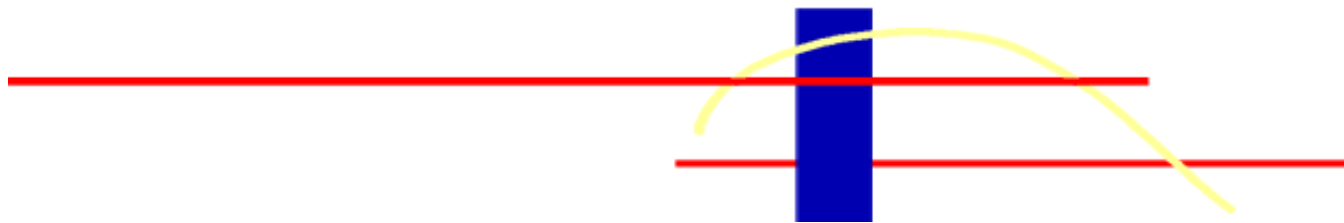


Concept Overview

Physical & Mental Ability



Summer 2020 Version
Developed by: Professor Marsden

People with disabilities
are the world's largest
minority group

Source: More than one billion people experience some form of disability, ILO Global Business and Disability Network
<http://www.businessanddisability.org/index.php/en/boxes/109-more-than-one-billion-people-experience-some-form-of-disability>

Who Is A Person With A Disability?



People with disabilities aren't a homogeneous group.

- People can experience a disability that originates from physical, sensory, intellectual, learning, and mental issues.
- People experience a disability to varying extents. The disability could have a minor impact on their ability to work – or – may have a major impact on their ability to work.
- People may be born with a disability – or the disability occurs during the lifespan.

People with disabilities work in all occupations

Table 3. Employed persons by disability status, occupation, and sex, 2017 annual averages
[Percent distribution]

Occupation	Persons with a disability			Persons with no disability		
	Total	Men	Women	Total	Men	Women
Total employed (in thousands)	5,670	3,111	2,558	147,668	78,290	69,377
Occupation as a percent of total employed						
Total employed	100.0	100.0	100.0	100.0	100.0	100.0
Management, professional, and related occupations	34.1	32.5	35.9	39.9	36.4	44.0
Management, business, and financial operations occupations	14.6	16.4	12.5	16.6	17.5	15.6
Management occupations	10.5	12.8	7.8	11.7	13.2	9.9
Business and financial operations occupations	4.1	3.7	4.7	5.0	4.3	5.7
Professional and related occupations	19.4	16.1	23.5	23.3	18.9	28.3
Computer and mathematical occupations	2.3	3.0	1.4	3.2	4.5	1.7
Architecture and engineering occupations	1.5	2.3	0.5	2.1	3.4	0.7
Life, physical, and social science occupations	0.6	0.5	0.7	0.9	0.9	1.0
Community and social service occupations	2.1	1.4	2.9	1.7	1.1	2.4
Legal occupations	1.2	1.4	1.0	1.2	1.0	1.4
Education, training, and library occupations	5.5	3.1	8.5	6.0	3.1	9.4
Arts, design, entertainment, sports, and media occupations	2.2	2.1	2.4	2.1	2.1	2.1
Healthcare practitioners and technical occupations	4.0	2.2	6.1	6.0	2.8	9.7
Service occupations	20.2	16.5	24.8	17.3	14.2	20.9
Healthcare support occupations	2.3	0.6	4.4	2.3	0.6	4.2
Protective service occupations	2.1	2.7	1.3	2.0	3.0	1.0
Food preparation and serving related occupations	5.5	4.4	6.9	5.4	4.7	6.2
Building and grounds cleaning and maintenance occupations	5.9	6.7	4.9	3.8	4.2	3.3
Personal care and service occupations	4.5	2.0	7.5	3.9	1.7	6.2
Sales and office occupations	22.7	16.1	30.8	21.9	15.9	28.5
Sales and related occupations	10.2	8.8	11.9	10.3	9.9	10.8
Office and administrative support occupations	12.5	7.3	18.8	11.5	6.0	17.8
Natural resources, construction, and maintenance occupations	8.9	15.5	1.0	9.3	16.6	1.0
Farming, fishing, and forestry occupations	0.9	1.4	0.3	0.8	1.1	0.4
Construction and extraction occupations	4.1	7.3	0.3	5.3	9.7	0.3
Installation, maintenance, and repair occupations	3.9	6.8	0.4	3.2	5.8	0.3
Production, transportation, and material moving occupations	14.1	19.4	7.5	11.6	16.9	5.6
Production occupations	6.7	8.7	4.4	5.5	7.4	3.4
Transportation and material moving occupations	7.3	10.8	3.1	6.1	9.6	2.2

Source: US Government, Bureau of Labor Statics, June 21, 2018

Table 3: Employed Persons by Disability Status, Occupation and Sex, 2017 Annual Averages

<http://www.bls.gov/news.release/disabl.t03.htm>

"People First" Language

"**People-first** language," respects human beings and their rights to be appreciated for the strengths they have, rather than to be defined by their disabilities.

Using people first references helps to make coworkers who are disabled feel respected, valued, understood.

Examples:

Person with a disability (instead of disabled person)

Tamara, who is vision impaired (instead of blind person)



The Term Inclusion and Disability



The term “inclusion” originates from language used within disability advocacy circles. Long before corporations were talking about “inclusion” and adding the term to the diversity area of their websites – the disability community owned the term.

Inclusion is an important concept for the people with disabilities whose desire is to be respected, heard and treated equally in the workplace.

Organizations and the workforce are charged with offering support so that disabled employees can rise to their desired level within an organization. A core concept of inclusion –involvement – where all employees are welcomed to engage in key activities and offer their input - is just as vital when considering the disabled employee population.

People with Disabilities and Work



Bureau of Labor: Latest Statistics Data 2019

UNEMPLOYMENT RATE

The unemployment rate was lower in 2019 than 2018. Jobless rate continued to be about **twice as high as the rate for those without a disability.**

Unemployment Rate for People 16 – 64 who are Disabled – **7.3%**
Compare to unemployment rate for People 16 – 64 who are without a disability – **3.5%**

People who are categorized as unemployed **must be available to work and have tried to locate employment within the month prior to the survey.**

The unemployment rate identified above is the number of people unemployed as a percent of the entire civilian labor force.

Bureau of Labor: Latest Statistics Data 2019

Race Makes a Difference

Race	Persons w/a Disability		Persons w/out a Disability	
	EMPLOYED	UNEMPLOYED	EMPLOYED	UNEMPLOYED
White	19.7%	6.6%	66.6%	3.1%
Black or African American	15.6%	11.8%	64.9%	5.9%
Asian	18.9%	6.7%	64.7%	2.6%
Hispanic or Latino Ethnicity	20.5%	8.6%	67.7%	4.2%

Source: Bureau of Labor Statistics (February 26, 2020.) Persons with a Disability: Labor Force Characteristics Summary.
Table 1 Accessed: <https://www.bls.gov/news.release/disabl.t01.htm>

Bureau of Labor: Latest Statistics Data 2018

Education Makes a Difference – Age 25 years and older

Education	Persons w/a Disability		Persons w/out a Disability	
	EMPLOYED	UNEMPLOYED	EMPLOYED	UNEMPLOYED
Less than a high school diploma	9.1%	9.3%	54.3%	5.1%
High School Graduate, No College	15.5%	7.2%	63.7%	3.5%
Some College or associate degree	21.1%	7.2%	69.6%	2.8%
Bachelor Degree & Higher	28.2%	4.5%	75.5%	2.0%

Source: Bureau of Labor Statistics (February 26, 2020.) Persons with a Disability: Labor Force Characteristics Summary.
 Table 1. Accessed: <https://www.bls.gov/news.release/disabl.t01.htm>

Work Part Time

People with a disability were more likely to be employed part time (32%) than those with no disability (17%).

