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Copenhagen  
30<sup>th</sup> May – 2<sup>nd</sup> June 2006.**

**Ageism – towards a global view  
A series of 3 seminars.**

**Seminar 1  
Age Discrimination in 5 continents: real issues, real  
concerns**

**Wednesday 31<sup>st</sup> May 2006**

**Region: America**

**Paper: Age Discrimination in the United States**

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*“Old age was highly respected in early America. . .”*  
David Hackett Fischer, 1978: 29

## Introduction<sup>1</sup>

In America’s youth-obsessed society, old-age is anything but highly respected or sought after today. Television stations compete to attract 18-49-year-old viewers rather than the more rapidly growing 55- or 65-plus segments, many of whose members have more disposable income to spend. Vigorous, attractive, and sexy twenty- or thirty-year olds abound in advertisements, but septuagenarian counterparts are rare. Purveyors of beauty products and plastic surgeons capitalize on the widespread desire to ward off the visible signs of aging, often at considerable cost and to questionable effect.

Codger, old coot, geezer, hag—these are a few of the terms, typically disparaging, that Americans often use when referring to the elderly. Ageist stereotypes pervade many aspects of life. They crop up in jokes and cartoons, in the snide comments of store clerks, and in the imprecations of impatient drivers. Older persons themselves may be perpetrators as well as victims of such stereotypes, which, according to the International Longevity Center-USA (2006: 23), convey the same message, “older men and women are incompetent. . . .”

Ageism, which refers to age-based stereotypes or generalizations as well as to discriminatory behavior, has generated neither the outrage nor the academic attention that sexism and especially racism have in the United States. A recent Google search<sup>2</sup> for the three “isms” yielded 65.3 million hits for racism, 9.7 million for sexism, and fewer than 1.2 million for ageism. Nelson (2002: ix) suggests that one reason for this imbalance is that “age prejudice is one of the most socially condoned, institutionalized forms of prejudice in the world.” He maintains that “Americans tend to have little tolerance for older persons and very few reservations about harboring negative attitudes toward” them (ibid.).

Negative stereotypes, even when they produce a chuckle as cartoons and jokes often do, are potentially damaging to the extent that those who subscribe to the stereotypes act on them. The consequences of such actions may be relatively benign—offense at receiving a birthday card that makes fun of older persons, for example—or financially devastating as when they involve the inability to obtain a job because of age. Occasionally, they are hard to believe. Hendricks (2005), for example, reports on the U.S. Office of Management and Budget informing the

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<sup>1</sup> Revised version (June 20, 2006) of a paper prepared for the International Federation on Ageing 8<sup>th</sup> Global Conference on Aging seminar on “Age Discrimination in Five Continents: Real Issues, Real Concerns,” Copenhagen, May 31, 2006. Sara Rix is a senior policy advisor in AARP’s Public Policy Institute. The views expressed in this paper are those of the author and do not necessarily represent official policy of AARP.

<sup>2</sup> June 18, 2006.

Environmental Protection Agency (EPA) that older persons are less valuable than younger ones. Thus, when assessing the relative impact of environmental hazards, the EPA was advised to appraise the costs at death of an older person at 63 percent of a younger person's. It has also been reported that after 9/11, animal advocates reached pets in need of rescue much sooner than medical teams got to some elderly and disabled people (O'Brien, 2003).

Ageism manifests itself in both self- and other evaluations of worth. Older persons may internalize the negative assessments of others and act accordingly by, e.g., withdrawing from or never getting involved in various forms of social intercourse.

There are, of course, costs to age discrimination above and beyond the psychological and social. Lost wages and benefits are a direct personal cost of job displacement, being passed over for a promotion, or losing out to another job applicant because of age. Litigation is expensive, and monetary settlements can be substantial. Productivity suffers when older workers, because of age discrimination, exit or remain out of the labor force, are underemployed, and/or lack equal access to the training that would keep their skills up to date. Employers face costs in the form of lost knowledge and experience, added expenditures for recruitment and training, and often less than optimal performance on the part of new workers being trained (AARP, 2005; Buccigrossi and Robinson, 2003).

Ageism differs from racism and sexism in that there is little evidence of animus toward older persons, perhaps because most people have loving experiences with older relatives and will also, assuming they avoid premature death, join the ranks of the elderly themselves. Yet ageism seems to be pervasive (International Longevity Center-USA, 2006; Levy and Banaji, 2002; Palmore, 2001), even though much of it may go unrecognized or ignored by those who harbor or experience the consequences of negative stereotypes (see e.g., Levy and Banaji, 2002). It may even have increased (e.g., AARP, 2002).

### **Taking a Look at Age Discrimination in the United States**

This paper examines age discrimination in the United States, which, since 1967, has had federal legislation banning age-based discrimination in employment—the Age Discrimination in Employment Act (ADEA). The other federal anti-age discrimination law is the Age Discrimination Act of 1975. This law, which prohibits discrimination based on age in programs or activities receiving federal financial assistance, does not target a specific age or age groups for protection.

The paper concentrates on discrimination against older persons. Although younger persons can certainly be discriminated against, they have fewer age-based protections in the United States than do older persons, at least at the

federal level. Older age groups have been the focus of most of the aged-based legislative and litigious action in the country.

There is little evidence that the young experience discrimination to the extent that older persons do, or with the same deleterious consequences. Younger workers may, for example, be relegated, at least for a time, to low-level jobs that do not fully utilize their abilities or take advantage of their education (Buccigrossi and Robinson, 2003). Assuming they perform adequately in entry-level jobs, however, they can expect to move out of them. A similar end for older workers does not exist.

Because the young are not immune to ageism, law professor Howard Eglit (2005) suggests that “old-ageism” is a more precise term to use when referring to stereotypes about differential behavior toward older persons. However, he also notes that “ageism is commonly understood as a malign mechanism doing harm just to the old” ((ibid.: 59). This paper subscribes to that point of view and uses the terms ageism and age discrimination as applied to older persons.

In addition, the paper pays most attention to employment-based age discrimination, in part because that has been the focus of most legal action, policy attention, and research and in part because it is the type of discrimination with which the author is most familiar. Positive discrimination, which exists in the form of favoritism or preferential treatment, is mentioned only in passing. Nor is attention paid to the perfectly legal use of age to qualify for certain types of assistance and benefits, such as Social Security old age benefits or Medicare.

## **America’s “Old”**

There is no universally accepted definition of “old age” in the United States. While Americans are hardly keen to consider themselves old at 40, protection under the ADEA begins at that age. Some federally funded programs designed specifically to assist “older” persons, such as the Senior Community Service Employment Program (SCSEP), use 55 as the lower age of eligibility. And for many people, old age traditionally began at 65, when workers became eligible for full Social Security benefits. By that age, retirement in the late 20<sup>th</sup> century was the norm.<sup>3</sup> The age of eligibility for full Social Security benefits is gradually rising to 67. Whether this results in a shift in what is conventionally thought of as “old age” remains to be seen.

## **Experiencing Age Discrimination in Employment**

### What Workers See and What They Get

Estimating the pervasiveness of age discrimination in employment is no easy task. Employers are hardly likely to admit to survey researchers how often and

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<sup>3</sup> In fact, most workers do not wait until 65 to collect benefits.

