

How Is the Age Discrimination in Employment Act Working? A Look Back and Into the Future

This In Brief summarizes *Reassessing the Age Discrimination in Employment Act*, written for the AARP Public Policy Institute by David Neumark of the University of California at Irvine. The paper examines how effective the ADEA has been and the challenges that lie ahead for older adults who want or need to work.

At forty-one, the Age Discrimination in Employment Act (ADEA) is entering middle age. What has it accomplished to date, and is it still up to the job?

The ADEA was enacted in 1967 to promote the employment of older persons based on ability rather than age, to prohibit arbitrary age discrimination in employment, and to help employers and workers find ways of meeting problems arising from the impact of age on employment. The number of labor force participants protected by the ADEA—81 million people aged 40 and older today—is projected to grow to more than 88 million by 2015.

The aging of the population will pose social, economic, and public policy challenges over the next few decades, one of which is fostering longer work lives in the face of slowing labor force growth. If boomers are to remain in the workforce later in life, as they say they plan to, appropriate jobs must be available and employers must be willing to hire and retain older workers. Yet older workers face a variety of barriers in their efforts to remain employed or find new employment. The ADEA was designed to eliminate the barrier of employment-based age discrimination. The law initially applied to workers aged 40-65. The upper age limit was raised to 70 in 1978 and removed altogether in 1986, in so doing eliminating age discrimination for most workers.

What Has the ADEA Accomplished?

In this paper, the author examines the research literature on the impact of the ADEA and concludes that the “evidence seems to show that it is likely that labor markets were—and still are—characterized by discrimination against older workers.” Specifically, he observes that:

- The number of age discrimination claims filed with the Equal Employment Opportunity Commission—over 14,000 in FY 2006—suggests continuing age discrimination.
- There is still some evidence of the existence of negative stereotypes about older workers, although such stereotypes may have diminished. Presumably, explicit age limits are no longer mentioned in “Help Wanted” advertisements.
- Enforcement of the ADEA has focused on termination more than on hiring. This likely reflects the difficulties and potential rewards associated with claiming discrimination in terminations compared to hiring.
- Age discrimination laws boost the employment of older protected workers.
- The ADEA’s impact has been more on the continued employment of those younger than normal retirement age than over it. There is some evidence that age discrimination laws reduced retirement, although there is

disagreement as to whether this was spurred by banning mandatory retirement.

- There is no evidence that the ADEA has increased employment through more hiring and it is possible that it has reduced the hiring of older workers because of the greater costs of terminating such workers.
- The principal effect of the ADEA may have been to strengthen the bonds of long-term employment relationships by reducing the incentives for firms to fire older workers whose pay might be higher than productivity.

Can the ADEA Meet the Challenges of an Aging Population?

As the boomers age, many workers over 65 can be expected to leave their long-term career employment and move into part-time or shorter-term jobs. As a result, age discrimination in hiring may become more important than it has been in recent decades.

- If large numbers of older adults begin to seek bridge jobs after leaving full-time careers, the focus of ADEA enforcement efforts on terminations might not be as valuable going forward. Instead, it becomes more important to figure out how to ensure that age discrimination does not deter the hiring of older adults after leaving full-time work.
- The evidence on both the enforcement and the effectiveness of the ADEA suggests that the law may be relatively ineffective with regard to the hiring of older workers. There may be limitations on how effectively the regulatory and judicial systems address

discrimination in hiring, and it would be useful to consider whether this effectiveness can be increased.

However, in crafting any policy changes intended to boost the hiring of older workers, it is important to remember the underlying economic barriers to this hiring and to focus on rooting out only the discriminatory behavior.

- Because disability rates rise with age, an increasing share of workers covered by the ADEA may also experience work-limiting disabilities. Hence, employers may have to be concerned with discrimination claims brought under the Americans with Disabilities Act as well as the ADEA. The combined impact of workers being protected by both laws may have been to reduce employment, although there is limited research on the aged 65-plus population. An important challenge will be thinking creatively about how to continue protecting the aged and disabled from employment discrimination while not scaring employers away from hiring older workers who are relatively likely to experience some disability as they age.

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