Just Cause Protection under Manager Discrimination

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January 3, 2026

Motivation

At a baseline, employment in the U.S. is at-will (with some exceptions)

- "at-will" $\rightarrow$ workers can be fired for any cause

Recently, concern about bias has motivated advocacy for employment protections

- workers already experiencing discrimination may be especially vulnerable under at-will employment (Andrias and Hertel-Fernandez 2021)
- workers could be fired for the same conduct tolerated by others (Center for Popular Democracy et al. 2019)

Nationally representative survey (Schaeffer 2023): workers experience of (self-reported) racial discrimination varies by race

- black workers $\rightarrow$ 41%
- Hispanic workers $\rightarrow$ 25%
- white workers $\rightarrow$ 8%

NYC just cause (JC) law

A just cause law for NYC fast food workers was enacted in 2021

- employers cannot fire or substantially reduce hours without JC
- just cause $\rightarrow$ illegal or dangerous behavior, or failure to perform job duties

Preventing discrimination from managers was a primary motivation

Probationary period

- for the first 30 days after hiring, workers are subject to the previous at-will standard
- creates a high-stakes decision for the firm at this 30-day mark

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What we do

Research question: What are the effects of just cause (JC) regulation on labor markets in an environment with discrimination?

We construct a simple theoretical framework to evaluate this question

- adapts the standard economic model of EPL
- generates predictions on whether JC makes it easier to *achieve* and *retain* stable employment
- exploits the timing of separations around a probationary period

We empirically test the model on the NYC JC law

- Quarterly Workforce Indicators (QWI) data
- synthetic difference-in-differences (SDID) (Arkhangelsky, Athey, Hirshberg, Imbens, and Wager 2021)

We do not confirm predictions of model $\rightarrow$ possibly due to data issues

- we do find evidence of screening discrimination against the young
- screening discrimination $\rightarrow$ when managers tend to hire or retain workers from groups they can more reliably evaluate
- because of data issues, biggest contribution is the framework

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Outline of presentation

Intuitive description of model and predictions

Empirical methods and evaluation of predictions

Screening discrimination findings

Conclusion

Environment

Firm hires workers to fill a unit mass of positions each period (discrete)

- worker can supply labor inelastically to a single firm

Each worker has a productivity (x) and "discrimination value" (ϵ)

- managers care about $(x + \epsilon)$, not just x
- values change stochastically

When deciding to fire a worker, the manager compares

- value of current match
- expected value of a new match (plus the cost of matching)

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Interpreting ϵ

$\epsilon \quad \rightarrow \quad$ the manager's taste-based discrimination value for a worker

- high ϵ values $\rightarrow$ "favored workers"
- low ϵ values $\rightarrow$ "disfavored workers"

If the manager has race-, gender-, or age-specific preferences over workers:

- high ϵ values $\rightarrow$ favored groups
- low ϵ values $\rightarrow$ disfavored groups $\rightarrow$ experiencing discrimination

In what follows, we consider the possibility of such discrimination

- we generate predictions on how the law might affect different groups in this case