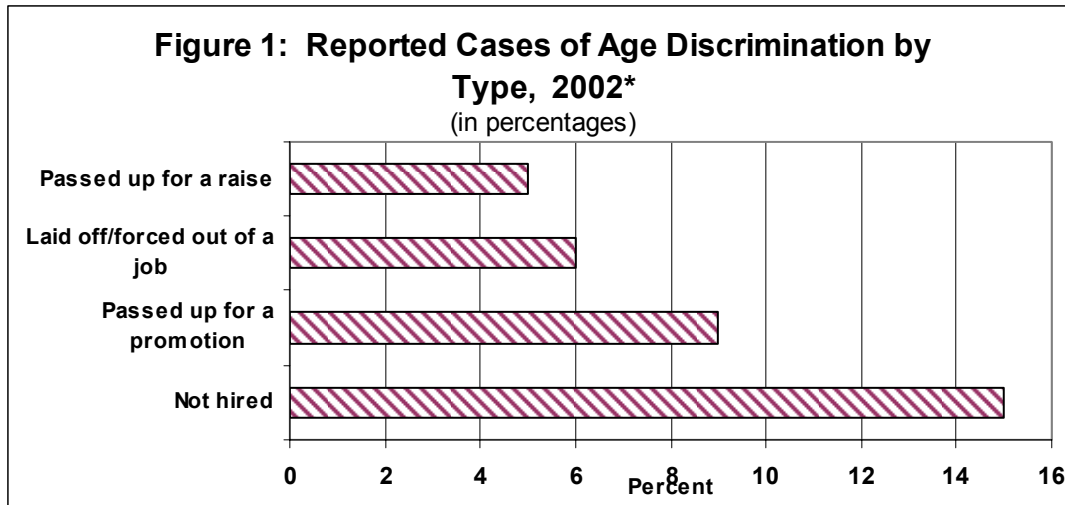
under what circumstances they might discriminate against older workers. Perhaps because it is so difficult to study, research on age discrimination in the United States is somewhat limited, certainly when compared to research on other problems experienced by older workers.

In a 1978 survey conducted by Harris and Associates, 80 percent of employees agreed that “most employers discriminate against older people and make it difficult for them to find work” (U.S. Congress, 1979: 74). As of 2002, over two-thirds of workers aged 45-74 believed that “workers face age discrimination in the workplace today” and that the problem begins around age 49 (AARP, 2002: 66). Sixty percent contended that older workers are the first to go when jobs are cut (ibid.: 68).

More recently, Lahey (2005) mailed several thousand resumes to employers in Boston, Massachusetts and St. Petersburg, Florida in a study of employers’ responses to job applicants of different ages. The age of the applicants, described as between 35 and 62, was indicated by high school graduation date. To control for factors other than age that might influence hiring decisions, the jobs in question were entry level (e.g., clerical work or licensed practical nursing), and all applicants were women. Lahey found that younger applicants were 40 percent more likely to be called for an interview than applicants aged 50 or older. According to Lahey’s calculations, that meant that to obtain one interview opportunity, an older applicant in Massachusetts would have to send out 27 resumes to the 19 from a younger applicant. In Florida, one interview would require 23 applications from an older worker and 16 from a younger one.

The Lahey findings are consistent with those of Bendick and colleagues (Bendick, Jackson, and Romero, 1996; Bendick, Brown, and Wall, 1999). Likewise using job applications from older and younger workers, these investigators also found that younger job applicants were favored over older applicants, despite the fact that the applicants were similar to each other in all respects except age. In their review of the industrial gerontology and industrial psychology literature, Adams and Neumark (2006: 206) observe that “more than a handful” of studies show that age is a factor in the evaluation of job applicants and in promotion decisions, although they caution that most of the research involves hypothetical situations, which may or may not reflect what goes on in the business world (ibid.: 190-191).

Older people appear more likely to witness age discrimination against others or to believe that discrimination occurs than to experience it themselves. Interestingly, reports of age-based discrimination in hiring are more common than terminations (15 percent v. 6 percent, respectively [Figure 1]), even though workers are more likely to file termination charges with the Equal Employment Opportunity Commission (EEOC), the agency with jurisdiction over the ADEA.



\*Percent of persons aged 45-74 believing these things had happened to them because of their age.

Source: AARP, *Staying Ahead of the Curve: The AARP Work and Career Study* (Washington, DC: AARP, 2002), 70.

Not surprisingly, older jobseekers (i.e., those who say they are looking for work) are substantially more likely to contend that workers face age discrimination than are their employed counterparts (80 percent v. 66 percent) (AARP, 2002: 67). This is probably a reflection of the employment barriers jobseekers have actually confronted while looking for work. Nonetheless, regardless of age, race or ethnicity, occupation, or job status, a majority agrees that age discrimination is a problem.

Employment status also has an impact on the types of discrimination workers say they have experienced (Table 1). More than one-fourth (27 percent) of jobseekers aged 45-74 report being laid off or fired because of their age, and that may well be the reason they are looking for work. In contrast, hardly any (5 percent) full-time older workers cite having experienced an age-based layoff or firing (ibid.: 71).

These survey data provide insights into *perceptions* of age discrimination; there is no way of knowing how many of those who report discriminatory actions have really been victims. On the one hand, some workers who report discrimination could be attributing adverse employment outcomes to age when other factors are responsible. This may be especially likely with respect to hirings, where the qualifications of the competition are not generally known. (Terminations, unlike hirings, salary offerings, or raises, are highly visible. Just who has been let go and who has been retained and how they compare to one another [e.g., by age, race, or sex] are evident to everyone. Hence, it is not surprising that the modal reason for filing an age discrimination charge with the EEOC has involved terminations.)

<b>Table 1: Reported Cases of Age Discrimination by Employment Status*</b> (percent reporting)				
<b>Employment Status</b>	<b>Type of Age Discrimination Reported</b>			
	Not getting hired	Passed up for a promotion	Laid-off/fired	Passed up for a raise
Working full time	11	8	5	4
Working part time	20	13	8	8
Looking for work	41	18	27	11

\*For each experience, respondents, who were aged 45-74, were asked if it had happened to them "because of age."

Source: AARP, *Staying Ahead of the Curve: The AARP Work and Career Study* (Washington, DC: AARP, 2002), 70.

To the extent that an act only appears to be discriminatory, figures on age discrimination in employment would be inflated. On the other hand, workers and job applicants may be unaware of any discrimination, much of which is very subtle. In such instances, survey data such as those reported here could be underestimating what is really going on.

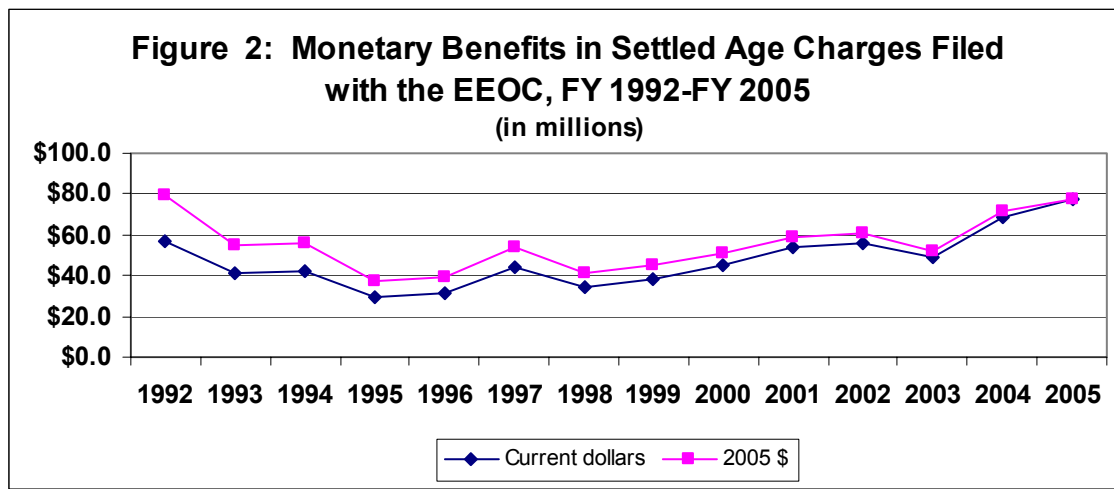
Increases in reported instances of age discrimination could be the result of workers becoming more informed about age discrimination and thus more likely to recognize it when it occurs. By 2002, most baby boomers in the United States were in the ADEA's protected age category. This self-centered generation may be especially sensitive to real and perceived slights and so more inclined than others to believe that they have experienced age discrimination.<sup>4</sup>

