



Policies for an Aging Labor Force

Keeping Older Workers with Health Conditions Employed

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Each year, millions of older workers leave the labor force and retire prematurely, often because of health shocks. The COVID-19 pandemic and economic downturn have made the challenges for older workers even greater (Bui, Button, and Picciotti 2020). In this brief, we explore how providing workplace accommodations can help more workers remain in the labor force. Although we focus on workers over age 55, workplace accommodations could also help many younger workers who develop a health condition that inhibits their ability to work. States with paid-leave programs are especially well positioned to help workers stay in the labor force without changes to federal law.

We review the data on health and employment among older workers, evidence on the effectiveness of interventions to keep individuals in their jobs, the frequency that at-risk workers receive accommodations, and obstacles to providing more accommodations. We also detail the legal framework and recent developments that have opened up new opportunities for workplace accommodations. Finally, we suggest an approach to increase awareness of these opportunities to expand workplace accommodations.

Health and Employment of Older Workers

New or worsening health conditions that inhibit work are primary reasons older workers leave the labor force. A study using the Health and Retirement Study (HRS) found the probability of having a potentially disabling condition increases from 21 to 43 percent as people age from 55 to 64 (Johnson, Favreault, and Mommaerts 2009). Older workers are especially susceptible to health shocks, making them more likely to leave the labor force (Johnson, Favreault, and Mommaerts 2009). The employment prospects for older workers who lose a job are often bleak; because older out-of-work adults usually have more difficulty finding a new job than younger workers, they tend to be

unemployed longer, and they are more likely to take a pay cut when returning to work (Johnson and Gosselin 2019). Median hourly wages for reemployed men were 20.1 percent lower in their new jobs than in their old jobs at ages 50 to 61 and 35.6 percent lower at age 62 or older (Johnson and Mommaerts 2011). Munnell, Zhivan, and Sass (2009) stated, “Once displaced, older workers are less likely to be reemployed, have less time to adjust their retirement plans, and are more likely to retire prematurely.” (1)

Some older workers have developed a “work niche” with a specific skill set; younger workers change jobs more frequently (Charness and Czaja 2006). Older workers who have developed greater firm-specific human capital and feel pressure to retire early may forfeit more job-specific experience than a younger worker. This specialization may cause more adverse consequences from job loss for older workers, making it more difficult for older workers to find new employment or forcing them to accept lower-paying positions.

Older workers who experience job loss are much more likely to retire prematurely. A survey by the Employee Benefits Research Institute found 4 in 10 workers reported retiring earlier than planned. Of the retirees reporting premature retirement, 35 percent retired because of a health problem or a disability (Employee Benefit Research Institute and Greenwald & Associates 2019). HRS data from 1992 to 2016 show that many workers ages 50 to 67 report being forced or somewhat forced to retire, often citing health as either a somewhat or more important factor. Overall, 45 percent of retired workers report having been forced or somewhat forced to retire; this rate is 10 to 15 percentage points higher for people of color than for white people. Of premature retirees, 62 percent cite poor health as a factor in their involuntary retirement, a rate that is similar across racial groups. Workers with no more than a high school education are 10 percentage points more likely to report an involuntary retirement. Those involuntary retirees are 16 percentage points more likely to cite poor health as a factor than retirees with more than a high school education.¹

The Social Security Disability Insurance (SSDI) program protects only some of the workers who are forced to retire from health issues, because of the program’s strict eligibility criteria (Smalligan, Williams, and Boyens 2019). Moreover, workers who are forced to retire are just as likely to receive retirement benefits as disability benefits (Seligman 2014). Bound and Waidmann (2011) found that a significant number of early retirees had health issues as severe as those receiving SSDI or Supplemental Security Income.

Some workers have conditions serious enough to qualify for SSDI. Many who do not qualify struggle to reenter the labor force or choose premature retirement and the lower Social Security benefits that come with it. Older adults with poor health who are not receiving SSDI are more likely to live in or near poverty than older workers on SSDI. Favreault, Johnson, and Smith (2013) estimate that 35 percent of this group have incomes below 100 percent of the federal poverty level (FPL), and another 9 percent have incomes less than 150 percent of FPL.

