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## Discussion Paper Series

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

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

The Great Recession led to dramatic 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 relative increase in unemployment durations for older workers indicates that older individuals who lost their jobs as a result of the Great Recession, or who were seeking new employment, have had greater difficulty becoming re-employed.

The increase in unemployment durations for older workers has led to speculation that age discrimination plays a role. Moreover, there may be some reasons to expect more discrimination in poor labor markets as long queues of job applicants allow employers to be more selective in their hiring decisions.

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. While Neumark and Button recognize that they cannot determine whether age discrimination actually occurred, they can ask whether these state protections reduced the adverse effects of the Great Recession on older workers relative to younger workers.

Neumark and Button find little evidence that stronger age discrimination protections helped older workers weather the Great Recession, relative to younger workers. Indeed, in some instances they appear to have made things relatively worse for older workers.

### **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) are used covering the time period 2003-2011. Age groups include prime-age individuals (ages 25-44) and older individuals (55 and older). The authors focus on two features of state age discrimination laws:

1. Firm-size minima for the applicability of state age discrimination laws. The firm-size minimum specifies the minimum number of employees working at a firm for state age discrimination laws to apply. 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. Stronger remedies exist when the state age discrimination law goes beyond the federal law by providing compensatory or punitive damages. During the sample period, 29 states have stronger remedies.

The authors conduct a statistical analysis in which they examine 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

Results of the analysis are shown below in Tables 1 and 2, presented separately for older men and women. The estimates capture the differential effects of the Great Recession on older vs. younger workers, across states with and without the stronger age discrimination protections. In Table 1, the outcomes of interest are unemployment rates and employment-to-population ratios. In Table 2 the outcomes are unemployment duration and hiring rates.

In summary, 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 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.

Table 1.

	Unemployment Rates				Employment to Population Ratios				
	Lower Firm-Size Minimums		Stronger Remedies		Lower Firm-Size Minimums		Stronger Remedies		
	Men	Women	Men	Women	Men	Women	Men	Women	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	
<i>During the Great Recession:</i> effects on older workers in states with stronger age protections.	(1)	-0.07	-0.25	0.56	0.31	0.18	-0.40	-0.39	-1.13**
<i>After the Great Recession:</i> effects on older workers in states with stronger age protections.	(2)	0.25	0.47	1.05***	0.52	-0.26	-0.98*	0.15	-0.06

\*, \*\*, \*\*\* means statistically significant from zero at the 10%, 5%, and 1% level respectively.

Columns 1-4 of Table 1 display results from the analysis when the outcome of interest is the unemployment rate. In columns 5-8 the outcome of interest is the employment-to-population ratio. Effects during the Great Recession are presented in row 1 and effects after the Great Recession are presented in row 2.

When the outcome is the unemployment rate, stronger remedies apparently worsened the unemployment rates of older men after the Great Recession. In row 2, column 3, stronger remedies are associated with a 1.05 percentage point increase in unemployment among older men, relative to younger men. No other estimates are statistically significant.

When the outcome is the employment-to-population ratio, the only statistically significant results are for women. During the recession, lower firm-size minimums are associated with a 1.13 percentage point drop in the employment-to-population ratio of older women compared to younger women (see row 1, column 8). After the recession, stronger remedies are associated with a .98 percentage point drop in the employment-to-population ratio of older women compared to younger women (see row 1, column 8). Note that an employment-to-population ratio of .20 means that if the population of older women were 1,000, then 200 individuals would be employed. In this example, a 1.13 percentage point drop in the employment-to-population ratio (a drop from .20 to .187) would indicate that 11 fewer individuals were employed.

Table 2.

	Unemployment Durations				Hiring				
	Lower Firm-Size Minimums		Stronger Remedies		Lower Firm-Size Minimums		Stronger Remedies		
	Men	Women	Men	Women	Men	Women	Men	Women	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	
<i>During the Great Recession:</i> effects on older workers in states with stronger age protections.	(1)	1.45	-2.35	5.53***	-4.03*	0.03	-0.09	-0.11	-0.46
<i>After the Great Recession:</i> effects on older workers in states with stronger age protections.	(2)	-1.81	1.18	5.08***	-3.21	-0.25	-0.39	-0.36	-0.84**

\*, \*\*, \*\*\* means statistically significant from zero at the 10%, 5%, and 1% level respectively.

Columns 1-4 of Table 2 present results from the analysis when the outcome of interest is duration of unemployment. In columns 5-8 the outcome of interest is the hiring rate. For unemployment duration, the estimate represents the number-of-weeks change in unemployment duration for older workers compared to younger workers. There are no statistically significant effects due to the lower firm-size minimums. However, stronger remedies results in an additional 5.53 weeks of unemployment for older men relative to younger men during the recession (see row 1, column 3), and an additional 5.08 weeks of unemployment after the recession (see row 2, column 3). Women, in contrast, experienced a

reduction in unemployment duration of 4.03 weeks during the recession (see row 1, column 4). Following the recession, the result is negative as well, though it is statistically insignificant.

When the outcome is the hiring rate, the estimate represents the percentage point change in the rate of hiring. The only statistically significant result is in row 2, column 8, indicating that stronger remedies are associated with a .84 percentage point drop in the hiring rate of older women relative to younger women after the Great Recession.

## Discussion of Results

For men, the authors find *no* evidence that stronger age discrimination protections helped older workers weather the Great Recession, relative to younger workers. When there is evidence that stronger state age discrimination protections mediated the effects of the Great Recession, they appear to have made things relatively worse for older workers. (The estimates that indicate age discrimination protections leading to a worsening of outcomes for older workers are shaded in the tables.)

For women the evidence is more mixed. On the one hand, there is some evidence that stronger age discrimination protections were associated with relatively smaller increases in the unemployment durations of older women during the Great Recession; the one estimate in Table 2 reflecting this effect is indicated by a box. On the other hand, in the period after the Great Recession, states with stronger age discrimination protections had larger declines in the employment-to-population ratio and larger declines in the hiring rate for older women.

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. The authors note that 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 Neumark and Button examine the effectiveness of state age discrimination laws in the years leading up to the Great Recession, they 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? The authors 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.