



Submission to the 11th Session of the Open Ended Working Group on Ageing

Right to Work and Access to the Labor Market

The US federal government, as well as almost all US state governments, have laws against age discrimination. At the federal level, the Age Discrimination in Employment Act (ADEA) protects workers who are 40 and older from age-based employment discrimination. The ADEA , passed in 1967, is modeled on and in some parts identical to, Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, sex, color, religion, and national origin. Title VII is important to older workers not only because its interpretation influences the interpretation of the ADEA , but also because older workers may be subject to discrimination based on race, sex, ethnicity, or religion as well as age. While Title VII and the ADEA share a common purpose—eliminating discrimination in the workplace—and have nearly identical language, there are some important differences between them. Most notably, the ADEA covers fewer employers and provides fewer remedies than Title VII. In contrast, most states offer the same protections for age discrimination as other forms of discrimination.

In addition, differences have emerged in the way courts have interpreted the ADEA to provide less protection for older workers. For example, courts have imposed greater evidentiary burdens on age discrimination victims than on people bringing claims under Title VII. As a result, these court rulings have also made it easier for employers to justify policies that have a discriminatory impact.

Of note is the Supreme Court's 2009 decision in *Gross v. FBL Financial Services, Inc.* that made it particularly difficult for workers alleging age discrimination to prevail in court. Where more than one factor may have been at work, older workers must show that age was a deciding factor that caused their adverse treatment, rather than having to show only that age was one of the factors the employer considered. Other decisions have limited in other ways the ability of workers to bring successful age discrimination claims.

Research shows that age discrimination remains common in the US workplace. Among American workers ages 45 and older, 61 percent reported either seeing or experiencing age discrimination in the workplace. Older jobseekers are very aware of how age discrimination acts as a barrier to working; unemployed people were more likely than their working counterparts to say they had seen or experienced age discrimination, and 38 percent believed they had not been hired for a job because of their age.ⁱ

There is evidence that age discrimination is an even bigger problem for older women. Field studies have demonstrated a higher prevalence of age discrimination in hiring against older female job applicants compared with their male counterparts.ⁱⁱ Women are more likely to say that they have seen or experienced age discrimination (64 percent versus 59 percent of men). An individual's race may also intensify the effects of age discrimination; African American/black workers were most likely to say they had experienced age discrimination.ⁱⁱⁱ



AARP supports the following Employment Principles:

Protect people from discrimination—freedom from discrimination is a fundamental right. AARP supports policies and programs that seek to redress past and current discrimination through active measures that ensure equal opportunity in all areas of American life.

Expand employment opportunities and economic security—employment policy should remove barriers to and expand employment opportunities for all who are willing and able to work, minimize unemployment and underemployment, and promote economic security in order to enable individuals and their families to maintain a decent standard of living, enhance individual dignity, and foster economic growth.

Help vulnerable populations—vulnerable populations should receive special help in finding and keeping employment capable of sustaining a decent standard of living.

Increase job availability and quality—government and employers should promote job creation that accounts for the needs of older workers. They should also address deteriorating job quality such as stagnating wage levels, a decline in jobs with benefits, unpredictable schedules, and growth in contingent employment.

Improve human capital development—individuals, employers, and policymakers must each play a role in ensuring that workers of all ages can develop new and update existing skills as the economy and labor market change.

ⁱ AARP. *The Value of Experience: The AARP Work and Career Study* (Washington DC: AARP Research, 2018) <http://www.aarp.org/ValueofExperience>.

ⁱⁱ David Neumark, Ian Burn, and Patrick Button. "Age Discrimination and Hiring of Older Workers," *FRBSF Economic Letter* 2017-06 (San Francisco: Federal Reserve Bank of San Francisco, February 27, 2017). <https://unbound.upcea.edu/innovation/alternative-credentialing/microdegrees/national-survey-suggests-that-employers-will-lead-way-on-digital-badging/>.

ⁱⁱⁱ AARP, *The Value of Experience: The AARP Work and Career Study* (Washington, D.C.: AARP Research, 2018). <http://www.aarp.org/ValueofExperience>.