ADA Audio Conference Series
May 28, 2013

This session is scheduled to begin at 2:00pm Eastern Time

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Listening to the Webinar, continued

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- Questions may also be emailed to webinars@ada-audio.org

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Customize Your View

- Resize the Whiteboard where the Presentation slides are shown to make it smaller or larger by choosing from the drop down menu located above and to the left of the whiteboard. The default is “fit page”
Customize Your View continued

- Resize/Reposition the Chat, Participant and Audio & Video panels by “detaching” and using your mouse to reposition or “stretch/shrink”. Each panel may be detached using the icon in the upper right corner of each panel.

Technical Assistance

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1. **In webinar platform:** Send a private chat message to the host by double clicking “Great Lakes ADA” in the participant list. A tab titled “Great Lakes ADA” will appear in the chat panel. Type your comment in the text box and “enter” (Keyboard - F6, Arrow up or down to locate “Great Lakes ADA” and select to send a message); or

2. **By Email** webinars@ada-audio.org; or

3. **Call** 877-232-1990 (V/TTY)
Welcome!

Upcoming changes for federal contractors and subcontractors: Hiring and employing people with disabilities

Hannah Rudstam
Judy Young
Employment and Disability Institute
Cornell University, 2013

Disclaimer

Information, materials, and/or technical assistance are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the ADA, nor binding on any agency with enforcement responsibility under the ADA.

The Northeast ADA Center is authorized by the National Institute on Disability and Rehabilitation Research (NIDRR) to provide information, materials, and technical assistance to individuals and entities that are covered by the ADA. The contents of this document were developed under a grant from the Department of Education, NIDRR grant number H133 A110020. However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government.
Goals for today...

1. The face of talent in your workplace
2. What gave rise to these changes
3. The stats on people with disabilities and employment
4. Quick overview: The upcoming Rehabilitation Act 503 Guidelines
5. Quick overview of ADA AA
6. Issues in implementation
7. Best practices: Compliance and beyond
8. Resources and link

http://autisticadvocacy.org/2012/02/new-proposed-regulations-to-section-503-of-the-rehabilitation-act/

• Good overview of RA 503 Regs

• New regulations to strengthen Section 503 of the Rehabilitation Act
What is the face of talent?

What is the face of talent?
What is the face of talent?

What is the face of talent?
What is the face of talent?

What is the face of talent?
What is the face of talent?

What is the face of talent?
The face of disability is our face. People with disabilities are in all walks of life, in all professions, and in all ages.

It’s about people, not pity.
It’s about ability, not disability.
Often, the biggest barrier is not the disability, but the attitudes of others.

See the person, not the disability

Disability in America:
An Overview
Disability inclusiveness and competitive advantage

- Attracting Talent
- Retaining talent
- Enhancing performance
- Reducing work absence
- Access to a broader talent pool
- Connecting with customers

In the near future...

A greater portion of our workforce will be working with a disability.

- Enhanced ability to diagnose disabilities earlier
- Better treatments mean more people can work with disabilities
- Improved assistive technology means the disability can be effectively accommodated in the workplace
- Our population is aging

ADA Audio Conference Series
May 28, 2013
15–24 Years

10.4%

Brault, 2008

25–44 Years

11.4%

Brault, 2008
45–54 Years

19.4%

Brault, 2008

55–64 Years

30.1%

Brault, 2008
It’s about performance!

A study* of 314 workplaces found that employees with disabilities:

- Had the same job performance ratings as employees without disabilities
- Did not require any more of supervisor’s time
- Were no more likely to be absent, late or have off-work time than any other employee
- Did not have more workplace accidents
- Were less likely to leave the job

People with disabilities...

• Have educational levels similar to others (National Organization On Disability/Kessler, 2010)*

• Can be and are held to the same performance standards as any other employee (Office of Disability and Employment Policy)**

** https://disability.workforce3one.org/view/401117431065920103/info

A new study from the Job Accommodation Network...

