



Foreword

For all of the progress Americans have made in recent decades to include people with disabilities as full participants in their communities, pervasive unemployment and underemployment continue to serve as major impediments to the self-sufficiency, independence, and quality of life sought by the approximately 50 million Americans who are living with disabilities. Since World War II, the labor market activity rate of 1/3 for working-age adults with disabilities has remained stable, even in the face of enormous economic expansion and significant developments in vocational rehabilitation practice, assistive technology, and legislation protecting the rights of workers with disabilities.

Certainly, no initiative to promote employment opportunities and equal access to the workplace for people with disabilities has been more important than the Americans with Disabilities Act (ADA). Title I of the ADA requires employers in both the private and public sectors to uphold the civil rights of qualified workers with disabilities, both by prohibiting discriminatory conduct and requiring reasonable accommodations that enable people with disabilities to perform their jobs. The ADA was enacted in 1990 and took full effect in 1994, and its landmark employment provisions have brought important attention to the job acquisition, performance, and retention issues that confront people with disabilities in the new American workplace. That said, 12 years of effectuation have not provided enough time for the ADA to achieve its ambitious and noble purpose of eliminating discrimination. During these early stages of ADA implementation, the law has had the effect of bringing to light discriminatory conduct on the part of employers rather than reducing the incidence of discriminatory conduct. The latter objective could be generations in coming; sweeping social change is a slow process, but there is no doubt that the ADA has pointed us in the right direction.

The ADA has brought important public attention to the issue of workplace discrimination, and discrimination seems to be a unifying feature of the employment experience for Americans with disabilities. As many as 75 percent of workers with disabilities nationwide report that they have encountered some form of discrimination in the workplace, and all stakeholders in the employment of people with disabilities have a vested interest in understanding more thoroughly the phenomenon of workplace discrimination.

Enter the National Equal Employment Opportunity Commission ADA Research Project, the most ambitious effort to date to identify and understand the employment discrimination experiences of Americans with disabilities. With access to the universe of Title I allegations collected by the Equal Employment Opportunity Commission since the ADA took initial effect in 1992, this Project has produced compelling insights into the characteristics of charging parties (i.e., people with disabilities) and respondents (i.e., employers), the types of discrimination alleged to occur, and the outcomes of the ADA Title I investigatory process. By comparing the employment discrimination experiences of subpopulations of people with disabilities from the vantage point of the EEOC's Integrated Mission System database, Dr. Brian McMahon and his colleagues have identified patterns of discrimination that are differentiated most strikingly by disability type. In this monograph, Project team members describe, compare, and contrast the employment discrimination experiences of people with HIV/AIDS, mental retardation, diabetes, multiple sclerosis, deafness and hearing impairments, speech impairments, traumatic brain injuries, spinal cord injuries, missing limbs, and disfigurement. Taken in aggregate, these investigations provide critical, population-level data that can be used to inform direct service, advocacy, employer education, and professional training efforts. The intent is to redress, prevent, and ultimately eliminate workplace discrimination on the basis of disability. In that regard, this monograph represents several more steps in the right direction, several more steps toward realizing the true spirit and intent of the Americans with Disabilities Act.

CHAPTER 1

An Overview of the National EEOC ADA Research Project

Brian T. McMahon

Abstract

This overview is intended to outline the development and scope of the National EEOC ADA Research Project which resulted from a cooperative agreement between the Equal Employment Opportunity Commission and Virginia Commonwealth University. Research questions, the EEOC database, extraction of study data, limitations of the data, the organization of research teams, and some preliminary studies conducted by Project investigators are described.