### Claiming Age Discrimination

Charges filed with the EEOC are another admittedly imperfect measure providing insights into both perceived and actual age discrimination. The EEOC most often concludes that a filed charge lacks merit, i.e., that there is no reasonable cause to assume that age discrimination occurred; this has been the case for about 60 percent of charges filed from Fiscal Year (FY) 1992 through FY 2005 ([www.eeoc.gov/stats/adea.html](http://www.eeoc.gov/stats/adea.html)). Nonetheless, Adams and Neumark (2006: 195) argue that all the ADEA cases that are deemed worthy of merit by the EEOC are an indication that the problem of age discrimination has not disappeared. (Of all the charge receipts resolved in FY 2005, the EEOC concluded that there was reasonable cause to assume discrimination in 4.1 percent, up from 2.2 percent in FY 1992 [[www.eeoc.gov/stats/adea.html](http://www.eeoc.gov/stats/adea.html)].) In addition, court judgments and monetary settlements in age cases are further proof that age discrimination occurs and remains a significant problem. Monetary benefits, excluding those obtained through litigation, amounted to \$77.7 million in FY 2005 and have

<sup>4</sup> Respondents in the AARP survey were aged 45-74 in 2002; the boomer respondents, aged 45-56, were over two-thirds of the sample.

averaged \$47.8 million per year since 1992 ([www.eeoc.gov/stats/adea.html](http://www.eeoc.gov/stats/adea.html)), or \$55.7 million in inflation-adjusted dollars (Figure 2).



\*Excludes monetary benefits from litigation.

Source: Equal Employment Opportunity Commission, Enforcement Statistics, [www.eeoc.gov/stats/adea.html](http://www.eeoc.gov/stats/adea.html).

### Discrimination and the Job Search

The difficulties older workers face in their search for work, especially when unemployed, are yet another indicator that age discrimination may be at work. Analyses of job displacement data are not consistent as to whether older workers are disproportionately targeted for displacement (e.g., Adams and Neumark, 2006; Farber, 2005). Older displaced workers, however, fail to recover from the experience of displacement as readily or as well as younger workers do. They are, for example, substantially more likely than younger displaced workers to leave the labor force after displacement. The Bureau of Labor Statistics reports that nearly 1.7 million workers aged 55 and older were displaced from their jobs between January 2001 and December 2003 as a result of a plant closing or move, insufficient work, or abolition of their shift/position (U.S. Department of Labor, 2004, Table 8).<sup>5</sup> By January 2004, one in five displaced workers aged 55-64 and more than three in five aged 65 or over were no longer in the labor force. For the 65-plus population, the proportion reemployed after displacement was lower than it was in 2002 (25 percent from 30 percent), the previous year

<sup>5</sup> This was a greater number than had been displaced between January 1999 and December 2001, when 1.2 million older workers lost their jobs (U.S. Department of Labor, 2002, Table 8 and 2004, Table 8).

As of January 2004, more than half (52 percent) of all older (55-plus) workers displaced from 2001 to 2003 had found other jobs. Although this was a higher percentage than had found work after the previous period of displacement tracked by the Bureau of Labor Statistics (49 percent), it was substantially below that for the displaced worker population aged 25-54, 69 percent of whom were reemployed by January 2004.



examined by the Bureau of Labor Statistics (U.S. Department of Labor, 2002: Table 8), and the proportion out of the labor force was up (55 percent to 61 percent).

Regardless of the reason for withdrawal, workers who exit the labor force are not counted among the unemployed, even if they would like to be working. Thus, unemployment rates in the older population may be a poor indicator of job interest. For some older workers, displacement offers a convenient excuse to retire. Others, however, leave the labor force after a fruitless job search or to avoid what is often a long and discouraging hunt for work. Data on duration of unemployment reveal that older (aged 55-plus) unemployed workers are unemployed longer than their younger counterparts (under 55)—an average of 24.1 weeks vs. 17.8 weeks in 2005 (U.S. Department of Labor, 2006, Table 31). Older workers are also more likely to be found among the long-term unemployed.

Some observers have suggested that the longer unemployment of older workers may be due to worker preferences or motivations rather than to discrimination (Adams and Neumark, 2006; Neumark, 2001; Rones and Herz, 1989); i.e., such workers could be continuing to hope for higher wages or a job more comparable to the one they lost, which could account for some of the age differential in duration of unemployment. If so, outcome data reveal a poorer payoff, on average, for the wait. Not only are older unemployed workers less likely than their younger colleagues to become reemployed, they are also more likely to experience earnings and benefit losses when they do find work (U.S. Congress, Congressional Budget Office, 1993; Couch 1998; Hipple, 1999). Again, one cannot conclude that age discrimination accounts for these differentials, but when coupled with other data on the job hunt and attitudes of employers toward older workers, data such as these paint a rather bleak picture of the employment prospects of America's older workers, at least some of which seems attributable to discrimination.

### The Older Discouraged Worker

The phenomenon of “job-seeking discouragement” may also be the result of actual discrimination or fear of experiencing it. Technically, discouraged workers are men and women who would like a job and say that they are available for work but not seeking employment because they do not believe that work is available, think they lack the necessary schooling or training, fear that employers will think them too old, or anticipate some other type of discrimination (U.S. Department of Labor, 2006: 254). As it turns out, very few persons aged 55 or older who are out of the labor force qualify as “discouraged,” according to the Bureau of Labor Statistics. Fewer than 3 percent even admit to wanting a job,<sup>6</sup> and only 8 percent of those who wanted work, or 78,000 individuals in 2005, met all the official criteria for jobseeking discouragement (U.S. Department of Labor,

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<sup>6</sup> Forty-one million persons aged 55 and over were not in the labor force in 2005, and only 1 million reported wanting a job (U.S. Department of Labor, 2006, Table 35).

2006: Table 35). These percentages have remained fairly stable since the definition of discouragement was revised in the early 1990s.

The definition of discouraged was looser prior to 1994, and the proportion of older workers who were discouraged workers was higher as a result. Other research indicates that the number of older persons who would like to be working might be substantially higher than that reported by the Bureau of Labor Statistics. The Commonwealth Fund (1990: 3) once reported that 1.1 million older Americans “were most ready and able to work.” If employment opportunities for older workers were more appealing<sup>7</sup> and if older workers did not have to worry quite as much about age discrimination in finding work, more older Americans who are out of the labor force might express greater interest in working when they talk to Bureau of Labor Statistics interviewers.

