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BALTIMORE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Peoples Court Building
Baltimore 2, Maryland

A REPORT TO THE BALTIMORE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ON THE ADVISABILITY OF AMENDING ORDINANCE NO. 379 TO INCLUDE DISCRIMINATION BECAUSE OF AGE AMONG UNFAIR EMPLOYMENT PRACTICES

SUBMITTED BY

William A. Darkey, Jr.
6 January 1959

INTRODUCTION

The Baltimore Equal Opportunities Commission was requested by Mayor D'Alesandro in September 1957 to make a recommendation as to whether or not the City of Baltimore would be well-advised to amend its fair employment practices law (Ord. No. 379) to include discrimination because of age among unfair employment practices.

Four states and several cities have included age discrimination among unfair employment practices. The United States government also has enacted such legislation to apply to the United States Civil Service and to industries operating under government contract. Further, the City of Baltimore has removed age criteria for employment with the City Service, except in the cases of the Fire and Police Departments. The question of such legislation, therefore, is in conformity with much of the current thinking about fair employment legislation.

The present report presents the conclusions of a four-month study made during the summer of 1958 of the problem of age discrimination in employment in the City of Baltimore. It finds that such discrimination exists in serious proportions and recommends legislation to make it an unfair employment practice.

Instead of an amendment to Ordinance No. 379 including "age" along with "Race, color, religion, national ancestry, or origin", however, the report recommends that discrimination because of age be made the subject of a separate ordinance.

The two kinds of discrimination are different. They arise from different causes and create different sorts of problems. These

differences could result in a conflict of interpretations if the two sorts of unfair practices were included in the same law.

The report further recommends that the Baltimore Equal Employment Opportunity Commission be charged with the administration of the recommended legislation. The whole history of fair employment practices commissions shows that their mode of operation, being essentially concilliatory and educative, is eminently suited to deal with the kind of cases that would arise under the proposed law.

The Method of This Study

It was evident from the outset of this study that neither the time, the staff, nor the available sources of information permitted an elaborate statistical analysis of the Baltimore labor market. Such a study, moreover, did not seem imperative.

Elaborate studies have been made of other labor markets. The most thorough, and for the purposes of the present study, the most relevant, is that made in 1956 by the United States Department of Labor of seven major labor markets throughout the country. Similar studies have been undertaken and reported by a number of state governments that have faced the problems of their older workers. The general findings of these studies are in complete accord with one another, and there seemed to be no reason to assume that the City of Baltimore should in this respect be at wide variance with the rest of the nation.

On the other hand, corroborative evidence on the extent of the problem of age discrimination in Baltimore employment is clearly prerequisite to any final practical judgement as to the desirability

of legislation to deal with the problem. To obtain such corroborative evidence five different sorts of investigation were carried out:

(1) A study of "Help Wanted" advertisements in local newspapers to determine the frequency of age criteria in such advertising.

(2) An analysis of job openings listed with the Maryland Department of Employment Security.

(3) A questionnaire to Baltimore employers.

(4) Interviews with individuals who are in a position to be familiar with the problem locally. Among these were employers, officials of local private employment agencies, officials of labor unions, government officials and private citizens concerned with the problem.

(5) Interviews with officials of state governments who have had experience in administering laws of the type contemplated by the present report.

Particular acknowledgement of the generous and frank cooperation of all persons consulted in the course of this study would be tedious because of their number, but a general acknowledgement of our debt to them and a general expression of our gratitude is here offered. Included in this acknowledgement are those employers who cooperated so fully and willingly in completing and returning the questionnaire sent out by the Commission.

THE NATURE AND EXTENT OF THE PROBLEM OF THE OLDER WORKER

The question of whether or not the City of Baltimore should enact legislation declaring arbitrary discrimination because of age to be an unfair employment practice must be answered in terms of two other questions. (1) Is age discrimination in employment a sufficiently serious problem to warrant legislation to deal with it? (2) Would legislation of the type proposed be an appropriate and effective means of improving the situation? This report attempts to answer these two questions and is organized on this basis.

The problem of discrimination in employment because of age is a particular aspect of a larger problem, in part social, in part economic, and it is necessary, both in the examination of the problem and in the reporting of it to include a rather broad context in order to avoid distortion and inaccuracy.

The Population Explosion

There is a growing awareness of what the sociologists have called the "population explosions." This simply means that our population is growing at a steadily increasing rate. This is not due solely to the birth rate of an increasing population. It is due to the fact that the life expectancy of the average citizen in this country has been steadily increasing as a result of advances in preventive and therapeutic medicine. More people are living longer.

A corollary phenomenon of the population explosion ia that the conquest of infectious diseases formerly fatal to adults has resulted in radical change in the structure of our population considered by age

groups. A few statistics make this dramatically clear. The population of the United States has doubled since 1900, while the number of the group between the ages of fifty-four and sixty-four has tripled and that of the group age sixty-five and over has quadrupled in the same time.

Table I below gives the age group composition of the population of Baltimore in successive decades since 1900 and adds a final column of data based on the 1957 estimate of the Department of Health.

TABLE I

Per Cent of Population in Successive Decades of Age, Baltimore 1900-1957*

Age Period (Years)	1900	1910	1920	1930	1940	1950	1957	Per Cent Change 1900-1957
Total	100.	100.	100.	100.	100.	100.	100.	---
0-9	20.0	18.2	18.2	17.2	13.4	17.5	21.1	5.5
10-19	19.4	18.4	16.9	17.0	16.7	12.5	14.0	-27.8
20-29	20.0	20.3	19.7	18.6	18.4	17.2	11.4	-43.0
30-39	15.7	15.9	16.7	16.8	16.7	16.5	15.9	+ 1.3
40-49	11.4	12.3	12.6	13.3	14.4	14.0	14.2	24.6
50-59	7.1	8.1	8.5	8.9	10.3	10.9	11.2	57.7
60-69	4.1	4.4	4.9	5.4	6.4	7.1	7.3	78.0
70-79	1.8	1.9	2.0	2.3	2.9	3.3	3.8	111.1
80 & Over	0.4	0.5	0.5	0.5	0.8	1.0	1.2	200.0

* Except for the last two columns, the data in the above table are taken from Table I, page 20, of Widening the Lengthened Path of Life, Report of the Baltimore City Comission on Aging and Problems of the Aged, 1955. Items in the last two columns have been computed from the Quarterly Statistical Report of the Baltimore City Health Department, December 30, 1957

It can be seen that, while the groups above the age forty show a large positive change, the groups below that age show either a much smaller positive change or even a rather spectacular negative change. Population projections made in 1951 estimate that Baltimore should reach a stable population in about the year 2000 with a total of 1,064,000 of whom 138,000 or about 13% will be over age sixty-five in contrast with 3.8% for 1900 and 7.4% for 1957.

The Older Citizen and the Older Worker

There is an increasing awareness of the social and economic problems created by the longevity of our older citizens, by which term we mean, in general, those over age sixty-five, the current customary age of retirement. But it is imperative in considering the subject of the present study to distinguish carefully between the problems of the older citizen and the problems of the older worker; for, while these groups may coincide in certain marginal circumstances, they are essentially different groups with different problems although the problems of both are occasioned by the population developments discussed above. Indeed, it is fair to say that, for the present at least, the problems of the older citizens for the most part fall fairly into the category of social welfare problems, while those of the older worker are fundamentally a matter of sound economic practice when viewed from the position of management and of fair employment practices, and justice to the individual worker when viewed from the individual's viewpoint.

An older worker is not likely to be an older citizen. He has been defined as any worker who meets with an obstacle in finding employment solely on account of his age. It is fairly startling to discover that,

in the current labor market, he may be a person as young as thirty-two. Airline hostesses have met with such obstacles at this age. In the main, however, the groups meeting such obstacles are those of age forty-five or over. For women, the lower age limit may be thirty-five or forty. The practice of setting lower age limits as criteria of eligibility for employment is entirely familiar, and is perhaps commonly accepted as a general employment practice, though, in point of fact, it is not universal and has never been so. A more detailed consideration of this practice will be made later. It is the legitimacy of such practices which is in question in the consideration of the proposed legislation.

But it is possible at the outset to state the question more precisely. In hiring an employee, it is clear that the employer's primary and proper concern is to hire a worker who can carry out the duties of his job in a satisfactory way. Clearly, this must be construed in economic terms and must consider not only whether or not the worker can perform the operations the job requires, but also whether he can perform them efficiently and whether he will fit satisfactorily into the company organization. It this is granted, then the practice of setting age criteria in hiring can be understood in only one way: Chronological age is assumed to be an index to a worker's ability to perform his work.

The question is whether or not age is a reliable index to this ability. If it is a reliable index, the use of it should not be construed as an unfair practice. If it is reliable only in part, the area of its reliability should be defined and its application confined to this area. If it is not reliable, or only minimally reliable, it should be discarded and replaced by more reliable methods of evaluation

The Labor Department's Seven Area Study of Employment Problems of the Older Worker

In 1956 the United States Department of Labor published an extensive study of the employment problems of the older worker in our economy. This is the most comprehensive study of the subject yet undertaken in terms both of extensive coverage of the problem (the total labor force considered by the study numbered an estimated 5,674,000 workers employed in representatively selected areas) and in terms of extensive analysis of the findings.

Since this study was carefully set up to be representative of the nation as a whole, its findings may reasonably be assumed to apply generally to the Baltimore area, although some deviations from the national figures can be expected due to particular local conditions.

A rather extensive summary of the Labor Department's study follows. This summary provides the most direct and accurate way of summarizing the nature and extent of the problem and furnishes a standard against which to measure and judge the findings of the present study of the older worker's situation in the Baltimore labor market.

The Seven Area Study's overall conclusion as to the extent of hiring restrictions is summarized in the following paragraphs:

> "The nub of the older worker problem is the imposition of hiring restrictions in the form of chronological age limits. The phase of the seven-area project dealing with local employment office service confirmed earlier findings that many employers follow such restrictive hiring practices. Of the 21,000 job openings listed during April 1956 at local employment offices participating in the study, more than half (52%) specified age limits of <u>under 55</u>, 41% specified <u>under 45</u>, and 20% <u>under 35</u>.

"Employer age preferences cut across all occupational groups and industries. Upper age limitations were found more frequently, however, in clerical, unskilled, professional and managerial and sales job openings than in other occupational groups.

"All types of industries applied upper age restrictions. In both the finance and real estate, and the transportation, communications, and public utilities industries, one-third of the job openings specified workers under 35 years, and more than one-half specified workers under 45 years. In the durable goods manufacturing and wholesale and retail trade, almost one-half of the job openings specified upper age limits under 45 years of age. Approximately 60% of the job openings of the above four major industrial divisions specified upper age limits under 55 years.

"It was also generally found that firms of all sizes specified upper age limits, but that the larger establishments did so more frequently than smaller ones."

If we assume as a reasonable approximation that the great majority of the labor force is to be found in the age group between twenty and sixty-four years of age, we find that this group comprises about 55.1% of our population. Taking the most extreme lower limit of thirty-five years, it then follows that 61% of our labor force may be considered as older workers who may, under existing hiring practices, meet with obstacles to employment because of their age. If we raise the limit to forty-five, we find that 36.6% of the labor force may encounter such obstacles. And, even if we raise the limit to fifty-five years, the age, where according to all studies, the restrictions become most stringent, we find that 16% of the labor force still fall within this group. This is a very considerable portion.

Furthermore, two additional factors augment the seriousness of the problem. In the first place, it is evident that such restrictive hiring practices in penalizing age, penalize also skill and experience, which would appear to be a contradictory practice. And, in the second place, because older workers normally earn higher salaries and because

of the emphasis upon youth in industry, it is the older worker who is frequently discharged in the event of a merger or automation or other such circumstance. And, the same causes which were responsible for his discharge make it difficult for him to obtain re-employment. It must also be observed, on the other hand, that seniority rights sometimes protect the older worker.