Introduction

Fifteen years after the enactment date of the Americans with Disabilities Act (ADA, PL 101-336), there has been considerable progress with respect to both employment rights and public access. Most observers agree that public access has improved more rapidly, in part because of the commercial benefits realized by improving places of public accommodation. [1,2,4] However, the most important indicator of employment success—the labor force participation rate for Americans with disabilities—continues to hover around 32% (vs. 81% for people without disabilities). [3] Policy makers point out that ADA Title One (the employment provisions) in and of itself would not remedy the situation completely, and certainly not quickly. Other barriers contribute to the low rate of labor force participation including financial disincentives to work, the uneven availability of healthcare across employers, an unstable economy, the outsourcing of jobs, the lagging performance of our special education system, and fluctuations in the rate of unemployment. Moreover, in spite of new technologies, disability does affect ability and does compromise both the employability and place ability of many Americans. [3]

ADA Title One itself was a unique civil rights law. Its character is anti-discrimination, and not affirmative action. Its immediate purpose is to combat and minimize workplace discrimination against Americans with disabilities. In simple terms, ADA Title One requires that all personnel actions be unrelated to the existence of consequence of disability.

Research Questions

The researchers who contributed to the studies in this monograph seek answers to a particular set of questions to shed light on one barrier to the labor free participation gap. These questions included the following:

- Are there discrete organizational behaviors that in the aggregate constitute workplace discrimination?
- What is the specific nature and scope of workplace discrimination against Americans with disabilities?
- Does workplace discrimination affect Americans with disabilities in different ways as a function of personal characteristics such as type of impairment, gender, age, race or ethnicity?
- To the extent that employers perpetrate workplace discrimination, does it vary as a function of the employer's industry, location, or size?
- When Americans with disabilities file allegations of workplace discrimination, what proportion of these has merit, and what proportion lacks merit at the conclusion of a complete investigation?
- Does the resolution of allegations vary as a function of either complainant or employer characteristics?

For rehabilitation and business professionals who appreciate the importance of the vocational life area, these are important questions. But what data exists that might even begin to shed light? Enter the U.S. Equal Employment Opportunity Commission (EEOC), which exists to enforce certain federal laws prohibiting job discrimination. These include:

- Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin;
- The Equal Pay Act of 1963 (EPA), which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
- The Age Discrimination in Employment Act of 1967 (ADEA), which protects individuals who are 40 years of age or older;
- Sections 501 and 505 of the Rehabilitation Act of 1973 , which prohibit discrimination against qualified individuals with disabilities who work in the federal government;
- The Civil Rights Act of 1991 , which, among other things, provides monetary damages in cases of intentional employment discrimination; and
- Title I and Title V of the Americans with Disabilities Act of 1990 (ADA), which prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments.

EEOC also provides oversight and coordination of all federal equal employment opportunity regulations, practices, and policies.

The EEOC Database

EEOC maintains an information system, known as the Integrated Mission System (IMS), which is used to track the filing, investigation, and resolution of all allegations of workplace discrimination under these federal statutes. The IMS contains solid information that provides a definitive way for researchers to begin to answer the questions posed above. Indeed, since July 26, 1992, the first effective date of ADA, over 600,000 allegations have been filed with the EEOC under ADA Title One.

Under an Interagency Personnel Agreement (IPA) involving the EEOC, Professor Brian T. McMahon, and Virginia Commonwealth University, a nationwide project was begun in 2003 to utilize the IMS for research purposes in order to provide evidence-based answers to the questions above. Dr. McMahon and VCU colleagues proceeded to extract and refine IMS in order to retrieve, verify, and examine closed ADA allegations. An informal network of 25 research volunteers was organized to form the National EEOC ADA Research Project.

The articles that follow are products of an intense data mining effort in the Project's first two years. Some Project team members utilize IMS data to create disability-specific and industry-specific profiles of employment discrimination. Others seek to explore the interface of disability with gender, age, or ethnic status. Still others are using the data to validate (or not) extant theories of stigma, to predict investigatory outcomes, or to better understand discrete

discriminatory behaviors such as disability harassment, failure to accommodate, or unlawful discharge. One would be hard pressed to find a richer source of data that will, if carefully handled, advance our understanding of this substantial impediment to vocational restoration - - workplace discrimination.