**Direct Benefits**

• 87%--Accommodation enabled us to retain a valued employee
• 74%--Increased employee’s productivity
• 55%--Increased employee’s attendance
• 54%--Saved worker’s comp costs

**Indirect Benefits**

• 69%--Improved interactions with co-workers
• 61%--Increased overall company morale
• 57%--Improved interactions with customers
• 42%--Improved workplace safety
• 41%--Increased overall company attendance

Various studies have found that reasonable accommodations cost much less than employers expect.

A Job Accommodation Study* found:

- 49% of reasonable accommodations cost nothing
- 78% cost less than $500


How are people with disabilities faring in today’s workplace?
Employment Discrimination Charges Filed with (EEOC) or (FEPA)
Most Common Issues on ADA Charges filed in U.S.: 2008-2010

<table>
<thead>
<tr>
<th>Rank</th>
<th>Charge</th>
<th>% of all charges</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Discharge</td>
<td>59.14%</td>
</tr>
<tr>
<td>2</td>
<td>Accommodation</td>
<td>29.94%</td>
</tr>
<tr>
<td>3</td>
<td>Terms/Conditions</td>
<td>21.01%</td>
</tr>
<tr>
<td>4</td>
<td>Harassment</td>
<td>16.12%</td>
</tr>
<tr>
<td>5</td>
<td>Discipline</td>
<td>10.51%</td>
</tr>
<tr>
<td>6</td>
<td>Hiring</td>
<td>6.1%</td>
</tr>
<tr>
<td>7</td>
<td>Constructive Discharge</td>
<td>4.23%</td>
</tr>
</tbody>
</table>

Source: Calculations by S. von Schrader, Cornell University, Employment and Disability Institute, using the EEOC IMS files, 2008-2010. Development of this table was supported by Employer Practices Related to Employment Outcomes Among Individuals with Disabilities (H133B100017) funded by the U.S. Department of Education National Institute on Disability and Rehabilitation Research to Cornell University.

Employment Discrimination Charges Filed with (EEOC) or (FEPA)
Most Common Basis for ADA Charges filed in U.S.: 2008-2010

<table>
<thead>
<tr>
<th>Rank</th>
<th>Charge</th>
<th>% of all charges</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Retaliation</td>
<td>21.26%</td>
</tr>
<tr>
<td>2</td>
<td>Regarded as</td>
<td>12.23%</td>
</tr>
<tr>
<td>3</td>
<td>Back impairment</td>
<td>9.61%</td>
</tr>
<tr>
<td>4</td>
<td>Other orthopedic</td>
<td>7.19%</td>
</tr>
<tr>
<td>5</td>
<td>Depression</td>
<td>6.23%</td>
</tr>
<tr>
<td>6</td>
<td>Record of</td>
<td>5.59%</td>
</tr>
<tr>
<td>7</td>
<td>Diabetes</td>
<td>4.83%</td>
</tr>
<tr>
<td>8</td>
<td>Anxiety disorder</td>
<td>4.37%</td>
</tr>
<tr>
<td>9</td>
<td>Cardio-vascular</td>
<td>3.8%</td>
</tr>
<tr>
<td>10</td>
<td>Bipolar disorder</td>
<td>3.43%</td>
</tr>
</tbody>
</table>

Source: Calculations by S. von Schrader, Cornell University, Employment and Disability Institute, using the EEOC IMS files, 2008-2010. Development of this table was supported by Employer Practices Related to Employment Outcomes Among Individuals with Disabilities (H133B100017) funded by the U.S. Department of Education National Institute on Disability and Rehabilitation Research to Cornell University.
### Trends in EEOC Charge Data: Across all EEOC Categories*

