



October 7, 2022

U.S. Equal Employment Opportunity Commission  
131 M Street, NE  
Washington, DC 20507

Dear Commissioners:

On behalf of our 38 million members and all older Americans nationwide, AARP appreciated the opportunity to testify on September 22 at the Equal Employment Opportunity Commission's (EEOC) Strategic Enforcement Plan (SEP) listening session. We also appreciate the opportunity to provide these written comments following the session to make sure that the employment barriers many older workers face are part of the Commission's priorities for fiscal years 2022-2026.

### **Age Discrimination is Prevalent**

AARP believes that any type of discrimination in the workplace is unacceptable. Too often, when discussing discrimination in the workplace, age is not included. This is particularly troubling given that ageism in the labor force remains persistent and prevalent. Research released by AARP in May 2021 found that 78 percent of older workers say they have seen or experienced age discrimination in the workplace, the highest level since AARP began tracking this question in 2003. In addition, a recent AARP study shows that nearly two out of three (63 percent) women age 50-plus experience age discrimination regularly. The percentages of older Americans who have experienced age discrimination by race include 77 percent of African Americans/Blacks, 61 percent of Hispanic/Latinos, and 59 percent of Whites. Older women also experience age discrimination at higher rates than older men.

This data highlights the importance of recognizing intersectional claims of discrimination, such as age and gender as well as age and race, and the need to more frequently investigate and litigate intersectional claims. However, the interplay of claims based on protected characteristics can be complicated for investigators to understand. We urge the EEOC to address intersectional discrimination as a SEP priority by providing training to its enforcement and legal staff and aggressively pursuing such claims.

To underscore the seriousness of age discrimination, even in this extraordinarily tight labor market and the associated disruptions to our economy, still one in four jobseekers 55 and older were long-term unemployed, according to the August jobs report. That is compared to just 18.7 percent of jobseekers ages 16 to 54. The effect of pandemic unemployment on older women is particularly acute, as about 70 percent remained unemployed after six months or more – even in this extremely “hot” job market. Across the country, despite the many “now hiring” signs, older workers still are not getting hired.

Employers still use age-based qualifications in their job postings or rely on age-related inquiries and screening procedures in their job application process. For example, AARP notes the existence of job ads specifying a maximum number of years of experience (i.e., “no more than 10 years of experience”), restricting recruitment efforts for entry-level positions to college campuses, and/or requiring a college-affiliated email address in order to apply. In addition, some online job-search sites, applications, and social media platforms continue to screen out older applicants or allow employers to do so. For example, some require applicants to include dates of birth or graduation dates in fields that cannot be bypassed.

These practices facilitate discrimination and deter older individuals from applying. Some sites have taken this type of age-related inquiry a step further. Instead of asking for dates of graduation or dates of prior employment, they use drop-down menus that only go back to a certain year, therefore excluding older applicants. Assessments using chatbots can also be unfair if they analyze criteria unrelated to job qualifications, such as how long it takes to answer a question, or the use of natural language processing to discern patterns in candidates’ word choices, speed of response, etc.

### **Ramp Up Enforcement and Litigation**

Age discrimination in hiring is a persistent and widespread problem, which AARP believes demands much more attention from the EEOC. While we appreciate that the SEP priority on hiring discrimination includes age discriminatory practices, the EEOC has brought few age discrimination in hiring lawsuits. We therefore urge the EEOC to increase its litigation and enforcement efforts to combat discriminatory hiring practices that deny job opportunities to older workers.

AARP believes the EEOC should focus enforcement and litigation resources on such hiring practices to send a clear message to employers that age discrimination in hiring is simply unacceptable and unlawful. We also urge the Commission to focus on job sectors known (including as a result of EEOC hearings) to have high rates of age discrimination, such as the entertainment industry, marketing, and technology firms.

AARP is aware that the EEOC has launched an artificial intelligence (AI) and algorithmic fairness initiative and recently filed a lawsuit alleging three companies, collectively called iTutorGroup, programmed their online recruitment software to automatically reject older applicants because of their age. We applaud this work but urge the Commission to provide additional resources to hire staff with expertise in AI to assist investigators in identifying discriminatory AI practices.

Finally, we call on the EEOC to examine the causes of the continuing decline in the number of discrimination charges filed with the Commission, while evidence of continued ageism, racism, and sexism in our workplaces and our society remains. While [more older workers reported experiencing age discrimination](#) this year than ever before, only three percent of those on average contacted the EEOC. Most said they didn’t take any action because they felt it wouldn’t make a difference, and the fact that most charges are administratively dismissed or quickly closed reinforces the perception that filing a charge with the EEOC isn’t worth the effort.

The public's negative perception of the filing process may be contributing to the decline in charge filings. AARP believes the Commission must do more to demonstrate to the public that complaints of discrimination will be addressed more vigorously and expeditiously.

The Commission's cumbersome charge system may also be one of the causes of the decline in filings. It imposes time-consuming hurdles by requiring the submission of an inquiry and an interview before an individual can file a charge. AARP urges the Commission to allow attorneys and individuals to file charges online without these prerequisite steps. Online filing has become much more prevalent.

Once again, AARP thanks the EEOC for the opportunity to testify and to provide written comments. We look forward to continuing to work with the Commission to ensure vigorous enforcement of the laws to protect older workers in the workplace. If you have questions, please feel free to contact Holly Biglow on our Government Affairs team at [hbiglow@aarp.org](mailto:hbiglow@aarp.org) or (202) 570-3760.

Sincerely,



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