Older Female Employees Face a Double Whammy During COVID-19 Turmoil

According to AARP employment data, women over the age of 55 face a dual threat to their careers and earning power amid the financial and labor market turmoil due to Covid-19. In April, approximately 20 million jobs were lost in the United States and the unemployment rate reached a staggering 14.7%.

Between March and April, the unemployment rate for women age 55 and over catapulted from 3.3% to 15.5%, the largest increase reported by the Department of Labor’s Bureau of Labor Statistics.

This stark data is consistent with numerous studies that have found that the stereotypes leading to ageism and sexism are exacerbated when combined in a single employee.

Why Are Older Women Impacted So Acutely?

Various factors have converged to magnify the labor-market toll on two separate sets of workers: female and older employees. It is thus an unfortunate reality that older female employees will be hit harder by the unforgiving Covid-19 employment landscape. As discussed below, this is often referred to as “sex-plus” discrimination, meaning sex discrimination plus some other protected characteristic such as age or...
Regarding the impact on women, NPR recently noted the difference between the 2008/2009 recession in which “male-dominated industries like construction and finance were the first to feel the slowdown.” In contrast, the Covid-19 unemployment crisis first hit the service industry and “a lot of high-contact workplaces like beauty parlors, shoe stores and dentist offices — where women outnumber men[.]”

Moreover, the impact of the increased family caregiving required during the pandemic crisis has generally fallen on women, according to the Washington Post, which explained that it’s “an impossible situation for caregivers who continue to go out to work, and for those who now work from home. There is not enough time to do everything. Families have to make tough choices: If a ball must be dropped, which one should it be? Chances are, in a heterosexual couple, it will be a woman’s paid labor.”

Likewise, older employees may be more likely to be laid off because of assumptions about their having more expensive health benefits, being more susceptible to COVID-19, or that they are unable to perform their jobs well remotely due to a lack of technological skills.

What Is “Sex-Plus” Discrimination?

Federal employment laws, such as Title VII of the 1964 Civil Rights Act, make it illegal to discriminate against employees based on protected characteristics such as race, gender, or age. In many employment discrimination cases, the employee claims that their employer has discriminated against them because they are a woman. A “sex-plus” employment discrimination claim (also referred to as “intersectional discrimination”), on the other hand, involves an employee who alleges their employer treated them differently because they are a black woman. That is, the employee suffered discrimination based on their protected characteristics of race and gender. See, e.g., Jefferies v. Harris County Community Action Association, 615 F.2d, 1025, 1034 (5th Cir. 1980).

Courts are far more split on whether an employee can rely on intersectional discrimination claims when it involves age plus another protected characteristic, such as sex. An insightful analysis of these claims by Professor Marc Chase McAllister appears in the Boston College Law Review and notes that courts rejecting sex-plus-age discrimination claims point to the different legal burdens applicable to age versus sex discrimination claims. In addition, unlike sex, age is not a protected characteristic under Title VII; instead, age discrimination is prohibited by a separate law the Age Discrimination in Employment Act (ADEA).

Courts that allow sex-plus-age discrimination claims to proceed reason that it is a form of sex discrimination prohibited by Title VII and that women over 40 are a viable sub-class who are treated worse than employees outside of this protected sub-class.

Parting Thoughts
The labor market fallout from COVID-19 has hit almost all employment sectors and taken a huge toll on employees across the board. But the acute impact on women over 55 bears close watching given that it will be even more difficult for this subset of employees to resume their careers and make up for lost earnings.

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