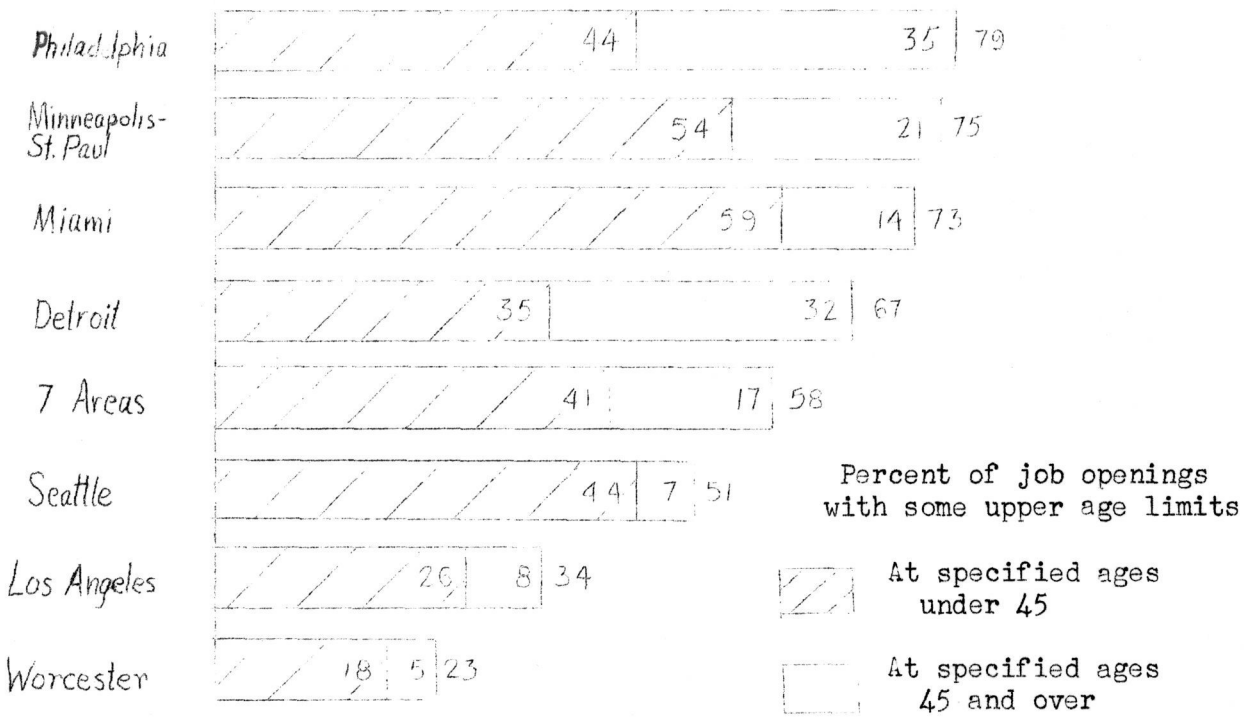
A caution is necessary in the application of the material here summarized. It is not being suggested that 61% or 36.6% or 16% of the workers in our labor market are in fact meeting with discrimination on account of age. It is said only that formally hiring practices which set chronological age limits potentially affect such a proportion of the labor market.

Pointing out these propositions is not intended to create any impression of actual numbers affected but rather to suggest the unreality and inapplicability or, perhaps better, the impracticality of any hiring criterion which in fact formally excludes such large segments of the labor market, and segments in which are found so great a proportion of skilled and experienced workers. It, furthermore, should be immediately evident that, in actual practice, such older workers form the backbone of existing industry. This being so, it is the more striking that, when such a worker is separated from his employment, he encounters the most severe artificial barriers to re-employment.

Statistical evidence of hiring practices affecting older workers is presented in the following pages.

Hiring Patterns Affecting Older Workers

1. On a national average, 58% of all job openings impose some upper age limit. Forty-one per cent exclude workers over age forty-five. These percentages vary considerably among labor markets throughout the country. In Philadelphia, which, of the seven labor markets considered in the study, most nearly resembles Baltimore[1] both in industrial pattern and in geographical location, 79% of all job openings imposed some upper age limit, while 44% set this limit at age forty-five.



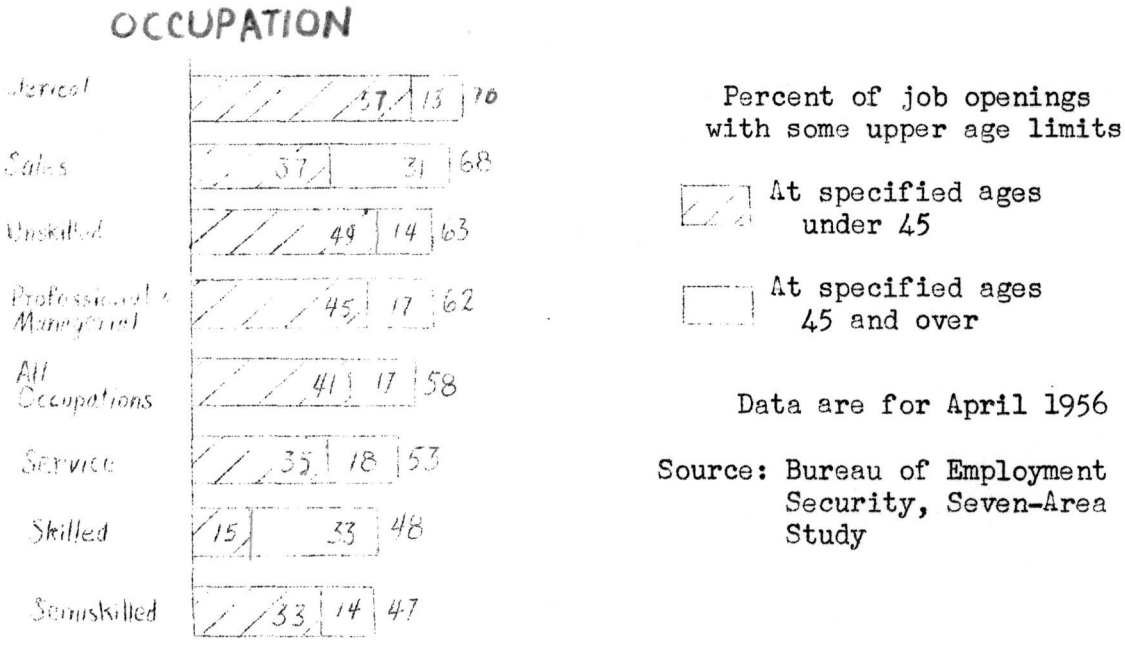
Data are for April 1956

Source: Bureau of Employment Security, Seven-Area Study

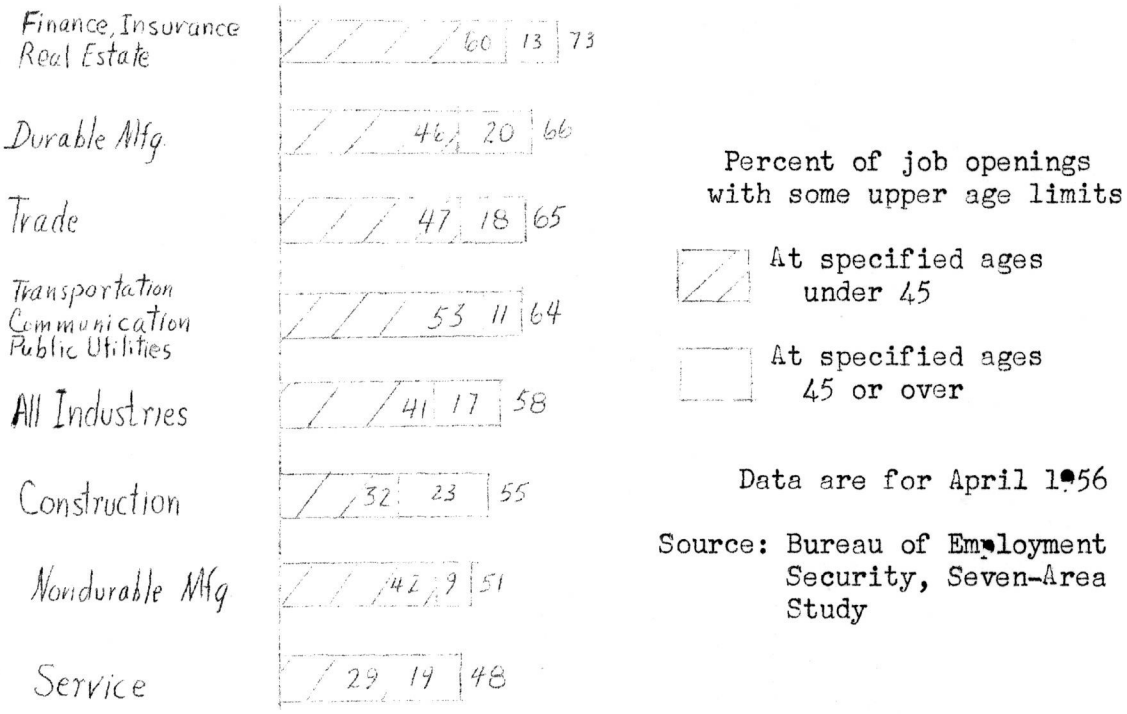
1 See Appendix A

2. The practice of setting age restrictions in hiring was analyzed according to (a) occupation, (b) type of industry, and (c) size of firm.

   (a) <u>Considered according to occupation, age restrictions are encountered most frequently in white collar and unskilled occupations, least often in skilled and semi-skilled occupations.</u> It is worthy of note that a relatively low percentage of skilled and semi-skilled occupations set any age limit at all, and that, furthermore, only 15% of the former set a limit of less than 45 years. This suggests that where a definable skill is desired, age appears to be considered a less relevant criterion for hiring. It also reflects the fact that skill increases with age and that the main body of skilled workers are by that very fact older workers. And, it raises the question whether accumulated experience does not also contribute in a similar way to the effectiveness of older workers in occupations where skill is less easily defined and evaluated.

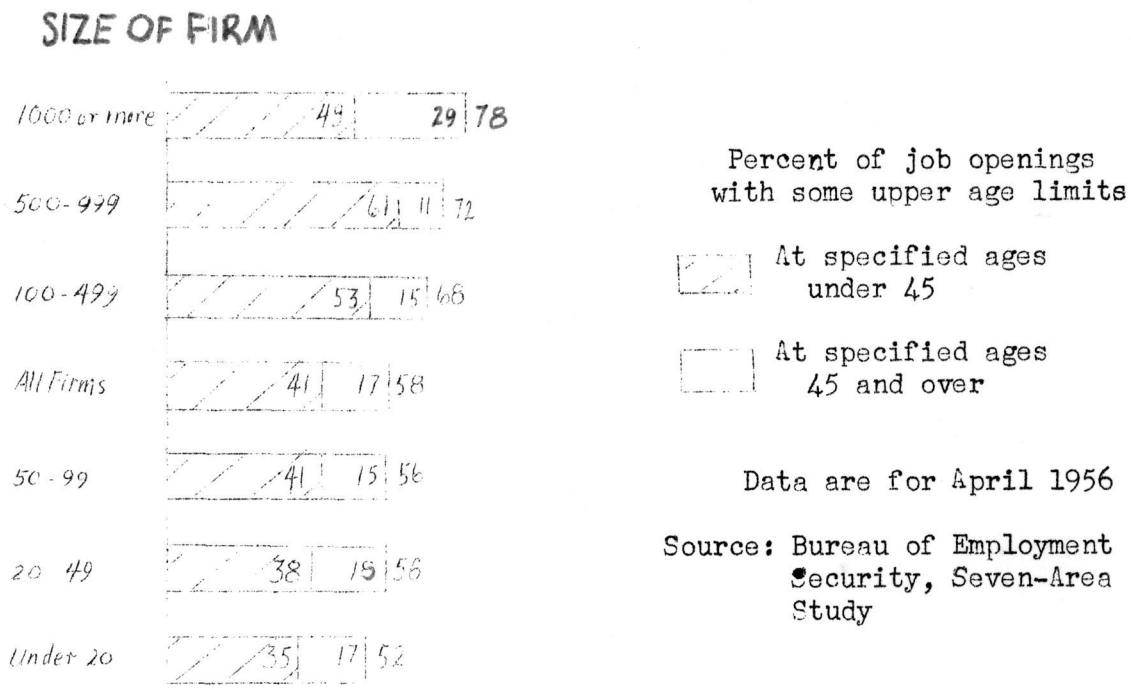


(b) Considered according to type of industry, age restrictions are encountered most frequently in the hiring policies of those industries which employ the largest numbers of workers in the most restrictive of the occupational categories considered in (a) above.



(c) Larger firms impose age maximums more frequently than smaller firms. This appears to be the result of the rigidly administered personnel policies attendant upon large-scale operations which do not permit much consideration of individual workers. Smaller organizations are less likely to have elaborate and semi-autonomous personnel divisions and, consequently, are able to interpret their policies more flexibly, making individual judgements more often.

