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# LIFE EXPERIENCE SERIES

## APPROACHING RETIREMENT: THE EFFECTS OF LABOR MARKET BARRIERS ON ECONOMIC SECURITY

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# ABSTRACT

This paper, *Approaching Retirement: The Effects of Labor Market Barriers on Economic Security*, uses the systems approach to examine the experience of different groups of workers in the labor market and how this contributes to their level of preparedness for the end of their work lives. In particular, the paper examines workers' experience with structural barriers including disparities in hiring, pay, and promotion.

Labor market disparities also include occupational segregation or the overrepresentation or underrepresentation of a group in an occupation or industry. This study looks at the relationship of occupational segregation to pay and access to benefits.

Multiple approaches are used in this study. The paper begins with an examination of the retirement assets available to workers and the disparities in the asset holdings of workers by race, ethnicity, gender and age. The next section assesses disparities in the labor market using a review of research studies that control for observable variables such as education and work experience (e.g., workers with the same level of education and work experience are compared). Following this, information regarding unlawful employment discrimination, and how it impacts affected employees' ability to save and retirement contributions and benefits, is presented. Finally, the paper presents microsimulation estimates of the level of retirement security workers would experience in the absence of labor market barriers.

This study finds disparities in hiring, pay, promotion and access to benefits by race, ethnicity, gender, disability and age that cannot be explained by differences in education, work experience or other observable variables. In addition, tens of thousands of charges are filed annually by workers with the U.S. Equal Employment Opportunity Commission. And the Department of Labor addressed violations of worker protections affecting well over 150,000 workers last year. Microsimulation modeling shows in the absence of labor market variables, workers' retirement benefits would be substantially higher and retiree poverty rates would be substantially reduced.



# INTRODUCTION

The following paper is part of a series of efforts by federal agencies to address the needs of the public at critical times in their lives. This paper focuses on the point in life when workers are approaching retirement.<sup>1</sup> The transition from working to retirement marks one of the most significant changes in life. As workers approach retirement, they may look forward to a well-earned rest. There is a substantial share of workers, though, with concerns about economic security in retirement.

Many, if not most, papers examining retirement security focus on the actions taken by workers to prepare for retirement. These papers ask,

**“WHAT SHOULD THE WORKER CONTINUE TO DO OR DO DIFFERENTLY TO PREPARE FOR RETIREMENT?”**

Conversely, this paper examines the experience of workers in the labor market and asks,

**“HOW SHOULD THE LABOR MARKET CHANGE TO ENSURE ALL WORKERS HAVE AN EQUITABLE OPPORTUNITY FOR A SECURE RETIREMENT, WITH INCOME ABOVE THE POVERTY LINE?”**

The difference in the questions results from different schools of thought. The deficit model<sup>1</sup> attributes disparities in economic security to a person’s limitations.

According to this model, those who are economically insecure are facing this situation because they, for example:

- Did not have enough education.
- Did not work hard enough.
- Were not sufficiently diligent about saving.

Therefore, the solutions proposed often aim to change the person’s behavior. Often those with too few retirement assets are advised to work harder, obtain more education—especially more financial education—and save more. However, decades of pursuing the deficit model approach have not resulted in an equitable opportunity for a secure retirement for all workers.

For example, studies on the effects of financial education yield mixed results. One study found a statistically significant but small increase in self-reported retirement preparation.<sup>2</sup> However, this comes with the authors’ caveat that the findings,

**“ALSO SUGGEST CAUTION REGARDING THE POTENTIAL OF EDUCATION AS A BEHAVIORAL REMEDY.” (P.1)**

More recent research shows that financial education in high school did not increase the likelihood that adults would own retirement or non-retirement assets.<sup>3</sup> The second question above is based on the systems approach.<sup>4</sup> This model examines factors external to a person and how they influence the person’s wellbeing. This approach

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<sup>1</sup> The Social Security Administration thanks the Equal Employment Opportunity Commission and the Department of Labor for their provision of certain background information, including on the application of the federal laws barring workplace discrimination and related to job-based retirement benefits

maintains that structural barriers—including policies, programs, and institutional practices—advance the economic well-being of some groups while impeding the economic wellbeing of others.

Proponents of this approach stress the necessity to identify and address root causes of disparities.<sup>5</sup> Solutions proposed using this approach are directed to changes in policies, programs, and institutional practices.



# LITERATURE REVIEW

## Retirement Assets and Disparities by Worker Characteristics

The three-legged stool—including Social Security, employer sponsored pensions, and personal savings—is an often-cited analogy of retirement income. This section discusses each of these potential sources of retirement income.

### Social Security

Social Security is the bedrock of financial security for seniors.

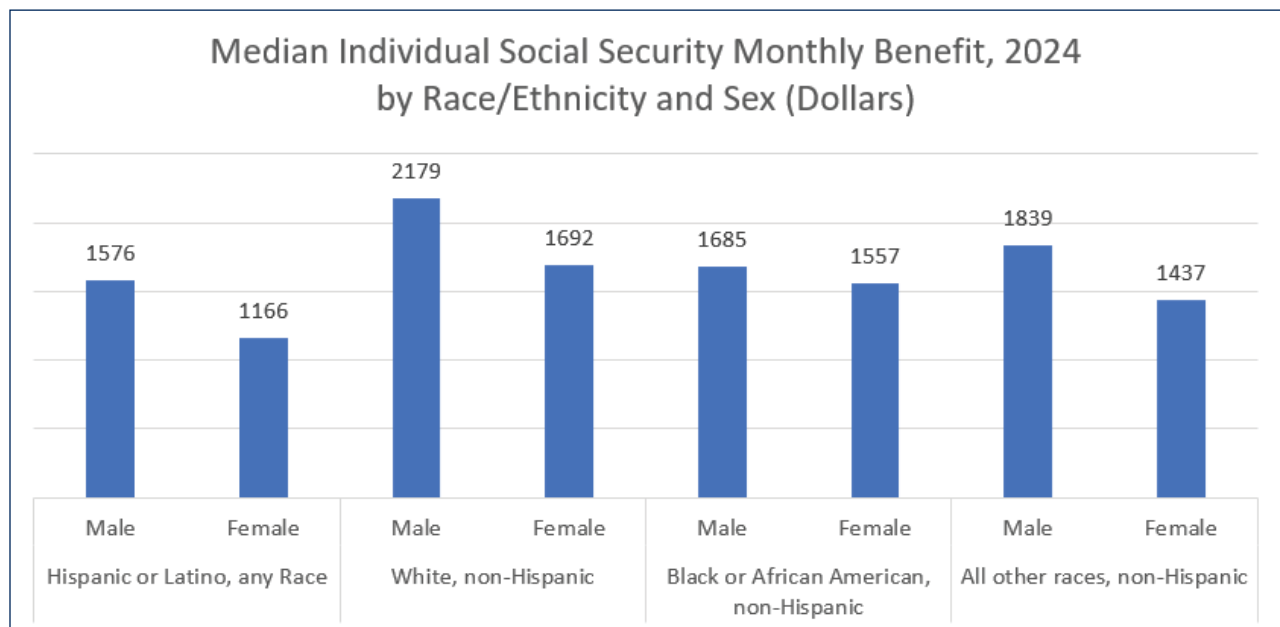
- More than 50 million retired workers aged 62 and older received Social Security retirement benefits in 2023.<sup>6</sup>
- About 30% of the total income of seniors aged 65 and older comes from Social Security.<sup>7</sup>
- Approximately 37% of men and 42% of women 65 and older receive at least 50% of their income from Social Security.

These benefits represent 90% of the income received by about 12% of men and 15% of women 65 and older. However, substantial disparities exist in the level of retirement benefits retired workers receive.

Social Security benefits are based on the number of years a worker is employed, the average wages they earned during most of their work life, and the Social Security payroll taxes they contributed.

*Chart 1* below shows women consistently receive lower benefit levels than men. This is both within racial and ethnic categories and compared to White men. Prior studies have shown that women are more likely to spend time out of the labor force than men, often to care for family members.<sup>8</sup> Time out of the labor market can lower a worker’s Social Security benefits. Women are also paid a lower level of wages in contrast to men doing equivalent work.<sup>9</sup>

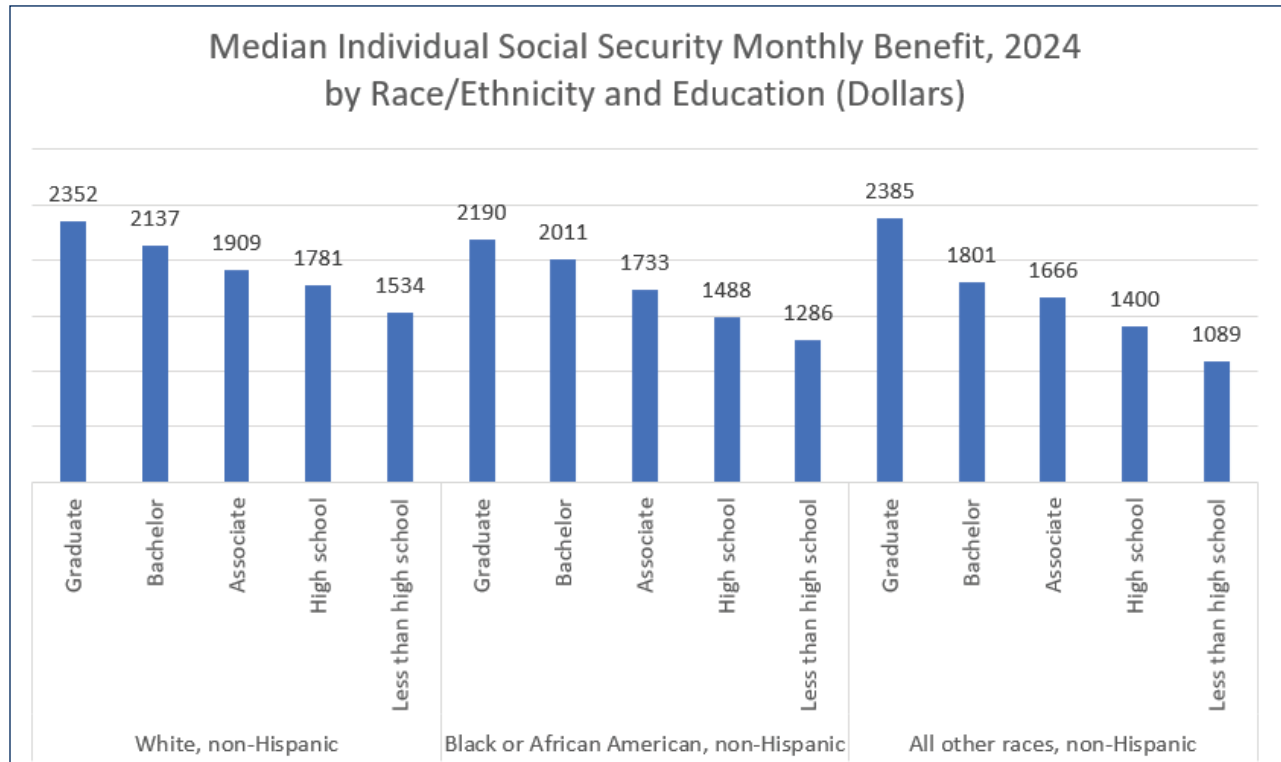
**Chart 1: Projected Social Security Benefit Distribution in 2024, for current-law beneficiaries aged 60 or older.<sup>10</sup>**



Similarly, *Chart 2* demonstrates that when retirees with the same level of education are compared, retirees of color typically receive lower levels of benefits than White retirees. This runs counter to the narrative that differences in economic security are driven substantially by differences in levels of education.

The upcoming section on labor market disparities delves into the structural barriers that People of Color and women face in the labor market. This results in lower life-time earnings and, consequently, lower Social Security retirement benefits.

**Chart 2: Projected Social Security Benefit Distribution in 2024, for current-law beneficiaries aged 60 or older.<sup>11</sup>**



## Employer-Sponsored Pensions

The second source of retirement income for workers is employer sponsored. Historically, this was usually a defined benefit pension based on a formula. It was also paid as a guaranteed lifetime annuity when a worker retires.

Defined benefit pensions have been largely replaced by defined contribution plans since the 1980s. Defined contribution plans are retirement savings accounts, such as 401(k) plans. These accounts generally consist of:

- Savings by the worker.
- Any contribution an employer may make.
- Gains or losses from investing the savings.

Employers offering defined contribution plans are not required to provide matching dollars to the workers' savings.<sup>12</sup>

When workers of color and White workers are similarly situated, they make similar choices concerning defined contributions. This is based on a study of rates of participation and contributions to 401(k)s.<sup>13</sup> The study found no significant differences in participation rates or contribution levels between these workers. The results are after controlling for:

- Job tenure
- Education
- Income
- Assets

But nearly 48% of workers are not covered by a workplace retirement plan. Also, coverage varies by gender, race and ethnicity, education, and other characteristics.<sup>14,15</sup>

*Table 1* below shows that Black and Latino workers are substantially less likely to be covered than White workers. Workers who have less education, lower earnings, work for a smaller employer, or are younger, are also less likely to be covered.

**Table 1: Workers Not Covered by a U.S. Workplace Retirement Plan**

Characteristics	Percent
<i>Total</i>	47.7
<i>Gender</i>	
Male	46.3
Female	49.3
<i>Race and Ethnicity</i>	
White	41.6
Black	53.2
Latino	63.6
Asian	45.2
<i>Education</i>	
Less than High School	76.0
High School	57.4
Some College	50.2
Bachelor's or Higher	31.9
<i>Earnings Quintile</i>	
\$18,000 or less	78.6
\$18,001 to \$31,000	64.3
\$31,001 to \$50,000	44.1
\$50,001 to \$78,000	29.4
More than \$78,000	19.8
<i>Employer Size</i>	
Under 10	78.1
10 – 24	64.8
25 – 99	52.2
100 – 499	42.3
500 – 999	37.4
1,000+	33.7
<i>Age (years)</i>	
18 – 34	56.6
35 – 44	43.0
45 – 54	40.9
55 – 64	40.4
<p>Sabelhouse, John. March 2022. The Current State of U.S. Workplace Retirement Plan Coverage. <a href="https://www.upenn.edu/content">*content (upenn.edu)</a></p> <p>Notes: Estimates based on expanded Current Population Survey workplace coverage measures pooled over calendar years 2018, 2019, and 2020, statistically adjusted using Survey of Consumer Finances coverage conditional on retirement account ownership and benchmarked against published administrative Statistics of Income control totals based on form W2 filings.</p>	

These differences in access to employer-sponsored retirement accounts are reflected in household retirement savings. In 2022, 71 percent of Asian and 66 percent White, non-Hispanic households held retirement accounts, compared to 46 percent of Black and Hispanic households.<sup>2</sup> For those with accounts, the median value for Asian and White, non-Hispanic households in 2022 was \$100,000 and \$97,000, respectively, compared to \$25,000 for Black households and \$30,000 for Hispanic households.<sup>3</sup>

The age at which workers gain access to retirement accounts affects their future balances and retirement security. The T. Rowe Price Retirement Savings and Spending Study (RSS) found that non-White retirement plan participants started saving later in life, compared with White plan participants. Just 18 percent of Black participants, 28 percent of Asian American participants, and 29 percent of Hispanic participants started saving before age 30 compared to 38 percent of White participants.<sup>4</sup>

## Savings

The third leg of the stool was personal savings when employer sponsored retirement benefits were primarily defined benefit pensions funded largely by employers. Workers may not have the same level of resources available for saving outside defined contribution accounts since these 401(k) plans substantially shift retirement saving to the worker.<sup>16</sup> Few workers who are not covered by workplace retirement plans were saving in non-employment based Individual Retirement Accounts (IRAs).<sup>17,18</sup>

Several states mandate private sector employers that do offer an employer-sponsored retirement savings plans to provide employees the option to have direct deposits made by employers into IRAs for workers. Workers are automatically enrolled in these plans and must “opt-out” if they do not want to participate. These auto-IRA plans offer a way for workers without a pension or 401(k) to save. However, it is important to note that employers cannot contribute matching funds to auto-IRA accounts.<sup>19</sup>

Consequently, an auto-IRA holder who has a direct deposit of \$100 made to their account each month will have substantially less retirement wealth accumulated than a worker who saves \$100 a month in an employer-matched 401(k). They each diligently save the same amount each month. The worker, however, with an employer-matched 401(k) has a *structural benefit* that the non-covered worker does not have with only an auto-IRA.

Examinations of the combined sources of retirement income (i.e., Social Security, pensions, and retirement savings) show disparities by race and gender.<sup>20,21,22,23,24</sup> If improvements are to be made in the economic security of retirees, it is necessary to intervene while workers are still in the labor market and **before they reach the point of retirement.**

This paper examines the disparities workers face while they are still in the labor market. The next section employs research studies to assess these labor market disparities.

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2 U.S. Census Bureau, Survey of Income and Program Participation. 2022 Wealth and Asset Ownership: Table 2. Accessed September 23, 2024.

3 U.S. Census Bureau, Survey of Income and Program Participation. 2022 Wealth and Asset Ownership: Table 1. Accessed September 23, 2024.

4 Banerjee, Sudipto. “Race, retirement, and the savings gap.” T. Rowe Price. March 2024.

## Research-Based Assessment of Labor Market Disparities

Studies show the experience of workers in the labor market varies substantially by race, ethnicity, gender, disability, age and other characteristics. These disparities are often attributed to differences in levels of education.

One study found that nearly all the research on discrimination in labor and housing markets show evidence of discrimination.<sup>25</sup> This research samples prior studies and rigorously corrects for bias. The findings showed approximately half of the labor market studies did not maintain their conclusions about the presence of discrimination when adjusting for bias.

Numerous other studies challenge these findings. These studies conclude that discrimination is responsible for a wide array of labor disparities. They also confirm significant effects of intersectionality<sup>26</sup>—the interconnected nature of social categorizations such as:

- Race
- Class
- Gender

These studies have found that workers may experience a variety of structural barriers that detrimentally affect their current and future compensation and ability to build retirement savings. These barriers include:

- Hiring and pay disparities.
- Occupational segregation.
- Advancement practices that disadvantage certain demographic groups.

In particular, People of Color, women, people with disabilities, and older workers have been disproportionately disadvantaged by such barriers. These barriers limit their:

- Entry into stable, full-time, higher-paying positions or industries.
- Receipt of compensation equivalent to that of colleagues with different demographic characteristics.
- Advancement and retention in more highly compensated managerial and leadership positions.

Such workers' lower compensation and lack of access to critical employer benefits may be challenging. Challenges may exist with purchasing wealth-building assets, compiling sufficient retirement savings—including employer-sponsored retirement plans and contributions—and enjoying a financially secure retirement. Studies examining these barriers are discussed in the remainder of this section.

## Hiring Disparities

Numerous research studies demonstrate that some unexplained variance remains in the rate of hiring experienced by different demographic groups. This is even after controlling for observable variables that might explain disparities.