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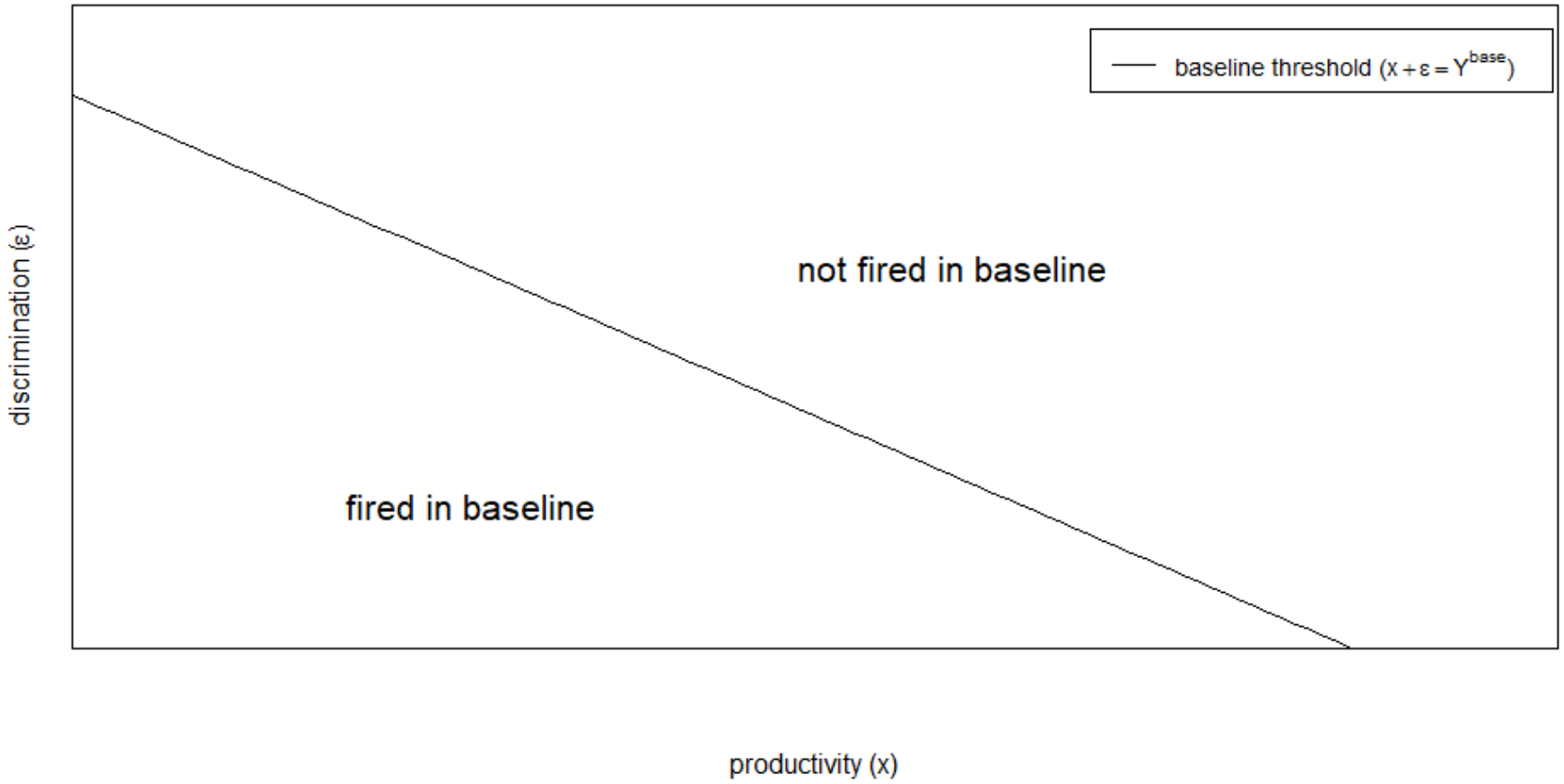
Baseline environment: optimal for firm to choose a "firing threshold" Y^{base}

- $x + \epsilon < Y^{base} \rightarrow$ fire
- $x + \epsilon \geq Y^{base} \rightarrow$ retain

