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IDENTITY AND DISABILITY IN THE WORKPLACE

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INTRODUCTION AND OVERVIEW

It is estimated that 19.3% of Americans are people with disabilities, or approximately one in every seven of us.¹ Individuals with disabilities are less likely to be employed when compared to their nondisabled peers.² This represents a significant loss to both private and public sector organizations, of willing and able talent, as well as a loss of income and social and economic participation for people with disabilities. Individuals with disabilities continue to experience low levels of employment, even though it has been more than a decade since Congress passed the Americans with Disabilities Act of 1990 (ADA) prohibiting disability discrimination.³ According to a recent study using the Census Bureau's Current Population Survey (CPS) for working-age civilians in 1999, 34% of men and 33% of women with work disabilities were employed during 1999, compared to 95% of men and 82% of women without work disabilities.⁴ Men and women with disabilities also worked approximately one-third fewer hours on average than those without

* The authors would like to acknowledge the contributions of Andrew Houtenville, Research Specialist, and Sara VanLooy, Research Assistant, from the Cornell University Program on Employment and Disability in the data analysis, subsequent preparation of selected figures, and manuscript preparation.

1. U.S. CENSUS BUREAU, PROFILE OF SELECTED SOCIAL CHARACTERISTICS: 2000, tbl. DP-02, available at <http://censtats.census.gov/data/US/01000.pdf> (last visited Feb. 4, 2003).

2. *Id.*

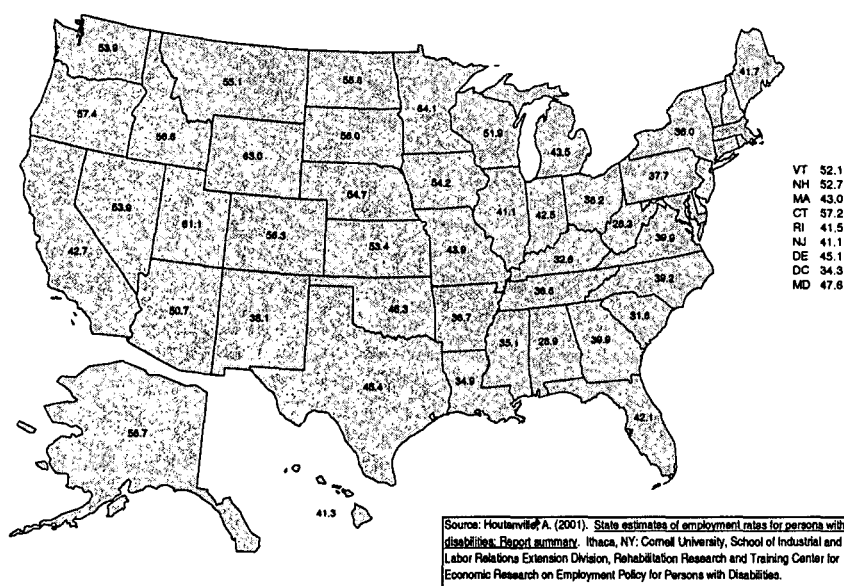
3. Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 (2000).

4. Richard V. Burkhauser et al., *Self-Reported Work-Limitation Data: What They Can and Cannot Tell Us*, 39 DEMOGRAPHY 541, 551 tbl.2 (2002).

disabilities.⁵ This disparity is a function of inequities in social policy, access to education, training, and employment, as well as society's attitudes toward people with disabilities.

To illustrate this disparity pictorially, Figure 1 presents the relative employment rate of men with disabilities as compared to their nondisabled peers on a state-by-state basis.⁶ "The relative employment rate is the employment of those with a disability as a percentage of the employment rate of those without disabilities."⁷ The larger the number is, "the closer the employment rates to those without disabilities."⁸

Figure 1. Relative Employment Rates of Non-Institutionalized Civilian Men with Disabilities Aged 25 through 61 for Each State and the District of Columbia over the Period of Employment Years 1980 through 1998



5. *Id.*

6. Andrew Houtenville, *State Estimates of Employment Rates for Persons with Disabilities: Report Summary* (Aug. 2001), at <http://www.ilr.cornell.edu/ped/trtc/papers.html> (last visited Feb. 4, 2003).

7. Andrew Houtenville, *Economics of Disability Research Report #2: Estimates of Employment Rates for Persons with Disabilities in the United States by State, 1980 through 1988*, at 12 n.7 (2000), at <http://www.ilr.cornell.edu/ped/trtc/papers.html> (last visited Feb. 4, 2003).

8. *Id.*

The purpose of this Article is to examine and discuss factors within the workplace that may affect the ability of individuals with disabilities to access and retain employment. The analysis is based on findings from a Cornell University study of human resource professionals in both the private and federal sectors.⁹ Part I provides an overview of the study, discusses selected key findings about remaining barriers, and provides implications for needed future workplace interventions based on the survey responses. Part II reviews selected literature addressing the workplace issues identified in the study. Part III examines some of the concepts and possible solutions regarding workplace discrimination and responses to the accommodation needs of applicants and workers with disabilities. In conclusion, we discuss where further research is needed to address remaining employment inequities for people with disabilities.

I. PERCEPTIONS OF HUMAN RESOURCE PROFESSIONALS ABOUT ACCOMMODATING PERSONS WITH DISABILITIES—THE CORNELL STUDY

A. Background of the Study

Two parallel ten-page surveys were distributed to a random sample of the membership of the Society for Human Resource Management (SHRM), the entire membership of the Washington Business Group on Health (WBGH), and the Human Resource (HR) and Equal Employment Opportunity (EEO) personnel in federal agencies.¹⁰ The surveys covered some of the employment provisions

9. Susanne M. Bruyère, Disability Employment Policies and Practices in Private and Federal Sector Organizations (Mar. 2000) [hereinafter Disability Employment Policies], at http://www.ilr.cornell.edu/extension/research/publisting.html?pub_id=637 (last visited Feb. 4, 2003).

