

Allegations of Employment Discrimination under the ADA and Resolutions: Population Characteristics and Trends

Amy N. Davis, Michael D. West, and
Brian T. McMahon

This study investigates allegations of workplace discrimination made by job-seekers and workers across three main impairment groups including general disability, chemical dependence and psychiatric disability. Specifically, the types of allegations and resolutions were compared across disability classifications and demographic characteristics. Demographic characteristics of individuals making allegations were consistent with those of individuals with disabilities in the general population. A number of statistically significant relations were found with respect to both allegations and resolutions; however, some of these differences may not be socially significant. Approximately 79% of allegations were related to post-hire issues, such as discrimination in promotion and termination, disciplinary actions, and harassment. While initial allegations reflect the individuals' perception that they have been discriminated against, the majority of allegations investigated by the EEOC are decided in favor of employers.

Introduction

Discrimination in the workplace has been an issue for individuals with disabilities some time (Bishop & Allen, 2001; Cook, 2006; Martin, Brooks, O'Day, 1998; Ortiz, & Veniegas, 2003; Rumrill, Roessler, & Koch, 1999). Title VII of the Civil Rights Act of 1964 created the Equal Employment Opportunity Commission (EEOC) as an independent federal agency with the authority to receive, initiate, and investigate allegations of employment discrimination. The EEOC investigates claims of workplace discrimination involving several Federal laws: Title VII of the Civil Rights Act of 1964 (Title VII), Equal Pay Act of 1963 (EPA), Age Discrimination in Employment Act of 1967 (ADEA), Title I and Title V of the Americans with Disabilities Act of 1990 (ADA), Sections 501 and 505 of the Rehabilitation Act of 1973, and the Civil Rights Act of 1991. According to the ADA (§ 12101), 43,000,000 Americans are estimated to have one or more physical or mental disabilities. This number is increasing as the population as a whole grows older, and is now estimated at 54,000,000, nearly one of every six Ameri-

cans (McNeil, 1997). The ADA defines an individual with a disability as a person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of said disability, or is regarded as having such impairment. The ADA also protects applicants and employees from discrimination based on their relationship or association with an individual with a disability, whether or not the applicant or employee has a disability.

The ADA requires that an employer make accommodation to a qualified employee or applicant provided that it does not impose "undue hardship" on the employer; i.e., providing it is "reasonable." That being said, a qualified applicant or employee is one who can perform the essential functions of a job with or without reasonable accommodations, and only qualified individuals are protected. The ADA defines accommodations as modifying existing facilities making them accessible, restructuring job tasks, or acquiring the appropriate equipment or technology to accommodate the individual.

Obviously, "reasonable accommodations," "substantial limitation," and "regarded as" disabled are all

terms involving a measure of subjectivity. For this reason, the EEOC is prepared to conduct and resolve investigations fairly and accurately in light of all evidence obtained. Many American businesses, however, voluntarily support trying to end workplace discrimination in an effort to reduce the costs of time, money, and image (National Organization on Disability, 2002). Some employers are also willing to hire workers with mental retardation or other disabilities in order to be considered "good corporate citizens" (Johnson, Greenwood, & Schriener, 1998; Olson, Cioffi, Yovanoff, & Mank, 2001)

The ADA covers employers with 15 or more employees as well as labor unions and employment agencies. When an individual with a disability has been "wronged" under the auspices of one of these laws, a charge can be filed with the EEOC. The individual filing the charge is defined as the Charging Party (CP). The employer is defined as the Respondent. The EEOC offers the Respondent the option of resolving the charge via mediation, settlement, or conciliation, which may save the employer time and money. If none of these options are optimal or successful, an investigation is set into motion and the possibility of a lengthy litigation becomes probable. A statistic published by the EEOC states that in the fiscal year of 2005 alone, 14,893 charges of disability discrimination were received by the EEOC and 15,357 cases were resolved. In Fiscal Year 2006 alone, the EEOC recovered \$44.8 million in monetary benefits for CPs and other aggrieved individuals.

To keep things in perspective, it should be noted that in order for individuals to be protected under the ADA they have to disclose that they have a disability. Because many disabilities are not apparent just from appearance, individuals sometimes choose not to disclose for fear they will be subject to discrimination. However, if an individual wants the right to the protection of the ADA, disclosure must occur. This may not seem like much of a problem, given the new and creative technologies that are developed to aid employees with disabilities. In spite of this, however, disabilities still affect the ability of many employees and their ease of placement in the work force (Schwochar & Blanck, 2003). This directly impacts the decision of individuals to disclose their disability to their employer.