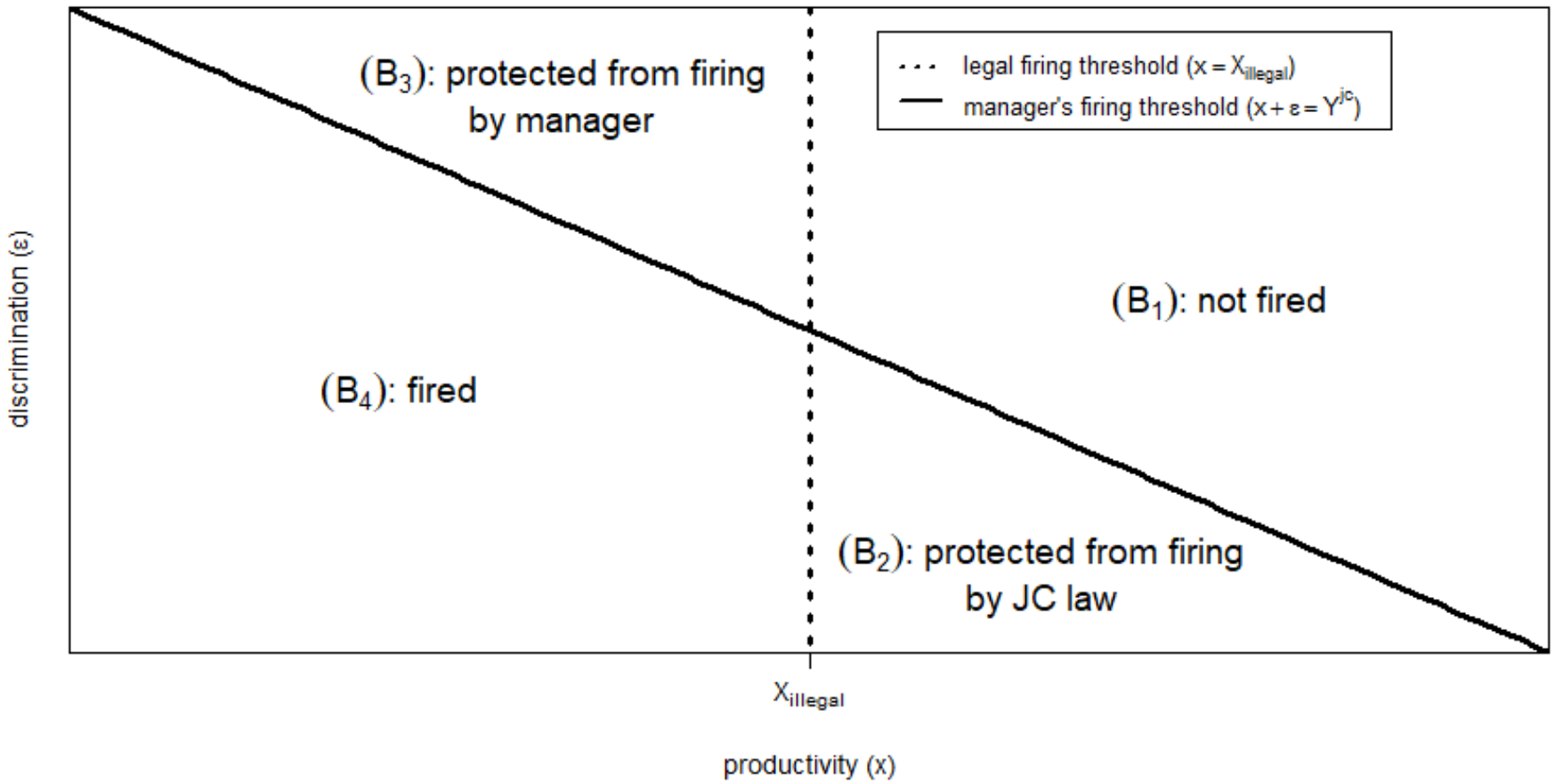


JC environment: illegal to fire a non-probationary worker with $X \geq X_{illegal}$

- restriction is "objective" $\rightarrow$ on x (productivity), not $x + \epsilon$
- "probationary" $\rightarrow$ in first period after hiring $\rightarrow$ can still be fired w/o restriction

Firm again chooses a "firing threshold" Y^{jc}

- below graph: post-probationary interaction btw. law ($X_{illegal}$) and threshold (Y^{jc})



Comparing environments

We show that $Y^{base} < Y^{jc} \rightarrow$ JC increases the firm's firing threshold ⏩ intuition

Visualizing the comparison of steady states is useful ⏩ baseline ⏩ transition to JC

- from this transition, we can derive our main results

Two main testable predictions

1. JC makes it harder for new workers to *achieve* a stable employment ⏩ details
2. JC makes it relatively easier for disfavored groups to *retain* stable employment ⏩ details

"Stable employment" $\rightarrow$ lasting more than one period

- past the probationary period under JC

Overview of empirics

Goal: test the employment effects of NYC's JC law for fast-food workers

Dataset: Quarterly Workforce Indicators (QWI)

- county-level data at the 4-digit NAICS industry level
- employment, hires, and separations
- consider data from 2018 Q1 to 2023 Q2 (JC became effective 2021 Q3)

Methodology for causal analysis: synthetic difference-in-differences (SDID)

- Arkhangelsky, Athey, Hirshberg, Imbens, and Wager (2021)

Proxies for affected population and other variables are flawed details

- thus, analysis offers a test of effects, not unbiased estimates

Connecting theory to empirics	*First main prediction*	*Second main prediction*
prediction	JC will decrease the stable share of hires	JC will increase the stable sep. rate for favored workers relative to disfavored worker
intuition	JC will make it harder for new employees to achieve stable employment	JC will make it relatively easier for disfavored groups to retain stable employment
relevant variable	stable hire	stable separation
model measure	worked in the current period and the next period, but not the previous period	worked in the current period and the previous period, but not the next period
empirical measure	worked in the current quarter and the next two quarters, but not the previous quarter	worked in the current quarter and the previous two quarters, but not the next quarter
outcome variable	stable share of hires $= \frac{\text{stable hires}}{\text{all hires}}$	stable sep. rate $= \frac{\text{stable separations}}{\text{stable employment}}$

Synthetic difference-in-differences (SDID)

SDID combines desirable properties of

- the synthetic control method (SCM)
- difference-in-differences (DiD)

We consider changing trends in NYC fast food against changes in two types of comparison groups

- *within-industry* $\rightarrow$ fast food in other U.S. counties
- *within-location* $\rightarrow$ other industries in NYC

In total, we consider four models

1. within-industry, no minimum wage control
2. within-industry, minimum wage control
3. within location
4. pooled (within-industry and within-location together)

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First main prediction

- **empirical prediction:** JC will decrease the stable share of hires
- **intuition:** JC will make it harder for new employees to achieve stable employment

	population	*model*			
		within-ind. (no mw cont.) (1)	within-ind. (mw cont.) (2)	within-location (3)	pooled (4)
stable share of hires	overall	-0.0086	-0.0069	-0.0198*	-0.0143
		(0.0113)	(0.0096)	(0.0119)	(0.0116)
		[0.0128]	[0.0128]	[0.0125]	[0.0073]

