



Age Discrimination in Colorado

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Freedom from differential, discriminatory treatment in the workplace is essential to financial security. Yet in a recent survey, [over 30 percent of older Coloradans](#) report experiencing age discrimination at their place of employment. Taking a [number of forms](#) – from being pushed into early retirement to being refused interviews and promotions – the holistic impacts of [age discrimination](#) are steep: weakening our workplaces; hurting our economy; and endangering the financial well-being of the [78 percent of older Coloradans](#), and their families, who work to sustain daily living.

While a base set of age discrimination laws exist, they have proven woefully inadequate. But this problem isn't intractable. In Colorado, we can strengthen protections for older workers by updating state statute to:

- **Prohibit employers from asking age identifying information on job applications**
- **Clarify and expand when age discrimination cases can be pursued**
- **Ensure age discrimination statutes are in parity with discrimination protections for other protected demographics**

There's a strong need to act right now. While older adults faced employment obstacles well before COVID-19, [historical evidence](#) suggests these challenges will only grow in size and scale as a result of our current economic downturn. By strengthening workplace protections for older adults, we'll take an important step to ensure Colorado's economy is a place where all can thrive, regardless of age.

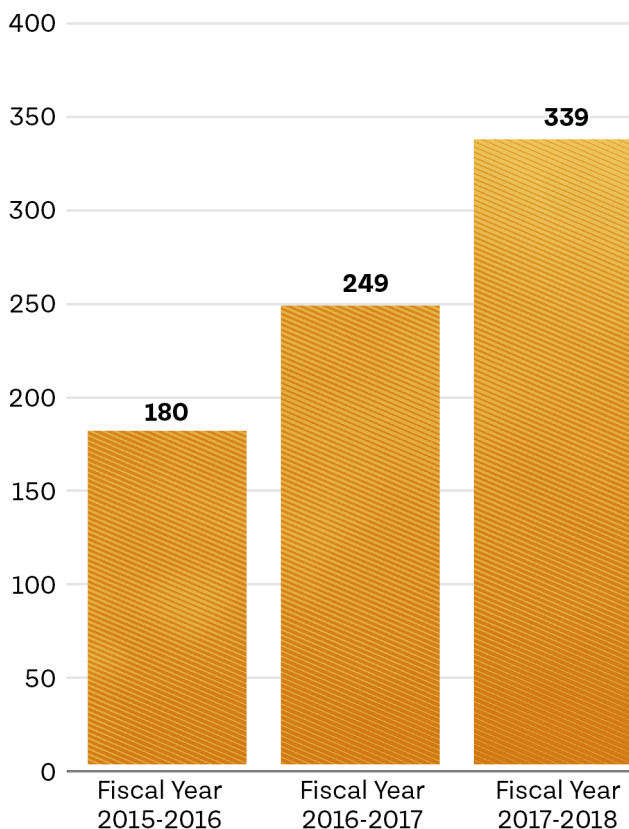
The Basics: Age Discrimination in Colorado

A recent survey from [Changing the Narrative](#) finds nearly one-third of Colorado workers aged 50 and older have experienced age discrimination. This finding is similarly reflected in the following national statistics:

- [Two-thirds](#) of those between the ages of 45 and 74 have either seen or experienced age discrimination in the workplace
- More than [one-third of workers](#) believe their age has kept them from getting a job since turning 40
- Approximately [one-quarter](#) of all workers aged 45 and older have heard negative comments about their age while at work

While an imperfect indicator, as it's likely only a fraction of workers experiencing discrimination who pursue legal action, data from Colorado's Civil Rights Division suggests age discrimination is on the rise. Between fiscal year 2015-2016 and fiscal year 2016-2018, age discrimination complaints filed with the Division grew by 88 percent.