Not in Labor Force

A significant number of people who are disabled,
ages 16 – 64 **are neither**
“employed” or “unemployed.”

They are simply not in the labor force at all.

More people who are disabled are “not in the labor force”
than people who are not disabled.

People with Disabilities and Poverty



“People with disabilities make up approximately 12% of the U.S. working-age population.

But they account for more than 50% of those living in long-term poverty.”

Source: National Council on Disability. (October 26, 2017). Highlighting Disability / Poverty Connection, NCD Urges Congress to Alter Federal Policies that Disadvantage People with Disabilities. <https://ncd.gov/newsroom/2017/disability-poverty-connection-2017-progress-report-release>

Cross Over Issues



The aging workforce and disability

The workforce is aging. There are *millions* of Baby Boomers in the workforce.

The last of the Baby Boomers will not turn 65 until 2029. Many of the Baby Boomers will remain in the workforce past age 65.

The occurrence of disabling health concerns increases as we age.

The proportion of employees with disabilities will continue to increase for some time.

Technology and disability

Technological innovations will impact the proportion of employees with disabilities in the workforce.

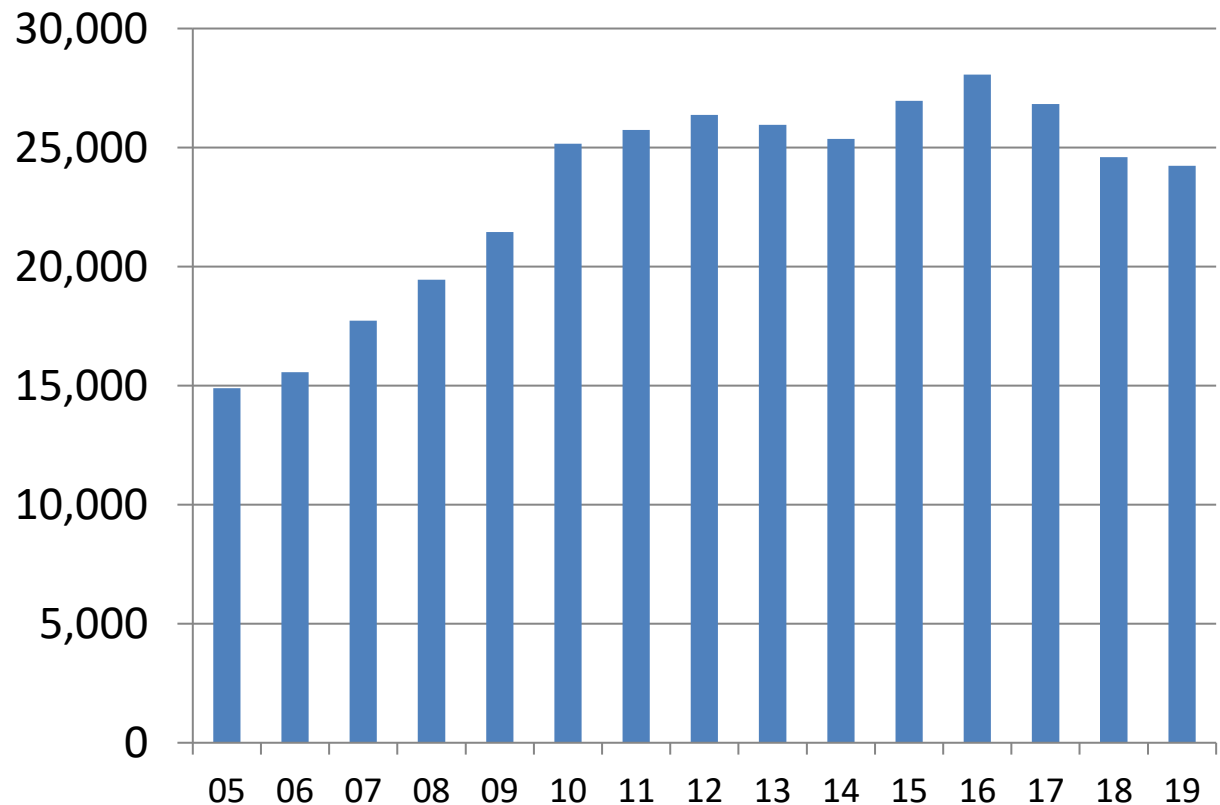
Consider innovations in assistive devices, new technologies that make remote work easier and advances in health care as three means to increase the number of people with disabilities in the workplace.

Discrimination in the Workplace

Claims Filed with the EEOC

One way of identifying the level of discrimination in the United States is to refer to the number of disability related discrimination cases filed with the EEOC.

Remember that only a portion of those who are discriminated against file a claim when they experience disability related workplace discrimination.



Most recent statistics: Source: ADA Charges 1997 – 2019 (Latest data available)

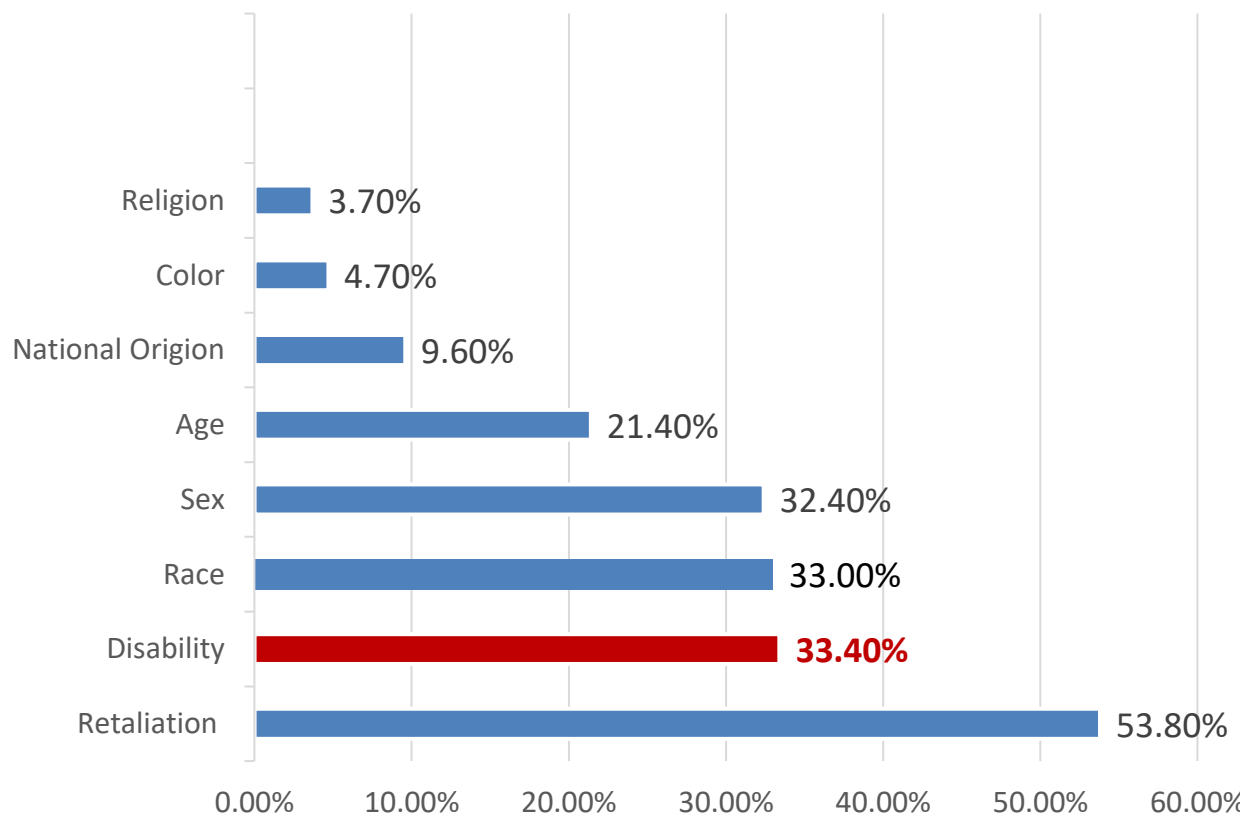
<https://www.eeoc.gov/statistics/americans-disabilities-act-1990-ada-charges-charges-filed-eeoc-includes-concurrent>

National Disability Claims Are Still High; 2019 Claims Show Pattern of Decline in Claims

PREVIOUS PAGE: As indicated in the chart on the previous page, claims of employment discrimination because of disability were at an **all time high in 2016 (28,073 people filed claims.)** Between 2016 and 2019, 3,835 fewer people filed a claim of discrimination based on disability.