10. *Id.* at 7. This Cornell University research was funded by two sponsors. The United States Department of Education National Institute on Disability and Rehabilitation Research (NIDRR) funded the study of private sector employers as a Research and Demonstration (Grant No. H133A70005). This was a collaborative effort with the Society for Human Resource Management (SHRM), the Washington Business Group on Health (WBGH), and the Lewin Group. *Id.* at 6. The Presidential Task Force on Employment of Adults with Disabilities in the United States Department of Labor funded the survey of federal human resource and equal employment opportunity personnel. *Id.*

of the ADA and, for federal sector organizations, the Rehabilitation Act of 1973 as amended.¹¹ The surveys included items covering the reasonable accommodation process; recruitment, pre-employment screening, testing, and new employee orientation; health and other benefits of employment; opportunities for promotion/training; disciplinary process/grievance, dismissal or termination; interaction with labor/industrial/collective bargaining issues and other employment legislation; personnel training on the ADA and the Rehabilitation Act; resources used and found most helpful in handling disability nondiscrimination and accommodation disputes; and the role of disability management programs in contributing to the accommodation process and workplace acceptance of employees with disabilities.¹²

The research described in *Disability Employment Policies* is based on the premise that the responsibility for implementing the ADA and Rehabilitation Act's employment provisions falls largely on HR professionals.¹³ HR professionals are responsible for recruitment, pre-employment screening, and other workplace practices that affect the hiring and retention of workers with and without disabilities.¹⁴ The purpose of the research was to identify how HR professionals have responded to this legislation and to learn what can be done further to support their very critical role in minimizing workplace discrimination for people with disabilities.¹⁵

B. Methodology

A sample of 1402 names, telephone numbers, and addresses of the Society for Human Resource Management (SHRM) members was obtained from SHRM.¹⁶ These members were randomly selected based on the size of the organization for which they worked.¹⁷ The

11. *Id.*

12. *Id.* at 7-8.

13. *Id.* at 6.

14. *Id.*

15. *Id.*

16. *Id.* at 8. Further information about the Society for Human Resource Management can be obtained from the SHRM website at <http://www.shrm.org> (last visited Feb. 4, 2003).

17. *Disability Employment Policies*, *supra* note 9, at 8.

goal was to have a random sample of individuals from small, medium, and large organizations in the United States.¹⁸ Based on the distribution of members by organization size, a random sample was drawn proportional to the population within size strata. Interviews were conducted by telephone from July 9, 1998, through November 10, 1998, by the Computer-Assisted Survey Team (CAST) at Cornell University, using a Computer-Assisted Telephone Interviewing (CATI) system. A letter explaining the project was sent one week prior to the initial telephone call; 813 responses (a 73% response rate) were received. The response rates were similar for each size group.¹⁹ The Washington Business Group on Health (WBGH)²⁰ study was conducted on the 164 WBGH member companies.²¹ Surveys were mailed to all members in late July 1998. In early September 1998, telephone calls were made to 127 nonrespondents. Respondents were offered the options of returning a mail questionnaire, a fax questionnaire, or completing the survey by telephone. Calls were ended after two weeks. A 32% (n=52) response rate was obtained.²²

For the federal sector agency representatives, a list was obtained of all HR and EEO personnel across all ninety-six U.S. federal agencies.²³ The Chair of the Presidential Task Force sent out a preliminary letter to all agency heads prior to the survey initiation, alerting them to the survey and clarifying its purpose. A letter was sent to each potential interviewee approximately two weeks prior to the initiation of the survey. The survey was conducted during July and August 1999, by telephone from Cornell University by CAST, using a CATI system. Four hundred and fifteen agency representatives were contacted and a total of 403 surveys were returned (a 97% response rate).²⁴

18. *Id.*

19. *Id.*

20. Further information about the Washington Business Group on Health can be obtained from the WBGH web site at <http://www.wbgh.org> (last visited Feb. 4, 2003).

21. *Disability Employment Policies*, *supra* note 9, at 8.

22. *Id.*

23. *Id.*

24. *Id.*

C. Results

Interviewees were asked a number of questions across the topics mentioned above, from recruiting, pre-employment screening and testing, to promotional opportunities and disciplinary processes.²⁵ A summary of the surveys in both sectors and recommendations for effective workplace policies and practices is provided elsewhere.²⁶ We will focus here on summarizing (1) what action organizations reported taking to meet the needs of employees with disabilities, (2) areas where they reported difficulty in making changes and identified remaining barriers to meeting these needs, and (3) the percent experiencing disability claims. We will also briefly discuss the results of this research, and provide suggestions on ways to effectively address these remaining barriers.

As evidenced in Figure 2, private sector organizations and federal agencies are responding to disability nondiscrimination legislation by making accommodations for applicants and employees with disabilities.²⁷ Across eleven possible areas where accommodations could be made, survey respondents most commonly reported making changes by making existing facilities accessible, being flexible in the application of HR policies, and restructuring jobs and work hours.²⁸ Other often-made changes by both groups were modifying the work environment and making transportation accommodations.²⁹ Accommodations made least often were in the areas of modifying training materials and changing supervisory methods.³⁰ There was a statistically significant difference in the groups' responses to making these changes in all of the eleven categories, with federal agencies more likely to have made changes in each category.³¹ Private-sector organizations were much more likely to indicate that they had "never needed" to make a particular change.³²

25. *See id.* at 30-54.

26. Susanne M. Bruyère et al., *HR's Role in Managing Disability in the Workplace*, 27 EMP. REL. TODAY 47 (2000).

27. *Disability Employment Policies*, *supra* note 9, at 11 figs. 3, 12.

28. *Id.* at 12.

