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GENDERED AGEISM AND DISABLISM AND EMPLOYMENT OF OLDER WORKERS

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ABSTRACT

Gendered discrimination based on age and disability is a pressing issue, because this discrimination can interfere with the goal of lengthening work lives, especially for older women. In the United States, the Age Discrimination in Employment Act and the Americans with Disabilities Act prohibit age and disability discrimination in employment, while Title VII of the Civil Rights Act bars discrimination against women. However, because gender and age (and disability) discrimination fall under different statutes, these laws may be inadequate to protect against discrimination based on gendered ageism and disablism. Legal rulings in the United States generally do not recognize intersecting claims – discrimination based on two or more protected characteristics – when those characteristics are covered by separate statutes. This may help explain the evidence that age discrimination is worse for women than for men.

We discuss the theory and methods we can use to analyze these issues, and the relevant laws and their failure to protect women from gendered ageism. We review evidence on gendered age discrimination, and evidence on the effects of discrimination laws and how well they protect from intersectional discrimination. Finally, we discuss potential changes in policies that could better protect against gendered age discrimination.

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Introduction

Older women are an integral part of the labor market in both developing and developed countries. However, gendered ageism may lead to unequal employment opportunities. In developing countries, often, older women are a hidden, unpaid workforce because the majority of their work consists of informal care and domestic work. Consequently, their contribution is undervalued, creating inequality in economic empowerment and financial disadvantage in later life via negative impacts on their pensions and health.¹ In developed countries where legal systems promote equal employment opportunities, older women still suffer from discrimination rooted in gendered ageism.² In the United States, for example, federal and state laws make discrimination in the workplace illegal. Most evidence indicates that these laws have improved labor market outcomes for older workers, disabled workers, and women. However, there continues to be evidence of discrimination against each group, as well as evidence that age discrimination is worse for women than for men, and more limited evidence that disability discrimination may be worse for women.³

Gendered ageism is generally defined as the increased vulnerability of older women – i.e., those at the intersection of older ages and gender. Sociologists have theorized about gendered ageism based on prejudice, stereotypes, discriminatory behavior, and social category and power relations in terms of productive capacity in the society, and extended this theory to gendered disablism and other multiple marginalizations.⁴ Older workers are perceived as less

¹ Age International, *OLDER WOMEN: THE HIDDEN WORKFORCE, ACCESS TO ECONOMIC JUSTICE* (2021).

² David Neumark, Ian Burn, and Patrick Button, *Is It Harder for Older Workers to Find Jobs? New and Improved Evidence from a Field Experiment*, *JOURNAL OF POLITICAL ECONOMY*, 127, 922-970 (2019a).

³ Neumark et al., *supra* note 2.

⁴ Clary Krekula, Pirjo Nikander, and Monika Wilinska, *Multiple Marginalizations Based on Age: Gendered Ageism and Beyond*, in *CONTEMPORARY PERSPECTIVES ON AGEISM*, edited by L. Ayalon and C. Tesch-Römer (2018).

competent and less productive, while also perceived as more reliable, warmer, and possessing a stronger work ethic – stereotypes and perceptions that are consistent across different countries.⁵ In addition, older women experience appearance-related aging (e.g., gray hair) that is perceived as associated with a lack of competence.⁶ Some qualitative evidence documents women experiencing such gendered ageism in their workplace and transitioning to self-employment to mitigate this tension.⁷

Gendered ageism and gendered disablism, which are the focus of this chapter, are of interest to economists because they create inequality in employment opportunities and conditions of work. In light of population aging that is spurring policies to lengthen work lives, and an increasing share of older women in the labor force, gendered age discrimination (which we think of as potentially arising with respect to either age or disability, since disability is correlated with age – and hence often refer to both with “gendered ageism”) is a pressing issue. These developments are mirrored in the United States; in recent years the share of older women has risen significantly,⁸ and there have been multiple increases in the social security full retirement age, and other policy changes, to encourage later retirement.

The goal of lengthening work lives, especially for older women, can run up against gendered ageism. One might think that strong U.S. anti-discrimination laws suffice. There are federal laws to combat age and disability discrimination in employment – the Age Discrimination in Employment Act (ADEA), and the Americans with Disabilities Act (ADA) – while Title VII of the Civil Rights Act bars discrimination against women. However, because

⁵ Harris et al., *Ageism and the Older Worker: A Scoping Review*, GERONTOLOGIS, 58, e1-e14 (2018).

⁶ Vanessa Cecil et al., *Gendered Ageism and Gray Hair: Must Older Women Choose between Feeling Authentic and Looking Competent?* JOURNAL OF WOMEN & AGING, 34, 210-225 (2022).

⁷ Elina Meliou and Oliver Mallett, *Negotiating Gendered Ageing: Intersectional Reflexivity and Experiences of Incongruity of Self-Employed Older Women*, WORK, EMPLOYMENT AND SOCIETY, 36, 101-118 (2022).

⁸ Figure 1 in Joanne Song McLaughlin, *Limited Legal Recourse for Older Women’s Intersectional Discrimination Under the Age Discrimination in Employment Act*, THE ELDER LAW JOURNAL, 26, 287-321 (2019)

gender and age (and disability) discrimination fall under different statutes, these laws may be inadequate to protect against discrimination based on gendered ageism. Legal rulings in the United States generally do not recognize intersecting claims – discrimination based on two or more protected characteristics – when those characteristics are covered by separate statutes. For example, an older woman may bring forward a claim of age discrimination under the ADEA, or a claim of gender discrimination under Title VII. But she is limited in bringing forward a claim as an older woman as a uniquely protected class under U.S. discrimination laws. This may help explain the evidence that age discrimination is worse for women than for men.

In this chapter, we take a labor economics approach to intersectional discrimination in employment, focusing on the United States. We discuss the theory and methods we can use to analyze these issues, and the relevant laws and their failure to protect women from gendered ageism. We review evidence on gendered age discrimination, and evidence on the effects of discrimination laws and how well they protect from intersectional discrimination. Finally, we discuss potential changes in policies that could better protect against gendered age discrimination.

Discrimination and intersectionality

In this section, we lay out the economic theories and methods we use to think about intersectional discrimination in employment.

Models of discrimination

Economists use three different models of discrimination. The Becker model assumes a nonpecuniary cost or “distaste” of different economic agents – employers, employees, or customers – from interacting with particular groups.⁹ Most empirical work on discrimination is

⁹ Gary S. Becker, THE ECONOMICS OF DISCRIMINATION, 2nd Edition (1971).

based on the employer discrimination model, and employer discrimination is the principal target of U.S. anti-discrimination enforcement. The market-level implication of employer discrimination is that groups that experience discrimination will earn less than similarly productive members of other groups. The employer discrimination model motivates studying discrimination via wage regressions that estimate group differences in pay controlling for productivity-related characteristics.¹⁰ The employer discrimination model also predicts hiring discrimination, especially when there are constraints (like minimum wages, or equal pay laws) on paying lower wages to members of protected groups employed at the same firm.

