
The Senior Precariat

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With steadily rising life expectancy and the collapse of private-sector pensions, more and more U.S. workers are remaining in the labor force well beyond the traditional retirement age of sixty-five. Some do so because they enjoy their jobs and remain healthy enough to continue performing effectively. But the vast majority of those who are “working longer” do so because of economic need. Yet older workers face limited employment options due to rampant age discrimination in the mainstream labor market—despite the fact that such discrimination has been prohibited by law for half a century in the United States. Older workers laid off or otherwise “displaced” often find it difficult or impossible to find a new position with similar compensation. As a result, they have increasingly turned to non-standard work in which age barriers to work tend to be lower. They find work as temps, freelancers, “independent contractors,” or in short-term contract jobs—almost always receiving lower pay than in their previous jobs and few (if any) benefits.

... [O]lder workers face limited employment options due to rampant age discrimination in the mainstream labor market ...

A 2015 survey conducted by economists Larry Katz and Alan Krueger found that virtually all U.S. employment growth in the 2005-2015 period was due to the growth of “alternative work arrangements” (AWA)—defined as temporary help agency work, on-call work, contract work, and freelancing or independent contracting.¹ Their study also exposed a dramatic age gradient in this part of the labor market, with the highest prevalence and the

fastest growth of AWA concentrated in the age group of fifty-five to seventy-five, as Figure 1 shows.² There is also a striking gender disparity, with the prevalence of AWA among women (all ages) doubling—from 8.3 percent in 2005 to 17 percent in 2015, while among men (all ages), AWA grew from 11.5 to 14.7 percent over the same period.

... [T]he highest prevalence and the fastest growth of AWA concentrated in the age group of 55 to 75 ...

Contract work (working for one company under a fixed-term contract, as distinct from being an independent contractor) has expanded more rapidly than other types of AWA for older workers since 2005. But in 2015, by far the largest group of AWA workers in the fifty-five to seventy-five age group were independent contractors, as Figure 2 shows.³ By contrast, the much-vaunted “gig” economy hosted by online platforms like Uber and TaskRabbit made up only 0.5 percent of the U.S. workforce. The evidence suggests that the growing but still relatively small gig economy is dominated by younger workers (in contrast to other types of AWA), despite media reports featuring contented retirees driving for Uber and in other such jobs. A 2016 Pew survey found that 23 percent of respondents who reported earnings in the gig economy were students, while only 5 percent were retired. As Figure 3 shows, this study found that workers below fifty dominated

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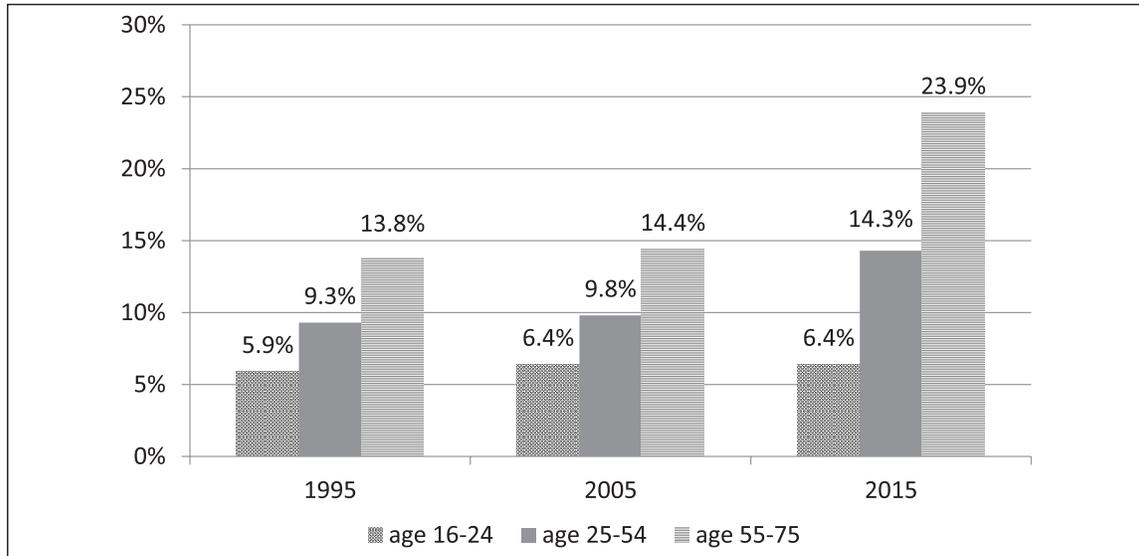