Limitations of the Dataset

Like most large databases, the IMS is not a panacea for rehabilitation researchers. In consultation with EEOC, the researchers arrived at criteria for the extraction of allegations into various “study datasets.” By intent, these criteria favor a consistent and complete investigatory process over a larger number of allegations. Specifically, the extraction process deletes all files that do not involve direct discrimination against Americans who are disabled at the time of the alleged incident. Thus, allegations that involve retaliation, record of disability, regarded as disabled, or associate of persons with disabilities are being studied in the first phase. Also excluded are allegations that contain errors or are currently unresolved, as well as those whose merit is determined by an agency other than the EEOC; e.g., Office of Federal Contract Compliance Programs, civil courts or state fair employment practices agencies. To be sure, these allegations can be studied at a later date, but in the early going the researchers are interested in clarity, consistency, and parsimony. The remaining study dataset for the current projects is still quite rich, with 328,738 resolved allegations - - every reported allegation that meets the selection criteria from the Title I effective date through September 30, 2003. Project team members are mindful that many if not most incidents of workplace discrimination go unreported. As with most civil or criminal offenses, it is not possible at this time to determine the prevalence of unreported discrimination.

Other fields in the dataset are deleted in the interest of confidentiality. Federal law requires that identifiers of either a complainant, known as a Charging Party, or an employer, known as a Respondent, must be protected. Accordingly, fields that may lead to identification (such as name, specific industry, address or even state) were purged from the study dataset within weeks of the Project. The VCU IRB has reviewed all data extraction procedures, methods, and analytic techniques and all manuscripts have been reviewed by EEOC prior to publication. To date, no substantive changes to content have ever been requested by EEOC.

These extraction criteria have direct implications for the conduct and applicability of the research itself. Although the study dataset is a subset of the larger universe of workplace discrimination involving Americans with disabilities, it does include the entire population of interest for this Project. Accordingly, population statistics are common through the project as opposed to inferential techniques. Additionally, Project investigators are cautious to avoid generalization of these findings beyond the individuals and employers that are actually represented in the dataset. Our findings are descriptive of these and only these allegations, and the Charging Parties and Respondents from whom they are derived.

After an introductory training session, Project investigators are free to form their own research teams, formulate their own research questions, pursue their own research funds, request data extractions specific to their target issue and comparison groups, choose and apply their own research designs and statistical techniques, and interpret their own findings. The selection of specific study topics is coordinated by Dr. McMahon to avoid duplication of effort. Investigators freely exchange ideas regarding research questions, funding sources, literature, methods, and findings. As a result of this dialogue, preferred approaches emerge in terms of design and statistics, and a measure of redundancy may occur from one article to the next. However, each article must “stand alone” because of dissemination needs that are unique to particular funding sources, consumer organizations, or industry groups. In consideration of this reality, the reader’s indulgence is requested.

Common Tables and Phase One Topics

To conserve the reader's time and the publisher's space, a number of Tables follow this Preface. These provide an explanation of terms and codes that are common usage in EEOC investigations. These include:

- Frequency distribution of allegations in the largest comparison group, known as GENDIS, by impairment (Table 1). GENDIS includes all allegations in which a *known* physical, sensory, or neurological impairment is involved. Two articles in this issue have utilized subsets of GENDIS as comparison groups, specifically those focused upon missing limbs and disfigurement.
- Definitions of the unique discriminatory behaviors that are tracked (Table 2).
- Types of closures or resolutions that may conclude an EEOC investigation (Table 3). Readers are cautioned that unless specific references are made to merit resolutions, the investigator is dealing with allegations of discrimination, which the researchers regard as a perception of discrimination rather than an actual occurrence.
- Parameters of the Charging Party variable of race/ethnicity (Table 4).
- Parameters of Respondent variables of employer size and industry (Table 5).
- Parameters of the Respondent variable location by region (Table 6).

These tables are referred to repeatedly in most of the manuscripts that follow, and in the aggregate they constitute a useful glossary for the reader as well as a "big picture" with respect to scope of discrimination and the potential of the IMS database.

Regarding reprint selection, only the disability-specific profiles are reprinted in this monograph. The intent is to describe the unique aspects of workplace discrimination in specific populations when compared to a general population of physical or sensory impairments. These specific conditions include HIV/AIDS, mental retardation, diabetes, multiple sclerosis, deafness/hearing impairment, speech impairment, traumatic brain injury, and spinal cord injury. Sometimes a smaller and more relevant comparison group was utilized, as in the articles concerning missing limbs and disfigurement.