The first purpose of this study is to describe the universe of allegations and resolutions of workplace discrimination derived from Americans with disabilities as previously categorized. The second purpose is to identify observable trends in allegations and resolutions by gender, age and race.

Method

Data Source and Reduction

The data used in this study were drawn from a database maintained by the EEOC of ADA Title I allegations closed between July 26, 1992 (the first effective date of ADA Title I) and September 30, 2003. The final data set consisted of 122,677 unduplicated, closed records with an allegation basis across the three main impairment groups of GENDIS (general non-behavioral disability), Chemical Dependency and Psychiatric Disability (Behavioral Disability) (refer to Table 1 for specific impairments within these groups). For the purposes of this study, the category of "other disabilities" was not included because of the unknown nature of the impairments represented in this group. Also excluded were CPs who have record of disability, are regarded as having impairment, and those who have a relationship or association with an individual with a disability, because individuals in these groups are likely to not be disabled at the time the allegation was filed, and therefore their inclusion would confound the study.

It is important to note that each record, and thus the unit of analysis for this study, is an allegation, not the CP. A single CP may make more than one allegation in a single complaint, or may make the same allegation on more than one occasion. Each allegation made by a CP represents one of the 122,677 records.

Study data were strictly limited to allegations brought under Title I of the ADA. Allegations brought under other federal employment statutes were not considered, including the Civil Rights Act, Equal Pay Act, Age Discrimination in Employment Act, and the Family and Medical Leave Act. In addition, charges brought under State anti-discrimination statutes were excluded due to wide variations in definitions of disability, discrimination, or remedies for breach.

To maximize confidentiality, all information regarding the CP and the Respondent was purged except for descriptive data. For the CP, this included age, race and ethnicity, gender, and type of impairment.. Each allegation is coded by the EEOC investigator into one of 40 possible discrimination issues. These were reduced to three areas of discrimination:

- 1) Getting a job (e.g., discrimination in recruitment, interviewing, and hiring);
- 2) Working conditions (e.g., discrimination in assignments, advancement, disciplinary actions, or demotions; permitting an antagonistic work environment); and
- 3) Keeping a job (e.g, discriminatory termination or layoff, return to active status from layoff).

When an allegation is closed, it becomes a resolution either with merit or without merit. Merit resolution

Table 1. Disability Type by Category

Type	N	Common reported impairments
GENDIS (General Non-Behavioral)	70,768	Allergies, asthma, back impairment, chemical sensitivities, cancer, diabetes, epilepsy, orthopedic impairment, mental retardation, neurological impairment, brain/head injury, cerebral palsy, missing digits or limbs
Chemical Dependency (Behavioral)	6,110	Substance abuse, alcoholism, drug abuse
Psychiatric Disability (Behavioral)	45,799	Emotional psychiatric impairment, anxiety disorder, depression, manic/depressive disorder, schizophrenia, other psychiatric disorders

indicates that evidence of discrimination based on disability has been found whether or not the Respondent accepts the remedy for breach (penalty, remediation or consequence) prescribed by the EEOC. A resolution without merit indicates that there is insufficient evidence to conclude that actual discrimination did occur, or the matter was closed for a technical or administrative reason. Examples of the latter might include the following: the Respondent was not covered under ADA Title I, the allegation was withdrawn, or the CP was not a qualified person with a disability.

Statistical Analyses

To describe the universe of allegations of workplace discrimination based on all three impairment groups, frequencies were computed for demographic characteristics of the Charging Parties and Respondents and broken down by discrimination issue as well as merit of resolution. To identify observable trends, allegations as described by discrimination issues and types of resolutions were calculated and compared across impairment groups as well as across gender, age and race. Chi-square goodness-of-fit statistics were used to compare impairment groups, age, gender and race across the three categories of allegations (getting a job, working conditions, keeping a job). Likewise, Chi-square goodness-of-fit statistics were used to compare impairment groups, age, gender and race between the two types of resolution (merit vs. non-merit). Frequencies and percentages are provided for Respondent demographics broken down by discrimination issue as well as merit status of resolutions.

Results

Table 2 through Table 5 cross-tabulate CP characteristics by type of allegation, including CP disability, sex, age and race. As shown in Table 2, the most frequent type of issue for all three disability groups was in keeping a job. However, individuals with chemical

dependency were far less likely to allege discrimination in getting a job and more likely to allege discrimination in keeping a job to a statistically significant degree ($\chi^2=1300$, $df=4$, $p<.0001$).