Another contributing cause is that the larger firms are able to afford more attractive employee benefits. This gives them an advantage in the labor market so that they are able to recruit workers of the ages they may specify. Smaller firms, whose benefit programs are less attractive, must come to terms with the market and hire such workers as are available to them. It is evident that this cause would be more operative in a tight labor market than in a slack one:

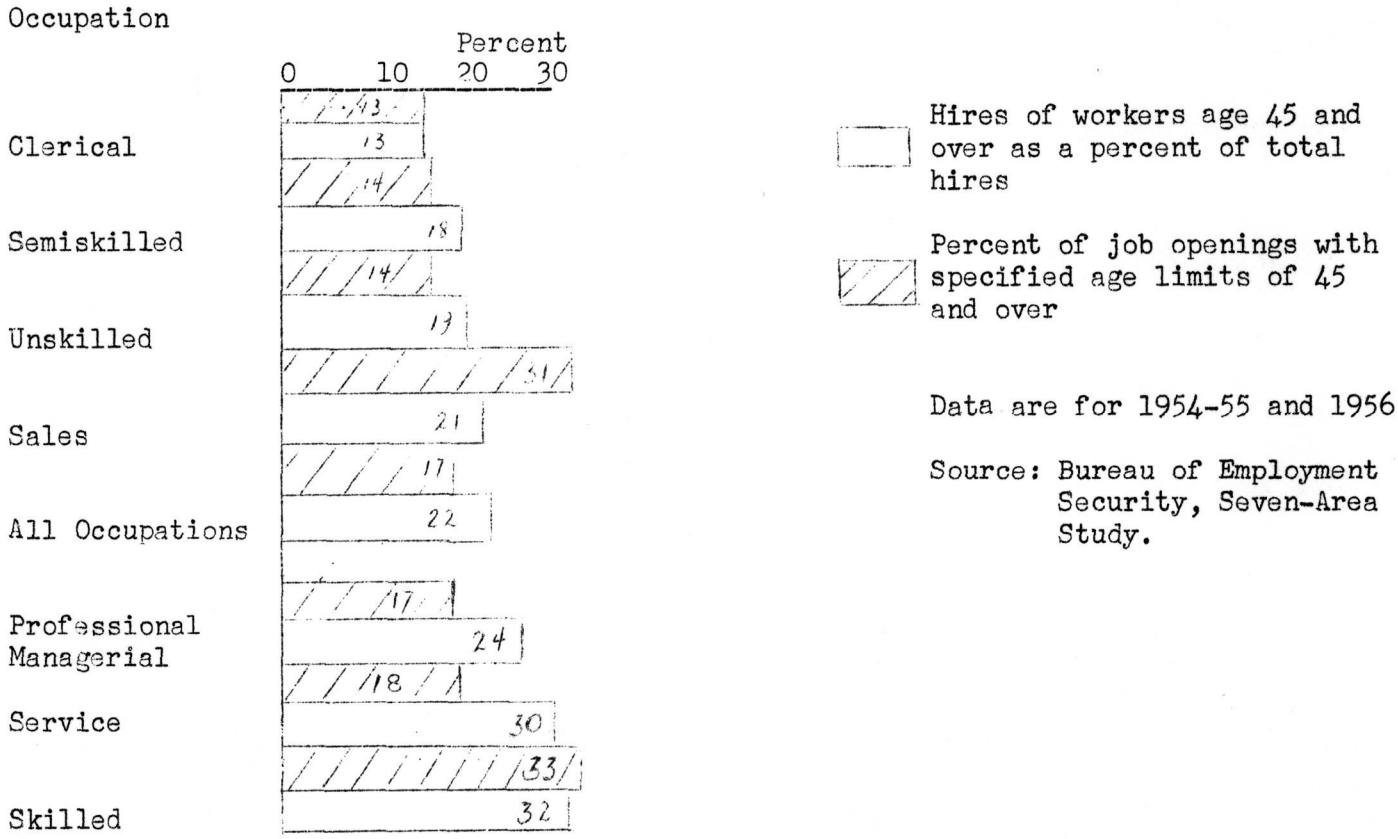


It is worthy of note in considering the extent to which age maximums are specified in hiring that, although they are 27% more frequent in firms employing over 1000 workers than in those employing less than 20, even the latter specify them for over one-half of their job openings; and that, although firms of less than 20 workers specify a maximum of forty-five years less frequently than larger firms, they, nevertheless, specify this maximum for more than one-third of their openings. This is a

very large proportion of available jobs.

3. Actual hiring patterns analyzed by (a) occupation, (b) type of industry and (c) size of industry are evidence of the effectiveness of the age limits in practice.

(a) The accompanying graph analyzes, according to occupation, the hiring patterns of the firms surveyed. The solid bars represent the hires of workers age forty-five and over as a percentage of total hires. The diagonally ruled bars represent the percentage of job openings with age limits of forty-five years and over. (The latter material has been transposed from graph 2-a above for purposes of comparison.)



Generally speaking, it is evident that hiring patterns rather closely parallel the pattern of age restriction. In one category (clerical) the percentages are identical. In three categories (semi-skilled, unskilled, professional and managerial) the percentages of restricted job openings are 4% or 5% lower than the percentages of hires. In one case (service) restricted job openings are 12% lower than the hires in the category. In the two remaining cases (sales and skilled) there are fewer hires than restricted openings.

The cases in which the percentages of hires of workers exceed to some degree the percentages of restricted openings can probably be accounted for by the relative tightness of the labor market which necessitates the hiring of workers in violation of maximum age policies. Inspection of correlative data suggests that much of such hiring is due to hiring in smaller firms (cf. 2-c above). This is especially true for the service industries, the majority of which are small firms. This would account for the 12% difference shown.

The remaining two cases must be accounted for differently. In each the percentage of restricted job openings exceeds the percentage of total hires over age forty-five.

In the case of skilled labor, the first observation is that the percentages differ by only 1% and probably should be considered equal. The second is that, in the category of skilled labor, a very high percentage of job openings are available to workers over 45 because the majority of skilled workers are older workers.

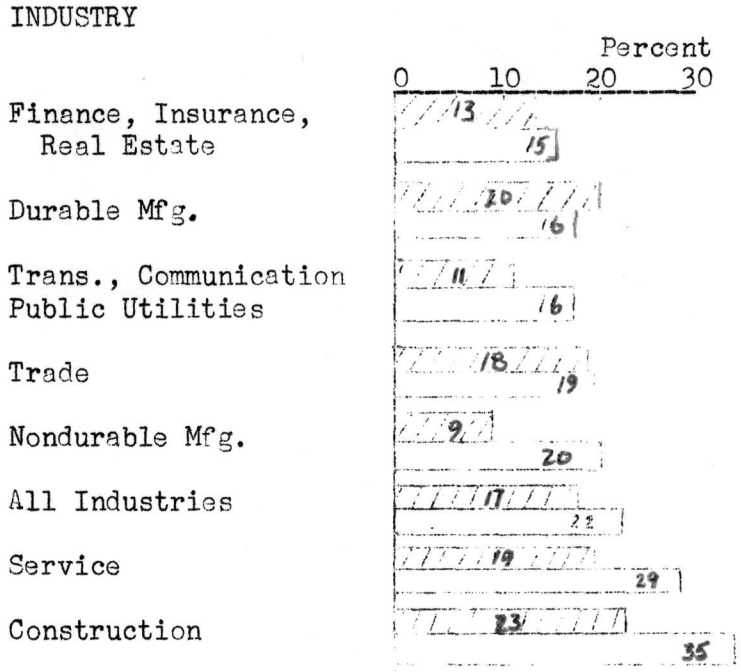
The sales category is somewhat different. Here, the number

of restricted openings exceeds by 10% the number of hires of workers over forty-five. This would seem to confirm the observation that, in certain areas and certainly in sales positions, there is an operative "preferred age" somewhat lower than the specified possible maximum.

These data seem to warrant the conclusion that hiring patterns considered by occupation parallel rather closely the pattern of age restrictions

It is again necessary to note that, while age restrictions are less stringent in some occupations than in others, even in the case of skilled labor, only one-third of the hires are of workers over age forty-five, while on the national average, 40% of job seekers are over age forty-five. If we average all occupations, we find that, while 40% of job seekers are over forty-five, only 22% of all hires are of workers over this age. That is, about one-half of the older job seekers are hired. And this also misrepresents the situation when we take into account that not all of these secure positions for which their experience has fitted them or at salaries commensurate with their previous incomes.

b) An analysis according to industry confirms the preceding conclusion that hiring patterns parallels the pattern of age restrictions. Both in the average for all industries and in particular industries, the percentage of hires exceeds the percentage of restricted jobs by from 1% to 12%. The overall average excess is 5%.



Hires of Workers Age 45 and Over as a Percent of Total Hires

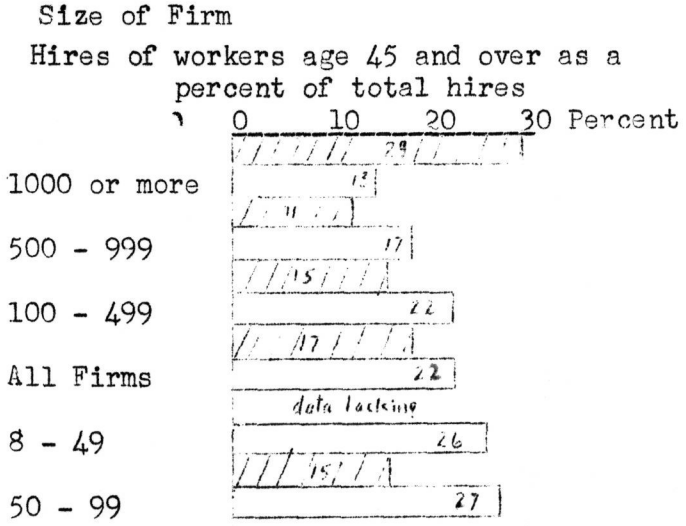
Data are for 1954-55 and 1956

Source: Bureau of Employment Security, Seven-Area Study

(c) Analysis of hiring patterns of workers over age forty-five according to size of firm again confirms the pattern previously established. There are two notable deviations.

(i) In the case of firms employing 1000 or more workers, only 13% of the total hires are of workers over age forty-five (this is the same percentage as for the most restrictive of the occupational groups, clerical workers,(cf. graph 2-a supra), whereas 29% of the openings announced themselves as available to workers over age forty-five. This again suggests the operation of a "preferred age" as opposed to an official maximum age.)

(ii) Smaller firms filled 12% more jobs with workers over age forty-five than the number of openings they announced as available to such workers. This again would appeear to



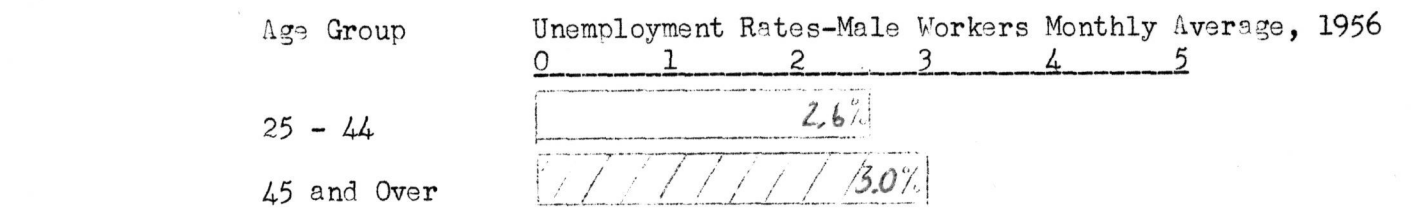
Data are for 1954-55

Bureau of Employment Security, Seven-Area Study

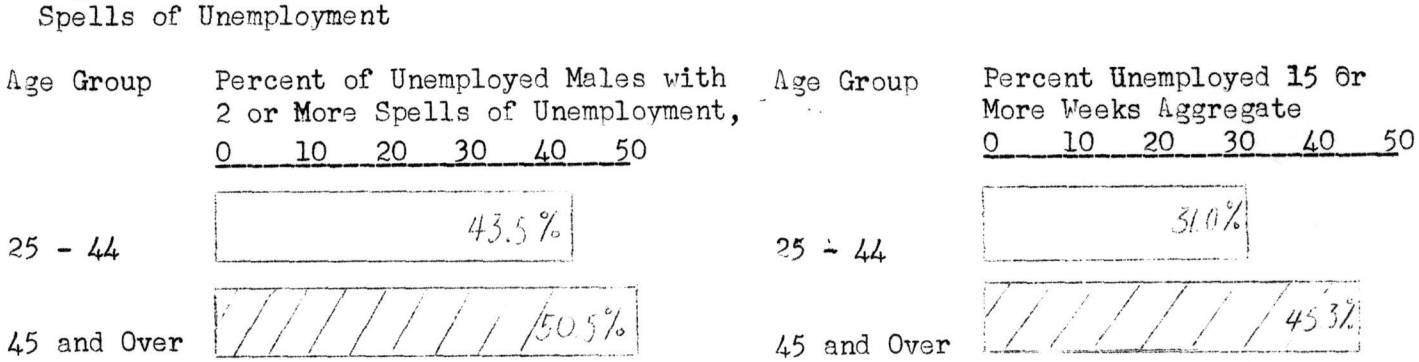
illustrate the effect of a tight labor market (cf., 2-c supra).