Policies to Help At-Risk Older Workers Stay Employed

Strong evidence shows that well-designed return-to-work early interventions could help keep more at-risk workers employed (Smalligan and Boyens 2019). The guidelines of the American College of Occupational and Environmental Medicine states “The fundamental reason for most medically-related lost workdays and lost jobs is not medical necessity” (ACOEM 2006). The most straightforward early intervention with some of the strongest evidence of effectiveness is a workplace accommodation to manage a new health condition (Cullen et al. 2018; Bültmann 2016). Providing job-protected medical leave can be the most immediate accommodation, and subsequent accommodations can evolve to include flexible schedules, special equipment, and revised work tasks.

Studies show that workplace accommodations can help keep at-risk workers employed (Burkhauser, Butler, and Kim 1995; Daly and Bound 1995). A study of large California employers found that those with explicit accommodation programs retained workers who developed work-based impairments at a significantly higher rate than employers without such programs, and injured workers returned to work 1.4 times faster than a comparable group returned (McLaren, Reville, and Seabury 2010; McLaren, Reville and Seabury 2017) A systematic review of the return-to-work literature found that interventions involving workplace accommodations were most effective at keeping workers with disabilities employed (Franche et al. 2005). Accommodations can help address a wide range of conditions, from musculoskeletal conditions (Franche et al. 2005) to mental health issues (McDowell and Fossey 2015). A Denmark study of 809 “sick-listed” workers with temporary health conditions lasting more than eight weeks found that those in an accommodated job were 41 percent less likely to stop work than those in other jobs (Høgelund and Holm 2014). A case study that surveyed 5,000 employees and managers at eight companies found that workplace accommodations were relatively inexpensive (Schur et al. 2014). The Office of Disability Employment Policy funds the Job Accommodation Network, and their survey of employers finds that about 58 percent of accommodations have no cost, and when there is a cost, it is typically about \$500 (Job Accommodation Network 2019).

Panel surveys show a correlation between the availability of workplace accommodations and continued employment, though they cannot establish causation. Hill, Maestas, and Mullen (2016) analyzed HRS data and concluded that workers who were provided accommodations were 40 percent more likely to be working two years later. However, the authors caution that the correlation becomes statistically insignificant after four years, and workers with health conditions serious enough to qualify for SSDI do not appear to benefit.

Workplace accommodations may also benefit employers by reducing job turnover and increasing productivity (US Senate Committee on Health, Education, Labor, and Pensions 2013). A study using the RAND American Life Panel, including a 2015 follow-up survey on workplace disability, found one-fifth of employees reported needing accommodations at work, and two-thirds of these employees received them (Gifford and Zong 2017). Workers who were not accommodated were five times more likely to report higher levels of lost productivity than those who received accommodations.

Do At-Risk Workers Receive Workplace Accommodations?

Data on the rates at which older workers receive accommodations is conflicting, but they largely indicate that the rates of accommodation are low. The Hill, Maestas and Mullen (2016) examination of HRS data discussed in the previous section found that only a quarter of newly disabled older workers in their 50s were accommodated by their employer. An earlier study using HRS data from 1992 found less than one-fifth of workers with musculoskeletal conditions received any form of workplace accommodation (Yelin, Sonneborn, and Trupin 2000). A study using the National Health Interview Survey showed that 12 percent of workers ages 18 to 69 with a wide range of impairments reported receiving workplace accommodations. Those with more education were significantly more likely to be accommodated, and those with mental health conditions were significantly less likely to be accommodated (Zwerling et al. 2003). Data from a July 2019 disability supplement to the Current Population Survey (CPS) show that only 13.8 percent of workers with a disability requested a change in their current workplace to do their job better compared with 9.1 percent of those with no disability.²

The Hill, Maestas, and Mullen (2016) study found few distinguishing characteristics of employers who grant accommodations. However, they found that employee characteristics, specifically personality traits more associated with self-advocacy, “largely determine which workers are accommodated.” Similarly, a systematic review of the literature by Finnish researchers found that key facilitators and potential barriers to accommodations included self-advocacy and the level of support of employers and the community (Nevala et al. 2015). In the US, employer engagement on accommodations is required by the Americans with Disabilities Act (ADA) from 1990. Some research emphasizes the importance of the worker requesting an accommodation; some other evidence indicates that an employer’s willingness to provide an accommodation depends on its access to public and private resources and the ability to communicate with the affected employee (Gould-Werth, Morrison, and Ben-Shalom 2018).

