

**Workplace Discrimination & Disability**  
The National EEOC ADA Research Project



**Brian T. McMahon**  
Sr. Research Professor, PM&R  
Professor, Rehabilitation  
Counseling

**ADA Audio Conference Series**  
**March 20, 2007**

**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

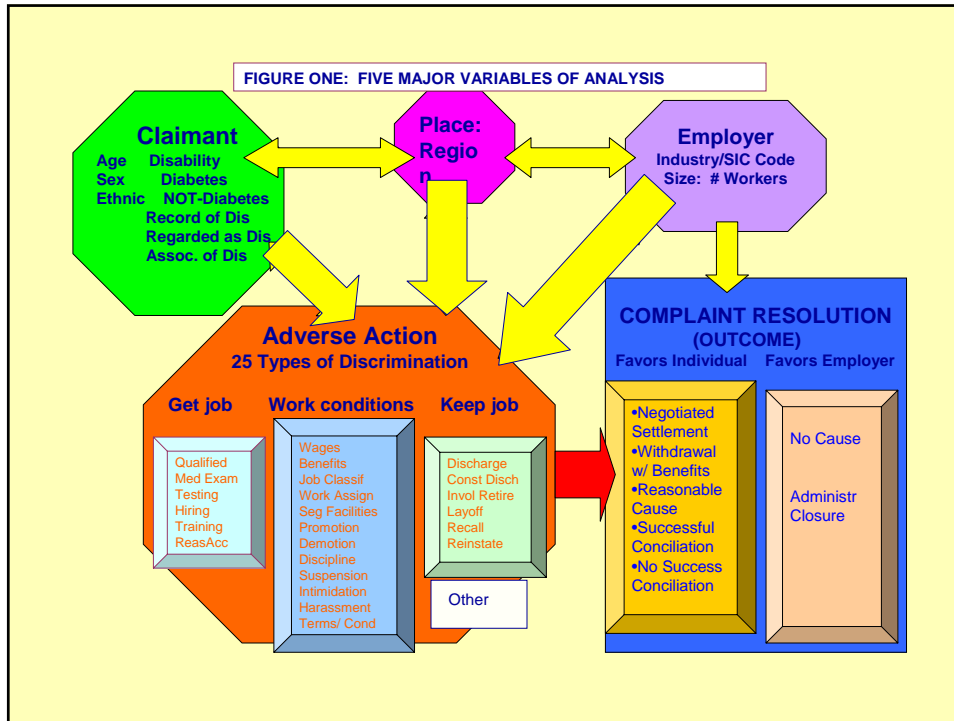
RESPONDENTS/**EMPLOYERS**

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

**ISSUES:** 25 unique types of discriminatory behavior

**OUTCOME/RESOLUTION:** allegation has/not Merit





## 45 IMPAIRMENTS INTO SIX COMPARISON GROUPS

6

- 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



vs.

**DIABETES: 11k**

## **PSYCHIATRIC: 50,000**

### **Allegations involving**

- anxiety disorder
- depression
- bipolar illness
- schizophrenia
- other psychiatric impairment.



**CHEMICAL DEPENDENCE:  
7,000**

**Allegations involving:**

- **Alcoholism**
- **Drug dependence.**

**OTHER: 70,000**

**Allegations involving:**

- **Physical, Sensory or  
Neurological Disability**
- **Specific Impairment Not Known**

**RECORD OF or REGARDED AS: 44,000**  
**RELATIONSHIP or ASSOCIATION: 3,500**

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

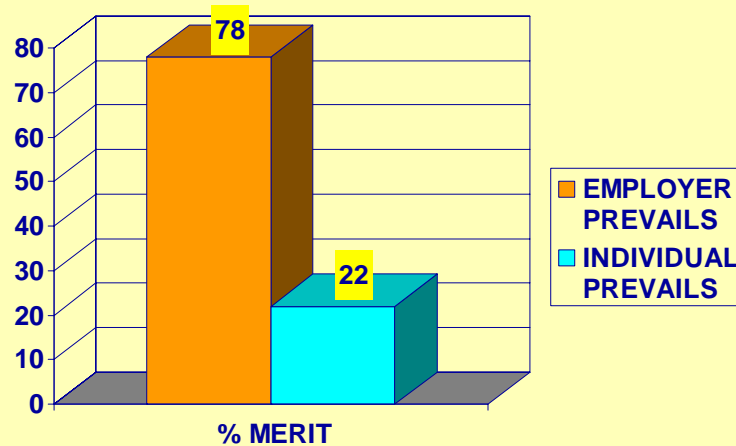
"NO DIFFERENCES"  
MEANS  
"NO UNIQUENESS"

