



## Revisiting the Americans with Disabilities Act after Two Decades

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## ARTICLES

### **Revisiting the Americans with Disabilities Act after Two Decades**

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*This article examines the Americans with Disabilities Act (ADA) 20 years after its passage. It provides an overview of the history and major components of the ADA, examines who has disabilities and how they are faring, and traces how the ADA has evolved through court cases that have limited its scope. In addition, the article investigates abuse of the ADA, its economic impact, and the problems in defining a disability. Although the ADA is continuing to evolve, it requires significant change to live up to its magnificent promise.*

*KEYWORDS ADA, Americans with Disabilities Act, civil rights, disability, disability economics, protective legislation*

In 2010 the American with Disabilities Act (ADA, 1990) celebrated its 20th birthday. Like most social legislation, the seeds of the ADA were planted many years before former President George Bush signed the bill into law on July 26, 1990 (Karger & Stoesz, 2009). The roots of the ADA lay in the success of the civil rights movement of the 1960s, which provided the impetus for other civil rights movements, including women's, gay and lesbian, and welfare rights. Even though minorities—and later women—won hard-fought protections through federal civil rights legislation passed by Congress in the 1960s and 1970s, it was only much later that the rights of persons with disabilities were also protected by federal legislation.

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Three major pieces of civil rights legislation were passed by the Congress in the 1960s: the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Civil Rights Act of 1968 (also known as the Fair Housing Act of 1968). Although the Civil Rights Act of 1964 prohibited discrimination on the basis of race, religion, and national origin in organizations receiving federal funds, and barred discrimination in employment and public accommodation (i.e., bus stations, restrooms, and lunch counters), it did not cover people with disabilities. The Voting Rights Act of 1965 only protected the voting rights of minorities. In turn, the Civil Rights Act of 1968 included Title VIII, which prohibited discrimination on the basis of race, religion, national origin, and sex in the sale and rental of housing. Although critically important, these bills failed to directly ensure the rights of people with disabilities. Moreover, although women were soon recognized as a protected class, it was not until the 1988 Fair Housing Act that people with disabilities were also covered. Another law that prohibited discrimination against people with disabilities was Section 504 of the Rehabilitation Act of 1973. Although significant, this bill did not protect those with disabilities from discrimination by employers, by private-sector accommodations, by publicly funded programs, and by those providing federal financial assistance. It took 17 years for the ADA to provide comprehensive protection and to address the areas not covered by Section 504 (VCU/DBTAC, n.d).

The ADA was the most comprehensive legislation for people with disabilities ever passed in the United States. It extended similar civil rights to people with disabilities that other groups already had on the basis of race, sex, national origin, and religion. Similar to other civil rights legislation, the ADA prohibited discrimination on the basis of disability in private-sector employment, in state and local government activities, and in public accommodations and services, including transportation (Administration on Developmental Disabilities, n.d). Although the extension of civil rights to persons with disabilities satisfied some supporters by establishing protective parity with other marginalized groups, it alienated others, especially small employers, who believed they were hurt by the accommodation requirements of the Act. The ADA is composed of five titles that cover the following:

- Title I: Employment: Prohibits discrimination in employment against people with disabilities and requires employers to make reasonable accommodations.
- Title II: Public Services: Requires local and state governments to make their programs and services accessible to people with disabilities.
- Title III: Public Accommodations: Privately owned entities cannot exclude or segregate individuals with disabilities, unless the requirements are necessary for the operation of the public accommodation.
- Title IV: Telecommunications Services: Telephone companies must provide devices for the hearing impaired and all federally funded television programs must include closed captioning.

- Title V: Miscellaneous Provisions: Addresses the ADA's relationship with other federal and state laws, and requirements relating to insurance, construction, and design regulation.