Figure 1. Employment in “alternative work arrangements” by age, 1995-2015.

Source: Data from Katz and Krueger, March 2016.

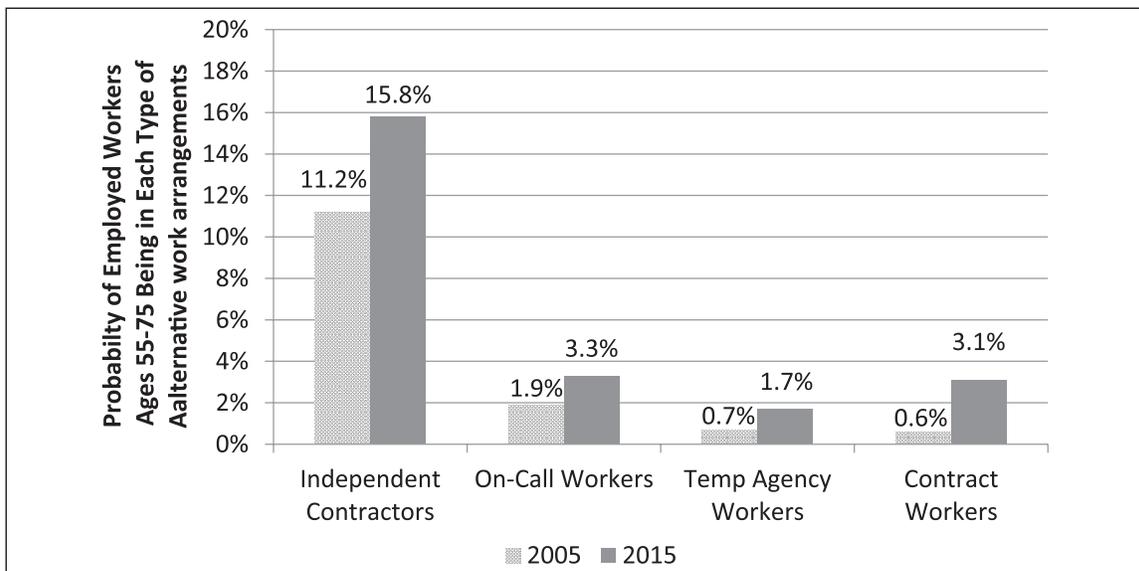


Figure 2. Employment growth among workers aged fifty-five to seventy-five, by type of work, 2005-2015.

Source: Data from Katz and Krueger, March 2016.

the gig sector, while older workers were under-represented relative to their share of the adult population.⁴ That underrepresentation was particularly extreme for those over sixty-five.⁵

Unemployment, the Great Recession, and Older Workers

Older workers generally had lower unemployment rates than their younger counterparts before, during, and after the Great Recession. For

example, in 2010, the unemployment rate was 7.1 percent for workers aged fifty-five to sixty-four, less than half the 15.5 percent rate among workers aged twenty to twenty-four. Overall, unemployment is highest for young workers and gradually declines with age, plateauing at about age forty-five.⁶ (It should be noted that unemployment rates vary widely, especially by race and education, *within* each age group.)

