Workplace Discrimination & Disability
The National EEOC ADA Research Project

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ADA Title One Primer
(all you’ll need to know - - for today)

ALL personnel actions
must be unrelated
to the existence
or consequence of disability,
as defined in the act.
WORKPLACE DISCRIMINATION AND DISABILITY

ONLY BARRIER TO EMPLOYMENT? NO!
– FINANCIAL DISINCENTIVES TO WORK
– INSTABILITY IN ECONOMY
– LABOR MARKET FLUCTUATIONS
– HEALTHCARE AVAILABILITY
– OUTSOURCING OF JOBS
– PROSPECTIVE GUEST WORKER PROGRAM(S)

LEAST RESEARCHED BARRIER? YES!

WHAT’S IN THE DATABASE?

369,000 Title I CLOSED allegations over 13.2 yrs
(not in process)
GROWS @ 5% per year
CHARGING PARTIES/CONSUMERS
– 45 unique and known impairments
– Race, Gender, Age
RESPONDENTS/EMPLOYERS
– 10 unique industry groupings
– Number of Employees
– Region (DBTAC and Census)
ISSUES: 25 unique types of discriminatory behavior
OUTCOME/RESOLUTION: allegation has/not Merit
FIGURE ONE: FIVE MAJOR VARIABLES OF ANALYSIS

- Claimant: Age, Sex, Disability, Ethnicity, Diabetes, NOT Diabetes Record of Dis Regarded as Dis Assoc. of Dis
- Place: Region
- Employer: Industry/SIC Code, Size: # Workers
- Adverse Action: 25 Types of Discrimination
- Get Job: Wages, Benefits, Job Classif, Work Assign, Seg Facilities
- Work Conditions: Job Classif, Work Assign, Seg Facilities
- Keep Job: Wages, Benefits, Job Classif, Work Assign, Seg Facilities

COMPLAINT RESOLUTION (OUTCOME)
- Favors Individual
- Favors Employer
- Negotiated Settlement
- Withdrawal w/ Benefits
- Reasonable Cause
- Successful Conciliation
- No Success Conciliation
- No Cause
- Administr Closure

45 IMPAIRMENTS INTO SIX COMPARISON GROUPS

- GENERAL DISABILITY (200k)
- PSYCHIATRIC IMPAIRMENTS (50k)
- CHEMICAL DEPENDENCE (7k)
- OTHER DISABILITY (70k)
- RECORD OF/REGARDED AS (44k)
- ASSOCIATION WITH PERSON w/ DISABILITY (3.5k)
GENERAL DISABILITY: 200,000

Known physical, sensory or neurological impairments

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

PSYCHIATRIC: 50,000

Allegations involving

- anxiety disorder
- depression
- bipolar illness
- schizophrenia
- other psychiatric impairment.
CHEMICAL DEPENDENCE: 7,000

Allegations involving:

- Alcoholism
- Drug dependence.

OTHER: 70,000

Allegations involving:

- Physical, Sensory or Neurological Disability
- Specific Impairment Not Known
• Not Existence but Consequence of Disability
• These allegations are studied separately because they do not pertain to actual disability status in the present time; i.e., they relate to second and third prongs of the ADA definition of disability
• Specific impairment unspecified

SEVEN STUDY AREAS

• DISABILITY SPECIFIC PATTERNS
  • GENDER, RACE, AGE
  • INDUSTRY SPECIFIC PATTERNS
• IMPACT OF EMPLOYER SIZE, REGION
• ISSUE SPECIFIC ANALYSES
• SUPREME COURT DECISIONS (e.g. SUTTON)
  • DRIVERS OF MERIT OUTCOME
LET'S GET A FEEL
FOR SPECIFIC STUDIES & FINDINGS

BUT FIRST
“NO DIFFERENCES”
DOES NOT MEAN
“NO DISCRIMINATION”

“NO DIFFERENCES”
MEANS
“NO UNIQUENESS”

TRUE OR FALSE?

IN DISABILITY WORLD,
MOST ALLEGATIONS OF
WORKPLACE
DISCRIMINATION ARE
RESOLVED IN FAVOR OF
THE PERSON WITH A
DISABILITY
FALSE!

TAKE CHANCES IN COURT? <5%

TRUE OR FALSE?

LACKING RESOURCES, SMALL EMPLOYERS ARE MORE LIKELY TO ENGAGE IN DISCRIMINATORY BEHAVIOR
SIZE MATTERS in thousands

ALLEGATIONS

GENDIS

TRUE OR FALSE?

IN DISABILITY WORLD, MOST WORKPLACE DISCRIMINATION IS RELATED TO HIRING ACTIVITY
FALSE!
HIT PARADE OF ISSUES

HIRING < 4% OF ALL ALLEGATIONS  74% OF ALL ALLEGATIONS

DISABILITY DISCRIMINATION IS
A JOB RETENTION BARRIER

HIRING

QUALITY OF WORK

JOB RETENTION
TRUE OR FALSE?

CONSISTENT w/ SOCIAL PSYCHOLOGY RESEARCH, WORKPLACE DISCRIMINATION IS MORE PREVALENT WHEN IT INVOLVES BEHAVIORAL DISABILITIES (PSYCHIATRIC AND ADDICTION)

FALSE!

HIGER LEVELS OF ACTUAL DISCRIMINATION

MENTAL-BEHAVIORAL

PHYSICAL, SENSORY, NEURO

• Contrary to Prevailing Theories about Stigma
WHICH GROUP EXPERIENCES THE HIGHEST OVERALL LEVEL OF ACTUAL WORKPLACE DISCRIMINATION?

