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Working Longer to Improve Retirement Security: Improving Public Policy¹

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Industrialized countries provide basic retirement benefits through social insurance and other programs to support seniors, as their populations live much longer and their retirement periods grow as well. This often results in a strain on public resources. Working longer improves retirement security and can reduce the cost of public and private retirement programs, but policymakers have often not focused on how to facilitate and support older retirement ages.

Those in the policy community are lagging behind other professionals such as gerontologists, actuaries, economists and retirement planners in talking about the societal importance of longer work. They are not doing much to address barriers to longer work or ways to enable phased retirement.

This essay discusses policy issues. We strongly encourage policymakers to focus on increasing retirement security by encouraging and making it easier for people to work longer. A separate essay, “Working Longer to Improve Retirement Security: Addressing Workplace Issues,” discusses issues for employers.

The Situation in 2017

Longer work is not a focus of the current public policy agenda. The main issue related to later work that gets attention is raising the Social Security retirement age, but there are many additional issues. This essay focuses on a broad range of benefit and legal issues that create barriers to phased retirement and longer work.

The Government Accountability Office conducted a study in 2017² during which they interviewed both employers and experts; they found little formal phased retirement. They present evidence that many people work as part of retirement, in effect creating their own phased retirement. They identified both advantages of phased retirement and obstacles; legal issues were found to be particularly important.

There have been years of discussion about phased retirement, and the rules were partly clarified and liberalized by the Pension Protection Act of 2006. Under this legislation, defined benefit (DB) plans are allowed to pay benefits to participants who are phasing out starting at age 62. But there has been little use of these provisions, possibly because they are still complex to implement and there remain unanswered questions, and possibly because most of the DB focus has been on freezing or terminating the plans.

Issues related to later retirement and longer work are concerns in many countries. The Melbourne Mercer Global Pension Index³ is a study of pension systems in 27 countries. The 2016 report⁴ identified several challenges, including “the need to:

- “Increase the state pension age and/or retirement age to reflecting increasing life expectancy, both now and into the future, and thereby reduce the level of costs of the publicly financed pension benefits [and]
- “Promote higher labour force participation at older ages, which will increase the savings available for

1 This essay reflects research discussions with a number of experts on legal issues related to longer work and phased retirement and an extensive interest in later work as an important response to an aging society. The combined experience of the authors includes more than 20 years in different phases of retirement, more than 10 years in facilitating jobs for older workers and many years of pension consulting.

2 U.S. Government Accountability Office, “Older Workers: Phased Retirement Programs, Although Uncommon, Provide Flexibility for Workers and Employers,” report to the Special Committee on Aging, U.S. Senate, GAO 17-536 (June 2017), <https://www.gao.gov/assets/690/685324.pdf>.

3 Mercer, *Melbourne Mercer Global Pension Index*, reports are issued annually, <https://www.globalpensionindex.com/>.

4 Mercer, *2016 Melbourne Mercer Global Pension Index*, October 2016, <https://www.globalpensionindex.com/wp-content/uploads/MMGPI2016-Report.pdf>.

retirement and limit the continuing increase in the length of retirement.”

In the United States, expectations about work in retirement and actual retirement age do not match. According to our observations, about half of retirees work after retirement or phase out in some way and about three-quarters say they want to work after retirement. The 2017 SOA Post-Retirement Risk and Process of Retirement survey found that pre-retirees expected to retire at a mean age of 65, but retirees had actually retired from their main occupation at a mean age of 58.⁵

Focus on Rehire of Retirees

Much of the phased retirement today is in the form of hire or rehire of retirees, either by their prior employer or by a new employer. But it is not easy. Some modest policy changes would ease barriers to rehiring retirees and probably not be costly to anyone.

There are complexities involved in the rehire of retirees because of provisions in pension and employment laws and employee benefit plans. Also, these retirees may often want to have creative work arrangements. Rehire by the same employer where there are pensions being paid requires a bona fide termination of employment or the pension plan will be in legal trouble. However, there is no definition of bona fide termination in the law or regulations.