The statistical discrimination model is related to assumptions about the productivity of different groups, rather than “distaste.” If an employer thinks members of a group are less productive, even when observable characteristics like education, experience, etc., are the same, then the employer will only hire members of that group at a lower wage.¹¹ And the same consideration as for the employer discrimination model implies that pay constraints will translate into hiring discrimination.

Statistical discrimination ties naturally into stereotypes or assumptions about different groups. Whether the assumptions are true or not, the predicted effects on wages (or employment) are similar, although more subtle differences can arise, including how initially erroneous beliefs about differences in productivity can become self-fulfilling.¹² For example, employers may initially assume that expected tenure is lower for women than for men, and therefore choose to invest less in women’s human capital; this can give women less incentive to stay with the firm,

¹⁰ David Neumark, *Employers’ Discriminatory Behavior and the Estimation of Wage Discrimination*, JOURNAL OF HUMAN RESOURCES, 23, 279-295 (1988).

¹¹ Dennis J. Aigner, and Glen G. Cain, *Statistical Theories of Discrimination in Labor Markets*, INDUSTRIAL AND LABOR RELATIONS REVIEW, 30, 175-187 (1977).

¹² Stephen Coate, and Glenn C. Loury, *Will Affirmative-Action Policies Eliminate Negative Stereotypes?*, AMERICAN ECONOMIC REVIEW, 83, 1220-1240 (1993).

leading to employers' expectations about women's lower tenure being fulfilled.

Finally, there may be implicit discrimination, which draws on insights from psychology.¹³ In this model, discriminatory decisions are based on unconscious rather than conscious biases. Unconscious biases may lead to discriminatory behavior by different agents – e.g., recruiters evaluating job applicants – even among decision makers who are not prejudiced or who deliberately try to avoid stereotypes or prejudice. The best policy responses to implicit bias may be quite different.¹⁴

Intersectional discrimination as interactions

We interpret “intersectional discrimination” in the framework of interactions, in which discrimination along two intersecting dimensions may lead to discrimination that exceeds the sum of its parts. For example, in empirical work, if age discrimination in hiring is gendered (worse for older women than for older men), we would expect a negative interaction between indicator variables for females, and for older applicants, in a hiring model. In this case, older workers might fare worse than younger women and men (controlling for the effect of gender), but older women fare worse than older men.¹⁵ As explained below, this framework helps understand how the law weakens protections against intersectional discrimination.

This perspective on intersectional discrimination is consonant with some key intersectionality literature. Writing about race and sex, Crenshaw describes the “intersectional

¹³ Patricia G. Devine, *Stereotypes and Prejudice: Their Automatic and Controlled Components*, ATTITUDES AND SOCIAL COGNITION, 56, 5-18 (1989). For a broader discussion of unconscious or implicit cognition, see: Anthony G. Greenwald, and Mahzarin R. Banaji, *Implicit Social Cognition: Attitudes, Self-esteem, and Stereotypes*, PSYCHOLOGICAL REVIEW, 102, 4-27 (1995).

¹⁴ Marianne Bertrand, Dolly Chugh, and Sendhil Mullainathan, *Implicit Discrimination*, AMERICAN ECONOMIC REVIEW, 85, 84-98 (2005).

¹⁵ The interaction of membership in two marginalized groups need not always lead to “double disadvantage.” David S. Pedulla, *The Positive Consequences of Negative Stereotypes: Race, Sexual Orientation, and the Job Application Process*, SOCIAL PSYCHOLOGY QUARTERLY, 77, 75-94 (2014).

experience” as “greater than the sum of racism and sexism.”¹⁶ But we also recognize that intersectional discrimination is more complex than interactions in regression models. Some scholars criticize quantitative analyses of intersectional discrimination, and prefer qualitative research on the “context of lived experience.”¹⁷ While this is potentially valuable complementary evidence, the “empirical interactions” approach is a fruitful way to understand and interpret both the law and the evidence on intersectional discrimination.

Why might age and disability discrimination be gendered?

There has been little consideration of why these models of discrimination might predict intersectional discrimination, and there may be no need for different models. Rather, the distastes, stereotypes, or unconscious biases on which these models are based may simply be stronger for particular “intersections” of group membership.

Taste discrimination or implicit bias may be worse for older women because physical appearance matters more for women, and age is perceived to detract more from physical appearance of women than of men.¹⁸ Evidence from job descriptions posted on internet job boards in China and Mexico, where employers often express preferences for workers based on age and sex, is consistent with women being penalized more than men for declining appearance with age, with greater preference for women in job descriptions seeking young workers, and for men in job descriptions seeking older workers (with ages ranging from 18 to 45).¹⁹ There is a

¹⁶ Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, UNIVERSITY OF CHICAGO LAW FORUM, 1, 139-167 (1989) at 140. See also: Ange-Marie Hancock, *Intersectionality as a Normative and Empirical Paradigm*, POLITICS & GENDER, 3, 248-254 (2007) at 251.

¹⁷ Liam Kofi Bright, Daniel Malinsky, and Morgan Thompson, *Causally Interpreting Intersectionality Theory*, PHILOSOPHY OF SCIENCE, 83, 60-81 (2016).

¹⁸ E.g., Linda A. Jackson, PHYSICAL APPEARANCE AND GENDER: SOCIOLOGICAL AND SOCIOCULTURAL PERSPECTIVES (1992); Francine M. Deutsch, Carla M. Zalenski, and Mary E. Clark, *Is There a Double Standard of Aging?* JOURNAL OF APPLIED SOCIAL PSYCHOLOGY, 16, 771-785 (1986).

¹⁹ Peter Kuhn, and Kailing Shen, *Gender Discrimination in Job Ads: Evidence from China*, QUARTERLY JOURNAL OF ECONOMICS, 128, 287-336 (2013); Miguel D. Hellester, Peter Kuhn, and Kailing Shen, *The Age*

persistent age gap between male and female lead actors in Hollywood movies, with men on average six to 10 years older, and more leading roles for younger women and for older men.²⁰

The stability of these age patterns over a period of 90 years strongly suggests that it is driven by moviegoer preferences. There is evidence that older women are evaluated more negatively than older men along some dimensions (behaviors, such as willingness of others to interact with them) but not others (competence, such as intelligence and memory).²¹

Older women may experience stronger statistical discrimination because employers assume they are likely to have to care for elderly parents or spouses. Evidence from correspondence studies (discussed below) suggests that family responsibilities decrease job opportunities for women,²² although research on negative labor supply effects from elder care is unclear and younger women may have even greater competing household responsibilities. Stereotyping may also be intersectional. Women are viewed as reaching the “prime of life” earlier than men, and adverse age stereotypes set in earlier for women than for men; but other evidence is less decisive.²³

There is some specific theorizing on gendered disablism, positing that femaleness is a social construct associated with a “natural form of physical and mental deficiency,” and disability is a social construct that stigmatizes certain kinds of bodily variation.²⁴ Discrimination

Twist in Employers’ Gender Requests, JOURNAL OF HUMAN RESOURCES, 55, 482-69 (2020).

