

Allegations of Reasonable Accommodation Discrimination by People with Visual Impairments Filed Under Title I of the Americans with Disabilities Act: Characteristics of Merit vs. Non-Merit Resolutions

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This article describes findings from a causal comparative study of merit resolutions versus non-merit resolutions for allegations filed under the issue of reasonable accommodation by individuals who are visually impaired under Title I of the Americans with Disabilities Act between 1992 and 2005. Significant characteristics of both the charging parties and the respondents were examined. The major finding in this study is that, for individuals who are visually impaired, the merit rate for reasonable accommodation is proportionally 17% higher than the average merit rate, for this group, for the five other most common discrimination issues (hiring, discharge, constructive discharge, disability harassment/intimidation, and terms/conditions of employment). Results also indicate that a significant decrease in the merit rate for reasonable accommodation for individuals who are visually impaired occurs between the ages of 55-64, but rises to a significantly above average rate for charging parties older than 65. Implications for human resources, management practices, and the development of assistive technology are presented.

A workplace accommodation is any modification to the work environment or to the way the work is usually done that enables an individual with a disability to enjoy equal employment opportunities; this includes the opportunity to attain a similar level of performance or to enjoy equal benefits and privileges of employment as a similarly situated, typical person without a disability. Under Title I of the Americans with Disabilities Act (ADA), employers are required to provide "reasonable" accommodation for employees with disabilities. Some examples of reasonable accommodation given by the Equal Employment Opportunity Commission (EEOC) include: making existing facilities accessible, job restructuring, modifying work

schedules, and acquiring or modifying equipment or services (Job Accommodation Network [JAN], 2008). However, employers are not expected or obligated to do anything that eliminates an essential job function, lowers production standards, or causes them undue hardship. (JAN, 2008)

The issue of reasonable accommodation is the second most common type of allegation filed (at a rate of 18%) under the ADA (McMahon & Hurley, 2008). Furthermore, it also has an impact on other issues of employment, which can have their own charges of discrimination under the ADA. For example, reasonable accommodation can affect hiring discrimination by an employer if the employer does not hire a job candidate

based on that job candidate's need for reasonable accommodation (Crudden & McBroom, 1999; O'Day, 1999) or by not providing reasonable accommodation during the job interview (Unger, Rumrill, & Hennessey, 2005). Also, an employer who fails to address the issue of reasonable accommodation for a particular employee may affect that employee's performance of their essential job functions; this may cause the employee, in turn, to receive poor performance evaluations, possibly leading to his or her being discharged (Rumrill, Roessler, Battersby-Longden & Schuyler, 1998). In addition, the need for reasonable accommodation (for those with visual impairments as well as for those with other disabilities) is often underreported because of fear of reprisals such as losing a job or being passed over for promotion (Frank & Bellini, 2005).

Although a non-adversarial, collaborative approach between the employer and employee is the best way to address reasonable accommodation needs (Rumrill & Scheff, 1997), in this study we examine those cases, for charging parties who are visually impaired, that have led to the actual filing of discriminatory charges at the EEOC. In particular, we look at the different characteristics of merit versus non-merit resolutions. "Resolution" refers to the closure of an allegation of discrimination after a complete investigation by the EEOC has been conducted. A "merit resolution" is an allegation closure which indicates that the allegation had merit, that is to say, that reasonable accommodation discrimination did occur. A "non-merit resolution" is an allegation closure which indicates that the EEOC failed to find sufficient evidence of reasonable accommodation discrimination or that the case was closed on the basis of an administrative technicality.

The research question that guided our study is:

Which characteristics differentiate merit from non-merit resolutions within allegations of reasonable accommodation discrimination by people who are visually impaired filed under Title I of the Americans with Disabilities Act?

Research Design and Method

Data Source: The EEOC Integrated Mission Database

This study is a retrospective analysis of secondary data to identify predictors of reasonable accommodation discrimination in the workplace against people with visual impairments. The EEOC is responsible for enforcing certain federal laws, including the ADA, which prohibit employment discrimination. In addition, the EEOC maintains an information system, named the Integrated Mission System (IMS), which is used to track the filing, investigation, and resolution

of all allegations of workplace discrimination under federal statutes. The IMS contains over two million allegations of employment discrimination and through an Interagency Personnel Agreement between the EEOC and Virginia Commonwealth University, the National EEOC ADA Research Project (the Project) was launched in 2003 and has since received funding (which begun in October of 2006 for a 5-year period) by the National Institute on Disability and Rehabilitation Research.