Neumark contends that experimental research (e.g., field experiments) confirms nonexperimental evidence (e.g., regression-based analysis) of hiring discrimination.<sup>27</sup> And, that there is pervasive evidence of discrimination, including by:

- Race
- Ethnicity
- Gender
- Disability
- Age

A frequently cited study by Quillian and Pager offers a meta-analysis of every field experiment available at that time of their assessment.<sup>28</sup> The study notes hiring discrimination against Black and Latino workers.

It found that racial discrimination in hiring persists over time, with White job applicants receiving 36% more callbacks than Black job applicants. In addition, White job applicants receive 24% more than Latino job applicants. They also found,

**“ACCOUNTING FOR APPLICANT EDUCATION, APPLICANT GENDER, STUDY METHOD, OCCUPATIONAL GROUPS, AND LOCAL LABOR MARKET CONDITIONS DOES LITTLE TO ALTER THIS RESULT.”  
(P. 10870)**

At every level of education, on average, Black workers experience higher rates of unemployment than White workers.<sup>29</sup> Comparing Black and White high school dropouts, the unemployment rate for Black high school dropouts doubles that of White high school dropouts. This level of disparity persisted among workers with advanced college degrees. The unemployment rate for Black workers was still almost two times that of White workers. In addition, Black women consistently have higher rates of labor market participation than White women.<sup>30</sup> Yet, they typically experience higher rates of unemployment than both White men and White women, at every level of education.<sup>31</sup>

The average unemployment rate for Latino workers was higher than the national average for all workers from 1980 to 2017.<sup>32</sup> This disparity decreased from the mid-1990s to 2006 then rose through 2010, encompassing the period of the Great Recession and reaching double digits. This was higher than the rise in the overall unemployment rate during this period.

Even with the overall unemployment average in decline after 2010, including for Latinos, the gap remained. A disaggregation by ancestry was also conducted from 1988 (when data became available) to 2017. Both men and women of Mexican, Puerto Rican, and Cuban descent had similar patterns of unemployment with Latinos overall. But typically, Puerto Rican men experience higher rates of unemployment than other Latinos and Cuban American women experience lower rates than other Latinas.

The rate of labor force participation for Latino men was consistently higher than that of men overall, on average. The rate for Latinas grew more than other groups but remained lower than women overall, on average. Mexican American men had higher labor force participation rates than other Latinos. Puerto Rican women’s labor force participation rate grew more than other Latinas, on average, so that rates became similar for all Latinas.

Indigenous people face some of the highest unemployment rates. In December 2021, American Indian and Alaska Native (AIAN) people experienced unemployment rates of 7.9%, on average. This is compared to 3.9% for the overall population.<sup>33,34</sup>

However, Button and Walker did not find differences in call back rates for resumes signaling the applicant was Indigenous, versus resumes conveying the applicant was White.<sup>35</sup> A potential reason may be that the resumes were submitted for “common jobs,” including:

- Retail sales
- Kitchen staff
- Server
- Janitor
- Security

There may be discrimination in jobs that require a greater skill level, have higher levels of pay, and have greater authority than the “common jobs” tested. Previous research found, historically, even with labor market expansion, Black workers rarely had access to jobs where they had authority over White workers.<sup>36</sup> The successful lawsuit filed by the U.S. Department of Justice (DOJ) against the South Dakota Department of Social Services (DSS) adds support for this theory.

The 2015 lawsuit was for repeated discrimination against Native American job applicants in their Pine Ridge office.<sup>37</sup> Pine Ridge is a reservation of the Oglala Lakota Native Americans. The plaintiff applied but was not selected for an employment specialist position. The plaintiff initially filed a charge of discrimination with the U.S. Equal Employment Opportunity Commission (EEOC) in 2010. As part of the alleged charge,

**“...DSS HAS A POLICY OF HIRING WHITE APPLICANTS IN THE HIGHER-PAYING SPECIALIST POSITIONS, SUCH AS EMPLOYMENT SPECIALIST, WHILE ONLY HIRING NATIVE-AMERICAN APPLICANTS FOR LOWER PAYING POSITIONS.” (P.3)**

When the EEOC was unable to reach a voluntary resolution of the charge through conciliation, they referred it to the DOJ. The U.S. District Court, D. South Dakota, Western Division granted DOJ’s partial motion for summary judgment, finding that the government had established a prima facie case of a pattern or practice of discrimination by DSS.<sup>38</sup> In 2020, the parties reached a settlement, the terms of which included that DSS would pay \$350,000 in back pay and other monetary relief to approximately 60 Native American job applicants and comply with reporting requirements regarding its hiring of Specialists at the Pine Ridge Office.<sup>39</sup>



In addition to hiring disparities by race and ethnicity, there are also disparities by age. Research finds that compared to young applicants, callback rates were 18% lower for middle-aged applicants and 35% lower for older applicants.<sup>40</sup> This results in roughly 54% longer unemployment gaps. State age discrimination laws with larger penalties helped close the callback difference between old and young applicants by 3.65 percentage points for men and 2.7 percentage points for women. There is no evidence, however, that these laws protected older workers during the Great Recession.<sup>41,42</sup>

There is further research on discrimination at the intersection of age and gender. Research shows a 1 percentage point increase in the local unemployment rate reduced callbacks for older women job applications by 15% relative to young women.<sup>43</sup> Other research found that older women received a 20% lower callback rate than young women regardless of economic conditions.<sup>44</sup>

Somewhat related, one study found that:

- Mothers received callbacks half as often as nonmothers.
- Mothers received lower starting salaries.
- Application reviewers saw them as less competent and committed.<sup>45</sup>

Reviewers saw fathers as more committed, and they received larger starting salaries compared to childless men. Reviewers saw childless women somewhat more favorably than childless men.

A final, potential labor market barrier is discrimination towards workers with disabilities. On average, people with disabilities experience less favorable labor force statistics than people without disabilities. In 2023, people with disabilities had a/an:

- Labor force participation rate of 40.2%.
- Employment rate of 37.1%.
- Unemployment rate of 7.7%.<sup>46</sup>

In comparison, people without a disability have rates of 77.7%, 75%, and 3.5%, respectively.

Ameri conducted the first field experiment on disability and hiring.<sup>47</sup> He found cover letters noting a disability receives 26% lower callback rates. This occurs even when the type of disability mentioned would not affect productivity for the position sought. This effect concentrated in applicants with experience (which may be interpreted as older or receiving higher pay) and in small businesses not covered by the Americans with Disabilities Act (ADA).

Other types of studies provide insight into what some people with disabilities may face. Social Security's qualitative study uses in-depth interviews of people with disabilities.<sup>48</sup> Respondents report the inability to apply for in-person jobs located inside an inaccessible building. They also show concern that employees who are deaf may have more difficulty getting a promotion for which they qualify if there is not an interpreter available who has the communication skills commensurate with the higher-level job. Similarly, an evaluation by Carr and Namkung found that workers with physical disabilities report significantly higher levels of perceived job discrimination and unequal opportunities.<sup>49</sup> Workers also experience lower levels of support from their supervisor and colleagues. People with disabilities, who are faced with these experiences, may be unable to accumulate the years of work and level of wages that would result in sufficient Social Security and other retirement benefits to make them economically secure.

## ***Pay Disparities***

Disparities in pay is the focus of a number of studies. Many contributors to pay gaps have been identified and measured, such as:

- Education
- Experience
- Occupation
- Industry type

However, a significant portion of the pay gap is unexplained by such factors.<sup>50</sup> Research shows empirically that only 63.3% of the wage disparity between Black women and White women is explained by labor market characteristics.<sup>51</sup>

Another study examined multiple representative data sources and found intersectional discrimination is not only visible in wages, but the narrowing of wage gaps has slowed through time.<sup>52</sup> This includes wage gaps of women due to recent increases in educational attainment.

Similarly, Mandel and Semyonov examined data by race and gender from 1970 to 2010. They stated such decomposition,

**“UNDERScores THE SIGNIFICANCE OF THE INTERSECTION BETWEEN GENDER AND RACE .”53 (P. 1039)**

They found that racial wage gaps were wider between men than women, but through time, the trend was similar. Racial wage gaps declined from 1970 to 2000 and then reversed for both men and women. They concluded:

**“THE GROWTH OF THE RACIAL PAY GAP AT THE TURN OF THE MILLENNIUM IS ATTRIBUTABLE TO THE INCREASE IN OVERALL INCOME INEQUALITY, STAGNATION IN OCCUPATIONAL SEGREGATION, AND AN INCREASE IN THE UNEXPLAINED PORTION OF THE GAP, A PORTION WE ATTRIBUTE TO ECONOMIC DISCRIMINATION.” (P. 1039)**

These unexplained gaps continue to cause inequities in U.S. workplaces. They have significant impacts on the U.S. economy, in general, and on women, certain racial and ethnic groups, and women in these racial and ethnic groups, in particular. Evidence suggests that at least some portion of these unexplained gaps result from unlawful discrimination. This is either directly in pay, bonus, or benefits determinations or indirectly through factors like job segregation and discriminatory hiring and promotion practices.

Pay systems, the way employee compensation is structured, also affect workers' short- and long-term financial security. Employee benefits, such as:

- Employer-subsidized health insurance
- Employer-subsidized retirement plans
- Paid leave

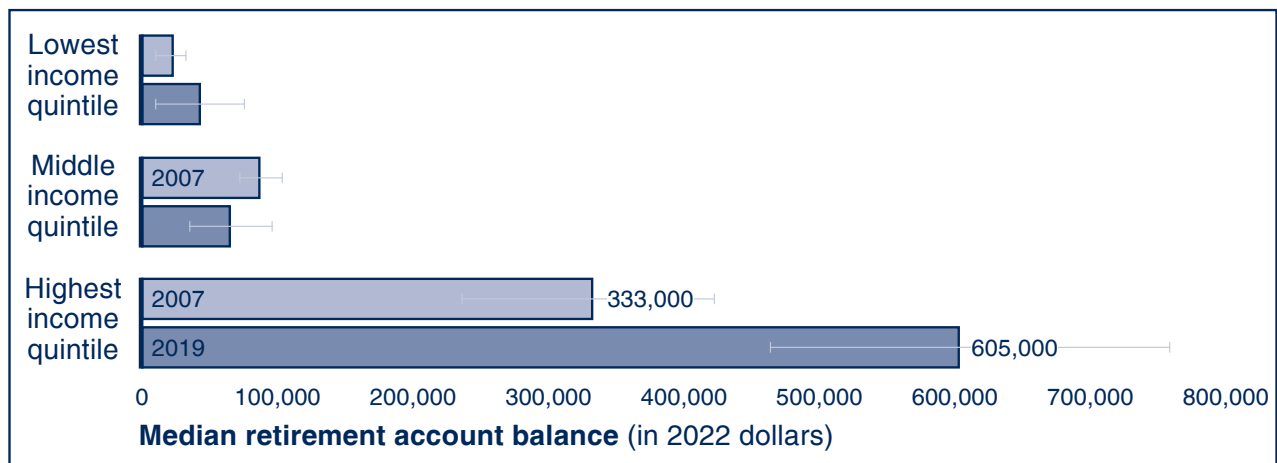
These benefits constitute a significant percentage of workers' compensation.<sup>54</sup>

Women, workers of color (including women of color), and those with disabilities may be less likely to work in higher wage positions or salaried positions that provide such benefits.<sup>55</sup> The combination of low pay and lack of benefits puts these workers in a quadruple-bind. Their low wages render it economically challenging to obtain or maintain necessities such as food, housing, clothing, and education. The lack of employer-provided benefits may result in:

- Higher medical costs.
- Loss of pay when seeking medical care for themselves or their families.
- Smaller retirement savings.

*Chart 3* illustrates there is a correlation between a person’s income and retirement savings. Those with higher levels of income can save for retirement at a much greater rate than those with lower incomes.

**Chart 3: Estimated Retirement Account Balances for Households Age 51-64 With A Balance, By Income<sup>56</sup>**



## Race and Ethnicity Pay Gap

Workers of color are often paid less than White workers, even with all else being equal. When People of Color work in higher paying jobs or industries, they may be paid less than their White peers.<sup>57,58</sup> Compounded with time, even small pay gaps amount to a significant financial disparity.

A 2017 study by Daly analyzing Census data from 1979 to 2016, shows Black men and women earn less than their White counterparts.<sup>59</sup> These gaps cannot be explained by differences in:

- Age
- Education
- Job type
- Geography
- Part-time status

This Black-White wage gap is consistent across all levels of educational attainment, indicating that contributing factors to the wage gap apply to the entire population of Black workers.<sup>60</sup> This gap has existed since race and ethnicity-based pay data were first collected

by the Census Bureau in 1979. The gap has either narrowed or widened at distinct periods since the latter part of the 1960s,<sup>61</sup> but generally has grown wider with time.<sup>62</sup>

The gap narrowed dramatically during the latter part of the 1960s through the 1970s, then widened during the 1980s. This briefly improved during the late 1990s and expanded again post-2000.<sup>63</sup> Daly found that while Black men earned, on average, 80% of what White men earned in 1979, that percentage slid to approximately 70% in 2016.<sup>64</sup>

During that same period, the gap also widened for Black women compared to White women. In 1979, Black women earned almost 95% of what White women earned. This percentage dropped to 82% in 2016.<sup>65</sup> Notably, the Black-White pay gap persisted despite Black adults outpacing White adults in their rate of gaining educational achievement between 2011 and 2021.<sup>66</sup>

Similarly, Latino workers earn less than White workers who have equivalent educational backgrounds and experience.<sup>67</sup> When education, experience level, and geographic region were controlled, the wage gap persisted between White men and Latino men. Latino men made 14.9% less in hourly wages than White men in 2017.<sup>68</sup>

This gap was slightly less than the 1979 disparity of 16.5%. Latinas' wage gap with White men declined substantially from 1979 to the mid-1990s. It then leveled out at about 33% of White men's wages. The wage gap between Latinas and White women has been relatively constant with Latinas making about 10% less than White women.

For the most part, Mexican American men have experienced the greatest and most persistent wage gaps with White men. Women of Mexican, Puerto Rican, and Cuban ancestry all experienced a decline in the wage gap with White men. However, the gap remained substantial by 2016 and greater than men of respective ancestries.

As previously noted, Indigenous people experience some of the lowest wages. Using fiscal year (FY) 2020 data, an EEOC study found that AIAN workers in the civilian federal sector typically received substantially lower annual pay than employees overall.<sup>69</sup> Governmentwide:

- Employees overall received \$82,669.
- Women overall received \$79,278.
- AIAN men received \$64,009.
- AIAN women received \$56,432.

A study by Hurst<sup>70</sup> used 1990 Census data to examine the different factors in earnings between AIAN workers compared to White workers after controlling for observable variables such as:

- Education
- English language proficiency
- Geographic location

He found that while human capital and location specific characteristics have important impacts, there remained a,

**“SUBSTANTIAL UNEXPLAINED DIFFERENTIAL IN EARNINGS [13%]  
BETWEEN THE VARIOUS CATEGORIES OF INDIANS AND NON-  
INDIANS.” (P. 805)**

Also, the return to education was greater for White workers (10%) than for American Indians (7-8%) and Alaska Natives (5-6%).<sup>71</sup> The overall employment statistic average for Asian American, Native Hawaiian and Pacific Islander (AANHPI) show they are faring better than other workers. However, data divided by country of ancestry showed a substantial share of the AANHPI community experiences high unemployment and low earnings. They encounter discrimination in earnings and promotions.<sup>72</sup> For instance, discrimination was indicated to be more likely experienced by:

- Vietnamese
- Cambodian
- Hmong
- Lao
- Native Hawaiian Pacific Islanders (NHPI)

East Asian and Indian workers experience discrimination less by comparison. A survey of AANHPI workers in California showed some AAPI workers are doing well financially, but 38% experience “significant financial insecurity and struggle (p. 6).<sup>73</sup> The rates were highest for:

- Hmong (44%)
- NHPI (36%)
- Cambodians (26%)
- Vietnamese (26%)

Financial insecurity was reported by less than one quarter of:

- Chinese (23%)
- Filipinos (22%)
- Japanese (22%)
- Indians (20%)
- Koreans (15%)

**AAPI WORKERS WHO ARE STRUGGLING WITH POVERTY ARE MORE LIKELY THAN NON-STRUGGLING WORKERS TO HAVE BEEN REQUIRED TO WORK OVERTIME WITHOUT BEING PAID FOR IT (25 PERCENT VS. 16 PERCENTS), TO BE PAID LESS THAN THE MINIMUM WAGE (20 PERCENT VS. 5 PERCENT), OR TO HAVE HAD THEIR WAGES [UNLAWFULLY] WITHHELD BY THEIR EMPLOYER (14 PERCENT VS. 5 PERCENT).<sup>74</sup> (P. 9)**

Even Asian Americans who are financially better off may not be treated equitably in the labor market. Asian Americans experience a pay gap in high-wage occupations, earning on average, 93 cents for every dollar earned by their White colleagues.<sup>75</sup> This is despite being overrepresented in such roles.

## **Gender Pay Gap**

The gender pay gap has persisted throughout decades and there has been uneven progress narrowing the gap with time. Beginning in the mid-1950s and for many years thereafter, the earnings gap between male and female workers was approximately 60%.<sup>76</sup> Although the gap has narrowed with time, the gender pay gap remains in the 80-84 percentile and relatively unchanged since approximately 2004.<sup>77</sup>

Although highly paid positions may offer higher income and greater benefits, the gender pay gap persists in such positions. Women make up approximately 30% of workers in the 20 highest-paid occupations in the United States.<sup>78</sup> Even in those positions, women tend to be paid less than men, amounting to a collective \$44.4 billion wage gap in such occupations.<sup>79</sup>

### **Pay Gaps and the Intersection of Race, Ethnicity, and Gender**

The Bureau of Labor Statistics (BLS) August 2024 report notes a persistent pay gap based on gender and the intersection of gender, race, and ethnicity. The report highlights women's earnings in 2023. It also notes that the size of the gender pay gap varies significantly based on race and ethnicity.<sup>80</sup> The BLS reported that, Asian women and men typically earned more than their White, Black, and Latino counterparts in 2023. Compared to Asian women, who earned \$1,299, on average:

- White women earned 79% (\$1,021).
- Black women earned 68% (\$889).
- Latina workers earned 62% (\$800).<sup>81</sup>

The gender pay gap continues to be widest for Black women and Latina workers.<sup>82</sup> The pay gap between men and women within each race and ethnicity group is also significant. The 2023 within-group pay gap was largest in groups (i.e., Asian and White) where overall earnings for the group were higher compared to other race and ethnicity groups.<sup>83</sup>

This means the widest gap in 2023 was between Asian women and Asian men, where Asian women were paid 79% as much as Asian men. The next highest gap was between White women and men, where White women were paid 83% as much as their White male counterparts.

In comparison, the smallest gender pay gaps within race and ethnicity groups were in groups with the lowest overall pay: Latina workers' earnings were 87% of Latino workers, and Black women had median earnings that were 92% of Black men's.