The number of complete resolutions in the IMS grows by approximately 5% each year. Participants in the Project remain convinced that these modest beginnings represent but the tip of the iceberg in our efforts to better understand the full nature, scope, and impact of workplace discrimination in America.

Acknowledgements

Gratitude is extended to Dr. Ronald Edwards of the EEOC Office of Research, Information and Planning for his total commitment, support, and technical assistance in the Project. Linda R. Shaw, Associate Professor at the University of Florida, is Co-Director of the Project. Dr. Mehdi Mansouri, of Herzing University in Milwaukee, was essential to the Project for his tireless refinement and nurturance of the dataset. The National Institute of Disability and Rehabilitation Research (NIDRR) deserves a full measure of thanks for providing funds for the first study, regarding diabetes, in the form of a Mary Switzer Distinguished Research Fellowship for Dr. McMahon. NIDRR and the Multiple Sclerosis Society deserve additional appreciation for their ongoing support of our work. IOS Press deserves special mention because each of these studies originally appeared in one of two of their premiere journals:

- **WORK: A Journal of Prevention, Assessment, and Rehabilitation, 25(1) 2005.**
- **Journal of Vocational Rehabilitation, 23(3), 2005.**

Table 1. Composition of GENDIS by Specific Disabilities in Descending Order of Frequency

DISABILITY	N	DISABILITY	N	DISABILITY	N
Back Impairment	39,951	Multiple Sclerosis	3,669	Speech Impairment	1,637
Non-paralytic Orthopedic Impairment	27,833	Cumulative Trauma Disorder	3,296	Cerebral Palsy	1,392
Heart/Cardiovascular	10,764	Diabetes	11,437	Chemical Sensitivities	1,183
Hearing Impairment	8,936	Other Blood Disorder	3,100	Mental Retardation	1,132
Other Neurological	8,560	Other Respiratory or Pulmonary Disorder	2,810	Disfigurement	751
Vision Impairment	7,030	Missing Digits or Limbs	2,793	Tuberculosis	155
Cancer	6,812	Gastrointestinal	2,583	Dwarfism	118
Asthma	5,446	Paralysis	2,380	Autism	98
Epilepsy	5,232	Allergies	2,079	Cystic Fibrosis	95
Learning Disability	5,133	Brain / Head Injury-Traumatic	2,037	Alzheimer's	36
HIV / AIDS	4,130	Kidney	2,002		
TOTAL			174,610		

Target Groups for Special Issue are Highlighted

Table 2. Allegation Issues (Discriminatory Behaviors) in the Order of Decreasing Frequency for Project Dataset

N	ISSUES	DEFINITION
103,777	Discharge	Involuntary termination of employment status on a permanent basis.
58,448	Reasonable Accommodations	Respondent failed to provide reasonable accommodation to known physical/mental limitations of a qualified person with a disability.
28,528	Terms / Conditions of Employment	Denial or inequitable application of rules relating to general working conditions or the job environment and employment privileges which cannot be reduced to monetary value.

(continued)