Null at the 95% model across four models

⏩ visual of pooled model

Second main prediction

- **empirical prediction:** JC will increase the stable separation rate for favored workers relative to disfavored worker
- **intuition:** JC will make it relatively easier for disfavored groups to retain stable employment

	comparison	*model*			
		within-ind. (no mw cont.) (1)	within-ind. (mw cont.) (2)	within-location (3)	pooled (4)
stable separation rate	white - black	0.0023 (0.0035) [0.0078]	-0.001 (0.0028) [0.0077]	-0.001 (0.0034) [0.0138]	8e-04 (0.0034) [0.007]
	white - Hispanic	0.0044** (0.0021) [0.004]	0.0035* (0.0021) [0.004]	0.0033 (0.0024) [0.0052]	0.0036* (0.0021) [0.0024]
	male - female	-0.0029 (0.0046) [0.0034]	-0.0028 (0.0041) [0.0034]	-0.0021 (0.0046) [0.0024]	-0.0021 (0.0046) [0.0019]
	age 14-34 - age 35+	0.0048 (0.0045) [0.0069]	0.0056 (0.004) [0.007]	2e-04 (0.0048) [0.0082]	0.0044 (0.0045) [0.0049]

No robust significant effects

- some of the white-Hispanic estimates are significant or marginal
- a Bonferroni correction for multiple hypotheses casts doubt on significance

Motivation for considering screening discrimination

Outcome from an additional analysis motivate an alternative mechanism not considered by our theoretical model

screening discrimination – when managers tend to hire or retain workers from groups they can more reliably evaluate (Cornell and Welch 1996)

Perhaps employers take longer to screen certain type of workers than others

- example: a white manager may take longer to screen black workers than white workers on average
- maybe they can get a "better read" on white worker more quickly

Introducing a high-stakes decision at 30-days could lead to more firings of workers that are "harder to read" on average

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Did JC lead to relatively more new employee turnover from certain groups?

- **empirical test:** relative change in stable share of hires after JC
- **intuitively:** does it become harder for certain groups to *achieve* stable employment

	comparison	*model*			
		within-ind. (no mw cont.) (1)	within-ind. (mw cont.) (2)	within-location (3)	pooled (4)
stable share of hires	white - black	0.0076 (0.0065) [0.006]	0.0104* (0.0061) [0.0059]	0.0134* (0.0069) [0.0103]	0.0098 (0.0066) [0.0066]
	white - Hispanic	0.0026 (0.0028) [0.0039]	0.003 (0.003) [0.0039]	0.0052 (0.0034) [0.0061]	0.0037 (0.0029) [0.0033]
	male - female	0.0039 (0.0028) [0.006]	0.0038 (0.0027) [0.006]	0.0026 (0.0032) [0.0032]	0.0037 (0.003) [0.0025]
	age 14-34 - age 35+	-0.0201** (0.0081) [0.0054]	-0.0197** (0.0079) [0.0054]	-0.008 (0.0086) [0.013]	-0.0186** (0.008) [0.0048]

Estimates suggest there is screening discrimination against the young

- i.e., JC makes it harder for younger workers to *achieve* stable employment
- holds up to Bonferroni correction and other robustness tests

