

RRTC on Workplace Supports & Job Retention

Workplace Discrimination & Disability The National EEOC ADA Research Project

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ADA Title One Primer

(all you'll need to know - for today)

All personnel actions
Must be unrelated
To the existence
Or consequence of disability,
As defined in the act.



Workplace Discrimination & Disability

Only barrier to employment? No!

- Financial disincentives to work
- Instability in economy
- Labor market fluctuations
- Healthcare availability
- Outsourcing of jobs
- Prospective guest worker program(s)

Least researched barrier? Yes!

What's in the database?

369,231 Title I CLOSED
allegations over 13.2 yrs
(not in process)

GROWS @ 5% per year

CHARGING PARTIES / CONSUMERS

- 45 unique and known impairments
- Race, Gender, Age



What's in the database?

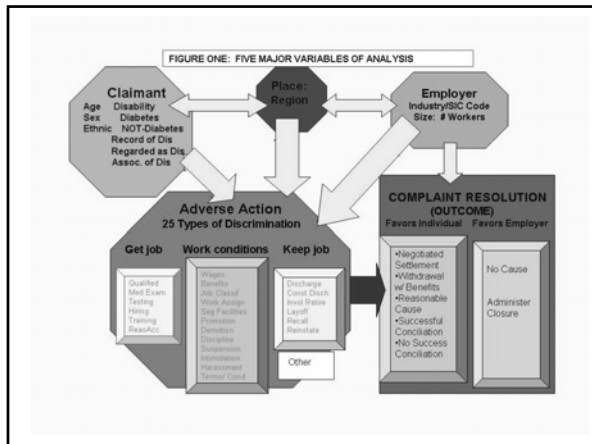
RESPONDENTS / EMPLOYERS

- 10 unique industry groupings
- Number of Employees
- Region (DBTAC and Census)

ISSUES: 25 unique types of
discriminatory behavior

OUTCOME / RESOLUTION:
allegation has/not Merit






- ### 45 Impairments into 6 Comparison Groups
- General Disability (200k)
 - Psychiatric Impairments (50k)
 - Chemical Dependence (7k)
 - Other Disability (70k)
 - Record of / Regarded as (44k)
 - Association with Person w/ Disability (3.5k)

General Disability:
 200,000
 Known physical, sensory or neurological impairments

allergy, asthma, back, chemsens, HIV, blood disorders, cancer, DIABETES, disfigurement, dwarfism, missing limbs, orthopedic impairment, GI, hearing, cardio, kidney, MR, autism, Alzheimer's, TBI, CP, CTD, LD, MS, CF, TB, epilepsy, paralysis, other neuro or respiratory, speech, vision

DIABETES: 11k

VS.

- Psychiatric: 50,000**
 Allegations involving
- Anxiety disorder
 - Depression
 - Bipolar illness
 - Schizophrenia
 - Other psychiatric impairment.
- 

- Chemical Dependence: 7,000**
 Allegations involving:
- Alcoholism
 - Drug dependence

- Other: 70,000**
 Allegations involving:
- Physical, Sensory or Neurological Disability
 - Specific Impairment Not Known

Record of or Regarded as: 44,000
Relationship or Association: 3,500

- Not Existence but Consequence of Disability
- These allegations are studied separately because they do not pertain to actual disability status in the present time; i.e., they relate to second and third prongs of the ADA definition of disability

Record of or Regarded as: 44,000
Relationship or Association: 3,500

- Specific impairment unspecified

7 Study Areas

- Disability specific patterns
- Gender, race, age
- Industry specific patterns
- Impact of employer size, region
- Issue specific analyses
- Supreme court decisions (e.g. Sutton)
- Drivers of merit outcome

Let's get a feel for specific studies & findings

But First

"no differences" does **not** mean "no discrimination"

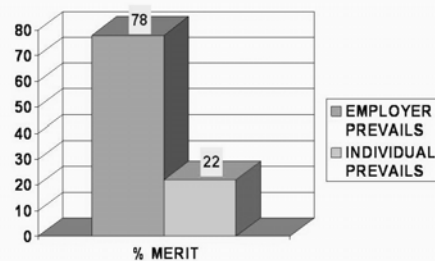
"No differences" Means "No uniqueness"

True or False?

In disability world, most allegations of workplace discrimination are resolved in favor of the person with a disability



FALSE!



TAKE CHANCES IN COURT? <5%

True or false?

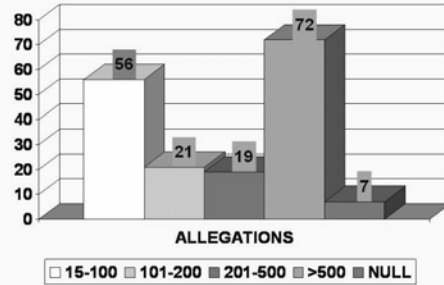
Lacking resources,

Small employers are more likely to engage in discriminatory behavior



SIZE MATTERS in thousands

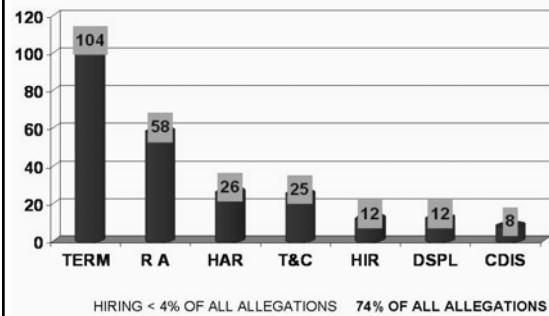
GENDIS



True or false?