CHART: Disability claims in 2019 represented **33.4% of charges filed.**

The only charges that were filed by more employees were those claiming discrimination based on retaliation.



Source: EEOC Releases Fiscal Year 2018 Enforcement and Litigation Data

<https://www.eeoc.gov/newsroom/eeoc-releases-fiscal-year-2019-enforcement-and-litigation-data>

Disability Case Recently Settled by EEOC - \$25,000

November 6, 2019

Failed to Employ Because of Disability

Disability: Paralysis on Left Side of Body

Family Dollar refusing to employ a job applicant who suffers from left-sided paralysis and wears a brace on his left arm.

After being interviewed the applicant was offered the position but was told that he could not start work until a few weeks later.

Despite his requests for a start date, he was never placed on the schedule and never performed any services for the company.

During this same time, the company continued to hire other non-disabled individuals to work as customer service representatives at the same store.

Disability: Case Goes to Trial – Walmart – 5.2 Million Dollar Award October 11, 2019

Failed to Accommodate Disability

Disability: Developmental disability; deaf; visually impaired

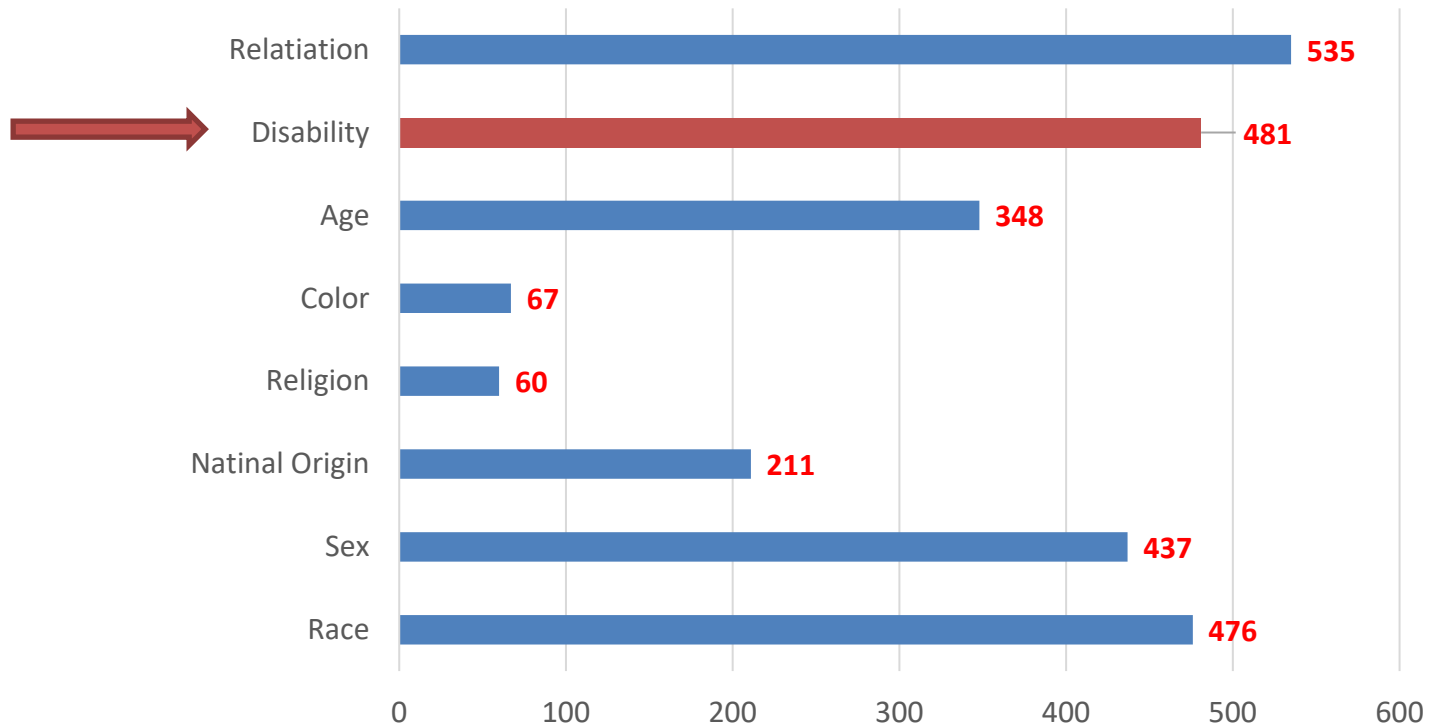
The employee worked as a **cart pusher** for 16 years with the accommodation of assistance from a job coach (provided by public funding.) When a new manager started at the Walmart, the manager suspended the employee and forced the employee to resubmit medical paperwork in order to keep his reasonable accommodations, even though the employee's conditions had not changed.

When the employee/legal guardian submitted new paperwork, requesting the continued accommodation of assistance from a job coach, the store cut off communication and terminated the employee.

After a 3½-day trial, the jury found in favor of the EEOC and awarded the employee **\$200,000 in compensatory damages** and an additional **\$5 million in punitive damages**.

2019
(latest EEOC statistics available)

Claims in New Jersey



EEOC Charge Receipts for New Jersey

<https://www.eeoc.gov/statistics/enforcement/charges-by-state/NJ>

Laws that Protect: Disability and Employment

Americans with Disabilities Act



The signing of the Americans with Disabilities Act occurred 30 years ago this month!



Photo of President George Bush signing into law the Americans with Disabilities Act of 1990 on the South Lawn of the White House. L to R, sitting: Evan Kemp, Chairman, Equal Employment Opportunity Commission, Justin Dart, Chairman, President's Committee on Employment of People with Disabilities. L to R, standing: Rev Harold Wilke and Swift Parrino, Chairperson, National Council on Disability, 07/26/1990.

Laws that Protect: Disability and Employment



Americans with Disabilities Act

The Americans with Disabilities Act was originally enacted in 1990. It was subsequently amended in 2008 (law came into effect 2009.)

According to the ADA, disability means:

- (1) a person **who has** a physical or mental impairment that **substantially limits one or more major life activities**
- (2) a person **with a record of** a physical or mental impairment that **substantially limits one or more major life activities, and**
- (3) a person **who is regarded as having** a physical or mental impairment that **substantially limits one or more major life activities.**

One of the improvements in the amendment is the expansion of **major life activities**.

These are common “**major life activities**”

caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

Added to these activities were “**major bodily functions**”

functions of the immune, circulatory, gastrointestinal, musculoskeletal, neurological, reproductive and endocrine systems.

Given the addition of “bodily functions” a disability is, for example, also the following conditions: cancer, sleep disorders, diabetes, heart disease

Example of Major Life Activity Including a Bodily Function:

A person with insulin-dependent diabetes would be covered under the new definition of disability because **endocrine system functioning** is now considered a major life activity.

Sources: Job Accommodation Network, Accommodation and Compliance Series: The ADA Amendments Act of 2008 <http://askjan.org/bulletins/adaaa1.htm>

US Department of Labor, Office of Federal Contract Compliance, Frequently Asked Questions <http://www.dol.gov/ofccp/regs/compliance/faqs/ADAfaqs.htm#Q4>

The US Rehabilitation Act of 1973, Section 503

Section 503:

- prohibits **federal contractors** from **employment discrimination** of people with disabilities.
- requires federal contractors (and subcontractors) **to take affirmative action** when recruiting, hiring, promoting, and retaining people with disabilities.