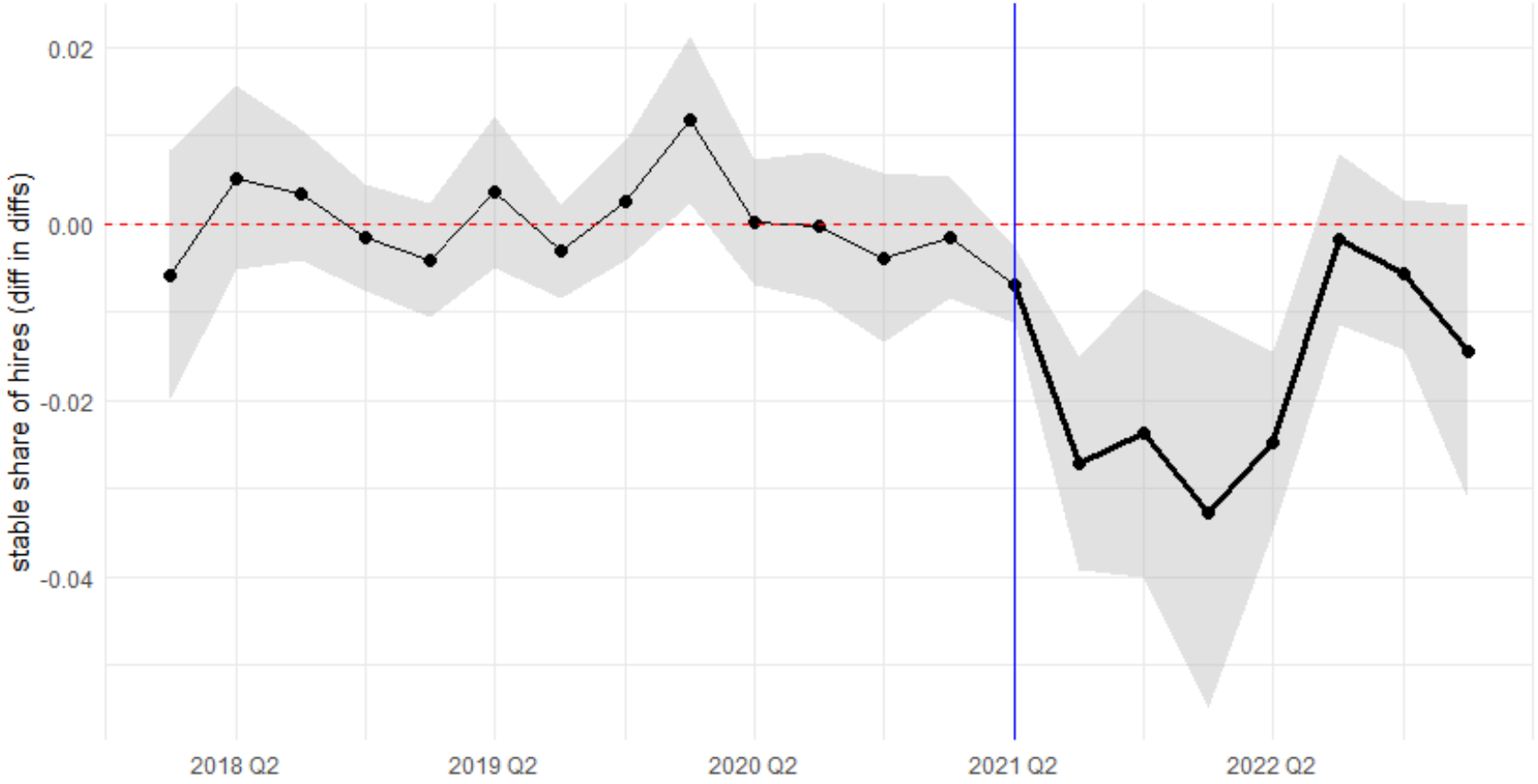


Figure: Effect on stable share of hires (pooled model)

Possible mechanism: if managers use work experience as a screening tool, they will have less information on younger workers (on average)

- 30-day probationary period gives employers insufficient time to screen younger workers

Summary of findings

Theory:

- adapt standard EPL model to an environment with manager discrimination
- first prediction: JC makes it harder for new workers to *achieve* a stable employment
- second prediction: JC makes it relatively easier for disfavored groups to *retain* stable employment

Empirics: use QWI & SDID to test empirical predictions on NYC fast food

- find no strong evidence of either prediction
- null consistent with several possible stories (e.g., lack of enforcement) ⏩ details

Further empirical analysis suggests screening discrimination may be at play against younger workers (< 35)