Significant relationships were also found for allegation by sex ($\chi^2=324.0$, $df=2$, $p<.0001$), age ($\chi^2=319.3$, $df=8$, $p<.0001$), and race ($\chi^2=22.8$, $df=6$, $p<.0001$). In general, males were more likely to allege discrimination in keeping a job, and females were more likely to allege discrimination in working conditions. Older CPs (ages 36 and up) were more likely to allege discrimination in working conditions, while younger CPs (age 21 and under) were more likely to allege discrimination in keeping a job. CPs of the primary minority races (African-American and Hispanic) were more likely to allege discrimination in working conditions, while Caucasian CPs and those of "other races" were more likely to allege discrimination in keeping a job.

Resolutions

Tables 6 through 9 present cross-tabulations of CP characteristics and resolutions of the allegations. Significant relationships were found in cross-tabulation of resolution by disability group ($\chi^2=195.5$, $df=2$, $p<.0001$), age ($\chi^2=26.5$, $df=4$, $p<.0001$), and race ($\chi^2=212.5$, $df=3$, $p<.0001$), but not by sex. Allegations by CPs with general disabilities were more likely to be decided in favor of the CP vs. allegations made by members of other disability groups. Allegations by older CPs (over 65) were more meritorious than those below 65. Allegations made by Caucasian CPs and those classified as "other races" were more meritorious than those of other racial/ethnic groups. This means that more actual (vs. perceived) discrimination was experienced by these groups.

Table 2. Types of Allegations by CP Disability Group

	<u>"Get Job"</u>		<u>"Work Conditions"</u>		<u>"Keep Job"</u>	
	n	Row%	n	Row%	n	Row%
GENDIS	14,174	23.5%	19,407	32.2%	26,770	44.4%
Chemical Dependency	520	9.8%	1,545	29.2%	3,232	61.0%
Psychiatric Disability	7,407	18.6%	15,313	38.5%	17,021	42.8%

* $p < 0.0001$ * $df = 4$ **Table 3. Types of Allegations by CP Sex**

	<u>"Get Job"</u>		<u>"Work Conditions"</u>		<u>"Keep Job"</u>	
	n	Row%	n	Row%	n	Row%
Female	11,260	22.0%	18,547	36.2%	21,391	41.78%
Male	10,828	20.0%	17,676	32.7%	25,579	47.30%

* $p < 0.0001$ * $df = 2$ **Table 4. Types of Allegations by CP Age**

	<u>"Get Job"</u>		<u>"Work Conditions"</u>		<u>"Keep Job"</u>	
	n	Row%	n	Row%	n	Row%
Under 21	58	16.7%	83	23.9%	207	59.48%
21 to 35	4,155	19.8%	6,473	30.9%	10,316	49.26%
36 to 50	11,167	21.4%	18,440	35.3%	22,607	43.30%
51 up to 65	4,422	21.1%	7,685	36.6%	8,898	42.36%
65 or Older	266	18.2%	556	38.1%	636	43.62%

* $p < 0.0001$ * $df = 8$ **Table 5. Type of Allegations by CP Race**

	<u>"Get Job"</u>		<u>"Work Conditions"</u>		<u>"Keep Job"</u>	
	n	Row%	n	Row%	n	Row%
Caucasian	14,616	21.7%	22,291	33.1%	30,416	45.18%
African American	3,850	18.9%	7,608	37.4%	8,887	43.68%
Hispanic	1,392	19.9%	2,739	39.1%	2,868	40.98%
Other	1,996	20.9%	3,253	34.0%	4,319	45.14%

* $p < 0.0001$ * $df = 6$

Table 6. Type of Resolution by CP Disability Group

	Resolved in Favor of Charging Party		Resolved in Favor of Respondent	
	n	Row%	n	Row%
GENDIS	15,612	22.1%	55,156	77.9%
Chemical Dependency	1,059	17.3%	5,051	82.7%
Psychiatric Disability	8,737	19.1%	37,062	80.9%

**p<0.0001 * df = 2*

Table 7. Type of Resolution by CP Sex

	Resolved in Favor of Charging Party		Resolved in Favor of Respondent	
	n	Row%	n	Row %
Female	12,214	20.9%	46,154	79.1%
Male	13,167	20.5%	51,019	79.5%

Table 8. Type of Resolution by CP Age

	Resolved in Favor of Charging Party		Resolved in Favor of Respondent	
	n	Row%	n	Row%
Under 21	90	21.6%	326	78.4%
21 to 35	5,090	21.2%	18,970	78.8%
36 to 50	12,063	20.0%	48,310	80.0%
51 up to 65	5,203	20.8%	19,761	79.2%
65 or Older	407	23.2%	1,344	76.8%