²⁰ Robert K. Fleck, and F. Andrew Hanssen, *Persistence and Change in Age-Specific Gender Gaps: Hollywood Actors from the Silent Era Onward*, INTERNATIONAL REVIEW OF LAW AND ECONOMICS, 48, 36-49 (2016).

²¹ Mary E. Kite, Gary D. Stockdale, Bernard E. Whitley, and Blair T. Johnson, *Attitudes toward Younger and Older Adults: An Updated Meta-Analytic Review*, JOURNAL OF SOCIAL ISSUES, 61, 241-266 (2005); Susan Sontag, *The Double Standard of Aging*, in PSYCHOLOGY OF WOMEN, edited by J. Williams (1979).

²² E.g., Shelley J. Correll, Stephen Benard, and In Paik, *Getting a Job: Is There a Motherhood Penalty*, AMERICAN JOURNAL OF SOCIOLOGY, 112, 1297-1338 (2007).

²³ Mary E. Kite, and Lisa Smith Wagner, *Attitudes toward Older Adults*, in AGEISM, edited by T. D. Nelson (2004).

²⁴ Rosemarie Garland-Thomson, *Feminist Disability Studies*, SIGNS, 30, 1557-1587 (2005); Eunjung Kim, *Asexuality in Disability Narratives*, SEXUALITIES, 14, 479-493 (2011).

against disabled women might exceed the sum of its parts owing to links between maternity and reproduction; the stereotype of femaleness is as caregiver, but disability undermines this role.²⁵ Finally, like with age, physical appearance is negatively associated with bodily disability. If appearance matters more for women than for men, then women may also be penalized more for the effects of disability on perceived appearance.

Age discrimination law, disability discrimination law, and intersectionality

Age and disability discrimination laws

The ADEA prohibits discrimination based on age for those aged 40 and over, and outlaws mandatory retirement for nearly all workers. The ADA protects disabled individuals from discrimination – requiring employers to provide reasonable accommodations to known employee disabilities. Many states have age and disability discrimination laws, which can strengthen federal laws.²⁶ Table 1 documents information on state age and disability discrimination laws.

Lower firm-size minimums for the applicability of state age discrimination laws, and larger damages than under the federal ADEA, have proven important.²⁷ Larger potential damages typically arise when state laws allow compensatory or punitive damages, which are not allowed under federal law.²⁸

²⁵ Michelle Fine, and Adrenne Asch, *Disability Beyond Stigma: Social Interaction, Discrimination, and Activism*, JOURNAL OF SOCIAL ISSUES, 44, 3-21 (1988).

²⁶ E.g., David Neumark, Ian Burn, Patrick Button, and Nanneh Chehras, *Do State Laws Protecting Older Workers from Discrimination Reduce Age Discrimination in Hiring? Evidence from a Field Experiment*. JOURNAL OF LAW AND ECONOMICS, 62, 373-402 (2019b).

²⁷ David Neumark and Joanne Song, *Do Stronger Age Discrimination Laws Make Social Security Reforms More Effective?* JOURNAL OF PUBLIC ECONOMICS, 108, 1-16 (2013). The ADEA applies to firms with 20 or more workers, but states can have lower minimums.

²⁸ United States Equal Employment Opportunity Commission, *Federal Laws Prohibiting Job Discrimination Questions and Answers*, <https://www.eeoc.gov/fact-sheet/federal-laws-prohibiting-job-discrimination-questions-and-answers>; Michael D. Moberly, *Reconsidering the Discriminatory Motive Requirement in ADEA Disparate Treatment Cases*, N. M. LAW REV, 24, 89-124 (1994).

State disability discrimination laws sometimes use a less strict definition of disability, either explicitly or via case law. The federal ADA definition is a condition that “...substantially limits one or more major life activities...,”²⁹ a standard has proven difficult for plaintiffs.³⁰ Some states change the definition from “substantially limits one or more major life activities” to either “materially limits” (Minnesota) or just “limits” (California).³¹ Other states only require the disability to be “medically diagnosed” without regard to whether the impairment limits major life activities.³² A handful of states differ from the ADA’s minimum firm size of 15, and there is also state variation in damages.

Disability discrimination laws can provide additional protection to older workers beyond age discrimination laws.³³ Disabilities that can limit work (and major life activities) rise steeply with age, especially past age 50.³⁴ Correspondingly, employer expectations that a worker will develop a disability – posing future accommodation costs – should rise with age. Moreover, many ailments associated with aging have become classified as disabilities.³⁵ Thus, more older workers have an option of pursuing either age discrimination or disability discrimination claims. Disability discrimination laws may provide stronger protections. For example, the ADA does

²⁹ 42 U.S. Code §12102 (1).

³⁰ Ruth Colker, *The Americans with Disabilities Act: A Windfall for Defendants*, HARVARD CIVIL RIGHTS CIVIL LIBERTIES LAW REVIEW, 34, 99-162 (1999). There are still challenges for many conditions, despite broadening the definition of disability with the ADA Amendments Act of 2008 (ADAAA).

³¹ Patrick Button, *Expanding Employment Discrimination Protections for Individuals with Disabilities: Evidence from California*, ILR REVIEW, 71, 365-393 (2018).

³² Alex Long, *State Anti-Discrimination Law as a Model for Amending the Americans with Disabilities Act*, UNIVERSITY OF PITTSBURGH LAW REVIEW, 65, 597-653 (2004).

³³ E.g., Wendy A. Stock, and Kathleen Beegle, *Employment Protections for Older Workers: Do Disability Discrimination Laws Matter?* CONTEMPORARY ECONOMIC POLICY, 22, 111-26 (2004); Patrick Button, Mashfiqur R. Khan, and Mary Penn, *Do Stronger Employment Discrimination Protections Decrease Reliance on Social Security Disability Insurance? Evidence from the U.S. Social Security Reforms*, JOURNAL OF THE ECONOMICS OF AGING, 22, 100370 (2022).

³⁴ E.g., John W. Rowe, and Robert L. Kahn, *Successful Aging*, THE GERONTOLOGIST, 37, 433-40 (1997).