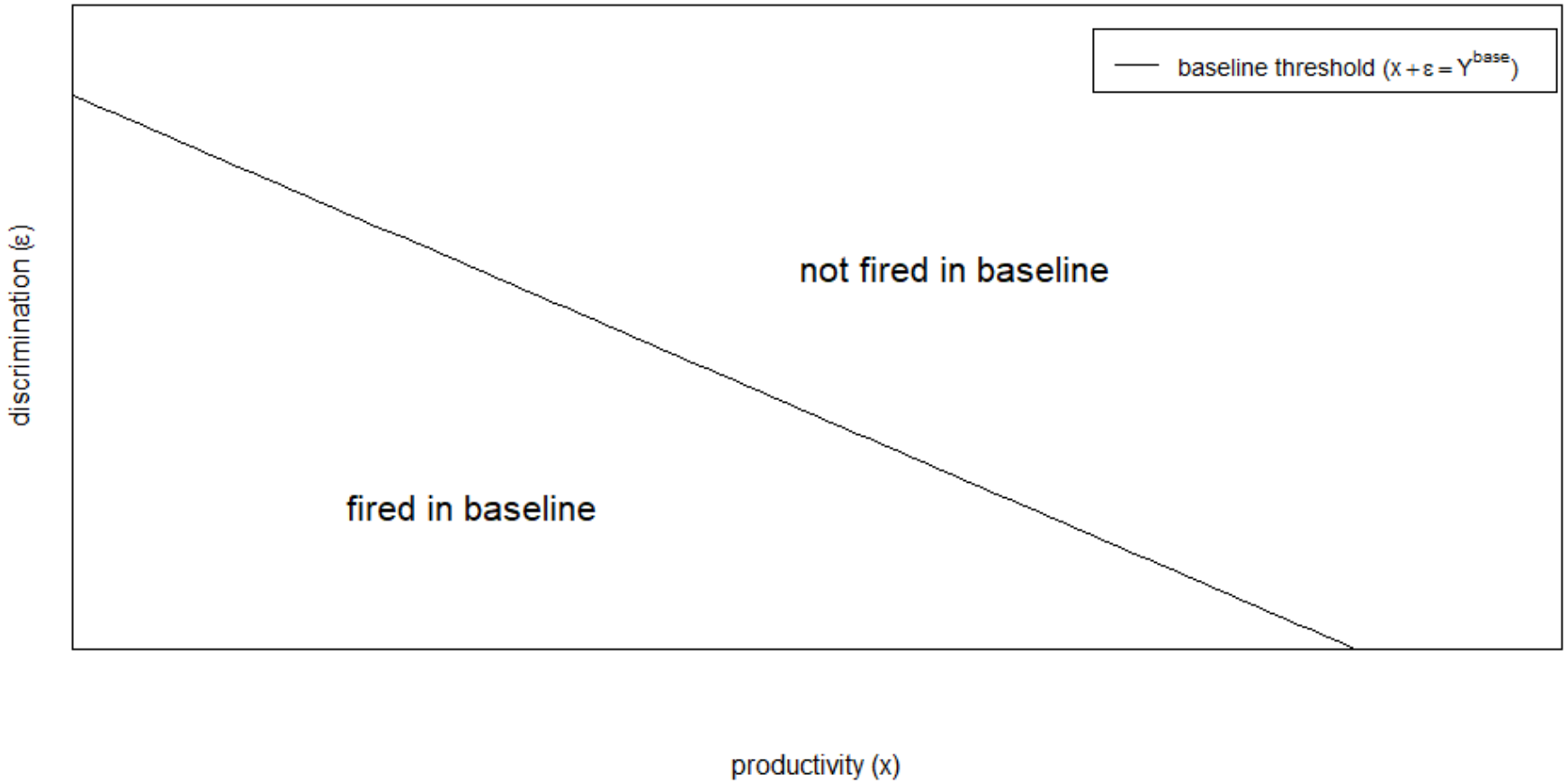
- suggests managers have less confidence in productivity of young workers
- plausible since employers likely use work history as a screening tool

Contributes meaningfully to the relevant literature ⏩ details ⏩ future work

Thank you for listening!