Within the new regulations (called a “Final Rule” enacted March, 2014), a goal of **7% of the contractor’s workforce** was set.

Affirmative Action & Hiring People with Disabilities on Federal Level

- Federal government agencies **must**:
set goals for hiring people with disabilities; recruit people with disabilities
- Federal government agencies **can**:
advantage people with disabilities associated with employment (hiring, promoting, training, etc.)

Increasing Federal Employment of Individuals with Disabilities Executive Order 13548

In 2010, President Obama made an executive order to increase the employment of people with disabilities in the US Federal government.

An additional 100,00 people with disabilities had to be hired over a period of 5 years.

Presidential Proclamation on National Disability Employment Awareness Month, 2019

— ECONOMY & JOBS | Issued on: September 30, 2019



Excerpt

Thanks to my Administration's economic policies, we have seen the creation of more than 6.3 million new jobs since the election, providing tremendous opportunities for job seekers nationwide. In April, the national unemployment rate dropped to a near half-century low, and the unemployment rate for Americans with disabilities reached the lowest level on record. It is essential that we continue creating an environment in which Americans with disabilities have access to full participation in our economy and the ability to experience the benefits of employment.

Discrimination of employees based on physical or mental abilities is illegal through **state law. New Jersey's Law Against Discrimination (LAD)** language to the right.

In addition the law requires an employer to offer accommodations to assist employees in meeting their job responsibilities.

Finally, the LAD prohibits employers from denying employment opportunities to people with disabilities unless the employer reasonably determines that the nature and extent of a person's disability reasonably precludes his or her safe performance of a particular job. In order for the decision to be reasonable, the employer must determine that the employee's disability precludes the performance of essential duties, not merely hinders the execution of some tasks. Furthermore, before deciding that a person's disability precludes his or her safe performance of a particular job, an employer must first consider the possibility of making reasonable accommodations, that is, adjustments to the work assignment or workplace, that may enable the person to perform the essential functions of his or her position.

Source: NJ LAD, Division of Civil Rights.
<http://www.state.nj.us/lps/dcr/employ.html>

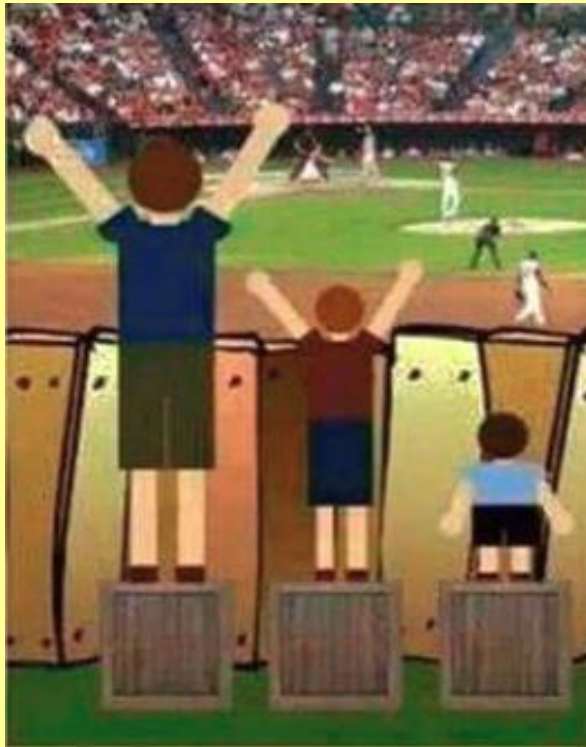
Existence of Protective Laws Isn't Enough

“Legislative mandates typically have limited impact due to lack of political will to enforce them, numerous loopholes, and difficulties in interpretation of the laws. Further, although such legislation may establish policy relative to fair treatment and provide some level of protection against direct discrimination, **it does little in the short term to change attitudes, overcome entrenched practices, or change the systemic barriers to employment that rise from within organizations and from the social systems that fail to adequately prepare youth with disabilities for competitive work roles.** Workers with disabilities also report apprehension in dealing with employers and asserting rights guaranteed under such legislation.”

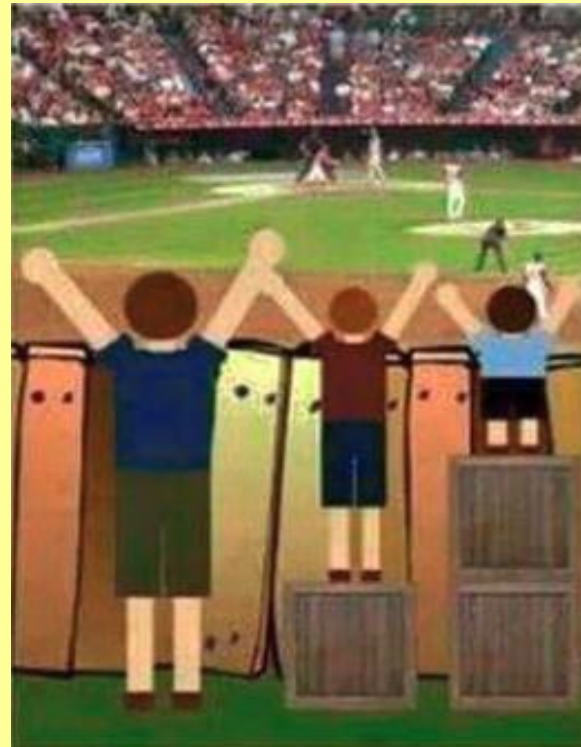
Source: Lysaght, R., Ouellette-Kuntz, H., & Lin, C. (2012). Untapped potential: Perspectives on the employment of people with intellectual disability. *Work-A Journal Of Prevention Assessment & Rehabilitation*, 41(4), p. 411 -12.

Accommodation

Equality doesn't mean justice



EQUALITY



JUSTICE

Accommodation



The ADA requires that employers offer “reasonable accommodations” to employees with disabilities. Modifications may need to be made to workplace policies, schedules, and tasks.

"In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. “

Accommodations must be provided for both job applicants and the workforce.

The employee (or position applicant) must request an accommodation. The request can be communicated verbally.

Discrimination: Accommodation and Termination Example

“Terminating a qualified employee because of a disability violates the Americans with Disabilities Act (ADA). The law also requires an employer to provide reasonable accommodation to an employee or job applicant with a disability... Managers must understand their responsibilities to provide medical leave as a reasonable accommodation when required under the ADA.”

EEOC Press Release, June 16, 2016.

<https://www.eeoc.gov/eeoc/newsroom/release/6-16-16a.cfm>

Liberty Chrysler Dealerships to Pay \$50,000 to Settle EEOC Disability Discrimination Lawsuit

Saturday, June 18, 2016

Saleswoman Unlawfully Fired Because of Her MS, Federal Agency Charges

Three integrated Nevada-based car dealerships will pay \$50,000 to an employee who was fired because of her multiple sclerosis and provide other relief to settle a disability discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced today.

The dealerships are Liberty Chrysler, Jeep and Dodge LLC in Winnemucca; Internet Auto Rent and Sales, Inc. in Reno; and Internet Auto Rent and Sales of Las Vegas, Inc.

According to EEOC, in October 2010, about three months after starting as a commissioned salesperson at the Winnemucca dealership, Shara Rynearson notified her supervisor that she was experiencing a sudden change in vision, numbness in half of her face and loss of balance, and went to an emergency room. The next day, Rynearson presented her supervisor with hospital documents that tentatively diagnosed multiple sclerosis and noted the doctors' instructions not to work until after a neurological appointment to confirm the diagnosis. She also later brought in a doctor's note excusing her absence from work. Instead of allowing Rynearson to take medical leave for the diagnosis and treatment of her disability, her employer fired her on November 5, 2010.

"Losing my job made my MS diagnosis so much more stressful and terrifying," said Rynearson. "Thanks to EEOC's lawsuit and this settlement, I hope no one else will have to endure an experience like mine."

