

**Discrimination in Hiring under the Americans with Disabilities Act:
The National EEOC ADA Research Project**

Filing a charge of employment discrimination under the Employment Provisions (Title I) of the Americans with Disabilities Act (ADA) entails following the procedures outlined by the Equal Employment Opportunity Commission (EEOC) [1,2], which is the applicable federal enforcement agency. Enforcement is strictly a complaint-driven process; i.e., the EEOC cannot audit, otherwise seek out nor pursue discriminatory activity in the absence of a complaint brought by a Charging Party (individual with a disability) against a Respondent (typically an Employer with 15 or more workers). ADA Title I is unique for a civil rights statute. Its purpose is anti-discrimination, not affirmative action. In simple terms, ADA Title I requires that all personnel actions be unrelated to the existence or consequence of disability

The National EEOC ADA Research Project (Project) is rooted in the careers of its principals who have provided hundreds of days of training to thousands of Employers, rehabilitation professionals, and consumers regarding the effective implementation of the ADA. Training participants generated frequently asked questions to which there were no obvious answers; e.g., Consumer: “What does this mean for people with my particular impairment?”; Employer: “What does this mean for my particular industry?” Both: “Are there specific types of discrimination which I am more likely to encounter?”

Beginning in 2002 the trainers undertook an effort to provide better answers to these deserving questions, and transitioned their efforts from education to research. In 2003, a cooperative agreement was forged between the EEOC and Virginia Commonwealth University which resulted in the inception of the Project. Today, over 50 researchers and graduate students across America are engaged in an exhaustive data-mining effort focused upon the Integrated

Mission System (IMS), the master database used by the EEOC to track the filing, investigation, and resolution of allegations of workplace discrimination. Most Project investigators seek to develop disability-specific or industry-specific profiles of employment discrimination. Some are exploring the interface of disability with gender, age, or ethnic status. Others are validating (or not) extant theories of stigma, or attempting to predict EEOC investigatory outcomes. But the following studies that follow are unique in their purpose which is to describe the most common issues in workplace discrimination beginning with Hiring. Subsequent studies will focus on the other most prevalent discrimination issues which presently constitute the comparison group: disability harassment and intimidation, failure to accommodate, unlawful discharge, and terms and conditions of employment.

Currently there are 369,182 allegations in the database. This figure includes all ADA Title I allegations which:

- a. were closed by the EEOC from the first effective date of the ADA (July 26, 1992) through September 30, 2005, and
- b. meet the extraction criteria of the Project which excludes allegations involving retaliation, investigated by state enforcement agencies, or referred to litigation.

Project team members are mindful that many if not most incidents of workplace discrimination go unreported. As with most civil or criminal offenses, it is not possible at this time to determine the prevalence of unreported workplace discrimination.

To date, 40 journal articles have been generated by the Project. Following are some general findings of interest:

1. The overwhelming majority of discrimination is related to job retention or the quality of work, not job acquisition. Specifically, there are 40 areas of human resources in which some

measurable discrimination is found. However, 76% of all allegations derive from just six issues. From a risk analysis perspective, this is where Employers should be most vigilant: Discharge and Constructive discharge: (35%); Reasonable accommodation (18%); Terms and conditions of employment (9%); Disability harassment & intimidation (9%); Hiring (5%)

2. Merit resolutions which favor the Charging Party occur in 22% of all closures. Non-merit resolutions which favor the Employer occur 66% of the time. The balance of all resolutions (12%) includes closures for a variety of administrative reasons or technicalities.
3. Most impairment groups show significantly higher levels of actual discrimination on 2 or 3 issues. Allegations derived from people with HIV have higher levels on 19 issues. They are closed with merit at much higher levels as well -- 30% vs. 21% in the comparison group [3].
4. Social psychologists tell us that negative attitudes are more prevalent toward persons with behavioral disabilities. In workplace discrimination, however, levels of actual discrimination are higher for persons with physical and sensory impairments [4].
5. Although large businesses (over 500 workers) employ less than 1/5 of American workers and have dedicated human resources departments, they receive more allegations of discrimination than small or medium size Employers.
6. While considerable energy is expended on issues such as prohibited medical inquiry, job training, employment testing, and benefits, each of these issues comprises less than 1% of all allegation activity.

The four articles that follow are intended to illuminate the topic of workplace discrimination under ADA Title I specific to the issue of Hiring. This is accomplished by comparing and contrasting various aspects of the Hiring database (n = 19,527) with a comparison group (n = 259,680) comprised of five other prevalent discrimination issues identified in point #1

above. The first article elucidates the unique characteristics of the Charging Parties who have filed Hiring-related allegations. They were found to be disproportionately male, younger or older workers, white, and experiencing more obvious physical or sensory disabilities. The second article describes the unique characteristics of Employers against whom Hiring-related allegations are filed. It was found that Hiring allegations were more likely to be filed against Employers with 15-100 or over 500 employees, in the Western U.S. Census region, and in industries including educational services; public administration; transportation and warehousing; professional, scientific, and technical services; agriculture, forestry, fishing, and hunting; and construction. The third explores the Merit rate in Hiring; i.e., the outcomes of EEOC investigations in which the allegations of the Charging Parties are supported. In simple terms, a Merit closure distinguishes an allegation from an actual discriminatory even. Researchers found that in Hiring-related allegations the Merit rate is elevated, which is counterintuitive to the perception that “Hiring is an invisible process.” Finally, Project researchers attempt to identify those variables in the dataset that differentiate a Merit from a non-Merit resolution. Merit outcomes are heavily influenced by the age (younger) and impairment/ (physical, sensory, and neurological) of the Charging Parties.

All studies derived from the Project have been approved by the IRB at VCU (approval # 06176). Funding for the Project is provided by the National Institute of Disability and Rehabilitation Research to the Coordination, Outreach and Research Center (CORC) of the National Network of ADA Resource Centers (www.adata.org) at VCU. These ten Regional Centers are engaged in an additional 25 original research projects involving ADA themes in employment or public access. The intent is to further our understanding of how ADA is really working and how technical assistance efforts can be improved.

References

[1] Federal Laws Prohibiting Job Discrimination Questions and Answers. (n.d.). Retrieved November 19, 2004, from Equal Employment Opportunity Commission Web site:

<http://www.eeoc.gov/facts/qanda.html>

[2] Equal Employment Opportunity Commission. A Technical Assistance Manual on the Employment Provisions of Title I of the Americans with Disabilities Act (EEOC-M-1A). Washington, DC, 1992.

[3] Conyers L, Boomer K, McMahon B. Workplace discrimination and HIV/AIDS: The National EEOC ADA Research Project, *WORK: A J of Assess, Prevent, and Rehab.* 2005;24: 1-12.

[4] Chan F, McMahon B, Cheing G, Rosenthal D, Bezyak J. Drivers of workplace discrimination against people with disabilities: Physical vs. mental-behavioral genesis. *WORK: A J of Assess, Prevent, and Rehab.* 2005; 25(1): 77-88.