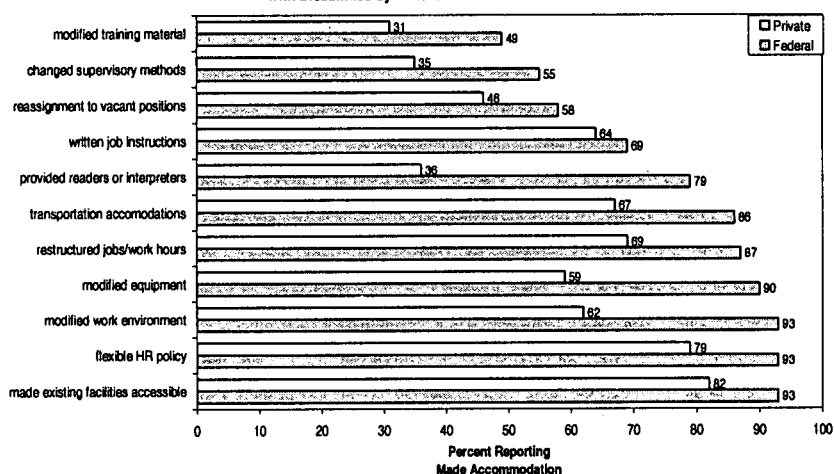
29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

Figure 2. Percent Reporting Accommodations Their Organization Made to Meet the Needs of Employees with Disabilities by Private/Federal Sectors



Source: Bruylère, S. (2000) Disability Employment Policies and Practices in Private and Federal Sector Organizations. Ithaca, NY: Cornell University, School of Industrial and Labor Relations Extension Division, Program on Employment and Disability.

* all statistically significantly different across sectors ($p < .05$)
 Note: Non-federal sector organizations were more likely to say they never needed to make the change than the federal sector organizations.

As mentioned, HR professionals' responses from both the federal and private sectors indicated many accommodations made as a result of disability nondiscrimination legislation.³³ Disparities, however, continue to exist, and the survey also asked questions regarding perceptions of remaining barriers for people with disabilities in the workplace.³⁴ Respondents were presented with seven possible barriers to the employment and advancement of people with disabilities.³⁵ On average, the private firm respondents reported fewer barriers than federal respondents.³⁶ Of the private firms 29% reported no barriers and 40% reported one or two compared with 24% and 34% respectively for the federal respondents.³⁷ A statistically significant difference existed between private and federal sector respondents in two of the areas, although in general

33. See *supra* notes 27-30 and accompanying text.

34. See Bruylère, *supra* note 26.

35. *Disability Employment Policies*, *supra* note 9, at 15.

36. *Id.* at 15 fig.7.

37. These figures are the authors' subsequent analysis of the survey data (on file with authors).

the profile of perceived barriers, in terms of overall percentage of response, was similar (see Figure 3).³⁸ Interestingly, in both the federal and private sectors, the costs of training, supervision, and of accommodations for applicants or employees with disabilities were least likely to be rated as significant barriers as compared to other areas.³⁹ Overall, three-quarters of the respondents did not view any of the three cost considerations as barriers.⁴⁰ The barriers to employment and advancement for persons with disabilities reported by the largest number of federal and private sector employers were lack of related experience (49% reported by private sector and 53% by federal), and lack of requisite skills and training in the applicant or employee with a disability (39% for private sector respondents and 45% for federal).⁴¹ The next barrier most often cited was supervisor knowledge of how to make accommodations (31% in the private sector group and 34% in the federal).⁴² Negative attitudes or stereotypes among coworkers and supervisors towards persons with disabilities was seen as the third most significant barrier among federal respondents (43%), and fifth among private sector respondents (22%).⁴³

38. *Disability Employment Policies*, *supra* note 9, at 15.

39. *Id.*

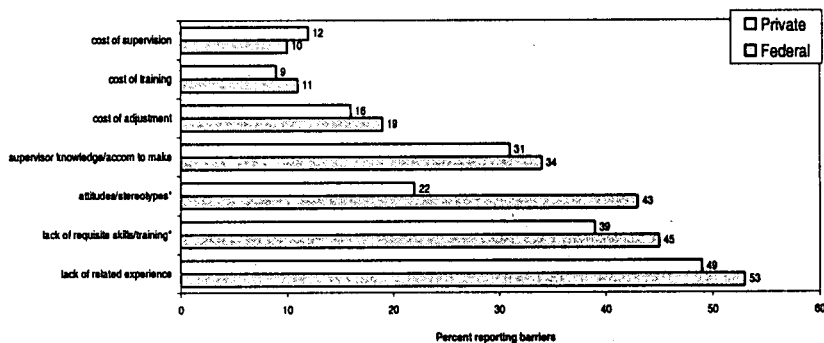
40. *Id.* at 15 fig.7.

41. *Id.* at 15.

42. *Id.*

43. *Id.*

Figure 3. Percent Reporting Barriers to Employment or Advancement for Persons with Disabilities by Private/Federal Sectors



Source: Shapiro, S. (2003). Disability Employment Policies and Practices in Private and Federal Sector Organizations. Ithaca, NY: Cornell University, School of Industrial and Labor Relations Extension Division, Program on Employment and Disability.

* statistically significantly different across sectors ($p < .05$)

Interestingly, attitudes toward persons with disabilities was also seen as an area where organizations have made significant efforts to make changes, but was also reported as among the most difficult changes to make.⁴⁴ In both sample groups, those surveyed were asked whether they had made certain changes in the workplace in order to meet the needs of employees with disabilities, and asked to rate the degree of difficulty in making those changes (see Figure 4).⁴⁵ In both groups, the change most often made, but also seen as the most difficult to make, was changing coworker or supervisor attitudes toward the employee with a disability (32% of private sector and 33% of federal respondents indicated this change was “difficult” or “very difficult”).⁴⁶ The majority of respondents in both groups did report having made all of the listed modifications to organizational policies and practices to help overcome the barriers to employment and advancement faced by people with disabilities.⁴⁷ Changes made by more than three-quarters of respondents’ organizations include: ensuring equal pay and benefits, creating

44. *Id.* at 17.