<http://www.natlawreview.com/article/liberty-chrysler-dealerships-to-pay-50000-to-settle-eeoc-disability-discrimination>

Reasons why employees with disabilities disclose their disability

As seen by the results of a survey, a major reason for informing one's employer of a disability is to request an accommodation.

Factors	Percentage of people with disabilities who rated the factor "very important"
The need for an accommodation to perform a job or to take care of a health condition during working hours	69.9%
An open and supportive relationship with one's supervisor	65.0
Knowing that the employer has made concerted efforts to create a disability inclusive/friendly workplace	56.0
Knowing that the employer is actively recruiting and hiring people with disabilities	49.4
Knowing that other employees had disclosed their disability and were successful in the workplace	48.7
Disability is included in the employer's diversity statement	48.5
The belief that the disclosure will lead to new opportunities for promotion or training (e.g., programs to advance employees who are members of diverse groups)	39.2
A message of disability inclusiveness on the company's website or promotional materials (e.g., pictures of people with disabilities)	36.9
A statement on recruitment materials inviting applicants with disabilities	36.1
An employee with a disability recruiting at job fairs or campus recruitment events	30.7
The existence of a disability employee resource group (affinity group)	23.3

Source: Leveling the Playing Field, The Conference Board, p. 41.

<http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1292&context=edicollect>

Source: Calculations by Sarah von Schrader, Cornell University, Employment and Disability Institute, using data from Cornell and AAPD's Emerging Employment Issues for People with Disabilities Survey. This table represents the responses of the 473 individuals who disclosed their disability in their current or most recent position. For further information, visit the Cornell website (digitalcommons.ilr.cornell.edu/edicollect/1288).

What are the barriers employees experience?

Physical Barrier Examples: Facilities of a workplace and equipment associated with position duties must be accessible

A employee who uses a wheelchair can't fit his wheelchair under the desk in his office.

An employee with a severe learning disability has great difficulty reading. The employee requests that the employer install a computer with speech output.

Policy/ Procedure Examples: When and how position responsibilities are met

An employee can't make it to work at her scheduled starting time because of medical treatments she's undergoing.

An employee has diabetes. The employee needs three or four 10-minute breaks each day to test her blood, and if necessary, to take insulin.

The Cost of Accommodating Should Not Be A Barrier

For Persons with Disabilities That Need Personal Assistance Services

One Time Cost: \$1,850

For Persons with Disabilities That DO NOT Need Personal Assistance Services

One Time Cost: \$0 - \$500

Many accommodations cost nothing (example: changing schedule)

46% of employers surveyed – accommodations cost nothing

(The Job Accommodation Network contends that 57% - not 46% of workplace accommodations cost nothing)

45% - one time cost

“Specifically, these employers found that on average, for every dollar they put into making an accommodation, they “got back” a little over \$10 in benefits. There probably are few other changes an employer can make that will result in such a return on the investment. “

Benefits of Making Accommodations (cited by businesses in study):

- retained a valued employee (86%)
- increased employee productivity (71%)
- improved interactions with co-workers (67%)
- increased overall company morale (58%)
- increased employee attendance (49%)
- Increased diversity within the company (42%)
- Improved workplace safety (41%)

Source: Job Accommodation Network

<http://www.diversityresources.com/rc/pdfs/LowCostHighImpact.pdf>


Undue Hardship

- **Significant** difficulty or expense to the employer

Can you see how the threshold for accommodating religious based and disability-based accommodations is different?

- Considers “the resources and circumstances of the employer *in relationship to* the cost or difficulty of providing a specific accommodation.”
- Accommodations must be considered on a “case-by-case basis.”

The Special Case of "Invisible" – or – "Hidden" Disabilities



Regarding disability charges filed with the EEOC, the most cited conditions *were invisible ones*.

Examples of types of invisible disabilities

Psychiatric Disabilities: major depression, anxiety, bipolar disorder, schizophrenia, obsessive-compulsive disorder, post-traumatic stress disorder (PTSD)

ADD/ADHD

Diabetes

Chronic Fatigue
Syndrome

Learning Disabilities

Heart Conditions

Fibromyalgia

Dyslexia

Cancer

Rheumatoid Arthritis

Epilepsy

HIV/AIDS

Crohn's Disease

A key decision employees must make is **when and if they are going to disclose their disability**. The voice of those faced with the decision to disclose their hidden disability:

“I do not want to be viewed as a disabled person and then as an employee... I want to ensure that I am viewed as a valued employee who happens to have a disability.”

“Company policies are worthless if discriminatory behaviors are not curbed and the disabled are seen as too unreliable and costly. There is enormous ignorance and fear by non-disabled co-workers, so denial and avoidance is rampant. Disability is still being treated like acute disease. Until this changes, there is still too high a risk of losing one's job if you disclose.”

“[Disclosure] makes it harder to get fair and equal treatment in the workplace and results in being bullied, either by co-workers or by employers.”

Source: Emerging Employment Issues for People with Disabilities, Cornell University, ILR School, Employment and Disability Institute, p. 20 21.

<http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1288&context=edicollect>

Employees have a variety of reasons why they do not want to disclose their disability

Reasons why employees with disabilities do not disclose their disability

Factors	Percentage of people with disabilities who rated the factor "very important"
Concern about being fired or not being hired	78.1%
Concern about being treated differently by supervisor/co-workers	67.5
Concern that the employer may focus more on the disability than on actual work performance/abilities	67.0
Fear that opportunities for promotion will be more limited	66.7
Concern about losing or not receiving health care benefits	64.0
Concern that one's supervisor would not be understanding/supportive	63.2
Concern about being viewed differently by supervisor/co-worker	62.6
A belief that the disability does not have an impact on ability to perform the job	56.5
A desire to keep the disability private	42.6

Source: Leveling the Playing Field, The Conference Board, p. 41.
<http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1292&context=edicollect>

Source: Calculations by Sarah von Schrader, Cornell University, Employment and Disability Institute, using data from Cornell and AAPD's Emerging Employment Issues for People with Disabilities Survey. This table represents the responses of the 116 individuals who disclosed their disability in their current or most recent position. For further information, visit the Cornell website (digitalcommons.ilr.cornell.edu/edicollect/1288).

“Medosch says she's comfortable being vocal about her disability now because she's well protected at her current job. She ... acknowledges invisible disability can be hard to fathom — especially when so many people who live with it seem, outwardly, at least, to be just like everyone else.”



Carly Medosch, 33, has suffered from Crohn's disease (an inflammatory bowel condition) since the age of 13.

Source: Gingold, N. (March 8, 2015). People With 'Invisible Disabilities' Fight For Understanding. NPR. (Print and audio) Accessed from <http://www.npr.org/2015/03/08/391517412/people-with-invisible-disabilities-fight-for-understanding>

Legal Issues & Invisible Disabilities

“When people with **invisible disabilities** request accommodations, some employers respond, "We don't do that as a policy.”

That's a problem. Because that person is not asking to partake of a benefit that's offered in a policy; that person is asking for an accommodation they're entitled to under the law.”

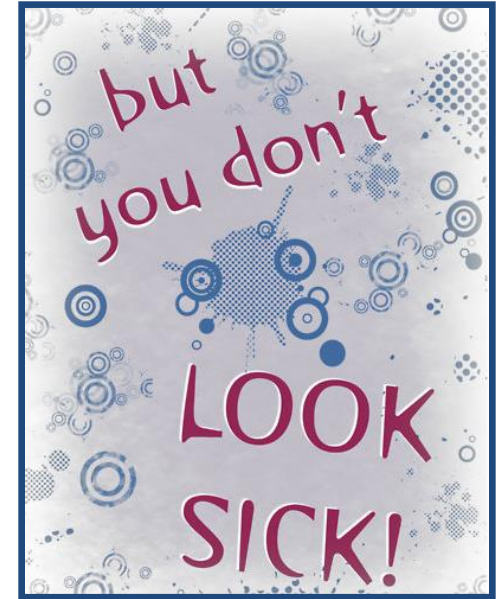
Joyce Smithey, Labor and Employment Attorney



Source: Gingold, N. (March 8, 2015). People With 'Invisible Disabilities' Fight For Understanding. NPR. (Print and audio)
Accessed from <http://www.npr.org/2015/03/08/391517412/people-with-invisible-disabilities-fight-for-understanding>

Those with invisible disabilities...

must deal with the stigma associated with having a disability, along with being scrutinized by those who do not perceive the condition as a disability – or – because the employee “doesn’t look sick.”