As previously stated, Black women are paid lower wages than White men or women, at every level of education.<sup>84,85</sup> And Black women are usually paid less than White and Black men and White women in every occupation.<sup>86</sup> The effects of race and gender are not just additive, but ongoing.<sup>87</sup>

Bahn,<sup>88</sup> expanding on the work of Mora and Dávila,<sup>89</sup> emphasized the intersectional effect of labor market discrimination for Latinas. She found that the total wage gap for Latinas was 40%, which is greater than the sum of their gender wage gap of 9% with Latinos and their ethnic wage gap of 26% with White women.

Black and White women would need at least one additional education degree to earn as much as less-educated men. This data comes from a 2022 study analyzing 2020 data from the Census Bureau and the Current Population Survey.<sup>90</sup> In the same study, Latina workers would need two additional degrees to earn as much as less-educated Latino men.

An examination of 2022 data found that Native American women with a bachelor's degree working full-time, year-round are typically paid \$9,000 less than White, non-Hispanic men. This is even with some college but no degree (\$53,000 compared to \$62,000). The trend continues at every level of education. Based on these disparities, a Native woman would have to have a master's degree to earn as much as a White, non-Hispanic male with a bachelor's degree.<sup>91</sup>

The DOL notes that some of the unexplained portion of the pay gap is due to discrimination, while describing how industry and job segregation explain a significant portion of the pay gap for Black women and Latinas.<sup>92</sup> Specifically, DOL summarizes,

**“[R]ACE AND GENDER INTERSECT IN COMPLICATED WAYS FOR WOMEN OF COLOR, AND THE DUAL IMPACTS OF RACISM AND SEXISM ON WOMEN OF COLOR’S WAGES ARE NOT SIMPLY ADDITIVE. FOR BLACK WOMEN, MOST OF THE WAGE GAP RELATIVE TO WHITE MEN (55.5 PERCENT) CANNOT BE EXPLAINED THROUGH OBSERVED DIFFERENCES. AT LEAST SOME OF THIS UNEXPLAINED PORTION IS LIKELY CAUSED BY RACIAL AND GENDER-BASED DISCRIMINATION, ALTHOUGH THE PRECISE FIGURE CANNOT BE ESTIMATED USING AVAILABLE DATA.” (P.21)**

Based on trends dating back to the 1980s, Black women will not reach wage equality with White men until 2144.<sup>93</sup> The effect of gender pay gaps is not just immediate. Pay gaps have cumulative effects throughout the length of women’s careers. As a result, a U.S. woman (of any race or ethnicity) who works full-time, year-round loses almost \$400,000 throughout the span of a 40-year career, compared to White men.<sup>94</sup>

When the gender pay gap is disaggregated by race and gender, the disparities are more striking. Compared to White men, Native American women working full time, year-round typically lose almost \$1,150,000 throughout the course of their careers. Latina women typically lose approximately \$1,218,000, and Black women typically lose almost \$885,000.<sup>95</sup> The lost career earnings for AANHPI women, as a group, were projected to be more than \$187,000. The following subcategories include projections to lose more than \$1,000,000 throughout their lifetime due to the gender wage gap.<sup>96</sup>

- Bhutanese
- Burmese
- Nepalese
- Hmong
- Cambodian
- Laotian

Furthermore, the impact of these gender pay gaps trickle down to future Social Security benefits. Table 2 showcases rough approximations of the Social the Social Security Benefit gaps for women by race:

**Table 2: Gender Pay Gaps and the SSA monthly benefit gaps**

<b>Ethnic Group</b>	<b>Typical Losses over a 40-year career</b>	<b>Monthly Benefit estimate</b>	<b>Monthly Benefit difference from Non-Hispanic White Men</b>	<b>% Benefit increase without gap</b>
All women, regardless of race	\$400,000	\$2,233	\$391	15%
AANHPI Women	\$187,000	\$2,440	\$184	7.5%
Native American Women	\$1,150,000	\$1,548	\$1,076	69.5%
Black Women	\$885,000	\$1,811	\$813	44.9%
Latina Women	\$1,218,000	\$1,496	\$1,128	75.4%
White, non-Hispanic Women	\$573,600	\$2,099	\$525	25.0%

## Pay Gaps for People with Disabilities

Data indicate that there is a significant pay gap for people with disabilities. The U.S. Census Bureau's 2019 report analyzed 2017 data from the U.S. Bureau of Labor Statistics. It found that full-time, year-round employees with a disability typically earned 87 cents for every dollar earned by those with no disability.<sup>97</sup>

Most people with a disability are less likely to find full-time work and to work year-round.<sup>98</sup> When all workers with disabilities are considered, regardless of schedules or occupation, their earnings are only 66 cents for every dollar earned by someone without a disability, on average.<sup>99</sup> Section 214(c) of the Fair Labor Standards Act (FLSA) permits certain employers to pay workers with disabilities whose,

**“EARNING OR PRODUCTIVE CAPACITY” IS “IMPAIRED” LESS THAN THE FEDERAL MINIMUM WAGE IN “SHELTERED WORKSHOPS.”<sup>99,100 (P.98)</sup>**

The law does not establish a minimum wage for such workers who earn on average \$4.15 per hour.<sup>101</sup> More than half of the workers receiving less than \$3.50 per hour. Both hourly rates fall well below a livable wage.<sup>102</sup> Also, there is no minimum amount that an employer granted a 214(c) certificate must pay a person with a disability. Actual hourly rates can potentially be even lower.

The number of workers covered by 214(c) certificate recipient employers has dropped in recent years. There are hundreds of thousands of workers who have completed or are currently in such programs. They are paid far less than the minimum wage, often for extended periods of time.

DOL recently issued a Notice of Public Rule Making to end the FLSA subminimum wage program.<sup>103</sup> This is in the proposed rule phase and is not yet law. Currently, in the FLSA program tens of thousands of people with disabilities continue to receive subminimum wages for their work. As of 2020, approximately 68,000 employees were in the program, while more than 1,200 organizations held or had applied for 214(c) certificates.<sup>104</sup>

The numbers of participants in the program declined from more than 124,000 employees in 2018. It is likely that hundreds of thousands of people with disabilities employed in 214(c) sheltered workshops may notice significantly reduced Social Security benefits. The reduction is due to their receipt of subminimum wages throughout the years or decades.<sup>105</sup>

People with disabilities may be vulnerable to employment and labor law violations that delay or prevent their access to accurate, timely paychecks. This is also true for higher-paying, higher-skilled positions. People also may be:

- Subject to wage theft.
- Intentionally paid less than their peers who are without disabilities.
- Subject to human trafficking.<sup>106</sup>

Stereotypes about the work capabilities of those with disabilities may render some employers reluctant to employ them. Employers are also more likely to offer them positions beneath their skills, abilities, and potential.<sup>107</sup>



For example, according to the Census Bureau, the most common occupation for people with a disability is janitorial or building cleaner. A substantial number of people with disabilities work as cashiers, salespersons, and laborers—also typically low-paying positions.

## **Disparities in Advancement**

Workers may encounter discrimination that prevents or delays them from obtaining executive positions, managerial positions, salaried positions, or other positions with higher pay and benefits that provide greater immediate and long-term economic security.

## **Barriers to Advancement of Women**

### ***Discriminatory Evaluation and Promotion Processes Serve as a Barrier to Women's Advancement***

Gender bias in selection, evaluation, and promotion processes may halt or hinder women's advancement into more senior, higher-paying positions. Such bias may arise in a variety of ways. In some cases, employers may hire and promote women based on past accomplishments and men based on future potential.<sup>108</sup> Even in organizations that consider both performance and potential in promotion decisions, women may be less likely to be promoted than their male colleagues.<sup>109</sup> This is despite receiving higher performance ratings.

In other instances, some employers may assume based on gender stereotypes female employees would (or should) refrain from accepting promotions into positions that require relocation, frequent travel, or long hours.<sup>110</sup> The assumption is that women have caregiving responsibilities.

Gender bias also may influence performance evaluations on which compensation and promotion decisions are based. For example, in performance reviews, managers may be more likely to use task-related words, such as “analytical” or “competent,” to describe male employees. In contrast, managers use relational words, such as “compassionate” or “energetic,” to describe female employees.

Because task-related qualities tend to carry more weight in promotion decisions, male employees may be perceived more favorably by decisionmakers.<sup>111</sup> In other instances, some managers may base performance ratings in part on a desire to retain high-performing subordinates.<sup>112</sup> Such a practice may disproportionately result in lower promotion rates for women. This is because female employees may be more conflict-averse, or less likely to quit, than their male peers.<sup>113</sup>

Finally, promotion standards may mistakenly incorporate or perpetuate gender bias. For example, the leadership characteristics in promotional evaluations may include qualities that are respected in male leaders.<sup>114</sup> There may be a poor perception when women display the same characteristics, such as assertiveness or ambition.

Hiring officials and Boards of Directors, who are predominantly male, may also prefer candidates with backgrounds, experiences, and characteristics similar to themselves and prior leaders.<sup>115</sup> In some instances, prior leadership or Board service may be a prerequisite for such positions.<sup>116</sup> Such practices may prevent qualified female employees from obtaining senior, highly compensated positions.

## ***Women May Be More Likely to Be Selected for Leadership Positions That Have a Higher Risk of Failure***

Women may be more likely to be selected for senior leadership positions in organizations experiencing performance challenges. This refers to a phenomenon known as the “glass cliff.”<sup>117</sup> By assuming control of organizations that are already struggling, female leaders have a higher risk of failure. They also may be more likely to encounter pressure internally and externally.

They also may be given less time to implement improvements and demonstrate success than their male peers before facing removal or pressure to resign.<sup>118</sup> In addition, female Chief Executive Officers (CEOs) are more likely than their male counterparts to be challenged by activist investors.<sup>119</sup> Female CEOs also may not receive subsequent leadership opportunities at rates comparable to men, which may limit their future earnings.<sup>120</sup>

## **Barriers to Advancement of Workers of Color**

### ***Workers of Color Are Underrepresented in Leadership Roles***

Workers of color are underrepresented in leadership roles compared to their share of the U.S. workforce. For example, according to one study of Black workers making up 12% in the U.S. private sector they represent only:

- 7% of managers.
- 4 to 5% of senior managers, vice and senior vice presidents.
- 1% of Fortune 500 CEOs.<sup>121</sup>

Latinos constitute 17.3% of U.S. workers but fewer than 2% of Fortune 500 CEOs and fewer than 1% of Fortune 100 CEOs.<sup>122</sup> Just 6% of CEOs in all U.S. companies, and 8% of all managerial positions are Latino.<sup>123</sup>

Asian Americans represent 6% of the U.S. workforce, but only 4.6% of Fortune 500 CEOs.<sup>124</sup> A 2008 EEOC study showed that while AAPI representation in the federal government exceeds their presence in the civilian labor force, they are underrepresented in management and senior level positions.<sup>125</sup> In 2005, AAPI made up:

- 3.8% of the labor force.
- 5.94% of the federal workforce.
- 3.39% of senior pay levels (above General Schedule (GS)-15).

The report indicated that AAPI employees experienced a ceiling to their advancement.<sup>126</sup> The report provided a set of recommendations addressing discrimination against AAPI employees in the federal government, including circulation of an Executive Order.

Similar findings regarding a glass ceiling were documented in other studies.<sup>127,128</sup> AANHPI workers are less likely than White workers to advance to management positions even after controlling for age, education, and nativity status. Women of color are even more underrepresented in corporate leadership roles. For example, of the U.S. population:

- Black women comprise 7.4%, but only 1.6% of corporate vice presidents and 1.4% of C-suite executives.<sup>129</sup>
- Asian women constituted 1.7% of C-suite officers in 2022, compared to approximately 3.4% of the population.<sup>130</sup>
- Latinas represent more than 9% of the population, but only less than 1% of C-suite executives.<sup>131</sup>

## Obstacles to the Promotion and Advancement of Workers of Color

Workers of color may be more likely to work in positions with fewer advancement opportunities.<sup>132</sup> Even when employed in higher-paying industries, workers of color may face barriers to advancement. For example, one study has found that workers of color in high-skilled firms disproportionately hold positions with less access to top clients.<sup>133</sup>

Workers of color also may hold corporate positions that are not profit-focused. This may render them less competitive for Board and corporate leadership roles held by those with business management experience.<sup>134</sup>

The lack of mentors, sponsors, and managerial support contributes to workers of color's underrepresentation in management positions. For instance, workers of color may be less likely than other workers to have more senior colleagues assist and support their advancement. Studies have found that:

- Black and Latino workers may be less likely to have mentors or sponsors to provide advice and advocate on their behalf.<sup>135</sup>
- Such workers may be less likely to have managers who highlight their accomplishments or provide management opportunities.
- These workers are less likely to interact with senior leadership or be included in high-level conversations and decisions.<sup>136</sup>

Employment discrimination may adversely affect workers of color's professional advancement opportunities.<sup>137</sup> Discriminatory recruitment and hiring practices may prevent them from:

- Learning about
- Expressing interest in
- Being equitably considered for
- Receiving advancement and promotional opportunities<sup>138</sup>

In some cases, workers of color may be perceived as lacking in leadership potential due to race or intersectional stereotypes. Alternatively, they may be viewed as overambitious for seeking leadership positions or other professional advancement opportunities.<sup>139</sup>

## Occupational Segregation

Another form of labor market barrier is occupational segregation—the overrepresentation or underrepresentation of a group in an occupation or industry.<sup>140,141</sup> In certain circumstances, this may result from voluntary preferences regarding desired professions, career paths, or industries. In other instances, occupational segregation may result from discrimination.

For example, women, People of Color (including women of color), or those with disabilities may be denied employment in certain fields or industries. They may be relegated to less senior, lower-paid, or lower-skilled roles, based on their gender, race, national origin, and disability status.

Studies have shown that occupational segregation based on race, ethnicity, gender, and disability is widespread, even among workers with the same levels of education. A study by Hamilton, Austin, and Darity showed that, even after controlling for education, 87% of U.S. occupations are racially segregated.<sup>142</sup>

Another study compared Black and White workers with and without bachelor's degrees between 1980 and 2019.<sup>143</sup> It showed persistent occupational segregation regardless of educational attainment, and substantially greater than would be expected to occur randomly under race-neutral conditions.

Among workers without bachelor's degrees, Black workers were primarily employed in the lowest paid jobs such as nursing and home health aides. They were also underrepresented in jobs with authority and higher pay.

By contrast, their White counterparts primarily held jobs as supervisors of sales workers and managers. These are some of the highest paid jobs for workers with or without bachelor's degrees. For workers with bachelor's degrees, the pattern was quite similar. Of the top 10 occupations employing Black workers with bachelor's degrees, elementary and middle school teacher position had the greatest number of these workers.

This occupation was also among the top 10 for White workers with a bachelor's degree. But it was superseded by managers paying substantially more. Lawyers and judges, as well as chief executives, and legislators also commanded some of the highest pay. They were among the top 10 occupations with the greatest number of White workers with bachelor's degrees. These occupations were absent from the top 10 with the highest number of Black workers with bachelor's degrees.

In addition to examining occupations with the highest volume of workers, the study also looked at occupations where Black and White workers were over- or underrepresented, by level of education. The findings showed Black workers without a bachelor's degree were overrepresented in some of the lowest paid jobs. Conversely, White workers without a bachelor's degree were overrepresented in skilled blue-collar jobs. The study concluded that,

**“A FOUR-YEAR DEGREE DOES NOT PROVIDE BLACK WORKERS WITH ACCESS TO THE SAME SET OF OCCUPATIONS AS IT DOES FOR WHITE WORKERS”<sup>144</sup> (P. 27)**

A study compared not only Black and White workers, but Latino workers, too.<sup>145</sup> They further separated by gender and controlled for educational requirements and attainment. Results showed that as the quality of job roles increased, there was a significant decrease in the representation of Black and Latino women and men and White women. Conversely, White men had higher concentration in higher quality roles. The same pattern occurred with respect to wages levels of jobs.

The EEOC's 2015 report, in recognition of its 50th anniversary, showed the persistence of occupational segregation.<sup>146</sup> The data were used to examine changes in employment participation between 1966 and 2013. These data show occupational segregation has endured.

Black workers are underrepresented in the professional sector and are overrepresented in the service sector. The share of Black workers in the professional sector increased from 1.3% in 1966 to 7.6% in 2013. This was still far less than the 11.9% of the civilian labor force that Black workers comprised in 2013.<sup>147</sup>

Also, Black workers in the professional sector began to decline after 2008. By contrast, the share of Black workers in the service sector varied throughout the period but began at 23% in 1966 and ended in almost the same place by 2013—23.3%.

In 2013, Latinos made up 15.9% of the workforce.<sup>148</sup> The share of Latinos who were in the professional sector grew from 0.76% in 1966 to 5.7% in 2013. On the other hand, the share of Latinos in the service sector climbed steadily from 4.01% to 20.5%.

The AIAN were 0.9% of the workforce in 2013.<sup>149</sup> Their participation rates as professionals grew from 0.1% in 1966 to almost 0.4 % in 2013. Their participation rate in the service sector increased from about 0.3% to 1.42% in 1984 and then fell to 0.7% by 2013.

Asian Americans were 5.5% of the workforce in 2013.<sup>150</sup> In 1966, the percentage of Asian Americans who were professionals was approximately 1.3%. This share grew to about 11.5% in 2013. This community remained underrepresented in the service sector. In 1966, they had a participation rate 0.8% in the service sector, and this increased to 4.74% in 2013.

The occupational segregation of women, workers of color, and people with disabilities is often not a matter of choice. Sometimes it is the result of job steering. Job steering occurs when workers are discriminatorily steered towards lower-paying, lower-profile positions. These positions provide fewer opportunities for them to develop their skills, gain experience, and advance into positions that provide higher pay and benefits. For example, employers and employment agencies may steer applicants into:

- Lower-paid positions.<sup>151</sup>
- Less desirable positions.<sup>152</sup>
- Positions that do not involve customer or client contact.<sup>153</sup>
- Positions involving more dangerous or hazardous work.<sup>154</sup>
- Positions that provide fewer advancement opportunities.<sup>155</sup>
- Positions that are ineligible for supplemental compensation (such as commissions, bonuses, or tips).<sup>156</sup>
- Positions based on race, sex, national origin, religion, or other protected characteristics.

Job steering may occur in a range of positions and occupations, including low-wage and higher paying jobs.<sup>157</sup> While any group may be subjected to job steering, it may unfairly affect women, workers of color, and other marginalized groups.<sup>158</sup>

### ***Implications of Occupational Segregation for Wages and Benefits***

Occupational segregation has implications for both wages and benefits. The professional sector has some of the highest paying jobs. Conversely, wages in the service sector are typically substantially lower. According to the Bureau of Labor Statistics, in the second quarter of 2024:

Among the major occupational groups, people employed full time in management, professional, and related occupations had the highest median weekly earnings—\$1,877 for men and \$1,389 for women.<sup>159</sup> People employed in service occupations earned the least—\$809 for men and \$706 for women. (p.2)

In general, male-dominated occupations provide higher pay than female-dominated occupations, regardless of education or skill.<sup>160</sup> Further, as the proportion of women increases in an occupation, the pay in that occupation declines, even controlling for education and skill.<sup>161</sup> Consequently, women are disproportionately employed in lower wage jobs.