**p<0.0001 * df = 4*

Table 9. Type of Resolution by CP Race

	Resolved in Favor of Charging Party		Resolved in Favor of Respondent	
	n	Row%	n	Row%
Caucasian	17,125	21.7%	61,742	78.3%
African American	4,175	17.8%	19,287	82.2%
Hispanic	1,430	17.9%	6,570	82.1%
Other	2,365	21.4%	8,677	78.6%

**p<0.0001 * df = 3*

Discussion

Limitations of the Data

The EEOC ADA database provides succinct records of allegations and decisions regarding employment discrimination. Its primary purpose is to inform the EEOC and Congress of discrimination issues, and therefore there are some limitations with regard to research investigations that use the data. For example, the database only includes allegations that are reported to the EEOC, not those that are resolved internally between the employee and employer, or those that employees choose not to pursue. Nor does the database include allegations brought at the state level. However, it should be noted that the EEOC ADA database represents the entire population of EEOC-investigated and closed discrimination cases, and in that respect generalizability of the findings are not at issue.

Major Findings and Implications

The category of "keeping a job" accounted for the largest proportion of allegations made by individuals with disabilities. For all groups, the majority of allegations were in the area of job retention, indicating that nearly half of the CPs were already employed or had been employed at the time the alleged action occurred. The percentage of allegations closed with merit, i.e., in favor of the CP, was always markedly lower than allegations closed without merit, i.e., in favor of the Respondent.

CPs with general disabilities represented approximately 57% of the data set. This percentage is consistent with prevalence rates of like disabilities in the general population (U.S. Census Bureau, 2000). In addition, the demographic characteristics of CPs mirrors epidemiological studies and such disproportionate statistics are likewise prevalent in males and minority group members. These consistencies support the face validity of and provide credence to the IMS dataset with respect to its representation of adults with disabilities.

The data are clear that most allegations of discrimination occur post-hire. Approximately 79% of allegations were related to post-hire issues, such as discrimination in promotion and termination, disciplinary actions, and harassment. Discrimination in recruitment or hiring practices accounted for only about one-fourth of allegations. Unfortunately, the EEOC dataset does not include the time frame (i.e., pre-hire or post-hire) in which the CPs disclosed their disabilities to employers (or even if they did so). This precludes our ability to examine the degree to which presence or timing of disclosure influences discrimination. This is certainly an area that warrants further investigation but

which cannot be adequately addressed through the EEOC data.

Seven of the eight cross-tabulations and chi-square analyses revealed statistically significant differences; however, it should be noted that many of these statistical differences are not necessarily significant from a practical standpoint, with differences of only a few percentage points between groups. This is the limitation of chi-square analyses with very large populations. However, some interesting relationships were revealed.

For example, it is interesting that CPs with chemical dependencies were less likely to allege discrimination in hiring and more likely to allege discrimination in keeping a job than were CPs in the other groups. One plausible explanation for this anomaly is that chemical dependencies are not visible disabilities, are less likely to be disclosed at hire, and more likely to result in disciplinary actions when the CP's work is affected by the effects of his or her dependencies.

It is also telling that patterns of allegations and resolutions varied to some degree by sex, race, and age, which are also areas in which employees are protected from discrimination under Federal law. It is feasible that discrimination (or perceptions of discrimination) may be influenced by a combination of personal characteristics of the alleging party, not just based on his or her disability. If so, it would be feasible that claims made under the ADA could have been made based on race, sex or age under the Civil Rights Act, Equal Pay Act, or the Age Discrimination in Employment Act.

Finally, it is notable that cases were resolved in favor of the CP more frequently when the CP has general disabilities (22.1%) as opposed to chemical dependency (17.3%) and psychiatric disability (19.1%). While the difference is only a few percentage points, the significant finding is that individuals with general disabilities have a 16% better chance of a merit resolution than individuals with psychiatric disability, and a 28% better chance than individuals with chemical dependency. It is plausible that workers with general disabilities are more able to be accommodated and/or more able to perform the essential functions of their jobs than are members of the other two groups. This is certainly an area that warrants further investigation.

The data are also clear that most allegations of discrimination by job-seekers and employees with disabilities are ultimately decided by the EEOC to be without merit. This is consistent with prior findings from studies of the EEOC data. For example, Rumrill, Roessler, McMahon, and Fitzgerald (2005) found that only 25% of all allegations by individuals with multiple sclerosis were closed with merit. While it is an undeniable fact that many individuals with disabilities, whether it is a general disability, chemical dependency or a psychiatric disability, perceive themselves to be victims of employment discrimination, the majority

of allegations investigated by the EEOC are decided in favor of employers.

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Author Notes

Address correspondence to Dr. West at P. O. Box 842011, Richmond, VA 23284-2011. Phone: 804-828-5957, fax: 804-828-2193, email: mdwest@vcu.edu.



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