³⁵ Harvey L. Sterns, and Suzanne M. Miklos, *The Aging Worker in a Changing Environment: Organization and Individual Issues*, JOURNAL OF VOCATIONAL BEHAVIOR, 47, 248-68 (1995).

more to limit defenses against discrimination claims.³⁶ Disability discrimination claims require proving a disability, but doing so can be less challenging under some state disability definitions.

Intersectionality with gender

Title VII of the Civil Rights Act protects women (and minorities) from employment discrimination. It might seem natural to think that because there are anti-discrimination laws protecting both older (and disabled) workers and women, older women could bring a gendered age discrimination claim under both the ADEA (or ADA) and Title VII, based on evidence of greater discrimination experienced by older (or disabled) women.

Courts generally disallow this, however. For example, in *Thompson v. Mississippi State Personnel Bd.*, an older female plaintiff provided evidence of educational requirements having a disparate impact on older women.³⁷ However, the court declined to recognize women over age 40, distinct from men over 40, as protected from adverse treatment, because neither Title VII nor the ADEA specifically protects this subset of women. Thus, statistical data showing different selection rates of women over 40 and men over 40 on its own was not probative, in contrast to differences in selection rates between all applicants aged 40 or older vs. younger than 40 – which undermined a finding of disparate impact on either older employees or female employees.

Courts sometimes discuss the importance of recognizing subgroups within protected classes, but to the best of our knowledge have always declined to accept intersectional

³⁶ Unlike the ADEA, the ADA does not include an exception for bona fide occupational qualifications (BFOQs) that may permit age-related decisions when age is related to other factors that pose legitimate business or safety concerns. Stock and Beegle, *supra* note 33; Richard A. Posner, AGING AND OLD AGE (1995); Paul E. Starkman, *Alleging a 'Pattern or Practice' under ADEA: An Analysis of the Impact and Problems of Proof*, LABOR LAWYER, 8, 91-123 (1992). Furthermore, age-related disabilities might be judged as amenable to “reasonable accommodation” by employers under disability discrimination laws, making it harder to justify an apparently discriminatory practice on the basis of business necessity. Gardner, Russell H., and Carolyn J. Campanella, *The Undue Hardship Defense to the Reasonable Accommodation Requirement of the Americans with Disabilities Act of 1990*, LABOR LAWYER, 7, 37-51 (1991).

³⁷ *Thompson v. Mississippi State Personnel Bd.*, 674 F. Supp. 198 (N.D. Miss. Oct. 5, 1987).

discrimination claims under the ADEA, emphasizing that all cases recognizing intersectional discrimination claims were under Title VII in isolation, and no such cause of action has been recognized under the ADEA.^{38,39}

Because of how statistical analysis is used in discrimination cases, if older women cannot file intersecting claims, they are less strongly protected from discrimination than other groups with non-intersecting claims. Consider disparate impact cases concerning employment practices that are prima facie neutral but have a disproportionate adverse effect on a protected group. Because disparate impact cases do not need to prove intent to discriminate, they lend themselves to statistical analyses that demonstrate the adverse outcome for the protected group.⁴⁰ Often, a “four-fifths rule” is used to measure the practical significance of a disparity: for example, does the policy result in a selection rate for a protected group that is less than four-fifths of the rate for the group with the highest rate?⁴¹ Although there is more nuance in applying this rule, a simple application demonstrates the problem when intersecting claims are barred.

Suppose that there are 60 applicants for a position: 15 older women, 15 older men, 15 younger women, and 15 younger men. Assume only 4 older women are hired, and 6 from each remaining group. If older women could file an intersecting claim (age-plus-sex), they would show a selection rate of 0.267 (4/15) – less than 80% (four-fifths) of the 0.4 selection rate (6/15)

³⁸ See *Jefferies v. Harris County Cmty. Action Ass'n*, 615 F.2d 1025 (5th Cir. 1980), *Thompson v. Mississippi State Personnel Bd.*, 674 F. Supp. 198 (N.D. Miss. Oct. 5, 1987), *Murdock v. Goodrich*, 1992 Ohio App. LEXIS 6611 (Ohio Ct. App., Summit County December 30, 1992), and *Sherman v. American Cyanamid Company Co.*, 1999 U.S. App. LEXIS 21086.

³⁹ It may also be less attractive to bring such a claim under the ADEA than Title VII. As we understand it, a case brought under Title VII would be a sex-plus-age, making the comparison between older women and older men, whereas a case brought under the ADEA would be an age-plus-sex case, making the comparison between older women and younger women, which might remove a larger, gender-related difference from the comparison.

⁴⁰ If a practice or policy has an adverse effect on a protected class, then to be nondiscriminatory the employer must make a business necessity defense of the practice or policy. This can differ in ADEA cases, where there is a “reasonable factor other than age” defense; <https://www.eeoc.gov/regulations/questions-and-answers-eeoc-final-rule-disparate-impact-and-reasonable-factors-other-age>.

⁴¹ Code of Federal Regulations, 29 CFR 1607.4 (d) (2018).

for older men or for younger men or women, providing evidence of disparate impact. However, if older women can only bring an age discrimination claim, their selection rate is 0.333 because all older workers are in the calculation (4 women plus 6 men divided by 30 applicants).

Similarly, if older women can only bring a gender discrimination claim, their selection rate is 0.333 because all female workers are in the calculation. In either case, the 0.333 selection rate is greater than 80% of the 0.4 selection rate for older men or for younger men or women, thus failing to provide evidence of disparate impact.

The same reasoning applies to a regression analysis of hiring (or other outcomes). The strongest evidence of discrimination against older women would come from a model that includes a separate coefficient (an interaction) for older women, to compare to older men, younger women, and younger men, with the latter presumably providing the strongest evidence of gendered age discrimination. But with intersectional claims barred, the regression is effectively restricted to include either an age effect or a gender effect, and either one of these would show a smaller differential. For example, suppose that from 5 older women, 5 younger women, 5 older men, and 5 younger men, a firm discharged 3 older women, but only 1 worker from each remaining group. A regression analysis with an age-gender interaction would show a discharge rate for older women 0.4 higher than for the other three groups (0.6 vs. 0.2). However, if older women are restricted to age or gender discrimination claims, the regression analysis can only show a disproportionate discharge rate 0.2 higher than younger workers or male workers, because the analysis is limited to comparing their discharge rate to all young workers or all male workers.

Some higher court rulings not directly addressing intersecting claims serve to reduce protection from age discrimination for older women – most importantly *Gross v. FBL Financial*

*Service, Inc.*⁴² In *Gross*, the Supreme Court emphasized differences between the ADEA and Title VII in raising the standard to prove age discrimination claims, ruling that older workers must prove that age was *the* determining factor (a “but for” cause), and disallowing evidence based on a mixed motive. This contrasts with Title VII, which allows mixed-motive claims and requires plaintiffs to show only that the protected characteristic was *a* motivating factor.