Almost two-thirds (63.6%) of workers in the 20 lowest paid occupations in the United States are women.<sup>162</sup> Women working full-time in such positions earn, on average, \$22,500 per year, or approximately \$11 per hour.<sup>163</sup>

Research also shows a wage penalty for both men and women who work in occupations with mostly women workers.<sup>164</sup> A 2014 analysis of Census Bureau 2011 Current Population Survey Annual Social and Economic Supplement data:

...suggests that there is a clear penalty for working in female-dominated occupations, with women in each of . . . three broad skill categories earning less in female-dominated occupations than in integrated or male-dominated occupations. Men also suffer a wage penalty for working in female-dominated occupations compared to what they could earn in male-dominated or integrated occupations at the same skill level.<sup>165</sup> (pp.16)

Average occupational wages are lower in occupations in which Black and Latino workers are overrepresented. This is compared to occupations in which these groups are underrepresented.<sup>166</sup> When workers of color are employed in industries that offer jobs at a variety of pay rates, they are more likely to hold lower-paying positions.

For example, one study found that while many Black workers worked in the healthcare industry, they were more likely to hold lower-paying positions.<sup>167</sup> The National Partnership for Women and Families found women make up 89% of paid caregivers.<sup>168</sup> Women of color make up more than half of the direct care workforce:

- 28% are Black.
- 21% are Latina.
- 9% are other women of color.

These levels are quite high given these women's share of the labor force (6.6% for Black women, 7.5% for Latinas, and 3.0% for Asian women in 2018, the year of the study).<sup>169</sup> Caregiving does not pay well or offer many, if any, fringe benefits. Home health and personal care workers at the 10<sup>th</sup> percentile of wages had an average annual salary of less than \$25,000 in 2023.<sup>170</sup> At the median, the Bureau of Labor and Statistics found the average annual salary was about \$33, 500 for home health and personal care aides (bls.gov).<sup>171</sup>

In addition to receiving lower wages, employees of color disproportionately lack access to employer-provided retirement benefits. The Center for American Progress found that 82% of direct care workers do not have access to a retirement savings plan or pension at work.<sup>172</sup>

In occupations overrepresented by Black and Latino employees, workers may have fewer opportunities to receive benefits. Workers of color, in particular, Black, and Latino workers, are less likely than White workers to receive employer-sponsored health insurance, employer-provided retirement plans, and paid leave. Even when workers of

color are employed in higher-paid fields that are more likely to provide benefits, they are less likely to have equal access to such benefits.

Employment benefits make up a significant amount of workers' total compensation<sup>173</sup> and are “the most direct contributors to wealth-building via the workplace.”<sup>174</sup> Consequently, a lack of access to such resources deprives workers of color meaningful economic security vehicles. It also renders them vulnerable to potentially significant financial expenses. Workers of color also may be more likely to work in industries or positions that pose greater risk of injury.<sup>175</sup> Therefore, a lack of employer-provided health coverage may result in substantial healthcare costs. These are costs that may be covered with retirement or other savings. Regardless of gender, race, ethnicity, or age, people with disabilities are more likely than those without disabilities to earn lower incomes.<sup>176</sup> Those with disabilities tend to work in low-paying positions, such as janitors, building cleaners, personal care aides, cashiers, clerks, and administrative assistants.<sup>177</sup>

Low-wage jobs are less likely to provide workers with benefits such as employer-provided health insurance and paid leave.<sup>178</sup> These are benefits that may be particularly important to workers with disabilities who may require more health care. Without health insurance benefits, workers may have higher out-of-pocket medical care costs.

Workers may lose pay if they need to take time off work for health-related reasons, such as to obtain medical treatment or recover from illness. Higher out-of-pocket expenses and lost wages make it harder to save for retirement. Occupational segregation has resulted in People of Color and women—especially women of color—being more represented in occupations in which employers do not provide pensions or retirement savings plans. These workers are especially unlikely to have access to employer-matched savings plans.

Workers in the service sector are only about half as likely as workers in the management, professional, and related sectors to have access to retirement benefits through their employer (Kimbrow and Mayfield 2013). As a result, they are more likely to be exposed to poverty in their senior years. The next two sections present the work of the EEOC and the DOL to monitor, identify, and address labor discrimination. The sections discuss not only hiring, but also in pay, promotion, retention, and benefits.

## **Unlawful Discrimination in the Workplace**

The EEOC enforces federal equal employment opportunity (EEO) laws that prohibit discrimination in every aspect of employment. The discrimination is on the basis of protected characteristics, including:

- Race
- Color
- National origin
- Sex (including pregnancy, childbirth, and related medical conditions)
- Sexual orientation and gender identity
- Religion
- Age (40 and older)
- Disability or genetic information
- Retaliation for EEO activity<sup>179</sup>

This means that an employer may not discriminate against an employee in hiring, firing, promotions, pay, or terms, conditions, or privileges of employment. This includes granting breaks or approving leave.<sup>180</sup> Retirement benefits are considered both a condition and privilege of employment, as well as a form of compensation.<sup>181</sup>

While employers are not required to offer retirement benefits, many employers provide such benefits for former employees as a source of income after completion of their employment. In most cases, retirement benefits are offered through a:

- Defined benefit.
- Defined contribution plans.
- Combination of the two.<sup>182</sup>

Where employers do choose to provide retirement benefits, the federal EEO laws require that those benefits, as part of compensation, be provided in a non-discriminatory manner absent a statutory exception.<sup>183</sup>

The Age Discrimination in Employment Act of 1967 (ADEA);<sup>184</sup> the ADA;<sup>185</sup> and Title VII of the Civil Rights Act of 1964<sup>186</sup> all expressly prohibit discrimination in compensation, terms, conditions, or privileges of employment. “Compensation” includes payments made to or on behalf of an employee as remuneration for employment. This includes “fringe benefits” such as pensions or other service retirement benefits.<sup>187</sup>

Employers may not discriminate in benefits whether the employer chooses to:

- Provide the benefits itself.
- Purchase benefits.
- Package benefits from an insurer or other entity.

The ADEA, ADA, and Title VII also prohibit discriminatory practices that indirectly affect compensation, such as relegating certain groups of employees to lower paying jobs.<sup>188</sup>

In addition, the Equal Pay Act (EPA)<sup>189</sup> prohibits sex-based wage discrimination. With the EPA, an employer must pay male and female employees at the same establishment equal wages,

**“FOR EQUAL WORK ON JOBS THE PERFORMANCE OF WHICH REQUIRES EQUAL SKILL, EFFORT, AND RESPONSIBILITY, AND WHICH ARE PERFORMED UNDER SIMILAR WORKING CONDITIONS.”<sup>190</sup>**

Jobs that are compared need be only substantially equal, not identical. Unequal compensation can be justified only if the employer shows that the pay differential is attributable to a bona fide seniority, merit, or incentive system, or any other factor other than sex. The EPA defines “wages” to include retirement benefits.<sup>191</sup>

EEOC is the primary federal agency responsible for enforcing these federal EEO laws. If an employee believes that they have been subjected to discrimination because of their protected characteristic, they may file a charge of discrimination with the EEOC.<sup>192</sup>

The EEOC has authority to investigate such charges of discrimination filed against employers covered by the laws it enforces. If discrimination is found to have occurred, the EEOC will try to settle the charge. If the matter is not settled, the EEOC has the authority to file a lawsuit to protect the rights of individuals and the interests of the public.



The unlawful denial or reduction of retirement benefits deprives people of resources and savings needed to support retirees and provide economic security during retirement, and directly contribute to inequities in retirement. Moreover, discrimination during an employee’s career can influence the wages they receive and their ability to save for retirement independent of their employer-provided plans.

The sections below first address discrimination in retirement benefits directly and then workplace discrimination more broadly.

## **Discrimination in Retirement Benefits under Title VII and PDA**

Under Title VII, in determining eligibility for, amount of, or charges for employee benefits, employers may not consider a person’s:

- Race
- Color
- Sex (including pregnancy, sexual orientation, or gender identity)
- National origin
- Religion

The cost of the benefit is not a defense.<sup>193</sup> This provision applies to sex-based distinctions in retirement benefits. Although women as a class generally live longer than men,<sup>194</sup> Title VII requires that each person be treated individually. As a result, employers may not use sex-based actuarial tables, which rely on generalizations about women’s and men’s life expectancies. The tables are used to calculate either the amounts an employer pays in benefits to men and women or the amount required in contributions from male and female employees for those benefits.<sup>195</sup> Where an employer has used sex-based actuarial tables to require that women make larger contributions to its pension fund than male employees, this would result in a finding of discrimination.<sup>196</sup>

- *Refer to, e.g., Los Angeles Dept. of Power and Water v. Manhart* (unlawful to require women to pay more for the same retirement benefits received by men; rejecting argument that the sex-based distinction was justified by actuarial tables showing that women live longer and therefore were likely to cost the employer more).<sup>197</sup>
- *Arizona Governing Comm. v. Norris* (unlawful for an employer’s voluntary pension plans to pay women lower monthly retirement benefits than men who made the same contributions).<sup>198</sup>

Throughout the last several years, the EEOC has consistently received charges of discrimination alleging a violation of Title VII with respect to retirement benefits and pensions.

Under the Pregnancy Discrimination Act (PDA),<sup>199</sup> employers must treat women who are affected by pregnancy, childbirth or related medical conditions the same as others who are similarly able or unable to work.

Where an employer offers benefits of any sort, therefore, including retirement, health insurance, or disability benefits, it must cover pregnancy and related medical conditions in the same way and to the same extent, that it covers other medical conditions.

As for retirement benefits, employers must allow women who are on pregnancy-related leave to accrue seniority in the same way as those who are on leave for reasons unrelated to pregnancy. If an employer allows employees who take medical leave to retain their accumulated seniority and to accrue additional service credit during their leaves, the employer must accord the same treatment to women on pregnancy-related leaves.

Similarly, employers must treat pregnancy-related leaves the same as other medical leaves in calculating the years of service that will be credited in evaluating an employee's eligibility for a pension or for early retirement. These principles also apply to pregnancy-related leaves taken before the effective date of the PDA. This is where an employer uses years of service to establish eligibility for retirement benefits.

**SCENARIO** – In 2000, Employee took maternity leave, and the employer denied any accrual of service credit during maternity leave. If the employer permitted employees on leave for other medical reasons to accrue service credit during their leave, this would have been a violation of the PDA at the time Employee took leave. In 2024, the employer implements an incentive program that authorizes employees with 25 or more years of service to take early retirement with full pensions. Because she took a maternity leave for which she accrued no years of service credit, Employee falls short of the 25-year service requirement. She files a charge with the EEOC challenging discrimination on the basis of pregnancy. Employee's claim regarding retirement is timely and states a violation of the PDA. In evaluating eligibility for early retirement, the employer has distinguished between employees who took leave due to a pregnancy-related disability and employees who took leave for other temporary disabilities. The employer's decision to incorporate that denial-of-service credit in calculating seniority in 2024 is unlawful discrimination.<sup>200</sup>

## Discrimination in Retirement Benefits under the ADA

An employer may not discriminate against a qualified person with a disability, on the basis of disability, with respect to fringe benefits.<sup>201</sup> Some employers offer two types of retirement-related fringe benefit plans offering:

- Disability retirement benefits for employees to allow them to retire early due to a disability.
- Regular, "service" retirement benefits for having worked for the employer.

Where an employer establishes either or both types of plans, it may not discriminate against employees with disabilities. Generally, the ADA prohibits an employer from:

- Excluding employees from participation in a service retirement or disability retirement plan because of their disabilities.
- Requiring different lengths of employment for participation by people with and without disabilities in the employer's service retirement or disability retirement plans.
- Setting different levels or types of coverage for those with and without disabilities in a service retirement plan.

Employers are not required to provide disability or service retirement plans for their employees. It does not violate the ADA for an employer to offer only a service retirement plan, but not a disability retirement plan. If an employer provides both types

of retirement plans, they would not violate the ADA for denying service retirement benefits to those who have previously chosen voluntarily to take disability retirement benefits. Therefore, if an employee opts for a disability retirement, denial of other retirement benefits would not violate the ADA.<sup>202</sup>

Similarly, an employer would not violate the ADA if an employer does not provide the same level of benefits in each of the plans. This is because they are two separate benefits that serve two different purposes. As long as all employees may participate in the service retirement plan on the same terms, an employer will not violate the ADA. This is regardless of the existence of a disability and if it provides lower levels of benefits in its disability retirement plan than in its service retirement plan. The EEOC has and continues to receive charges alleging discrimination regarding retirement and pensions in violation of the ADA.

## **Past or Current Employment Discrimination May Affect Future Retirement and Retirement Security**

### ***Unlawful Employment Discrimination Contributes to Inequities in Retirement***

Under the laws enforced by the EEOC, discrimination generally affects a job applicant or employee. It can happen through decisions about hiring, firing, transfer, promotion, pay, or other terms, conditions, or privileges of employment. This includes:

- Harassment based on that person's race
- Color
- Religion
- Sex (including gender identity, sexual orientation, and pregnancy, childbirth, and related medical conditions)
- National origin
- Age (40 or older)
- Disability
- Genetic information

Discrimination also occurs when an employer's use of neutral employment policies and practices has a disproportionately negative impact on applicants or employees of a particular protected group. This is if the policies or practices at issue are not job-related and necessary to the operation of the business. Likewise, it is illegal to retaliate against a person because they:

- Opposed unlawful discrimination.
- Filed a charge of discrimination.
- Participated in an employment discrimination investigation or lawsuit.

Unlawful discrimination during an employee's working years can have a direct effect on an employee's retirement security. Discriminatory employment actions effecting wages or pay reduces a person's ability to save for retirement.<sup>203</sup> Employment decisions such as failure to hire, denial of promotion, demotion, reduction in pay, or termination can also result in the reduction or elimination of pay and contributions to employer-provided retirement benefit plans.

If unlawful discrimination takes place at any of these points during an employee's career, the decisions will not only affect their immediate pay and retirement benefits, but also their ability to start saving for retirement.<sup>204</sup> These decisions will continue to have repercussions throughout one's career.

For instance, if a qualified employee is denied a promotion due to their race or ethnicity, it results in a denial of the higher salary commensurate with that position as well as the retirement contributions and, potentially, employer matching funds tied to that higher salary. The impact can be more profound for older workers.

When older workers lose their jobs late in their careers because of age, finding reemployment can be challenging. They can face age discrimination when seeking reemployment. If or when they are re-employed, the worker must try to "catch up" on retirement savings they lost as they grow closer to retirement.<sup>205</sup>

## **Workplace Discrimination on the Basis of Age**

As noted above, under the Age Discrimination in Employment Act (ADEA), it is unlawful to discriminate against a person who is age 40 or older. This is with respect to any aspect or term, condition, or privilege of employment, including hiring, firing, reductions in force (RIFs), promotion, layoff, compensation, benefits, job assignments, and training.<sup>206</sup>

Harassing an older worker because of age is also prohibited.<sup>207</sup> It is also unlawful to retaliate against anyone for engaging in protected activity. This includes opposing employment practices that discriminate based on age or for filing an age discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADEA.<sup>208</sup>

Unlawful age discrimination can occur in a variety of forms. As noted above, for example, "disparate treatment" based on age occurs when an employee within the protected age group (age 40 or older) is treated less favorably than other similarly situated employees. This is with respect to any aspect of employment, including wages and terms, conditions, or privileges of employment.

"Disparate impact" discrimination may result from a seemingly neutral employment policy or practice that is applied broadly to all employees and applicants. But it has equality adverse effects on employees or applicants aged 40 and older, the practice is not otherwise justified by a reasonable factor other than age.<sup>209</sup>

The ADEA prohibits discrimination in compensation based on age or protected activity. The term "compensation" includes any payments made to, or on behalf of, an employee for employment.<sup>210</sup> Wages include, but are not limited to:

- Payments for salary
- Overtime pay
- Bonuses
- Vacation and holiday pay
- Retirement benefits
- Stock options, profit sharing, or bonus plans<sup>211</sup>

This also includes benefits, pension or other retirement benefits, and early retirement incentives.<sup>212</sup>

**SCENARIO** – A school district limits the salary increases of a group of teachers older than age 45. It does so by way of a provision of the collective bargaining agreement (CBA) between the school district and the union representing teachers. The state pension code provides that if a teacher’s final average salary includes a year in which they received a salary increase of more than 6%, the school district must contribute to the Teacher’s Retirement System. This is to cover the increased pension cost attributable to the salary increase.

The provision of the CBA agreement limits the salary increases of teachers who are within 10 years of retirement eligibility to no more than 6% above their previous year’s salary. A teacher, 52 years old, completed post-graduate classes which should have entitled them to receive more than a 6% raise for the next school year. Because the teacher’s age at the time put them within 10 years of retirement eligibility of 55, the school district capped their raise at 6% for the next school year.

The CBA provision limiting salary increases is facially discriminatory based on age. This is because it drew “an express line” between teachers aged 45 and older and those younger than 45 in this way: teachers younger than 45 were able to receive salary increases that teachers aged 45 and older could not. This is solely because of their age.<sup>213</sup>

From FY19-23, the EEOC received an average of nearly 13,700 charges each year alleging unlawful age discrimination.

### ***Age Discrimination & Economic Loss***

For all employees, the loss of a job has a ripple effect on the employee’s retirement and ability to save for retirement. The employee may lose access to the former employer’s retirement plan, experience difficulty finding subsequent employment, and be unable to contribute to or invest in individual retirement vehicles.

For older workers in particular, lowered or eliminated wages and retirement benefits associated with job loss may create additional or more acute adverse effects on the timing and security of retirement. The loss of a job has serious long-term financial consequences as older workers often must withdraw from their retirement savings while unemployed. They are also likely to suffer substantial losses in income even if they become re-employed.<sup>214</sup>

When discrimination occurs to older workers resulting in lower or loss of pay, their ability to retire is particularly affected because they may have insufficient time to rebuild from that loss.<sup>215</sup> After a termination, those who are close to retirement age may face:

- Unplanned early retirement.
- Difficulties in finding subsequent reemployment.<sup>216</sup>
- Earlier depletion of their retirement savings accounts.
- Accumulated debt.<sup>217</sup>

**SCENARIO** – Karen recently became manager of a software development company. She wants to boost sales and productivity by hiring a younger, more tech-savvy marketing representative. Jack, 62, is the company’s current marketing representative. He’s doing a great job including a successful ad blitz that generated much industry-wide buzz and attracted numerous new clients. Karen fires Jack because he is close to retirement age and replaces him with Joaquin, a 35-year-old marketing whiz. Karen discriminated against Jack by firing him because of his age. Jack was only 3 years shy of being eligible to retire. Jack has to find new employment as a 62-year-old and may find it hard to do so. He may have to dip into his savings to pay his bills while he is looking for work. This will make it harder for Jack to save for retirement in 3 years. Health permitting, he may conclude that he should work longer than 3 more years to make up for the loss to his savings. Jack can also accumulate enough funds to feel comfortable choosing to retire.