The ADA is enforced through designated federal agencies and covers most private and public entities, including all businesses with 15 or more employees. Despite complaints about the ADA's vigorousness, the law allows for exceptions around significant difficulties in implementation. For instance, Titles I and II allow exceptions to the requirement of providing reasonable public accommodations if they impose undue hardship on an employer, or pose a direct threat to the health or workplace safety of others. Removal of architectural or communication barriers in existing buildings (Title II) must only be carried out if readily achievable, otherwise alternative methods must be provided (Bricout, 2007; U.S. Department of Justice, 1995).

### What Constitutes a Disability?

Multiple definitions of disability exist. One medical definition of a disability is that it is a chronic disease requiring various forms of treatment. A second definition derived from the medical model and used to determine eligibility in the Social Security Disability Insurance program characterizes people with disabilities as those unable to work or unable to work as frequently in the same range of jobs as people without disabilities (Roth, 1987). These definitions view people with disabilities as inherently less productive than other members of society. A third definition of disability is based on the inability to perform certain functions expected of the able-bodied population. As Roth (1987) maintains, "The functional limitation, economic, and medical models all define disability by what a person is not—the medical model as not healthy, the economic model as not productive, the functional limitation model as not capable" (p. 8).

A newer definition, the psychosocial model, views disability as a socially defined category. In other words, people with disabilities constitute a minority group that experiences discrimination. Congruent with social work values, this definition locates the problem in the interaction between people with disabilities and their social environment. Therefore, the adjustment to disability is a social challenge requiring the adjustment of society. This definition requires that society reconsider its attitudes, eliminate stereotypes, and remove the physical and transportation barriers placed in the way of people with disabilities. In part, this definition of disability was expressed in Section 504 of the Rehabilitation Act of 1973.

Almost from its inception, the ADA suggested questions about what constitutes a disability. Some supporters argue that it is not broad enough, whereas others argue that the categories are too encompassing. Nevertheless, the ADA defines a person with a disability as someone with a physical or

mental impairment that substantially limits one or more major life activities; has a record of this impairment; or is regarded as having such an impairment. The ADA definition of disability is necessarily broad to avoid excluding anyone with a legitimate claim.

### How Widespread Are Disabilities?

The U.S. Census Bureau (2002) reports that almost one in five Americans self-report some kind of disability, with one in ten experiencing a severe disability. About 8% to 17% of the population between the ages of 20 and 64 have a disability that limits their ability to be employed, and about half that number are disabled to the point where they cannot work or can work only irregularly (see Tables 1 and 2). Under ADA's definition more than half of all those 65 and older have a disability (U.S. Department of Commerce, 1997). Of the 51 million Americans with disabilities, fewer than 4 million are legally blind, deaf, or in a wheelchair. These data help illustrate the vague interpretation around what constitutes a disability, thereby allowing large numbers of people with varying levels of broadly defined disabilities to seek protection under the ADA.

### Has the ADA Been Effective?

Although the range of disabilities is vast, most people with disabilities share a central experience rooted in stigmatization, discrimination, and oppression. Given that, it is not surprising that rates of disability are greatest among the aged, African Americans, the poor, and blue-collar workers (Hendricks, Schiro-Geist, & Broadbent, 1997). Compared to people without disabilities, those with disabilities tend to be more frequently unemployed and underemployed and therefore often fall below the poverty line. Disability is frequently positively correlated with poor education, age, and poverty. African Americans are twice as likely as Whites to have some level of disability and their representation is even higher in the totally disabled population. More women than men have disabilities. The problems of low wages and unemployment are exacerbated because people with disabilities often need more medical and hospital care than others, are less likely to have health insurance, and

**TABLE 1** Disabled Persons, Age 21–64

Disability	% employed <sup>a</sup>
Difficulty hearing	68.1
Difficulty seeing	55.3
Mental disability	47.2
Difficulty walking	40.8

*Note.* From U.S. Census Bureau (2006).

<sup>a</sup>Persons might have more than one type of disability.