Regulations associated with Section 503 of the Rehabilitation Act of 1973 require government contractors to **invite every job applicant, new hire, and employee to “self-identify” if they have a disability.**

This regulation exists “to induce organizations to create more inclusive workplaces where employees feel safe disclosing their disabilities and disability becomes less of a barrier to employment.”

However, it could be difficult for businesses to entice those with **invisible disabilities** to disclose that they have a disability, given the stigma of disability in the workplace – AND – the scrutiny under which they are placed because one can’t “see” their disability.

NOTE:

Regulations went into effect March 2014; government contractors who are impacted are those that employ 50 or more workers/do more than \$50,000 worth of business with the federal government each year.

The Challenge of Getting Hired



October 2015:

Researchers from our own LSER Department publish findings of discrimination against disabled job candidates

Using fictitious resumes and cover letters for both people with disabilities and those without disabilities, researchers found that overall, those who disclosed their disability in their cover letter got call backs from employers about 26% less than the able-bodied applicants.

There were two types of resumes:

- applicant was highly qualified (6 years experience)
- applicant was not experienced (around 1 year out of college)

Three different cover letters were used. Applicant with:

- no disability
- spinal cord injury
- Asperger's syndrome

What do you think were the results?

Employers were:

- **34 percent less likely to show interest** in an experienced applicant with a disability
- **15 percent less likely to express interest** in an applicant with a disability who is just starting out his/her career.

Discrimination of job applicants “was roughly **the same whether the disability was a spinal cord injury or Asperger’s.**”

These results indicate that employers **held a more general bias against people with disabilities.**

A study published in 2012 examined what impacts people with disabilities becoming employed. Results indicate the following as prime barriers:

- **Type of disability:** There is a negative stigma of mental disability that is greater than the stigma of a physical disability
- **Workplace Culture:** Misperceptions or prejudices regarding work performance, cost of accommodation. Fear of litigation.

What helps....

- Workplace leadership/manager knowledge of the reality of accommodations
- Workplace leadership/manager prior experience with people with disabilities

Source: Jans, L. H., Kaye, H. S., & Jones, E. C. (2012). Getting hired: Successfully employed people with disabilities offer advice on disclosure, interviewing, and job search. *Journal of Occupational Rehabilitation*, 22(2), 155–165. doi:10.1007/s10926-011-9336-y

Other Barriers to Employment

Employment History

Individuals with disabilities may have employment histories that involve **“long gaps in employment; short periods of employment** (not being employed with a single organization for an extended period); **lack of work experience.”** (p. 37 – 38)

Credit Screening

Credit checks will indicate receipts of Social Security Disability Insurance payments or large medical debt **that identifies the fact that they have a disability.** In addition, job candidates and disability advocates are concerned that the **credit screening is being correlated to candidate “motivation and capacity” potential.** *They question the connection, especially when poor credit often originates from circumstances that are not under their control.*

Incarceration Record

Involvement with the criminal justice system is a potential reality for those with a disability of mental illness or substance abuse. It's well documented that **a criminal record impacts one's ability to secure employment.**

For those with the above mentioned disabilities, the fact that they have a record can have dramatic results. As one vocational rehabilitation specialist is quoted to say *“Most of my clients who have criminal backgrounds – yes – they are screened out of about 35 jobs before they can locate one.”*

Source: Emerging Employment Issues for People with Disabilities, p. 31 – 34. Cornell University, ILR School, Employment and Disability Institute

<http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1288&context=edicollect>

Contemporary Issues: *What's Going on in the US?*



#1 - Covid 19 and the ADA

What's legal: for an employer to require – or – for an employee to request?

#2 - Disability Equity Index

Five years after the US Business Leadership Network (USBLN) and the American Association of People with Disabilities (AAPD) joined forces to create the “Disability Equality Index” corporate competition, the 2019 index is published. 156 corporations scored an 80% or above in 2019.

#3 - Subminimum Wage

At issue for some time – subminimum wage for people with intellectual disabilities working in sheltered workshops. Will Congress pass legislation to abolish subminimum wage?

#4 - Autistic Adults and Employment

High unemployment, some businesses consider employment options.

#1: COVID- 19, Work and ADA

Why focus on the COVID-19 virus in an overview about diversity of physical and mental abilities in the workplace?

- The potential need for employee accommodations associated with the virus, depending on new employer policies.
- At-risk employees wanting to continue to work at home.
- Testing for COVID-19 or it's antibodies as an employment condition. (It's legal to test, but not legal to require employees pass an antibody test to return to work)
- Sharing of medical information of an employee with other personnel in the organization.

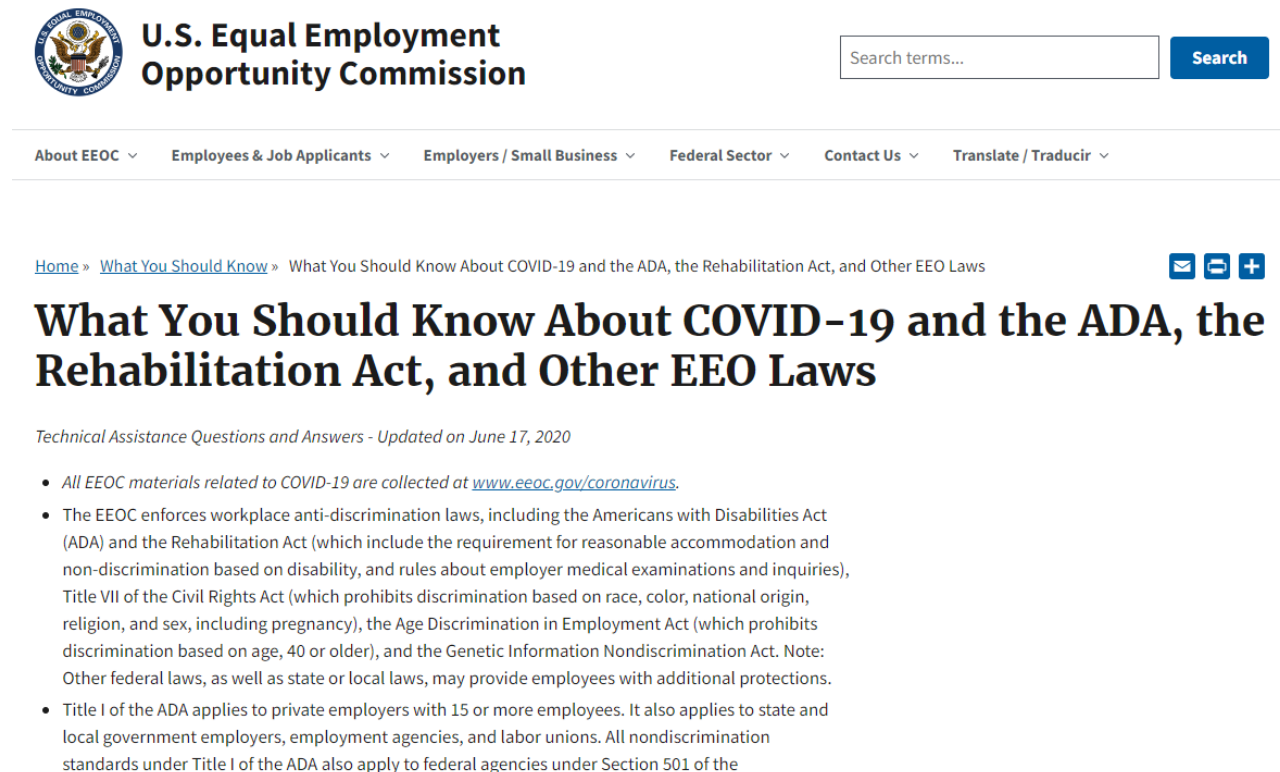
Sources:


Tornone, K. (June 23, 2020). ADA prohibits COVID-19 antibody tests, EEOC says, HRDive
<https://www.hrdive.com/news/ada-prohibits-covid-19-antibody-tests-eeoc-says/580363/>

Clarey, K. (May 19, 2020). EEOC: Avoid benevolent discrimination as at-risk employees return to work. HRDive
<https://www.hrdive.com/news/eeoc-avoid-benevolent-discrimination-as-at-risk-employees-return-to-work/578226/>

The EEOC has published a comprehensive document in a question/answer format to assist both the employer and the employee.