In disability world, most workplace discrimination is related to hiring activity

False! Hit Parade of Issues



Disability discrimination is a **Job Retention** barrier

HIRING

QUALITY OF WORK

Job Retention

True or false?

Consistent w/Social Psychology Research, workplace discrimination is more prevalent when it involves behavioral disabilities (Psychiatric and Addiction)

False!
Higher levels actual discrimination

Mental-behavioral



**PHYSICAL,
SENSORY,
NEURO**

*Contrary to Prevailing Theories about Stigma

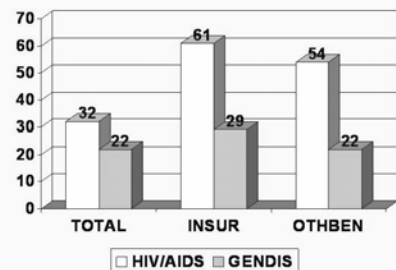
Which group experiences the highest overall level of actual workplace discrimination?

- A. Mental retardation
- B. Missing limbs
- C. Disfigurement
- D. Epilepsy
- E. HIV/AIDS

Answer is ...?

Most Impairment Groups have 2-3 Issues w/ Significant Differences from their comparison group.

Xxx/xxx, Conyers et al
MERIT RESOLUTION RATES x ISSUE



SIGNIFICANT DIFF ON 16 OF 25 TOP ISSUES

Disability Harassment
26,000 allegations

- Includes bothering, tormenting, troubling, ridiculing, or coercing an employee because of disability
- Involves jokes, epithets, or graffiti

Insidious?

Which group reports the most disability-related harassment?

- A. Spinal cord injury
- B. Hearing impairment
- C. Mental retardation
- D. Traumatic brain injury

ANSWER IS ?

- MENTAL RETARDATION
- HEARING IMPAIRMENT
- TRAUMATIC BRAIN INJURY

more insidious?

Database integrity disfigurement, n = 751

- Problems in harassment and non-wage benefits
- Problems in retail and service industries
- Slightly lower merit rates,

As expected

But

For People w/ Disfigurement (burns), What is Most Predictive of Actual Discrimination?

- A. Industry of employer
- B. Race of individual
- C. Size of employer
- D. Discrimination issue
- E. Region of country

None of the Above!

Trick Question

GENDER

Sutton Trilogy & Diabetes

- Sutton v United Airlines
- Albertson's v Kirkinburg
- Murphy v UPS
- "Substantially limiting" must consider mitigating circumstances
- Dramatically reduces number eligible for ADA protections

Most likely Impacts

- Diabetes
 - Depression
 - Epilepsy
 - Multiple sclerosis
- Conditions in which substantial limitations are ameliorated considerably by:
- Medications
 - Prosthetics / orthotics
 - Assistive technology
 - Psychological adjustment

Sutton "Catch 22"

Consider a Person w/ Type I
Diabetes

Hypoglycemic episodes controlled by insulin

Unfairly considered "unfit to work"

But not impaired enough to be protected
by ADA

NCD Concerns

March 17, 2003

The Supreme Court's stance on mitigating measures deprives the individual of the right to maintain an ADA action ... because such a person is not eligible for the ADA's protection. This means an employer or other covered entity may discriminate with impunity against such individuals in various flagrant and less flagrant ways.

SUTTON x DIABETES June 22, 1999

SUTTON	PRE	POST	TOT
ALLEGATIONS	5644	5793	11,427
MONTHS	83	51	134
ALLEGATIONS PER MONTH	68	114	85.35
MERIT RES N	1073	1494	2567
MERIT RES %	19 %	26 %	22.4%

DISCRIMINATORS EMBOLDENED? Yes
PLAINTIFFS DISCOURAGED? NO

There are many, many
favorable industry findings

There are many, many favorable
issue findings

Must Reinforce the Positives

Project to Date

- 15 lead investigators, 50 total
- 9 universities
- 40 studies published or in press
- 4th dissert'n Almost Complete (3 us)
- >5 Studies More in 2007 (+ each yr)



Project to Date

- Support from 4 grants (3 NIDRR)
- Entire process began 4 yrs ago
- Entire process is voluntary
- Business-like & professional approach
- Close linkage/monitoring by EEOC



Where are these Published?

- Work: Journal of Prevention, Disability, and Rehabilitation
June/July 2005 (9 studies)
- Journal of Vocational Rehabilitation
December, 2005 (6 studies)
- Workplace Discrimination and Disability (2007).
B.T. McMahon (ed). VCU RRTC on Workplace
Supports & Job Retention (11 reprints from
above)

Where are these Published?

- 2006: Update database
- To be released in 2007: Healthcare
Industry, Cancer, Blindness/Low Vision,
Autism, MCS, others.

Where are these Published?

To be conducted by
CORC (07-09)

- R Accom, terms/conditions, hiring, termination
- Gender and ethnicity studies (08-09)
- DBTAC regional profiles (07)
- Advance specific findings in greater detail (M.S.)
- More supreme court decision impacts

Shirley Chisholm

“In the end anti-black, anti-female,
and all forms of **discrimination** are
equivalent to the same thing –
anti-humanism.”