Another employment action that can affect older workers is a reduction in force (RIF). Employers sometimes decide to reduce their workforce for economic or operational reasons. Often in such cases, an employer lays off all employees in a particular position or division. This requires employees to separate from employment involuntarily and unexpectedly.

RIFs may affect older employees who are at or near retirement eligibility but want to continue to work and earn an income.<sup>218</sup> The ADEA requires employers to ensure that RIFs or layoffs are based on nondiscriminatory reasons and where possible, avoid the disproportionate dismissal of older employees.<sup>219</sup>

When faced with a RIF, some eligible older workers opt to retire early. The ADEA allows employers to conduct a RIF by providing exit incentive programs, such as a one-time buyout, or voluntary early retirement incentives (ERIs) to all employees who are eligible for immediate retirement, as long as the plan is consistent with the purposes of the ADEA.<sup>220</sup> Under ERIs, older employees typically are offered a financial incentive in exchange for their agreement to leave the workforce earlier than they had planned. Older employees may benefit from retirement incentives, which may – depending on the employee’s particular situation and the details of the ERI—enable them to retire with larger benefits earlier than otherwise would have been possible.<sup>221</sup>

### ***Challenges of Older Workers Seeking Re-employment***

After losing a job, older workers may have a hard time finding employment.<sup>222</sup> Some of the barriers facing older employees involve ageism and negative stereotypes. The EEOC heard testimony that unfounded assumptions regarding age drive discrimination in the workplace.<sup>223</sup> For example, common negative stereotypes about older workers include that they are more costly and harder to train, less adaptable and flexible, more resistant to change, or less competent and less energetic than younger employees.<sup>224</sup> Such stereotypes can lead to negative evaluations, demotions, denial of promotions or hiring, and firings.<sup>225</sup>

Such negative stereotypes are found in some specific fields such as the tech sector. For example, the EEOC<sup>226</sup> heard testimony at a Commission hearing regarding pervasive age discrimination in the technology sector noting that companies’ hiring policies and practices are designed to attract and hire younger employees.<sup>227</sup> Some tech companies even referred to older employees as “digital immigrants” and screened out applicants

who included their graduation dates or dates of birth.<sup>228</sup> Some companies have asserted that older applicants were not a “cultural fit” in deciding not to hire them.<sup>229</sup>

**SCENARIO** – A company that provides online tutoring services to students hires tutors by using online recruitment software. The company’s tutor application software solicits the birthdate of applicants. The company programs its tutor application software to automatically reject female applicants aged 55 or older and male applicants aged 60 or older. Gina applied to be a tutor using her real birthdate and was automatically rejected because she was older than age 55. The company’s actions violate the ADEA, which prohibits employers from discriminating based on age. Therefore, the company discriminated against Gina along with hundreds of eligible applicants when it rejected them because of their age.

EEOC data shows that unlawful termination or discharge makes up many of the charges filed under Title VII. In 2023 alone, of the 81,055 charges received by the Commission, 31,309 charges or nearly 39% raised an allegation of discriminatory discharge.

## Workplace Discrimination on the Basis of Sex

A recent U.S. Government Accountability Office (GAO) report found that women may also face more challenges than men in obtaining retirement security. In general, women tend to live longer and therefore require more money to support themselves post-retirement.<sup>230</sup> However, women tend to receive lower wages<sup>231</sup> and have less access to retirement plans than men.<sup>232</sup>

Sex-based employment discrimination, including discrimination based on sexual orientation, gender identity and pregnancy, affects earnings and workers’ ability to save for retirement. Employers must ensure their workplace policies or practices are applied equitably to employees. This is regardless of sex and ensure that involuntary separations from employment are not based on sex-based discrimination. If it were, it could hinder women’s retirement savings and contributions. For example, EEOC charge data shows that terminations and constructive discharges are the largest number of the charges filed on the basis of sex. In discrimination complaints filed with the EEOC, other events arise, such as:

- Demotion
- Failure to hire
- Denial of promotion
- Compensation decisions

## ***Discrimination Based on Pregnancy and Caregiving***

The effect of sex-based discrimination on retirement security can also occur in cases involving pregnant workers and other workers who are the primary caregiver for their family. Unlawful discrimination could affect the potential retirement plan contributions of the employee, who may take a leave of absence from work.

As noted above, recent studies have shown that women’s participation in the labor force has been increasing with time, and through the past several decades, women have become more likely to pursue higher education. They’re also more likely to work full time and year-round.<sup>233</sup> Despite the growth of women in the workforce, women still tend to be the primary caregivers for the family.<sup>234</sup>

Women commonly take time off from work or take a “career break” during pregnancy and after childbirth to care for their newborn.<sup>235</sup> Women’s efforts to try to find a balance between work and family sometimes causes them to experience a “maternal wall.” The maternal wall contributes to the phenomenon of the “glass ceiling.” In other words, something preventing women from advancing in their careers.<sup>236</sup> Women are also often expected to handle most or all the childcare needs for the family. This may include:

- Securing daycare for infants and toddlers when they return to work.
- Taking care of children when they are sick.
- Providing before and after care for school-aged children.<sup>237</sup>

Caregiving responsibilities are not limited to childcare but also include other forms of caregiving. This may mean care and support for the elderly and for family members with disabilities, including adult children, spouses, or parents.<sup>238</sup> These caregiver roles tend to fall to women who, although working, are essentially providing unpaid labor within the home.<sup>239</sup>

Although caregiving can primarily fall to women,<sup>240</sup> certain groups of women suffer greater impacts on their employment and retirement. More specifically, caregiving responsibilities are shouldered more among women of color, particularly African American women.<sup>241</sup> African American mothers with young children have higher rates of labor force participation. This is compared to other women raising young children.<sup>242</sup>

Women of color may also devote more time to caring for extended family members, including grandchildren and elderly relatives. This is in comparison to their White counterparts.<sup>243</sup> Caring for children, parents, and family members with disabilities often causes women to take time away from the workplace. This results in the:

- Choice of lower-paying or part-time jobs.
- Use of paid and unpaid leave.
- A host of other work-related adjustments.

These consequences may ultimately lead to gaps in employment or women leaving the labor force entirely.<sup>244</sup> These events result in forfeiture of pay and benefits including the loss of pension benefits and possible matching contributions by employers to defined



contribution plans.<sup>245</sup> The compound effect of these breaks in employment is further reflected in reduced personal savings and investments.<sup>246</sup> All these factors can result in:

- Lower lifetime earnings.
- Less money to save for retirement.
- Lack of access to employer-sponsored retirement plans.
- Reduced retirement security.<sup>247</sup>

The federal EEO laws do not prohibit discrimination against caregivers per se.\*There are circumstances, however, in which discrimination against caregivers might constitute unlawful disparate treatment. This is on the basis of prohibited characteristics under Title VII of the Civil Rights Act of 1964 (Title VII) or the Americans with Disabilities Act of 1990 ADA.<sup>248</sup> Under Title VII, it could be a violation if an employer believes a young mother will be less available and committed to the job. This could be due to sex-based stereotyping about working women with the employer refusing to offer her available overtime work. Female caregivers can experience disparate treatment as an applicant in the form of questions that male applicants don't encounter. For instance, questions about childcare can lead to steering or assigning women with caregiving responsibilities to less prestigious or lower-paid positions.

**SCENARIO** – A mid-level manager at a data services company applied for a promotion to a newly created upper-level management position. In her promotion interview, the manager is asked how she manages her childcare responsibilities, and the selecting official states that he has “a very difficult time understanding why any man would allow his wife to live away from home during the work week.” The manager is denied the promotion, and she files an EEOC charge alleging sex discrimination. The employer explains that it did not select the manager because it felt that it was unfair to the manager's children for their mother to work so far from home. Under the circumstances, the employer denied the manager the promotion because of unlawful sex discrimination, basing its decision in particular on stereotypes that women with children should not live away from home during the week.<sup>249</sup>

## Workplace Discrimination on the Basis of Race

As noted above, in addition to potential disparities in retirement security based on age or sex in the workplace, employees of color disproportionately lack access to employer-provided retirement benefits. Workers of color, in particular, Black and Hispanic workers, are less likely than White workers to receive employer-sponsored health insurance, employer-provided retirement plans, and paid leave.<sup>250</sup> Even when workers of color are employed in higher-paid fields that are more likely to provide benefits, they are less likely to have equal access to such benefits.<sup>251</sup>

Among workers who are similarly situated with respect to income, education, job tenure, and assets, there are no significant differences in the participation rates. This is also true for contribution levels to 401(k) plans between workers of color and White worker.<sup>252</sup> Workers of color are also more likely to be employed in job sectors which do not traditionally offer retirement plans.<sup>253</sup> However, participation rates not only depend on access to such plans on the job but the amount of income available to invest in retirement plans.

The GAO has reported a decline in Black households with retirement account balances from 50% in 2007 to 35% in 2016.<sup>254</sup> There are considerable disparities in the earnings of Black or African American and Hispanic workers as compared to White and Asian American workers. In 2019, the median income of White households was about \$90,700. This is approximately 1.7 times the amount of median income of households of all other races (about \$53,400).<sup>255</sup>

According to the U.S. Census Bureau, in 2022, the median household income for Black and Hispanic households was \$52,860 and \$62,800, respectively. This is compared to \$81,060 and \$108,700 for non-Hispanic White and Asian households.<sup>256</sup> These disparities not only affect income but also influence whether employees have access to employer sponsored retirement plans. Not all employers offer retirement plans and often low-wage workers don't have access to employer-provided plans or plans that offer matching contributions.

High-income households have three times greater access to workplace retirement accounts than low-income households.<sup>257</sup> Even when workers of color have access to employer-sponsored retirement plans, the amount of their income may impact their ability to save enough on their own or contribute to the retirement plan causing them to miss out on receiving their employer's matching contribution.<sup>258</sup>

If workers of color experience employment discrimination, such as reduced wages, job loss, disparate pay or denial of promotions, based on their race, color or national origin, the discrimination can exclude their participation in employer-provided retirement plans and have significant negative impacts on their ability to save for retirement through individual or personal savings. For example, when employees experience loss of pay, they experience financial hardship and may have to borrow from their retirement plans or other savings.<sup>259</sup>

The greatest number of charges received by the EEOC alleging race discrimination involve termination averaging nearly 12,700 charges per year from fiscal years 2016 to 2023. Other events such as demotion, failure to hire, denial of promotion, and compensation decisions are often raised in complaints of race discrimination filed with the EEOC.

The loss of retirement security also may be seen in unlawful discrimination cases where there is intersectionality of protected classes. Classes such as an older worker who is also adversely impacted by sex-based or race-based discrimination in the workplace. In many cases, this impact occurs prior to separation from employment and may occur gradually across a period of time. This is due to workplace discrimination based on age, sex, and race.

For example, workplace discrimination, pay disparities, and discriminatory pay structure may result in lower earnings for workers of color, who are also women and older. They have a significant impact on women's ability to save for retirement, and on the funds and income sources to support themselves in retirement.<sup>260</sup>

#### Workplace Discrimination on the Basis of Disability<sup>261</sup>

People with disabilities may also experience employment discrimination in violation of the ADA which will impact their ability to save for retirement. The ADA prohibits discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term

or condition of employment of an employee or applicant with a disability, a history of a disability, or regarded as having a disability. The ADA also requires employers to provide job applicants or employees with reasonable accommodations to participate in the employment process or to perform the essential functions of the job, unless to do so would cause an undue hardship.<sup>262</sup>

Sometimes an employee's exercise of their rights to reasonable accommodation under federal employment laws involves a break in employment such as requesting time off as a reasonable accommodation for a disability, pregnancy, childbirth or related medical condition or caregiving responsibilities. This sometimes results in not only a loss in pay but loss in retirement benefits. Therefore, if a gap in pay was due to unlawful discrimination or statutorily-protected reasonable accommodation or leave, then there will likely be an adverse impact on their retirement benefits and their ability to save for retirement.

Terminations and denial of reasonable accommodations are the most frequently alleged issues in EEOC charges filed on the basis of disability discrimination. Within the ADA, employers are also prohibited from discriminating against someone with a disability. This includes someone based on their relationship or association with a person with a disability, such as a child, spouse, or parent. Under this provision, an employer may not treat workers or caregivers based on stereotypical assumptions about their ability to perform job duties, while working or providing care to a relative or another person with a disability.

An employer may not refuse to hire a job applicant who has a family member with a disability under the assumption that the applicant would have to use leave to take care of their family member or any other disability-related assumption.<sup>263</sup>

**SCENARIO** – An applicant for a position is interviewed. The employer determines that they are the best person for the position. During the interview, the employer learns that the applicant is a single mother of a child with a disability. Because the employer believes the applicant is the primary caregiver for the child, the employer thinks the person will not be able to focus on the job, will likely have attendance issues and will not be able to perform the position to the best of their ability. Therefore, the employer selects another candidate. and suggests the mother of the child with a disability reapply when her caregiving responsibilities have changed. Such a decision would violate the ADA because the decision not to hire the applicant was due to her association with a person with a disability.

As noted above, all situations in which an employee with a disability – or someone associated with a person with a disability – is terminated or experiences a break in work due to discriminatory actions (such as those described above); the person may also experience a reduction in retirement savings.

## ***Resources***

Given the magnitude of the EEOC mission, its level of resources is very modest. At the end of FY21 the EEOC had about 2,100 Full Time Employee (FTE) positions to address the charges filed by workers across the nation.<sup>264</sup> This was an improvement after the 1,939 employees they had in FY20, but substantially less than the 3,300 employees EEOC had in FY1980.<sup>265, 266</sup>

## ***Equity in Retirement: The DOL***

Private employers are not required, as a matter of federal law, to provide retirement benefits to their employees.<sup>267</sup> Many employers do, however, provide such benefits for former employees once they retire, through a defined benefit pension plan, a defined contribution pension plan (such as a 401(k) plan), or a combination of the two. Employers also receive certain tax advantages for providing retirement benefits. Where employers provide retirement benefits, the federal EEO laws require that those benefits, as part of compensation, be provided in a non-discriminatory and tax provisions manner, absent a statutory exception.<sup>268</sup>

## ***Employee Benefits Security Administration***

The Employee Benefits Security Administration (EBSA) is the agency within the DOL that regulates and oversees the retirement plans offered through employment with private employers. The EBSA implements and enforces the requirements of the Employee Retirement Income Security Act (ERISA), a federal law governing employee retirement, health and other welfare benefit plans. Section 510 of ERISA provides for the Secretary of the DOL, or a participant or beneficiary of a plan, to bring civil proceedings if it can be demonstrated that an ERISA benefit plan participant or beneficiary (or someone who has given information) has testified, or, they are about to give testimony relating to ERISA, was discharged, fined, suspended, expelled, disciplined, or discriminated against for exercising any right to which they are entitled.

These rights are within the provisions of an employee ERISA benefit plan (ERISA). Section 510 applies if such action was taken against someone for purposes of interfering with the attainment of any right the complainant may become entitled to under the plan (or Title I of ERISA). It also applies if the person has given information or testified or is about to testify in any inquiry or proceeding relating to ERISA.

Among other requirements, ERISA mandates certain reporting and disclosures by covered plans. These reporting and disclosure provisions do not, however, require that plans report to EBSA any information regarding the demographics of those participating in the plans. Demographic information includes information about race, nationality or gender. Therefore, EBSA does not receive information through plan reporting that would show disparities in the benefits being offered to employees. It does, however, it reviews research regarding the provision of employment-based retirement benefits to different groups.

## ***EBSA Assistance to Underserved Communities***

EBSA provides information at [www.dol.gov/ebsa](http://www.dol.gov/ebsa) in 13 different languages, including publications, tools, videos, outreach information and more regarding employee benefits. EBSA also has benefits advisors available across the country to assist workers by answering their questions and helping when they are facing issues with their retirement

plan. EBSA's benefits advisors can assist workers in more than 300 languages. EBSA also works with a translation service to enhance access to assistance. EBSA also conducts outreach events specifically targeted to different underserved communities through its regional offices across the country.

### ***Resources***

EBSA is a small agency. It is responsible for overseeing an enormous plan universe, including:

- More than 801,000 employment-based retirement plans.
- About 2.6 million group health plans.
- Approximately 514,000 other welfare benefit plans.

As of FY24, ERISA-covered retirement and welfare plans held approximately \$13.6 trillion in assets. In total, ERISA-covered plans provide benefits to more than 156 million workers and their families. ERISA-covered health plans are the overwhelming source of health coverage in the United States for people under age 65. EBSA also has important regulatory and audit responsibilities for both the federal Thrift Savings Plan (TSP) and IRAs. TSP is the largest defined contribution plan in the world. It has more than 6.85 million participants and \$872 billion in assets. IRAs currently hold even more assets than ERISA-covered retirement plans with \$13.6 trillion in assets.

EBSA is already extraordinarily small as compared to the vast plan universe for which it is responsible. While the plan universe is large, EBSA is small, employing less than 840 people nationwide. At current staffing levels (about 840 people nationwide when including supplemental funding), EBSA has only about 1 investigator for every 13,000 ERISA-covered plans. Throughout the past decade, the agency's responsibilities have only grown with the enactment of new and complex health and retirement laws.

The number of plans under its jurisdiction have increased. However, even as its responsibilities have grown, the agency's budget has declined. This has resulted in repeated reductions in staffing. The agency has repeatedly had to reduce the size of its staff. For example, EBSA lost more than 279 FTE within a 12-year period because of persistent reductions in resources.

Without additional funding, that number of staff reductions will increase by another 117 FTE. This is as the agency's budget decreases with the expiring of the No Surprises Act supplemental funding. The staffing drops from 841 FTE in FY24 to about 724 FTE in the coming fiscal year. Even as its responsibilities have dramatically increased, the agency will have to meet its new demands with 14% fewer FTEs. This is compared to the previous year. The contrast could not be starker between the small size of the agency and the large universe it is responsible for regulating.

EBSA traditionally does more with less, but the agency faces strain due to unfunded mandates. For example, in FY24, EBSA must implement unfunded provisions of SECURE 2.0. This includes various tasks such as to:

- Conduct studies.
- Draft congressional reports.
- Create a new lost and found database.

- Provide\*.
- Collaborating with other government agencies on the regulatory projects.

The agency must also implement the Employee Ownership Initiative and handle regulatory and enforcement work related to the Mental Health Parity and Addiction Equity Act. EBSA has devoted significant effort to Mental Health Parity and Addiction Equity Act enforcement and has uncovered serious compliance issues across the industry. These issues are at both the plan and service provider levels.