Although employers are not likely to admit that they violate the law by discriminating against older workers, they do express reservations about older workers that may help explain why the search for work on the part of older workers is often so discouraging and unrewarding. Admittedly, employers tend to regard older workers as loyal, dependable, committed to quality, good with customers—the list of positive attributes is quite extensive—but they are less positive about older workers’ flexibility, adaptability, technological competence, and ability to learn new technology (AARP, 1995a and 2000; Barth, McNaught, and Rizzi, 1993). The presumed negative attributes often outweigh the positive ones when it comes to getting or retaining a job. A report prepared for AARP says, in fact, that the positive qualities characteristic of older workers “seem to be taken for granted by managers” (AARP, 1995b: 35).

## **Addressing Age Discrimination**

### Age Discrimination: Out of Sight—Out of Mind

In contrast to the European Union, where older workers are a priority issue, the aging workforce is not high on the public policy agenda in the United States. The lack of focus on older worker issues in general extends to age discrimination in particular. For one thing, the demographic situation in the United States is more favorable than it is in many other developed countries: fertility rates are higher, and the population is increasing. Social Security will not become insolvent for several decades. Finally, labor force participation rates at upper ages are quite high, certainly when compared to the EU as a whole. The “need” to do something about or for older workers is simply less pronounced.

In addition, after decades of decline, the labor force participation rates for older Americans began to level off in the mid 1980s and, for reasons that are not well

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<sup>7</sup> Older workers express considerable interest in part-time employment in retirement. However, part-time work in the United States is often low-wage, low-benefit, and demanding work that does not offer much appeal to those who don’t need the earnings.

understood (Johnson, 2002), have been on the rise. For some age groups, the increases have been dramatic (Table 2). Over the past 20 years alone, the rate for those aged 65-69 has increased by more than 50 percent and seems poised to continue rising. For an age group of critical interest to the European Union, i.e., 55-64, the U.S. employment rate is nearly 20 percentage points higher than it is for the EU countries in total.<sup>8</sup>

2005 was a good year as far as employment in the United States was concerned. The unemployment rate fell, and the number with jobs, older as well as younger, was up. Since 2000, in fact, the number of employed persons aged 55 and over has increased by 5.7 million or 32 percent, and the labor force participation rate has risen by nearly 5 percentage points from 32.3 to 37.2. Very few older workers are employed part time because they cannot find full-time work.

Age discrimination is not a top-of-mind issue in the United States, due in part to a favorable employment environment for older workers, at least as far as rising employment and low unemployment rates are concerned. Despite a general belief on the part of older Americans that age discrimination is common, it is apparently not sufficiently worrisome to have stimulated much public pressure to “do anything” about it.

<b>Table 2: Labor Force Participation Rates for Older Persons, Selected Years</b> (in percentages)				
	<b>55+</b>	<b>55-64</b>	<b>65-69</b>	<b>70-74</b>
<b>1950</b>	43.0	56.7	NA	NA
<b>1980</b>	32.8	55.7	NA	NA
<b>1985</b>	30.3	54.2	18.4	NA
<b>2000</b>	32.4	59.2	24.5	13.5
<b>2005</b>	37.2	62.9	28.3	16.3

Source: U.S. Department of Labor, Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, May 2005, <http://data.bls.gov/PDQ/outside.jsp?survey=ln>.

### Looking to the Age Discrimination in Employment Act

Perhaps more to the point, the United States has had federal legislation against age discrimination for nearly four decades, and some might assume that any problems are being taken care of as a result. In addition to the above-mentioned Age Discrimination in Employment Act and Age Discrimination Act, the Americans with Disabilities Act of 1990 prohibits employment discrimination against qualified individuals with disabilities. Given the fact that chronic health and disabling conditions increase with age, this law’s protections may be especially important to older workers.

The ADEA was passed three years after Title VII of the Civil Rights Act of 1964 barred discrimination based on race, color, religion, sex, or national origin.

<sup>8</sup> However, rates are higher in some countries, such as Norway and Sweden.

Significantly, Congress debated whether to include age under Title VII, but sufficient support for doing so was lacking. It was feared that adding age could put passage of Title VII in jeopardy; Congress instead opted to have the Secretary of Labor study age discrimination and report back with recommendations (Bessey and Ananda, 1991). The resultant research underscored in no uncertain terms that age discrimination in employment was a significant problem in the United States and led to passage of the ADEA. According to Bessey and Ananda (1991), Congress had been surprised by some of the study's findings.

Macnicol (2006) and Neumark (2001), among others, have emphasized that action against age discrimination preceded the ADEA. Maximum hiring ages for federal workers were abolished in 1956. Executive Order 11141 established a policy against age discrimination among federal contractors in 1964, although procedures for handling complaints were lacking (Neumark, 2001). States, however, had begun to pass statutes dealing with age discrimination as early as 1903,<sup>9</sup> and today, every state has an age discrimination law, many with broader coverage than the ADEA. Friedman (1984: 5) wryly observes that “it is fair to say [those early laws] did not make much of a splash at the time.”

The Age Discrimination in Employment Act of 1967 has, it is probably safe to say, made far more of a splash, although it did not seem to generate much enthusiastic support or heated opposition at the time of its passage. There was little organized effort from the public to get the law enacted; nor was there much lobbying on the part of businesses to get it rejected (Friedman, 1984). According to Friedman, the aged at the time were far more concerned about benefits than about worker protections against age discrimination—poverty rates among the elderly were high; Social Security was not yet indexed; promised private pensions could evaporate at a moment's notice. To be sure, the elderly were not even covered by the ADEA of 1967; it was rather a law for the middle-aged (Friedman, 1984).

The ADEA initially banned arbitrary discrimination against workers aged 40-65 in all terms of employment, including hiring, discharge, compensation, promotions, and training. Employers with 20 or more employees are covered by the law as are employment agencies, labor organizations, and federal, state, and local governments. U.S. citizens employed by U.S. employers in foreign countries are also covered by the law. Responsibility for enforcing and monitoring the ADEA initially rested with the Department of Labor but was transferred to the Equal Employment Opportunity Commission in 1979.

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<sup>9</sup> This was Colorado, which was far ahead of any other state when it came to age discrimination. According to Friedman (1984), two additional state statutes on age discrimination were passed in the 1930s and all others in the 1950s or later. State laws are not all restricted to older workers; some, for example, apply to persons of all ages or to aged those 18 and older.

The 1967 act applied only to the private sector. Protection was extended to state and local government workers and most federal employees in 1974. Amendments in 1978 raised the mandatory retirement age to 70 and eliminated mandatory retirement for federal employees. Although there is little evidence that mandatory retirement rules were a significant factor in retirement decisions (Schulz, 1995),<sup>10</sup> mandatory retirement was eliminated for most occupations in 1986.<sup>11</sup>

A significant development occurred in 2005 when the Supreme Court ruled in *Smith v. City of Jackson, Mississippi* that ADEA claims can be based on disparate impact theory, which holds that workplace practices and policies that appear facially neutral can have a differential, or disparate, impact on certain classes of workers, in this case, older workers.

### Who Is Protected?

As of 2005, nearly 130 million persons, or 57 percent of the U.S. civilian noninstitutional population, were aged 40 or older and, if in the labor force, as 78 million were, for the most part had the protection of the ADEA. With the expansion of ADEA protections, a greater percentage of the workforce was covered by the ADEA in 2005 than in 1967 (52 percent vs. 46 percent [Table 3]).

