

Guest Editorial

Workplace Discrimination and Disability

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1. Introduction

The genesis of this special issue is derived from one aspect of our own careers. Over the past 15 years we have collectively provided over 250 days of training to over 15,000 employers, rehabilitation professionals, and consumers regarding the effective implementation of the Americans with Disabilities Act (ADA). Like any busy consultants, we fielded scores of questions and collected a fair amount of evaluative information regarding the content. Again and again the same concern was expressed. 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 1992, our efforts were gradually redirected from training to research in order to provide better answers to these worthwhile and important questions [7,8,10–13].

ADA employment provisions, known as Title I, are unique as civil rights statutes go. Their character is anti-discrimination, not affirmative action. Their immediate purpose is to combat and minimize workplace discrimination against Americans with disabilities. In simple terms, ADA Title I requires that all personnel actions be unrelated to the existence or consequence of disability.

Even 15 years after the enactment date of ADA, the labor force participation rate by people with disabilities continues to languish around 30%, well under the 81% figure for the general population of working age adults.

A variety of well documented factors contribute to this problem including financial disincentives to work, the uneven availability of employer-sponsored healthcare, an unstable economy, the outsourcing of jobs, the uneven performance of our special education system, and fluctuation in the rate of unemployment. Moreover, in spite of new technologies, disability does affect ability and compromises both the employability and place ability of many Americans [5,6,16,17].

In 2003, a cooperative agreement was forged between the Equal Employment Opportunity Commission (EEOC) and Virginia Commonwealth University which resulted in the inception of the National EEOC ADA Research Project (Project). Over 50 rehabilitation researchers are engaged in an exhaustive data-mining effort focused upon the Integrated Mission System (IMS) – a master database used by the EEOC to track the filing, investigation, and resolution of allegations of workplace discrimination. Some Project investigators are exploring the interface of disability with gender, age, or ethnic status. Others are validating (or not) extant theories of stigma, predicting EEOC investigatory outcomes, or documenting discrete discriminatory behaviors such as disability harassment, failure to accommodate, or unlawful discharge. Like the contributors to this special issue, however, most Project investigators utilize IMS data to create disability-specific profiles of employment discrimination. Seven such studies may be found in a recent special issue of *WORK: A Journal of Assessment, Disability, and Rehabilitation* [1,2,4,9,14,15,18,19].

Table 1
Composition of GENDIS by specific disabilities in descending order of frequency

Disability	N	Disability	N	Disability	N
Back impairment	39,951	Multiple sclerosis	3,669	Speech impairment	1,637
Non-Paralytic orthopedic impairment	27,833	Cumulative trauma disorder	3,296	Cerebral palsy	1,392
Diabetes	11,437				
Heart/Cardiovascular	10,764			Chemical sensitivities	1,183
Hearing impairment	8,936	Other blood disorder	3,100	Mental retardation	1,132
Other neurological	8,560	Other respiratory or pulmonary disorder	2,810	Disfigurement	751
Vision Impairment	7,030	Missing Digits or Limbs	2,793	Tuberculosis	155
Cancer	6,812	Gastrointestinal	2,583	Dwarfism	118
Asthma	5,446	Paralysis	2,380	Autism	98
Epilepsy	5,232	Allergies	2,079	Cystic fibrosis	95
Learning disability	5,133	Brain/Head injury-traumatic	2,037	Alzheimer's	36
HIV/AIDS	4,130	Kidney	2,002		
Total					174,610

This special issue of the *Journal of Vocational Rehabilitation* contains six additional disability-specific profiles. Featured are the characteristics of allegations derived from Americans with mental retardation, spinal cord injury, speech impairment, cerebral palsy, multiple sclerosis, and asthma. The Project also seeks to identify those features that distinguish merit from non-merit resolutions or outcomes. In simple terms, how does a complaint of discrimination differ from an actual occurrence of discrimination?

Although still in its infancy, the Project has yielded some startling results. For each impairment, the major comparison group includes allegations derived from Americans with physical, sensory, and neurological conditions (see Table 1). Referred to as GENDIS (general disability), this group of 174,610 allegations is derived from a larger set of 328,738 allegations that pertain to discrimination on the basis of a current disability, record of disability, perception of disability, or association with a person with disability. For GENDIS, allegations of workplace discrimination (both with and without merit) frequently involve the following personnel actions: discharge, reasonable accommodation, terms/conditions of employment, disability harassment, hiring, and discipline. The overwhelming majority of allegations do not relate to job acquisition, but to the retention and satisfaction of employment. Finally, merit resolutions generally occur in only 20% of allegations filed under ADA, a statistic similar to that of other protected classes: women, minorities, and older workers. Yet Project investigators have discovered that patterns of discriminatory allegations and resolutions vary widely when two factors are isolated: the specific impairment basis of the Charging Party (complainant) and the industry designation of the Respondent (typically an employer).