4. <u>Older workers (a) have a higher rate of unemployment, (b) are out of work more often, and (c) are out of work for longer periods.</u>

Older Male Workers Have Higher Rates of Unemployment...



A Higher Proportion have 2 or More Spells of Unemployment

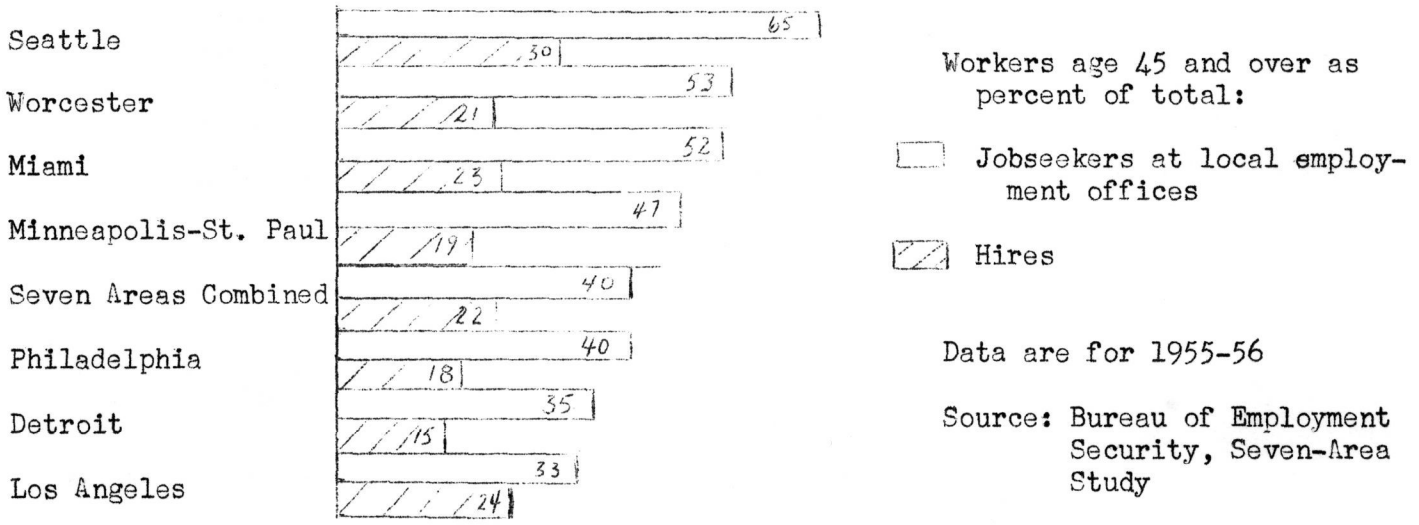


UNITED STATES DEPARTMENT OF LABOR
Bureau of Employment Security

Source: U.S. Department of Commerce, Bureau of the Census

5. <u>In the labor market, hires of older workers are below their proportion among job seekers.</u>

Area Employment Experience - Workers Age 45 and Over



Data are for 1955-56

Source: Bureau of Employment Security, Seven-Area Study

It is to be observed that, on the national average, 40% of job seekers are age forty-five and over while only 22%, or slightly more than half as many hires, are of workers in this age group. Conversely, 60% of job seekers are under age forty-five but 78% of the hires are from this group. In Philadelphia, which is assumed to resemble Baltimore, 40% of job seekers are over forty-five years of age, while 18% of the hires or slightly less than half are under forty-five. In Philadelphia, 82% of hires are of workers under age forty-five.

Extent of the Problem in Baltimore

The Labor Department's Seven-Area Study finds that, on a national average, 58% of all job openings specify some upper age limit of eligibility, and that 41% specify an upper limit of forty-five years. In Philadelphia, which of the seven cities studied most nearly resembles Baltimore, 79% of the openings specified some upper limit, and 44% specified a limit less than forty-five.

This information about the country at large provides a standard against which to gauge the results of four separate efforts made in the course of the present study to determine the situation in Baltimore. These four studies were (1) a survey of newspaper "Help Wanted" advertisements for the month of May and July 1958, (2) a survey of job openings listed with the Maryland Division of Employment Security, (3) an independent questionnaire to Baltimore employers, and (4) interviews with managers of private employment agencies. Summaries of the results of these studies follow.

(1) Newspaper Survey

Classified "Help Wanted" advertising in Baltimore newspapers appeared

to offer a possible index to the age factor in local hiring practices. Numerous sources, including the Department of Employment Security, private employment agencies, and the newspaper management, as well as the questionnaire sent to employers, verified that a very considerable proportion of job placements are made through this medium. Further, such advertising is available over a considerable perios of time and in sufficient quantity to provide the basis for a statistically meaningful treatment.

The Baltimore Sun was selected after an initial count of all local newspapers on the ground that its advertising is more general and greater in quantity than that carried by other newspapers. Preliminary tabulation of data for different periods of several weeks led to the conclusion that the Sunday edition of the Sun provides the most representative data. The staff of the Sunpapers confirmed this conclusion. The data in Table II, therefore, are drawn from the classified section of Sunday editions of the Sun.

The table exhibits three sets of data. The first two sets of entries are from the months of May and July 1958. The third entry is for one Sunday in May 1943 and is included to display the effect of a tight labor market upon the use of age maximums in hiring practices.

These data may be summarized as follows:

(1) About one-sixth of the current year's help wanted ads examined include some age restriction.

(2) The incidence of such restrictions appears to be higher for female workers.

(3) The application of such restrictions is inversely

TABLE II

"Help Wanted" Ads Specifying Age Maximums Taken from the Baltimore Sun

	MEN			WOMEN			MEN & WOMEN		
DATE	No. of Ads.	No. of Ads. with Age Max.	% of Ads with Age Max.	No. of Ads	No. of Ads with Age Max.	% of Ads with Age Max.	No. of Ads	No. of Ads with Age Max.	% of Ads with Age Max.
4 May 58	373	51	13.7	249	39	16.0	622	90	14.4
11 May 58	347	56	16.1	249	33	13.2	596	89	14.9
18 May 58	297	50	16.8	310	51	16.4	607	101	16.5
25 May 58	377	50	13.2	260	52	20.0	637	102	15.4
TOTAL	1394			1068			2462		
		Average	15.0		Average	16.4		Average	15.3
6 July 58	218	39	18.0	153	23	15.0	371	64	17.0
13 July 58	401	60	14.9	221	36	16.0	622	96	15.4
20 July 58	314	52	16.5	243	41	16.8	557	93	16.7
27 July 58	347	46	13.3	190	27	14.2	537	73	13.6
TOTAL	1280			807			2087		
		Average	15.7		Average	15.5		Average	15.7
9 May 43	577	37	6.4	400	35	8.8	977	72	7.4

Proportional to the tightness of the labor market, the frequency of such maximums in 1943 being less than half the current rate.

Limitations and Qualifications

These data can be regarded only as indicative. They cannot be taken as a precise index to Baltimore hiring practices for the following reasons:

(1) The count recorded is for single ads, although in actual fact many ads are for more than one job opening.

(2) The absence from an ad of an age maximum does not mean that none will be applied in the resultant hiring.

These two observations indicate that, in making an estimate of the number of positions restricted by age maximums, the figures of the table should be revised upward.

Furthermore, the relation of these data to the labor market as a whole is indeterminate because:

(3) Since data are unavailable either on the total number of hires in the Baltimore labor market for a given period or on the number affected through newspaper advertising, no ratio can be established between this survey and the total picture.

(4) Inasmuch as only certain types of positions are regularly advertised in the newspapers, the survey is inderterminately selective.

Conclusions

In spite of these limitations the data appear to warrant the

following conclusions:

(1) Age criteria are generally operative in Baltimore hiring practices.

(2) Such criteria appear to affect women to a slightly greater extent than men.

(3) The application of these hiring criteria is in inverse ratio to the tightness of the labor market.

The data just considered record the frequency with which classified advertisements specigy some age limit as a qualification for the job opening. They do not, however, show the frequency with which particular age limits occur. It is of some importance to know this in order to ascertain which age groups of the labor force are most likely to be affected by the hiring practices under consideration, and to gain some notion of employers' views of desirable ages. To put it another way, if an older worker is defined as "one who meets with some obstacle to employment because of his chronological age," the discovery of the most frequently occurring age limits will help to define the older worker. Such a definition is essential both in making an estimate of the extent of the problem and in envisioning a possible legal approach to a solution.

Table III records the frequencies with which various age maximums were specified in the Baltimore Sun "Help Wanted" advertisements for twenty days in the month of July 1958. Certain interpretive remarks are necessary for an understanding of these data.

No advertisements are included which cite age minimums. None are included which merely designate "boy" or "girl," since, in the absence of further information, they may be only technical terms (e.g., "counter

girl", "bus boy") which do not necessarily imply age restrictions.

It is evident that the most frequent age designation in these data is "young." The first two columns of each category cite the number of such advertisements within the given age group and the percentage of the total group which that number constitutes. Since this method of recording the data does not present a very clear picture, it was decided to distribute the "young" entries in a reasonable way among the appropriate groups. The scheme of distribution was as follows.

It was first decided that by "young" the employer probably meant under forty. This interpretation does not appear to restrict unduly the normal colloquial usage and is, moreover, entirely consistent with the other age data of the table. The "young" data, therefore, were distributed among the first four age groups in the same proportions in which the specifically designated ages occurred. The third and fourth columns exhibit this "adjusted" data.

It is apparent that age maximums automatically restrict both men and women age thirty-five and over from more than half of the job openings which specify such maximums. Thirty-five would appear to be the critical age for both sexes with a rapidly decreasing rate of job availability for each successive five years of age. See Table III, page twenty-three.

Conclusions

Age restrictions were found in approximately 15% of the newspaper "Help Wanted" advertisements examined. Although such advertising is indeterminately selective, it does not appear to exclude entirely any

TABLE III

Frequencies of Particular Age Maximums Appearing in "Help Wanted" Ads from the Baltimore Sun

	MEN				WOMEN				MEN & WOMEN			
	No. of positions	% of Pos.	Adjusted % of Pos.	Adjusted cumulative % of Pos.	No. of Pos.	% of Pos.	Adjusted % of Pos.	Adj. Cumulative % of Pos.	No. of Pos.	% of Pos.	Adjusted % of Pos.	Adj. Cumulative % of Pos.
Total	490	100.0	100.0	100.0	381	100.0	100.0	100.0	871	100.0	100.0	100.0
Young	159	32.4			161	42.3			320	36.7		
Under 25	24	4.9	8.4	8.4	4	1.0	2.1	2.1	28	3.2	5.9	5.9
" 30	41	8.4	14.3	22.7	19	5.0	9.7	11.8	60	6.9	12.4	18.3
" 35	90	18.4	31.4	54.1	104	27.3	52.5	64.3	194	22.3	40.2	58.5
" 40	70	14.3	24.3	78.4	47	12.3	23.6	87.9	117	13.4	24.1	82.6
" 45	47	9.6	9.6	88.0	17	4.5	4.5	92.4	64	7.4	7.4	90.0
" 50	11	2.2	2.2	90.2	12	3.1	3.1	95.5	23	2.6	2.6	92.6
" 55	23	4.7	4.7	94.9	6	1.6	1.6	97.1	29	3.3	3.3	95.9
" 60	22	4.5	4.5	99.4	11	2.9	2.9	100.0	33	3.8	3.8	99.7
" 65	3	.6	.6	100.0	0	0.0			3	.3	.3	100.0

type of occupation and, therefore, serves as an approximate index to hiring in the City of Baltimore

Further, for the two reasons cited above, the figure 15% should be revised upward to achieve a truer approximation of the number of job openings restricted by age maximums. Subsequent data from other sources will support this assertion.