Current employer options with regard to rehire of retirees include:

- Avoid rehire entirely
- Make people wait a period to be rehired
- Limit work of rehires to less than 1,000 hours annually, usually done in connection with a waiting period
- Use a retiree pool
- Engage retirees as consultants
- Use independent contractor arrangements
- Work through third parties, like a temp agency or specialized consulting firm

Pools and third-party arrangements can be limited to a firm’s own retirees or they can offer access to a broader pool of individuals. The different methods of handling

rehires can be used in combination. For example, a rehired retiree might be an independent contractor, not allowed to work more than a certain number of hours, and not be able to be hired as a contractor until six months have elapsed from termination of employment.

Employers seeking to rehire retirees are faced with a tangle of legal complexities and ill-defined rules. It would be a great help to clarify and define what a bona fide termination of employment is and offer safe harbors so that employers could know what approaches are safe and choose the best ones for them. Ideally, safe harbors should deal with the combination of issues related to termination of employment and age discrimination and serve to keep independent contractor status issues from raising added roadblocks.

For example, an arrangement that does not include a regular ongoing job and involves less than 750 hours of work per year could meet a safe harbor test. Participation in a pool with a limit on total hours worked could also qualify.

Issues When DB Pensions are Provided

When DB plans are offered, phased retirement can mean partial pension payments or payment of pensions while someone is still working, leading to a number of questions. For example, will reduced benefits be paid to phased retirees, and how will they be calculated? Will pension credit continue for the additional work? When will benefits be recalculated? How will early retirement adjustments be applied if phasing occurs during the early retirement period?

When phasing occurs through rehire of retirees, there are also DB pension issues. Under what circumstances can retirees work and collect benefits? If benefits are suspended or partly suspended, how are benefits recalculated for the added service? These are a few of the technical issues. While the plan sponsor chooses exactly what they wish to do, the statute and regulations define what requirements and limitations apply.

When benefits are provided only through defined contribution (DC) plans, there is no issue of partial

5 Society of Actuaries, 2017 Risks and Process Retirement Survey: Report of Findings, January 2018, <https://www.soa.org/research-reports/2018/retirement-risk-survey/>.

pension payments. However, there may be issues of when the employee is allowed to receive plan benefits—at phased retirement or only at full retirement. DC issues are much simpler.

Phased Retirement for Federal Employees

Federal employee benefits provide an example to the private sector and also may offer ideas for legislation that can encourage or enable private sector practice. Legislation⁶ enabled phased retirement for federal employees, a program that allows full-time federal employees to work part-time schedules while starting to draw retirement benefits. The program was first implemented in 2014. Agencies were required to sign up for the program. Employees who are eligible for phased retirement and want to continue working on a part-time basis may do so with the agreement of their agencies. During phased retirement, the employee receives a partial pension and will keep accruing additional service credit for their final pension. Employees participating in this program are required to spend 20 percent of their time mentoring other employees.

Take-up of the program has been disappointing. As of June 27, 2017, 252 people had applied and an additional 79 were retired under the program.⁷ But many agencies had not offered the program to employees or had started only recently. The lower-than-expected take-up has also been attributed to lack of flexibility in the program and the need for individual approvals.

When Congress enacted the legislation, it was hoped it would encourage more private sector organizations to offer phased retirement. However, with the experience to date, it is unlikely to do this, and it could have the opposite effect.

Policy Updates to Facilitate Longer Work

We have suggestions about a number of policy areas⁸ that can be used to facilitate and encourage longer work.