Age Discrimination Charges Filed with the Colorado Civil Rights Division

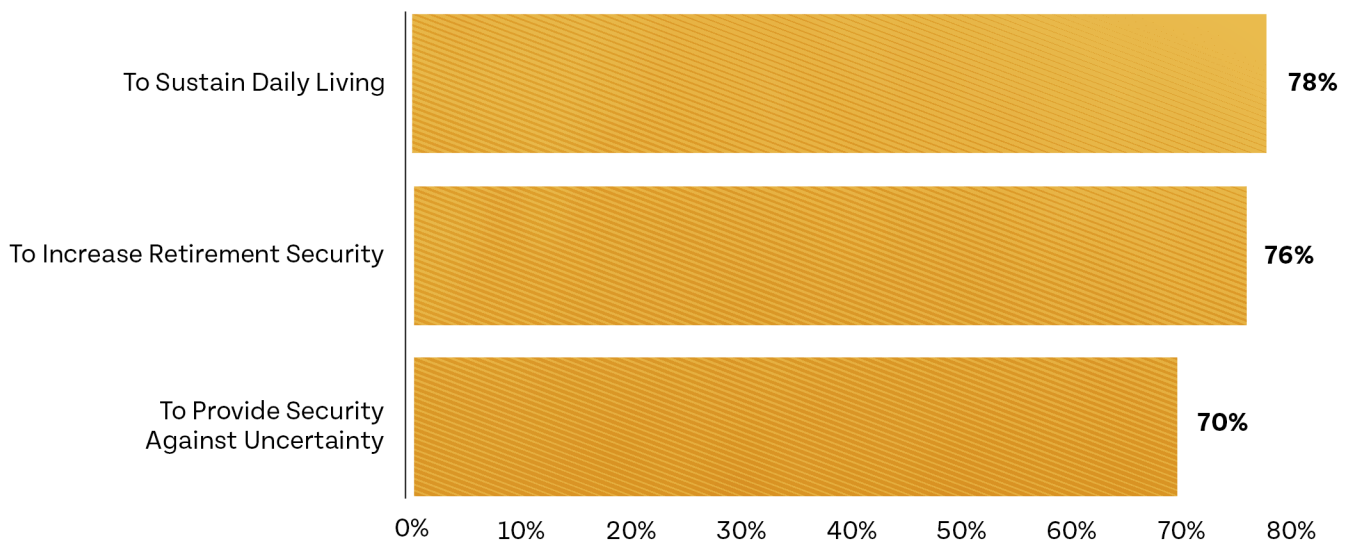


Source: Colorado Civil Rights Division, 2018 Annual Report

Fast Facts on Older Adults in Colorado's Workforce

- Over 40 percent of [Colorado's workforce](#) is covered by current age discrimination statute, a number projected to grow in the coming two decades.¹
- Mirroring [national trends](#), older Coloradans are the fastest growing segment of the state's labor market. Between 2020 and 2040, the number of Coloradans aged 65 and older who are in the workforce is projected to grow by over 65 percent. For comparison, the next fastest growing age group, those aged between 45 and 54, is projected to grow by less than 40 percent over the same period.²
- A recent survey by [Changing the Narrative](#) shows those aged 50 and older often remain in the workplace for reasons related to economic security and well-being.

Primary Reasons Older Coloradans Are Looking for Work



Source: Changing the Narrative, 50+ Colorado Workforce Survey

A Problem Exacerbated by COVID-19

Prior to COVID-19, many older workers experienced significant workplace-related challenges. However, as a result of our current economic downturn, these problems are projected to grow in severity and impact in the coming months and years. In the aftermath of previous recessions, multiple studies show older adults are:

- Disproportionately likely to be both amongst the [long-term unemployed](#). During the [Great Recession](#), only 41 percent of unemployed adults aged 62 and older found work after 18 months. This compares to 78 percent of those between 25 and 49 years of age.
- At risk for being pushed into [early \(or involuntary\) retirement](#) due to an inability to find meaningful employment.
- More likely to experience age discrimination. [One study finds](#) for every 1 percent increase in unemployment, job applicant callback rates for older versus younger women drop by 15 percent, and age discrimination claims related to firings increase by 3.4 percent and 1.4 percent for hirings.

As we're still in the midst of a COVID-induced economic crisis, it's far too early to gauge the full, long-term impact on older workers. However, the data we do have suggests we're likely to see a repeat of previous historical challenges. Between March 2020 and November 2020, the number of discouraged workers between aged 55 to 64 grew by over [80,000](#). Connectedly, labor force participation for those aged 65 and older [dropped by 2 percent](#) between December 2019 and December 2020. Due to factors like age discrimination, it is likely to be a difficult journey as these workers think of reengaging with the labor force in the coming months and years.