Project researchers used the IMS to extract a dataset which contains only those allegations *closed* under ADA Title I from the ADA's effective date of July 26, 1992 through September 30, 2005. In order to ensure confidentiality, all identifying information was purged. All discrimination allegations brought under federal statutes other than the ADA were excluded as were those filed under state laws. Also excluded were allegations filed under ADA Title I that were still being investigated or were currently open by the EEOC for litigation, as allegations such as these could not provide information regarding resolution status. Further, other allegations excluded were recording or duplication errors or those allegations filed in an act of retaliation, since these allegations would not offer insight into the existence of or consequence of disability. The remaining Project master dataset consists of 369,182 allegations of employment discrimination filed under ADA Title I with the EEOC. Of note, the unit of interest in this dataset is an allegation, not an individual who filed an allegation since an individual may bring more than one allegation (i.e., two or more charges brought simultaneously if multiple discriminations have occurred at once or two or more charges brought consecutively if multiple discriminations have occurred over a period of time such as one in 1992 and one in 2001).

From the master Project dataset detailed above (with 369,182 allegations), researchers for the current study further extracted a data sub-set of only those allegations of discrimination filed by individuals with visual impairments (for a total of 7,931 allegations) which was finally reduced to only those allegations filed by individuals with visual impairments *and* involving reasonable accommodation (for a final total of 1,481 allegations).

Study Variables

Both for the Project and for the current study, a person who brings an allegation of discrimination is called a charging party (CP) and the employer against whom the allegation is brought is called a Respondent. The following are the variables that pertain to the CP: "basis" or CP's disability; the "issue" or type of discrimination filed in the allegation (e.g. wrongful firing, failure to make a reasonable accommodation, failure to hire); and the race (White, African Ameri-

can, Native American/Alaskan Native, Hispanic, Asian, Mixed Ethnicity, Other, or Unknown), age (grouped for the current study as 16-34, 34-54, 55-64, 65+, or Unknown), and gender (male or female) of the CP. The following are the variables that pertain to the respondent: employer size in terms of the number of employees (15-100, 101-200, 201-500, 501+), employer industry (indicated by the National Industry Classification System [NAICS]), employer region (U.S. Census regions: South, West, Midwest, Northeast, Other, U.S. Territories, Foreign). In addition to CP and respondent variables, the dataset also includes two more variables which pertain to the allegation's resolution: resolution year (1992-2005) and resolution status (i.e., resolved with merit: CP prevails, or resolved without merit: respondent prevails). Resolution Status is dichotomous and the only outcome variable of the dataset.

Data Analysis

In business and other arenas, large databases have been successfully analyzed for important variable differences using an exploratory technique called the Exhaustive Chi-Square Automatic Interaction Detector (CHAID; Kosciulek, 2004; SPSS, 1998). The Exhaustive CHAID algorithm reduces the number of predictor categories by merging categories when there is no significant difference between them (Fielding, 2007). When no more categories can be merged, the predictor can be split and a node (or branch) forms (Fielding, 2007). This splitting process (based on a chi-square statistic) continues forming a hierarchical Exhaustive CHAID classification tree with nodes depicting significant differences in predictor variables in respect to an outcome variable of interest (Fielding, 2007). Because the original CHAID (non-exhaustive) bases significance on the last predictor category split tested, it is not always guaranteed to find the most significant split (Fielding, 2007). In order to remedy this, the *Exhaustive* CHAID (the technique used in the current study) merges categories without taking predictor significance levels into account until only two categories remain for each predictor and then finally splits based on the largest significance value, not on the last predictor tested (Fielding, 2007).