- **Revisit Social Security retirement ages.** This is the issue most commonly cited in discussions of later retirement and phased retirement. Social Security retirement ages strongly influence when people retire and also public expectations about reasonable retirement ages. It is important to integrate discussion of disability benefits into the conversation. While many people are able to work longer, many others are not. The situation also varies by education. Appropriate social benefit eligibility ages are an issue in many countries.
- **Develop safe harbors for creative work arrangements and rehire of retirees with focus on bona fide termination of employment.** Under current pension law, bona fide termination of employment is important but there is no specific definition of what that means. That has long been a barrier to rehire of retirees, even on a limited basis. Defining it better or offering safe harbors would enable more of the people seeking work in retirement to return to prior employers and make it easier for employers to know what is acceptable. Safe harbors that work well may cross several legal areas.
- **Consider a new classification of worker tailored to encore careers.** Some employers work extensively with independent contractors. That can be a way to avoid offering individuals benefits and the legal protections extended to employees. The regulations can serve as an inadvertent barrier to using phased retirees as independent contractors. Whether the best way to provide for a range of options for encore careers and rehire of retirees is to provide a special worker category should be explored. Such an effort would be a major step to advancing access to more creative job options.
- **Expand public job training to help people move to encore careers.** Some government agencies currently are involved with identifying training needs, offering and encouraging job training. There

6 Federal phased retirement for federal employees is authorized under Moving Ahead for Progress in the 21st Century Act of 2012, or MAP-21, Pub. L. No. 112-141, 126 Stat. 405, § 100121.

7 Nicole Ogrysko, “Is Phased Retirement Starting to Take Off?” Federal News Radio, June 28, 2017, <https://federalnewsradio.com/retirement/2017/06/is-phased-retirement-starting-to-take-off/>.

8 The policy issues discussed are based on the U.S. environment, except where noted otherwise. The general issues related to phased retirement apply in many countries.

are some situations where training would be very helpful in connection with encore careers.

- **Provide education for employers and model documentation around encore careers and retiree contracts.** Model documents could help both the worker and the organization engaging them to handle the transaction efficiently and smoothly. Contracts can be a major barrier to retiree rehire. A government agency could provide such documents or encourage them in the private sector.
- **Revisit Medicare primary/secondary rules.** These rules require Medicare be secondary to employer-sponsored coverage when an individual has coverage under an employer plan as an active employee or a dependent of an active employee. Medicare is primary for most Americans when they reach 65, and health care costs tend to rise with age. This rule is a barrier to hiring and retaining people over age 65.
- **Revisit age discrimination requirements.** The GAO study lists the age and disability discrimination regulations as a barrier to phased retirement. Age discrimination is a problem, but this type of regulation can have unintended consequences. It appears quite likely that these requirements are a barrier to innovation and hiring older workers. Barriers can be created by the actual provisions of the law, by actual or feared outcomes in court, and by perceptions. It is a time for a thorough study to understand how effective this legislation is, what, if any, unintended consequences it produces and whether fine tuning is needed.
- **Revisit employee benefit plan laws and regulations, including the phased retirement provisions of the Pension Protection Act.** Employee benefits law includes provisions that regulate normal retirement ages, discrimination in the provision of benefits, suspension of benefits on return to work, permit payments of benefits to employee working after age 62, and so on. The age

requirement set forth in the Pension Protection Act is a problem. A big question is whether these rules can be simplified and which are a barrier to phased retirement. The GAO report discusses barriers related to nondiscrimination requirements and also challenges related to the calculation of benefits.

Note that phased retirement and improvement in the policy environment surrounding it was a topic studied by the 2008 Department of Labor's Advisory Council on the Employee Retirement Income Security Act of 1974.⁹ Barriers to phased retirement and perceptions about barriers were topics of the more recent GAO report.

Multiple federal and probably some state agencies have roles in some of these matters or other employment regulation. It is important they work together to resolve these issues and encourage later employment.

In closing, phased retirement, which allows people to gradually move from full-time work to labor force exit, makes a great deal of sense to us. Longer work lives are important to many stakeholders in our society.

For more information

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⁹ U.S. Department of Labor, 2008 Advisory Council on Employee Welfare and Pension Benefit Plans, "Advisory Council Report on Phased Retirement," 2008, <https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council/2008-phased-retirement-2>.