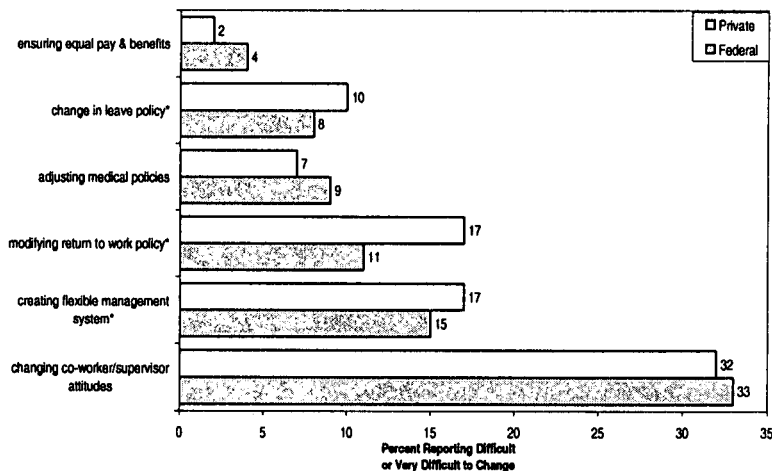
45. *Id.* at 16 fig. 9.

46. *Id.* at 17.

47. *Id.*

flexibility in the performance management system, modifying the return to work policy, and adjusting leave policies.⁴⁸

Figure 4. Percent Reporting Difficult or Very Difficult to Make Changes to Meet Needs of Employees with Disabilities by Private/Federal Sectors (of Those Who Have Made the Change)



Source: Bryniarski, S. (2000). Disability Employment Policies and Practices in Private and Federal Sector Organizations. Ithaca, NY: Cornell University, School of Industrial and Labor Relations Extension Division, Program on Employment and Disability.

* statistically significantly different across sectors ($p < .05$)
Note: percentages do not include those who didn't make the change.

The study also examined private and federal sector employers' experience in having dealt with disability nondiscrimination claims.⁴⁹ Private sector respondents reported significantly fewer claims filed against them under the ADA than did federal respondents (see Figure 5).⁵⁰ Federal respondents reported that failure to provide reasonable accommodation was the claim most often experienced by government agencies (36%).⁵¹ The second most common claim by federal respondents reported was failure to promote (26%).⁵² The most commonly filed claim for private sector respondents was wrongful discharge (19%).⁵³ The second most common claim among private sector respondents was failure to

48. *Id.*

49. *Id.* at 19.

50. *Id.*

51. *Id.*

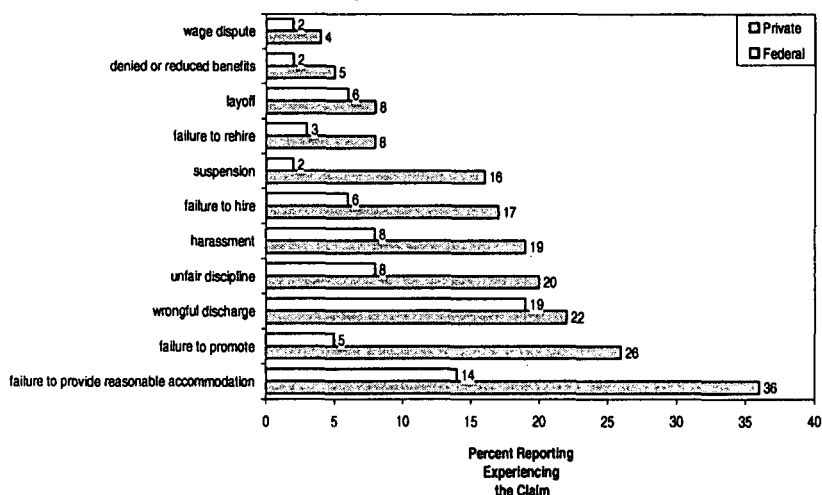
52. *Id.*

53. *Id.*

provide reasonable accommodation (14%).⁵⁴ The claim least often experienced by both groups was that of wage disputes (2% for private sector, 4% for federal), followed by the claim of denied or reduced benefits (2% for private sector, 5% federal).⁵⁵

The majority (72%) of respondents reported never experiencing

Figure 5. Percent Experiencing Disability Claims under the ADA by Private/Federal Sectors



Source: Brydlen, S. (2000). Disability Employment Policies and Practices in Private and Federal Sector Organizations. Ithaca, NY: Cornell University, School of Industrial and Labor Relations Extension Division, Program on Employment and Disability.

* all statistically significantly different across sectors ($p < .05$)

any of the eleven listed claims under the ADA.⁵⁶ Companies that reported such claims were most often larger firms and agencies. This result is not surprising, given that the larger the number of employees, the greater the likelihood of having an individual who might file a claim.⁵⁷ Almost three-quarters of private sector respondents (72%) reported having a grievance resolution process, and 93% of federal respondents reported the same.⁵⁸ The study

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

hypothesized that a grievance resolution process might reduce the chances of an employee filing a claim; however, it was determined that organizations with a grievance resolution process were more likely to have reported ADA claims against them.⁵⁹ It may be that the grievance resolution process came about retroactively, to address or prevent additional claims, or that the availability of a process provided a ready forum for filing claims.⁶⁰