A. MENTAL RETARDATION
B. MISSING LIMBS
C. DISFIGUREMENT
D. EPILEPSY
E. HIV/AIDS

ANSWER IS …?

MOST IMPAIRMENT GROUPS HAVE 2-3 ISSUES w/ SIG DIFF from GENDIS

2. XX IS SECOND
   – SIGNIFICANT DIFF ON 9 OF TOP 25 ISSUES
WHICH GROUP REPORTS THE MOST DISABILITY-RELATED HARASSMENT?

A. SPINAL CORD INJURY
B. HEARING IMPAIRMENT
C. MENTAL RETARDATION
D. TRAUMATIC BRAIN INJURY
DISABILITY HARASSMENT
26,000 allegations

• includes bothering, tormenting, troubling, ridiculing, or coercing an employee because of disability

• Involves jokes, epithets, or graffiti

Insidious?

ANSWER IS …. ?

• MENTAL RETARDATION

• TRAUMATIC BRAIN INJURY

• HEARING IMPAIRMENT

more insidious?
DATABASE INTEGRITY DISFIGUREMENT, N = 751

• PROBLEMS IN HARASSMENT AND NON-WAGE BENEFITS

• PROBLEMS IN RETAIL AND SERVICE INDUSTRIES

• SLIGHTLY LOWER MERIT RATES, AS EXPECTED

BUT ……

DATABASE INTEGRITY DISFIGUREMENT, N = 751

ALLEGATIONS OF DISCRIMINATION AND MERIT FINDINGS FOR DISFIGUREMENT

ARE DRIVEN BY??????
DATABASE INTEGRITY
CTDs: A.J. Armstrong et al.,

- HIGHER w/ LARGE EMPLOYERS (>500)
- HIGHER IN:
  - MANUFACTURING
  - TRANSPORTATION/UTILITIES
  - FINANANCIAL, INSURANCE, REAL ESTATE
- HIGHER IN:
  - LAYOFF, REINSTATEMENT, REASONABLE ACCOMMODATION

SUTTON TRILOGY & DIABETES

- SUTTON v UNITED AIRLINES
- ALBERTSON’S v KIRKINBURG
- MURPHY v UNITED PARCEL SERVICE

- “SUBSTANTIALLY LIMITING” MUST CONSIDER MITIGATING CIRCUMSTANCES
- DRAMATICALLY REDUCES NUMBER ELIGIBLE FOR ADA PROTECTIONS
MOST LIKELY IMPACTS

- DIABETES
- DEPRESSION
- EPILEPSY
- MULTIPLE SCLEROSIS

CONDITIONS IN WHICH SUBSTANTIAL LIMITATIONS ARE AMELIORATED CONSIDERABLY BY

MEDICATIONS
PROSTHETICS/ORTHOTICS
ASSISTIVE TECHNOLOGY
PSYCHOLOGICAL ADJUSTMENT

SUTTON “CATCH 22”

CONSIDER A PERSON w/ TYPE I DIABETES

HYPOGLYCEMIC EPISODES CONTROLLED BY INSULIN

UNFAIRLY CONSIDERED “UNFIT TO WORK”

BUT NOT IMPAIRED ENOUGH TO BE PROTECTED BY A.D.A.
NCD CONCERNS
March 17, 2003

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

SUTTON x DIABETES
June 22, 1999

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<td>MERIT RES %</td>
<td>19%</td>
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DISCRIMINATORS EMBOLDENED? Yes
PLAINTIFFS DISCOURAGED? NO
THERE ARE MANY, MANY FAVORABLE INDUSTRY FINDINGS

THERE ARE MANY, MANY FAVORABLE ISSUE FINDINGS

MUST REINFORCE THE POSITIVES

PROJECT TO DATE

• 15 LEAD INVESTIGATORS, 50 TOTAL
• 9 UNIVERSITIES
• 40 STUDIES PUBLISHED OR IN PRESS
• 4th DISSERT’n ALMOST COMPLETE (3 Us)
• >5 STUDIES MORE IN 2007 (+ each yr)
• SUPPORT FROM 4 GRANTS (3 NIDRR)
• ENTIRE PROCESS BEGAN 4 YRS AGO
• ENTIRE PROCESS IS VOLUNTARY
• BUSINESS-LIKE & PROFESSIONAL APPROACH
• CLOSE LINKAGE/MONITORING BY EEOC
WHERE ARE THESE PUBLISHED?

WORK: JOURNAL OF PREVENTION, DISABILITY, AND REHABILITATION
June/July 2005 (9 STUDIES)

JOURNAL OF VOCATIONAL REHABILITATION
December, 2005 (6 STUDIES)

WORKPLACE DISCRIMINATION AND DISABILITY (2007). B.T. McMahon
(Ed). VCU RRTC on Workplace Support & Job Retention
(11 reprints from above)

2006: UPDATE DATABASE

TO BE RELEASED IN 2007: HEALTHCARE INDUSTRY, CANCER,
BLINDNESS/LOW VISION, AUTISM, MCS, OTHERS.

TO BE CONDUCTED BY CORC (07-09)
• R ACCOM, TERMS/CONDITIONS, HIRING, TERMINATION
• GENDER AND ETHNICITY STUDIES (08-09)
• DBTAC REGIONAL PROFILES (07)
• ADVANCE SPECIFIC FINDINGS IN GREATER DETAIL (M.S.)
• MORE SUPREME COURT DECISION IMPACTS

Shirley Chisholm

“In the end antiblack, antifemale, and all forms of discrimination are equivalent to the same thing – antihumanism.”