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Did Age Discrimination Protections Help Older Workers Weather the Great Recession?

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The Great Recession led to large increases in unemployment rates and unemployment durations for workers of all ages, but the duration of unemployment for older workers rose far more dramatically. The increase in unemployment durations for older workers has led to speculation that age discrimination plays a role. Many states offer stronger protection against age discrimination than is offered under the federal Age Discrimination in Employment Act (ADEA). This paper explores whether these stronger age discrimination protections at the state level acted to protect older workers during the Great Recession.

Analysis

Data are drawn from two sources: the Current Population Survey (CPS) and the Quarterly Workforce Indicators (QWI). Data from all states (excluding Washington, DC, for the QWI) are used covering the time period 2003–2011. Age groups include prime-age individuals (ages 25–44) and older individuals (55 and older). We focus on two features of state age discrimination laws:

1. Firm-size minima for the applicability of state age discrimination laws. States with a lower firm-size minimum are considered to have stronger laws, since state law covers employees that are not covered by the ADEA, which has a firm-size minimum of 20. During the sample period, 34 states have a lower firm-size minimum (fewer than 10 employees).

2. Stronger remedies than the federal ADEA, by providing compensatory or punitive damages. During the sample period, 29 states have stronger remedies.

We conduct a statistical analysis examining whether older workers in states with stronger age discrimination laws experienced less severe labor market disruptions during the Great Recession relative to younger workers, as measured by unemployment rates, employment-to-population ratios, unemployment duration, and hiring rates. Results are estimated separately for the time periods during the Great Recession (2007:Q4 to 2009:Q2, as defined by the National Bureau of Economic Research), and immediately following it (through 2011). These periods are analyzed separately because labor market dynamics are quite different in each period, and because recession-driven labor market changes often lag behind the output changes that economists use to define recessions.

Results

The analysis shows that during the Great Recession, stronger remedies were associated with a reduction in the employment-to-population ratio among older women relative to younger women, reduced unemployment durations among older women relative to younger women, and increased unemployment durations among older men relative to younger men. The analysis also shows that after the Great Recession, stronger remedies are associated with increased unemployment rates among older men relative to younger men, increased unemployment durations for older men

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relative to younger men, and reduced hiring rates for older women relative to younger women. In addition, after the recession, lower firm-size minimums are associated with reduced employment-to-population ratios for older women compared to younger women.

Discussion of Results

The results suggest that, for men and women, there is very little evidence that stronger state age discrimination protections helped older workers weather the Great Recession. Moreover, there is some indication that the opposite occurred, with older workers bearing more of the brunt of the Great Recession in states with stronger age discrimination protections.

However, this evidence does not speak to the effectiveness of age discrimination laws during normal times. Some previous research indicates that the initial adoption of state and federal age discrimination laws increased employment of older men. Indeed, in this study, when we examine the effectiveness of state age discrimination laws in the years leading up to the Great Recession, we find evidence of reduced unemployment durations for men and improved hiring rates for men and women. Why does the effectiveness of these laws apparently vary across the business cycle? We suggest several possible explanations:

1. An event like the Great Recession creates such severe disruptions in labor markets that sorting out the effects on employment adjustments of age discrimination versus changing business conditions becomes very difficult, reducing the likelihood that workers, attorneys, or the state commissions that enforce anti-discrimination laws perceive age discrimination, or that claims of age discrimination can prevail.

2. Because states with stronger age discrimination laws impose constraints on employers, there could be more "pent-up demand" for age discrimination in these states, which firms act on during a sharp downturn. There are parallels to this type of behavior in other areas of economic research.

3. During and after the Great Recession, product and labor demand may have been sufficiently uncertain that employers perceived a stronger possibility of wanting to terminate a recently-hired older worker before that worker voluntarily chose to leave. Rather than risk a wrongful termination claim based on age, employers might have been more reluctant to hire older workers.

Policy Implications

There are a number of potential implications of this evidence and these conjectures in terms of the longer-term goal of lengthening work lives. If the conjectures are correct, then as the economy recovers the stronger state age discrimination protections – in the states that have them – would become more effective at improving labor market outcomes for older workers. On the other hand, if it did indeed become easier to discriminate against older workers during the Great Recession and its aftermath, or employers were more likely to engage in such discrimination, then the extended periods of unemployment, especially among workers near retirement ages, might have hastened transitions out of the labor market and toward retirement, permanently lowering employment of older workers.

Finally, if age discrimination does increase during sharp economic downturns, and especially if the implication of this is that some older workers leave the job market permanently during such periods, then it may be useful to think about whether it is possible to modify age discrimination protections so that they maintain their effectiveness in times of economic turbulence. It is not obvious what kinds of changes might meet this objective, since inferring discriminatory patterns in terminations or other dimensions of employer behavior will inevitably be difficult when labor markets are more volatile. But making it more difficult to discriminate in hiring, in general, could help.

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