Not only were respondents asked to identify possible employment and advancement barriers, but they were also asked to rate the effectiveness of six methods of reducing such barriers (see Figure 6).⁶¹ Both sectors identified visible top management commitment as the best method for reducing employment and advancement barriers (81% for private sector respondents, 90% for federal).⁶² The next three most popular methods of reducing barriers were ranked closely within both respondent groups, though there was a statistically significant difference between groups.⁶³ These three methods were: staff training (62% private and 71% federal), mentoring (59% private and 71% federal), and on-site consultation or technical assistance (58% private and 71% federal).⁶⁴ Private sector employers ranked tax incentives as the least effective method of reducing such barriers; indeed only 26% reported tax incentives as effective or very effective in reducing employment and advancement barriers.⁶⁵ A parallel item on special budget allocations as a way to reduce accommodation costs to employers was asked on the federal survey.⁶⁶ Sixty-nine percent of those interviewed saw this as effective or very effective in reducing employment and advancement barriers.⁶⁷

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

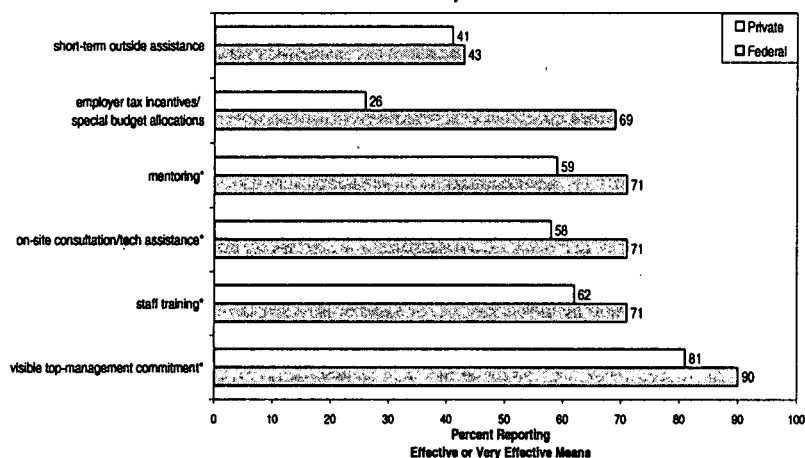
64. *Id.* at 15 fig. 8; *id.* at 16 fig. 17.

65. *Id.* at 16 figs. 8, 17.

66. *Id.*

67. *Id.*

Figure 6. Percent Reporting Effective or Very Effective Means of Reducing Barriers to Employment for Persons with Disabilities by Private/Federal Sectors



Source: Bruehl, S. (2000). Disability Employment Policies and Practices in Private and Federal Sector Organizations. Ithaca, NY: Cornell University, School of Industrial and Labor Relations Extension Division, Program on Employment and Disability.

* statistically significantly different across sectors ($p < .05$)

II. RELATED LITERATURE ON WORKPLACE ATTITUDES TOWARD ACCOMMODATION

"Identity and disability in the workplace" lends itself to an opportunity to further discuss the meaning of the Cornell study regarding attitudes toward persons with disabilities in the workplace as a continuing barrier.⁶⁸ Although respondents also indicated that top management commitment, staff training, mentoring, and on-site consultation/assistance can help to remove these barriers,⁶⁹ closer examination surrounding workplace culture might reveal ideas about how to make positive changes to address these issues. This Part summarizes research from selected literature about attitudes towards persons with disabilities and organizational policies and practices that address workplace inequities.

We conducted a literature review from the past ten to twelve years in business, human resources, psychological, and sociological

68. *Id.* at 15, 17.

69. See *supra* notes 62-64 and accompanying text.

literature databases. We identified relevant studies or theoretical papers that discussed the issue of "attitudes toward disability" and workplace policies and practices that evidenced more effective ways of facilitating acceptance and accommodation of persons with disabilities. This Part summarizes some of the key concepts presented in these papers and discusses their future implications for effective workplace practice. We include a discussion that integrates thoughts from related research including studies from the following areas: health, safety, and disability management; the economics of workplace accommodation; hostile work environment and retaliation claims; perceived fairness of selection systems; a theoretical framework for explaining reactions to accommodation decisions; and suggested models to heighten supervisor and co-worker response to workplace accommodation requests.

A. Employer Attitudes Toward Persons with Disabilities

The Cornell study affirms that workplace attitudes are a continuing barrier to the hiring and retention of people with disabilities.⁷⁰ A review of the literature affirmed this barrier, but also provides some additional information. In 2000, Brigida Hernandez, Christopher Keys, and Fabricio Balcazar reviewed thirty-seven studies available from 1987 through mid-1999 that focused on employer attitudes towards people with disabilities.⁷¹ This review found that:

[E]mployer attitudes toward workers with disabilities differed depending on how attitudes were defined. Specifically, ... positive results were more apparent in studies that assessed global attitudes toward workers with disabilities. In contrast, negative results were more evident in studies that assessed more specific attitudes toward workers with disabilities.... [T]here appears to be a veneer of employer acceptance of workers with disabilities.... [Apparently,] it has become socially appropriate for employers to espouse positive global attitudes toward these individuals. Thus, [employers'] global acceptance

70. See *supra* notes 25-67 and accompanying text.

71. Brigida Hernandez et al., *Employer Attitudes Toward Workers with Disabilities and their ADA Employment Rights: A Literature Review*, 66 J. REHAB. 4, 4-5 (2000).

of these workers seems superficial and is likely not indicative of significant efforts to employ them.⁷²

B. The Importance of Workplace Culture in Minimizing Disability Impact

Changes in the availability and skill level of the labor force, as well as the requirements of the ADA, have moved employers to pay closer attention to the issues of workplace health and safety, as well as to accommodate employees with disabilities. An integrated disability management program is one method of reducing costs associated with disabilities in the workplace, especially workers' compensation claims. In findings from a study by the Upjohn Institute, one of the important organizational characteristics of firms with low workers' compensation claim rates was an open managerial style coupled with a human-resource-oriented corporate culture.⁷³ These factors may also play a role in reducing litigation associated with discrimination claims.