**TABLE 2** Characteristics of the Civilian Noninstitutionalized Population by Age, Disability Status, and Type of Disability, 2002

	Number (in thousands)	%
Total all ages	282,831	100.00
With any disability	51,235	18.1
Total population 6 years and older	259,387	100.00
With any disability	10,746	4.1
Total population 15 years and older	222,226	100.00
With any disability	46,124	20.8
Sensory	14,828	6.7
Physical	43,555	19.6
Mental	14,329	6.4
Self-care	3,611	1.6
Total population 25–64 years	149,031	100.00
With any disability	24,350	16.3
Sensory	7,162	4.8
Physical	20,853	14.0
Mental	8,229	5.5
Self-care	1,831	1.2
Going outside the home	3,685	2.5
Employment disability (age 16–64 years)	29,359	19.7
Total population 65 years and over	33,742	100.00
With any disability	17,646	52.3
Sensory	6,920	20.5
Physical	21,733	64.4
Mental	3,921	11.6
Self-care	1,738	5.2
Going outside the home	4,921	14.6

*Note.* From U.S. Census Bureau (2006).

spend more of their own money on medical care than do the able-bodied (Blanck, 1996; Karger & Stoesz, 2009; Kim, 1996).

The economic hardship experienced by the disabled population is astounding. For instance, about 73% of persons with disabilities are unemployed, 22% do not complete high school, and 26% live below the poverty line (by comparison, only 8% of persons without disabilities are poor; Bricout, 2007; Bureau of Labor Statistics, 2009; Disabled People's International, 2006; Kopeks, 1995; McNeil, 2000; NOD/Harris, 2000). Moreover, the median income for people with severe disabilities was \$12,800 in 2002 compared to \$25,000 for the nondisabled population (Disabled People's International, 2006). College-educated people with disabilities earn less money over the course of their lifetime than their nondisabled counterparts (Bricout, 2007; Hendricks et al., 1997).

The preceding data suggest that the ADA has not been successful in improving the economic conditions of people with disabilities; yet self-reports indicate some improvement. Whereas a NOD/Harris (1998) survey found that 58% of respondents with disabilities stated that the ADA had not significantly

improved their lives, a 2000 NOD/Harris survey found that 63% of respondents with disabilities believed their life had indeed improved in the last decade. Consequently, the jury is still out on whether ADA beneficiaries perceive that the bill has dramatically changed the quality of their lives.

Like other civil-rights-based legislation, the ADA has provoked criticism and a reaction from some of those compelled by the law to accommodate the disabled. This backlash is aggravated by the persistent belief that some people under the ADA umbrella are malingerers. This criticism is reminiscent of the age-old differentiation between the worthy and unworthy poor. Moreover, the problem of determining who is disabled is compounded by those whose disabilities are not readily apparent, such as persons with soft muscle disabilities and mental or emotional problems who appear to be robust, fit, and able to work. Bricout (2007) noted that several studies have found commingled positive and negative views, stereotypes, and attitudes toward people with disabilities among employers, neighbors, peers, teachers, and others (Bruce, Harman, & Baker, 2000; Clark, 1997; Hernandez & Keys, 2000; Silverman & Segal, 1996).

A key issue that marks civil rights legislation is whether the ADA is perceived as having gone too far. In other words, has the legislation tipped the balance the other way and created reverse hardship or discrimination? Within the context of the ADA this question revolves around four separate but related features: (a) opportunity versus the civil rights of others (whether the ADA unfairly advantages one group over another); (b) abuse (whether the ADA is being abused by fit and unworthy malingerers); (c) economics and the high cost of compliance (whether provisions of the ADA cause extreme economic hardship for employers and others required to comply with its provisions); and (d) whether the ADA has succeeded in improving the lives of people with disabilities. The answers to these questions depend, of course, on who is asked.

A major goal of the ADA was to promote employment opportunities for people with disabilities. Americans with disabilities typically experience severe employment difficulties even in a robust economy, but the economic downturn appears to have exacerbated their situation. By October 2009 the unemployment rate for persons with a disability was 16.5% compared to 9.2% for persons with no disability. In late 2009 only 21% of persons with disabilities were in the labor force, compared to 71% of the general population (Bureau of Labor Statistics, 2009). Although these data suggest that the economic impact of the ADA has been less than successful, the employment and economic data might have been far worse without the ADA.