Examination of the frequency with which particular age maximums occur indicate that age thirty-five is a critical age for workers of both sexes. Less than half of the job openings which specified age limits were available to men who had passed their thirty-fifth birthday, and only about one-third to women of the same age. At age forty-five, only one-eighth of the openings are available to men and less than one-tenth to women of that age.

These conclusions suggest that the older worker in Baltimore is a worker of thirty-five. Since about two-thirds of the labor force are between ages thirty-five and sixty-five, this proportion of the labor force, then, is potentially affected by age restrictions in hiring. The figures offer no index to how many are actually so affected.

(2) The Department of Employment Security Survey

In 1952 the Maryland Department of Employment Security reviewed 564 job opportunities listed with that agency in one month and classified them according to the age limits specified by the employer. In cooperation with the present study the Department made a parallel survey of job opportunities listed with them for the month of August 1958. The results of these two studies are tabulated below.

Maximum Specified Age Limits for Job Opportunities Listed with the Maryland Department of Employment Security, Baltimore Office For a Period of One Month, 1952 and 1958

Maximum Age Limit (years)	Number of Positions		Per Cent of Positions		Cumulative Per Cent of Positions	
	1952	1958	1952	1958	1952	1958
Total	564	1142	100	100	100	100
45	368	567	65	50	65	50
50	170	210	30	18	95	68
55	15	116	3	10	98	78
60	8	148	1	13	99	91
65 & Over	-	87	-	8	-	99
None Stated	3	15	1	1	100	100

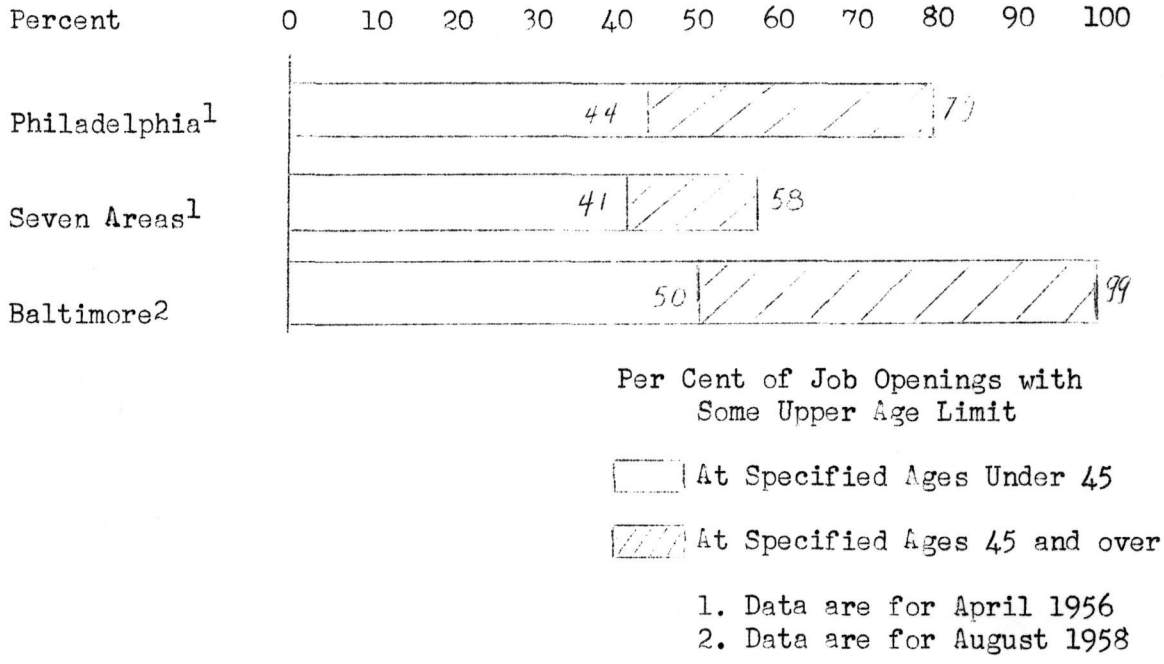
The parallel figures immediately reveal a considerable improvement of job opportunities for older workers in the six year period between the surveys. For example, in 1952 only 35 % of the jobs listed were available to workers over age forty and only 5% to workers over age fifty. In August 1958, 50% were available to workers over forty-five and 32% to those over age fifty. And, whereas in 1952 there were no listings whatsoever of opportunities for workers sixty-five and over, 8% of the 1958 listings were available to this group. This improvement undoubtedly is largely due to the Department's special program of job development and counselling services for older workers.

On the other hand the fact of improvement must not be allowed to obscure the fact that, considered absolutely, job opportunities for

older workers are shown to be severely restricted by age maximums. For example, only 32% of the opportunities listed were available to workers over fifty. Such workers, according to current retirement practices have a work life expectancy of at least fifteen years.

It must also be noted that, for many unemployed older workers, the situation is worse than these figures would indicate, for they are an aggregate of all openings listed. They do not consider the suitability of listed openings to the needs of the actual unemployed workers. An opening available to an unskilled worker of age fifty does not meet the needs of an unemployed stenographer of forty-five or an office manager of fifty. In terms of skill, experience, and previous salary, the picture is much more restricted than the figures would indicate.

The graph compares the figures from the Employment Security study with the Labor Department's figures for the combined seven areas and for Philadelphia.



1. Data are for April 1956
2. Data are for August 1958

It is immediately evident that the figures for Baltimore are in excess both of those for the Seven Areas as a whole and for Philadelphia.

While the listings of the Department of Employment Security may be selective in some indeterminate way and may not statistically be a completely valid sample of the Baltimore market, it is probably a much more accurate index to the market than the newspaper survey, for the Department is in direct contact with employers and personnel departments and thus has direct knowledge of the hiring policies of individual firms. The program of special services to older workers brings the Department into further specialized contact with the problem.

(3) The Questionnaire to Employers

The questionnaire[1] to Baltimore employers shows that 46 % of the 174 firms replying have some maximum age for hiring. About 31% of these firms said they have a maximum age of under fifty years.

These percentages do not parallel those in the preceding sections. They are figures on personnel policies and are included here as an indication of the frequency with which such policies include age restrictions. To render them comparable with the previous percentages, we should have to arrive at an estimate of the total number of hires effected under the policies of the firms surveyed. Data for such an estimate could not be obtained.

As a minimum conclusions, however, the questionnaire shows that age maximums are operative in a significant number (31%) of firms.

These data cannot take cognizance of the factor of "preferred age."

1. See Appendix B for questionnaire form

While company policy may state a maximum age for hiring, a supplementary policy of hiring, when possible, on the basis of a somewhat lower "preferred age" effects a further restriction.

(4) Private Employment Agencies

Interviews with managers of private employment agencies gave an additional clue to the operation of age maximums in hiring in certain fields not well represented in either newspaper advertising or Employment Security figures. These were the fields of the professions and management.

In these fields, it is the common experience that it is difficult to place job seekers over age forty-five. By age fifty, placements in large firms are virtually impossible, though careful job development of well-qualified persons often results in placement in smaller firms. The difficulty increases almost in geometric proportion with five-year age increments. Precise quantitative data, naturally, were not available from private employment agencies.

General Conclusions

It appears to be an inescapable minimum conclusion that age criteria are widely used in hiring in the Baltimore labor market. Potentially, they would appear to affect over half of the working population. The data assembled by this study provide no basis for assuming that Baltimore's situation in this respect is significantly better than the national average.

This being the case, it is assumed in what follows that the findings of the Labor Department's Seven-Area Study are generally applicable to Baltimore. None of the implications of age discrimination in hiring depend upon a precise statistical evaluation. Statistical evaluations are

valuable only as indicating the extent of the practice. Even a large local deviation from the national figures - and there is not reason to suspect one - would not alter the general conclusion that age discrimination affects a sufficiently large proportion of our labor force to constitute a serious problem. It certainly affects a proportion too large to ignore.

BASES FOR OLDER WORKER DISCRIMINATION

The Bases of Age Restrictions in Employment

The preceding section of the report has described the practice and pattern of older worker hiring in the current labor market. This description makes clear the difficulties older workers encounter in obtaining re-employment. That section, however, made no attempt to examine or evaluate these practices. This section of the report presents the reasons offered in justification of the use of age criteria in hiring older workers and offers an evaluation of them.

In general, there would appear to be two possibilities:

(1) The use of age criteria in hiring is economically sound and a matter of good business practice, or even necessity, however unfortunate it may be for the older workers whom it affects. If this is found to be the case, we face a social problem for which a solution must be found, but that solution would not appear to lie in fair employment legislation. A law which would require an employer to hire workers who could not satisfactorily perform the task for which he needs them would be unjust and unenforceable. It would certainly be highly undesirable.

(2) There is the opposite possibility that the hiring of older workers is economically sound and that the use of arbitrary age criteria is poor business practice. If this alternative proves to be the case, legislation prohibiting the imposition of arbitrary age barriers would be (a) possible, (b) economically advantageous, and (c) in justice, necessary. For, if there should prove to be no real economic justification for the practice, then there is no

justification, and it is proper that the practice be forbidden by law.

The two possibilities are antithetical and the antithesis cannot be genuinely resolved without further information. For, it is, on the one hand, difficult to believe that a practice so general should not have a basis in economic fact; yet, on the other hand, it is also difficult to accept the consequence that, if it has such a basis, then half of our labor force is too old to be economically employed and that most of our skilled workers, not to mention our management personnel, are similarly beyond the age at which it is economical to employ them.

The basic reason for age discrimination in hiring practices is not easy to locate. Despite the looseness and vulnerability of such a remark, it appears that the real basis is a general social attitude which places great emphasis on the advantages of youth without serious suggestion that there are other and compensatory advantages attendant upon age.

Youth is thought to be infinitely desirable and age, while it can not be avoided, tends to be camouflaged. If a man is sixty, vigorous and imaginative, he is said to be young for his age, meaning that he possesses the vigor and imagination of a youth, for these are assumed to be essentially the characteristics of youth. That vigor and imagination may also be virtues of age is not seriously considered, even in the face of an overwhelming number of examples of sexegenarians whose vigor and imagination surpass that of most of their fellows, young or old, and in the face of the equally great mass of evidence that the average youth is unlikely to be a model of vigor and imagination. We, as a people, have not seriously contemplated the notion that vigor and imagination probably are not functions

of chronological age at all in any universal sense. It is certainly true that vigor and imagination in youth may be different and possibly less useful in many contexts than the same qualities in an older person. Also, they may be difficult to deal with in a person of any age. It is indeterminate in general to what extent these characteristics may be desirable qualifications for a given job. The vigor and imagination of a Churchill may not be particularly useful in a pipefitter or an assembly line worker, however valuable they may be in themselves.

Experience is one concomittant of age that is immediately evident as a desirable trait. It is fairly clear that, with the passage of time, a man both ages and gains more experience. This applies to job experience. Normally, this means an increase in skill.

Skill, however, is a matter both of judgement and of operation. Physical deterioration may impair either judgement or the physical execution of judgements, and, at a certain phase of physical deterioration, a worker may no longer be able to perform his tasks. It may be on some such basis that the notion that age is a reasonably accurate index to a worker's ability to perform his job comes about. This must be regarded narrowly, however, Current practice makes 65 the normal retirement age. Does this assume that by age 65 a worker's abilities have so far declined, on the average, that he should no longer be retained on the work force? And, if so, at what point is it assumed that there is a sufficient impairment of his powers that an age criterion must be set for hiring?

To answer the first question, we may first observe that most workers continue working after age 65 if they are permitted to do so. And they are often permitted to do so by companies that could retire them earlier but do

not choose to do so, presumably because they are sufficiently productive to earn their wage. Furthermore, most industries do not have a fixed retirement age at all. Of the 174 firms replying to this question on the questionnaire distributed by this study, for example, 113 had no retirement program at all. An additional 9 firms which have a retirement program have no policy on mandatory retirement age. Thus 70% of the firms replying do not feel that the matter is clear enough to warrant any general policy. This is in marked contrast to hiring policies where 46 % have some maximum age for hiring and 31 % have a maximum of less than fifty years.