The anticipated loss of this funding, from the No Surprises Act, will force the agency to scale back these enforcement efforts. Without additional funding, EBSA will struggle to promptly handle No Surprises Act complaints, potentially impacting the number of benefit recoveries. Since 2022, EBSA has handled 74,140 inquiries, resulting in 1,828 benefit recoveries totaling \$18,638,207.

### ***Wage and Hour Protections***

The DOL's Wage and Hour Division (WHD) enforces federal minimum wage, overtime pay, recordkeeping, and child labor requirements of the FLSA. WHD also enforces the:

- Migrant and Seasonal Agricultural Worker Protection Act.
- Employee Polygraph Protection Act.
- Family and Medical Leave Act (FMLA).
- Consumer Credit Protection Act wage garnishment provisions.
- Employment standards and worker protections as provided in several immigration-related statutes.

Additionally, WHD administers and enforces the prevailing wage requirements of the:

- Davis-Bacon and Related Acts (DBRA).
- Service Contract Act.
- Other statutes applicable to federal contracts for construction.
- Provision of goods and services.

WHD's mission is to promote and achieve compliance with labor standards to protect and enhance the welfare of the nation's workforce. WHD has long focused on protecting low-paid workers who are most vulnerable to wage violations. WHD does not rely on complaints alone. Agency-initiated investigations ensure that enforcement strategies do not reinforce existing inequities related to economic security. WHD focuses on protecting people from historically marginalized communities and workers overrepresented in certain low-wage jobs. These disparities are due to occupational segregation and systemic discrimination. The FLSA establishes federal labor standards, including the:

- Federal minimum wage.
- Overtime pay requirements.
- Federal child labor protections.
- Recordkeeping requirements.

These standards are applicable to most private and public employers across the country. Remedies under the FLSA include back wages, damages, civil money penalties, and the right for employees to file private lawsuits. In FY23, WHD collected more than \$274 million in back wages and damages for more than 163,000 workers nationwide. Employers are required to treat back wage payments as they would otherwise treat wages for other federal withholding and tax obligations. Therefore, workers who were found by WHD to be victims of wage theft may increase. But these workers never fully recovered compounded losses related to their retirement security as well as their overall economic security.

WHD also enforces the DBRA. This ensures construction workers on federal and federally assisted construction contracts are paid not less than local prevailing wages including bona fide fringe benefits. Bona fide fringe benefits generally include those benefits which are common in the construction industry. They include:

- Medical care.
- Compensation for injuries or illness.
- Pensions for retirement or death.
- Insurance to provide such items.

To be considered bona fide, fringe benefits must also be provided pursuant to a plan, fund, or program is legally enforceable and meets certain criteria such as the:

- Requirements of ERISA.
- Laws and regulations enforced by the Internal Revenue Service.
- state insurance laws.

Refer to [40 U.S.C. § 3141\(2\)\(B\)](#); [29 CFR § 5.29\(a\), \(d\)](#).<sup>269</sup> Similarly, the McNamara-O’Hara Service Contract Act requires prevailing wages to be paid to service workers on federal service contracts. The Service Contract Act also requires the payment of certain fringe benefits, usually “health and welfare,” vacation, and holiday benefits in addition to the hourly monetary wage requirements.<sup>270</sup>

WHD also enforces the requirement that employers provide federally protected leave under the FMLA. FMLA entitles eligible employees to 12 weeks of unpaid, job-protected leave for certain family and medical reasons. At the employee’s or employer’s option, certain kinds of paid leave may be substituted for unpaid leave. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours more than the previous 12 months, and if there are at least 50 employees within 75 miles.

For the duration of FMLA leave, the employer must maintain the employee’s health coverage under any group health plan. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

## ***Resources***

Collectively, the laws enforced by WHD cover most private, state, and local government employment and protect more than 165 million of America’s workers in more than 11 million workplaces throughout the United States and its territories. WHD carries out its mission with about 1,700 employees. The number of WHD employees is far outweighed by the workplaces they regulate and the workers they protect. In other words, the ratio of WHD employees to workplaces is like “a dot on the sun.”

## Information Sharing Related to Recovery of Retirement Benefits

The EBSA has authority under ERISA to recover amounts owed to plans, participants and beneficiaries related to violations of ERISA, including retirement plan contributions owed by employers and employee deductions to retirement plans that should have been made by the employer on behalf of the employee.

Both the Wage and Hour Division of the DOL and the EEOC have authority to recover retirement contributions and retirement benefits to some extent under the laws and rules they enforce. However, while there is not currently a formal provision for either the Wage and Hour Division or the EEOC to provide information to EBSA regarding retirement plan-related recoveries, or to refer cases involving possible retirement plan amounts owed to EBSA, these referrals are generally done on an ad hoc basis. EBSA may also on its own initiative informally learn about matters that may involve amounts owed to retirement plans in cases being handled by the Wage and Hour Division and the EEOC and determine to take its own action to investigate and seek recovery of amounts that may be owed to the retirement plan or the participants.

## Impact of Labor Market Discrimination on Economic Security in Retirement

Labor market discrimination has far-reaching consequences for lifetime earnings, which, in turn, profoundly affect retirement security and Social Security benefits. Contributors to lower lifetime earnings are periods of unemployment, as well as inequities in pay, promotion, and retention. Lower earnings not only mean reduced current income but also lead to diminished opportunities to accumulate retirement savings.<sup>271</sup>

Higher levels of unemployment and lower wages also affect Social Security benefits, which are based on the number of years worked and the level of wages received throughout one's work life. Discrimination essentially has a compounding effect. People with lower lifetime earnings are not only more likely to be economically insecure during their working lives, but they are also more likely to have lower levels of retirement resources.

The Social Security benefit formula is designed to replace a higher percentage of pre-retirement earnings for lower-wage workers than for higher-wage workers.<sup>272</sup> This progressive benefit formula helps mitigate, but cannot overcome, the effects of labor market discrimination. Consequently, such discrimination limits the earning potential of some demographic groups and perpetuates inequalities in retirement benefits.

Occupational segregation can lead to differences in access to employer-sponsored retirement plans. High-paying jobs are more likely to offer robust retirement benefits, including 401(k) plans with employer contributions. For example, in 2022, 73% of establishments in the finance and insurance industry offered retirement benefits plans compared to just 27% of establishments in the leisure and hospitality industry.<sup>273</sup> When workers are segregated into lower-paying occupations, they are less likely to have access to these retirement savings opportunities, further worsen disparities in retirement security.

Access to consistent employment, as well as equitable pay, promotions, and retention, are critical for a secure retirement. Retirement equity is essential for ensuring that people can age with dignity and financial stability. When people face labor market discrimination and occupational segregation throughout their careers, they are more



likely to rely more heavily on Social Security as their primary source of retirement income.

Social Security is the most successful social program in the nation. In the absence of the program, 35% of people aged 60 and older in 2024 would be in poverty compared to the 5% under current law.<sup>274</sup> The Social Security program has successfully reduced poverty to 6%. Social Security was never intended to be the sole source of retirement income. Workers who do not have access to employer sponsored savings plans and whose low levels of earnings limit the amount they can save for retirement, rely primarily or totally on Social Security. These workers are more likely to be vulnerable to financial insecurity in their golden years, even after receiving Social Security benefits. While 4% of White workers would be poor after receiving Social Security benefits in 2030; 8% of African American workers; 8% of Latino workers; and 7% of workers of other races would be poor after receiving Social Security.<sup>275</sup>

## Microsimulation

As a final step in our analyses for this paper, we have developed estimates of the economic security or insecurity of workers within different labor market and retirement benefit scenarios. Our primary objective is to understand how workers would fair with respect to retirement security, if the labor market did not discriminate in hiring, pay, promotions, and retention.

To accomplish this, we used Social Security's microsimulation model: Modeling Income in the Near-Term or [MINT](#). MINT version 8 is built from Social Security's administrative records matched to the [Survey of Income and Program Participation](#). It uses economic, demographic, and programmatic assumptions in the [2023 Trustees Report](#) for its projections. MINT can project:

- Future retirement income
- Marital trends
- Social Security benefits
- Household income
- Poverty in retirement

These projections allow researchers and policy makers to analyze future retirement conditions and the effects of potential retirement policy changes. We can alter past, present, and future earnings to determine the effect of labor market changes on career earnings. Also, the resulting change in Social Security benefits, household income, and poverty rates.<sup>276</sup>

The scenarios below are rough counterfactuals to demonstrate the potential effects if discrimination were removed from the labor market and the caveats are important to note. These scenarios are closer to thought experiments than sophisticated simulations of the labor market or economy. Everything is held constant other than the earnings and resulting Social Security and Supplemental Security Income benefits: other income sources do not change. There are no behavioral responses that would cause changes in decisions about marriage, work, savings, retirement, and claiming. We assume that earnings disparities are fully due to barriers in the labor market rather than a mix of barriers and individual preferences to work less or in jobs that pay less. There are no macroeconomic reactions, such as reducing others' earnings or income, or economic

reactions to higher earnings. The assumptions of the 2023 Trustees Report continue to determine wage growth, inflation, mortality, etc.

## Results

### *What if There Were No Hiring Inequities?*

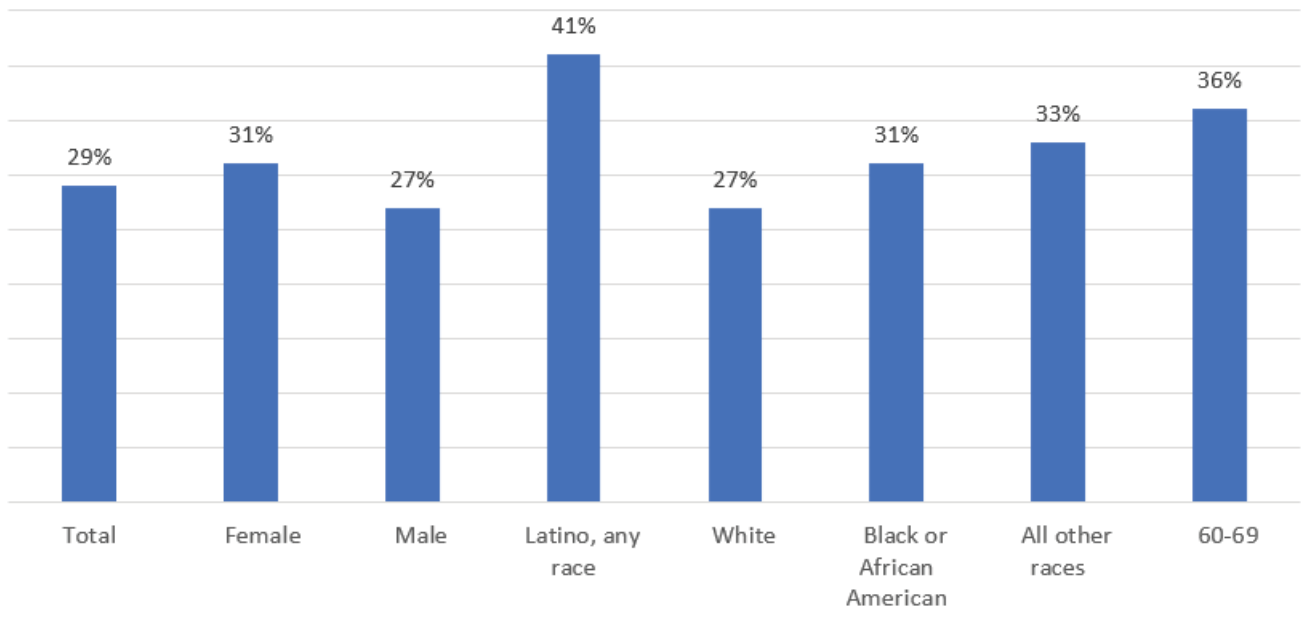
To estimate the effects of a scenario with no hiring disparities, we modeled a simple, hypothetical scenario in MINT to eliminate earnings gaps for workers aged 18 to 62. If a worker has more than \$1.00 in total earnings in the prior year, followed by less than \$1.00 earnings the current year, we identify that as a gap. We replace the zero year with the prior year of earnings, increased by wage growth. As a result, *among workers who previously had earnings gaps*, Social Security benefits would increase for workers aged 60 and older in 2030 as follows:

**Table 2. Percent with a Social Security benefit increase and percent change in number in poverty due to eliminating pay gaps**

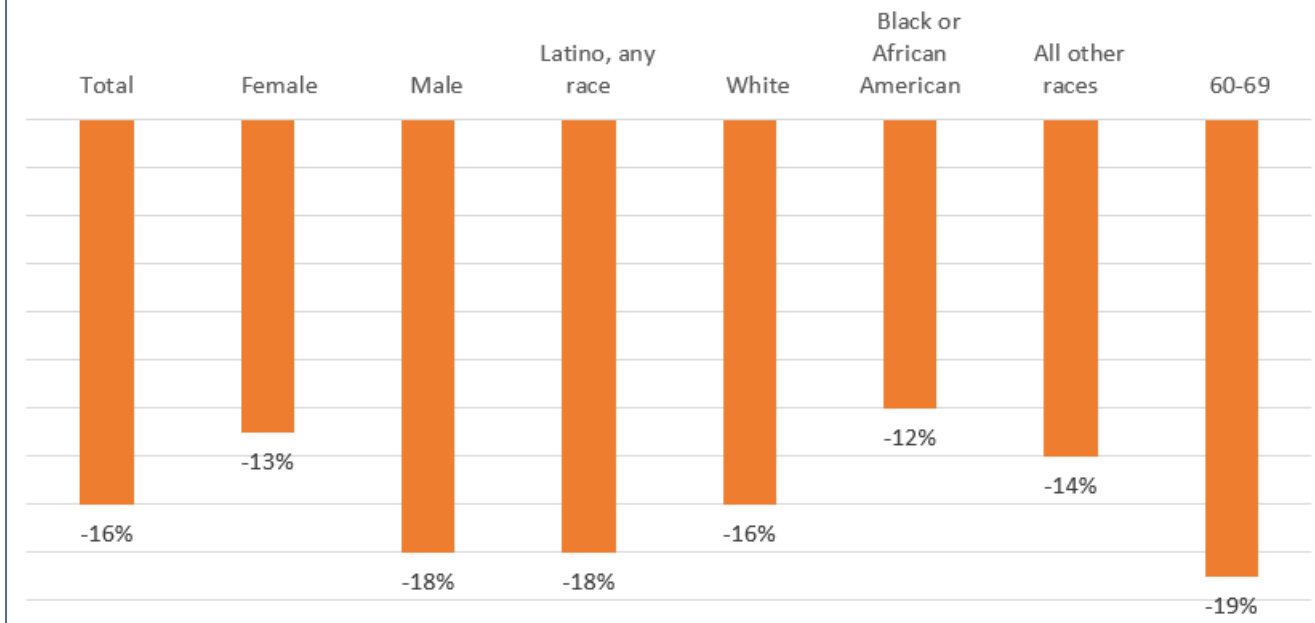
<b>Population: Social Security beneficiaries, age 60 or older in 2030</b>		
<i>Characteristic</i>	<i>Percent With A Benefit Increase</i>	<i>Percent Change In The Number In Poverty</i>
Total	29%	-16%
<i>Sex</i>		
Female	31%	-13%
Male	27%	-18%
<i>Race/Ethnicity</i>		
Latino, any race	41%	-18%
White	27%	-16%
Black or African American	31%	-12%
All other races	33%	-14%
<i>Age</i>		
60-69	36%	-19%
Source: Social Security Administration, MINT 8 using 2023 Trustees Report intermediate assumptions		

### *What if There Were No Inequities in Promotions?*

Percent with a benefit increase due to Eliminating Pay Gaps



Percent change in number in poverty due to Eliminating Pay Gaps



We modeled a simple, hypothetical scenario in MINT to estimate the effects of a scenario where there are no disparities in promotions for workers aged 18 to 59. This means workers who currently do not receive regular promotions would instead receive them. We defined a missed promotion as 5 consecutive years of positive earnings where there is an absence of at least 1 year in which there is an earnings increase of at least 10% compared to the prior year.

When that happens, we give the worker an earnings increase of 10% in one of those 5 years. We start from age 18 and move to older ages. If an observed or imputed promotion causes a new pay plateau at a later age, we add another promotion. Since promotions decline in frequency at older ages after earnings peak in the late 50s, we make these changes up until age 59. The results of these increases are seen in Table 3.

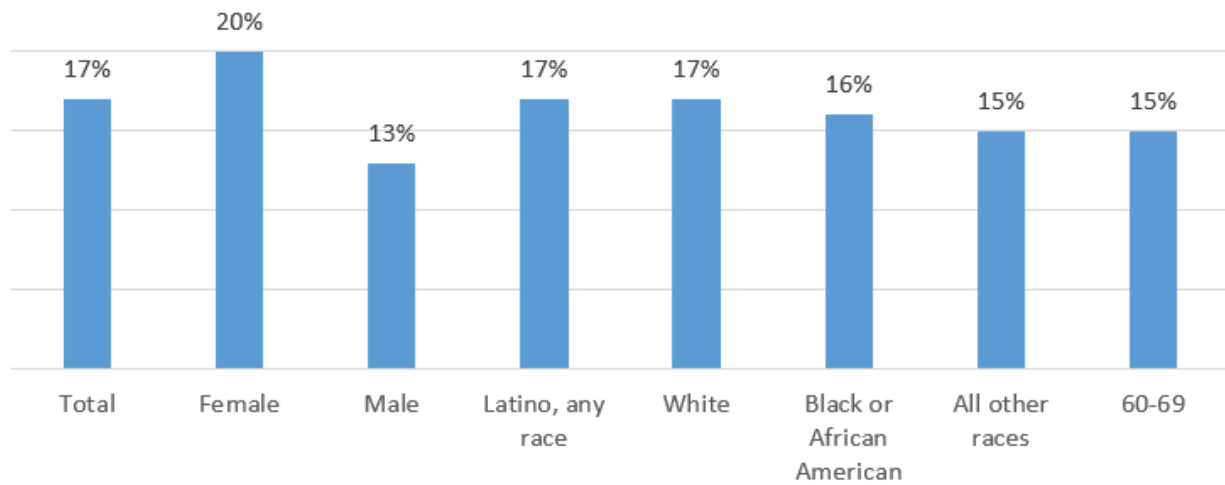
**Table 3. Percent with a Social Security benefit increase and percent change in number in poverty due to improving promotion equity**

<b>Population: Social Security beneficiaries, age 60 or older in 2030</b>		
<i>Characteristic</i>	<i>Percent With A Benefit Increase</i>	<i>Percent Change In The Number In Poverty</i>
Total	17%	-2%
<i>Sex</i>		
Female	20%	-3%
Male	13%	-2%
<i>Race/Ethnicity</i>		
Latino, any race	17%	-2%
White, non-Hispanic	17%	-3%
Black or African American	16%	-2%
All other races	15%	-1%
<i>Age</i>		
60-69	15%	-2%

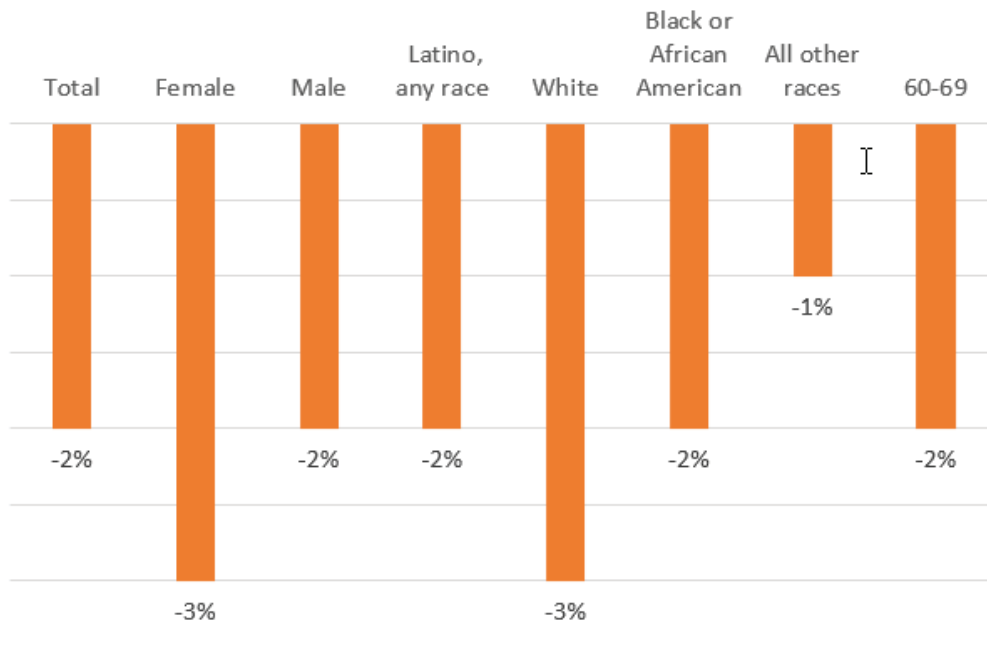
Source: Social Security Administration, MINT 8 using 2023 Trustees Report intermediate assumptions

Figure

### Percent of population with a benefit increase due to Improving Promotion Equity



### Percent change in the number in poverty due to Improving Promotion Equity



***What if There Were  
No Barriers in the***

## Labor Market?

To estimate the effects of a scenario where the labor market has no barriers or discrimination, we modeled a simple, hypothetical scenario in MINT. It increased pay for women and non-White workers who received lower earnings than White male workers with the same age and education. We begin by calculating median earnings for:

- College educated White male workers at each age.
- Non-college educated White male workers at each age.