In documenting disability-specific patterns of discrimination, the Project does not intend to obviate or reverse the intent of the cross-disability movement. It is a fact, however, that many consumer organizations have amassed substantial resources to combat workplace discrimination on behalf of their constituents who often share a single impairment. The American Diabetes Association, for example, has a national network of attorneys who are vigilant in the implementation of ADA. Their efforts are likely to be more successful when it is known who, when, where and how discrimination is manifest for Americans with diabetes.

Conversely, Project investigators have long understood that employers are not villains in this equation. Allegation activity with respect to disability is relatively low, especially for a new and remedial statute such as ADA. Furthermore, even when the perception of discrimination is so strong as to move the Charging Party to file a formal complaint with the EEOC, full investigation of the charge fails to support the allegation 80% of the time. Job placement experts understand that business principals do not view themselves first and foremost as "employers." They are owners, managers, marketers, lenders, manufacturers, service providers and builders. Their mission statements address the pursuit of excellence in the provision of goods or services, not the employment or enhancement of the lives of Americans with disabilities. Employers are, and appropriately so, driven by profit or public service. Some have come to resent that the societal burdens of training, education, healthcare, family well being, and social justice are, in part, thrust upon them. Yet most American businesses support the eradication of workplace discrimination and its associated costs in terms of time, money, and image [16]. However, ADA information and technical assistance can now be con-

Table 2
 Allegation issues (Discriminatory Behaviors) in order of decreasing frequency for project dataset

N	Issues	Definition
103,777	Discharge	Involuntary termination of employment status on a permanent basis.
58,448	Reasonable accommodation	Respondent failed to provide reasonable accommodation to known physical/mental limitations of a qualified person with a disability.
28,528	Terms/Conditions of employment	Denial or inequitable application of rules relating to general working conditions or the job environment and employment privileges which cannot be reduced to monetary value.
25,776	Disability harassment	Same as Intimidation except that this issue would be used to describe antagonism in non-employment situations or settings.
17,535	Hiring	Failure by an employer to engage a person as an employee.
12,030	Discipline	Assessment of disciplinary action against an employee.
7,905	Constructive discharge	Employee is forced to quit or resign because of the discriminatory restrictions, constraints, or intolerable working conditions.
7,628	Layoff	Temporary involuntary separation due to lack of work. Facts must clearly indicate that the involuntary separation is temporary.
7,533	Other	Issues alleged which do not fit under any other defined code.
7,435	Promotion	Advancement to a higher level of work usually involving higher pay or more prestigious work environment.
6,898	Wages	Inequities in monetary compensations paid for work performed, including salary and gratuities, commissions, amounts paid for completion of specific items or work, incentive rates or bonuses.
5,776	Demotion	Involuntary downgrading to less pay or less desirable job with reduced benefits or opportunities for advancement.
5,085	Reinstatement	Failure of an employer to reinstate a person as an employee.
4,845	Suspension	Suspension of employment status because of disability.
4,563	Intimidation	Bothering, tormenting, troubling, ridiculing or coercing a person because of disability. For example: (1) making, allowing or condoning the use of jokes, epithets or graffiti; (2) application of different or harsher standards of performance or constant or excessive supervision; (3) the assignment to more difficult, unpleasant, menial or hazardous jobs; (4) threats or verbal abuse; or (5) application of stricter disciplinary measures such as verbal warning, written reprimands, impositions or fines or temporary suspensions.
4,528	Benefits	Inequities in providing non-wage compensation items, such as parking rates, gifts, bonuses, discounts, etc.
4,516	Assignment	Designation of an employee to less desirable duty, shift, or work location.
2,531	Benefits: Insurance	Discrimination with respect to the provision of insurance benefits.
2,278	Prohibited Medical Inquiry	Respondent unlawfully required an individual to take a medical examination (e.g., during pre-job-offer stage) or to respond to prohibited medical inquires (e.g., on a job application from or during a pre-employment interview).
1,895	Recall	The calling back to regular employment status of persons who have been in a layoff status
1,675	Training	Failure or refusal to admit a person into a training program or job that will serve as a learning experience.
1,352	Union	Failure by a labor organization to process or diligently pursue a grievance or dispute, or failure to adequately represent the interest of a particular person or group because of disability.
943	Representation	
	Involuntary retirement	Compelling an employee to retire.
702	Unfavorable reference	Providing references to potential employers that may place a person in an unfavorable light due to a disability.
671	Job classification	Restriction of employees with a disability to a certain type of job or class of jobs.
659	Benefits: Pension	Discrimination with respect to the awarding of pension/retirement benefits.
603	Qualifications (weak criteria)	Discrimination with respect to the factors or criteria used in determining a person's fitness for employment, referral, promotion, admission to membership in a labor organization, training or assignment to a job or class of jobs.
474	Seniority	Occurs with the use made of seniority: the length of service in employment; e.g., promotion.
456	Referral	Failure by a labor organization or employment agency to nominate an applicant for hire, training or apprenticeship or training other than that requested by the applicant based on the applicant's disability.
358	Testing	Use tests to determine fitness for employment, referral, promotion, training, or assignment, etc.
350	Segregated Union	Failure of a labor organization to admit individual to membership.
190	Severance pay	Denial of severance pay upon leaving employment.
163	Maternity leave	Treating a woman differently for maternity leave based upon her disability.
157	Tenure	Status of holding a position on a permanent basis for educational institutions only.
155	Waive ADEA rights	Provision of benefits contingent upon employee's agreement to waive the right to seek redress under ADEA.
89	Early retire incentive	Offer of early retirement to induce older workers to leave the workforce.
70	Posting notices	Failing to post a required notice.