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,

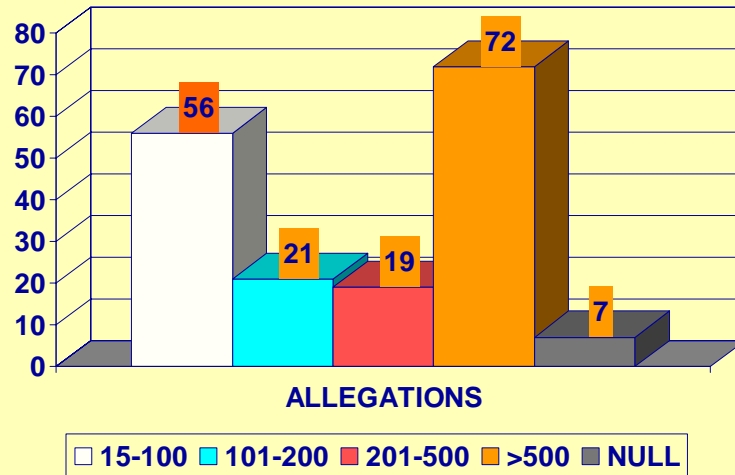
SMALL EMPLOYERS ARE  
MORE LIKELY TO ENGAGE IN  
DISCRIMINATORY BEHAVIOR





## SIZE MATTERS in thousands

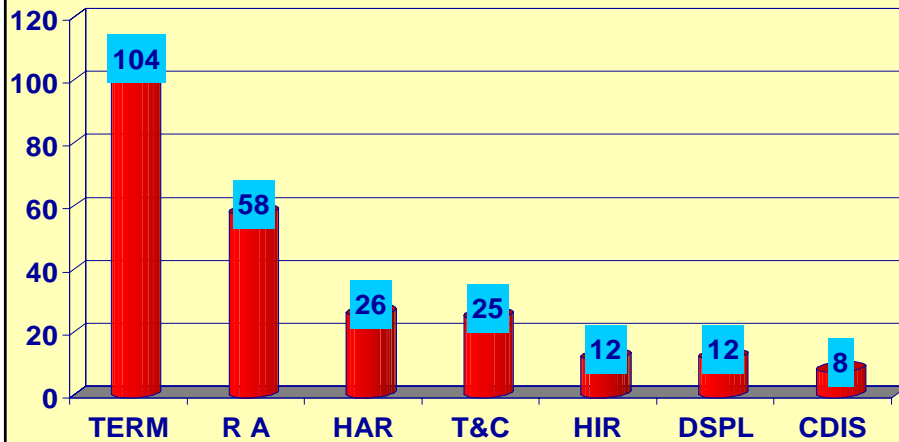
GENDIS



## 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!**  
**HIGHER 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

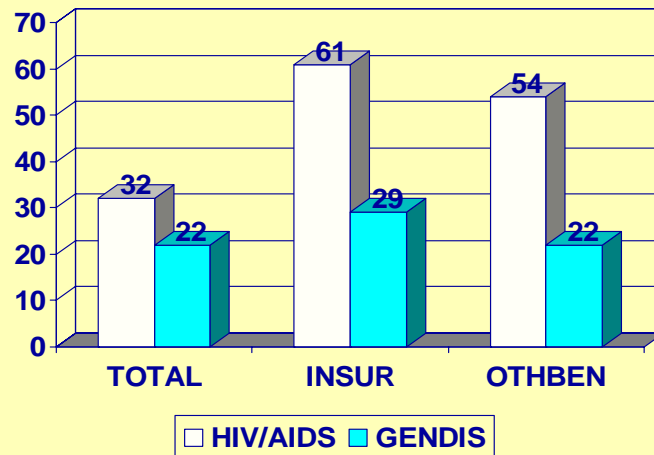
**ANSWER IS ...?**

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

**2. XX IS SECOND**

- SIGNIFICANT DIFF ON 9 OF TOP 25 ISSUES

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



**SIGNIFICANT DIFF ON 16 OF 25 TOP 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

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

DISCRIMINATORS EMBOLDENED? Yes  
PLAINTIFFS DISCOURAGED? NO

**THERE ARE MANY, MANY  
FAVORABLE INDUSTRY  
FINDINGS**

**THERE ARE MANY, MANY  
FAVORABLE ISSUE FINDINGS**

**MUST REINFORCE THE POSITIVES**

## **PROJECT TO DATE**

- 15 LEAD INVESTIGATORS, 50 TOTAL
- 9 UNIVERSITIES
- 40 STUDIES PUBLISHED OR IN PRESS
- 4th DISSERT'N ALMOST COMPLETE (3 Us)
- >5 STUDIES MORE IN 2007 (+ each yr)
- 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.”