RESEARCH Brief

University of Michigan Retirement Research Center

Policy Interactions between Increases in the Normal Retirement Age and Age Discrimination Laws

David Neumark and Joanne Song* September 2011

Population aging and the low employment rate of seniors implies slowing labor force growth relative to population, and a rising dependency ratio, in coming decades. Because these changes pose challenges to the solvency of Social Security, numerous supply-side reforms have been implemented to increase the employment (and delay benefit claiming) of those who would otherwise retire, including raising the full retirement age (FRA) from 65 to 67, and reductions in the taxation of benefits. Additional changes are likely to be considered as part of efforts to shore up the solvency of Social Security.

These supply-side reforms may be frustrated, however, by age discrimination that creates barriers to continued employment or new hiring of older workers. Although the federal Age Discrimination in Employment Act (ADEA) and state age discrimination laws have helped reduce age discrimination, evidence suggests that age discrimination persists. If age discrimination deters the employment of older workers, especially beyond what has until recently been the "full" retirement age of 65, then supply-side incentives — via changes to Social Security or other policies — may be rendered less effective or ineffective.

The key policy question this paper addresses, then, is whether stronger age discrimination protections enhanced the impact — in terms of reducing benefit claiming and increasing employment — from the increases in Social Security's FRA that occurred in the past decade. We focus on state-level age discrimination laws because, during the period when the FRA began to increase, there were no changes in federal age discrimination law that could be used to identify the effects of variation in the strength of age discrimination protections.

The research requires data covering older individuals in the United States at and around the usual ages of retirement, in a period before and after the FRA began to increase. With such data, we can identify those potential retirees who are "caught" by the increase in the FRA; that is, they are at an age that would have been past the FRA before the FRA began to increase, but because they reach that age after the FRA increases, they face a higher retirement age than the FRA of 65 faced by past cohorts. These data come from the Health and Retirement Study (HRS), and we use waves from 1992 through 2008, extending through the initial round of increases in the FRA from 65 to 66.

We also use an extensive database of state age discrimination laws that we constructed, using detailed information from state statutes and their histories, judicial cases, and other sources. We focus on four aspects of age discrimination laws that, based on our research, have significant variation above and beyond what is specified in the federal law: the firm-size cutoff for applicability of the law, when lower than the cutoff of 20 in the ADEA; whether the state law allows compensatory or punitive damages, which are not allowed under the federal law; the statute of limitations for filing a claim; and the recoverability of attorneys' fees under state law, which can increase the attractiveness of filing discrimination lawsuits.

The empirical strategy is to estimate the Social Security benefit claiming and employment responses of those who are caught by the increase in the FRA, and to ask how this response differs for those in states with stronger age discrimination laws. If, for example, benefit claiming of those workers caught by the increase in the FRA declines more in the states with stronger age discrimination laws, we would conclude that these age discrimination laws enhance this dimension of the labor supply

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response to the increase in the FRA. We would reach a similar conclusion if the employment of those workers caught by the increase in the FRA increases more in states with stronger age discrimination laws.

The evidence indicates that in states with stronger protections against age discrimination in the labor market, older individuals were more responsive to increases in the Social Security FRA. Specifically, where the state laws applied to small firms that are not covered by the ADEA, employment increased more at ages that were initially beyond but subsequently lower than the FRA — i.e., for those older individuals "caught" by increases in the FRA. Where the state laws provided stronger remedies (harsher penalties), the response to the increase in the FRA was stronger for both employment and claiming Social Security benefits. And we find some evidence that these impacts of state age discrimination laws were stronger where, under state law, attorneys' fees are recoverable. We find some parallel results for those beyond the earlier Social Security claiming age (62) but younger than 65, but only for full-time employment and only for stronger remedies.

The employment findings are particularly significant. Because benefits taken before the FRA are actuarially adjusted, whether or not workers begin to take benefits before the FRA may have little impact on the financial solvency of Social Security. However, if people work longer, they pay taxes into the system for a longer period, which has direct beneficial financial implications.

More generally, the evidence suggests that Social Security reforms on the supply side intended to enhance incentives for older individuals to remain in the workforce — whether in the form of the second scheduled round of increases in the FRA, or other changes in incentives — will be more effective if public policy reduces demand-side barriers to the employment of older workers that stem from discrimination. The states that currently provide stronger age discrimination protections may provide a model for changes in the ADEA that could enhance the effectiveness of future Social Security reforms. Given that these supply-side reforms impose costs on older individuals, it seems reasonable to try to eliminate demand-side barriers to older workers' employment that would otherwise necessitate stronger supply-side changes to achieve solvency of the Social Security system.

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