Table 2, continued

N	Issues	Definition
66	Segregated facilities	Maintenance of separate facilities (common areas or activities) on the basis of disability.
50	Apprenticeship	Failure to admit a person into a program or job that will serve as a learning experience, usually involving a contractual arrangement between the employer, labor organization and the apprentice.
45	Advertising	Expression of a preferred health status when soliciting applicants for employment, training, apprenticeship, etc.
0		OTHER ISSUE CODES HAVE A FREQUENCY OF ZERO

Table 3
Closure codes and frequencies for 174,610 GENDIS allegations from persons w/physical, sensory or neurological impairments

Type of closure	N	Definition	Merit
Withdrawn w/CP Benefits	10,726	Withdrawn after independent settlement, resolved through grievance procedure, or after Respondent unilaterally granted benefits w/o formal "agreement".	YES
Settled w/CP Benefits	14,603	Settled and EEOC was involved in settlement.	YES
Successful conciliation	4,378	EEOC has determined discrimination occurred, and Respondent has accepted resolution.	YES
Conciliation failure	8,707	EEOC has determined discrimination occurred, but Respondent has not accepted resolution.	YES
No cause finding	115,403	Full EEOC investigation failed to support alleged violation(s).	NO
Admin closure	2,066	Due to processing problems; e.g., Respondent out of business or cannot be located, file lost or cannot be reconstructed.	NO
Admin closure	102	Due to Respondent bankruptcy	NO
Admin closure	537	Because CP cannot be located	NO
Admin closure	1,690	Because CP non-responsive	NO
Admin closure	2,596	Because CP uncooperative	NO
Admin closure	138	Due to outcome of related litigation	NO
Admin closure	70	Because CP failed to accept full relief	NO
Admin closure	10,746	Because EEOC lacks jurisdiction; includes inability of CP to meet definitions, Respondent <15 workers, etc.	NO
Admin closure	2,848	Because CP withdraws w/o settlement or benefits. Reason unknown	NO

veyed in industry-specific terms. When such information speaks directly to the who, when, where and how of discrimination in unique business sectors, it will be better received and implemented.

2. Limitations of the dataset

Like most large databases, the IMS is not a panacea for rehabilitation researchers. In consultation with EEOC, the researchers arrived at criteria for the extraction of allegations into various "study datasets." By intent, these criteria favor a consistent and complete investigatory process over a larger number of allegations. Specifically, the extraction process deletes all files that do not involve direct discrimination against Americans who are disabled at the time of the alleged incident. Thus, allegations that involve retaliation, record of disability, regarded as disabled, or associate of persons with disabilities are not included in GENDIS. Also excluded are allegations that contain errors or are currently unresolved, as well as those whose merit is determined by an agency other than the EEOC; e.g., Office of Federal Contract Compliance Programs, civil courts or state fair employment practices agencies. To be sure,

Table 4
Race and ethnicity codes for entire ADA study dataset

Race or ethnicity	N	Percent
White	202,221	61.5%
African American	66,076	20.1%
Other	27,800	8.5%
Hispanic/Mexican	21,758	6.6%
Unknown	4,499	1.4%
Asian	3,932	1.2%
Native American/Alaskan Native	2,091	0.6%
Mixed race	142	0.04%
Total	328,738	100%

these allegations can be studied at a later date, but in the early going the researchers are interested in clarity, consistency, and parsimony. The remaining study dataset for the current projects is still quite rich, with 328,738 resolved allegations – every reported allegation that meets the selection criteria from the Title I effective date, July 27, 1992, through September 30, 2003. 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.