### Creating ADA-Related Employment Barriers

Paradoxically, although the ADA has led to the removal of important barriers to employment, it might have led to the creation of equally problematic ones.

Given the litigious nature of American society and the aversion of employers and institutions to lawsuits, at least some employers will likely view hiring a person with disabilities as an invitation to a lawsuit. Others fear that ADA provisions insulate employees with disabilities from being fired, lest the employers risk a court case. Still others believe that the vague language of the ADA makes it difficult for employers to comply with its provisions, thereby inviting lawsuits. For example, compliance with the ADA will influence the interaction of employers and applicants by limiting questions about an applicant's disability. Instead of encouraging open dialogue around work expectations and allowing applicants with disabilities to address their strengths, employers often circumvent the problem by simply not interviewing applicants with disabilities. Moreover, some employers fear that employees with a disability could use the ADA to mask their incompetence or inappropriateness on the job.

As Bricout (2007) pointed out, employers' fear of ADA-related lawsuits is a valid concern because almost 17,000 ADA-related complaints or lawsuits were filed in 1999 alone. Although employers won 95% of these lawsuits and 85% of administrative complaints, the disposition was expensive. Some analysts claim that employer costs to address these charges can range from \$10,000 to as high as \$75,000 (Hudgins, 1999).

A 1998 study of Equal Employment Opportunity Commission records showed that so few employees won their cases largely because they failed to prove substantial limitations to functioning (Porter, 1998). More than 33% of ADA complaints were filed because of back problems (19.5%), emotional problems (11.4%), or alcoholism and drug abuse (3.6%). About 6% of complaints involved vision or hearing problems and only 12% involved those with spinal cord injuries or other neurological problems (Mathews, 1995).

The economic costs of the ADA are also a disputed item. To better understand the ADA it is useful to divide the bill's direct and indirect costs into two separate categories: outright spending and investments that could generate future taxes by increasing productivity. Bricout (2007) noted that the cost of most workplace accommodations is relatively low, ranging from \$100 to \$500 (Batavia, 1997; Bruyere, 2000; Jonse, Watzlaf, Hobson, & Mazzoni, 1996; Morely & Hyatt, 1996). Other indirect job accommodation costs, such as flexible scheduling or job sharing, might improve productivity and retention, or might result in the need for additional supervisors and breed resentment among coworkers who perceive this as special treatment (Bruyere, 2000; Burkhauser, 1997; Frierson, 1992; Pati & Bailey, 1995).

Anecdotal reports exist of several nonproductive costs associated with the ADA apart from workplace investments. Lloyd (2008) documented the impact of ADA lawsuits on small businesses in San Francisco. In 2008 the owners of a small chocolate shop were served with an ADA accessibility lawsuit, in which the wheelchair-bound plaintiff alleged that he had visited

the store six times and was prevented from entering it because of a curb step. According to Lloyd, the suit forced the owner to lay off three full-time employees and run the shop by himself. If the case ended up in court, the shop owner believed that legal costs would have resulted in shutting down the business. Lloyd maintained that a rash of ADA accessibility lawsuits has been visited upon San Francisco, enraging many local merchants and neighborhood advocates. These lawsuits were allegedly filed by a multimillionaire attorney who specialized in ADA lawsuits. The lawyer was reported to have targeted small businesses because they were less likely to wage an expensive legal battle given that settlements were typically around \$4,000. Choosing to close down his Carmel, California, hotel because of an ADA access suit, Clint Eastwood referred to the ADA suit as legalized racketeering.

### Court-Imposed Limits on the ADA

Although the ADA was founded on good intentions, it was an open-ended bill that allowed the courts to determine the parameters of the law. This vagueness proved an invitation to lawsuits, which resulted in the scope of the ADA being largely defined by Supreme Court cases. For instance, a 2001 Supreme Court ruling in *University of Alabama v. Garrett* (2001) found that state governments are immune from lawsuits in job discrimination claims. This decision suggested that the Supreme Court did not view the employment protection for people with a disability as being equivalent to that offered to individuals belonging to a racial or ethnic minority.