However, older workers who lost their jobs in the aftermath of the 2008 crash faced far

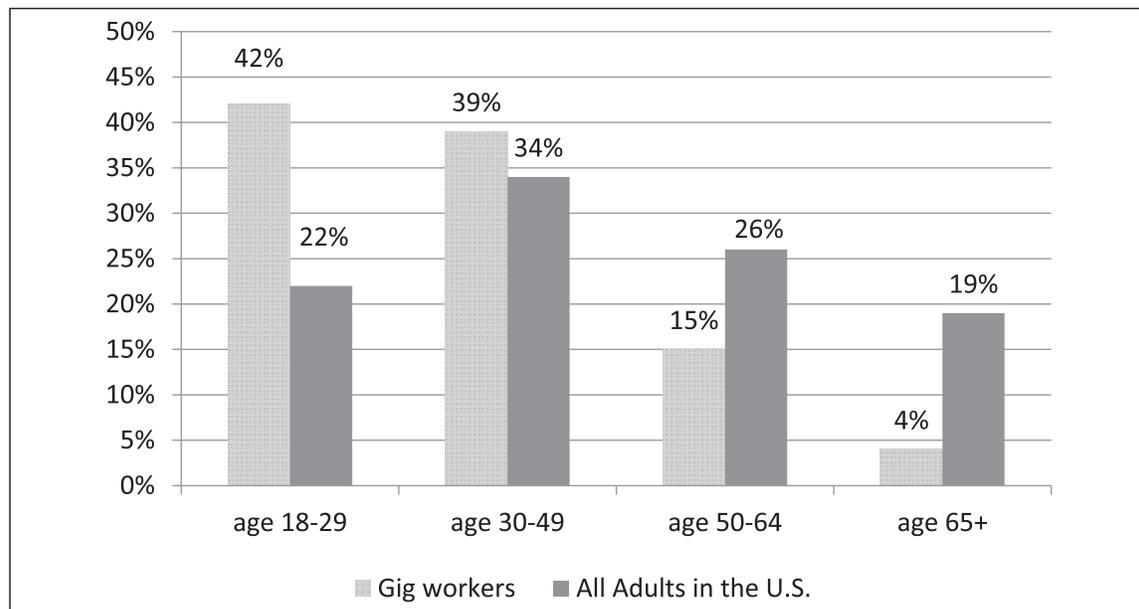


Figure 3. Adults reporting earnings from “gig” work and adults in the U.S. population, by age, 2016.
Source: Pew Research Center, 2016.

greater difficulty than younger workers in finding new positions. In February 2010, the duration of unemployment among workers aged sixteen to twenty-four was 20.3 weeks, whereas for those aged fifty-five and over, it was a far longer 35.5 weeks.⁷ And with the Great Recession, long-term unemployment (six months or more) skyrocketed among workers aged fifty to sixty-four: whereas in 2006-2007, 26 percent of the unemployed in that age group were out of work for 6 months or longer, by 2012-2013, the figure had nearly doubled, to 50 percent.⁸ Moreover, older workers who did find new jobs often were forced to accept far lower compensation. One estimate found that workers aged fifty-four to sixty-five earned an average of 13.5 percent less in their new jobs than in their pre-Recession positions. In addition to lower wage or salary rates, benefits are often less generous in these new jobs.⁹

... [W]ith the Great Recession, long-term unemployment (six months or more) skyrocketed among workers aged 50 to 64 ...

The Great Recession is behind us, but the employment challenges facing older workers who are laid off or fired show every indication

of continuing in the rapidly changing U.S. labor market. Older workers are overrepresented in occupations that are projected to shrink in the coming years, as Figure 4 shows.¹⁰ Among these are unionized jobs in private-sector “legacy” industries, most notably manufacturing, and unionized positions in the public sector.

