

TYPES NOT MAPPED YET October 27, 2020 | TTR not mapped yet | Lori W. Jones

COVID-19 and older employees: What employers should know and how they can lessen the impact

A version of this article was originally published in the October 2020 edition of Employee Benefit Plan Review.

The COVID-19 pandemic has sent shock waves around the world and its effect on global society will reverberate for many years. Already, researchers at institutions such as the Brookings Institution, the National Bureau for Economic Research (NBER), and the Centers for Disease Control (CDC) are analyzing data regarding the impact of the pandemic on current and future retirees. Early evidence indicates that older employees and retirees have been, and will continue to be, disproportionately disadvantaged by the pandemic.

Many employers are committed to maintaining an inclusive workforce that includes diversity not only with respect to race, gender and sexual orientation, but also with respect to age. It is important for employers to understand the unique pressures facing their older employees and current and future retirees as a result of the COVID-19 pandemic. This article will discuss some of the issues facing this age group, recent policy proposals by researchers at the Brookings Institution, and actions employers can consider to lessen the impact.

Hospitalizations and fatalities

According to the CDC, the rate of hospitalization for individuals aged 65-74 is 8 times higher than individuals aged 18-29. The rate of death in the age 65-74 category is 90 times higher than the age 18-29 category.¹ These disparities are more pronounced in higher age brackets. An obvious reason is that older age groups are more likely to have underlying medical conditions such as chronic kidney disease, coronary artery disease, hypertension and a history of stroke, all known to increase the risk of hospitalization and death from COVID-19. Another reason is the higher incidence of living in retirement communities, assisted living facilities and nursing homes where COVID-19 has been rampant.

Employment prospects

According to a working paper recently circulated by NBER, there is early evidence that the COVID-19 pandemic is having a greater impact on the employment of older employees than other employees.² In April 2020, the unemployment rate for employees age 65 and older was 15.43% compared to 12.99% for employees age 25-44.³ The working paper notes that many jobs taken by older adults serve as a supplement to retirement income or as a bridge to retirement, allowing employees to delay the commencement of Social Security and defer depleting retirement savings. These jobs often include managerial positions, transportation drivers, sales and construction for men, and managerial, administrative/clerical, sales and personal service for women. These types of jobs typically involve services that do not translate easily to working remotely.⁴ The working paper cites evidence that retirements increased in the early months of the pandemic.⁵ The working paper also suggests that those continuing to work may face increased age discrimination by employers due to their vulnerability to COVID-19. For those who have lost jobs, reemployment after the pandemic subsides will likely be more challenging. The working paper concludes that all of these factors indicate that the economic downturn triggered by COVID-19 will likely have a greater impact on older employees than in past recessions.⁶

Retirement income

It is estimated that 401(k) plan accounts on average decreased about 19% in the first quarter of 2020.⁷ While the stock market bounced back after first quarter 2020, the surge of COVID-19 cases and deaths during the summer months does not bode well for the long-term health of the U.S. economy. Should another severe downturn in the stock market occur, older employees and retirees will not have time to rebuild their savings as will younger

employees. Moreover, as noted above, opportunities to supplement their retirement savings by extending their employment years, may be limited.

Proposals by Brookings Institution researchers

In July 2020, researchers at the Brookings Institution issued a report titled, “COVID-19 and Retirement: Impact and Policy Responses” (“Brookings Report”).⁸ The Brookings Report included a number of policy proposals.

Social Security

The Brookings Report notes that several factors relating to the pandemic, including a reduction in Social Security payroll taxes and the continued decline in interest rates, are expected to accelerate the date by which the Social Security Trust Fund and Medicare Trust Fund will be depleted. For example, the Committee for a Responsible Federal Budget, a non-profit, bipartisan public policy organization, projects that depletion of the Social Security Trust Fund will accelerate from 2035 to 2031 and depletion of the Medicare Trust Fund will accelerate from 2026 to 2023. The Brookings Report proposes that Congress increase revenues to the system by increasing the earnings subject to the Social Security payroll taxes. It also recommends the development of a trained group of Social Security Administration specialists that can provide guidance to older employees on topics such as the optimal time to commence Social Security benefits and the impact of spousal eligibility for Social Security.

Employment policies

The Brookings Report includes the following proposals with respect to the employment of older employees.

Strengthen anti-discrimination laws

The Brookings Report recommends that the Age Discrimination in Employment Act be applied to reduce both actual and perceived age discrimination. The Report suggests that it is currently too difficult for older employees to demonstrate workplace bias. Although the Report does not elaborate on this point, presumably it is talking about the 2009 U.S. Supreme Court decision in *Gross v. FBL Financial Services, Inc.*,⁹ in which the Court held that plaintiffs must be able to demonstrate that age was the “but for” cause for the adverse action against them, i.e., but for the plaintiff’s age the adverse action would not have been taken. The Brookings Report suggests that the ADEA should be subject to the same legal standard as other anti-discrimination laws many of which allow plaintiffs to prevail if they demonstrate that their protected status was “motivating factor” for the adverse action against them.¹⁰

Lower Social Security taxes for long-term employees

The Brookings Report suggests lowering employer and employee Social Security payroll taxes once an employee has been employed for a minimum number of years. This would increase an older employee’s take-home pay and serve as an incentive for hiring older employees. The increased income tax revenue from such a proposal could offset the loss in payroll taxes attributable to the proposal.