The recency in which a worker experienced a disabling condition may also affect the rate of accommodation. Although national surveys find low rates of accommodation, individuals with long-standing, chronic disabilities who continue to work may better understand their rights and more successfully advocate for accommodations. The Kessler Foundation funded a national survey of people with significant disabilities with a focus on how people identify and overcome barriers to working. It found that 42 percent of people with disabilities were working, and 48 percent of this group used accommodations (Vidya et al. 2018). Maestas, Mullen, and Rennane (2019) conclude that the rates of accommodation and unmet accommodation depend largely on the sequence in which questions are asked. In other words, some workers who receive accommodations may no longer identify themselves as having a work limitation and may not be identified in some surveys.

Research on how employers should address occupational injuries as part of their workers’ compensation responsibilities has advanced substantially, and evidence shows that employers have

responded to the findings by developing more extensive return-to-work strategies for their workers compensation programs (Hunt 2009). One study using Bureau of Labor Statistics data found that “between 1987 and 2010, the share of workers with moderately severe occupational injuries and illnesses who were accommodated by their employers more than quadrupled” (Bronchetti and McInerney 2015). When an employer has a legal and financial responsibility to address an occupational injury or illness, worker self-advocacy becomes less important. Employers who are held responsible for workplace injuries or illnesses can use accommodations to reduce the duration of a worker’s claim for leave or to avoid a worker making a compensation claim. Bronchetti and McInerney (2015) conclude that larger firms that establish return-to-work programs are more likely to provide accommodations and that “the older the worker, the less likely he is to be accommodated on the job.”

Although estimates vary, there appears to be substantial unmet need for workplace accommodations, especially among older workers. Workers who request an accommodation may be more likely to receive an accommodation from their employer.

Few data are available to shed light on how workers with serious illnesses or injuries understand their rights to accommodation. A worker with a new and perhaps temporary condition may not consider themselves to have a disability or to have protections under the ADA. Workers have the greatest chances to obtain accommodations through their current employer, so timely self-advocacy is critical (Gates 2000). Although workers have the right to seek an accommodation, the legal framework for older workers is complicated, and many older workers may not understand their rights. In the next section, we review that legal framework.

The Federal Legal Framework for Workplace Accommodations for Older Workers

The Age Discrimination in Employment Act (ADEA) of 1967, the ADA of 1990, and ADA Amendments Act of 2008 are the most important job protection laws for older workers.³ The ADEA is typically the focus of protections for older workers. However, the ADA provides both an important complement to older workers’ ADEA rights and stronger rights to job-protected workplace accommodations. The legal framework for medical leave is also important because job-protected medical leave is often the first form of accommodation for newly ill or injured workers. The Family and Medical Leave Act (FMLA) is the most significant law providing job-protected medical leave, with the ADA providing additional protections for workers regardless of whether they are covered by the FMLA.⁴ In addition to these national laws, many state and local laws provide additional legal protections.

The ADEA covers employers with at least 20 employees and protects employees and job applicants age 40 or older from age discrimination in hiring, compensation, promotion, discharge, and other aspects of employment. However, the law does not explicitly address an employee’s right to workplace accommodations. The ADEA was limited in 2009 when the Supreme Court ruled in *Gross v. FBL Financial Services, Inc.* that claimants must prove that age was the sole motivating factor in a discrimination claim (Gonzales et al. 2015). The “sole motivating factor,” also referred to as the “but-

for” standard, is very difficult to prove (Cremin 2017). In January 2020, the House passed the bipartisan Protecting Older Workers Against Discrimination Act to change the ADEA standard, instead only requiring claimants prove that age was one of the factors behind an employer’s adverse action.⁵ It remains unclear, however, whether the Senate will take up the legislation.