<table>
<thead>
<tr>
<th>Category</th>
<th>2000</th>
<th>2005</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total #</td>
<td>79,896</td>
<td>75,428</td>
<td>99,412</td>
</tr>
<tr>
<td>Race %</td>
<td>36.2</td>
<td>35.5</td>
<td>33.7</td>
</tr>
<tr>
<td>Gender %</td>
<td>31.5</td>
<td>30.6</td>
<td>30.5</td>
</tr>
<tr>
<td>National origin %</td>
<td>9.8</td>
<td>10.7</td>
<td>10.9</td>
</tr>
<tr>
<td>Religion %</td>
<td>2.4</td>
<td>3.1</td>
<td>3.8</td>
</tr>
<tr>
<td>Color %</td>
<td>1.6</td>
<td>1.4</td>
<td>2.7</td>
</tr>
<tr>
<td>Retaliation %</td>
<td>27.1</td>
<td>29.5</td>
<td>38.1</td>
</tr>
<tr>
<td>Retaliation Title VII %</td>
<td>24.7</td>
<td>25.8</td>
<td>31.4</td>
</tr>
<tr>
<td>Age %</td>
<td>20.0</td>
<td>22.0</td>
<td>23.0</td>
</tr>
<tr>
<td>Disability %</td>
<td>19.9</td>
<td>19.7</td>
<td>26.5</td>
</tr>
<tr>
<td>Equal Pay</td>
<td>1.6</td>
<td>1.3</td>
<td>1.1</td>
</tr>
</tbody>
</table>


### US Overall Employment Rates (%)
2008/2011: With vs. Without Disability

<table>
<thead>
<tr>
<th>Category</th>
<th>2008</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment W/O Disability</td>
<td>79.9%</td>
<td>75.6%</td>
</tr>
<tr>
<td>Employment With Disability</td>
<td>39.5%</td>
<td>33.4%</td>
</tr>
<tr>
<td>Gap</td>
<td>40.4</td>
<td>42.2</td>
</tr>
</tbody>
</table>

### US Overall Full-Time/Full-Year Employment Rates (%)
#### 2008/2011: With vs. Without Disability

<table>
<thead>
<tr>
<th></th>
<th>2008</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment W/O Disability</td>
<td>60.4%</td>
<td>55.5%</td>
</tr>
<tr>
<td>Employment With Disability</td>
<td>25.4%</td>
<td>20.7%</td>
</tr>
<tr>
<td>Gap</td>
<td>35.0%</td>
<td>34.8%</td>
</tr>
</tbody>
</table>


### Poverty Rates (%) US & Puerto Rico
#### 2008/2011: With vs. Without Disability

<table>
<thead>
<tr>
<th></th>
<th>2008</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poverty W/O Disability</td>
<td>9.6%</td>
<td>12.4%</td>
</tr>
<tr>
<td>Poverty With Disability</td>
<td>25.3%</td>
<td>27.8%</td>
</tr>
<tr>
<td>Gap</td>
<td>15.7</td>
<td>15.4</td>
</tr>
</tbody>
</table>

Disability Laws
Rehabilitation Act
ADA Amendments Act

About the Rehabilitation Act of 1973

...Prohibits discrimination on the basis of disability in programs conducted by Federal agencies, in programs receiving Federal financial assistance, in Federal employment, and in the employment practices of Federal contractors. The standards for determining employment discrimination under the Rehabilitation Act are the same as those used in title I of the Americans with Disabilities Act.
The Rehabilitation Act

- Passed in 1973
- The ADA largely mirrors the Rehabilitation Act
- Has largely not been enforced when it comes to employment for people with disabilities in federal agencies or contractors

Sections:
- 501: Applies to federal agencies of the executive branch
- 503: Applies to federal government contractors and subcontractors with contracts of more than $10,000
- 504: Applies to programs and services getting federal aid or financial assistance such as educational institutions, hospitals and other human service programs
- 508: Applies to accessibility of information technology developed or used by the federal government

Other legal/policy changes: Emerging federal contractor guidelines

- Section 503 Rehabilitation Act enforced by OFCCP
- OFCCP took public comment until Feb 21, 2012
- Covers federal employers, contractors and subcontractors with at least $10,000 in federal contracts, representing roughly 20% of the total US workforce
- Increased accountability for disability hiring for federal entities
Highlights of Requirements*

**Goals:** Might have hiring goals (7%)

**Data Collection:** Contractors must invite applicants and employees to self-identify as having a disability

**Record-Keeping:** Contractors must track number of applicants and new-hires with disabilities

**Accommodation Requests:** Requires written procedures for accommodation requests

*For more information, go to [http://www.dol.gov/ofccp/503](http://www.dol.gov/ofccp/503)

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**Outreach:** Requires the establishment of linkage agreements with national and local organizations

**Job Listings:** Contractors must list job openings with American Job Centers or other appropriate employment delivery systems

**Annual Reviews:** Requires contractors to undertake annual reviews of their HR processes

**ADAAA Updates:** Must update HR processes to incorporate ADA AA changes

*For more information, go to [http://www.dol.gov/ofccp/503](http://www.dol.gov/ofccp/503)
What does this mean to employers?