In the second place, assuming that, on the average, a workman is no longer sufficiently productive after the age of 65 to warrant his continued employment, at what age is it assumed that his productivity has declined to a degree that it is no longer economically justifiable to hire him?

The frequency with which age maximums are used, as shown earlier in this report, seem to indicate in the judgement of personnel managers that the "age" for women is 35 or 40 and for men, 40 or 45. If this is true, it forces strange consequences. It means, for example, that over half the adult population is too old to be economically productive. It means that most of our skilled workmen are too old to be economical employees. It means also that most of the more responsible employees of any firm, those in managerial positions for instance, are too old. No one would seriously say this. And, yet, it is implicit in hiring practices that set age maximums.

Until relatively recently there has been no scientific knowledge of the phenomena of aging. The sciences of gerontology and geriatrics are still new, but certain conclusions have emerged from studies in these fields which have great bearing on our subject.

The most important is that there is no known correlation between chronological age and a person's work capacities. Individuals age at different rates physiologically and the chronological ages of different individuals do not correlate in any known way with their physiological ages. Furthermore, certain compensatory changes occur with age and skill. For example, though a man's reflexes may slow down as he grows older, the improvement of his judgement may more than compensate for the physical deterioration.

Again, there is an assumption that physical powers decline with age. This is true to a degree, and yet it is observable that some jobs which demand considerable physical exertion, for example, certain unskilled occupations like construction workers or stevedores, do not carry age criteria and many of the men in these jobs are of a relatively advance age.

The conclusion is that, while, in general and in the long run, powers decline with age, this does not happen in any regular way, is not a mere function of chronological age, and the decline does not happen as early nor to the extent that has been commonly assumed. Rather, the decline of an individual's capacity to work depends upon his own physical make-up and his own rate of physiological aging. The judgement of his capacity to work could be made accurately only by testing him in terms of the work he would be required to do. No reliable inference could be drawn in most instances from his birth date.

Thus, it is being suggested that the major reason for age barriers in employment is a general unexamined prejudice in favor of youth, a tendency to make unwarranted generalizations from too few particulars in support of the prejudice, and a lack of factual knowledge which would counter the error.

The remainder of this section of the report will examine in detail the

reasons given by employers for their objections to the hiring of older workers.

Reasons for Not Hiring Older Workers

In the course of its Seven Area Survey, the Labor Department questioned some 5,500 employers to discover their objections to hiring old workers. Since this is the most comprehensive data available on the subject, it is quoted here extensively.

Rank	Reasons	No. of Times Given	% of Total
1	Cannot Maintain Normal Production Standards (slow reaction, too slow for production, too slow on jobs involving speed)	1208	22.4%
2	Cannot Meet Company Physical Requirements (Diminished strength, stamina, endurance, health; not able to pass physical examinations, work too heavy physically)	1130	20.9%
3	Are Inflexible (Set in ways, resist change or criticism, lack versatility or acceptance of new ideas, difficulty in transferring)	712	13.2%
4	Pension and Insurance Costs (Pension or group insurance rates would increase)	547	10.1%
5	Are Above or Too Close to Compulsory Retirement Age (Would not be eligible for pension, retiring own workers at this age)	385	7.1%
6	Prefer Younger Workers in their Establishments (Just prefer younger people, do not wish to mix age groups, want younger people for entry jobs)	281	5.2%
7	More Difficult to Train (Take too long to train for new jobs, too slow in comprehending new methods, training costs)	173	3.2%
8	Are Excessively Absent from Work (Out too much because of illness, or other reasons)	167	3.1%
9	Do Not Fit in with Company's Policy of Promotion from Within (Move up own workers to better positions, use of seniority policy)	147	2.7%
10	Limited Work Expectancy with Company (Limited length of employment after hiring, available for only a limited number of years, low tenure [illegible] potential)	138	2.4%

Rank	Reasons	No. of Times Given	% of Total
11	Do Not Get Along with Others (Do not get along with co-worders, lack of cooperation, lack of ability to work with younger people	106	2.7%
12	Demand Too Much in terms of Salary, Medical and other Benefits (Reported by Bhiladelphia only)	89	1.6%
13	Have Objectional Personal Characteristics (Poor personal appearance, too exacting, emtionally unstable, lack of drive, unwilling to accept supervision)	85	1.6%
14	Lack Experience for New Fields of Work (Lack experience, unsuitable experience, lack needed skills)	50	0.9%
15	Accident Prone (Danger of injury, prone to accident)	19	0.4%
16	Miscellaneous	174	3.2%

*
**

"It will be noted that, of the reasons given by employers, many of them, such as objectionable personal characteristics, do not get along with others, and demands in terms of wages, have obviously little or no relationship to age. A number of employers have such reasons as dishonesty, bad habits, undependability, and lack of mental alertness as reasons for not hiring older workers. Apparently many generalizations are made to justify reluctance on the part of many employers to hire and utilize workers above certain ages."

Since, of the seven cities surveyed, Philadelphia most nearly approximates Baltimore in geographical location and in the constitution of its labor market, an analysis of the five reasons most frequently cited by Philadelphia employers is given.

1. Above or close to retirement (age) 16%
2. Pension and insurance costs. 15%

* It should be noted that an employer was free to cite more than one reason and that no employer may be assumed to have cited only one reason. The reason cited most often, for example, was "1". An employer citing this reason may have cited others also.

**"Counseling and Placement Services for Older Workers," U.S. Department of Labor, Sept. 1956, pp. 39-40

3. Physical requirements 13%

4. Lack flexibility 13%

5. Production 13%

Comparative figures for the City of Baltimore derived from the questionnaire to employers are as follows:

1. Production efficiency. 15.7%

2. Pension plan and insurance requirements. . . 9.1%

3. Company physical requirements. 7.7%

4. Company promotion policy 0.9%

5. Other. 0.6%

It is immediately observable from the data that none of the reasons given is cited with sufficient frequency to account for the extent of the age restrictions exhibited by the data of the preceding section of the report, nor do any of the causes cited appear to be matters of anything approaching universal employer experience.

(1) Older Workers and the Maintainance of Production Standards

The most frequently recurring objection to the employment of older workers is that they cannot maintain normal production standards, and this belief is perhaps the major barrier to their employment. Very little factual information is available, however, on how age affects work performance.

To begin with, it is significant that, although this reason is the one most frequently cited by employers for their reluctance to hire older workers, the frequency with which it is cited by no means shows it to be a universal experience. In the Labor Department's Seven Area Study, this

objection constituted 22.4% of the objections offered by employers. In Baltimore, it was cited 15.4% of the times. These figures certainly cannot be taken as evidence that it is a universal experience.

In 1956, the U. S. Department of Labor published the results of a pilot study of the relation between age and production efficiency in eight manufacturing establishments. Their conclusions were as follows:

> "It was found possible to draw conclusions of only a limited nature with respect to the relationships between age and work performance. In the case of output per man-hour, the data showed, in general, a stable average performance level through the age of 54, with some falling off occurring in the average for the 55-64 year group. Although the declines were, in most cases, statistically significant, the indexes of output for this age group were within approximately 10% of those for the age groups with peak production.
>
> "Variations in the output of persons in the same age group were very large -- infact, they were far greater than the differences in average output among age groups. This means, for example, that many workers aged 55-64 had output rates which were actually higher than the average rate in the age group with peak production. Conversely, many younger workers had output lower than the average output of older workers. Insofar as practical implications are concerned, these data emphasize the fact that an employer, in considering an applicant for employment, should evaluate the potentialities of the individual rather than immediately drawing conclusions from his chronological age." *

The results of this study are not to be taken as conclusive. Criteria for establishing and methods for measuring production efficiency are extremely difficult to devise. The eight establishments surveyed were engaged in the sort of manufacture in which piece-work could form a quantitative basis for measurement, but even this could not adequately evaluate quality of products. In work of a different sort, for example, clerical or sales work, the problems of measurement would be much more complex. Very much work remains to be done before production efficiency can be measured accurately for all types of industry. And, until such time, conclusive evidence about the older worker's production efficiency will be lacking.

*"Job performance and Age; A Study in Measurement," U.S. Dept. of Labor, 1956,pp1-2

As pointed out earlier, gerontology confirms the result of the study and the clear implication with respect to the employment of the older worker is that, unless some real standard of production efficiency can be established, some clear relation between age and ability, hiring should be based solely upon the ability to perform the work required and never upon mere chronological age.

The simple reply to the assertion that age is an index to production efficiency and that hiring ona basis of chronological age is quite simply that, there is no evidence for it and considerable indirect evidence against it.

(2) Cannot Meet Company Physical Requirements (Diminished strength, stamina, endurance, health; not able to pass physical examinations; work too heavy physically)

This, the second most frequently cited objection to the employment of older workers, needs some analysis.

(a) If there are bona fide physical requirements for the performance of a job, then hiring or rejection for that job should be made on the basis of the individual's physiological ability to do the job. The rejection of a candidate on such a basis would not be on account of his age but on account of his physical condition. On the other hand, to assume that an individual could not pass a physical examination because he has reached a certain chronological age is arbitrary and without justification.

(b) Physical requirements specified for a given job should bear a real and legitimate relation to the duties the job requires. Physical criteria are too often set up which bear no genuine relation to the powers required by the work. In such cases, the establishment of needlessly

high physical criteria is merely a device for screening out the older workers. For example, age barriers are most severe in clerical occupations (57% of job openings for clerical work have an upper age limit of 45). It is clear at the same time that physical requirements need not be very stringent in such occupations. On the other hand, in contrast construction, where one might conclude that physical condition would perhaps be an important factor, only 32% of job openings have an upper limit of 45.

(3) Are Inflexible

This objection, cited in 13% of the instances, is the most subjective of the major reasons and is consequently hardest to answer objectively. In the first place, it must be pointed out again that even on the basis of the statistics here cited it is a far from universal judgement. One can but point out that the great majority of employers do not find it a valid objection. There is no doubt that some employees are inflexible. There is probably no way to measure this characteristic in advance.

In addition, it can be pointed out that older workers have many compensatory advantages also cited by employers and some of them consort oddly with this objection.

Finally, it must be realized that the workers being considered are the group between ages 40 and 65. Even in terms of popular prejudice, this age group expecially in its lower half is not associated with senile stubborness.

(4) Pension and Insurance Costs Would Increase

The objection that hiring older workers would increase the cost to the employer of pension and insurance payments, which are part of their

employment benefit programs, occurs with great frequency in studies made of the problem of older worker employment. In the Labor Department's Seven Area Study, it was the objection that recurred with the fourth greatest frequency, appearing in 10.1% of the cases. The questionnaire to Baltimore employers cited it in 9.1% of the cases.

This appears to be a very formidable objection; for, whereas the three objections so far considered involve complex judgements on which there is little objective information. this objection would seem accessible to verification by cost accounting. Furthermore, the analogy with the individual's experience of insurance rates that increase with the age of the insured lends the objection a certain immediate plausibility.

One clear principle, however, emerges in a preliminary consideration of the objection. If the objection is valid, means must be found to correct it; for, it is clearly self-contradictory that a program instituted as a benefit to workers should turn out to be in fact an obstacle to their employment. It is not reasonable that a worker should be refused employment, not because he cannot do the work required, but because, if hired at his present age, he would be unable to retire with full benefits in ten, fifteen, or twenty years.

An analysis of the factors determining the comparative costs of pension benefits for older and younger workers and the effect of this upon age discrimination in hiring is extremely complex. Studies of the problem are still in progress and it is fair to say that its full range is not yet wholly understood.

Dr. Dan McGill of the Heubner Foundation for Insurance Education stated recently[1] that he is not persuaded that any substantial degree of

1 Proceedings, Older Worker Conference, State of Penna., Harrisburg, 1958

discrimination is due to pension costs. In many instances employers giving this reason turned out to have no pension plan. evidently using this reason to cover up their real one. Other employers maintaining a money purchase type plan in which the age of the employee does not affect the cost to the employer also gave this reason, although it was in fact entirely irrelevant.

The heart of the objection, of course, stems from the fixed benefit type of plan according to which a worker receives a fixed benefit upon hi retirement at a set age. Such plans normally specify a minimum length of service to qualify for benefits, and it is this fixed period which sets the lower age limit that is often translated into a maximum hiring age. Such a plan certainly costs the employer more to provide each dollar benefit for an older worker.