Gross had an immediate impact on older women’s intersectional discrimination claims under the ADEA. In *Cartee v. Wilbur Smith Assocs.*,⁴³ and *Deangelo v. DentalEZ, Inc.*,⁴⁴ courts interpreted *Gross* as prohibiting “ ‘an intersection of motives’ brought pursuant to the ADEA, as only the age motive truly matters.” Thus, *Gross* weakened older women’s intersectional discrimination claims, as well as weakening both women’s and men’s age discrimination claims generally.

The impact of *Gross* has been extended to disability claims, with mixed-motive claims similarly ruled invalid in *Serwatka v. Rockwell Automation, Inc.*⁴⁵ Although *Serwatka v. Rockwell* was not a disability-plus-sex claim, because the ruling, in this case, is based on the “but for” interpretation of *Gross*, we expect the arguments in *Cartee* and in *Deangelo* to apply. Similarly, in *Gross* the U.S. Supreme Court emphasized that the ADEA and Title VII are separate statutes, and that “when conducting statutory interpretation, we must be careful not to apply rules applicable under one statute to a different statute without careful and critical examination.” The court’s rationale on age-plus-gender discrimination would seem to apply analogously to gendered disability claims.⁴⁶

⁴² *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 129 S. Ct. 2343 (2009).

⁴³ *Cartee v. Wilbur Smith Assocs.*, 2010 U.S. Dist. LEXIS 26674 (D.S.C. March 22, 2010)

⁴⁴ *Deangelo v. DentalEZ, Inc.*, 738 F. Supp. 2d 572 (E.D. Pa. 2010).

⁴⁵ *Serwatka v. Rockwell Automation, Inc.*, 591 F.3d 957 (7th Cir. 2010).

⁴⁶ The same would presumably apply to age-plus-disability cases; Rowe and Kahn, *supra* note 34. In *Kelly v. Drexel Univ.*, 907 F. Supp. 864 (E.D. Pa. 1995), the Pennsylvania Eastern District Court ruled that it had no authority to recognize an age-plus-disability claim under the ADEA.

State laws can strengthen protections against intersectional discrimination. Some states (e.g., North Carolina and California) cover age, sex, and disability (and other protected groups) under one statute.⁴⁷ In such contexts, it is not necessary to invoke separate statutes in claims of intersectional discrimination. Moreover, case law in some states explicitly allows intersectional discrimination claims. For example, in *Doucette v. Morrison County*, the U.S. Court of Appeals, Eighth Circuit, explicitly agreed with the district court that “a claim of sex-plus-age discrimination is likely cognizable under the [Minnesota Human Rights Act].”⁴⁸

Additionally, some states do not require older workers to show that age was the determining factor in adverse employment decisions and allow “mixed-motive” causes of action. For example, in *Alamo v. Practice Mgmt. Info. Corp.*, the Court of Appeal of California stated: “we decline to follow Gross in considering the proper standard of causation under [The Fair Employment and Housing Act].”⁴⁹ A similar ruling was issued by the Superior Court of Connecticut in *Wagner v. Bd. of Trs. for Conn. State Univ.*, because the legislature included “the protection against age discrimination in the same statute that includes protections against other forms of discrimination, without otherwise distinguishing such claims (as under federal law).”⁵⁰

Evidence on age discrimination in hiring

There is much evidence of observed differences in outcomes that could be consistent with discrimination, such as longer unemployment durations for older than for younger job seekers.⁵¹ But such differences could also reflect other factors that vary between groups – in this example,

⁴⁷ California Cal Gov Code § 12940; North Carolina N.C. Gen. Stat. § 143-422.2.

⁴⁸ *Doucette v. Morrison Cty.*, 763 F.3d 978 (8th Cir. 2014).

⁴⁹ *Alamo v. Practice Mgmt. Info. Corp.*, 2012 Cal. App. Unpub. LEXIS 6902 (Cal. App. 2d Dist. September 24, 2012).

⁵⁰ *Wagner v. Bd. of Trs. for Conn. State Univ.*, HHDCV085023775S, 2012 Conn. Super. LEXIS 316 (Super. Ct. Jan. 30, 2012).

⁵¹ E.g., David Neumark, Patrick Button, *Did Age Discrimination Protections Help Older Workers Weather the Great Recession?*, JOURNAL OF POLICY ANALYSIS AND MANAGEMENT, 33, 566-601 (2014).

perhaps differences in the job offers that older vs. younger job seekers accept. Given this challenge, economists generally pursue more rigorous ways of testing for discrimination, including experiments, which rule out non-discriminatory explanations. The most reliable evidence comes from audit or correspondence (AC) studies of hiring discrimination,⁵² in which researchers create artificial job applicants in which there are no average differences by group, and then observe employer selections from these applicants.

There are many AC studies of discrimination based on age, disability, and gender, although far fewer focused on gendered age or disability discrimination.⁵³ Neumark et al. conducted a very large-scale correspondence study on age discrimination in hiring, focusing on near-retirement ages.⁵⁴ They submitted résumés to approximately 13,000 ads for jobs that employ and hire lower-skilled workers of all ages, including: administrative assistants and secretaries (female applicants); janitors and security guards (male applicants); and retail sales (both genders). Overall, callback rates for job interviews decline with age, pointing to age discrimination in hiring (see Figure 1), but the monotonic decline in callbacks with age is stronger and clearer for women, indicating that women face worse age discrimination than men. Other AC studies find evidence of age discrimination in hiring, especially for women, although most do not compare results by gender,⁵⁵ except for a Swedish study finding stronger age

⁵² E.g., Michael Fix, and Raymond Struyk, *CLEAR AND CONVINCING EVIDENCE: MEASUREMENT OF DISCRIMINATION IN AMERICA* (1993).

⁵³ David Neumark, *Experimental Research on Labor Market Discrimination*, *JOURNAL OF ECONOMIC LITERATURE*, 56, 799-866 (2018).

⁵⁴ Neumark et al., *supra* note 2.

⁵⁵ E.g., Marc Bendick, Charles W. Jackson, and J. Horacio Romero, *Employment Discrimination Against Older Workers: An Experimental Study of Hiring Practices*, *JOURNAL OF AGING & SOCIAL POLICY*, 8, 25-46 (1997); Joanna Lahey, *Age, Women, and Hiring: An Experimental Study*, *JOURNAL OF HUMAN RESOURCES*, 43, 30-56 (2008); Henry S. Farber, Dan Silverman, and Till M. von Wachter, *Factors Determining Callbacks to Job Applications by the Unemployed: An Audit Study*, *RSF: THE RUSSELL SAGE FOUNDATION JOURNAL OF THE SOCIAL SCIENCES*, 3, 168-201 (2017).

discrimination against women.⁵⁶

Ameri et al. conducted a large-scale correspondence study of disability discrimination, without regard to gender, finding significantly lower callbacks for disabled applicants.⁵⁷ A couple of studies test for differences in disability discrimination by gender, but do not find evidence of worse disability discrimination for women. In a Belgian study, Baert et al. found that unemployment due to severe depression decreases the callback rate, but the result is driven by male applicants.⁵⁸ Drydakis studied HIV-positive discrimination in Greece and found a similar negative callback effect for women and men who voluntarily disclose their HIV infection status.⁵⁹ Because using AC methods to study disability discrimination requires a narrow specification of disability, we need more studies before we can reach more general conclusions on gendered disability discrimination.