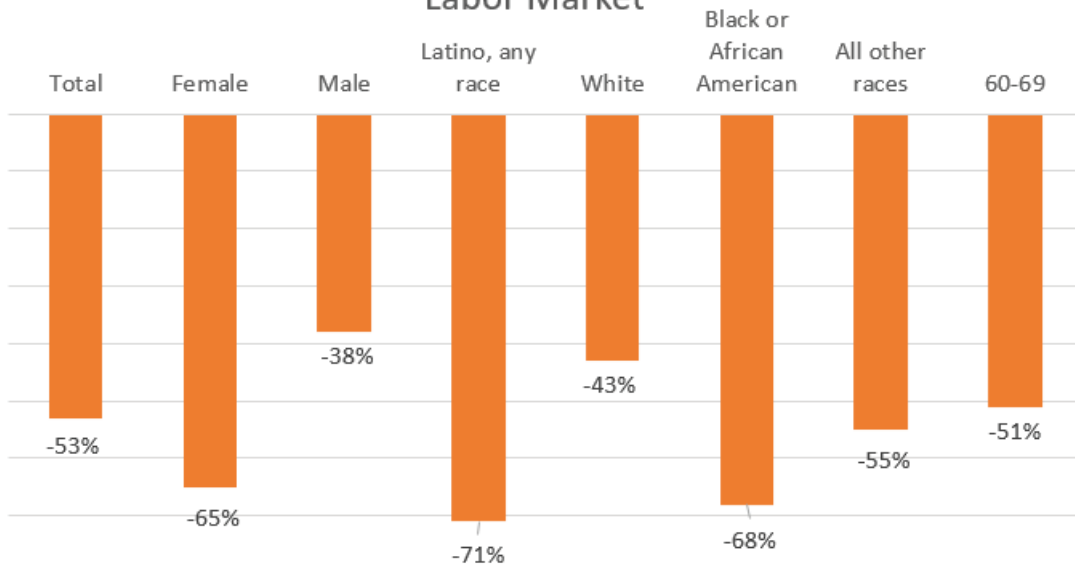
Next, if a woman or a non-White worker had positive earnings that are less than the median White male earnings for the corresponding age and education level, we increased their earnings to the White male median. This results in a 52% reduction in poverty and a 42% benefit increase for workers aged 60-69 in 2030. *Table 4* further outlines these results by race and ethnicity, gender, and country of birth.

Table 4. Percent with a Social Security benefit increase and percent change in number in poverty due to no barriers in the labor market

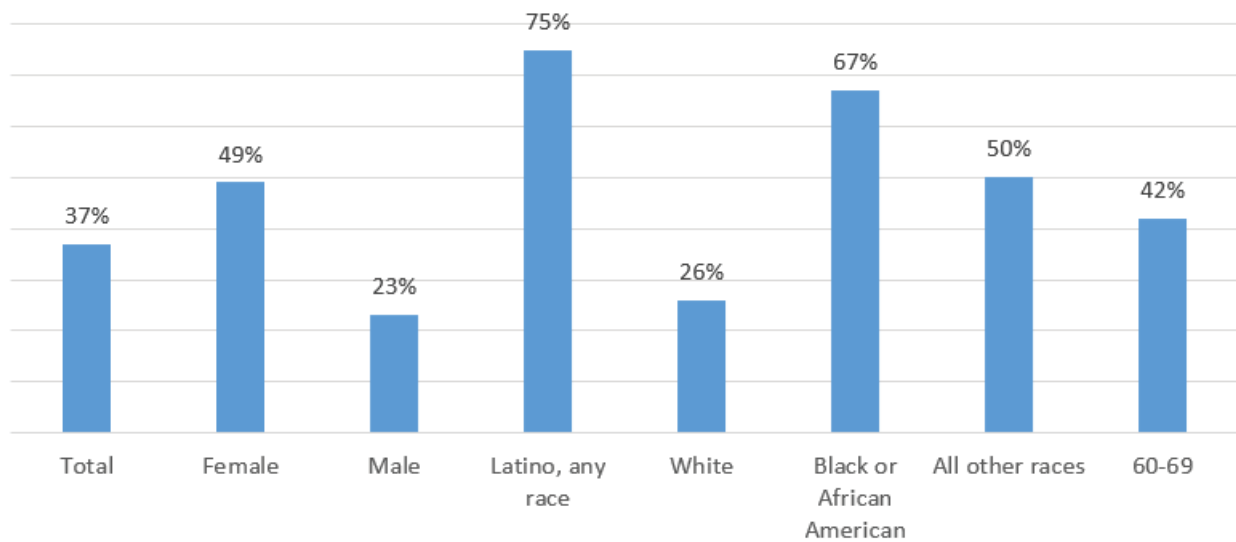
<b>Population: Social Security beneficiaries, age 60 or older in 2030</b>		
<i>Characteristic</i>	<i>Percent With A Benefit Increase</i>	<i>Percent Change In The Number In Poverty</i>
Total	37%	-53%
<i>Sex</i>		
Female	49%	-65%
Male	23%	-38%
<i>Race and Ethnicity</i>		
Latino, any race	75%	-71%
White	26%	-43%
Black or African American	67%	-68%
All other races	50%	-55%
<i>Age</i>		
60-69	42%	-51%

Source: Social Security Administration, MINT 8 using 2023 Trustees Report intermediate assumptions

### Percent change in number in poverty due to No Barriers in the Labor Market



### Percent of population with a benefit increase due to No Barriers in the Labor Market







## CONCLUSION

It is critical for work on retirement security to move beyond the deficit model approach. This model only addresses perceived limitations within workers. Instead, future studies should also recognize the evidence that shows structural barriers in the labor market. This includes discrimination and occupational segregation.

The enactment of federal laws barring workplace discrimination has been essential. The EEOC and DOL have endeavored to enforce this legislation by identifying violations and addressing them. However, the level of resources provided to these agencies is not sufficient to monitor the number of employers in the nation. It is also not sufficient to address all the charges filed by workers.

In the absence of sufficient resources for these agencies, workers who are affected by discrimination and occupational segregation will continue to be more likely to experience economic insecurity as they approach and live in retirement—even after a lifetime of labor market participation.



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- 180 U.S. Equal Employment Opportunity Commission. (n.d.). Prohibited employment policies/practices. Retrieved from, <https://www.eeoc.gov/prohibited-employment-policiespractices> (explaining prohibited employment policies and practices).
- 181 See *Arizona Governing Comm. v. Norris*, 463 U.S. 1073, 1079 (1983). Retrieved from <https://tile.loc.gov/storage-services/service/ll/usrep/usrep463/usrep4631073/usrep4631073.pdf> (stating “There is no question that the opportunity to participate in a deferred compensation plan constitutes a “conditio[n] or privileg[e] of employment,” and that retirement benefits constitute a form of ‘compensation.’”); see also *City of Los Angeles Dept. of Water and Power v. Manhart*, 435 U.S. 702, 712 n.23 (1978). Retrieved from <https://tile.loc.gov/storage-services/service/ll/usrep/usrep435/usrep435702/usrep435702.pdf> (finding that “[employer’s] pension benefits, and the contributions that maintain them, are “compensation” under Title VII.”); see also *Newport News Shipbuilding and Dry Dock Co. v. EEOC*, 462 U.S. 669, 682 (1983). Retrieved from <https://tile.loc.gov/storage-services/service/ll/usrep/usrep462/usrep462669/usrep462669.pdf> (affirming that health insurance and other fringe benefits are “compensation, terms, conditions, or privileges of employment.”); *Hishon v. King & Spalding*, 467 U.S. 69, 75 (1984) Retrieved from (“Such a benefit, though not a contractual right of employment, may qualify as a “privileg[e]” of employment under Title VII. A benefit that is part and parcel of the employment relationship may not be doled out in a discriminatory fashion. .”). See *infra* notes 10-17 and accompanying text.

- 182 See U.S. Department of Labor, Employee Benefits Security Administration. (n.d.). FAQs about retirement plans and ERISA. Retrieved from <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/retirement-plans-and-erisa-for-workers.pdf> (stating that ERISA is a federal law that sets minimum standards for retirement plans in private industry but ERISA does not require any employer to establish a retirement plan).
- 183 Employers that provide “fringe benefits” must generally do so without regard to an employee’s age. However, the ADEA contains exceptions that allow employers to provide lower benefits to older workers in limited circumstances. See 29 U.S.C. § 623(f)(2)(B)(i) (codifying the “equal cost” defense); 29 C.F.R. § 1625.10. Notably, the equal cost defense under the ADEA does not apply to the provision of retirement benefits. However, an employer may, in limited circumstances, offset the amount of other benefits received by an employee from the accrual of or allocation to that employee’s pension benefit. For more information see EEOC Compliance Manual, Section 3 Employee Benefits, at Background: Equal Cost and Offsets III. U.S. Equal Employment Opportunity Commission. (n.d.). Compliance manual: Section 3 employee benefits. Retrieved from <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/retirement-plans-and-erisa-for-workers.pdf>.
- 184 29 U.S.C. § 623(a)(1). Retrieved from <https://www.govinfo.gov/content/pkg/USCODE-2011-title29/html/USCODE-2011-title29-chap14.htm>.
- 185 42 U.S.C. § 12112(a). Retrieved from <https://www.govinfo.gov/content/pkg/USCODE-2023-title42/html/USCODE-2023-title42-chap126-subchapI-sec12112.htm>.
- 186 42 U.S.C. § 2000e–2(a)(1). Retrieved from <https://www.govinfo.gov/content/pkg/USCODE-2023-title42/pdf/USCODE-2023-title42-chap21-subchapVI-sec2000e-1.pdf>.
- 187 U.S. Equal Employment Opportunity Commission. (2000). Compliance manual: Section 10 compensation discrimination. OLC Control No. EEOC-CVG-2001-3, § 10-III. Retrieved from <https://www.eeoc.gov/laws/guidance/section-10-compensation-discrimination>. Compensation” has the same meaning as “wages” under the EPA.
- 188 *Id.*
- 189 29 U.S.C. § 206(d). Retrieved from <https://www.govinfo.gov/content/pkg/USCODE-2011-title29/html/USCODE-2011-title29-chap8-sec206.htm>.
- 190 *Id.*
- 191 29 C.F.R. § 1620.10. Retrieved from <https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XV/part-1625/section-1625.10>. Provides, in relevant part: “Under the EPA, the term “wages” generally includes all payments made to [or on behalf of] an employee as remuneration for employment. The term includes all forms of compensation irrespective of the time of payment, whether paid periodically or deferred until a later date, and whether called wages, salary, profit sharing, expense account, monthly minimum, bonus . . . Fringe benefits are deemed to be remuneration for employment.” “Fringe benefits” are defined as “includ[ing], e.g., such terms as medical, hospital, accident, life insurance and retirement benefits; profit sharing and bonus plans; leave; and other concepts.” 29 C.F.R. § 1620.11(a) (emphasis added); see also *Weinand v. Dep’t of Veterans Affs. of the State of Ill.*, No. 05-3232, 2006 WL 1319809, at \*2 (C.D. Ill. May 15, 2006).

- 192 Filing a Charge of Discrimination. U.S. Equal Employment Opportunity Commission (EEOC). Retrieved from <https://www.eeoc.gov/filing-charge-discrimination> (last visited Jan. 8, 2024). A charge of discrimination is a signed statement asserting that an employer engaged in employment discrimination and requesting EEOC to take remedial action.
- 193 In contrast, the ADEA provides for an equal cost defense, codified at 29 U.S.C. § 623(f)(2)(B)(i). The Commission’s regulations on the requirements of the defense, which were codified by Congress and are described in this section, can be found at 29 C.F.R. § 1625.10.
- 194 See Xu, J., Murphy, S. L., Kochanek, K. D., & Arias, E. (2022). Mortality in the United States, 2021. National Center for Health Statistics, NCHS Data Brief No. 456. Retrieved from <https://www.cdc.gov/nchs/products/databriefs/db456.htm>. (determining, based on U.S. mortality data on death rates by demographics, that life expectancy for males is 73.5 in 2021 and 79.3 for females).
- 195 Arizona Governing Comm. v. Norris, 463 U.S. 1073 (1983). Retrieved from <https://tile.loc.gov/storage-services/service/ll/usrep/usrep463/usrep4631073/usrep4631073.pdf> (finding it unlawful to pay lower monthly retirement benefits to women than to men); Los Angeles Dep’t of Water and Power v. Manhart, 435 U.S. 702 (1978). Retrieved from <https://tile.loc.gov/storage-services/service/ll/usrep/usrep435/usrep435702/usrep435702.pdf>. (determining it unlawful to require larger contributions from female than male employees to obtain the same benefit).
- 196 EEOC Compliance Manual at Title VII/EPA Issues II.A. Retrieved from <https://www.eeoc.gov/laws/guidance/section-2-threshold-issues>.
- 197 Manhart, 435 U.S. at 711. Retrieved from <https://tile.loc.gov/storage-services/service/ll/usrep/usrep435/usrep435702/usrep435702.pdf>.
- 198 Norris, 463 U.S. at 1086. Retrieved from <https://tile.loc.gov/storage-services/service/ll/usrep/usrep463/usrep4631073/usrep4631073.pdf>.
- 199 42 U.S.C. § 2000e(k). Retrieved from <https://www.govinfo.gov/content/pkg/USCODE-2023-title42/pdf/USCODE-2023-title42-chap21-subchapVI-sec2000e-1.pdf>.
- 200 EEOC Compliance Manual, Section 3 Employee Benefits, at Title VII/EPA Issues III.B. (Oct. 3, 2000). Retrieved from <https://www.eeoc.gov/laws/guidance/section-3-employee-benefits>.
- 201 42 U.S.C. § 12112(b)(2) . Retrieved from <https://www.govinfo.gov/content/pkg/USCODE-2023-title42/pdf/USCODE-2023-title42-chap126-subchapI-sec12112.pdf>. (defining prohibited discrimination to include participation in a contractual relationship with, inter alia, an entity “providing fringe benefits to an employee” with the effect of subjecting a qualified applicant or employee to prohibited discrimination); 29 C.F.R. § 1630.6(b)(same). Retrieved from <https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#1630.6>; 29 C.F.R. § 1630.4(f). Retrieved from <https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1630#1630.4>. (unlawful to discriminate based on disability with regard to “fringe benefits available by virtue of employment”).
- 202 See Castellano v. City of New York, 142 F.3d 58, 70 (2d Cir.), cert. denied, 525 U.S. 820 (1998). Retrieved from <https://casetext.com/case/castellano-v-city-of-new-york>.



- 203 Social Security Administration. (2024). Publication No. 05-10035, Retirement benefits. Retrieved from <https://www.ssa.gov/pubs/EN-05-10035.pdf>
- 204 In addition, the earlier an employee can start saving for retirement, the employee will be in a better place to achieve financial independence and retirement security later. Bureau of Labor and Statistics. (2013). Saving early for retirement. Retrieved from <https://www.bls.gov/careeroutlook/2013/fall/art02.pdf>.
- 205 See Government Accountability Office (GAO). (2011). Income security: Older adults and the 2007-2009 recession. Retrieved from <https://www.gao.gov/products/gao-12-76>.
- 206 29 U.S.C. § 623(a)(1). Retrieved from <https://www.govinfo.gov/app/details/USCODE-2011-title29/USCODE-2011-title29-chap14-sec623> The ADEA contains extensive provisions that explicitly govern analysis of discrimination claims involving benefits. Generally, employers must provide fringe benefits without regard to an employee's age. If benefits are not the same for older and younger workers, the employer will have to justify the difference. To receive equal benefits, older and younger workers must receive the same payment options, the same types of benefits, and the same amount of benefits. In limited circumstances, employers may provide a lower level of benefits or shorter duration of benefits to older workers under a bona fide employee benefit plan when the employer is spending the same amount, or incurring the same cost, for the benefit for older and younger. See 29 U.S.C. § 623(f)(2)(B)(i). This exception, known as the "equal cost" defense, applies only for benefits that become more costly to provide because of advancing age, including life insurance benefits, health insurance benefits, and disability benefits. The equal cost defense does not apply to retirement or severance benefits.
- 207 See, e.g., *Dediol v. Best Chevrolet, Inc.*, 655 F.3d 435 (5th Cir. 2011). Retrieved from <https://www.courtlistener.com/opinion/205500/dediol-v-best-chevrolet-inc/>. (holding that a fact finder could conclude that the plaintiff was subjected to a hostile work environment based on his age where the plaintiff's supervisor had made profane, age-based references to the plaintiff up to half a dozen times a day, the supervisor had engaged in physically threatening behavior toward the plaintiff, and the supervisor had "steered" sales away from the plaintiff and toward younger salespersons).
- 208 29 U.S.C. § 623(d). Retrieved from <https://www.govinfo.gov/app/details/USCODE-2011-title29/USCODE-2011-title29-chap14-sec623>.
- 209 29 CFR 1625.7. Retrieved from <https://www.ecfr.gov/current/title-29/subtitle-B/chapter-XIV/part-1625/section-1625.7>.
- 210 Equal Employment Opportunity Commission (EEOC). (n.d.). Compliance manual, section 10 compensation discrimination. Retrieved from <https://www.eeoc.gov/laws/guidance/section-10-compensation-discrimination>
- 211 *Id.*
- 212 Equal Employment Opportunity Commission (EEOC). (n.d.). Compliance manual, section 3 employee benefits. Retrieved from <https://www.eeoc.gov/laws/guidance/section-3-employee-benefits#l.%20Overview>.
- 213 See *Equal Employment Opportunity Commission v. Urbana School District No. 116*, 2023 WL 7354553. Retrieved from <https://www.eeoc.gov/newsroom/eeoc-wins-summary-judgment-against-urbana-school-district-no-116-age-discrimination-case>.

