 for women if they work under low temperature, high temperature, or perform heavy physical work or specified dangerous work for at least 10 years. The Sickness retirement ages are 50 for men and 45 for women. If workers or staff lose their working capability due to work-related injuries, they may retire at any age. Whether sickness retirement or disability retirement, they should get the diagnosis from a hospital and the certificate from the Labour Appraisal Committee. Because Article 1 stipulates that a worker or staff shall retire if he/she meets the requirements, we may conclude that a mandatory retirement model has been established instead of a former arbitrary retirement model set by *The Labor Insurance Regulation of 1951*. The reason lies in the fact that the unemployment rate was very high after the Cultural Revolution. The Chinese government intended to give more job opportunities to younger people and relieve the pressure of unemployment as well.

In the second Interim Measures for Cadres, Article 4 provides that cadres may retire if they have worked for over 10 years and reached the normal retirement age. Normal retirement ages are 60 for men and 55 for women. They may also apply for sickness retirement or work-related disability retirement. The requirements are the same as those for workers. Usually managerial or executive staff will be treated as cadres at a company. However, the definition of 'cadres' is not clear enough for administrative staff at lower or middle level at a company. There have been a lot of employment disputes about the retirement age of female supervisors or managers. In some provinces, such as Jiangsu, governments require employers to make up their own definition of "cadres". However, this definition shall be discussed by worker's councils and submitted to local labour administrations for reference.

It is noteworthy that the workers' pension was paid by his/her own work unit according to the

above-mentioned Interim Measures, and not by the social insurance fund. In 1983, the National People's Congress authorized the State Council to make necessary amendments on the two Interim Measures. To meet the reform needs of state-owned enterprises, the State Council issued an order to initiate a reform of the retirement insurance system for enterprises in 1991. In March 1995, the State Council issued a new order to unify the basic retirement insurance systems, which shall comprise 'a unified mechanism, unified criteria, a unified administration and a unified fund', which clearly showcasts the ambition of the State Council to pursue a unified retirement insurance system. Two years later, in July 1997, the State Council issued another Ordinance, which unified different funding models and required local governments to establish 'a unified basic retirement insurance system for staff and workers in enterprises.' It also provided the span of contribution rates for both employers and employees, qualifying terms and details about employees' benefits of retirement insurance. The 1997 State Council Ordinance has established the fundamental framework for the Chinese retirement insurance system. However, it still failed to unify the retirement insurance systems across the country. Instead, provincial governments were authorized to fix the contribution rates, benefits level and other important factors.

On 28 October, 2010, The National People's Congress passed *The Social Insurance Law of P.R. of China*, which went into effect from 1 January, 2011. The law enunciates that social security systems shall adhere to the principles of wide coverage, basic assurance, multi-level application and sustainability. Social security standards shall correspond to the level of economic and social development.[23] Article 16 of the Social Insurance Law reiterates two mandatory prerequisite conditions for retirement. It provides that an individual participating in basic pension insurance may claim basic pension benefits on a monthly basis where (1) he/she has made cumulative contributions for 15 years and (2) has reached the statutory retirement age. But the law didn't define the term of 'statutory retirement age'. In practice, this term refers to the retirement ages set by the two Interim Measures of 1978.

Article 2 of *The Social Insurance Law of P.R. of China* stipulates: "The state establishes basic pension insurance, basic medical insurance, work-related injury insurance, unemployment insurance, maternity insurance and other social insurance systems to protect the citizens' right to obtain material assistance from the state and society in the event of old age, illness, work-related injury, unemployment, childbirth, etc.." The construction of a flexible retirement system necessitates the need for reform concerning basic retirement insurance, basic medical insurance, work-related injury insurance and unemployment insurance.

3.1 Adjustments on Old-Age Insurance

At present, the legal relationship between the elderly who have already enjoyed pension insurance benefits or received pensions in accordance with the law and their employer is deemed to be an employment relationship. This excludes and limits the application of labour law and other laws to retired and re-employed elderly people, which brings obstacles for the protection of the rights and interests of employed elderly people with it.