Moreover, owing to the difficulty and expense of collecting large amounts of data in AC studies, most research using these methods restricts attention to one protected group vs. a potentially favored group.⁶⁰ An important implication is that the limited amount of research on intersectional discrimination means that intersectional discrimination in the workplace could be quite pervasive; the absence of evidence is not necessarily evidence of absence.

We can also potentially obtain evidence on discrimination from studying the effects of discrimination laws. We have to interpret this evidence cautiously; because discrimination laws

⁵⁶ Magnus Carlsson, and Stefan Eriksson, *The Effect of Age and Gender on Labor Demand – Evidence from a Field Experiment*, *LABOUR ECONOMICS*, 59, 173-183 (2019).

⁵⁷ Mason Ameri, et al., *The Disability Employment Puzzle: A Field Experiment on Employer Hiring Behavior*, *ILR REVIEW*, 71, 329-364 (2018).

⁵⁸ Stijn Baert, et al., *First Depressed, then Discriminated Against?*, *SOCIAL SCIENCE & MEDICINE*, 170, 247-254 (2016).

⁵⁹ Nick Drydakis, *Labour Discrimination as a Symptom of HIV: Experimental Evaluation – the Greek Case*, *JOURNAL OF INDUSTRIAL RELATIONS*, 52, 201-217 (2010).

⁶⁰ For a lab experiment on intersectional age and race discrimination in hiring decisions, see: Joanna N. Lahey and Douglas R. Oxley, *Discrimination at the Intersection of Age, Race, and Gender*, *JOURNAL OF POLICY ANALYSIS AND MANAGEMENT*, 40, 1083-1119 (2021).

create incentives to avoid charges of discrimination, they could change behavior even if there was not underlying discrimination in the first place. In our view, though, there is enough evidence of discrimination – from the types of studies just discussed, and many more⁶¹ – that this concern is unwarranted.

Age discrimination laws improved labor market outcomes for older workers, boosting employment of older workers in the protected age ranges and strengthening the employment relationship between older workers and firms.⁶² In addition, in response to Social Security reforms to encourage later retirement, older workers responded more strongly – working longer and claiming Social Security benefits later – in states that had stronger age discrimination laws (mainly larger damages), and there was evidence of a positive impact on hiring older workers.⁶³ In an extension of the correspondence study described above to cover retail hiring in all U.S. states, there was less evidence of discrimination against older women and men in states where age discrimination laws allow larger damages.⁶⁴

Disability discrimination laws have also helped workers.⁶⁵ For example, Ameri et al. compared outcomes for private employers with fewer than 15 employees and hence not covered by the ADA and find evidence of an effect of the ADA at the 15 cutoff.⁶⁶

⁶¹ Neumark, *supra* note 53.

⁶² E.g., Scott Adams, *Age Discrimination Legislation and the Employment of Older Workers*, *LABOUR ECONOMICS*, 11, 219-241 (2004); David Neumark, and Wendy A. Stock, *Age Discrimination Laws and Labor Market Efficiency*, *JOURNAL OF POLITICAL ECONOMY*, 107, 1081-1125 (1999).

⁶³ Neumark and Song, *supra* note 27.

⁶⁴ Neumark et al., *supra* note 2.

⁶⁵ E.g., Kathleen Beegle, and Wendy A. Stock, *The Labor Market Effects of Disability Discrimination Laws*, *JOURNAL OF HUMAN RESOURCES*, 38, 806-859 (2003); Douglas Kruse, and Lisa Schur, *Employment of People with Disabilities Following the ADA*, *INDUSTRIAL RELATIONS*, 42, 31-66 (2003). Some contradictory evidence is less compelling because it does not use state policy variation. See: Daron Acemoglu, and Joshua D. Angrist, *Consequences of Employment Protection? The Case of the Americans with Disabilities Act*, *JOURNAL OF POLITICAL ECONOMY*, 109, 915-957 (2001); Thomas Deleire, *The Wage and Employment Effects of the Americans with Disabilities Act*, *JOURNAL OF HUMAN RESOURCES*, 35, 693-715 (2000).

⁶⁶ Ameri et al., *supra* note 57.

There is limited evidence that speaks to intersectionality by exploring whether statutes that do *not* cover both groups potentially affected by intersectional discrimination provide less protection for these intersecting groups. This research ties back to the earlier discussion about the inability to prevail on intersectional discrimination claims for groups protected under different statutes. McLaughlin finds that state and federal age discrimination laws in the 1960s did more to increase employment and lower retirement for older men than older women.⁶⁷

Policy implications and potential responses

Age discrimination and disability discrimination are important policy challenges. While our view is that *all* workers have a fundamental right to equal employment opportunities, population aging provides an additional motivation to enable older individuals to work longer. And reducing discrimination against older women is particularly important for financial security at older ages, as many women outlive their husbands and end up impoverished.⁶⁸

Policymakers recognize the first challenge and have enacted numerous reforms to create stronger incentives to work longer, such as reducing retirement benefits available at younger ages, raising Social Security’s full retirement age, and reducing marginal tax rates on earnings of older workers.⁶⁹ However, focusing only on these “supply-side” incentives to work more at older ages without addressing potential demand side barriers stemming from discrimination against older workers – whether because of age, disability, or their interactions with gender – may be little more than “pushing on a string.” If we do not also combat demand side barriers from discrimination, so that older workers find it easier to stay in or return to the workforce, policy

⁶⁷ Joanne S. McLaughlin, *Falling between the Cracks: Discrimination Laws and Older Women*, *LABOUR*, 34, 215-238 (2020).

⁶⁸ E.g., Timothy M. Smeeding, and Susanna Sandstrom, *Poverty and Income Maintenance in Old Age: A Cross-National View of Low-Income Older Women*, *FEMINIST ECONOMICS*, 11, 163-197 (2005).