Consequential & Lasting Impacts of Age Discrimination

For the significant number of older workers who experience age discrimination, the economic and health impacts can be steep. A growing body of research shows:

- Over half of [long-time older employees](#) are forced to leave their positions before they want, with only 1 in 10 ever able to financially recover from these setbacks.
- [Half of working older adults](#) with household incomes under \$50,000 feel unable to switch jobs due to the threat of age discrimination, constricting the financial security of thousands of Coloradans.
- In addition to lost wages, perceived age discrimination has been connected to [poorer mental and physical health](#). More specifically, workers on the cusp of retirement who lose their job [live three years less](#) than comparable peers who don't suffer unemployment.
- As a result of age discrimination in 2018, the [U.S. lost \\$850 billion in GDP](#) due to lost wages, taxes, and productivity. This number is projected to grow to \$3.9 billion by 2050.

[Concerningly](#), one-third of all workers near retirement (those aged between 55 and 64) lack a defined contribution or benefit pension plan. For those who do have a plan, the median value of these accounts is less than \$90,000 – [far less](#) than what's generally considered adequate for retirement. For these Coloradans, the financial implications of being unable to find and maintain meaningful employment as they near retirement are especially significant.



Heightened Impacts for Already Marginalized Communities

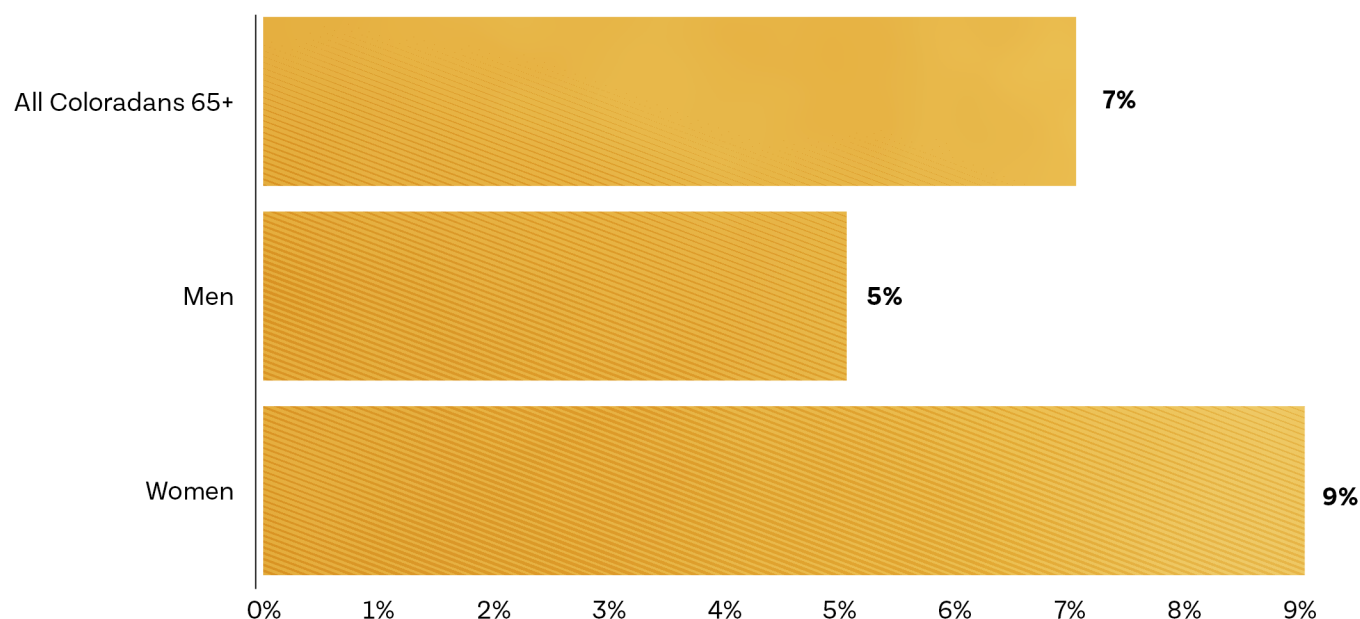
Alarming, just as women, Black, Hispanic, Indigenous, other workers of color, and those in low-wage positions often report higher rates of age discrimination, it's these Coloradans who are disproportionately likely to experience poverty in their later years and have a greater need to continue working as they age. This need is fueled in part by long-term structural inequities, such as:

- Systemic underinvestment in [child](#) and [elder care](#) that limit women's workforce participation
- [Gender](#) and [racial wage gaps](#)
- A host of inadequate employment protections and supports, including a lack of access to work-based [retirement savings accounts](#) and insufficient gender, racial, and disability discrimination laws

Each of the above-mentioned factors contribute to lower lifetime earnings and savings, and can make older age financially precarious. For already marginalized Coloradans, age discrimination compounds a lifetime of inequitable treatment.