N	ISSUES	DEFINITION
25,776	Disability Harassment	Same as Intimidation except that this issue would be used to describe antagonism in non-employment situations or settings.
17,535	Hiring	Failure by an employer to engage a person as an employee.
12,030	Discipline	Assessment of disciplinary action against an employee.
7,905	Constructive Discharge	Employee is forced to quit or resign because of the discriminatory restrictions, constraints, or intolerable working conditions.
7,628	Layoff	Temporary involuntary separation due to lack of work. Facts must clearly indicate that the involuntary separation is temporary.
7,533	Other	Issues alleged which do not fit under any other defined code.
7,435	Promotion	Advancement to a higher level or work usually involving higher pay or more prestigious work environment.
6,898	Wages	Inequities in monetary compensations paid for work performed, including salary and gratuities, commissions, amounts paid for completion of specific items or work, incentive rates or bonuses.
5,776	Demotion	Involuntary downgrading to less pay or less desirable job with reduced benefits or opportunities for advancement.
5,085	Reinstatement	Failure of an employer to reinstate a person as an employee.
4,845	Suspension	Suspension of employment status because of disability.
4,563	Intimidation	Bothering, tormenting, troubling, ridiculing or coercing a person because of disability. For example: 1) making, allowing or condoning the use of jokes, epithets or graffiti; 2) application of different or harsher standards of performance of constant or excessive supervisions; 3) the assignment to more difficult, unpleasant, menial or hazardous jobs; 4) threats or verbal abuse; or 5) application of stricter disciplinary measures such as verbal warning, written reprimands, impositions or fines or temporary suspensions.
4,528	Benefits	Inequities in providing non-wage compensation items, such as parking rates, gifts, bonuses, discounts, etc.
4,516	Assignment	Designation of an employee to less desirable duty, shift, or work location.
2,531	Benefits: Insurance	Discrimination with respect to the provision of insurance benefits.
2,278	Prohibited Medical Inquiry	Respondent unlawfully required an individual to take a medical examination (e.g., during pre-job-offer stage) or to respond to prohibited medical inquires (e.g., on a job application from or during a pre-employment interview).
1,895	Recall	The calling back to regular employment status of persons who have been in a layoff status.
1,675	Training	Failure or refusal to admit a person into a training program or job that will serve as a learning experience.

(continued)

N	ISSUES	DEFINITION
1,352	Union Representation	Failure by a labor organization to process or diligently pursue a grievance or dispute, or failure to adequately represent the interest of a particular person or group because of disability.
943	Involuntary Retirement	Compelling an employee to retire.
702	Unfavorable Reference	Providing references to potential employers that may place a person in an unfavorable light due to of disability.
671	Job Classification	Restriction of employees with a disability to a certain type of job or class of jobs.
659	Benefits: Pension	Discrimination with respect to the awarding of pension/retirement benefits.
603	Qualifications (weak criteria)	Discrimination with respect to the factors or criteria used in determined a person's fitness for employment, referral, promotion, admission to membership in a labor organization, training or assignment to a job or class of jobs.
474	Seniority	Occurs with the use made of seniority: the length of service in employment; e.g., promotion.
456	Referral	Failure by a labor organization or employment agency to nominate an applicant for hire, training or apprenticeship or training other than that requested by the applicant based on the applicant's disability.
358	Testing	Use tests to determine fitness for employment, referral, promotion, training, or assignment, etc.
350	Segregated Union	Failure of a labor organization to admit individual to membership.
190	Severance Pay	Denial of severance pay upon leaving employment.
163	Maternity Leave	Treating a woman differently for maternity leave based upon her disability.
157	Tenure	Status of holding a position on a permanent basis for educational institutions only.
155	Waive ADEA Rights	Provision of benefits contingent upon employee's agreement to waive the right to seek redress under ADEA.
89	Early Retire Incentive	Offer of early retirement to induce older workers to leave the workforce.

(continued)

N	ISSUES	DEFINITIONS
70	Posting Notices	Failing to post a required notice.
66	Segregated Facilities	Maintenance of separate facilities (common areas or activities) on the basis of disability.
50	Apprenticeship	Failure to admit a person into a program or job that will serve as a learning experience, usually involving a contractual arrangement between the employer, labor organization and the apprentice.
45	Advertising	Expression of a preference health status when soliciting applicants for employment, training, apprenticeship, etc.
0		OTHER ISSUE CODES HAVE A FREQUENCY OF ZERO

Table 3. Closure Codes and Frequencies for 174,610 GENDIS Allegations from Persons with Physical, Sensory or Neurological Impairments

