Legal and institutional impediments to partial retirement and part-time work by older workers

EXECUTIVE SUMMARY

Within ten years, baby boomers will begin retiring in large numbers. The United States will lose the services of millions of highly skilled, experienced workers. Because of the baby dearth that followed the baby boom, there will not be many new workers to replace them even as the senior adult population grows significantly. Labor force growth is expected to fall from 1.1 percent per year in the 1990s to 0.36 percent per year in the period 2010 to 2020.

The problem afflicts some professions more than others. There will be a particularly severe shortage of nurses and teachers while the supply of blue collar workers will be much less affected.

The situation could obviously be improved if older workers could be induced to work longer. This should be feasible as improved health has accompanied longer longevity and as jobs that require hard physical labor have declined in relative importance. The attractiveness of working longer could be enhanced if older workers were allowed more flexible work arrangements involving shorter hours and longer vacations.

Unfortunately, there are a large number of legal and institutional barriers to more flexible employment arrangements for older workers. These were not seen to be a problem when there was a positive desire to move people out of the labor force early in order to make room for the hoard of baby boomers working their way up the career ladder. While it was often not appropriate to erect these barriers then, now the imminent, drastic change in demographic conditions creates a much more urgent need for reform. The fact that many strongly follow recent cultural trends toward retiring early limits the extent to which reform can counter the decline in labor force growth, but reform can help and it can greatly increase the welfare of those individual workers who would welcome more flexible arrangements.
One of the most important barriers to longer work comes from privately negotiated defined benefit pension plans. The typical plan may state that the normal retirement age is 65, but a worker starting at age 25 is likely to find that the expected value of the pension accrues most rapidly between ages 51 and 55 under reasonable economic assumptions. Soon after 55, the accrual might actually turn negative. That is to say, the increased pension earned by working an extra year (if any) does not compensate for the fact that the person will get one less year of benefits. This is an important characteristic of many private plans, as well as public plans for teachers, fire personnel, other government workers. Social Security and Medicare benefits play a role as well in encouraging earlier retirement. The early retirement age established under Social Security sets a norm for society and many have suggested an increase in that age as one mechanism for strengthening the sustainability of the system.

Health costs create another barrier to hiring or retaining older workers. The cost for a standard health insurance policy for 55 to 59 year olds can be more than double that for 20 to 44 year olds. Currently, private insurers must pay health costs before Medicare contributes. The cost of hiring those 55 and over could be significantly reduced by removing the federal requirement that Medicare benefits are reduced or cancelled—effectively taxed away—if an employer plan is provided. The cost to the Federal budget would be quite modest.

It will take a 180-degree shift in traditional benefits thinking to reform a decades-old legal and regulatory system in which employers have looked for benefits tools to ease older workers out of the workforce. Nevertheless, very significant social and economic benefits would result from converting it into a system that encourages longer work.

There are three basic laws governing employee benefits—the Tax Code, ERISA and the Age Discrimination in Employment Act. Each has features which conflict with the objectives of phased retirement programs, but a major problem involves the complexities and ambiguities that arise when the three laws are combined. A risk averse employer may avoid making special arrangements for older workers because of regulatory uncertainties or a fear of litigation, even though the arrangements might be perfectly legal under a reasonable interpretation. The laws are more constraining with regard to private as opposed to public employees. Deferred retirement option plans are popular among public employers and might be a model for the private sector under a less restrictive set of laws and regulations.

Those laws and regulation have, to some extent, been developed to protect the rights of employees and one must tread carefully in developing reforms. Special provisions allow an innovative phased retirement approach for tenured faculty that could serve as a model acceptable to both employers and employees. Consideration could be given to a number of other policy options - from relatively easy to accomplish regulatory changes to more extensive statutory reforms permitting innovative designs and safe harbor plans for older workers. For example, providing older employees with information about the additional benefits to be gained from an additional year of work could better inform retirement decisions. In addition, statutory changes could enable employers to offer short-term special plans or benefits packages just for phased retirees. In return, phased retirees could be excluded from the non-discrimination testing rules for qualified plans. If phased retirement programs are facilitated, in part, by revisiting the treatment of part-time work under ERISA, the reform could serve as a vanguard for more flexible benefits policies for both older and younger workers.

This report is available in its entirety in the Portable Document Format (PDF), which many find convenient when printing.

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or none at all on their main job. 3) Failing to distinguish between wages paid to the partially retired and to the not retired causes a sizable exaggeration of the decline with experience in the wage offer for work while not retired. (374 K).