Women: [Recent studies show](#) older women both [experience age discrimination earlier](#) and [more often](#) than men. In practice, this contributes to [higher rates of long-term unemployment](#) for women and, as a result, greater financial insecurity. Concerningly for the coming months and years, prior to COVID-19 older women were disproportionately [represented in the service and personal care sectors](#), which have been amongst the hardest hit in the ongoing economic downturn.

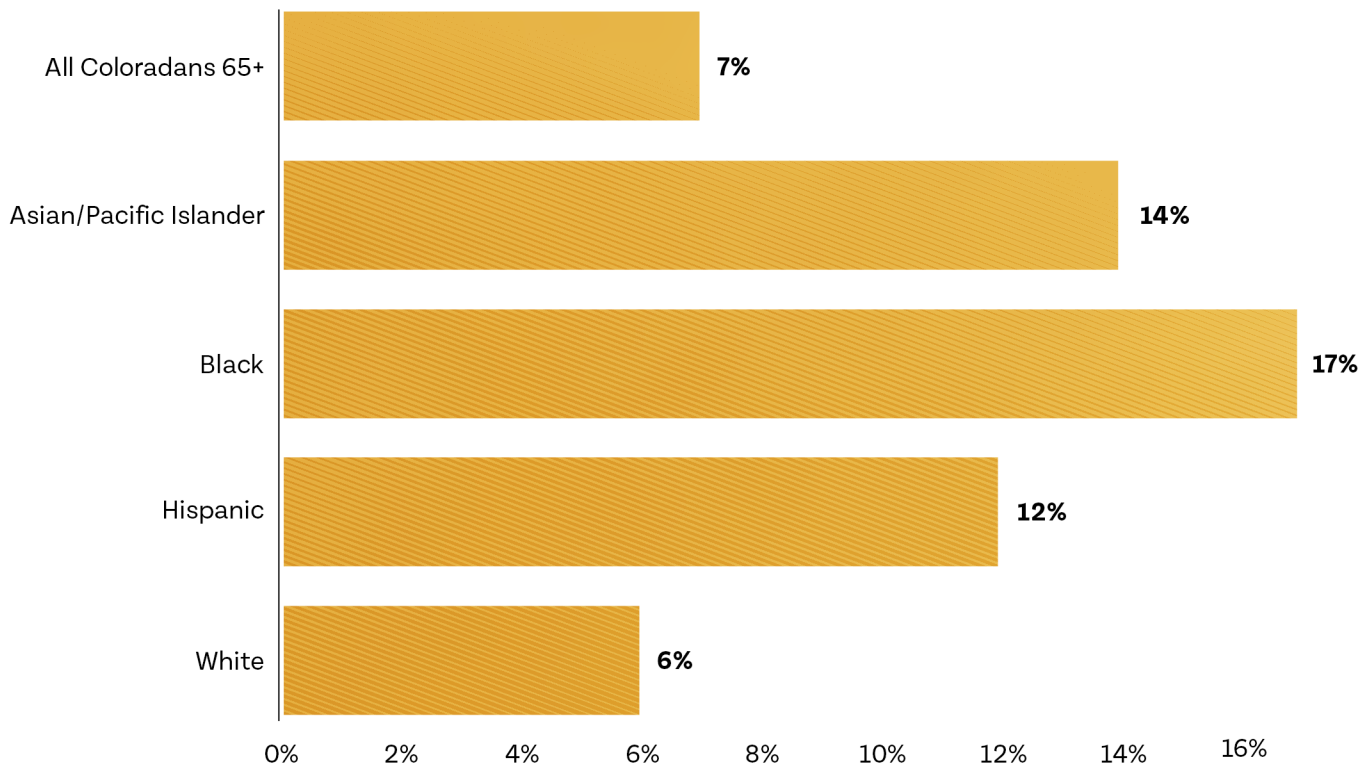
Coloradans 65+ in Poverty by Gender



Source: Bell Analysis of 2015-2020 IPUMS CPS data

Black, Indigenous, & People of Color: Compared to their white peers, [Black and Hispanic workers](#) experience age discrimination, or know someone who has, at higher rates. While just under 60 percent of white workers experience, or know someone who has experienced, age discrimination, 61 percent of Hispanic and 77 percent of Black workers have similar experiences. Connectedly, older Black workers are [forced out of the workplace](#) more often than older white workers.