In *Sutton v. United Airlines, Inc.* (1999), the airline refused to hire twin sisters who were regional pilots because they had uncorrected vision of 20/400. The Sutton sisters claimed that they were disabled within the parameters of the ADA either because they suffered from a physical impairment that “substantially limits . . . major life activities,” or because they were regarded as having such an impairment. The Court found for United Airlines and determined that poor vision that was correctable could not be regarded as an impairment that limited the Suttons’ life activity.

In *Murphy v. United Parcel Service, Inc.* (1999) the company fired a mechanic because of his high blood pressure. When Vaughn Murphy was hired by UPS in a mechanics position that required him to drive commercial trucks, he was appraised as meeting Department of Transportation (DOT) health guidelines. However, Murphy was fired when UPS discovered that his blood pressure exceeded DOT requirements. Murphy, in turn, claimed that his medication made him able to work and therefore his firing was unlawful under the ADA. The Supreme Court found for UPS when it ruled that high blood pressure was not a “substantial impairment” that might limit one’s life activities and thereby justify protection under the ADA. The Court concluded that to be designated as “disabled” an employee must be unable to perform more than just one task. In both cases, the Supreme Court ruled

that the ADA does not cover people whose disabilities can be sufficiently controlled with medicine, eyeglasses, or other corrective measures.

Concerned that the original intent of the ADA was being circumvented by the courts, Congress passed the Americans With Disabilities Amendments Act (AADA) in 2008. This measure paved the way for more antidiscrimination lawsuits by broadening the scope of the ADA and therefore enabling more employees to meet the threshold definition of disabled. In effect, the majority of future court cases will likely be decided on whether an employee is discriminated against rather than on whether he or she is disabled. Specifically, under the AADA the determination of whether an impairment substantially limits a major life activity must be made without regard to the effects of mitigating or corrective measures, except for eyeglasses or contact lenses.

### The ADA and Social Work Education

Social work education programs train and credential professionally competent social work practitioners. As such, there is an implicit assumption that any student who earns a master's or bachelor's degree in social work is capable of helping rather than hurting clients. At the same time, the social work profession is committed to promoting a society free of discrimination, including discrimination toward persons with disabilities.

The gatekeeping role of social work education is often frustrated by an institutional aversion to litigation. In an increasingly litigious society, greater numbers of students and faculty in the United States retain legal counsel over what they consider to be a breach of their rights. In many instances, these cases are settled out of court because universities are averse to prolonged legal battles and unfavorable publicity. Faced with spurious disability grievances, the resolve of universities and schools of social work is particularly weak because neither wants to be viewed as antagonistic toward people with disabilities. Hence, some university administrators are reluctant to question the disability claims of students, even if they appear bogus. Such is the slippery slope of the ADA.

Problematic areas of the ADA surface in schools of social work in two primary areas: mental health issues and learning disabilities. A small yet significant number of applicants to social work programs experience minor or major mental health problems, including depression, anxiety disorders, and even schizophrenia. The dilemma is whether schools of social work are obligated to accept these applicants under the ADA. Should social work programs admit and credential graduates with significant mental health problems to comply with the ADA? Or should they circumvent the bill? Although virtually all veteran instructors have at some time encountered students with severe mental disorders, it is unclear how many instructors have acted on it. Conversely, the National Association of Social Workers (NASW)

Code of Ethics clearly states that “Social workers should not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of race, ethnicity, national origin, color, sex, sexual orientation, gender identity or expression, age, marital status, political belief, religion, immigration status, or mental or physical disability.” It goes on to state that “Instances may arise when social workers’ ethical obligations conflict with agency policies or relevant laws or regulations. When such conflicts occur, social workers must make a responsible effort to resolve the conflict in a manner that is consistent with the values, principles, and standards expressed in this Code” (NASW, 2008).