The ADA mandates that employers provide reasonable accommodations to employees with disabilities who need them. The ADA Amendments Act strengthened the law’s legal protections, and although different legal standards hold across federal appeals courts, the ADA is generally viewed as providing stronger protections than the ADEA (Myers 2018). It applies to employers with 15 or more employees and, unlike the FMLA, there is no length-of-service requirement. Bureau of Labor Statistics data on the size of businesses indicate that nearly 80 percent of workers are covered by the ADA.⁶ However, an important limitation is that an employer can refuse to grant an accommodation if it would impose undue hardship on the business.

The COVID-19 pandemic has added an additional layer of challenges. The Equal Employment Opportunity Commission (EEOC) has issued guidance on employer responsibilities given COVID-19, the ADA and the other related laws.⁷ In addition, the Job Accommodation Network funded by the Office of Disability Employment Policy within the US Department of Labor, has published advice on how employers should manage reasonable accommodation requests given the ADA requirements.⁸

Workers may be entitled to job-protected medical leave under the ADA, and many workers with ADA protections also have rights under the FMLA. The FMLA provides the right to 12 weeks of unpaid leave for parental, caregiving, and medical leave for covered workers. The law ensures that employees have the right to return to their employer in the same job or a similar one (Klerman, Daley, and Pozniak 2012). FMLA applies to employers with 50 or more employees in a 75-mile radius. Workers are eligible to take FMLA leave if they have completed 1,250 hours of service for their employer over the past 12 months. Abt Associates estimates that 59 percent of workers are covered by the FMLA (Klerman, Daley, and Pozniak 2012).

In 2016, the EEOC issued a resource document clarifying that depending on the facts and circumstances of their situation, employees with disabilities may have the right to medical leave as a reasonable accommodation under the ADA.⁹ Those rights may apply even if an employer is not covered by the FMLA, an employer does not offer any medical leave benefits, or an employee exhausts other available benefits. This accommodation may be available for a variety of conditions such as recovery from surgery, serious stroke, or major depression. To address ambiguity that was leading to litigation, the EEOC also issued guidance that employees with cancer should be considered to have a disability under the ADA,¹⁰ and workers with pregnancy-related impairments may be considered disabled under the ADA, though pregnancy by itself is not a disability.¹¹ As a result, workers who exhaust their paid or unpaid medical leave benefits could be entitled to additional leave when returning to work. EEOC has consent decrees with some major employers that include multi-million-dollar penalties¹² and continues to identify expanding awareness and compliance with these rights as a significant concern in its enforcement plans.¹³

In summary, the ADA provides stronger job protections than the ADEA and clearer rights to accommodations and medical leave. The ADA also covers more workers than the FMLA. About half of workers without FMLA coverage are covered by the ADA.¹⁴ Even if Congress eventually acts to strengthen the ADEA, the law does not have the reasonable accommodation framework that constitutes a key part of the ADA. However, these stronger and more widely available ADA worker protections are only useful if workers know of and are prepared to advocate for their rights.

Do Newly Ill and Injured Workers Know Their ADA Rights?

Many organizations and government programs help educate individuals with long-standing disabilities about their ADA rights. However, workers with new conditions may not realize that they are experiencing either a temporary or long-term disability and have ADA rights. Little research and few data sources are available on how well newly at-risk workers understand their rights. Surveys asking workers with health conditions to describe their conditions may shed light on awareness of their ADA rights.

Disability can have different meanings to different people, and measuring the concept consistently in surveys is not easy. Earlier in this brief we described research that indicates that the sequencing of survey questions can influence whether workers report receiving an accommodation. At the most basic level, if workers don't consider themselves to have a disability, they are unlikely to expect that they have rights under the ADA. Moreover, older workers with new health conditions may attribute the new condition to aging rather than identify it as a disability. A study using the Canadian 2001 Participation and Activity Limitation Survey found those who attributed their condition to aging "were less likely to recognize the need for an accommodation; and among those who acknowledged a need, those who ascribed their disability to aging were less likely to have their needs met" (McMullian and Shuey 2006).