C. Economics of Accommodation as a Mediating Factor

Original critics of the ADA often cited economic factors, such as labor market inefficiencies and the cost to employers of providing accommodations, and labor market inefficiencies, as criticisms of the legislation. This initial conceptualization was not supported by the Cornell study's self-report of business representatives.⁷⁴ In an article on the economics of workplace accommodations, Peter Blanck cites several studies that suggest increasing numbers of people perceived to have disabilities entering the workforce face discrimination because of prejudicial attitudes about their impairments.⁷⁵ This research also suggests that "diminished worker value" of employees with perceived disabilities, as reflected in lower wages for comparable work, is unrelated to actual output or other

72. *Id.* (citations omitted).

73. R.V. HABECK ET AL., *DISABILITY PREVENTION AND MANAGEMENT AND WORKERS' COMPENSATION CLAIMS* (1988). This report was submitted to the Bureau of Workers' Disability Compensation, Michigan Department of Labor.

74. See *supra* fig. 3.

75. Peter David Blanck, *The Economics of the Employment Provisions of the Americans with Disabilities Act: Part 1—Workplace Accommodations*, 46 DEPAUL L. REV. 877, 883 (1997).

economic factors such as customer preferences.⁷⁶ In addition, discrimination stemming from employer animus may also result in lost productivity and therefore diminish a qualified individual's perceived economic value to the employer (as reflected through lower wages).⁷⁷ Blanck concludes that further empirical study of the employment provisions of the ADA from an economic perspective is needed, as "[t]he economic model has yet to demonstrate empirically the hypothesized labor market inefficiencies associated with the operation of [this legislation], particularly ... [as it relates] to workplace accommodation."⁷⁸

D. Workplace Environment as a Factor in Disability Discrimination

In the Cornell study, HR professionals cited supervisor and co-worker attitudes as a continuing barrier to employment for persons with disabilities.⁷⁹ Even if an employer does not intentionally discriminate against a qualified individual with a disability, under certain conditions they may still be held liable for the existence of a "hostile work environment." In a recent case, the U.S. Court of Appeals for the Fourth Circuit held that a hostile work environment claim, which courts have recognized under Title VII of the Civil Rights Act of 1964, is actionable under the ADA because the language used in both laws is virtually identical.⁸⁰

Information about work environment and discrimination, particularly as it relates to workplace culture and attitudinal issues, can be inferred from the pattern of discrimination claims filed with the EEOC over the past ten years.⁸¹ Although an examination of discrimination charges filed with the EEOC shows a declining trend in the number of disability-related claims, there has been a steady increase in recent years in the number of claims across all categories of discrimination alleging retaliatory action by employers,

76. *Id.*

77. *Id.* at 884-85.

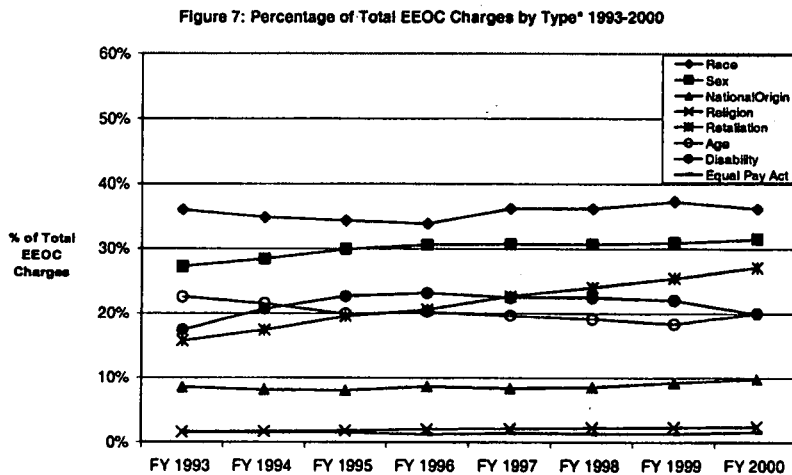
78. *Id.* at 914.

79. *See supra* fig. 3.

80. *See Fox v. General Motors Corp.*, 247 F.3d 169, 176 (4th Cir. 2001); *see also Flowers v. S. Reg'l Physician Servs., Inc.*, 247 F.3d (5th Cir. 2001) (holding the same).

81. *See infra* fig. 7.

which is perhaps an indication of an increasingly hostile workplace culture (see Figure 7).⁸²



* Because individuals often file charges claiming multiple types of discrimination, the number of total charges for any given fiscal year will be less than the total of the eight types of discrimination listed.

Data from: <http://www.eeoc.gov/stats/charges.html>

III. METHODS OF ADDRESSING DISABILITY DISCRIMINATION WITHIN WORKPLACE CULTURE

The above studies extended Cornell's research about the apparent impact of discriminatory attitudes and unfriendly work environments as possible causes for people with disabilities remaining unemployed or having difficulty keeping a job and progressing in their careers. Interestingly, not all individuals who have disabilities perceive themselves as having work limitations.⁸³ The information presented in Table 1 below shows the percentage of individuals reporting various impairments in a Census

82. EEOC, CHARGE STATISTICS FY 1992 THROUGH FY 2001, available at <http://www.eeoc.gov/stats/charges.html> (last modified Feb. 22, 2002).

83. R. Burkhauser & A. Houtenville, Presentation at the Interagency Subcommittee on Disability Statistics (ISDS) (July 2001).

Population Survey and the percentage of those respondents reporting work limitations. More than one-third of individuals reporting that they were blind in both eyes and almost two-thirds of those deaf in both ears do not report having a work limitation.⁸⁴ It would be interesting to learn more about this response, and if having effective and supportive workplaces or effective accommodations assists these individuals in perceiving themselves as not limited in their ability to work.