Improve access to earned income tax credit (EITC)

The Brookings Report recommends expanding the EITC for older employees to provide an additional incentive to stay in the work force and continue building retirement savings.

Undertake public/private sector initiative to connect older employees to jobs

The Report suggests a joint effort between the U.S. Department of Labor, state labor departments, private sector employers and search firms to educate older employees about employers that hire older employees, the required job skills and how to obtain those skills. The Report further suggests that this effort should be supported by federal funding.

Undertake research regarding training of older employees

In order to better equip older employees with necessary skills, the Report suggests research into the most effective way of providing training to older employees, with a focus on virtual training during the period of the pandemic. The Report recommends examining training methods used overseas.

Develop mentoring programs for older employees

Many older employees need assistance in their job searches, including resume preparation, developing interview skills and marketing their backgrounds and experience. The Report recommends the development of mentor programs to provide this assistance.

Promote alternatives to nursing homes

The Brookings Report notes that an important lesson from the pandemic is that retirees may be safer in their own homes rather than in nursing homes and other assisted-living facilities. The Report suggests that Medicaid support for home health and community-based health care be expanded so that retirees can receive in-home care.

Promote long-term care insurance

The Report suggests that the federal government consider an incentive for the inclusion of long-term care insurance as part of an employer's retirement benefit package. Such policies could help reduce the burden on government programs, such as Medicaid, for expensive end-of-life care.

Improve access to home equity

Some retirees, who may be entering retirement earlier than expected due to the pandemic, may have relatively low cash flow but significant value in their homes. The Report notes that current reverse mortgage programs are expensive in terms of fees and interest rates. The Report suggests reforms to the Home Equity Conversion Mortgage Program (the federal reverse mortgage program), including a streamlined small-dollar reverse mortgage or a product that converts a traditional mortgage to a reverse mortgage.

What employers can do

Many of the proposals listed above with respect to tax policy, community health and housing initiatives are beyond the purview of employers. However, there are some actions employers can consider to address the increased impact of COVID-19 on older employees and retirees. Before proceeding, an employer should study the guidance issued by the U.S. Equal Employment Opportunity Commission in June 2020 regarding actions that an employer may and may not take with respect to older employees.¹¹ In addition, an employer should consider the Age Discrimination in Employment Act (ADEA) and state and local age discrimination laws before taking any action directed solely at older employees and consult with legal counsel prior to implementation of such action.

The following are a few suggestions for consideration:

- Conduct a hazard assessment of the work place related to COVID-19 that takes into account the special vulnerabilities of older employees, e.g., increasing physical space between employees or creating barriers or partitions.
- Select and provide appropriate personal protective equipment (PPE) to employees at no cost.
- Educate all employees on the risks of COVID-19 and train them on the proper use of PPE.
- Explore the alternatives for flexible worksites (e.g., telework) for older employees who request them.
- Explore the feasibility of flexible work hours for older employees who request them.
- Increase training for skills needed to work remotely or to social distance, e.g., video or telephone conferencing.
- Provide "help desk" assistance for older employees (and all employees) who are working remotely.
- Survey employees regarding available transportation and explore alternatives that lessen the risk of exposure to COVID-19 for older employees.
- Make available investment education with respect to 401(k) plans and financial planning programs that include discussion of the issues facing older employees and retirees in light of the pandemic (virtually, if possible).
- Communicate with employees to inform them about available resources to address COVID-19, including resources specific to older employees, and to discover any workplace issues relating to COVID-19 that impact them.
- Host virtual meetings and social events in an effort to keep employees, including older employees, connected with the team.
- For outplaced older employees, provide training on job-seeking skills (resume writing, interviewing) and consider outplacement services.

Conclusion

It is clear from the Brookings Report that the impact of the COVID-19 pandemic on older employees and retirees will be far-reaching. Employers that are committed to inclusive workplaces should consider the needs of older employees and retirees in designing protocols and systems to address COVID-19.

Lori Jones is the chair of Thompson Coburn's Employee Benefits practice.

Click here to subscribe to News & Insights from Thompson Coburn related to our practices as well as the latest on COVID-19 issues.

1. <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-age.html> ↗

2. Buy, Truc Thi Mai, Patrick Button and Elyce G. Picciotti, "Early Evidence on the Impact of COVID-19 and the Recession on Older Workers," <https://www.nber.org/papers/w27448.pdf> (June 2020) ↗

3. *Id.* at page 17. [↔](#)

4. *Id.* at page 7. [↔](#)

5. *Id.* [↔](#)

6. *Id.* at page 8. [↔](#)

7. Soergel, Andrew, "Coronavirus Crisis Cuts Average 401(k) 19% as Pandemic Pummels Retirement Savings." (April 4, 2020) <https://www.usnews.com/news/economy/articles/2020-04-24/coronavirus-crisis-cuts-average-401-k-19-as-pandemic-pummels-retirement-savings> [↔](#)

8. Baily, Martin, Harris, Benjamin, and Doshi, Siddhi, "*COVID-19 and retirement: Impact and policy responses*." Brookings Institution. <https://www.brookings.edu/wp-content/uploads/2020/07/ES-7.30.20-Baily-Harris-Doshi.pdf> (July 2020) [↔](#)

9. 557 U.S. 167 (2009) [↔](#)

10. A recent U.S. Supreme Court case, *Babb v. Wilkie*, 140 S. Ct. 1168 (2020), lowered the standard for ADEA claims by federal employees. [↔](#)

11. <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> [↔](#)

authorsTest

lori

Lori W. Jones