23. Article 3, Social Insurance Law of P.R.C. .

3.1.1 Resetting Retirement Ages

Regarding the definition of a retirement age, it is necessary to reflect the benefits of flexibility and avoid one-size-fits-all approaches. Due to differences among labour groups, the current statutory retirement age is no longer able to meet the differentiated retirement needs among labour groups. Therefore, the minimum age for receiving pensions should be set first, that is, the earliest possible retirement age, so that after reaching this age and the minimum contribution years, workers can choose to retire and receive pensions or continue to work. As the legal retirement age is reached, pensions should be received in full. In addition, the maximum retirement age should be set in order to give the labour force an exit from the labour market and promote the balanced development of the labor market. In between, workers can freely choose their retirement age, ranging from the minimum pension age to the maximum retirement age, based on personal health status, income level, pension benefits and other conditions, giving them the option to either retire early or enjoy the right to delay retirement.

3.1.2 Dynamically Adjust Social Security Fund Payment Parameters

The construction of a flexible retirement system would expand citizens' retirement options. Citizens can choose to retire early, delay retirement or retire according to the statutory retirement age. Correspondingly, according to different choices, social security fund payment parameters such as pension benefit level, payment base, payment rate, and payment years should also be adjusted accordingly. For example, the minimum payment years should be increased, and a reward and punishment mechanism should be established to adapt to the flexible retirement system and the age structure of the population, thus motivating citizens to voluntarily choose to delay retirement in order to alleviate the pressure on social security funds brought about by the aging population.

3.1.3 Equal Retirement Age for Men and Women

Under the current retirement system, men and women retire at different ages. As working conditions and health conditions improve, along with the status of women in the labour market becoming increasingly equal to that of men, there is a realistic and objective reason to implement retirement at the same age for men and women. According to general practice in OECD countries, between 2010 and 2050, as many as 31 countries have or will have an equal retirement age for men and women. Thus, it has become a consensus that men and women should retire at the same age. Therefore, in terms of policy formulation, we can learn from the experience of OECD countries and gradually unify the retirement age for men and women. This could be done by extending retirement gradually by a few months each year, so as to limit the impact of flexible retirement policies on the labour market and provide workers with more benefits. Moreover, a longer psychological adaptation period increases policy acceptance.

3.1.4. Design of Retirement Benefits

The principle of "early reduction and late increase" shall apply for retirees. That is to say, pensions will be reduced for early retirees and increased for late retirees at a certain proportion, so as to encourage the elderly to choose different retirement plans according to their own circumstances. The new pension system shall encourage more willing and capable elderly people to prolong their career life to some extent and therefore extend their time to serve the society.

3.2 Adjustments on Medical Insurance

Current medical security for the elderly mainly consists of a basic medical insurance system, urban and rural medical assistance, and the preferential treatment system for the elderly implemented in some areas. The establishment of a flexible retirement system makes it possible to retire later. The elderly's physical capacities weaken with age, and combined with work requirements, they need better medical protection.

3.2.1 Build an Independent Medical Insurance System for the Elderly

The elderly often suffer from chronic diseases or diseases that cannot be completely cured and cause organ decline. For the elderly, maintaining organ function is more important than recovering. The current medical security policy targets all groups of people, mainly targeting people without diseases or those with curable emergencies, but does not meet the medical security needs of the elderly.

Therefore, legislation can be used to establish a relatively independent medical insurance system for the elderly or formulate special medical insurance policies for the elderly to meet the elderly's personalized and special needs for medical services.

3.2.2 Improve the Coordination Level of Medical Insurance Funds and Improve Medical Insurance Benefits

China's current medical insurance system cannot cover the actual medical expenditures of the elderly, and reimbursements cannot cover the medical services mainly used by the elderly. The circumstance of enjoying medical insurance benefits without paying contributions after retirement has aggravated the situation of medical insurance funds in the context of a seriously aging population.

In this regard, Germany has very rich experience. Regarding the co-ordination of medical insurance funds, Germany's statutory medical insurance adopts a lifelong payment approach. Retired employees and pension insurance funds each bear half of the medical insurance premiums. The medical insurance premium rate for retired employees is lower than the average level. This design reduces the financing burden of medical insurance funds and is conducive to the realization of intergenerational equity.