Other fields in the dataset are deleted in the interest of confidentiality. Federal law requires that identifiers

Table 5
EEOC respondent parameters for employer size and industry for GENDIS only, *N* = 174, 610

No. of workers	EEOC code	N	Industry designation	SIC code	N
15–100	A	56,194	Agriculture	010–099	1,158
101–200	B	20,721	Mining	100–149	1,390
201–500	C	18,516	Construction	150–199	3,482
501 +	D	72,331	Manufacturing	200–399	32,555
NULL	NULL	1,121	Transportation & Utilities	400–499	15,751
UNKNOWN	U	5,580	Wholesale	500–519	3,250
N < 15		147	Retail	520–599	18,151
			Financial, insurance real estate	600–659	7,000
			Services	660–909	49,543
			Public Admin,	910–980	16,050
			Not classified	981–999	21,490
			Unknown	NULL	4,781

Table 6
US census bureau classification of respondent regions by state for GENDIS only, *N* = 174, 610

Region-Code	N	Applicable states
South	<i>N</i> = 70, 451	Delaware, District of Columbia, Florida, Georgia Maryland, North Carolina, South Carolina, Virginia, West Virginia, Alabama, Kentucky, Texas, Mississippi, Tennessee, Arkansas, Louisiana, Oklahoma,
Midwest	<i>N</i> = 52, 038	Indiana, Illinois, Michigan, Ohio, Wisconsin, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota
West	<i>N</i> = 32, 802	Arizona, Colorado, Idaho, New Mexico, Montana, Utah, Nevada, Wyoming, Alaska California, Hawaii, Oregon, Washington
Northeast	<i>N</i> = 18, 674	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, New Jersey, New York, Pennsylvania
US Territory	<i>N</i> = 641	Puerto Rico, Guam, Virgin Islands, Palau, Northern Mariana Islands, Marshall Islands, American Samoa, Micronesia, Canal Zone
Foreign, Non-US	<i>N</i> = 4	All non-US countries

of either a Charging Party or a Respondent must be protected. Accordingly, fields that may lead to identification (such as name, specific industry code, address or even state) were purged from the study dataset in the early weeks of the Project. The VCU IRB has reviewed all data extraction procedures, methods, and analytic techniques and all manuscripts have been reviewed by EEOC prior to publication. To date, no substantive changes to content have ever been requested by EEOC.

These extraction criteria have direct implications for the applicability of the research itself. Project investigators are cautious to avoid generalization of these findings beyond the individuals and employers that are actually represented in the dataset. Our findings are descriptive of these and only these allegations, and the Charging Parties and Respondents from whom they are derived. After an introductory training session, Project investigators are free to form their own research teams, formulate their own research questions, pursue their own research funds, request data extractions specific to their target issue and comparison groups, choose and apply their own research designs and statistical techniques, and interpret their own findings. The findings and their interpretations in the Project are solely the

product of the contributing authors, and do not represent the viewpoints of the EEOC.

The selection of specific study topics is coordinated by the Project in order to avoid duplication of effort. Investigators freely exchange ideas regarding research questions, funding sources, literature, methods, and findings. As a result of this dialogue, preferred approaches emerge in terms of design and statistics, and a measure of redundancy may occur from one article to the next. However, each article must “stand alone” because of dissemination needs that are unique to particular funding sources, consumer organizations, or industry groups. In consideration of this reality, the reader’s indulgence is requested.

3. Common tables and phase two topics

A number of Tables follow this Foreword to provide an explanation of terms and codes that are common usage in EEOC investigations.

- Table 1 provides a frequency distribution of allegations in the largest comparison group, GENDIS, by type of impairment. GENDIS includes all al-

legations in which a known physical, sensory, or neurological impairment is involved. For each article herein, a target group is extracted from GENDIS and a comparison group is established from some or all of the remaining GENDIS impairment groups.

- Table 2 provides a frequency distribution and definitions of the discrete personnel actions that may be involved in an allegation of discrimination. These are known as Issues.
- Table 3 provides a frequency distribution and definitions of types of closures or resolutions that may conclude an EEOC investigation. Readers are cautioned that unless specific reference is made to merit resolutions, the investigator is dealing with allegations of discrimination which the researchers regard as a perception of discrimination rather than an actual occurrence.
- Table 4 provides a frequency distribution and parameters of one of several characteristics of the Charging Party; i.e., race/ethnicity. Gender, age and impairment are the others.
- Table 5 provides a frequency distribution and parameters of two characteristics of the Respondent: employer size and industry designation.
- Table 6 provides a frequency distribution and parameters of the third characteristic of the Respondent: location by broad US Census region.

These Tables are referred to repeatedly in most of the manuscripts that follow, and in the aggregate they constitute a useful glossary for the reader as well as a “big picture” with respect to scope of discrimination and the potential of the IMS database.

In the articles that follow, Project investigators describe and analyze disability-specific profiles of mental retardation, spinal cord injury, speech impairment, cerebral palsy, multiple sclerosis and asthma. The number of complete resolutions in the IMS grows by approximately 5% each year. Participants in the Project remain convinced that these modest beginnings represent but the tip of the iceberg in our efforts to better understand the full nature, scope, and impact of workplace discrimination in America.

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