


ADA Audio Conference Series
May 28, 2013

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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







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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**



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<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



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What is the face of talent?



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What is the face of talent?



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What is the face of talent?

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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


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Disability inclusiveness and competitive advantage



Attracting Talent

Retaining talent

Reducing work absence

Access to a broader talent pool

Enhancing performance

Connecting with customers

In the near future...

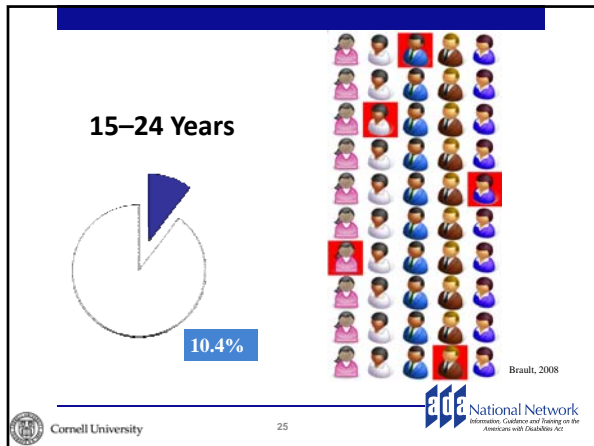


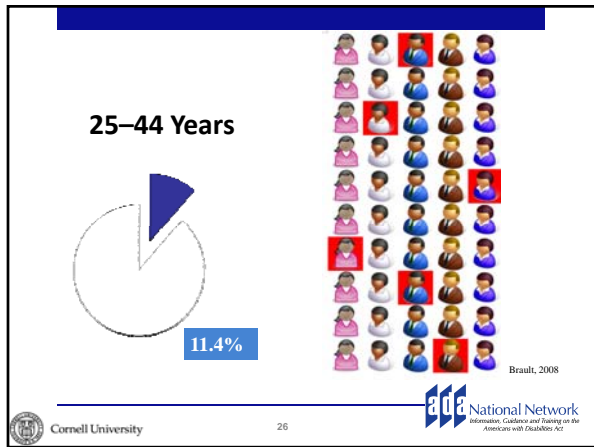
A greater portion of our workforce will be working with a disability.

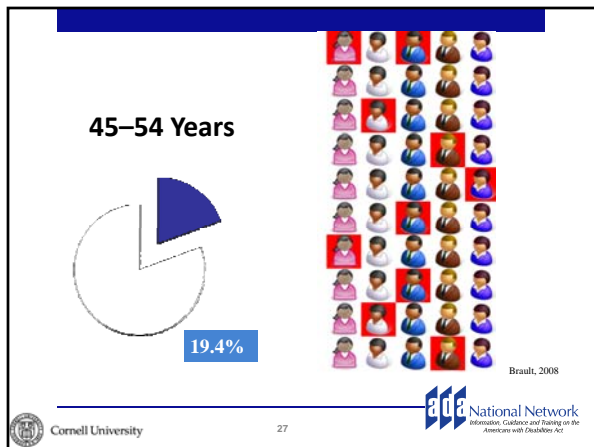
- Enhanced ability to diagnose disabilities earlier
- Better treatments mean more people can work with disabilities
- Improved assistive technology means the disability can be effectively accommodated in the workplace
- Our population is aging

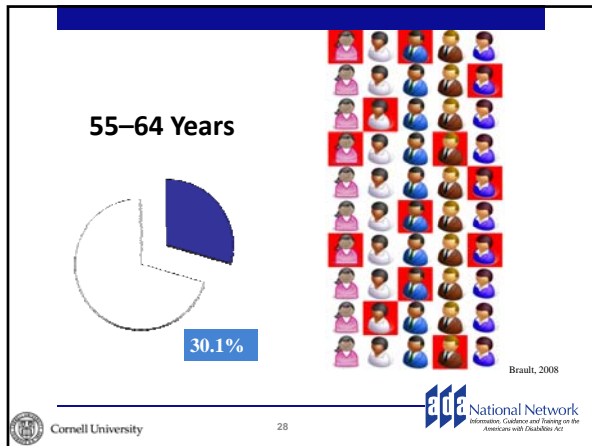

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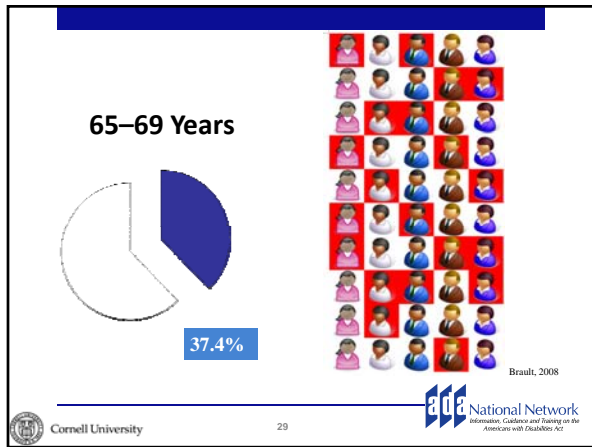
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It's about performance!