TYPE OF CLOSURE	N	DEFINITION	MERIT
Withdrawn with CP Benefits	10,726	Withdrawn after independent settlement, resolved through grievance procedure, or after Respondent unilaterally granted benefits w/o formal "agreement".	YES
Settled with CP Benefits	14,603	Settled and EEOC was involved in settlement.	YES
Successful Conciliation	4,378	EEOC has determined discrimination occurred, and Respondent has accepted resolution.	YES
Conciliation Failure	8,707	EEOC has determined discrimination occurred, but Respondent has not accepted resolution.	YES
No Cause Finding	115,403	Full EEOC investigation failed to support alleged violation(s).	NO
Admin Closure	2,066	Due to processing problems; e.g., Respondent out of business or cannot be located, file lost or cannot be reconstructed.	NO
Admin Closure	102	Due to Respondent bankruptcy	NO
Admin Closure	537	Because CP cannot be located	NO
Admin Closure	1,690	Because CP non-responsive	NO
Admin Closure	2,596	Because CP uncooperative	NO
Admin Closure	138	Due to outcome of related litigation	NO
Admin Closure	70	Because CP failed to accept full relief	NO
Admin Closure	10,746	Because EEOC lacks jurisdiction; includes inability of CP to meet definitions, Respondent <15 workers, etc.	NO
Admin Closure	2,848	Because CP withdraws w/o settlement or benefits. Reason unknown	NO

Table 4. Race and Ethnicity Codes for Entire ADA Study Dataset

RACE OR ETHNICITY	N	PERCENT
White	202,221	61.5%
African American	66,076	20.1%
Other	27,800	8.5%
Hispanic/Mexican	21,758	6.6%
Unknown	4,499	1.4%
Asian	3,932	1.2%
Native American/Alaskan Native	2,091	0.6%
Mixed Race	142	0.04%
TOTAL	328,738	100%

Table 5. EEOC Respondent Parameters for Employer Size and Industry For GENDIS Only, N = 174,610

NO. OF WORKERS	EEOC CODE	N	INDUSTRY DESIGNATION	SIC CODE	N
15-100	A	56,194	Agriculture	010-099	1,158
101-200	B	20,721	Mining	100-149	3,482
201-500	C	18,516	Construction	150-199	32,555
501 +	D	72,331	Manufacturing	200-399	15,751
NULL	NULL	1,121	Transportation & Utilities	400-499	3,250
UNKNOWN	U	5,580	Wholesale	500-519	18,151
N < 15		147	Retail	520-599	7,000
			Financial, Insurance Real Estate	600-659	49,543
			Services	660-909	16,050
			Public Administration	910-980	21,490
			Not Classified	981-999	4,781
			Unknown	NULL	

Table 6. U.S. Census Bureau Classification of Respondent Regions by State
For GENDIS Only, N = 174,610

REGION - CODE	N	APPLICABLE STATES
SOUTH	N = 70,451	Delaware, District of Columbia, Florida, Georgia Maryland, North Carolina, South Carolina, Virginia, West Virginia, Alabama, Kentucky, Texas, Mississippi, Tennessee, Arkansas, Louisiana, Oklahoma,
MIDWEST	N = 52,038	Indiana , Illinois, Michigan, Ohio, Wisconsin, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota
WEST	N = 32,802	Arizona, Colorado, Idaho, New Mexico, Montana, Utah, Nevada, Wyoming, Alaska, California, Hawaii, Oregon, Washington
NORTHEAST	N = 18,674	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, New Jersey, New York, Pennsylvania
U.S.TERRITORY	N = 641	Puerto Rico, Guam, Virgin Islands, Palau, Northern Mariana Islands, Marshall Islands, American Samoa, Micronesia, Canal Zone
FOREIGN,Non-U.S.	N = 4	All non-U.S. Countries

References

- [1] D. Kruse and L. Schur, Employment of people with disabilities following the ADA, *Industrial Relations*, 42(1) (2003), 31-66.
- [2] B.A. Lee, A decade of the Americans with Disabilities Act: Judicial outcomes and unresolved problems, *Industrial Relations*, 42(1) (2003), 11-30.
- [3] Author, National Organization on Disabilities, Harris survey of Americans with disabilities, (2002).
- [4] S. Schwochar and P. Blanck, Does the ADA disable the disabled? *Industrial Relations*, 42(1) (2003), 67-77.