Because the current study involves a relatively large database with multiple predictors (CP: basis (i.e., disability), issue (i.e., alleged discrimination), age, race, and sex; respondent: size, region, and industry; and year of resolution) and a single outcome variable of interest (either a merit resolution or non-merit resolution) the Exhaustive CHAID is a very appropriate technique for use. More specifically, the researchers' intention in using the technique in the current study was to detect which of these above predictor variables differentiate an allegation of reasonable accommodation discrimination resolved without merit from one

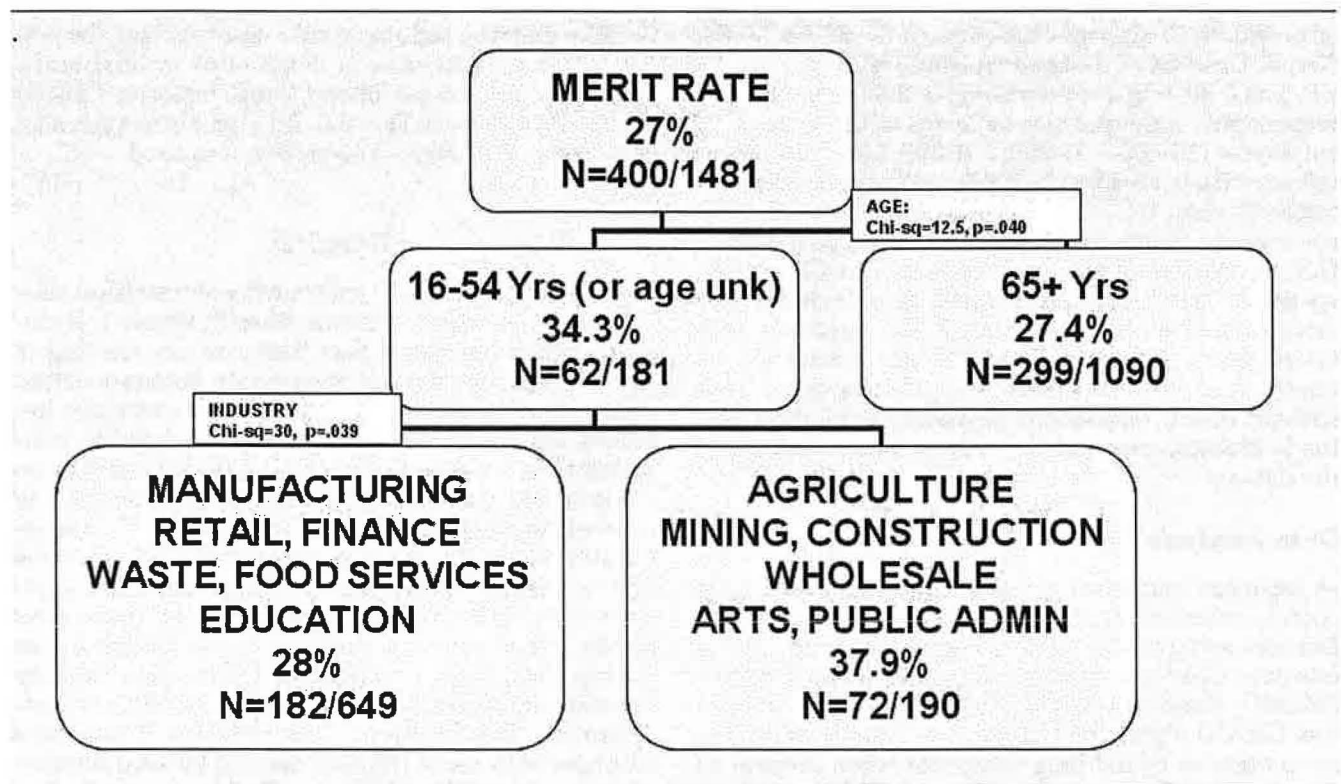
with a merit resolution. The Exhaustive CHAID is flexible and does not require that traditional assumptions be met; the technique only requires that the predictors be measured on a nominal or ordinal scale. Study researchers performed the Exhaustive CHAID using SPSS Answer Tree 2.0. All alpha levels were set at 0.05 and a Bonferoni correction was used.

Results

The Exhaustive CHAID generated a hierarchical classification tree which is shown below in Figure 1. By inspecting the top tier of that tree, one can see that of the 1,481 allegations of reasonable accommodation discrimination filed by people who are visually impaired, 400 (or 27.0%) were resolved with merit, indicating that one who has a visual impairment is more likely to have a merit resolution for an allegation of reasonable accommodation discrimination. This is noticeably above the average merit rate (23% [closures with merit (1,057) divided by total number of allegations (4,538)]) for individuals with visual impairments for the five other most common discrimination issues (hiring, discharge, constructive discharge, disability harassment/intimidation, and terms/conditions of employment). This is also well above the merit rate (22% [closures with merit (80,892) divided by total number of allegations (369,182)]) for all closures (including reasonable accommodation) for all disabilities.