⁶⁹ E.g., Robert L. Clark, and John B. Shoven, *Enhancing Work Incentives for Older Workers: Social Security and Medicare Proposals to Reduce Work Disincentives*, Brookings Institution, Washington, DC (2019).

incentives to retire later could reduce retirement benefits without doing much to increase employment, ultimately doing more harm than good; and the problem can be particularly severe for older women. And reducing age discrimination can strengthen the impact of supply-side incentives.⁷⁰

In light of these policy considerations, the evidence on discrimination, and the limitations of existing discrimination laws regarding gendered age and disability discrimination, some policy changes could potentially be advantageous.

First, irrespective of intersectional discrimination, policy changes could strengthen protections against age and disability discrimination generally. Evidence from state age discrimination laws indicates larger damages would help reduce age discrimination. And in response to *Gross*, the ADEA could also be amended to clarify that the standard for establishing discrimination is not “but for” age, making the ADEA and Title VII more similar and hence potentially undermining judicial justification for disallowing intersecting age and gender claims.⁷¹

Policy changes could directly address intersectional discrimination, correcting the anomaly of intersecting claims being allowed if they fall under a single statute, but not if they fall under separate statutes. First, policymakers could amend the ADEA (and ADA) to allow intersectional claims, in particular those regarding gender. Such a reform might help reduce the more severe age discrimination experienced by older women. And this, in turn, could increase older women’s financial security.

Second, we could extend affirmative action for federal contractors to older or disabled

⁷⁰ Neumark and Song, *supra* note 27.

⁷¹ In the 117th Congress, the U.S. House of Representatives passed the Protecting Older Workers Against Discrimination Act (H.R. 2062), which would have accomplished this exact purpose.

workers, including intersecting categories (even going beyond simply age and gender and disability and gender.) More generally, again irrespective of intersectional discrimination, one could argue that age and disability discrimination protections should be on par with protections based on race, sex, and ethnicity. As a first step, in part to model the importance and value of boosting employment of older workers and disabled workers, and perhaps especially women, the federal government could move quickly to require affirmative action based on these categories for federal agencies. This would parallel federal regulations implemented in 2018 (by the EEOC) clarifying the affirmative action obligations of federal agencies under the Rehabilitation Act of 1973, which had barred these agencies from discriminating based on disability.

While these policy changes could also mitigate other dimensions of intersectional discrimination (including multiple dimensions), our knowledge of the quantitative importance of intersectional discrimination along other dimensions is lacking.⁷² The most convincing evidence would come from correspondence studies, but detecting intersectional discrimination requires much larger samples to have sufficient power compared to one-dimensional discrimination.⁷³ Although there is a lack of rigorous evidence, there is suggestive evidence of other dimensions of intersectional discrimination in employment. For example, Lahey shows that older black women have worse employment outcomes compared to similar older white women.⁷⁴ Survey evidence indicates that older lesbians reported that they felt discrimination in employment based on both

⁷² One exception to the lack of evidence is a study of gendered race discrimination, using an eye-tracking lab experiment, which showed a strong negative interaction effect between age and race in hiring decisions. Lahey and Oxley, *supra* note 60.

⁷³ For a summary of existing field experiments see: Stijn Baert, *Hiring Discrimination: An Overview of (Almost) All Correspondence Experiments Since 2005*, in *AUDIT STUDIES: BEHIND THE SCENES WITH THEORY, METHOD, AND NUANCE*, edited by S.M. Gaddis (2018)

⁷⁴ JOANNA N. LAHEY, *Understanding Why Black Women Are Not Working Longer*, in *WOMEN WORKING LONGER: INCREASED EMPLOYMENT AT OLDER AGES* (Claudia Goldin and Lawrence F. Katz eds., 2018).

sexual orientation and age.⁷⁵ In a different survey, 45 percent of older lesbian, gay, bisexual, and transgender workers are not confident they could find another job due to discrimination, although this survey did not provide gender comparisons.⁷⁶

Title VII does not explicitly cover sexual orientation, but in 2020 the U.S. Supreme Court ruled that sexual orientation is covered under Title VII.⁷⁷ Although this ruling moves federal law toward providing equal employment opportunities for lesbian, gay, bisexual, and transgender workers, it still leaves a gap for those at the intersections, because the legal limitations we discussed in this chapter extend to other types of intersectional discrimination such as age-race, race-disability, or age-sexual orientation. It would therefore be useful to obtain evidence on discrimination along these other intersecting margins. This chapter provides a basis not only for how to reform existing laws to better protect older and disabled women from intersectional discrimination, but also how to write new laws preventing discrimination based on additional intersecting categories and identities.

⁷⁵ Paige Averett, et al., *Older Lesbians: Experiences of Aging, Discrimination and Resilience*, JOURNAL OF WOMEN & AGING, 23, 216-232 (2011).

⁷⁶ R. Perron and N. Quartey, *Perspectives of Lesbian, Gay, Bisexual, and Transgender (LGBT) Older Workers*, INNOVATION IN AGING, 2, 321 (2018).

⁷⁷ *Bostock v. Clayton Cty.*, 140 S. Ct. 1731 (2020). Some states cover sexual orientation as a protected group.

Table 1: Age and Disability Discrimination Laws

Age discrimination laws			Disability discrimination laws		
State	Minimum firm size	Larger damages than ADEA	Minimum firm size	Larger damages than ADA	Broader (medical) definition of disability
AL	20 (1997)	No	No law	No law	No law
AK	1 (1960)	Yes (1997)	1 (1987)	Yes (1997)	No
AZ	15 (1980)	No	15 (1986)	No (no punitive damages)	No
AR	No law	No law	9 (1993) ^a	No (same as ADA)	No
CA	6 (1961); 5 (1980)	Yes (1992)	5 (1974)	Yes (uncapped) (1992)	Yes (“limits” only)
CO	1 (1979) ^b	Yes (2013)	1 (1979)	No (same as ADA)	No
CT	5 (1960); 3 (1967)	Yes (1991)	3 (1973)	No	Yes
DE	4 (1976) ^b	Yes (2004)	20 (1988)	No (same as ADA)	No
FL	15 (1977)	Yes (1993)	15 (1977)	No (punitive capped at \$100k)	No
GA	1 (1981)	No	15 (1981)	No (no punitive)	No
HI	1 (1972) ^b	Yes (1997)	1 (1975)	Yes (uncapped) (1997)	No
ID	4 (1969); 10 (1976); 5 (1991)	Yes (1980)	10 (1988)	No (punitive capped at \$10k)	No
IL	15 (1979)	Yes (1979)	1 (1971); 15 (1976)	No (no punitive)	Yes
IN	1 (1965)	No	25 (1992); 15 (1994)	No (no punitive)	No
IA	4 (1972)	Yes (1979)	4 (1972)	No (no punitive)	No
KS	4 (1983)	Yes (1984)	4 (1974)	No (no punitive damages, damages capped at \$2k)	No
KY	8 (1972)	Yes (1974)	8 (1992)	No (no punitive)	No
LA	8 (1988); 20 (1997)	Yes (1988)	15 (1980)	No (no punitive)	No
ME	1 (1972)	Yes (1997)	20 (1999)	Yes (1997)	No
MD	1 (1968); 25 (1970); 15 (1973)	Yes (2007)	1 (1975)	No (same as ADA, no punitive damages in Baltimore County for employers < 15)	No
MA	6 (1960)	Yes (1990)	15 (1974)	Yes (uncapped) (1990)	No
MI	4 (1977); 1 (1980)	Yes (1977)	6 (1983)	No (no punitive)	No
MN	1 (1977)	Yes (1983)	4 (1977); 1 (1990)	No (punitive capped at \$25k)	Yes (“materially limits” only)
MS	No law	No law	1 (1975)	No (punitive capped at \$25k)	Yes (“materially limits” only)
MO	6 (1986)	Yes (1986)	No law	No law	No law
MT	1 (1974)	Yes (2007)	6 (1986)	Yes (uncapped) (1986)	No
NE	1 (1963); 25 (1972); 20 (2007)	No	1 (1974)	No (no punitive)	No
NV	15 (1973)	Yes (2019)	15 (1973)	No (no punitive)	No
NH	6 (1971)	Yes (1992)	6 (1975)	No (no punitive)	No
NJ	5 (1962); 1 (1966)	Yes (1990)	1 (1972)	Yes (uncapped) (1990)	Yes