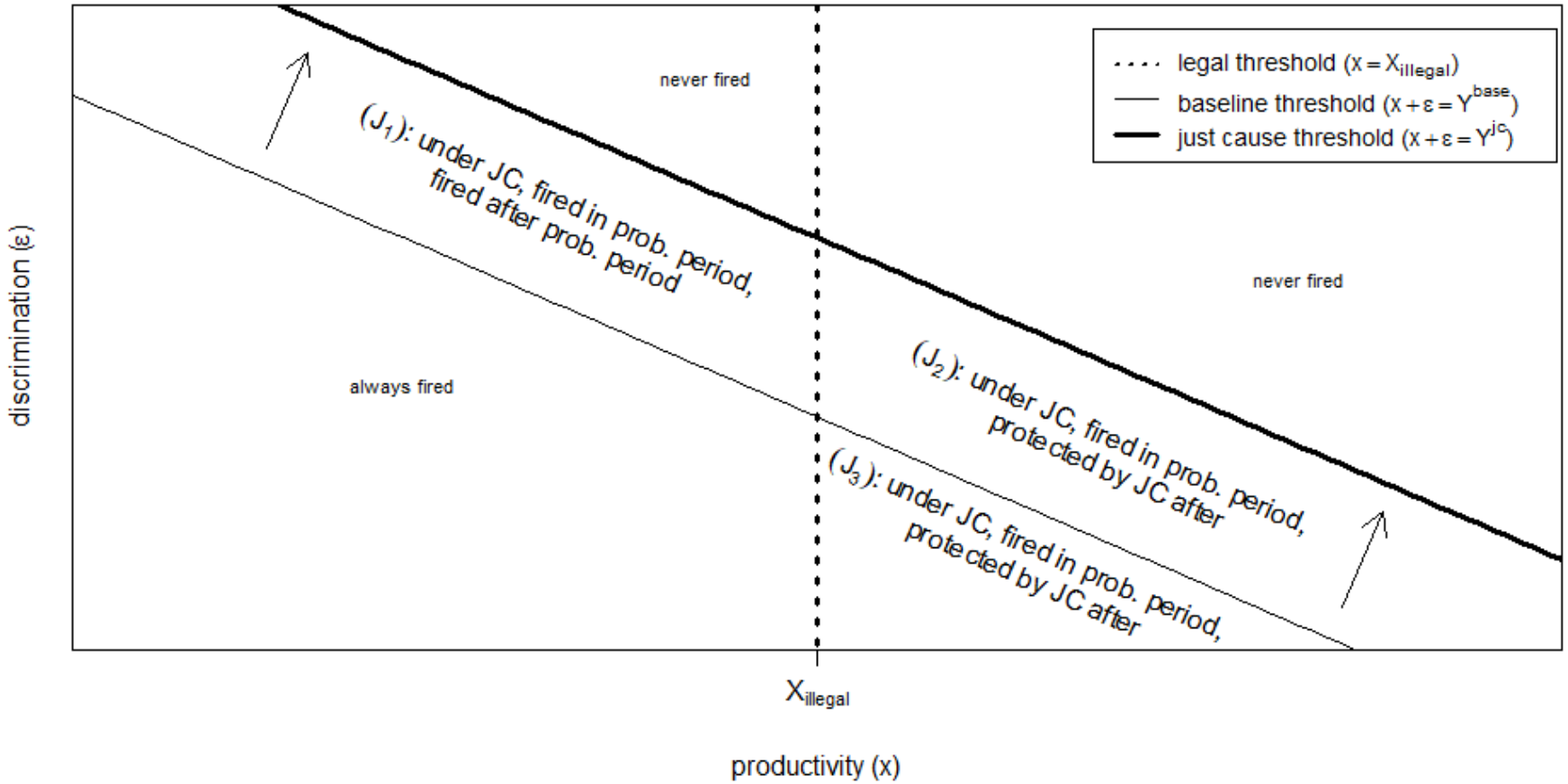
5 Supplementary Slides

Baseline



⏩ back ⏩ transition to JC

Transition to JC



back baseline

First testable prediction

back

Proposition 1

JC increases the stable share of hires

- "stable share" of hires $\rightarrow$ share that survive the probationary period

Intuitively: a greater share of new hires are fired (in probationary period)

- types between Y^{base} and Y^{jc} are fired under JC but not the baseline
- transition to JC

This prediction is empirically testable

- we define an empirical counterpart to the stable share of hires
- imperfect due to the QWI's structure

Second testable prediction

back

Proposition 2

JC increases the stable separation rate for high-ϵ workers (favored workers) relative to low-ϵ workers (disfavored workers)

- "stable" separation rate $\rightarrow$ fraction of post-probationary workers fired each period

Recall the three regions from the transition figure transition to JC

- J_1 $\rightarrow$ post-probationary period, fired after JC $\rightarrow$ retained in baseline
- J_3 $\rightarrow$ post-probationary period, protected by JC $\rightarrow$ fired in baseline
- J_2 is a wash

Workers in J_1 have higher ϵ values (favored) than J_3 (disfavored)

- stable separation rate increases for favored relative to disfavored groups

Intuitively: JC makes employment for disfavored groups relatively more secure after the probationary period

Intuition for threshold result

back

Theorem 1

The steady-state optimal threshold is higher in the environment with just cause than in the baseline environment ($Y^{jc} > Y^{base}$).

Holding match characteristics fixed, the manager will (weakly) prefer a new worker to an existing worker

They can always fire a new worker, but cannot always fire an existing worker

Also part of Theorem 1: In the JC environment, the steady-state optimal threshold for new and existing workers coincide.

Proxy for affected population

back

Population affected by JC law: non-supervisory NYC workers at fast food chains with more than 300 employees nationally

- this is best captured by a 6-digit NAICS industry (722513, limited-service restaurants)
- the QWI only provides 4-digit-level data (7225, restaurants and other eating places)

First issue: proxy contains many workers unaffected by JC legislation

- approximately that 70% of workers in 7225 are unaffected (see appendix)

Second issue: quarterly data cannot adequately capture outcomes surrounding short-term work