	Age Group		
<b>2005</b>	<b>Total 40+</b>	<b>55-64</b>	<b>65+</b>
Population 16+	57.4	13.3	15.5
Labor Force 16+	51.9	12.7	3.5
<b>1967</b>	<b>40-65</b>	<b>55-64</b>	<b>65+</b>
Population 16+	39.8	13.3	Not covered
Labor Force 16+	46.2	14.0	

Source: 2005 percentages calculated from Table 3 in U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Earnings* 53(1) (Washington, DC: U.S. Government Printing Office, 2006); 1967 data are from U.S. Department of Labor, Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, <http://data.bls.gov/PDQ/outside.jsp?survey=ln>.

<sup>10</sup> According to Schulz's calculations, less than 10 percent of all retired male Social Security beneficiaries in a 1968-1970 survey had reached a legal compulsory retirement age but were still able and willing to work. This is not to say that only this low percentage of few firms had age cutoffs for employment terminations but rather that other factors accounted for the labor force withdrawal of most workers.

<sup>11</sup> Exceptions include aged 65 and older employees in executive or high policymaking positions, defined as eligible for a private retirement benefit of \$44,000 per year. Public safety workers may also be exempt from maximum hiring and mandatory retirement ages.

While almost 90 percent of America's firms have fewer than 20 employees, fewer than 20 percent of workers are employed in firms with less than 20 (U.S. Bureau of the Census, 2006). Many of these workers are protected by state laws.

## **Understanding Age Discrimination in the United States**

### The Economics of Age Discrimination

Age discrimination in the United States, as AARP's Senior Attorney Laurie McCann (2003) points out, "is viewed more as an economics issue than as a civil rights issue." Cost considerations most definitely color employers' attitudes about older workers and affect their decisions about hiring, retaining, and training. Employers use economic motives as a rationale for ridding themselves of older workers.

In its 1965 report to Congress on older workers in the United States, the Department of Labor maintained that age discrimination was based on assumptions "about the effect of age on [workers'] ability to do a job when there is in fact no basis for those assumptions" (Neumark, 2001: 6). However, Neumark asserts that "the notion was not that the assumptions were never correct" (ibid.). The ADEA does acknowledge some age-related changes or differences and permits them to be taken into consideration, e.g., if age is an occupational qualification "reasonably necessary to the normal operation of a business." This, say Adams and Neumark (2006: 191), stems from "the presumption that there may be some productivity declines stemming from age-related work limitations."

Age-related physical changes that may affect performance, productivity, and employer costs are a fact of life. Chronic health conditions, which may have an impact on work ability, increase with age; co-morbidities are common; stamina may decline; vision and hearing problems manifest themselves as well. Older workers are less likely than younger workers to be injured on the job, but when they are, their injuries are more severe and recovery time is longer (U.S. Department of Labor, 1996). There is, however, wide variability in health status in the older population, and most older Americans rank their health as at least "good" (National Center for Health Statistics, 2005). It is also the case that most work can accommodate some increase in physical limitations and that other worker attributes (e.g., judgment, attention to detail) often compensate for any limitations.

Still, health care costs rise sharply with age in the United States, and because those costs are borne largely by employers, they are assumed to weigh heavily in employers' decisions about whom to hire and perhaps whom to retain. Other costs that are age-related (e.g., life insurance) or associated with tenure and/or rising salaries (e.g., pension contributions) typically increase as well. In recognition of the fact that some employment costs may be higher for older

workers, the ADEA's equal cost/equal benefit rule requires only that employers either provide equal benefits to older and younger workers and retirees or spend the same amount for the benefit regardless of the age of the beneficiary (AARP, 2006b: 4-6).

In the United States, the higher health care costs of older workers, in particular, conspire against them, if what employers report is any guide. Since 1982, employers who offer health insurance to their employees have been required to extend that coverage to Medicare-eligible employees (i.e., those aged 65 and over). Medicare becomes the secondary payer of insurance for these workers, and some believe that restoring Medicare as the primary payer could expand employment opportunities for older workers (Committee for Economic Development, 1999). The equal cost/equal benefit rule applies to health care benefits for current employees, so the question is: Why don't employers use it in dealing with health care costs? Administrative complexity and the difficulty in ensuring that health benefits at some lower dollar amount are truly equal—and thus in compliance with the law—may be part of the reason.<sup>12</sup>

Alicia Munnell, a noted economist and director of the Center for Retirement Research at Boston College, puts it bluntly: “. . . older workers are expensive. They are paid more, sometimes in excess of their greater productivity” (Munnell, 2006: 24); high health care costs and rising employer contributions to defined benefit pension plans are singled out. Some analysts argue that even if older workers are as productive as younger workers, the fact that they are typically paid more means that per hour compensation is greater for the same output.

Such cost matters have led to suggestions that salary adjustments might be in order, i.e., that consideration should be given to reducing the wages of older workers in light of presumably waning productivity, which could lead to greater labor force participation rates (see e.g., Rebeck, 1993). Japan deals with this issue via mandatory retirement and frequent rehiring of workers at lower retirement wages. Lower-wage rehiring (minus the mandatory retirement) probably occurs in the United States, where the rehiring of retirees is common, although it could easily violate the Age Discrimination in Employment Act and the Employee Retirement Income Security Act. Reliance on temporary help agencies for hiring retirees helps employers avoid running afoul of the law.

Happily, there is some good news to report, namely the possibility that the older-younger worker cost differential might not be as lopsided as it appears on the surface. A recent study makes a strong business case for hiring and retaining older workers by identifying factors that may considerably reduce the costs of those workers (AARP, 2005). *The Business Case for Workers 50+* finds that older-younger worker expense differentials narrow considerably when recruitment, training, and lost productivity costs are accounted for. In addition, employee engagement has been shown to directly affect the bottom line, and

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<sup>12</sup> The author is grateful to AARP's Laurie McCann for her help clarifying this issue.

older workers—in contrast to some stereotypes—tend to be highly motivated and engaged (ibid.: 33-38).

If more employers took a holistic approach to their examination of the worker costs and benefits, they might find that older workers are not as costly as they think. Moreover, even if overall costs turn out to be greater in some companies—and there is wide variation within the older worker population and across firms—it bears asking if older workers are really being paid too much. After all, as employers typically acknowledge, older workers bring to their jobs a wealth of institutional knowledge and experience, along with good judgment, dependability, customer skills, and the like. Such attributes must be worth something, even if employers tend not to attach a dollar value to them (AARP, 1995b).

The available research on age and productivity indicates that age is a poor predictor of performance (e.g., Sterns and McDonald, 1994). Many differences between older and younger workers are small or largely nonexistent, Neumark maintains (2001: 19). This is encouraging, of course, but, as Neumark again points out, “negative stereotypes about older workers and classifications based on them seem likely to act—at least sometimes—in an arbitrary fashion, harming many productive older workers” (ibid.).

Furthermore, the research on age and performance suffers from a number of limitations, including a dearth of studies that include substantial numbers of older workers, especially those aged 65 and above. Another issue is that the ADEA protects a very large segment of the labor force—52 percent in 2005, nearly one-third of whom were 55-plus. A growing number and percentage are 65 or older (Toossi, 2005). Differences between the average 45-year-old and the average 75-year-old are to be expected. Employers most likely operate on the assumption that the differences are real and important.

Selective attrition also affects research findings in longitudinal studies that might be attempting to determine how performance changes over time. Selective attrition refers to the tendency of some individuals to drop out of research studies more readily than others. As it turns out, the more capable subjects tend to be the survivors, yielding research findings that might not hold up or remain as strong with more representative samples. Individuals with health problems or declining abilities also tend to exit the labor force earlier than their healthier or more capable age peers, producing a “healthy worker effect,” or a workforce that is healthier than the older population as a whole. This raises the question of what impact (if any) a sizable increase in the number of older persons in the workforce—if they are there because they cannot afford to retire—would have on conclusions about age and performance.