Issues around the ADA also emerge in grading and class performance in social work education. For instance, there is a concern among some social work faculty that increased numbers of students are turning to obtaining a learning disability diagnosis to justify inadequate class or test performance. These students request special assignments, special test-taking procedures, the use of editors or grammatical software programs, and special tutors. Some might even go so far as to argue that writing skills are not a necessary prerequisite for professional competence (an argument that is difficult to justify) and therefore should not factor into the class grade.

Although learning disabilities constitute a serious problem, and in legitimate cases, persons with such difficulties should be fully accommodated in classroom settings, the gray area of intellectual disability poses a challenge for social work educators. Are students who cannot write well learning disabled, or have they just not mastered those skills? Is it appropriate for students with certain learning disabilities to enter into a profession that requires a high level of systematic conceptual and analytical thought? Although admittedly only a small percentage of students exploit the ADA, it nevertheless creates an uneven playing field that penalizes diligent students while rewarding those who have found an angle to make their education easier. This inevitably results in the demoralization of students and faculty who play by the rules.

At the end of the day, entering or continuing on the path of a social work career is not an entitlement. Moreover, the gatekeeping function and implicit mandate of social work education is to ensure that clients—most of whom are highly vulnerable—receive the highest level of service from the best trained graduates. Licensing laws are an outgrowth of that mandate. A slippery moral slope exists when social work education—and the social work profession in general—is faced with the conundrum of meeting the needs and expectations of intellectually or emotionally challenged students versus the obligation to provide the highest level of service to present and future clients. If push comes to shove, it would appear that the needs of vulnerable clients ought to trump those of vulnerable social work students.

## CONCLUSION

The inherent problems within the ADA manifest themselves in myriad ways. Its vague language allows for a definition of disabilities that often stretches the imagination. Some disabilities provide a loophole whereby those who refuse to take responsibility for their behavior can comfortably hide under the umbrella of a protected class. The most egregious part of exploiting the ADA is how it trivializes real disabilities. Those people for whom the ADA was originally intended, those with severe physical and mental disabilities, end up lumped together with others who have suspect disabilities. As nuisance claims and lawsuits proliferate, judicial actions will continue to limit the intent and spirit of the ADA. The unfortunate victims of this backlash will be those who most need the protection of the ADA.

The unclear expectations on what constitutes appropriate accommodations for people with disabilities is likely having a chilling effect on the employment prospects of the disabled population. Fears of costly litigation and administrative grievances are driving some employers to be suspect, if not downright hostile, to hiring workers with a disability. Reflecting an all too common irony in social policy, the ADA might be having the exact opposite effect of the intent of the legislation.

Creating yet another protected class has its drawbacks. The ADA defines people with disabilities as a vulnerable population in need of social protection. Moreover, the ADA assumes a priori that all people with disabilities choose to define themselves in terms of their disability and thus opt to be part of a protected class. However, there are those who choose to define themselves otherwise.

American social policy is fabricated on a piecemeal approach that puts vulnerable populations into an almost infinite number of "protected class" categories. It then proceeds to protect each category from the marketplace and from other categories. If the ADA's purpose is to transition people with disabilities into the social mainstream through employment, then how can putting people into yet another protected box facilitate that goal? By segregating the disabled into a protected class, they are being further isolated from mainstream American society. Social policy legislation should not further balkanize American society; instead it should create conditions that allow all people to participate as equal citizens with equal protections under the law. Piecemeal approaches to equality and fairness are always suspect in terms of their impact.

Like all legislation, the ADA is still evolving, and despite its problems, should not be abandoned. The vacuum left by the elimination of the ADA would likely be filled by a patchwork of federal, state, and local laws driven by politicians and state legislatures more concerned with states' rights than human rights. On the state or local level, the fate of the disabled population

could well end up in the hands of persons and parties opposed to civil rights. In that scenario, concepts like civil rights, distributive justice, and social equality would be a distant memory.

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