Therefore, it is recommended to build a diversified financing mechanism, encourage private capital such as enterprises and medical institutions to join in by introducing retiree contributions, financial subsidies, etc., adjust the payment ratio according to regional differences, and establish a diversified approach for financing, government subsidies, individual contributions, and private capital. With this kind of financing model, the financing pressure on medical insurance funds can be reduced and the stable operation of the medical insurance system can be maintained.

3.2.3 Develop a Long-term Care Insurance System

The 20th National Congress of the Communist Party of China made a strategic plan to "establish a long-term care insurance system" to cope with the social security needs brought about by the aging population. At present, China's long-term care insurance system is in the pilot stage and has achieved initial results. The construction of a flexible retirement system requires the supporting implementation of a long-term care insurance system to effectively protect the rights and interests of the elderly and increase the willingness of the elderly to delay retirement.

Germany has also established a long-term care insurance system, with the state, employers and individual employees bearing the premiums; retirees also pay half of the premiums, and the other half is borne by the pension insurance fund. In addition, the German government pays pension insurance premiums for at-home caregivers, thus giving incentives for community home care and encouraging family members to provide long-term care to their elderly.

China also needs to establish a long-term care insurance system as soon as possible, establish a link with a sound medical insurance, build a community long-term care system that is family-oriented and community service-based, meet the care needs of the elderly, and implement it in conjunction with the flexible retirement system, to enhance the willingness of the elderly to delay retirement, thus confronting the challenges brought by the aging population.

3.3 Expand the Coverage of Work-related Injury Insurance to Older Work

More and more older workers are still active; however, as age increases, the risks of work-related injuries increase. Because older workers are out of the coverage of work-related injury insurance, some provincial governments have started pilot projects to expand work-related injury insurance to older workers. For example, Zhejiang, Guangdong and Jiangsu provinces have made local rules on work-related injury insurance policy for workers above the legal retirement age, promoting the employment of older workers. In terms of a flexible retirement system, these pilot policies are significant for building an independent work-related injury insurance system for older workers.

It is important to develop a work-related injury insurance system for older workers based on the experience of pilot projects. First of all, the application of work-related injury insurance for older workers must be re-defined from two aspects: identity and age. On the one hand, regardless of whether the insured subject worked before reaching the statutory retirement age and the nature of his or her work, all older workers should be enrolled into an injury insurance scheme. On the other hand, the insurance upper and lower age shall be fixed in accordance with the specific retirement age. Secondly, it should be mandatory for employers to enroll older workers into the work-related injury insurance so as to protect their legitimate rights and interests. Thirdly, as for the way to raise insurance funds, the contribution model of *The Work-related Injury Insurance Regulations* should be followed. Employers shall bear the burden to pay the premium for older workers. At the same time, governments shall allocate appropriate financial subsidies as well, encouraging employers to invest more in labour safety.

3.4 Unemployment Insurance

By implementing a flexible retirement system, older workers would become an important force in the labour market in the future. Therefore, older workers should be treated equally to provide them with due unemployment insurance benefits, and *The Unemployment Insurance Regulations* should be revised to include older workers within the scope of unemployment insurance protection.

First of all, governments should establish and improve the vocational training system for older workers so as to improve their employability and adaptability, which will thereby improve their employment quality and promote the employment of older workers. Secondly, based on the employment characteristics of older workers, it is also necessary to establish or improve public employment service agencies for older workers. The government can purchase services from private employment service agencies to provide vocational training and job introductions to older workers. In addition, senior workers and employers could receive employment promotion subsidies, which make up for the loss of personal income caused by the employment of senior workers and the decline in labour productivity due to hiring senior workers. At the same time, governments shall pay corresponding subsidies and rewards to employers that hire a certain proportion of older workers, which will promote the employment of older workers and establish a balance between efficiency and fairness.

4. Conclusion and Recommendations

Flexible retirement reform is a widely-suggested positive response to the challenges of population aging. In *The Older Worker Recommendation, 1980 (No. 162)*, the International Labour Organization recommended member countries to adopt flexible retirement systems, if possible.[24] Similarly, in 1982, the United Nation also called on member states to take measures that will ensure a smooth and gradual transition from active working life to retirement, and in addition make the age of entitlement to a pension more flexible in.[25]

Germany and other European countries have experienced hyper-ageing for many years. They have developed a well-structured flexible retirement system for many years already. Their experience and lessons are very useful for China to develop its own flexible retirement system. The following are our recommendations for a feasible flexible retirement reform in China.