(ordering summary judgment in favor of Commission finding that Urbana School District No. 116 violated federal law by applying a discriminatory provision of CBA to limit the compensation of teachers aged 45 and older).

- 214 Fischer, J. D. (2012). Public policy and the tyranny of the bottom line in the termination of older workers. *South Carolina Law Review*, 53(2), 211-227. Retrieved from <https://scholarcommons.sc.edu/sclr/vol53/iss2/4/>. (explaining that finding work is more difficult for those over forty, and displaced older workers are likely to remain unemployed longer than younger persons. Earnings reductions are also common for older workers after being fired). *See also* EEOC, *The State of Age Discrimination and Older Workers in the U.S. 50 Years After the Age Discrimination in Employment Act (ADEA)*, (June 2018) (citing Peter Gosselin & Ariana Tobin, *Cutting 'Old Heads' at IBM, Pro Publica* (March 22, 2018)).
- 215 U.S. Government Accountability Office (GAO). (2011). *Income security: Older adults and the 2007-2009 recession*. Retrieved from <https://www.gao.gov/products/gao-12-76>
- 216 U.S. Government Accountability Office (GAO). (2020). *Retirement security: Older women report facing a financially uncertain future*. Retrieved from <https://www.gao.gov/products/gao-20-718t>.
- 217 U.S. Government Accountability Office (GAO). (2012). *Unemployed older workers: Many experience challenges regaining employment and face reduced retirement security*. Retrieved from <https://www.gao.gov/products/gao-12-445>.
- 218 Johnson, R. W., & Gosselin, P. (2018). *How secure is employment at older ages?* Retrieved from *How Secure Is Employment at Older Ages?* [https://www.urban.org/sites/default/files/publication/99570/how\\_secure\\_is\\_employment\\_at\\_older\\_ages\\_2.pdf](https://www.urban.org/sites/default/files/publication/99570/how_secure_is_employment_at_older_ages_2.pdf) (finding that “employer-related involuntary job separations increased sharply as workers grew older”); *see also* Coile, C. & Levine, P. *Reconsidering Retirement: How Losses and Layoffs Affect Older Workers 54-56* (National Bureau of Economic Research., Working Paper No. RRC NB10-18, 2010).
- 219 *Id.* To minimize their risk, employers may offer employees departing packages which include money or other benefits in exchange of a release or “waiver” of liability for all claims including claims raised with the EEOC. Such a contract is a severance agreement between the employer and the employee ending the employment due to a termination, layoff, or reduction in force. A waiver in a severance agreement generally is valid when an employee knowingly and voluntarily consents to the waiver. U.S. Code. (n.d.). 29 U.S.C. § 626(f). Retrieved from <https://www.govinfo.gov/app/details/USCODE-2020-title29/USCODE-2020-title29-chap14-subchapl-sec626>; EEOC, Q&A *Understanding Waivers of Discrimination Claims in Employee Severance Agreements*, at Part IV.A, Questions and Answers 6 and 7 (noting that a waiver of an ADEA claim is not valid unless the waiver satisfies the OWBPA requirements). OWBPA lists seven factors that must be satisfied for a waiver of age discrimination claims to be considered “knowing and voluntary.” *See* EEOC regulations *Waiver of Rights and Claims Under the Age Discrimination in Employment Act (ADEA)*, 29 C.F.R. Part 1625. In addition, such a waiver would be invalid and unenforceable if an employer used fraud, undue influence, or other improper conduct to coerce the employee to sign the waiver. EEOC, Q&A *Understanding Waivers of Discrimination Claims in Employee Severance Agreements*, at Part IV.A, Question and Answer 7. If the employee alleges that the waiver agreement was not knowing and voluntary under the ADEA, the employee is not required to return consideration given for that agreement. 29 C.F.R § 1625.23.

- 220 29 U.S.C. § 623(f)(2)(B)(ii). *See also*, U.S. Equal Employment Opportunity Commission (EEOC). (n.d.). Q&A: Understanding waivers of discrimination claims in employee severance agreements. EEOC-NVTA-2009-2 (July 15, 2009). Retrieved from <https://www.eeoc.gov/laws/guidance/qa-understanding-waivers-discrimination-claims-employee-severance-agreements>
- 221 U.S. Equal Employment Opportunity Commission (EEOC). (n.d.). Compliance manual: Section 3 employee benefits. Retrieved from <https://www.eeoc.gov/laws/guidance/section-3-employee-benefits#l.%20Overview> .
- 222 *See* Rix, S. E. (2015). Long-term unemployment: Greater risks and consequences for older workers. AARP Public Policy Institute. Retrieved from ( reporting that older workers who do lose a job spend longer period out of work, and if they do find another job, it tends to pay less than the one they left) available at [https://www.aarp.org/content/dam/aarp/ppi/2015-2/AARP953\\_LongTermUnemployment\\_FSFeb2v1.pdf](https://www.aarp.org/content/dam/aarp/ppi/2015-2/AARP953_LongTermUnemployment_FSFeb2v1.pdf) .
- 223 James, J. B. (2017). Written testimony of Jacquelyn B. James, PhD, B.C., The ADEA @ 50—More relevant than ever, meeting of the U.S. Equal Employment Opportunity Commission. Retrieved from <https://www.eeoc.gov/meetings/meeting-june-14-2017-adea-50-more-relevant-ever/james;>
- Levin, J., & Levin, W. C. (1980). Ageism: Prejudice and discrimination against the elderly. Wadsworth Publishing Co.; EEOC, The State of Age Discrimination and Older Workers in the U.S. 50 Years After the Age Discrimination in Employment Act (ADEA) § IV.A (2018), <https://www.eeoc.gov/reports/state-age-discrimination-and-older-workers-us-50-years-after-age-discrimination-employment>. *See also*, Posthuma, R. A., & Campion, M. A. (2009). Age stereotypes in the workplace: Common stereotypes, moderators, and future research directions. *Journal of Management*, 35(1), 158–188. <https://doi.org/10.1177/0149206308318617>. identifying and discussing the related research surrounding workplace age stereotypes).
- 224 *Id. See*, Rosen, B., & Jerdee, T. H. (1976). The influence of age stereotypes on managerial decisions. *Journal of Applied Psychology*, 61(4), 428–432. <https://doi.org/10.1037/0021-9010.61.4.428> (college business students playing the role of managers were more likely to fire or ignore an employee rather than retain or retrain if the employee was described as an “older employee.”).
- 225 *Id.*
- 226 U.S. Equal Employment Opportunity Commission (EEOC). (2016). Commission hearing on May 18, 2016, promoting diverse and inclusive workplaces in the tech sector. Retrieved from <https://www.eeoc.gov/meetings/meeting-may-18-2016-promoting-diverse-and-inclusive-workplaces-tech-sector>.
- 227 McCann, L. A. (2016). Written testimony of Laurie A. McCann, AARP Foundation Litigation, promoting diverse and inclusive workplaces in the tech sector, meeting of the U.S. Equal Employment Opportunity Commission. Retrieved from
- 228 *Id. See*, generally, *Marlow v. Chesterfield County School Board*, 749 F. Supp. 2d 417 (E.D. Va. 2010). Retrieved from <https://www.courtlistener.com/opinion/2469286/marlow-v-chesterfield-county-school-board/> (finding that “digital natives” or “21<sup>st</sup> Century skills” can be used to establish a claim of age discrimination).

- 229 *Heath v. Google LLC*, No. 15-cv-01824-BLF, 2019 WL 3842075 (N.D. Cal. Aug. 15, 2019) Retrieved from <https://casetext.com/case/heath-v-google-llc-11>. (granting joint motion for approval of \$11 million settlement of claims under the ADEA and California Fair Employment and Housing Act).
- 230 U.S. Government Accountability Office (GAO). (2007). Retirement security: Women face challenges in ensuring financial security in retirement (GAO-08-105). Retrieved from <https://www.gao.gov/products/gao-08-105>. (noting that life expectancy in the United States has steadily increased over the last 50 years, however the difference in life expectancy at age 65 for women and men grew from 1.5 years in 1940 to 4.4 years in 1980 and as a result women spend more time in retirement than men). Based on U.S. Centers for Disease Control and Prevention (CDC), the life expectancy for men is 74.8 years and for females: 80.2 years. U.S. Centers for Disease Control and Prevention (CDC). (2022). Mortality in the United States, 2022. Retrieved from <https://www.cdc.gov/nchs/fastats/life-expectancy.htm#:~:text=Life%20expectancy%20at%20birth%20Both%20sexes%3A%2077.5,years%20Males%3A%2074.8%20years%20Females%3A%2080.2%20years>
- 231 U.S. Equal Employment Opportunity Commission (EEOC). (n.d.). 2017 and 2018 pay data collection: Pay by sex and race/ethnicity - Private employers and federal contractors (EEO-1, Component 2). Retrieved from <https://www.eeoc.gov/data/2017-and-2018-pay-data-collection>. (containing employer-level workforce demographic and pay data, reported by pay band and demonstrating that women are paid less than men in the aggregate, and Black women and American Indian or Alaska Native women are paid the least). See *also* U.S. Government Accountability Office (GAO). (2020). Retirement security: Older women report facing a financially uncertain future (GAO-20-718T). Retrieved from <https://www.gao.gov/products/gao-20-718t> (stating that “women 65 or older had less retirement income than men and were nearly twice as likely as men to be living in poverty”).
- 232 Boivie, I. (2009). Shattering the retirement glass ceiling: Women need a three-legged stool (Issue Brief). National Institute on Retirement Security. Retrieved from <https://www.nirsonline.org/reports/shattering-the-retirement-glass-ceiling-women-need-a-three-legged-stool/> (“although women have made some gains in the workplace, today women are still much less likely to have access to a workplace retirement plan than men”).
- 233 In its April 2023 report, the U.S. Bureau of Labor Statistics found that the labor force participation rate was 71.7% for women with children under 18. Women make up 47.0% share of total employment. U.S. Bureau of Labor Statistics. (2023). Women in the labor force: A databook (Report 1103). Retrieved from <https://www.bls.gov/opub/reports/womens-databook/2022/home.htm> [hereinafter *BLS Databook*].
- 234 U.S. Equal Employment Opportunity Commission (EEOC). (2007). Enforcement guidance: Unlawful disparate treatment of workers with caregiving responsibilities (OLC Control No. EEOC-CVG-2007). Retrieved from <https://www.eeoc.gov/laws/guidance/enforcement-guidance-unlawful-disparate-treatment-workers-caregiving-responsibilities> [hereinafter *EEOC Caregiving Guidance*]. See generally Laura T. Kessler, *The Attachment Gap: Employment Discrimination Law, Women’s Cultural Caregiving, and the Limits of Economic and Liberal Legal Theory*, 34 U. MICH. J.L. REFORM 371, 378-

80 (2001). Retrieved from [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=285192](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=285192). (discussing women’s continued role as primary caregivers in our society and citing studies). Bureau of Labor Statistics, U.S. Dep’t of Labor, Employment Characteristics of Families – 2022 (Apr. 19, 2023) U.S. Bureau of Labor Statistics. (2023). Employment characteristics of families – 2022 (News Release). Retrieved from <https://www.bls.gov/news.release/pdf/famee.pdf#:~:text=The%20labor%20force%20participation%20rate%E2%80%94the%20percent%20of%20the%20higher%20than%20the%202019%20value%20of%2072.3%20percent>. The labor force participation rate—the percent of the population working or looking for work—for all mothers with children under age 18 was 72.9 percent in 2022, up by 1.7 percentage points from the prior year and higher than the 2019 value of 72.3 percent.

235 See Paulise, L. (2024). How to navigate career breaks: Pros and cons of taking sabbaticals. Forbes. Retrieved from <https://www.forbes.com/sites/lucianapaulise/2024/04/02/how-to-navigate-career-breaks-pros-and-cons-of-taking-sabbaticals/> (noting that almost 43% more women have a career break listed on their LinkedIn profile than men, and listing full-time parenting as one of the most common reasons why women take a career break); Amy B. Valente, Back on the Career Path: A Qualitative Study of Employment Transitions for Women Who Take a Career Break and Their Re-entry Experiences (2019) (Ph.D. thesis, Northeastern University).

236 Williams, J. C. & Segal, N. Beyond the Maternal Wall: Relief for Family Caregivers Who Are Discriminated Against on the Job, 26 Harv. Women’s L.J. 77 (2003). «Beyond the Maternal Wall: Relief for Family Caregivers Who Are Discriminated Against on the Job» by Joan C. Williams and Nancy Segal (discussing “maternal wall” discrimination, which limits the employment opportunities of workers with caregiving responsibilities).

237 Although both women and men report work absences due to childcare, women account for 82-85% of all the absences related to childcare. Women are more than four times more likely to miss work than men due to childcare. U.S.A. Facts. (2023). Who is missing work due to childcare issues? Retrieved from [https://usafacts.org/data-projects/childcare-work-absences?utm\\_campaign=earned&utm\\_content=link&utm\\_medium=affiliate&utm\\_source=usnews](https://usafacts.org/data-projects/childcare-work-absences?utm_campaign=earned&utm_content=link&utm_medium=affiliate&utm_source=usnews). See also Julie Haines, J. (2023). Gender reveals: Data shows disparities in child care roles. U.S. News & World Report. Retrieved from <https://www.usnews.com/news/health-news/articles/2023-05-11/gender-reveals-data-shows-disparities-in-child-care-roles>. The conflict and barriers are exacerbated by events like the COVID-19 pandemic which created a greater disruption. For women in the workforce as childcare providers closed their doors, they were required to care for other family members. According to the U.S. Census Bureau, mothers actively working declined 21.1 percentage points while the share of fathers dropped 14.7 percentage points in April 2020 compared to the previous month and compared to April 2019. Heggeness, M. L., Fields, J., García Trejo, Y. A., & Schulzetenberg, A. (2021). Tracking job losses for mothers of school-age children during a health crisis. U.S. Census Bureau. Retrieved from <https://www.census.gov/library/stories/2021/03/moms-work-and-the-pandemic.html>.

238 Smith, P. R. (2004). Elder care, gender, and work: The work-family issue of the 21st century. Berkeley Journal of Employment and Labor Law, 25, 351-360. Retrieved from <https://lawcat.berkeley.edu/record/1119236?ln=en&v=pdf> (noting that women provide about 70% of unpaid elder care). EEOC Caregiving Guidance at I.A.

- 239 Horovitz, B. (2023). New AARP report finds family caregivers provide \$600 billion in unpaid care across the U.S. American Association of Retired Persons (AARP). Retrieved from <https://www.aarp.org/pri/topics/ltss/family-caregiving/valuing-the-invaluable-2015-update/>. (stating that an AARP report finds that care provided by unpaid family caregivers in the U.S. was valued at \$600 billion in 2021) available at
- 240 Smith, P. R. (2004). Elder care, gender, and work: The work-family issue of the 21st century. *Berkeley Journal of Employment and Labor Law*, 25, 351-360. Retrieved from <https://lawcat.berkeley.edu/record/1119236?ln=en&v=pdf>. (noting that women provide about 70% of unpaid elder care); *see also* Nevada Department of Human Resources v. Hibbs, 538 U.S. 721 (2003). Retrieved from <https://tile.loc.gov/storage-services/service/ll/usrep/usrep538/usrep538721/usrep538721.pdf>. (noting that working women provide two-thirds of the nonprofessional care for older, chronically ill, and disabled individuals).
- 241 Clemetson, L. (2006, February 9). Work vs. family, complicated by race. *The New York Times*, p. G1. Retrieved from <https://www.nytimes.com/2006/02/09/fashion/thursdaystyles/work-vs-family-complicated-by-race.html>. EEOC Caregiving Guidance at I.A.
- 242 U.S. Equal Employment Opportunity Commission (EEOC). (2007). Enforcement guidance: Unlawful disparate treatment of workers with caregiving responsibilities (OLC Control No. EEOC-CVG-2007). Retrieved from <https://www.eeoc.gov/laws/guidance/enforcement-guidance-unlawful-disparate-treatment-workers-caregiving-responsibilities>. (In 2021, 69.0% of Black or African American women with children under the age of 3 were in the workforce, compared with 64.4% of White women, 53.7% of Asian American women, and 51.7% of Hispanic women).
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- 244 Women’s Institute for a Secure Retirement (WISER). (2016). Caregiving and retirement security: Fact sheet. Retrieved from <https://wiserwomen.org/resources/caregiving-resources/caregiving-and-retirement-security/>. (noting that caregivers often will decide to work part-time, quit their jobs, decline a promotion requiring longer hours or pass up a training opportunity requiring travel and that caregivers spend on average 24.4 hours each week providing care, leaving them with less time for paid work). Susan C. Reinhard, Selena Calderan, Ari Houser, and Rita B. Choula, *Valuing the Invaluable: 2023 Update Strengthening Supports for Family Caregivers*, AARP Public Policy Institute (March 2023) Reinhard, S. C., Calderon, S., Houser, A., & Choula, R. B. (2023). *Valuing the invaluable: 2023*

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- 275 Social Security Administration. (2024, April 14). MINT 8 modeling results. Retrieved from <https://www.ssa.gov/policy/docs/projections/user-guide.html>
- 276 Social Security Administration. (n.d.). Supplemental Security Income benefits and Social Security benefits adjustments for non-earnings income. Retrieved from <https://www.ssa.gov/policy/docs/projections/methodology.html#:~:text=We%20use%20the%20Modeling%20Income,taxpayers%20by%20race%20and%20ethnicity> We also allow Supplemental Security Income benefits to change in response to Social Security benefits, but all other non-earnings income amounts remain unchanged.

