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Does Protecting Older Workers from Discrimination Make It Harder to Get Hired?

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The aging of the population creates an imperative to increase the employment of older individuals, through reforms to Social Security and other policy changes. However, such efforts may be frustrated if discrimination against older workers deters their hiring and employment. Hiring is particularly important because extending work lives of older individuals is likely going to have to come from new employment in part-time or shorter-term “partial retirement” or “bridge jobs,” rather than from continued employment of workers in their long-term career jobs.

The natural response to the potential for age discrimination in hiring is to strengthen laws against age discrimination, and evidence suggests that stronger age discrimination laws increase employment of older workers. More directly related to recent reforms, Neumark and Song (2013) found that stronger state-level age discrimination protections enhanced the impact of the 1983 Social Security reforms that increased the Full Retirement Age (FRA) and reduced benefits, leading to more delayed benefit claiming and increases in employment between age 62 and the new FRA.

However, there is concern about the effects of age discrimination laws on hiring of older workers. In particular, age discrimination laws may be ineffective at combating hiring discrimination, and could even make matters worse. Because in hiring cases it is difficult to identify a class of affected workers, and economic damages are smaller than in termination cases, age discrimination laws may not be effective in combating discrimination in hiring. And if age discrimination laws mainly raise the costs of terminating older workers—an age discrimination protection that likely is effective (Neumark and Stock, 1999)—they could end up deterring hiring. The evidence on this question thus far is mixed.

In this paper we turn our attention to disability discrimination laws, exploring whether these laws are ultimately likely to be a help or a hindrance in achieving the goal of significant lengthening of the work lives of older individuals, via their effect on hiring. Although disability discrimination laws do not specifically define older, disabled workers as a protected class, it is a simple fact the incidence of disabilities that can limit work, and hence trigger protection by disability discrimination laws, rises steeply with age, especially past age 50 or so. This is recognized in the Americans with Disabilities Act (ADA), which notes that the number of disabled “is increasing as the population as a whole is growing older.”

This suggests that older workers may be disproportionately affected by disability discrimination laws. Moreover, the perception that a potential worker has a disability or is likely to have one in the near future, should also rise steeply with age, and that perception may affect older workers adversely. *A priori*, the concern that antidiscrimination laws may deter

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hiring of older workers is potentially more plausible with respect to disability discrimination laws than age discrimination laws. First, older workers without current physical challenges may still face disability-related discrimination simply because employers know they have a higher likelihood of developing a physical impairment as they age. Second, disability discrimination laws have important features that may make them more powerful than age discrimination laws at both protecting workers from discrimination, but also potentially raising the cost of hiring an older worker who is disabled or who might become disabled. As such, disability discrimination laws can pose higher potential costs to employers than do age discrimination laws—with both more grounds for a discrimination claim resulting from a termination decision and direct costs from having to accommodate an older worker with a disability or who develops a disability.

Of course, under disability laws these same considerations apply to younger workers. With regard to disabled younger workers, the argument carries through simply. However, with respect to employer behavior based on the expectation that a worker might develop a disability and then fall under the protection of disability discrimination laws, this seems likely to be less important, because the probability of developing a disability is likely sufficiently low for young workers so that it plays much less of a factor in hiring decisions for those who are not yet disabled. Hence, we look at effects of disability discrimination laws on hiring of disabled workers at all ages, but focus attention, in particular, on hiring of nondisabled older workers because the consequences of reduced hiring for this group could be substantial in light of population aging and the challenges it poses.

We study these questions using state variation in disability discrimination protections, which can strengthen the coverage of these laws by using a broader definition of disability than the ADA or applying to smaller firms, or can entail higher costs of discrimination via larger damages.

The preliminary evidence reported in this study is somewhat nuanced and not always consistent across datasets, but does appear to support the following conclusions. First, state disability discrimination laws that use the broader definition of disability appear to raise hiring of nondisabled older workers rather than lowering it, although we find no such effect of the other two provisions of state disability discrimination laws. This evidence comes from difference-in-differences specifications that compare differences across states with stronger and weaker disability discrimination protections – estimating the effects for older, nondisabled workers (who have high probabilities of becoming disabled) relative to younger, nondisabled workers (for whom these probabilities are low). This is inconsistent with the conjecture that such laws could deter hiring of older, nondisabled workers because employers fear they will become disabled and fall under these stronger protections.

Evidence from cross-state variation in laws and hiring rates – which could be less likely to reflect causal effects – suggests that stronger state disability protections reduce hiring of at least younger disabled workers. The positive effect of these laws on hiring of nondisabled older workers could then reflect some substitution from younger disabled workers toward older nondisabled workers.

Across the two kinds of evidence, we find no statistical evidence of adverse effects of disability discrimination laws on older workers – either from weaker tests we can use to study the disabled, or the more-compelling difference-in-differences tests we can use to study the nondisabled. Moreover, the latter evidence, which we view as most compelling, points to positive effects on hiring of older workers, as does complementary evidence on stronger state protections against age discrimination. Thus, the evidence we present in this paper suggests that stronger discrimination protections that affect older workers—either directly as age discrimination protections, or indirectly as disability discrimination protections—boost hiring of large groups of protected older workers.

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