More generally, the unionization rate is higher for older than younger workers (with the notable exception of workers over age sixty-five), as Figure 5 shows.¹¹ This reflects the fact that turnover tends to be lower in unionized jobs than in comparable nonunion jobs, in part because the former typically have higher compensation rates. In addition, unionization reduces the likelihood of age discrimination—especially under collective bargaining agreements that dictate laying off the least senior workers first. The fact that unions have failed to organize in sectors where young workers are concentrated—indeed, the limited organizing of unorganized workers generally in recent years—is another contributing factor.¹² At the other end of the spectrum, unionization rates are lower for workers over age sixty-five (see Figure 5) mainly because they are underrepresented in highly unionized industries like construction and manufacturing and overrepresented in such poorly unionized fields as agriculture, real estate, work in religious organizations, and taxi driving.¹³

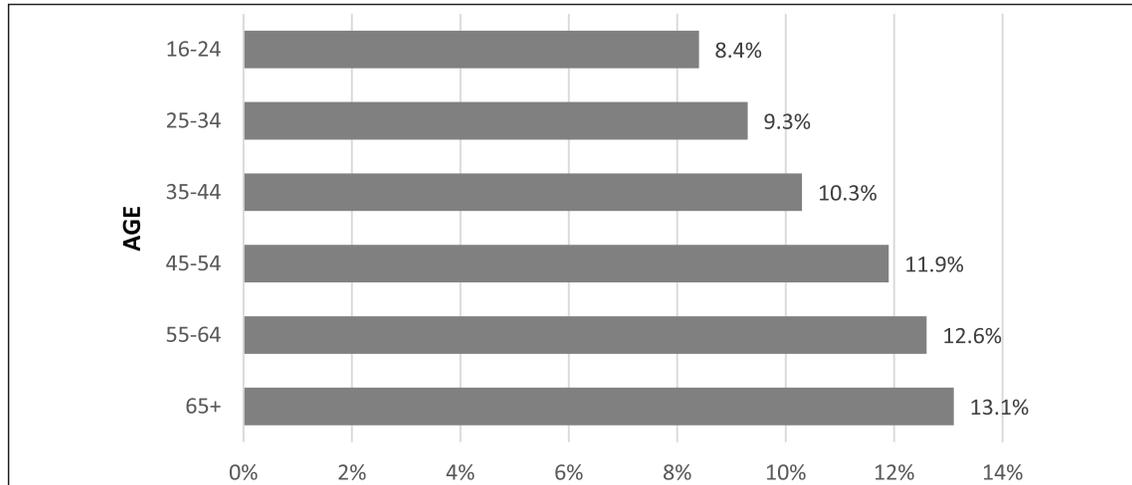


Figure 4. Share of workers in occupations projected to shrink between 2017 and 2027, by age.
Source: Jed Kolko analysis of U.S. Bureau of Labor Statistics and Census Data, 2016.