The variability in survey responses shows the difficulty in measuring the prevalence of disabilities. Self-reported disability is usually measured through two approaches in the CPS. One is a six-question sequence that asks about specific daily activities, such as walking or hearing and is asked monthly in the CPS since 2008.¹⁵ The other is a single work activity limitation question that is asked annually in the March CPS Annual Social and Economic Supplement and has been used since 1981.¹⁶ One study shows that each of these surveys captures only a portion of people with health limitations, and the overlap between the respondents who answered affirmatively to the six-question sequence and the single question is not large. Burkhauser, Houtenville, and Tennant (2014) found that 8.3 percent of working-age people who responded to both survey approaches in 2010 reported a work limitation (the single question), and 7.9 percent of working-age respondents reported difficulty doing one or more daily activities in response to the six-question sequence. However, only 4.6 percent reported both a work limitation and a difficulty with a daily activity when both approaches were used in the same survey. Overall, 11.6 percent reported a work limitation, difficulty with a daily activity, or both.

Although evidence that workplace accommodations can effectively delay labor force exits, many workers may not request accommodations. They may not be aware of their rights or fear either subtle or overt retaliation from their employer or supervisor (such as the loss of new work opportunities or promotions). After sex and race discrimination, disability is the third most common reason for EEOC harassment complaints.¹⁷

Paid Medical Leave and Educating Workers and Employers about their Rights and Responsibilities

State family and medical leave programs are expanding rapidly in the US, and a majority of leave taken under these programs is for a worker's illness and injury. Eight states plus the District of Columbia have enacted paid family and medical leave programs that enable workers to take paid time off to address their serious health conditions. Except in the District of Columbia, these programs provide between 12 and 52 weeks of leave following a typical waiting period of one week.¹⁸

Surveys of unmet need for leave show workers cite fear of job loss as a common reason for not taking needed leave. States have a responsibility to educate workers who apply for state medical leave benefits about their FMLA rights as well as any rights they may have under state FMLA laws or provisions enacted as part of their state paid-leave law. This is also an opportunity for states to educate newly ill and injured workers about their ADA rights to job-protected leave and other forms of workplace accommodations. Further, states should reinforce employers' responsibilities under these laws.

Workers who do not realize they have access to job-protected medical leave may forgo taking leave, so conducting outreach and education should be an important feature of state paid-leave programs. State outreach could involve an extensive communications effort at a low cost through email, social media, and online advertising. First, priority should be given to raising workers' awareness of their potential right to ADA-protected paid and unpaid leave. This knowledge may be the difference between whether or not a worker takes necessary medical leave. Second, the state could also conduct targeted outreach to workers who request extended leave (six weeks or more) or who request significant extensions to their original leave requests to provide more detailed information on their ADA rights. Those taking extended leave may be transitioning from a temporary disability to a longer-term or permanent condition that may require changes to workplace accommodations as they manage their conditions.

Finally, states could also prioritize workers with the most serious conditions, especially those who are close to reaching the expected recovery point for their condition or those close to fully exhausting their leave. For these workers, providing more comprehensive return-to-work services could be key to supporting positive health and employment outcomes. Congress should also consider whether the federal government should provide more substantial funding to states to provide these services (Smalligan and Boyens 2019).

Conclusion

Each year, 4.2 percent of workers experience a new health shock or work-limiting condition, putting them at a significantly greater risk of leaving the labor force (Mudrazija and Smalligan 2019). As workers grow older, they are at increased risk of experiencing serious work-limiting conditions. When these conditions cause them to become unemployed, they are at a heightened risk of taking premature retirement and experiencing an unplanned, permanent reduction in their income.

Workers with new serious health conditions may have a disability under the ADA. Older workers who experience new health shocks and work-limiting conditions may view their condition as a natural part of aging. Responses to surveys show that workers with serious health conditions often don't consider themselves to have a disability. Not realizing they have rights under the ADA, they may not object to pressure to retire prematurely. Once they have left their jobs, they may realize their ADA rights but have more difficulty exercising them.

The best opportunity to help these at-risk workers is at the onset of a new condition and when they are still employed. States with paid-leave programs that are delivering short term medical leave benefits are in an ideal position to educate workers and employers about their rights and responsibilities to provide leave and accommodations. Further, the federal government could support these state efforts through grants and by incorporating these practices into proposals for national paid leave. However, even without federal action, states can take meaningful action now to ensure that workers are aware of their existing rights.