NM	4 (1969)	Yes (1969)	4 (1973)	No (no punitive)	No
NY	6 (1960); 4 (1965); 1 (2020)	Yes (1968)	4 (1974)	No (no punitive)	Yes
NC	15 (1977)	No	15 (1977)	No (no punitive)	No
ND	10 (1983) ^b ; 1 (1991)	No	1 (1983); 1 (1991)	No (no damages)	No
OH	4 (1979)	Yes (1979)	4 (1976)	Yes (uncapped) (1979)	No
OK	15 (1985); 1 (2011)	No	15 (1981) 1 (2011)	No (no punitive)	No
OR	6 (1960); 1 (1973)	Yes (1999)	6 (1973)	Yes (uncapped) (1999)	No
PA	12 (1961) ^b ; 6 (1966); 4 (1967)	No	4 (1974)	No (no punitive)	No
RI	1 (1960); 4 (1986)	Yes (1991)	4 (1973)	Yes (uncapped) (1991)	No
SC	15 (1979)	No	15 (1996) ^b	No (same as ADA)	No
SD	No law	No law	1 (1986)	No (no punitive)	No
TN	8 (1981)	Yes (1981)	8 (2014) ^b	No (no punitive)	No
TX	15 (1983)	Yes (1995)	15 (1983)	No (same as ADA)	No
UT	25 (1975); 15 (1985)	No	25 (1979); 15 (1985)	No (no punitive)	No
VT	1 (1981)	Yes (1999)	1 (1981)	Yes (uncapped) (1999)	No
VA	5 to 14 (1995) ^b ; 5 to 19 (2014)	Yes (2020)	5 to 14 (1995) ^b ; 5 to 19 (2014)	No (no punitive)	No
WA	8 (1961)	Yes (1973)	8 (1973)	No (no punitive)	Yes
WV	12 (1971)	Yes (1999);	12 (1981)	Yes (uncapped) (1999)	No
WI	1 (1982) ^b	Yes (2009); No (2012)	1 (1982) ^b	No (no punitive)	No
WY	2 (1984)	No	2 (1985)	No (no punitive)	No

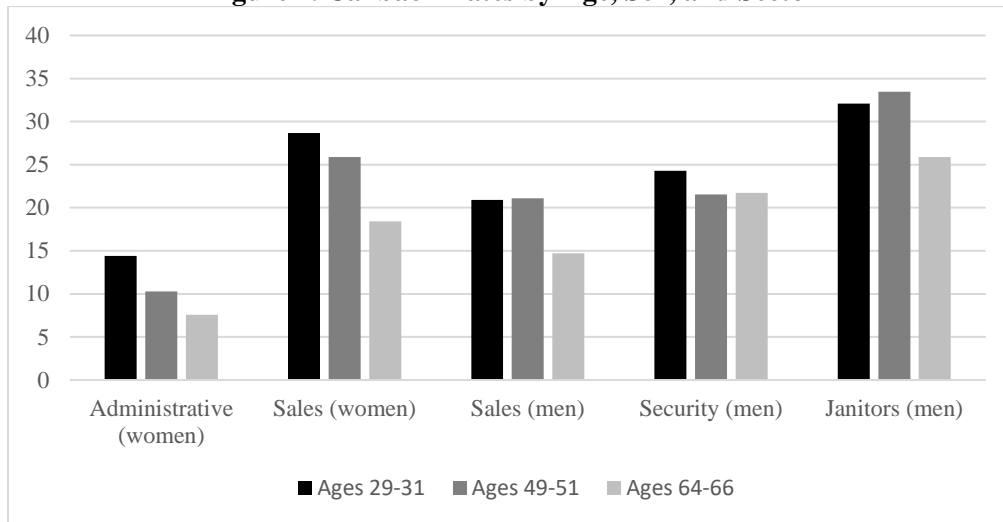
Notes: Age discrimination laws are from Neumark and Song (2013) and disability discrimination laws are from Neumark et al. (2017), but both are updated to 2020. For the states listed as “Yes” under Larger damages than ADA, but not uncapped, details are as follows: Alaska – uncapped compensatory damages, punitive damages capped above ADA levels; Maine – exceeds ADA cap for firms of 201+ employees. For Connecticut the evidence favors punitive damages not being available, and compensatory damages were definitely not available.

^aThe firm size is specified under the AR Civil Rights Act 1993, but there was a law before 1993 that states that individuals with physical disabilities shall be employed. We believe this law existed before 1973 but have been unable to trace the history back any further.

^bThe state law existed before either the firm size cut-off was defined or the larger damages were allowed. We only traced the laws beginning from 1960.

Source: David Neumark and Joanne Song, *Do Stronger Age Discrimination Laws Make Social Security Reforms More Effective?* JOURNAL OF PUBLIC ECONOMICS, 108, 1-16 (2013); David Neumark, Ian Burn, Patrick Button, and Nanneh Chehras. *Do State Laws Protecting Older Workers from Discrimination Reduce Age Discrimination in Hiring? Evidence from a Field Experiment.* JOURNAL OF LAW AND ECONOMICS, 62, 373-402 (2019b).

Figure 1. Callback Rates by Age, Sex, and Sector



Source: David Neumark, Ian Burn, and Patrick Button, *Is It Harder for Older Workers to Find Jobs? New and Improved Evidence from a Field Experiment*, JOURNAL OF POLITICAL ECONOMY, 127, 922-970 (2019a).