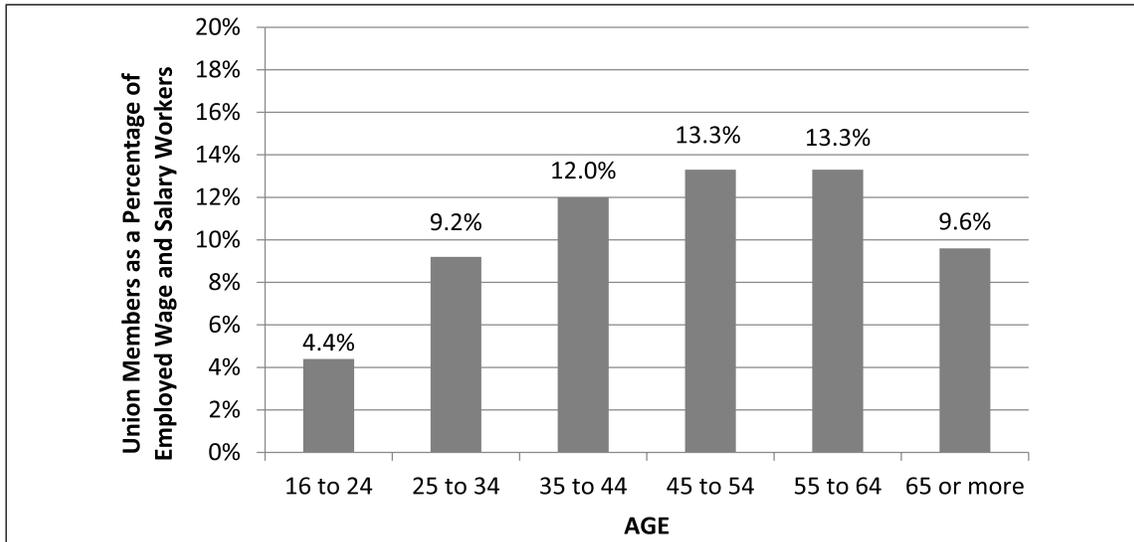


Figure 5. Unionization rates, by age, 2016.
Source: Data from U.S. Bureau of Labor Statistics, 2017.

Age Discrimination

The main factor driving the steep age gradient in precarious work or AWA shown in Figure 1, however, is garden-variety discrimination against older workers, especially in regard to hiring, which pervades the mainstream labor market. Employers typically believe that older workers are slower, less flexible, and more difficult to train than younger workers.¹⁴ This hegemonic view was bluntly articulated by University of Chicago legal scholar Richard A. Epstein in 1992: “Production ceases at death or incapacitation,”

he declared, “and it may well fall before that.”¹⁵

This widespread perspective, combined with the fact that in most U.S. workplaces older workers typically receive greater compensation (not only pay but also health care benefits) than their younger counterparts, helps explain why age discrimination is so pervasive.

Congress considered including a prohibition on age discrimination in Title VII of the Civil Rights Act of 1964, which bans race and sex discrimination. The latter was initially proposed by a conservative Southern legislator who hoped it would kill the bill, yet it did

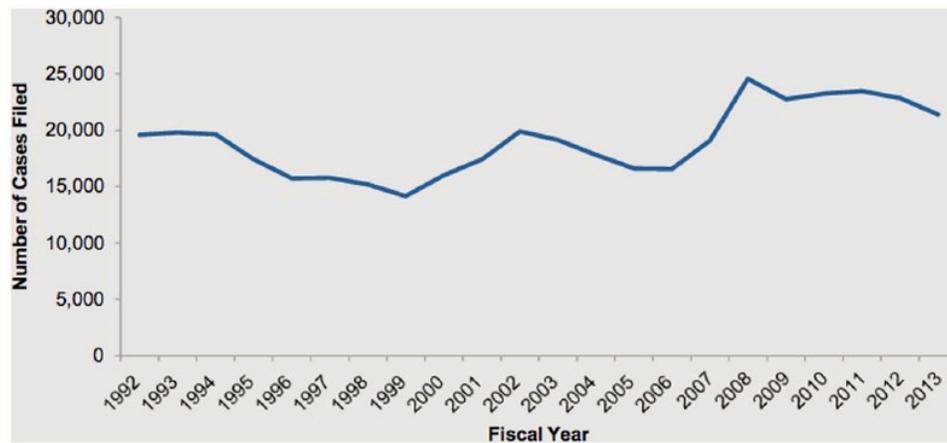


Figure 6. Age discrimination cases filed with the U.S. Equal Employment Opportunity Commission, 1992-2013.

Source: Data from U.S. Equal Employment Opportunity Commission.

become law. In contrast, the proposal to add age discrimination to Title VII was voted down. Three years later, however, Congress passed the Age Discrimination in Employment Act (ADEA), which was meant to protect workers aged forty to sixty-five (later this was raised to 70) from discrimination. A 1986 amendment prohibited most mandatory retirement plans.¹⁶

... [M]any online job search sites have drop-down menus for dates of graduation or first job that go back only to 1980 ...