Heightened accountability:
- Recruiting
- Hiring
- Accommodation
- Termination

Need to build partnerships with disability related entities

Heightened tracking requirements around disability hiring and employment

But I thought we weren’t supposed to ask whether applicants or employees have disabilities?

Employers can make disability inquiries of applicants or employees if the disability inquiry:
- Is needed to comply with a law
- Will be used to benefit people with disabilities in the workforce (e.g. develop programs/policies or evaluate progress in disability inclusiveness)
- Is voluntary (no penalties for not responding)
- Is anonymous and confidential (data must be aggregated such that it cannot be linked to an individual)
Disability Laws

ADA Amendments Act (ADAAA)

1990: ADA and Employment (Title I)

- Enforced by Equal Employment Opportunity Commission (EEOC)
- 15 or more employees
- Protects against disability discrimination in all employment processes
- Limits employer disability inquiry
- Reasonable accommodation unless there is undue hardship
Who is covered (has rights) under the ADA?

Applies to applicants or employees who:

- Have a disability
- Have a record of having a disability
- Are regarded as having a disability

What is a “disability?”

...A physical or mental impairment that substantially limits one or more major life activities*

* http://www.eeoc.gov/laws/regulations/ada_qa_final_rule.cfm

What are some recent changes?
The ADA Amendments Act (ADAAA)

What gave rise to ADAAA?

- Supreme Court decisions narrowed original disability definition
- The “catch 22” of disability definition

ADAAA has broadened (or re-stored) the definition of disability

Courts now directed to pay more attention to the discrimination event itself and less to whether the person has a disability
What are some recent changes?
The ADA Amendments Act (ADAAA)

Wording of disability definition has not changed

Meaning of the words/phrases have changed

- Illustrative lists
- Mitigating measures
- Episodic conditions
- “Regarded as” strengthened

ADAAA: Impairments that easily should be found to be disabilities under the ADA (Non-exhaustive list)

- Deafness
- Blindness
- Use of wheelchair
- Intellectual disability
- Partially or completely missing limbs
- Autism
- Cancer
- Cerebral palsy
- Diabetes

- Epilepsy
- HIV infection
- Multiple sclerosis
- Muscular dystrophy
- Major depressive disorder
- Bipolar disorder
- PTSD
- Obsessive-compulsive disorder
- Schizophrenia
What does all this mean to employers? Consider these ten strategies...

1. Designate disability-related expertise
2. Review your current general policies:

- Performance standards
- Codes of conduct
- Recruitment practices

3. Review your current disability policies:

- Accommodation policies & practices
- Leave and reassignment practices
4. Create new partnerships for recruitment

American Job Centers
State Vocational Rehabilitation Agencies
Other community disability agencies

5. Build capacity to track and report disability – related actions
6.
Build in analysis prior to taking adverse impact

7.
Review accommodation practices

- Internal accommodation request process unduly burdensome?
- Good faith effort—one accommodation attempt may not be enough
- Leave and re-assignment should be last resorts
- Beware of no-fault or 100% healed and leave policies
8. Track disability information

• In recruiting
• In hiring
• In accommodating
• In other areas of employment

9. Make sure face-to-face leaders are on board

• Mid-level managers need to be able to recognize and accommodation request
• Develop policies and training for managers/supervisors
10.
It’s not just about compliance & reporting!

- Spread the word: The business case
- Build a process to use tracked information to improve workplace policies and practices
- Building a climate of trust and openness so employees come forward with an accommodation request
Thank you for participating in today’s ADA-Audio Conference Session

The next scheduled session is:

*Service Animals in Post Secondary Education Settings*

June 18, 2013

Register at: www.ada-audio.org or call 877-232-1990 V/TTY