Yet even under such a plan there are factors which tend to reduce the higher cost per dollar benefit for the older worker which may largely cancel out the difference. (1) The increasing longevity of our population means that the younger worker, living longer in retirement, will draw benefits longer. (2) The trend toward higher benefits arising out of increasing prices and wages increases the cost of younger workers who are employed longer. The actual accounting of these factors remains to be done.

Proposed solutions to these difficulties take the form either of excluding older workers from pension plans altogether, or of instituting systems of adjusted benefits. The essential point is that ways can be found to prevent pension benefits from being an obstacle to the older worker.

In 1956 at the request of the U.S. Department of Labor, a distinguished group of experts made a careful study of the problem and published their

findings under the title "Pension Costs in Relation to the Hiring of Older Workers." The report concludes:

> "...the cost of private pension and insurance benefits ought not to be considered a real obstacle to the employment of older workers. It is urged that employers reexamine their policies, and the practices of hiring officials, concerning age restrictions in hiring insofar as they are based on the argument of higher pension and insurance costs. This report makes it clear that such costs need not stand in the way of the traditionally sound policy of hiring on the basis of ability to do the job without regard to age." (loc. cit. p. 26)

A similar study, "Pension Plans and the Employment of Older Workers," published in 1957 by the Canadian Department of Labour concludes as follows:

> "Nothing inherent in the nature of a pension plan makes it impossible for an employer to hire an older worker or to retain him beyond normal retirement age. The restrictive clauses incorporated in some plans would appear to stem more from employment policy than from pension policy." (loc. cit. p. 45)

And in a paper entitled "Should Private Pension Plans be a Major Roadblock to the Hiring of Older Workers?", Mr. Charles E. Odell, director of the Older and Retired Workers Department, UAW-CIO-AFL, one of the relatively small number of experts on this problem concludes:

> "The truth is that pension costs are not a valid reason for rejecting older workers, and should not be used as an excuse for otherwise unjustified discrimination in hiring and retirement based on the outmoded criterion of chronological age." (loc. cit. p. 9)

(5) <u>Are Above or Too Close to Compulsory Retirement Age</u>

This objection is closely coupled with the preceding one. One aspect of the objection is the fear on the part of the employer that it would be bad public relations policy to hire a worker who is too old to receive full pension benefits and to be forced to retire him with smaller benefits.

The employer should consider revision of his policies on hiring

older workers in the light of the following arguments:

> "The employer, if his personnel people have done their job, will gain needed men or women who at 45 or 55 will be more likely to stay with him than at any younger age.
>
> "The older employee will surely be glad to have useful employment at decent wages, maintaining his record of earnings with OASI[1] and adding whatever additional benefits he can under the private pension plan in the years before retirement. It seems likely that his appreciation would tend to increase the value of his job performance. He will certainly contribute more to the national economic welfare as a worker than as a dependent or a beneficiary.
>
> "The Community should react with approval toward an employer who holds open the opportunity for usefull work to older people, already protected against actual destitution if they can continue working, without arbitrary discrimination based on calendar age."*

Prefer Younger Workers

This has been discussed in the general introduction to this section of the report, pages 31 - 35.

Remaining Objections

The remaining objections occur in relatively few cases - in no case with a frequency of more than 3.2%. They can be considered not to constitute major objections and need not be dealt with individually. On the other hand, they are interesting as signs of the prevailing sort of objections that are often held against older workers. It is clear that many are, in general, quite subjective judgements, probably based upon individual cases and invalid as a general rule. A number can be statistically shown to be invalid and incorrect, e.g., that older workers are more accident prone or that they have a higher rate of absence. The reverse is true in both instances.

Probably the most interesting aspect of these objections is that they

1 It is to be remembered that the current OASI benefit for workers with a record of steady employment at today's prevailing wages is in itself fairly substantial.

*"Pension Costs," U.S. Department of Labor, 1956, p. 5

are so infrequent, an indication that there is no universal employer experience on these points

If it is true that older workers require a longer training period than younger workers, it is worth observing also that this disadvantage may be largely or totally offset by the fact that older workers change jobs far less frequently.

Conclusions

None of the objections was cited with sufficient frequency to point to universal adverse experience on the part of employers in employing older workers. Many of the objections given are clearly subjective judgements unsupported either by direct evidence or by the experience of other employers. The pension and insurance cost objection is in the great majority of cases inapplicable. In those cases where it does apply, it should be eliminated by a change of policy. The objection that older workers are inflexible is difficult to verify or disprove. It seems clear, however, that it is not relevant to the cases of all older workers. And it must be remembered that the point of the legislation contemplated is that capable workers should be hired without the impediment of arbitrary age barriers, not that incompetents be hired. If flexibility is a requirement of a job, a preliminary judgement should be made about this characteristic in itself and not as a function of chronological age.

Since none of the objections offered sufficiently accounts for the widespread use of age maximums in hiring, the hypothesis of a general prejudice in favor of youth, unfounded in fact, seems to be substantiated. Such a prejudice should be eliminated by wide dissemination of the facts about older workers.

FAVORABLE ATTRIBUTES OF OLDER WORKERS

The preceding section of the report has been concerned with arguments against the reasons offered in support of age criteria in hiring. This is a somewhat negative approach, and it seems proper here to include a brief consideration of the positive attributes of older workers on the job.

In the course of the Labor Department's Seven-Area Study the following favorable attributes of older workers were mentioned by employers interviewed.

1. They have the stability that comes with maturity.
2. Less time is wasted on the job by older workers.
3. They are more reliable and have a definite desire to work.
4. They have consistently less absenteeism and are more apt to stay on the job.
5. They have a sense of responsibility and loyalty to their job and to their employer.
6. They generally have steady work habits and have a serious attitude toward their job.
7. They generally require less supervision once they are oriented on the job.
8. They are less inclined to "make trouble".
9. They are less distracted by outside interests or influences, they generally have fewer domestic troubles, and they are capable of greater concentration.
10. According to some employers, older married women are more desireable than younger ones since they are less apt to take time off to bear and take care of children.

Counseling and Placement Services for Older Workers, U.S. Dept. of Labor, 1956, pp. 47-48.

It will be observed that these attributes (except for the last) are in general simply the result of greater work experience and longer living.

The National Association of Manufacturers has been engaged for many years in a campaign of promotional activity to highlight the worth of mature individuals as employees. Results of parallel surveys made by the NAM of some 2500 companies in 1939 and of about 3600 companies in 1951 show both that older workers compare very favorably with younger ones in the view of management and that there has been a significant increase in management's awareness of the facts.

The data from these surveys is tabulated below. It is to be noted that, whereas in 1939 the older worker was defined by the survey as one over 40, in 1951 the critical age was advanced to 45.

Older Workers Compared With Younger Workers

Factor	Equal or Superior %		Not Equal %	
	1939	1951	1939	1951
Work Performance	84.6	92.7	15.4	7.3
Attendance	82.5	98.1	17.5	1.9
Safety Records	86.2	97,4	13.8	2.6
Work Attitude	94.8	99.2	5.2	0.8

The foregoing facts find policy support in NAM's official position on "Employment Practices for Older Workers".

> "Older workers represent countless years of rich and seasoned experience, judgement, and stability, and constitute an immensely valuable asset in the nation's work force.
>
> "Employers are urged to observe voluntary hiring practices which give consideration to skills and abilities rather than to any arbitrary age factor..."
>
> NAM Employee Relations Department (bulletin), N. Y., July 1957, pp. 1-2.

Mr. John M. Convery of the Employee Relations Division of the NAM observed in a speech to the University of Michigan's Sixth Annual Conference on Aging that the problem of the older worker is really a twofold problem. On the one hand, the situation of the older worker who matures on the job, has been improved very considerably. The other aspect of the problem, the case of the man who at forty-five is seeking work, is more difficult. Success with the first group, however, and the demonstrably good results of retaining older workers on their jobs he feels to be an important factor in meeting the problem of the second group.

He goes on to point out that most surveys which compare older workers with the rest of the work force deal with the entire group of older workers

rather than with the recently hired older worker, He cites the following results of a survey made by the Federation Employment Service in New York City which considers the evaluations of recently hired older workers.

> In this study it was found that 83% of these older workers Placements had equalled or bettered the productivity of their younger associates, according to their employers. As for absence from work, 81% of the older group stayed away from work less frequently than their younger co-workers, while more than 6% of them had attendance records which equalled those of their juniors. With only 13% of the older workers absenting themselves more frequently than younger employees, it is quite evident that where absenteeism is a serious problem, the antidote could well be the employment of more mature workers.
>
> Earning Opportunities for Mature Workers, An address by John M. Convery before the University of Michigan sixth Annual Conference on Aging, Ann Arbor, Michigan.

All of these findings show that the older worker is a valuable employee whose performance compares quite favorably with that of his younger co-workers, and that arbitrary discrimination because of age deprives our work force of some of its most valuable members.

LEGISLATION AGAINST DISCRIMINATION IN EMPLOYMENT BECAUSE OF AGE

This final section of the report respectfully recommends to the Commission that it recommend to the Mayor and City Council of Baltimore the enactment of an ordinance, separate from Ordinance No. 379, but similar in form, declaring arbitrary discrimination in employment because of age to be an unfair employment practice, and that the proposed ordinance be administered by the BEEOC.

The evidence collected by this study within its necessary limitations confirms for the City of Baltimore the findings of the United States Labor Department in its Seven Area Study and is in agreement also with the findings of studies made by various state governments and other agencies. The conclusion is that arbitrary discrimination because of age is a widespread local practice and constitutes a serious problem within the City.

Legislation is the most appropriate and most direct way to deal with the problem. It is also the most effective way. The enactment of such a law would express the community's conviction that such discrimination is an unfair and wasteful employment practice which it desires to eliminate. The lack of legal expression, on the other hand, would greatly weaken other efforts to correct the practice.

In opposition to this view it is argued by some that legislation would be ineffective, and that the best way to eliminate age discrimination is by education - that is, by campaigns of public information and persuasion aimed both at the general public and at employers. The difficulty with this method is that campaigns of public information reach those who are already initially disposed to listen and do not effectively reach those who most ought to be reached.

This view also unnecessarily sets law and education in opposition to one another. Properly conceived and administered, law provides the occasion for education. Precisely this point is admirably demonstrated by the history of FEPC's in the United States. Out of more than 5,000 cases considered by FEPC's only 47 have gone to the courts. In Massachusetts where the age provision has been in effect since 1950 and where the law has actual punitive powers, over 400 cases have been considered and none has gone to court. These statistics means that the vast majority of FEPC cases of real discrimination have been conciliated, and all the cases considered have provided opportunities under the formality of the law for reasonable discussion of the problems involved. Such discussion is more effective and reaches further than that occasioned by mere educational campaigns.

Discrimination because of age is, of course, an unfair employment practice, and as such it falls squarely under FEPC jurisdiction. But in addition to this, a very powerful corollary reason that it should be so administered is that FEPC methods are exactly suited to provide the education essential to the administration of a regulatory law. It is for these reasons that this report recommends that the proposed ordinance by administered by the BEEOC.

In the course of this study three opinions emerged from conversations with the various individuals consulted about the age discrimination provision. (1) That the law would hinder the cause of the older worker by generating employer resistance to it as a further restrictive regulation. (2) That the law might do no good but it could do no harm and should be tried. (3) That, properly empowered and administered, it is an effective approach to the problem.