- the probationary period is 30-days, so quarterly is insufficiently granular

Visualizing test of first prediction

back

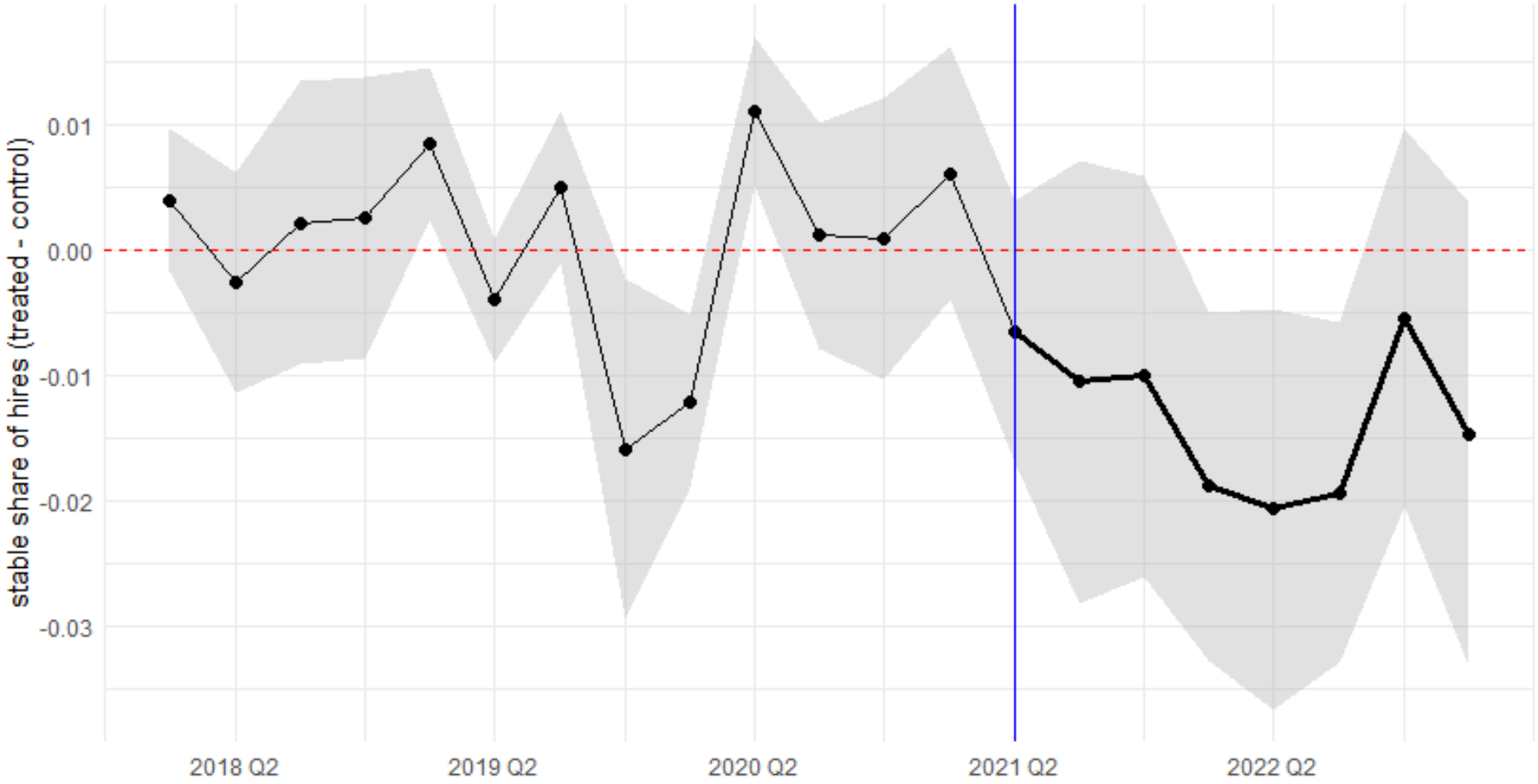


Figure: Effect on stable share of hires (pooled model)

Possible explanations of null results for predictions

back

Lack of discrimination

- there was no managerial favoritism along these demographic lines, so there was no scope to reduce it

Lack of enforcement

- there is favoritism, but enforcement of the law is so weak that it did not change managerial behavior.

Lack of statistical power or noise

- the magnitude of any effect is smaller than our statistical power to detect it
- plausible given our noisy proxy for the experiences of covered employees

COVID-19

- bias from COVID-19 and related policies may be hiding important results

Missing mechanism

- our theoretical model could be missing counteracting effects

Main contributions

back

Add to the limited theoretical literature on the interaction between EPL and taste-based discrimination

- notable exception: Holden and Rosen (2014)
- since probationary periods are a typical feature of JC laws and EPL, our framework is generalizable

Empirically test the predictions of our model on the NYC JC law using SDID

- builds of recent work to bring a new approach to the heterogeneous effects EPL lit.
- in particular, our companion paper on FWW laws

Add to literature on screening discrimination

- a few others: Lundberg and Startz (1983); Cornell and Welch (1996); Pinkston (2006); Morgan and Vardy (2009); Ritter and Taylor (2011); Benson, Board, and Meyer-ter-Vehn (2023)
- analysis suggests screening discrimination may be at play against younger workers (< 35)

Focus on *recent* EPL in the U.S.

- much of the existing U.S. EPL literature studies legislation from decades ago
- examples: Civil Rights Act of 1964 at-will employment exceptions (mostly 1970's and 1980's), The Americans with Disabilities Act (1990)

Avenues for future work

back

Future research could improve on our empirical analysis with better data that:

- allows isolation of affected establishments and workers
- can capture short-term employment outcomes precisely
- etc.

Studies in slack labor markets may find evidence more consistent with our model

- NYC JC law became effective during unusually tight labor markets
- in tight labor markets, managers may have less discretion in hiring, discipline, and firing, and may engage in less discrimination or favoritism

Investigating how NYC JC law affected worker productivity and firm performance

- studying EPL is common throughout EPL literature
- examples: Hopenhayn and Rogerson (1993); Ichino and Riphahn (2005); Bastgen and Holzner (2017); Montenovo (2024)