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

*DePaul University and Disability Works. Exploring the Bottom Line: A Study of the Costs and Benefits of Workers with Disabilities. Released January 28, 2007. Accessed March 31, 2008 at <http://www.disabilityworks.org/downloads/disabilityworksDePaulStudyComprehensiveResults.doc>

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)**

* <http://www.2010disabilitysurveys.org/pdfs/surveyresults.pdf>
** <https://disabilityworkforce30e.org/view/4011117431659720103/info>



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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



A new study from the Job Accommodation Network...

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

*Source: Job Accommodation Network (2007) *Workplace Accommodations: Low Cost, High Impact*. U. S. Department of Labor. Accessed May 3, 2008 at www.jan.wvu.edu/media/LowCostHighImpact.pdf

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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

*McNaughton, Tamie and Beth Loy. *Workplace Accommodations: A Small Investment for a Large Return*. A paper presented at the Job Accommodation Webcast June 12, 2007. Accessed March 31, 2008 at http://www.jan.wvu.edu/Teleconf/Events/2007/6-12-07_Handouts/WorkplaceAccommodations.ppt#295.17. Workplace Accommodation: A Small Investment Yields Large Returns



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How are people with disabilities faring in today's workplace?

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

Rank	Charge	% of all charges
1	Discharge	59.14%
2	Accommodation	29.94%
3	Terms/Conditions	21.01%
4	Harassment	16.12%
5	Discipline	10.51%
6	Hiring	6.1%
7	Constructive Discharge	4.23%

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 (H1338100017) funded by the U.S. Department of Education National Institute on Disability and Rehabilitation Research to Cornell University.

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

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

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 (H1338100017) funded by the U.S. Department of Education National Institute on Disability and Rehabilitation Research to Cornell University.

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Trends in EEOC Charge Data: Across all EEOC Categories*

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

Note: Charges can be brought under more than one category

*EEOC (2012) *EEOC Charge Statistics FY 1997 – 2012*. Accessed at <http://eeoc.gov/eeoc/statistics/enforcement/charges.cfm>

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

	2008	2011
Employment W/O Disability	79.9%	75.6%
Employment With Disability	39.5%	33.4%
Gap	40.4	42.2

*Adapted from: Erickson, W., Lee, C., & von Schrader, S. (2012). *Disability Status Reports: United States and Puerto Rico*. Ithaca, NY: Cornell University Employment and Disability Institute (EDI). Accessed at <http://www.disabilitystatistics.org>.

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

	2008	2011
Employment W/O Disability	60.4%	55.5%
Employment With Disability	25.4%	20.7%
Gap	35.0%	34.8%

*Adapted from: Erickson, W., Lee, C., & von Schrader, S. (2012). *Disability Status Reports: United States and Puerto Rico*. Ithaca, NY: Cornell University Employment and Disability Institute (EDI). Accessed at <http://www.disabilitystatistics.org>.

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

	2008	2011
Poverty W/O Disability	9.6%	12.4%
Poverty With Disability	25.3%	27.8%
Gap	15.7	15.4

*Adapted from: Erickson, W., Lee, C., & von Schrader, S. (2012). Disability Status Reports: United States and Puerto Rico. Ithaca, NY: Cornell University Employment and Disability Institute (EDI). Accessed at <http://www.disabilitystatistics.org>.

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Disability Laws
Rehabilitation Act
ADA Amendments Act



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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



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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>

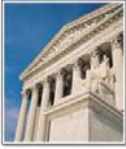
Highlights of Requirements*

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>

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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



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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)



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Disability Laws

ADA Amendments Act (ADAAA)


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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

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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

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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



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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



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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



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**What does all this mean
to employers?
Consider these ten
strategies...**

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**1.
Designate disability-
related expertise**

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**2.
Review your current general
policies:**

- Performance standards**
- Codes of conduct**
- Recruitment practices**

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3.

Review your current disability policies:



Accommodation policies & practices
Leave and reassignment practices

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4.

Create new partnerships for recruitment



American Job Centers
State Vocational Rehabilitation Agencies
Other community disability agencies

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5.

Build capacity to track and report disability – related actions



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6.

Build in analysis prior to taking adverse impact



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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

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8.

Track disability information



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

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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

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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


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