Notes

¹ Authors' calculations with assistance from Urban's Damir Cosic.

² "Persons with a Disability: Barriers to Employment, Types of Assistance, and Other Labor-Related Issues Summary," news release, US Bureau of Labor Statistics, May 1, 2020, <https://www.bls.gov/news.release/dissup.nr0.htm>.

³ Also important in terms of access to medical leave is the Family and Medical Leave Act.

⁴ In this brief we do not fully review the full range of laws concerning leave. For a full discussion, see Williamson (2019).

⁵ "Final Vote Results for Roll Call 21 (HR 1230, Protecting Older Workers Against Discrimination Act)," Clerk of the US House of Representatives, January 15, 2020, <http://clerk.house.gov/evs/2020/roll021.xml>.

⁶ Authors' estimate. See "Quarter Census of Employment and Wages: Overview," US Bureau of Labor Statistics, last modified September 23, 2020, https://www.bls.gov/cew/overview.htm#data_available.

⁷ "What You Should Know about COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws," US Equal Employment Opportunity Commission, last updated September 8, 2020, <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>.

⁸ Tracie DeFreitas, "The ADA and Managing Reasonable Accommodation Requests from Employees with Disabilities in Response to COVID-19," Job Accommodation Network blog, March 23, 2020, <https://askjan.org/blogs/jan/2020/03/the-ada-and-managing-reasonable-accommodation-requests-from-employees-with-disabilities-in-response-to-covid-19.cfm>.

- ⁹ “Employer-Provided Leave and the Americans with Disabilities Act,” US Equal Employment Opportunity Commission, May 9, 2016, <https://www.eeoc.gov/eeoc/publications/ada-leave.cfm>.
- ¹⁰ “Questions & Answers about Cancer in the Workplace and the Americans with Disabilities Act (ADA),” US Equal Employment Opportunity Commission, accessed September 29, 2020, <https://www.eeoc.gov/laws/types/cancer.cfm>; “Cancer in the Workplace and the ADA,” US Equal Employment Opportunity Commission, accessed October 15, 2020, <https://www.eeoc.gov/laws/guidance/cancer-workplace-and-ada>.
- ¹¹ See section II.B, ADA and Reasonable Accommodation, of “Enforcement Guidance on Pregnancy Discrimination and Related Issues,” US Equal Employment Opportunity Commission, accessed September 29, 2020, www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm.
- ¹² “Verizon to Pay \$20 Million to Settle Nationwide EEOC Disability Suit,” news release, US Equal Employment Opportunity Commission, July 6, 2011, <https://www.eeoc.gov/eeoc/newsroom/release/7-6-11a.cfm>.
- ¹³ “U.S. Equal Employment Opportunity Commission Strategic Enforcement Plan, Fiscal Years 2017 – 2021,” US Equal Employment Opportunity Commission, accessed September 29, 2020, <https://www.eeoc.gov/us-equal-employment-opportunity-commission-strategic-enforcement-plan-fiscal-years-2017-2021>.
- ¹⁴ Authors’ estimate using data from the US Bureau of Labor Statistics.
- ¹⁵ See “Disability Datasets,” Centers for Disease Control and Prevention, last reviewed September 16, 2020, <https://www.cdc.gov/ncbddd/disabilityandhealth/datasets.html>.
- ¹⁶ “Labor Force Statistics from the Current Population Survey: Data on the Employment Status of People with a Disability,” US Bureau of Labor Statistics, last modified August 25, 2010, <https://www.bls.gov/cps/cpsdisability.htm>.
- ¹⁷ “Disability Discrimination,” US Equal Employment Opportunity Commission, accessed September 29, 2020, <https://www.eeoc.gov/disability-discrimination>.
- ¹⁸ The District of Columbia’s paid family and medical leave plan provides for up to two weeks of leave for a worker’s own serious medical condition. See “State Paid Family and Medical Leave Insurance Laws,” National Partnership for Women and Families, August 2019, <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/state-paid-family-leave-laws.pdf>.

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