As important as economics may be when it comes to employers’ attitudes toward older workers, they may prove less salient, or be redefined, during a booming



economy, when labor is scarce and employers find it more difficult to replace presumably more costly workers. That this may be the case is suggested in age charge data from the EEOC; such charges appear to be linked to the economy. During the late-1990s, for example, the unemployment rate plummeted, and age charges filed with the EEOC fell as well. As the economy soured in 2000, the charges began to rise and reached 19,921 in FY 2002 (Figure 3). Since then, both the unemployment rate and the number of charges have fallen. In FY 2005, 16,585 charges were filed with the EEOC, down 7 percent from the year before. In tighter labor markets, employers may be less likely to discriminate against older workers, and jobseekers may be less inclined to respond to discriminatory behavior if they feel their chances of finding other work are favorable. Cost considerations may be reinterpreted as employers face a shrinking pool of alternative workers. The anticipated labor and skills shortages, should they materialize, could thus augur well for older workers.

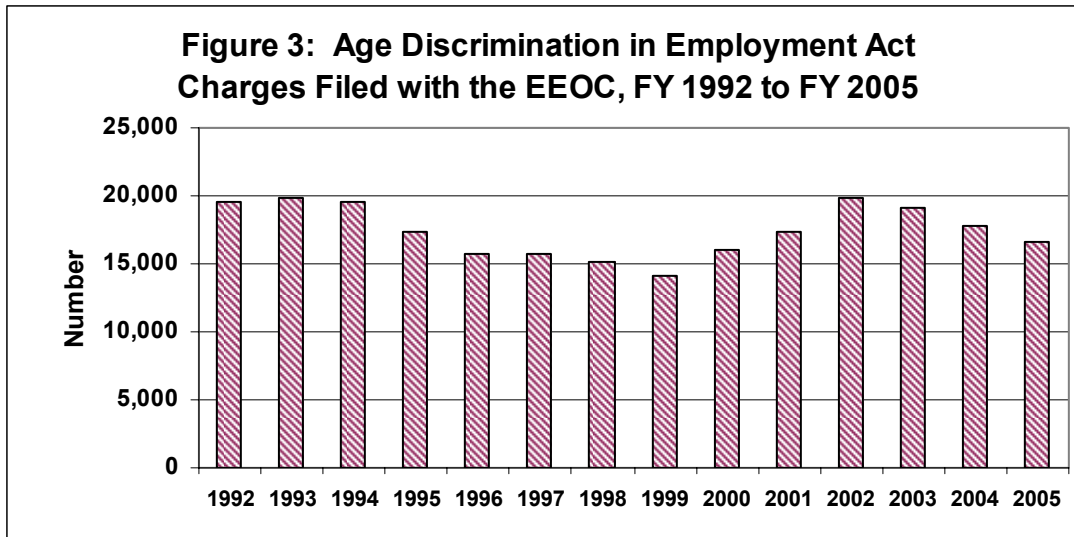
### But It's More than Age

Cost is not the only issue when it comes to age discrimination. Fairness—or the belief that discrimination just isn't right—operates as well. At the time that the mandatory retirement cap was being raised to 70, Americans were indicating that the increase might not be enough. Nearly 9 out of 10 then current as well as retired employees agreed that “*nobody* should be forced to retire because of age, if he wants to continue working and is still able to do a good job” (emphasis added), and two out of three business leaders felt the same way (U.S. Congress, 1979: 74). The public was somewhat less certain about whether most older persons could continue to perform as well on the job as they did when younger (57 percent of current employees, 61 percent of retirees, 33 percent of business leaders agreed that they could [ibid.]); however, one assumes that these same individuals would say that ability rather than age should be the deciding factor.

Moreover, even if the majority agrees that age-related physiological changes have some bearing on performance, and that is still an “if,” it is by no means certain that older Americans would question their own capabilities. In fact, many older workers apparently feel that they are at their peak. Nearly 70 percent of workers aged 45-74 contend that their best years are now and 53 percent say that the best years are still ahead of them.<sup>13</sup> Almost ninety percent contend that they continue to grow in their work (AARP, 2002: 86), which is hardly confirmation of the stereotype that older workers are merely biding time until retirement.

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<sup>13</sup> These figures obviously add to more than 100 percent and may appear inconsistent. However, it is perfectly reasonable to believe that, up to now, these are one's best years *and* that future years will be even better. The main point is that only a minority of older workers think that their best years are behind them.



Source: Equal Employment Opportunity Commission, Enforcement Statistics, [www.eeoc.gov/stats/adea.html](http://www.eeoc.gov/stats/adea.html).

Americans have traditionally had great faith in the ability of individuals to make it on their own. The ADEA, one might argue, helps level the playing field by requiring that age be eliminated from the employment equation. In a way, it subscribes to Americans' sense of fairness about providing the tools workers need to play the game and then leaving it up to them to get to the finish line. Of course, some might argue that age discrimination laws that protect only older people are themselves discriminatory and put those not covered (i.e., younger workers) at a disadvantage, but there is little evidence so far that that has been a problem.

### Taking Issue with Discrimination

If believed to be a victim of age discrimination, a worker can file a charge with the Equal Employment Opportunity Commission (EEOC) or the appropriate state agency that enforces state fair employment law. The EEOC examines and makes a decision about the charge. As reported earlier, the majority of age charges are deemed without merit by the EEOC, but that is also true of race and sex charges.

Table 4 presents the receipt and resolution of charges filed with the EEOC for fiscal year 2005 and provides a comparison with race- and sex-based charges. For whatever reason, fewer age charges than sex or race charges get filed with the EEOC, even though there are more people 40 and older in the workforce than there are females or minorities. Perhaps there is less discrimination against older workers than among those in the other two groups; perhaps more age discrimination goes unnoticed; perhaps older workers are more willing to tolerate discrimination<sup>14</sup> or have a greater sense of futility about filing a charge. In FY

<sup>14</sup> According to Lahey (2006), older women are unlikely to initiate lawsuits.

2005, there were about the same proportions of merit settlements among resolved age and race charges but more for the charges based on sex discrimination.<sup>15</sup> Regardless of the reason for filing, the EEOC concluded that the majority of charges lacked merit, with age charges falling between race and sex charges. The EEOC can take a case to court, but those are a mere fraction of the EEOC charges filed—38 for ADEA charges in FY 2005 (<http://www.eeoc.gov/stats/litigation.html>).

<b>Receipt/Resolution</b>	<b>Race</b>	<b>Sex</b>	<b>Age</b>
Receipts	26,740	23,094	16,585
Resolutions*	27,411	23,743	14,076
Resolutions by Type			
Settlements	10.2%	11.0%	9.4%
Withdrawal w/ benefits	4.3%	6.0%	5.4%
Administrative closures	13.4%	17.6%	18.0%
No reasonable cause	67.9%	58.3%	63.0%
Reasonable cause	4.2%	7.1%	4.1%
Successful conciliations	1.4%	1.9%	1.2%
Unsuccessful conciliations	2.9%	5.2%	2.9%
Merit resolutions**	18.7%	24.0%	19.0%
Monetary benefits (millions)***	\$76.5	\$91.3	\$77.7

\*The number of resolutions in any one year may exceed the number of new charges because they apply to pending charges and transfers from Fair Employment Practices Agencies as well as new charges.

\*\*Does not include monetary benefits obtained through litigation.