****Remember that ADA regulations addresses employers who have 15 or more workers. (NJLAD involves employers with any number of employees.)**



 **U.S. Equal Employment Opportunity Commission**

Search terms... **Search**

About EEOC ▾ Employees & Job Applicants ▾ Employers / Small Business ▾ Federal Sector ▾ Contact Us ▾ Translate / Traducir ▾

[Home](#) » [What You Should Know](#) » What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws   

What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws

Technical Assistance Questions and Answers - Updated on June 17, 2020

- All EEOC materials related to COVID-19 are collected at www.eeoc.gov/coronavirus.
- The EEOC enforces workplace anti-discrimination laws, including the Americans with Disabilities Act (ADA) and the Rehabilitation Act (which include the requirement for reasonable accommodation and non-discrimination based on disability, and rules about employer medical examinations and inquiries), Title VII of the Civil Rights Act (which prohibits discrimination based on race, color, national origin, religion, and sex, including pregnancy), the Age Discrimination in Employment Act (which prohibits discrimination based on age, 40 or older), and the Genetic Information Nondiscrimination Act. Note: Other federal laws, as well as state or local laws, may provide employees with additional protections.
- Title I of the ADA applies to private employers with 15 or more employees. It also applies to state and local government employers, employment agencies, and labor unions. All nondiscrimination standards under Title I of the ADA also apply to federal agencies under Section 501 of the

Source: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

#2: Two Non-for-Profit Organizations Established an Equity Index Competition in 2014



Organization is comprised of corporations interested in hiring and creating an inclusive environment for employees with disabilities.
http://www.usbln.org/about-us_mission.html



The American Association of People with Disabilities is a social; justice organization that works to impact the quality of life for people who are disabled. Their focus involves employment issues of equal employment opportunities, assuring people with disabilities earn enough to be self-sufficient and maintaining the services available to people with disabilities that are vital if people with disabilities want to work.
<http://www.aapd.com/our-focus/employment/>

*Remember the Human Rights Campaign (HRC) equity index corporate competition associated with LGBT employees? An equity competition in support of inclusive initiatives for employees with disabilities was developed and has concluded **the 5th annual Disability Equality Index competition.***

US companies can now be recognized with distinction as a “best place to work for people with disabilities.” Fortune 1,000 companies are invited to participate in the competition.

Note: 2020 DEI will be published end of July.

Companies
that scored
100%



2019 Best Places to Work

We provide the most comprehensive benchmarking tool for disability inclusion. Congratulations to the top scoring companies!

Source: 2019 DEI
<https://disabilityn.org/what-we-do/disability-equality-index/best-places-to-work-2019/>

3M	Accenture	Aetna	Ameren Corporation	American Airlines
American Water	Anthem, Inc.	Aramark	AT&T	BAE Systems, Inc.
Bank of America	Best Buy Co., Inc.	Biogen	Blue Cross Blue Shield of Michigan	BMO Harris Bank
Boehringer Ingelheim Pharmaceuticals, Inc.	Booz Allen Hamilton	Boston Scientific	Bristol-Myers Squibb Company	Brown-Forman Corporation
Capital One Financial Corporation	Cargill, Inc.	Centene Corporation	Chevron Corporation	Children's Hospital of Philadelphia
Cigna	Cisco	Comcast NBCUniversal	Corning	CSX Transportation, Inc.
CVS Health	Dell Technologies	Deloitte	Delta Air Lines, Inc.	Dow Inc.
DTE Energy	DuPont	DXC Technology	Entergy Corporation	Express Scripts
EY	Facebook, Inc.	Fidelity Investments	Florida Blue	Ford Motor Company
Freddie Mac	General Motors	GlaxoSmithKline plc	Goldman Sachs & Co.	Google LLC
Health Care Service Corporation	Hewlett Packard Enterprise	Highmark Health	HP Inc.	Huntington Bank
Intel Corporation	JPMorgan Chase & Co.	Kaiser Permanente	KPMG LLP	L'Oreal USA
Lincoln Financial Group	LinkedIn	Lockheed Martin	M&T Bank	ManpowerGroup
Mastercard	McKesson Corporation	Medtronic plc	Merck	MetLife Inc.
Microsoft	Nielsen	Northern Trust	Northrop Grumman	Northwestern Mutual
Old National Bank	Pacific Gas and Electric Company	PNC Financial Services Group, Inc.	PPL Corporation	Procter & Gamble
Prudential Financial	PwC	Qualcomm	Raytheon Company	Salesforce
SAP America, Inc.	Southern California Edison, an Edison International Company	Southern Company	Spaulding Rehabilitation Network	Sprint Corporation
Starbucks Coffee Company	State Street Corporation	Synchrony	T-Mobile	TD Bank N.A.
The Boeing Company	The Hartford	The Travelers Companies, Inc.	The Walt Disney Company	Thermo Fisher Scientific
Thomson Reuters	Tufts Health Plan	U.S. Bank	Unilever USA	United Airlines
Verizon	Voya Financial	Walgreens	Walmart Inc.	WellCare Health Plans, Inc.
Whirlpool Corporation				

What does the Disability Equality Index measure?

The DEI measures a wide range of criteria within four (4) categories. The breakdown of categories, subcategories, and point values is as follows:

- Culture & Leadership (30 points)
 - Culture (20 points)
 - Leadership (10 points)
- Enterprise-Wide Access (10 points)
 - Enterprise-Wide Access (10 points)
- Employment Practices (40 points)
 - Benefits (10 points)
 - Recruitment (10 points)
 - Employment, Education, Retention, & Advancement (10 points)
 - Accommodations (10 points)
- Community Engagement & Support Services (20 points)
 - Community Engagement (10 points)
 - Internal / External Support Services (10 points)

#3: Sheltered Workshops

Pay and Segregation Issues Have Closed Many Sheltered Workshops Throughout the United States

Paying people with disabilities a **subminimum wage** has been an issue for quite a while. This situation is legal through a loophole in the 1938 Fair Labor Standards Act.



“

Sub-minimum wages are unjust, exploitative and isolate people with disabilities from their peers in employment

”

Mary O'Hara; The Guardian; In the US They Even Have 'Sub-Minimum' Wages for Disabled People
<https://www.theguardian.com/society/2016/may/24/no-one-should-earn-sub-minimum-wage--disabled-people>

“Perceptions of disabled people’s ability to work have changed a lot in recent decades. But there are still widely accepted assumptions that certain disabled people, especially those with “severe” disabilities, mental illness, or cognitive impairments can’t just be hired and set loose to do a good job without extra help.

Some of this is prejudice.

Some of it is lack of simple accommodations.

But some disabled people really do need more training, long-term support, and individually crafted jobs before they can succeed.”

“It no longer feels morally defensible to encourage disabled people to work for a pittance, at less than even the minimum pay for other workers, just because they may not work at some arbitrary level deemed “normal.”

If we are willing to spend more for intensive training and support for a relatively small number of disabled employees who need it, then we should also be willing to see that they are paid at least minimum wage for their time and effort. It’s a matter of basic fairness and individual dignity.”

