

# BROOKINGS

Report

## **Strengthen age discrimination protections to help confront the challenge of population aging**

David Neumark Thursday, November 19, 2020

### **Editor's Note:**

*This report was produced in conjunction with the webinar, "Improving economic opportunity for older workers," co-sponsored by Brookings and the Kellogg Public-Private Initiative.*

**O**ne key policy imperative in response to the aging of the U.S. population is to increase employment among older workers. There is ample evidence of age discrimination, especially in hiring, that can impede policymakers' efforts to encourage or induce older people to work longer, and that inhibit working longer more generally.

The United States has federal legislation to prohibit age discrimination—the Age Discrimination in Employment Act (ADEA), passed in 1967. The ADEA has many parallels to antidiscrimination laws based on race, sex, ethnicity, and religion enshrined in Title VII of the Civil Rights Act of 1964, although the ADEA differs slightly in recognizing that sometimes age can play a legitimate role in labor market decisions and outcomes. For example, the ADEA originally allowed mandatory retirement to continue, while pushing the age from 65 to 70, before eventually prohibiting it for most workers. The other major federal antidiscrimination legislation is the Americans with Disabilities Act (ADA), passed in 1990; the ADA extends discrimination prohibitions to people with disabilities, as defined by the federal law. In addition, many states have their own age (and disability) discrimination laws that can strengthen federal laws (see, e.g., Neumark and Stock 1999, 2006). While the ADEA is obviously most relevant to the question of discrimination based on age, the interrelationships between all these antidiscrimination laws are potentially important in protecting older workers from discrimination, for reasons I explain in the paper.

There is evidence that both federal and state age discrimination laws are effective at boosting employment of older workers. More specifically, there is evidence that enacting the ADEA (and earlier state age discrimination laws) improved labor market outcomes for older workers, and more-contemporaneous evidence that stronger age discrimination laws in some states have increased the effectiveness of policies intended to induce workers to continue working until an older age. At the same time, some recent court rulings have weakened the ADEA.

Although age discrimination can potentially affect many margins of the employment relationship, this paper focuses on age discrimination in hiring for a number of reasons. First, most people do not just retire from their career job, but instead take bridge jobs or move to partial retirement, sometimes in part due to declining health (Cahill, Giandrea, and Quinn 2006; Johnson 2014; Johnson, Kawachi, and Lewis 2009; Maestas 2010). Partial retirement will surely become even more common if people work until older ages, since many older workers move from their career jobs to jobs that are less physically demanding. Second, the most rigorous evidence we have establishing age discrimination concerns discrimination in hiring. Third, both empirical evidence (Adams 2004; Neumark and Stock 1999) and the workings of age discrimination enforcement suggest that, at present, the ADEA is more effective at reducing age discrimination in terminations than in hiring (Neumark 2009). And fourth, there appears to be more scope for policy to reduce age discrimination in hiring, especially in light of recent court rulings.

These considerations lead me to propose the following steps to reduce age discrimination in hiring to help confront the challenge of population aging:

1. Increase damages under the ADEA to match the larger damages that some states allow.
2. Amend the ADEA to clarify that disparate impact claims are allowed in cases of hiring discrimination.
3. Amend the ADEA to clarify that the standard for establishing discrimination is not “but for” age.<sup>[1]</sup>
4. Amend the ADEA to allow intersectional claims, in particular those regarding discrimination against older women.

5. Extend affirmative action for federal contractors to older workers.

6. Consider closer integration of the ADEA and the ADA.

My proposals can be viewed as complementing other recent proposals in the New Approaches to Retirement Security project. Clark and Shoven (2019) focused on strengthening labor supply incentives in Social Security and Medicare; those incentives are usually related to changing policy to increase the effective posttax wage of older workers. Munnell and Walters (2019) suggest stronger labor supply incentives via expanding the Earned Income Tax Credit, as well as raising the retirement age and providing more information about retirement finances. They also suggest trying to increase demand for older workers by means of education, and by restoring mandatory retirement to forestall employer concerns of having to retain newly hired older workers for too long (although mandatory retirement seems likely to have effects in the opposite direction as well).

Read the full paper [here](#).

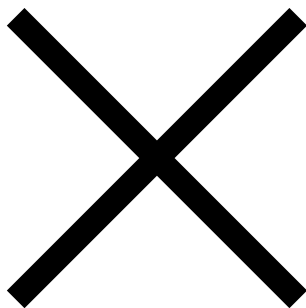
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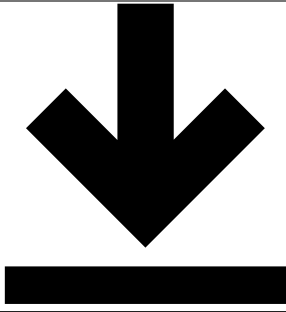
## Footnotes

1. 1 This would put the ADEA on par with protections afforded other groups under Title VII of the Civil Rights Act.



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