Source: Equal Employment Opportunity Commission, Enforcement Statistics, [www.eeoc.gov/stats](http://www.eeoc.gov/stats).

### Effectiveness of Age Discrimination Legislation

Although the data in previous sections might suggest otherwise, the ADEA has had some very obvious impacts. With few exceptions, for example, mandatory retirement is no longer legal. Some of the more obvious forms of age discrimination, such as help-wanted ads that solicit workers in a particular age range, have disappeared. As mentioned elsewhere in this paper, the monetary benefits paid to victims of age discrimination have totaled in the millions of dollars. Employers may have become more covert or subtle in their discrimination, or more clever in easing older workers out, but they know that age discrimination is illegal.

<sup>15</sup> Merit resolutions involve “charges with outcomes favorable to charging parties and/or charges with meritorious allegations. These include negotiated settlements, withdrawals with benefits, successful conciliations, and unsuccessful conciliations” (<http://www.eeoc.gov/stats/define.html>).

Just how effective the ADEA has been in reducing discriminatory actions against older persons and promoting employment is not clear. Age discrimination in employment has certainly not disappeared.

In its landmark examination of the health and safety needs of an aging workforce, the National Research Council and Institute of Medicine argue that there is much we do not know about the effectiveness of public policies designed to promote safe and productive employment at upper ages. The study decries the lack of systematic evaluation of laws intended to help older persons remain at or find work, or of the barriers the laws may create in trying to promote employment. It calls for research to correct the deficiency and includes the ADEA in the list of policies on which such research is needed (Wegman and McGee, 2004: 224-225).

A link between age discrimination and adverse outcomes tends to be found in the research, even though other explanations cannot easily be ruled out (Neumark, 2001: 29). In one attempt to evaluate the impact of the ADEA, Neumark states that “the evidence regarding direct effects of the ADEA points to some positive impacts on older individuals and workers.” He observes that the law may reduce hiring, but that it may have strengthened the long-term relationship between workers and firms, thus increasing the employment of older workers (ibid.: 35).

Adams (cited in Adams and Neumark, 2006: 195) concludes that age discrimination legislation has had no significant impact on the probability of being hired but has significantly reduced the probability of retirement. Yet, in an examination of what happened to labor force participation rates in states with and without their own age discrimination laws after the ADEA amendments of 1978,<sup>16</sup> Lahey (2006) found less hiring of and small but significant increases in the retirement of aged 50 and older white males in states that had age discrimination laws. Such males were employed 1-1.5 fewer weeks per year than those in states without a law. While this may seem a relatively modest gap, it is statistically significant and when spread over a large number of older workers could amount to a sizable reduction in work effort. Lahey’s findings “suggest that firms do not wish to hire older workers most affected by the [age discrimination] law, [and] are afraid to fire older workers” (ibid.: 4).

Although additional research is clearly called for, especially with respect to hiring, Neumark (2001: 34-35) asserts that “the empirical evidence suggests that the predominant effect of age discrimination legislation has been to reduce the likelihood that firms renege on long-term commitments to older, higher-paid workers, and consequently to strengthen long-term relationships between workers and firms.”

Overall then, legislation against age discrimination in employment does seem to have had a positive impact on employment through retention, leading Neumark

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<sup>16</sup> Although all states have age discrimination laws today, that was not the case in 1979.

(2001: 35) to conclude that on the whole, “a relatively positive assessment of [such legislation] in the United States is more warranted than a negative assessment.” He does not, however, feel that the evidence is overwhelming or decisive and urges caution in drawing conclusions. This is hardly a ringing endorsement, but until more research is conducted, it may be the best one can hope for.

### **Other Forms of Age Discrimination**

With respect to age discrimination in employment, federal and state laws are quite clear as to what is prohibited and who is protected. Other forms of age discrimination may be legal unless a program or activity is receiving federal financial assistance. Age discrimination in a publicly funded university, for example, would be prohibited. And while ageism and age discrimination are generally perceived as harmful and unacceptable, some so-called “discrimination,” e.g., benefits based on age, senior discounts, and senior retirement communities, is legal, desirable, and sought after.

Although the situation is apparently improving, older persons are underrepresented in films, television programs, and advertising. For example, persons aged 65 and over are nearly 13 percent of the population but less than 2 percent of prime-time television characters (International Longevity Center-USA, 2006: 12). Hatch (2005: 19) reports that negative portrayals in the media increase with age and that older women tend to be portrayed more negatively than men. Older persons are also underrepresented among writers for the television and film industry (International Longevity Center-USA, 2006: 12).

Most older Americans have access to health care through Medicare. Nevertheless, according to the National Center for Chronic Disease Prevention and Health Promotion, “60 percent of adults over 65 do not receive recommended preventive services” (International Longevity Center-USA, 2006: 8).

The research of long-term care gurus Robert Kane and Rosalie Kane (2005) highlights the persistence of often subtle ageism in the health care field and finds that ageism is more pronounced in long-term care than acute care. However, the Kanes stress that not all age differences in utilization patterns are ageist inequities. Differential treatment (e.g., diagnostic tests, access to specialists) may be a sign of ageism or it may be appropriate to a specific case. In some instances, for example, older individuals are too ill or frail to withstand aggressive treatment. Disparities in treatment reflect ageism, Kane and Kane argue, “only if the reason for the difference is age alone” (ibid.: 50).

Older persons have been underserved when it comes to emergency services—after 9/11 and during Hurricane Katrina, for example (International Longevity

Center-USA, 2006). According to *Ageism in America*, the majority of Hurricane Katrina victims were 61 or older (ibid.: 10).

Older persons have been excluded from or not well represented in clinical trials, among them trials on therapies often used for older persons (Kane and Kane, 2005). These have included trial research for prescription drugs of which the elderly are the biggest consumers (International Longevity Center-USA, 2006).

The International Longevity Center-USA (2006) points to other forms of ageism and discrimination, such as elder abuse, which rarely comes to the attention of the authorities.

As has been the case with respect to age discrimination in employment, it has not been all that easy to obtain good estimates of ageism in general. Erdmore Palmore (2001), long a student of ageism in the United States, has developed an instrument to examine the prevalence of ageism, the types of ageism, and the subgroups that report it. His instrument identifies 20 types of ageism, some of which are relatively innocuous, such as receipt of a birthday card or hearing a joke poking fun at old people. Others involve being denied rental housing, medical treatment, or employment because of age. In Palmore's testing of the instrument, the large majority of older persons (more than three-fourths, all of whom were aged 60 or older) reported experiencing at least one incidence of ageism. However the sample was small and not representative of the older population at large. Whether comparable results would be obtained from a more generalizable sample is unknown. Moreover, it seems significant that when it came to individual items, only one (being told an ageist joke) was reported by more than half the sample. Several others were experienced by hardly anyone.

## **Rallying Around Age Discrimination**

### Civil Organizations

There is no organization solely or even primarily devoted to combating age discrimination in the United States, although one organization works to keep age discrimination as close to the front burner as possible. This is AARP, which, with 36 million members, is the nation's leading nonprofit organization dedicated to enhancing the quality of life of all persons as they age. It is also "one of the few national organizations that defends and supports the legal rights of older Americans across the United States [and assures] that they have a voice in [the] judicial system" (See AARP, 2006a). AARP is without question the major nongovernmental organization (NGO) involved in fighting age discrimination on several fronts in the United States.