In looking at the middle tier of boxes in Figure 1, it is evident that the most significant driver of merit for this group of allegations is age: The right box on the second tier indicates that those CP's aged 16-54 have a merit resolution rate of 27.4% (299/1090 allegations) or prevail 27.4% of the time; the left box on the second tier indicates that those aged 65+ and those whose age is not known have a merit resolution rate of 34.3% (62/181 allegations) or prevail 34.3% of the time. These high rates of merit are offset somewhat by the 55-64 year age group (not shown) which has a lower merit rate of 18.57% (39/210 allegations) or prevail 18.57% of the time.

By examining the bottom tier of boxes we can scrutinize what drives this exceptionally high merit rate for those individuals ages 16-54 (mostly the traditional working-age years) with visual impairments. The answer is found in the industry classification of the Employer. Specifically, allegations derived from the sectors of agriculture/forestry/fishing/hunting, mining, construction, wholesale trade, and public administration carry a high merit rate of 37.9% (72/190 allegations). This same age group is affected also by industries of s of; a merit resolution rate of 28.04% (182/649 allegations) or prevail 28.04% of the time in the industries of unknown origin, manufacturing, retail trade, transportation/warehousing, finance/insurance, administrative/support/waste management/remediation services, educational ser-

Figure 1. Divers of Merit Resolution for Blind/Low Vision on Issue of Reasonable Accommodation

VICES, and food services which while having a strong merit rate of 28%, are actually driving the group down somewhat. A third group (not shown) has a merit resolution rate of 17.9% (45/251 allegations) in the industries of utilities; information; real estate/rental/leasing; and professional, scientific, technical, and professional; and health care/social assistance.

Discussion

The major finding in this study is that, for individuals who are visually impaired, the merit rate for reasonable accommodation is 4 percentage points higher (a proportional increase of 17%) than the average merit rate, for this group, for the five other most common discrimination issues (hiring, discharge, constructive discharge, disability harassment/intimidation, and terms/conditions of employment). It is also 5 percentage points higher (a proportional increase of 23%) than the merit rate for all closures (i.e., including all individuals with all impairments). As one can see, the proportional increases are significant. It should also be noted that these increases cannot be attributed to the charging party simply using more selectivity in bringing his or her charges forward in the case of reasonable accommodation (i.e., filing fewer non-merit charges): as the number of charges filed is actually 48% higher than would be expected on average (i.e., if

the charges by individuals with visual impairments were evenly divided among the six issues).

One potential reason for the higher merit rate could be because reasonable accommodation is relatively more concrete to substantiate than such issues as, for example, harassment/intimidation and would thus make it easier to prove a meritorious charge. However, one other important, potential reason for the higher merit rate is that employers have been noted to have strong negative attitudes toward reasonable accommodation even while having positive attitudes toward the ADA (see McMahon, et al., 2008). Therefore, it is likely that fewer cases of merit for reasonable accommodation are settled without a charge being filed (compared to the other five common discrimination issues). Consistent with this interpretation is the fact that significantly above the expected number of charges are filed for reasonable accommodation. This would suggest that more employer education is needed to change their attitudes particularly toward reasonable accommodation and preferably have them engaged in the education process before charges are even filed. In the meantime, persons who are visually impaired should be made aware of this prevalent discrimination (which can also impact other areas, such as hiring; see McMahon, et al., 2008) and trained in the self-advocacy skills that he or she will need (Rumrill, 2001).