For some time, advocates of people with intellectual disabilities have voiced their concerns that people with intellectual disabilities **should not be exploited**, nor should they **be segregated from mainstream employment venues**.

On the other hand, **people with intellectual disabilities and their families are often fond of the opportunities that the sheltered workshop offer – a safe, supportive, environment where people with disabilities can make friends, feel good about themselves and be productive.**



Source: Pulrang, A. (June 14, 2020). 3 Ways Candidates Can Make A Real Difference On Disability Employment. Forbes.
<https://www.forbes.com/sites/andrewpulrang/2020/06/14/3-ways-candidates-can-make-a-real-difference-on-disability-employment/#6431d9374ccb>

Often students with intellectual disabilities leave high school and go directly to a sheltered workshop – earning a very low wage. Originally meant to offer a training opportunity – people with disabilities don't often leave sheltered workshop venues to move onto employment in the community.

In fact, only 5% are ever employed outside of the sheltered workshops.



State Level

In 2002, Vermont abolished the subminimum wage. Multiple states (but not New Jersey) have in some way limited the use of subminimum wage for people with disabilities.

National Level

Passed that US House of Representatives:

Raise the Wage Act. (Includes raising the minimum wage for all to \$15 – including people with disabilities.)

Probably dead in the US Senate

In US House Education and Labor Committee:

Transformation to Competitive Employment Act.

This act not only abolishes subminimum wage for people with disabilities, but also “awards grants to states and certain eligible entities to assist them in transforming their business and program models to support individuals with disabilities.” (H.R. 873)

Sources:

Luterman, S. (March 16, 2020). Why Businesses Can Still Get Away with Paying Pennies to Employees with Disabilities. Vox
<https://www.vox.com/identities/2020/3/16/21178197/people-with-disabilities-minimum-wage>

H.R. 873 – 116th Congress (2019 – 2020) – Congress.gov: <https://www.congress.gov/bill/116th-congress/house-bill/873?q=%7B%22search%22%3A%5B%22Transformation+to+Competitive+Employment+Act%22%5D%7D&s=2&r=1>

#4: Employees with Autism Spectrum Disorder (ASD)

- In a first of its kind study in 2020, the CDC indicates that about 2.2% of adults (1 in 45 adults age 18+) are on the autistic spectrum.
- Only about half of 25-year-old people with autism have never held paying jobs. (Autism Speaks)
- “People with autism are more disconnected from employment than people with other disabilities.” (Anne Roux in Now Hiring)

Sources:

Fox, M. (May 11, 2020). First Study of Autism in Adults Estimates 2.2% Have Autism Spectrum Disorder. CNN.

<https://edition.cnn.com/2020/05/11/health/autism-adults-cdc-health/index.html>

Autism Statistics and Facts Autism Speaks

<https://www.autismspeaks.org/autism-statistics>

Zeldovich, L. (March 4, 2020). Now Hiring: What Autistic People Need to Succeed in the Workplace. Spectrum. Access:

<https://www.spectrumnews.org/features/deep-dive/now-hiring-what-autistic-people-need-to-succeed-in-the-workplace/>

Congress highlights role of small business employing those with autism

Both small and large business are being encouraged to hire people with Autism.

In **2016**, the US House Small Business Committee held a hearing on the role of small businesses in addressing the unemployment issue of autistic adults.

“For adults with intellectual or developmental disabilities or disorders, finding sustaining employment can be a real challenge. These individuals can be overlooked when employment opportunities arise, and too often they are shut out from the workplace all together.”

Steve Chabot, House Small Business Committee Chairman

Source:

Congress Highlights Role of Small Business Employing Those with Autism.

Accessed:

<https://www.autismspeaks.org/advocacy/advocacy-news/congress-highlights-role-small-business-employing-those-autism>

Around 2014, I began to see more media pieces on companies hiring autistic adults. Several media references below and on the following page.

"We are committed to making people's lives better, and this **pilot program** has the potential to not only make the participants' lives better, but also help Ford be an even more diverse and inclusive workforce. Autism affects many people in our communities, and I'm proud we're taking on this important initiative."

Spokesperson, Ford Motor Company



Autism Can Be An Asset In The Workplace, Employers And Workers Find

May 18, 2016 - 12:40 PM ET
Heard on All Things Considered

Microsoft announces pilot program to hire people with autism

<https://blogs.microsoft.com/on-the-issues/2015/04/03/microsoft-announces-pilot-program-to-hire-people-with-autism/#sm.00000mqhtpexe9e1vsa93o5n1k4a3>



Source:

How These 4 Major Companies Are Tackling The Autism Unemployment Rate. Accessed:

http://www.huffingtonpost.com/2015/05/07/autism-employment_n_7216310.html

The Advantages of Autistic Employees

A consulting firm recruits people on the spectrum for their focus and problem-solving skills, but some adjustments are required.

OLGA KHAZAN JUNE 28, 2017

The Atlantic
<https://www.theatlantic.com/health/archive/2017/06/the-advantages-of-autistic-employees/532014/>



Autistic? More Companies Say Add It to Your Resume

BY CLAIRE ZILLMAN

October 26, 2016 9:52 AM CST

Fortune
<https://fortune.com/2016/10/26/autism-jobs-employment-ey/>

But, I'm also aware that, as stated in the Now Hiring article, "the media often trumpets job programs for people on the spectrum, but these numbers have hardly budged in the past few years."

Source: Zeldovich, L. (March 4, 2020). Now Hiring: What Autistic People Need to Succeed in the Workplace. Spectrum.
Access: <https://www.spectrumnews.org/features/deep-dive/now-hiring-what-autistic-people-need-to-succeed-in-the-workplace/>

Autism-Friendly Employers Looking for Differing Skill Sets

It's important to note that people with Autism Spectrum Disorder (ASD) have varying abilities that are compelling to employers.

For some employers, it is the preference of some people with ASD for **repetitive work** that is drawing interest.



Suit-maker **Hart Schaffner Marx** hires on the autism spectrum. Employees on the ASD spectrum are supported by special physical accommodations the company offers. Here, a person on the ASD spectrum works in the customer service team – choosing fabric swatches to send to clients.

Source:

Rudy, L. J. (April 15, 2020). Top 10 Autism Friendly Employers. VeryWell Health

Access: <https://www.verywellhealth.com/top-autism-friendly-employers-4159784>

Zeldovich, L. (March 4, 2020). Now Hiring: What Autistic People Need to Succeed in the Workplace. Spectrum. Access:

<https://www.spectrumnews.org/features/deep-dive/now-hiring-what-autistic-people-need-to-succeed-in-the-workplace/>

Other employers, like Microsoft, SAP and Ernest & Young, are interested in highly functioning people with ASD. Skill sets that involve **technical and math innovation and problem-solving competencies** are compelling to these employers. Some people with ASD “may even outperform their neurotypical peers.” (Now Hiring)



Thirty-three-year-old David Siegal works for SAP’s Global Post-Sales department. His manager comments: “His curiosity and out-of-the-box thinking is amazing. It has been highly beneficial to improving our processes.”

"We live in a world of increasing specialization, where employers recruit specialized people for computer programming and math and science jobs. A person with extremely narrow ability levels can be a star in such a world."

John Elder Robison, social justice advocate, adviser, Department of Health and Human Services' Interagency Autism Coordinating Committee

<http://www.cnbc.com/2014/07/25/how-employers-are-tapping-talents-of-disabled-workers.html>

Source:

Rudy, L. J. (April 15, 2020). Top 10 Autism Friendly Employers. VeryWell Health

Access: <https://www.verywellhealth.com/top-autism-friendly-employers-4159784>

Zeldovich, L. (March 4, 2020). Now Hiring: What Autistic People Need to Succeed in the Workplace. Spectrum. Access:

<https://www.spectrumnews.org/features/deep-dive/now-hiring-what-autistic-people-need-to-succeed-in-the-workplace/>