AARP supports a number of policies that would strengthen the protections of the ADEA. For example, it calls for the elimination of all mandatory retirement, vigorous enforcement of the ADEA and Title VII of the Civil Rights Act, and

expansion of the ADEA's jurisdiction to cover employers with 15 or more employees, rather than the current 20 or more (AARP, 2006b). The Association also seeks to strengthen state age discrimination laws. In addition, AARP may represent older persons in age discrimination court cases and prepare friend of the court briefs, which "allow AARP to share research, facts, and policy analysis, helping courts make good decisions in precedent setting cases" (AARP, 2006a).

AARP may also take on federal agencies in its efforts to combat age discrimination. In *Erie County Retiree Assoc. v. County of Erie*, for instance, a federal court ruled that under the ADEA's prohibition against discrimination in benefits, employers cannot treat retirees differently based on Medicare eligibility. Specifically, employers are not allowed reduce or eliminate retiree health benefits at age 65, when workers become eligible for Medicare. AARP successfully prevented legislation that would have allowed employers to make such changes to their retiree benefits. The EEOC, however, has voted to exempt the practice from ADEA coverage, and AARP has filed a lawsuit charging that the exemption clearly violates the ADEA. (See AARP, 2006b.)

AARP aims to reduce unfair and/or discriminatory treatment of aged 50 and older workers, thereby helping them remain in the workforce as desired. By using and encouraging reference to the less fraught term "aged 50-plus workforce," rather than the "older workforce," AARP hopes to foster new and more positive ways of thinking about this growing segment of the population.

Finally, AARP works with industry to encourage the development and implementation of positive practices on the part of employers. The ADEA, after all, is not just about eliminating arbitrary age discrimination. It was also enacted "to promote employment of older persons based on their ability rather than age [and] help employers and workers find ways of meeting problems arising from the impact of age on employment."<sup>17</sup>

The International Longevity Center-USA (ILC) is another NGO that has taken on ageism and age discrimination, long an area of concern to its founder, Dr. Robert Butler. Butler, author of the seminal *Why Survive? Being Old in America* (Butler, 1975), coined the term "ageism" in 1968. The ILC recently published a comprehensive overview of ageism in the United States designed to alert the public to its pervasiveness and, it is hoped, lead to change (ILC-USA, 2006). The report concludes with an agenda for action on combating ageism in language, culture, the media, marketing, health care, emergency preparedness, nursing homes, and the workplace. Elder abuse receives considerable attention in the report.

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<sup>17</sup> See <http://www.eeoc.gov/policy/adea.html> for the text of the ADEA.

## The EEOC

A major actor in the fight against age discrimination is not a civil organization but rather the Equal Employment Opportunity Commission, the federal government agency responsible for enforcing the ADEA. The EEOC works to get redress for victims of discrimination, either through settlement or the litigation that it initiates. It provides information to individuals on recognizing and challenging discrimination. The EEOC can also establish equal employment opportunity policy, not all of which (e.g., with respect to retiree health benefits, as noted above) is always deemed by everyone in the best interest of older workers.

### **But What About Workers Themselves?**

Fighting age discrimination tends to be a relatively lonely battle, even when more than one worker is involved, as in a class-action suit. There is no constituency clamoring for something to be done about age discrimination; older Americans have not been energized by any call to take to the streets to protest age discrimination in employment or elsewhere. There are a number of possible reasons why Americans are not overly exercised about ageism or age discrimination:

- Even though older workers say they see age discrimination around them, most have not, as far as they know, experienced it themselves.
- Most older workers do not experience unemployment and so do not confront the reemployment barriers that older jobseekers often do.
- Older workers are reasonably confident that if they did lose their jobs, they could find another (AARP, 2002).
- Age discrimination may be viewed as a problem, but older workers themselves think their best work years are now or still ahead of them (AARP, 2002).
- Older workers do not tend to feel that their employers treat them worse than other workers because of age. More than three-fourths of workers aged 45-74 say, in fact, that age makes no difference at work (AARP, 2002).
- Most older workers are probably unaware of some forms of non-work-related ageism or age discrimination, such as research studies with few older participants. Older patients may not know that they are not receiving certain diagnostic tests or preventive measures. And while older Americans might note that television portrays relatively few “people like them,” that deficiency is probably unlikely to get many viewers complaining to their member of Congress.
- Most older Americans, fortunately, do not suffer elder abuse, but if they do, they are not, unfortunately, in a position to make their voices heard.
- Ageist birthday cards are apparently not as offensive as sexist and racist ones because they continue to be sold and, presumably, purchased.



- Older Americans may also think that, should the need arise, they are adequately protected by the ADEA.

## Conclusion

No one is likely to argue that age discrimination laws in America have solved the problem of discrimination against older individuals. Employers still harbor many negative attitudes about older workers and avoid hiring them or find ways to get rid of them. A recent survey of retirees found that 40 percent had been forced to stop work before they had planned to; 44 percent of these reported that job loss or downsizing was the reason (Rotenberg, 2006). Nonetheless, age discrimination laws in the United States offer protections that would not be available in a system of voluntary compliance, and the available scholarly evaluations of the ADEA, while more are needed, point to a positive impact overall.

Older persons as a group are not agitating for changes that would further reduce employment discrimination. Moreover, they have no protections against some other forms of discrimination, but there seems to be little push to obtain them. Relative acquiescence in the face of ageism and age discrimination may change, however.

Ageist stereotypes may convey the message that “older men and women are incompetent,” but it is doubtful that the nation’s 76 million boomers are going to buy that, at least not for some years to come. Boomers seem set to reinvent retirement—certainly many expect that of them—and to do so by working or trying to work later in life and remaining engaged in many other activities.

Nearly 80 percent of boomers say they expect to work at least part-time in retirement (AARP, 2004a). Although it is doubtful that anywhere near 80 percent will actually remain at work beyond age 65 or so, inadequate savings, the shift from secure defined benefit pension plans to less certain defined contribution plans,<sup>18</sup> and cuts in retiree health benefits may force millions of Americans to work well into their 60s and possibly beyond. Increased educational attainment and improved health status will foster longer worklives as well. If boomers do not find the employment options they want—more and better part-time jobs and phased retirement among them—or if they begin to experience age discrimination first-hand, they may be prepared to utilize the ADEA to an extent that their parents have not. The savvy employer will acknowledge that possibility and begin to eliminate the employment barriers that could lead to charges of age discrimination.

Some of the problems older workers face in their efforts to find work will get addressed if employers experience the labor and skills shortages that many

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<sup>18</sup> Unfortunately, many workers are finding that defined benefit plans are not as safe and secure as they once seemed to be as employers freeze pension contributions or even terminate plans.

project. Shortages are already evident in fields such as health care and education, where employers are implementing programs and policies that ease some job demands in an effort to attract and retain older workers (AARP, 2004b). Many examples of employers reaching out to older workers when they need them can be found in the literature. More such outreach and less discriminatory behavior can be expected if and when employers need bodies.

Age discrimination laws alone, however, won't do much good if the jobs are not there or if workers lack the skills employers are seeking. Thus, some of the responsibility for eliminating age discrimination rests with workers themselves, who will increasingly need to avail themselves of training and retraining opportunities. Older workers tend to be underrepresented in employer provided training programs, but few charges filed with the EEOC claim training discrimination.

On the one hand, the future may see less age discrimination as boomers and they and other older workers demonstrate their worth by remaining productive, flexible, and adaptable members of the workforce later in life. On the other hand, it may see an increase as employers seek ways to remain competitive in the global economy partly by shedding workers and cutting the costs of compensation. Stronger and more vigorously enforced age discrimination laws are needed to ensure that global competitiveness does not come at the expense of older workers.

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