Existing evidence, of course, is from the states which have such legislation. In massachusetts, with eight years of experience with such a law, the officials of the MCAD feel the age provision to be entirely administrable, although a recent report on the activities of the Commission suggests possible improvements. The same report states that while the total effect of the law may never be measurable in statistical terms, discriminatory advertising and work orders have been largely eliminated, and compulsory retirement before age 65 has been eliminated. The Labor Department's Seven Area Study, which included Worcester, Mass. reports as follows:

> "In Worcester, where a law prohibiting discrimination in employment on account of age is in effect, tallies were made of orders in which "preferred" ages were indicated in this area. In other words, the employer may still express an age preference even though he does not in fact reject otherwise qualified older workers simply because of their age. Far fewer orders indicated such preferences in Worcester than in the other cities without such laws. Less than one-fourth (23.5%) of the job openings in Worcester indicates some age preference.
>
> "In contrast, in five of the six remaining cities, the proportion of openings having upper age limitations given by employers was extremely high, ranging from 51% of all job openings in Seattle to 79% of the openings in Philadelphia...Over all, 58 percent of the openings reported had upper age limitations.
>
> Counseling and Placement Services for Older Workers, U.S. Dept. of Labor, 1956, p. 28

Mr. Elliot M. Shirk, Executive Director of the Pennsylvania FEPC which has had the age provision in its FEP law since 1956 reported as follows:

> "There is no way of telling to what extent older workers have obtained employment as the result of the improved application forms and ads but, at least, we know that the opportunity to apply for work has been opened for older workers which had been denied previously. There is no doubt in my mind that requiring non-discriminatory employment forms and newspaper help wanted advertising has improved the climate for older workers and helped eliminate some of the mechanical barriers which might hinder their employment privileges.
>
> Proceedings of Older Worker Conference sponsored by Commonwealth of Pennsylvania Dept. of Labor and Industry, Harrisburg, 1958, p. 158

Officials of the three commissions consulted (Massachusetts, Pennsylvania, and New York) all hold that information and education activities of the commissions are of the utmost importance and that it is imperative that these programs be understood and carried out as an essential part of the administration of the age law. If Baltimore should adopt such a law, then, such a program should be seen as a necessary concommitant.

One other point should be emphasized at this time. A law forbidding age discrimination is a negative measure. It is designed to remove certain impediments. But the problems of older workers cannot be solved by negative measures alone. A positive approach is also necessary. Such approaches are being made in the City of Baltimore by the special older worker services of the Department of Employment Security. The Mayor's Commission on Aging and Problems of the Aged has also examined and made recommendations concerning positive measures. If the age provision is adopted, the BEEOC should work in close cooperation with such agencies.

The final recommendation of this report is that prohibition of discrimination because of age be effected by a separate ordinance rather than by amendment of Ordinance No. 379. Discrimination because of race, religion, national origin or ancestry and discrimination because of age arise from entirely different causes. Consequently the problems of interpreting and administering FEP law would differ essentially in the two kinds of cases. To include "age" in the present law by amendment would be to risk confusion, or at any rate needless complexity in administration, interpretation and establishment of precedent.

There follows a draft of a proposed law by which discrimination in employment because of age is declared an unfair employment practice. This

draft largely follows the form of Ordinance No. 379, though it incorporates certain features of other bills. It is incorporated into this report as a concrete example to serve as a basis for discussion of the possible form for such a law. Alternative forms could be entirely consistent with the findings of the report.

A BILL

To prohibit unjust discrimination in employment because of age.

Section 1. This Act may be entitled the "Ordinance Against Age Discrimination in Employment".

Findings and Declarations of Policy

Section 2. (a) The Mayor and City Council of Baltimore hereby find that the practice of discrimination in employment against properly qualified persons solely because of their chronological age is contrary to American principles of liberty and equality of opportunity, is incompatible with the Constitution of the United States, and deprives the City of the fullest utilization of its capacities for production and economic advantage, thereby endangering the general welfare.

(b) Hiring bias generally against older workers deprives this municipality of its most important resource of experienced employees, adds to the number of persons receiving public assistance, and arbitrarily deprives the workers so affected of the dignity and status of self-support.

(c) Whereas chronological age cannot be shown to be a reliable index to a worker's ability to perform his work, the right to employment otherwise lawful is hereby recognized to be the right of all persons residing in the City of Baltimore without discrimination because of chronological age.

(d) It is hereby declared to be the policy of the City of Baltimore to protect the right recognized and declared in subdivision (c) hereof, to eliminate all such discrimination to the fullest extent permitted by the laws of the City, and to foster the employment of all persons in accordance with their fullest capacities. This Act shall effectuate such policy.

Definitions

Section 3. (a) The term "age" shall include, but shall not be limited to, all persons between the ages of thirty and sixty-five.

(b) The term "person", as used in this ordinance shall include an individual, partnership, corporation, union or association, including those acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, Whenever used in any clause prescribing and imposing a penalty, the term "person," as applied to partnerships, unions or associations, shall mean the partners or members thereof and as applied to corporations, to the officers thereof. The singular shall include the plural and the masculine shall include the feminine and neuter.

(c) The term "employer," as used in this ordinance shall include every person, as hereinabove defined, who employs five or more employees, exclusive of parents, spouse or children of such person. The term, however, shall not include fraternal, sectarian, charitable, religious or private educational organizations, but shall include any governmental unit, agency or employee as to which the City has the power to legislate.

(d) The term "labor organization" shall include any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in relation to employment.

(e) The term "employment agency" shall include every person, as hereinabove defined, regularly undertaking in this City, with or without compensation, to procure opportunities to work or to procure, recruit, refer, or place employees.

(f) The term "employment" shall not include the employment of individuals as domestic servants nor the employment of individuals to serve in personal and confidential positions.

(g) The term "Commission" means the Baltimore Equal Employment Opportunity Commission.

Exemptions

Section 4. (a) This Act shall not be construed to apply to age minimums set by law.

(b) Nothing herein shall affect the retirement system of any employer where such policy or system is not merely a subterfuge to evade the purposes of this Act.

Unfair Employment Practices Prohibited

Section 5. Except when the Commission shall have certified that a particular occupation or position reasonably requires the employment of a person or persons of a particular age and that such qualification is not adopted as a means of circumventing the purpose of this ordinance, it shall be an unlawful employment practice:

(a) For any employer, because of the age of any individual, to refuse to hire, or otherwise to discriminate against him with respect to hire, tenure, promotion, terms, conditions or privileges of employment or any matter directly or indirectly related to employment.

(b) for any employer, employment agency or labor organization to establish, announce or follow a policy of denying or limiting through a quota system or otherwise, employment or membership opportunities to any group or individual because of age.

(c) For any employer, employment agency or labor organization prior to employment or admission to membership to cause to be printed, published, or circulated any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon age.

(d) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise discriminate against any individual because of his age.

(e) For any labor organization to discriminate against any individual or to limit, segregate or classify its membership in any way which would deprive or tend to deprive such individual of employment opportunities or would limit his employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment or would affect adversely his wages, hours or employment conditions, because of such individual's age.

(f) For any employer, employment agency or labor organization to penalize or discriminate in any manner against any individual because he has opposed any practice forbidden by this ordinance or because he has made a charge, testified or assisted in any manner in any investigation, proceeding or hearing thereunder.

(g) For any person to aid, abet, incite, compel or coerce the doing of any act declared herein to be an unfair employment practice or to obstruct or prevent any person from complying with the provisions of this ordinance or any order issued thereunder or to attempt directly or indirectly to commit any act declared by this ordinance to be an unfair employment practice.

(h) It is specifically provided, that if the provisions of this ordinance are not otherwise violated, it shall not be an unfair employment practice for any employer to select for employment or employ any person who possesses qualifications, training or experience which best adapts him for the welfare and interest of such employer's business or profession.

Administration

Section 6. This Act shall be administered by the Baltimore Equal Employment Opportunities Commission according to the prodecures defined in Ordinance No. 379

Section 7. The provisions of this act shall be construed liberally for the accomplishment of the purposes thereof.

Severability

Section 8. The provisions of this ordinance are severable, and if any provision, sentence, clause, section or part thereof shall be held illegal, invalid or unconstitutional or inapplicable to any person or circumstance such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the ordinance or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this ordinance would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included therein and if the person or circumstances to which the ordinance or any part thereof is inapplicable had been specifically exempted therefrom.

Observations on the Proposed Ordinance

The form of the ordinance proposed generally follows that of Ordinance No. 379 from the obvious considerations of consistency.

Section 2(c). "This provision shall not be construed to apply to age maximums set by law." For example, positions requiring legal majority for the dispensing of alcoholic beverages, or those requiring that a worker be eighteen years of age, if he is to operate machinery.

Section 4(b). The full implications of pension plan and retirement systems cannot be foreseen without confronting actual situations and the law must leave open the possibility of fruitful exploration together with the employers affected. Evidence abailable, as given in the body of the report and in Appendix B strongly indicates that pension plan provisions are not an insurmountable obstacle to the elimination of age discrimination in employment. The essential condition is that such provisions should not be permitted inadvertently and unnecessarily to dictate general hiring policy.

Section 3(a). It is somewhat contradictory to define age at all for the purposes of prohibiting discrimination in employment because of age. The thesis has been maintained that age as such is never a criterion for employment (except possibly in the case of legal majority and similar cases).

Furthermore there are some distinct disadvantages to fixing age limits upon the applicability of the law. For example, the anti-discrimination law of the State of Massachusetts defines age to be between ages forty-five and sixty-five. A case arose involving clear age discrimination against certain airline stewardesses, aged thirty-two. Although the MCAD successfully arbi-

trated the case informally, formally it lay outside the Commission's jurisdiction. Nevertheless, it was a clear case of age discrimination in employment.

Similarly, a rigid upper age limit of 65 involves disadvantages. In industries where retirement is not compulsory at this age (and there are many) age discrimination could occur beyond this limit.

For these reasons the definition states the age limits 30 and 65 to indicate the primary focus of the problem, but permits action outside these limits in accordance with the intent of the law, if circumstances should so require.

Final Remarks

The necessities of presenting the arguments against age discrimination in employment and in favor of a law prohibiting it may inadvertently have created two misleading impressions about the views and intentions of this report. If this has been the case, these views and intentions are here explicitly disclaimed.

In arguing the case for the hiring of the older worker it has been necessary to confront the invidious distinctions made between him and younger workers. Arguments against these distinctions should in no case be construed as arguments against the employment of younger workers. The entire burden of the argument is that the underlying principle of fair employment practices should be observed as much in regard to age as race, religion, national origin, or ancestry, namely, that a worker should be hired solely on the basis of his ability to do the job without impediment of unfounded and irrational prejudice. Indeed, if one may be permitted the play on words, the principle is that hiring should be discriminating,

hiring the best man for the job, rather than discriminatory, excluding the best man for unfair and irrelevant reasons.

The report also wishes to disclaim the view that legislation of the type proposed is a panacea for the problems of the older worker. Adequate solutions are yet to be worked out by industry, labor and government, and it is clear that the greater part of the constructive work must be done by men of good will in industry and labor. The answers to these problems must ultimately be worked out in the material circumstances from which they arise. Legislation of the sort proposed is at a minimum merely regulatory and negative. At best it can be positive by providing the occasion for intelligent consideration of the problems and by lending assistance and perhaps guidance in seeking solutions. It is in the belief that the latter approach is entirely possible that this report has recommended legislation to meet the problem of the older worker.

APPENDIX A

Comparison of Baltimore and Philadelphia Labor Markets by Distribution of Industry

	Baltimore	%	Philadelphia	%
Manufacturing	187.1	32.	576.1	40.7
Construction	36.8	6.3	77.8	5.5
Transportation, Communication, Public Utilities	54.4	9.3	114.7	8.1
Trade	121.8	20.8	306.7	21.7
Finance, Insurance, Real Estate	30.8	5.3	69.8	4.9
Service	71.8	12.3	181.3	12.8
Government	81.4	14.0	85.8	6.1

APPENDIX B

NAME OF FIRM (Optional) _____

TYPE OF INDUSTRY _____

MDB 50588

1.		Total	Managerial & Professional	Clerical & Sales	Service	Skilled	Semi-skilled	Unskilled
A. Number of Employees								
B. What is the maximum age at which you will hire workers in these categories?*	MEN							
	WOMEN							
If you have a preferred age, what is it?* (*If none, please write None.)	MEN							
	WOMEN							
What are the reasons for these age maximums?								
a. Production efficiency								
b. Pension plan and insurance requirements								
c. Company physical requirements								
d. Company promotion policy								
e. Other (Please specify.)								
If your firm maintains training programs, of what type are they?								
a. For training new employees (Check Column)								
b. For upgrading (" ")								
If you have maximum ages for entering these programs, please specify.								
a. For new employees								
b. For upgrading								
D. If employees in any of these categories are covered by a pension plan, check column.								
If there is a maximum age for entering the plan, please specify.								
E. What is your compulsory retirement age? (If none, write None.)								
At what age is retirement optional?								
F. Through which of the sources listed below do you hire most of your workers in the categories at the right? (Please check column. If more than one source, rate 1 - 2 - 3.)								
a) Gate hires								
b) Maryland Employment Service								
c) Friends and private contacts								
d) Unions								
e) Newspaper advertising								
f) Private employment agencies								
g) School and university placements								
h) Other (Please specify.)								