4.1 Turning from One-Dimensional Deferred Retirement Age to A Comprehensive Flexible Retirement Reform

The aging population has posed significant challenges to China's social security funds. Currently, most provinces and cities struggle to balance their pension funds, with over ten provinces having a deficit.[26] While China has implemented nationwide coordination of pension insurance since 2018 and established a system for redistributing pension funds nationwide, it has not fundamentally addressed the imbalance between income and expenditures in pension funds. The rapid aging of the population, coupled with a noticeable slowdown in economic growth, has intensified the pressure on the balance sheets of pension funds. Therefore, the Chinese government should abolish the mandatory retirement system and adopt a flexible retirement system. Moreover, the policy of "delaying retirement age" is a one-sided policy unable to meet the needs of older workers. Therefore, it should be substituted by a more comprehensive and flexible retirement reform. The flexible retirement reform involves not only raising the retirement age, but also ensuring the flexibility of the retirement age, which will garner widespread support from the working people.

4.2 Raising the Retirement Age for Both Normal Retirement and Early Retirement Moderately

Regarding the adjustment of retirement age, the mainstream view is that China should gradually unify the statutory retirement age for both men and women to 65 by 2055. The current average life expectancy in China is 77 years, allowing an average of 12 years of pension payment. Compared to Germany's 67, the United States' 65, and Japan's 70, this retirement age is rather moderate. However, given China's lower average life expectancy and living conditions compared to developed countries, and the persistent pressure on youth employment as well, the average retirement age should be moderately lower than in Western countries, approximately at 63, making it more acceptable to many insured individuals. Drawing on the experience of Germany and other countries, the phased increase in retirement age is expected to be completed in around 2050. Given the health challenges and heavy family burdens of some workers, the minimum early retirement age may be set at 55. In China, certain groups, such as university professors and senior officials, are allowed to defer retirement, typically until they reach 63. In some provinces, such as Jiangsu and Zhejiang, people over 60 may continue to pay work-related injury insurance until they reach to 65. Therefore,

24. Article 21 of R163 provides that wherever possible, measures should be taken with a view to--
    (a) ensuring that, in a framework allowing for a gradual transition from working life to freedom of activity, retirement is voluntary;
    (b) making the age qualifying for an old-age pension flexible.
25. Recommendation 40, Report of the World Assembly on Aging, United Nation, Vienna, 26 July to 6 August, 1982.
26. Bingwen Zheng (ed.), China Pension Actuarial Report 2019-2050, China Labor and Social Security Press, 2019, pp. 3-17.

the normal retirement age may be set at 63, with the maximum retirement age at 65, and early retirement age at 55.

4.3 Rationalizing the Pension-Wage Replacement Ratio and Setting Reasonable Pension Standards

China's implementation of a flexible retirement system reform faces an institutional obstacle: pension levels are often higher than the minimum wage standard. Many low-wage workers earn significantly less than the pension levels of retirees. For instance, in Jiangsu Province, the minimum wage standard in 2022 was 2280 RMB, while the average pension is about 2837 RMB, creating an inverted relationship between pensions and minimum wages. Moreover, according to *The Social Insurance Law,* pensions must increase with economic growth, but wages often grow at a slower pace. Therefore, for many ordinary workers, it is wiser to start receiving pensions earlier. To more effectively encourage workers to choose deferred retirement, the Chinese government should raise the statutory minimum wage, raise the wages of in-service personnel and appropriately adjust the distribution standards and adjustment methods of basic pensions. For example, instead of basing adjustments on the GDP growth rate, they could follow the Consumer Price Index (CPI) instead.

4.4 Exploring A Fair and Effective Mechanism to 'Punish' Early Retirement and Reward Deferred Retirement

As China has had early retirement and disability retirement systems, it will be easier to allow qualified workers to retire early. In order to encourage workers to retire late and prevent abuse of early retirement, the flexible retirement system should establish a reasonable reward and deduction ratio for late and early retirement, to ensure effective incentives for deferred retirement.