Impairment Category	Prevalence Rate	Percentage Reporting Work Limitation
Blind in Both Eyes	0.15	69.0
Other Visual Impairments	1.83	36.2
Deaf in Both Ears	0.37	38.0
Other Hearing Impairments	7.49	23.4
Sensation Impairments	0.35	26.1
Stammering and Stuttering	0.42	33.3
Other Speech Impairments	0.26	64.9
Paraplegia, Hemiplegia, or Quadriplegia.	0.11	90.2
Paraparesis or Hemiparesis	0.05	88.5
Cerebral Palsy	0.09	74.5
Mental Retardation	0.29	90.2

84. *Id.*

In this section of the Article, we discuss several models from the literature that provide methods to understand the dynamics at work in discrimination of people with disabilities and their accommodation needs. Additionally, we suggest how to deal with them proactively to minimize the negative impact.

Dianna Stone and Adrienne Colella present a model for understanding how disabled individuals are treated in the workplace.⁸⁵ According to the authors, observer perceptions, accurate or not, of disabled individuals have a powerful influence over the way they are treated in organizations.⁸⁶ They suggest that stereotyping of disabled individuals can be separated into six aspects: social competence, task competence, concern for others, integrity, emotional adjustment, and potency.⁸⁷ Since many of these attributes may be seen as work-related, stereotypes can have a significant impact on decisions regarding the ability of disabled individuals to perform a job.⁸⁸ Also, it is noted that once stereotypes are formed, they are difficult to reverse, which leads to the perpetuation of unfounded beliefs about disabled employees.⁸⁹

Barbara Lee cites a study of employers conducted in 1993 by the Eagleton Institute, which revealed employer reluctance to hire disabled individuals, citing concerns about increased cost, safety issues, potential legal liability, reactions of coworkers and customers, and the need for additional supervision.⁹⁰ An employer's size, however, had a significant effect on the employer's attitudes.⁹¹ Respondents from large companies (more than 100 employees) were far more likely to view workers with disabilities in a positive manner and to have hired one or more such workers.⁹² These findings were consistent with the Cornell study, which found that

85. Dianna L. Stone & Adrienne Colella, *A Model of Factors Affecting the Treatment of Disabled Individuals in Organizations*, 21 ACAD. MGMT. REV. 352 (1996).

86. *Id.* at 357.

87. *Id.* at 358.

88. *Id.* at 358, 360.

89. *Id.* at 360.

90. Barbara A. Lee, *Legal Requirements and Employer Responses to Accommodating Employees with Disabilities*, 6 HUM. RES. MGMT. REV. 231, 243 (1996).

91. *Id.* at 247.

92. *Id.*

employers in mid- and large-sized organizations are more likely to report having made accommodations.⁹³

The survey by Lee found that large employers and those with actual experience in employing disabled individuals were significantly more likely to have positive attitudes toward them.⁹⁴ The same survey found that employers are especially leery of hiring or retaining individuals with certain disabilities, namely psychological disabilities and alcoholism.⁹⁵ Lee notes that although the study did not uncover strongly negative attitudes toward disabled individuals, it did reveal a continued reluctance on the part of many employers to hire workers with disabilities.⁹⁶ Most significantly, this research suggests that one of the most powerful tools to overcome negative perceptions and stereotypes about disabled workers is to hire them.⁹⁷ This suggests that hiring incentives for employers to heighten exposure might be beneficial. An alternative strategy might be motivating employers to create internships or mentoring programs for youth with disabilities, as a way to heighten exposure to people with disabilities at minimal risk to employers.

One concern sometimes cited by employers as the cause of their reluctance to hire individuals with disabilities is the predicted reactions of coworkers and customers.⁹⁸ Researchers have examined the issue of coworker perceptions of disability.⁹⁹ They found that disability had little impact on performance judgments and expectations.¹⁰⁰ When test subjects were asked to choose partners for a task in which they would be rated jointly, however, a negative bias against individuals with disabilities (in this case, individuals with dyslexia) appeared.¹⁰¹ The researchers suggest that when personnel judgments have potential implications for the raters, bias

93. SOCIETY FOR HUMAN RESOURCE MANAGEMENT, *THE ADA AT WORK: IMPLEMENTATION OF THE EMPLOYMENT PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT* (1999).

94. Lee, *supra* note 90, at 247.

95. *Id.* at 245.

96. *Id.* at 247.

97. *Id.*

98. *Id.* at 243.

99. Adrienne Colella et al., *The Impact of Ratee's Disability on Performance Judgments and Choice as Partner: The Role of Disability-Job Fit Stereotypes and Interdependence of Rewards*, 83 J. APPLIED PSYCHOL. 102 (1998).

100. *Id.* at 108.

101. *Id.* at 109.

against employees with disabilities may appear.¹⁰² They stress, however, that further research in this area is necessary to determine the interplay between the nature of the disability, the nature of the job, raters' stereotypes regarding disability-job fit, and the potential consequences of the rater's judgments in actually influencing the treatment of disabled individuals.¹⁰³

In yet another study taking a slightly different perspective on the issue of discrimination, researchers attempting to assess the genuineness of "justice-based" opposition to affirmative action programs found that prejudice and concerns about procedural justice were "distinguishable sources of opposition" to social policies.¹⁰⁴ In a related study, Joel Brockner and Batia Wiesenfeld examined the impact of outcomes and procedures on perceptions of fairness.¹⁰⁵ They suggest that the effects of a decision, including those made in the workplace, depend not only on the decision itself (outcome fairness) but *how* the decision is made (procedural fairness).¹⁰⁶ From business, legal, and ethical perspectives, participant perceptions of procedural justice are important and may influence organizational efficacy.¹⁰⁷ In the legal sphere, perceptions of unfairness may lead to increased discrimination claims.¹⁰⁸ Also, issues of procedural unfairness may resonate strongly with jurors in discrimination trials.¹⁰⁹

Other authors contend that workplace reactions to accommodation vary according to several factors, including the rationale provided for the accommodation, the nature of the accommodation, the originator (organization, employee, or both) of the accommodation, and the characteristics of the person being accommodated.¹¹⁰ For example, if the rationale provided for

102. *Id.* at 110.