Although in theory the ADEA has prohibited age discrimination for half a century, in practice the law has been notoriously ineffective. In 1967, just prior to the ADEA's passage, half of all private-sector job openings *explicitly* barred applicants over fifty-five years old, and one-fourth of all such openings barred those over forty-five.¹⁷ After ADEA became law, discrimination was no longer so overt, but the limited evidence available suggests that it remains a standard business practice. Surveys by AARP, for example, find that most older workers—72 percent of women and 57 percent of men aged forty-five to seventy-four—report having seen or experienced age discrimination; other surveys similarly have found that this is a widespread phenomenon.¹⁸ The ADEA was passed long before the recent expansion of AWA, but with the exception of independent contracting

(a type of self-employment), it covers this burgeoning sector of the labor market.

The U.S. Equal Employment Opportunity Commission, the government agency charged with ADEA enforcement, receives fifteen thousand to twenty thousand age discrimination complaints annually (and even more in recession years, with 2008 registering a record number) as Figure 6 shows.¹⁹ The few audit studies (in which investigators submit fake resumes to employers that differ only in indicators of age, such as college graduation dates or the date the applicant began her first job) have consistently found that older job applicants receive fewer interviews or callbacks than younger ones; this is particularly the case for older women.²⁰ And a recent story on National Public Radio revealed that many online job search sites have drop-down menus for dates of graduation or first job that go back only to 1980 (although after the story aired, some of the sites corrected this).²¹

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From the outset, ADEA carved out “bona fide occupational qualifications” from coverage. For example, airplane pilots, fire fighters, and others whose jobs involve public safety are exempt. The more consequential and pernicious doctrine, which can be legally invoked by employers as a

defense against age discrimination charges under ADEA, is that hiring and termination decisions affecting older workers involve a “reasonable factor other than age” (RFOA). For example, an economically motivated decision to lay off the best compensated workers—who happen to be older and more senior than the workers who remain employed—is acceptable under RFOA, as the U.S. Supreme Court ruled in a 1993 case, *Hazen Paper Co. v. Biggins*. Four years later, in *Marks v. Lorai Corp.*, a California Appellate Court judge made the underlying logic more explicit, ruling that “cost-based layoffs often constitute perfectly rational business practices grounded in employers’ concern for economic viability . . . Congress never intended the age discrimination laws to inhibit the free market economy.”²²

Facing formidable obstacles to re-employment in the mainstream labor market, . . . [older] workers flock instead to . . . “alternative work arrangements” . . .

Although women and racial/ethnic minorities are especially vulnerable to age discrimination, they are often advised to seek remedies under Title VII instead. This is because age discrimination is inherently difficult to prove, primarily due to the ADEA’s evisceration by judicial decisions that make it nearly impossible to bring a successful case. Especially consequential in this regard was a 5-4 Supreme Court decision in 2009, *Gross v. FBL Financial Services Inc.*, for which the majority opinion was written by Clarence Thomas. The Court ruled that a worker alleging age discrimination must show that he would not have suffered “but for” his age. This essentially means that the standards required for an ADEA claim are much more demanding than those required for race and sex discrimination cases under Title IX: plaintiffs must prove that age discrimination alone, and *no other* factor(s), led to their termination, being passed over in hiring (or in the *Gross* case, demotion).²³ Largely for these reasons, most plaintiffs in ADEA cases are white male white-collar workers in their fifties—who are not part of any other legally protected

category—typically alleging wrongful termination due to age discrimination.²⁴

Future Prospects

Age discrimination is ubiquitous in the U.S. labor market, despite the fact that it has been legally prohibited for half a century. Older workers who are laid off or “displaced” from a job often have great difficulty finding a new position with comparable responsibilities and compensation. Facing formidable obstacles to re-employment in the mainstream labor market, these workers flock instead to temporary work, contract work, freelancing, and other “alternative work arrangements,” categories in which workers over fifty-five are now highly overrepresented. Apart from anecdotal accounts, little is known about how older workers are faring in these precarious jobs, either economically or in terms of personal satisfaction.²⁵ That should be a high priority for future research.

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Notes

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