To address the pension payment pressure caused by an aging population, one essential feature of the flexible retirement system is to provide certain rewards for workers who choose to delay retirement, simultaneously reducing the pensions of those who retire early. This dual approach encourages more workers to voluntarily choose deferred retirement. Moreover, China should appropriately increase the reward for deferred retirement and the deduction for early retirement, making the flexible retirement system truly effective. For instance, if a worker delays retirement for one year, the pension would be increased by 6% in Germany, 8.04% in the United States, and 10.4% in the United Kingdom. China should choose a higher reward standard, an increase of 1% in the pension for every month of deferred retirement, resulting in a 12% increase for delaying retirement by a year. At the same time, if a worker retires early (between 55 and 63), considering a 6.66% deduction in the pension annually in the United States and a 3.6% in Germany, China may set a deduction ratio of 7.2% per year. Thus, retiring one month earlier would result in a 0.6% deduction in the monthly pension.

4.5 Decoupling Pension Insurance Relationship from Labour Relationship Immediately

Flexible retirement system requires decoupling the pension insurance relationship from the labour relationship. An employer shall not terminate the labour relationship with an employee when he/she reaches the statutory retirement age or receives the national basic old-age pension. The Constitution of China provides that all citizens have the right to work.[27] Older workers therefore have the right to work, too, although they may need some flexible arrangements in working hours and job responsibilities. In order to ensure older workers will continue to be covered by labour law, the National People's Congress should amend the item (2) of Article 44 of the Labour Contract Law, which allows an employer to terminate the labour contract with an employee if the employee has started to receive her/his pension. Even then, his labour relationship with the employer shall not terminate automatically. Instead, it shall depend on the negotiation and agreement between the worker and his employer. If the employee continues to work, he shall be covered by labour law as before. Furthermore, the State Council shall rescind Article 21 of the Regulation of Labour Contract Law.[28] In any case, an employer shall not terminate the labour relationship due to an employee's age.

4.6 Enacting the Flexible Retirement Law and Amending Other Laws Accordingly

The flexible retirement reform needs the National People's Congress of China to enact some new laws, such as *The Flexible Retirement Law, The Age Discrimination Law, and The Elderly Employment Promotion Law, etc*. The Flexible Retirement Law shall entitle older workers the right to retirement when they reach the full retirement age and contribution years. If they have any listed sickness, disability or family responsibility, they may choose to retire early.

The People's Congress should also amend some clauses of existing laws and regulations, such as *The Social Insurance Law, The Employment Promotion Law, The Labor Insurance Regulation, The Labor Law, The Labor Contract Law, and The Implementation Regulations on the Labor Contract Law* as well. These amendments should prevent age discrimination, that is, prohibit employers from terminating labor contracts based on the age of workers and protect workers from being laid off due to reaching the statutory retirement age or receiving the national basic retirement pension.

Generally speaking, flexible retirement is a comprehensive and systematic reform which will concern many fields of labour and social security law. It is necessary to make amendments of related statutes and clear the way for the reform. In the law-making process, older workers' rights and interests should be put first. The reform should bring them more choices and flexibility, instead of imposing limits on their rights to exit the labour market.

Last but not least, we shall keep in mind that flexible retirement reform is not a cure-all for the deficits of pension funds. The deferred retirement arrangement may certainly improve the balance sheet of pension funds temporarily, but it could not totally eliminate the problems caused by demographic change. A flexible retirement reform alone will not alleviate the burden of an aging population. It only postpones the peak of retirement payments.[29] On the long run, the best solution lies in the sustainable development of the economy and in-depth reform of the income distribution systems.

27. Article 42 of the Constitution of The People's Republic of China provides that citizens of the People's Republic of China have the right as well as the duty to work.
28. Article 21 of the Implementation Regulation on The Labour Contract Law provides that a labour contract shall expire when an employee reaches the mandatory age of retirement.
29. Bingwen Zheng (ed.), China Pension Actuarial Report 2019-2050, China Labor and Social Security Press, 2019, p. 104.

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