Coloradans 65+ in Poverty by Race/Ethnicity



Source: Bell Analysis of 2015-2020 IPUMS CPS data

Coloradans in Low-Wage Jobs: Older adults in low-wage jobs report higher rates of age discrimination than their higher income peers. [Changing the Narrative's](#) recent survey finds Coloradans making less than \$25,000 a year are much more likely than the average older worker to experience age discrimination (46 percent vs. 32 percent, respectively). A similar phenomena extends to those who have [lower levels of formal education](#).

While 60 percent of white workers experience, or know someone who has experienced, age discrimination, 61 percent of Hispanic and 77 percent of Black workers have similar experiences.

What We Can Do: Age Discrimination Laws in Colorado

Though a growing body of evidence shows age discrimination is a significant problem with devastating consequences, existing discrimination laws are deeply inadequate. Currently, a minimum set of workplace protections for older Coloradans exist through the Age Discrimination Employment Act of 1967, and those over the age of 40 are a [protected class](#). Federal and state law prevents discrimination against older workers in hiring, firings, demotions, promotions, and workplace conditions.

These protections, however, are minimal, and often only help workers in the most flagrant of cases. Problematic gaps in existent statute are due to:

- **Inadequate protections for prospective employees:** Even before taking a job, many older workers experience age discrimination during the hiring process. Minimal protections currently exist for older workers whose age is easily identified by prospective employers who require high school and college graduation dates on applications. Current law often makes it challenging for these individuals to bring age discrimination cases.
- **Significant differences between protections available for older adults versus other protected populations:** Over the past few decades, Colorado laws supporting those who've been discriminated against based upon factors like gender, race, and ability have been gradually strengthened. Unfortunately, age discrimination statutes have not received similar treatment. As a result, age discrimination statutes are significantly out of line with our evolving understanding of how to best support protected populations.



The Changes Colorado Needs

The gaps in current age discrimination law are significant, but not insurmountable. There are concrete, meaningful changes we can take to bolster state law in order to better support Colorado's older workers.

- **Prohibit employers from asking age-identifying information on applications:** It's illegal to explicitly ask job applicants how old they are. However, employers are still permitted to ask seemingly innocuous questions – like year of high school or college graduation – that indirectly give away prospective employees' ages. By banning the inclusion of age-identifying information on applications, we can help reduce some forms of discrimination in workplace hiring.
- **Expand when age discrimination cases can be pursued:** Currently, employers can justify their decision to fire or refuse to promote older workers based upon common proxies for age, like the cost of benefits or pension status. By changing state law to include proxies for age, we can remove a concerning avenue through which age discrimination is current allowed to continue.
- **Bring age discrimination statutes in parity with protections available for other protected groups:** In two important ways, age is treated differently under existing discrimination statutes than other protected classes like gender and race/ethnicity. To remedy this and equitably extend workplace protections to all Coloradans, statute should be changed to:
 - **Allow those who win age discrimination claims to receive compensatory and punitive damages:** In 2013, Colorado updated its discrimination protections with the Colorado Job Protection and Civil Rights Enforcement Act of 2013. Included in these changes was a provision allowing most individuals who have been discriminated against to receive compensatory and punitive damages. Victims of age discrimination are the only protected group excluded from these needed updates. Problematically, the lack of such awards can discourage lawyers from taking age discrimination cases.
 - **Clarify that individuals can pursue age discrimination claims even if it is not the decisive reason for adverse employment actions:** Colorado's age discrimination statutes are largely tied to federal law. In 2009, a [Supreme Court case](#) overturned years of precedent by reinterpreting federal law and requiring for those interested in pursuing legal action, age must be the decisive, not just one of several, reason(s) for the employer's adverse actions. This standard differs from those applied to other protected groups in Colorado. To remedy this disparity, state statute should be changed to explicitly allow age discrimination cases to be brought when age is one of several reasons for adverse employer action.

Age discrimination is a real, pervasive problem affecting a growing number of Coloradans. With sizable, long-term effects, reducing its prevalence is essential to creating a stronger economy. Fortunately, we have the ability to enact the meaningful change Coloradans need. By strengthening our state's age discrimination statutes we'll be taking action to create a fairer economy for all Coloradans.

Endnotes

- 1 Bell analysis of data from the Colorado Demographer's Office
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