103. *Id.*

104. D. Ramona Bobacel et al., *Justice-Based Opposition to Social Policies: Is It Genuine?*, 75 J. PERSONALITY & SOC. PSYCHOL. 653, 667 (1998).

105. Joel Brockner & Batia M. Wiesenfeld, *An Integrative Framework for Explaining Reactions to Decisions: Interactive Effects of Outcomes and Procedures*, 120 PSYCHOL. BULL. 189 (1996).

106. *Id.* at 190.

107. Stephen W. Gilliland, *The Perceived Fairness of Selection Systems: An Organizational Justice Perspective*, 18 ACAD. OF MGMT. REV. 694, 694-95 (1993).

108. *Id.* at 695.

109. *Id.*

110. Jeanette N. Cleveland et al., *Accommodation in the Workplace*, 7 HUM. RES. MGMT.

accommodation is a legal one ("we must accommodate"), then members of the organization may view the presence of a disabled individual in an organization as coercive.¹¹¹

Richard Klimoski and Lisa Donahue propose a model for human resource professionals to alleviate the problem using a multi-level/multi-stakeholder view of accommodating employees with disabilities.¹¹² Key stakeholders under this model include top managers, social service agencies, labor unions, customers, family members, and, of course, the individual with a disability.¹¹³ Progressive organizational culture is cited as a major factor in improving the treatment of individuals with disabilities.¹¹⁴

An extension of this thinking is the movement toward including disability issues in existing mainstream HR training and good practice.¹¹⁵ Diversity programs are often referenced as facilitating workplace acceptance of people with disabilities.¹¹⁶ In the last decade, the field of workplace diversity has undergone remarkable development and growth. We have seen the meaning of diversity within the employment context move beyond race and gender to encompass a fuller spectrum of differences and a broader vantage point of workplace inclusiveness. The Workplace Diversity Network, a joint project of the National Conference for Community and Justice and the Cornell University School of Industrial and Labor Relations has contributed to this discussion.¹¹⁷ A publication entitled *A Framework for Building Organizational Inclusion* summarizes the findings of the 1998 Alice and Richard Netter Labor-Management Public Interest Seminar sponsored by the Workplace Diversity Network.¹¹⁸

REV. 77 (1997).

111. *Id.* at 79-81.

112. Richard Klimoski & Lisa Donahue, *HR Strategies for Integrating Individuals with Disabilities into the Work Place*, 7 HUM. RES. MGMT. REV. 109 (1997).

113. *Id.* at 120-21.

114. *Id.* at 126.

115. Susanne M. Bruyère, *Dealing Effectively with Disability Accommodations*, MOSAICS, Nov.-Dec. 2000, at 4, available at <http://www.ilru.org/online/handouts/2002/bruyere/Mosaic.txt> (last visited Feb. 4, 2003).

116. *Id.* at 5.

117. Further information about the Workplace Diversity Network can be found at the Cornell University website at http://www.ilr.cornell.edu/extension/institutes/home.html?dept_id=80 (last visited Feb. 4, 2003).

118. TAMMY BORMANN & SUSAN WOODS, *A FRAMEWORK FOR BUILDING ORGANIZATIONAL*

Some of the attributes of inclusive organizations identified from seminar participants were as follows:

- Demonstrated commitment to diversity
- Holistic view of the employees and the organization
- Access to opportunity
- Accommodation for diverse physical and developmental abilities
- Equitable systems for recognition, acknowledgement, and reward
- Shared accountability and responsibility
- 360° communication and information sharing
- Demonstrated commitment to continuous learning
- Participatory work organization and work process
- Recognition of organizational culture and process
- Collaborative conflict resolution process
- Demonstrated commitment to community relationships.¹¹⁹

All of these factors, if effectively employed, will contribute to the enhanced integration of individuals with disabilities in the workplace.

CONCLUSION

This Article provides an overview of selected results from research conducted by Cornell University on workplace policies and practices in response to the Americans with Disabilities Act of 1990. The focus has been on Cornell's research results finding that discriminatory or stereotyping attitudes in the workplace about people with disabilities continues to be a barrier to employment and advancement for disabled individuals.¹²⁰ A review of the literature and other relevant information, such as the trend of discrimination claims filed over the past decade, affirms the perspective that attitudinal issues, workplace culture and environment, as well as

INCLUSION (The Workplace Diversity Network, Working Paper No. 2, 1999).

119. *Id.* at 5.

120. Bruyère, *supra* note 115.

workplace policies and practices, contribute to the continuing disparity in employment opportunities for people with disabilities.

Results from the Cornell study suggest that top management's commitment to disability nondiscrimination is a key factor in reducing discriminatory barriers.¹²¹ A review of the literature suggests additional ways to approach continuing attitudinal issues in the work environment. These include using a multi-level/multi-stakeholder view of the issue of accommodating employees with disabilities;¹²² designing an accommodation process that ensures organizational fairness, depending not only on the decision itself (outcome fairness) but *how* the decision is made (procedural fairness);¹²³ and developing an overall progressive and inclusive work environment that assures an appreciation of employee diversity.¹²⁴ Continued research is needed to better understand how each of these factors contributes to heightened employment equity and opportunity for individuals with disabilities.

121. *Id.* at 15.

122. Klimoski & Donohue, *supra* note 112.

123. Brockner & Wiesenfeld, *supra* note 105.

124. Bruyère, *supra* note 115.