Number of Charges and Merit Rate as a Function of Age

Most charges filed by those individuals with visual impairments for reasonable accommodation discrimination are filed by persons between the ages of 16-54, with an average of 28 charges per year compared to 21 charges per year (25% lower) for ages 55-64 and approximately 18 charges per year (36% lower) for ages 65 and over (the latter includes those of unknown age and is calculated assuming a 10 year span in the ages). This, however, does not mean that employers are more enlightened with increasing duration of employment by individuals who are visually impaired (if we assume, on average, that an older age of the CP is reflective of a longer duration with an employer). In fact, using the data from years 1994-5 provided by Kirchner and colleagues (Kirchner, Schmeidler, & Todorov, 1999) as an indication of the employment patterns of individuals who are visually impaired as a function of age, the number of people employed decreases by 48% in the age range of 55-64 and 75% in the age range of 65-69, compared to those of aged 16-54. Thus, the number of charges filed per employed person actually increases significantly with age. This suggests that those who stay in the workforce beyond age 55 are more assertive of their rights. It also suggests that reasonable accommodation is an ongoing concern that does not end when careers are stabilized. This means that support from state rehabilitation offices needs to be provided over the whole career of an individual, not only in the early years.

When looking at the merit rate as a function of age, one thing that is interesting to note is that the merit rate, which is 27% for the age group of 16-54, drops drastically for CPs between the ages of 55-64. For this age group the merit rate is 18.6% which is far below both the average merit rate for reasonable accommodation for individuals who are visually impaired of 27% and the merit rate for the five other discrimination issues (23%). One possibility is that this is simply due to an increase in charges filed for the age range of 55-64, resulting in a lower percentage of successful cases; however, an increase in filing charges is also true for the above 65 age range where the merit rate is 34%.

One hypothesis of what is happening in the 55-64 age group, which is disconcerting if true, is that the barriers at this stage of employment to equal opportunity have no currently known accommodation solution (i.e., that there are one or more essential job functions that cannot be modified or excluded). One could describe this as an "accommodation ceiling" preventing the equal opportunity for the charging parties to advance in their careers. Consistent with this interpretation is the fact that the average monthly pay of workers who are visually impaired is 37% lower than that of people who are not disabled (Unger et al.,

2005). In addition, many employees who are visually impaired, of all age groups, have reported that they are underemployed (Unger et al., 2005). Unfortunately we cannot definitively prove our hypothesis, as the non-merit resolutions of the database, for this age group, as in general, do not contain any information as to the reasoning for the outcome. However, evaluating the non-merit resolutions is an important research question as, if our hypothesis is true and if there are some common essential job functions that are most problematic, the results of this research could play an important role in guiding what problems on which assistive technology should focus. (Note that it is likely at this age that non-technology related reasonable accommodation solutions such as job restructuring or modifying work schedules have already been addressed.)

We should also point out that no "currently known accommodation solution" can be a relative statement. Title I of the ADA expects the CP to have the initiative to know what accommodations he or she needs. In fact, one of the main reasons for the accommodation process breaking down is due to the CP not knowing this answer (Rumrill, 2001). Therefore, in addition to the research question posed above, individuals who are visually impaired should be made aware of the consulting services of groups like the Job Accommodation Network and the availability, additionally, of a database of solutions. This is true in general, as although the overall merit rate for reasonable accommodation is high compared to other discriminatory issues, there are still 73% of charges that are found to be an unsupported claim.

For the next age group, ages greater than 65, the merit rate is 34%: far exceeding even the overall merit rate for reasonable accommodation for individuals who are visually impaired. This is likely because at this age range, individuals are generally entering a new life stage and, rather than continuing in their original job, are taking on a new, second job after retirement. These second jobs are more likely to be entry or lower level positions, as in the general population, for which it may be easier to prescribe a reasonable accommodation solution. The CP is also likely to know the solution as he or she is likely to have been through the process before, earlier in their career. This again emphasizes, by contrast, the support and research that is needed in advanced stages of a career, where the solution may not be so obvious, if individuals with visual impairments are to continue advancing up the career ladder.

However, the high merit rate for ages greater than 65, coupled with the fact that significantly more charges are filed per employee at these ages, suggests another issue. It appears that employers are even more unwilling to voluntarily provide reasonable accommodation for individuals in this age group who are visually

impaired. This is possibly because employers feel that the individuals will not be with the company for a long period of time, particularly as retirement is normative at age 65. However, as employers typically pay only \$300 for job accommodations (JAN, 2008) which makes cost only a minor issue. Educating employers more effectively as to the limited inconvenience job accommodation creates would also have the advantage of allowing younger individuals who are visually impaired feel more mobile in the workforce.

16-54 Age Group and Merit Rate as a Function of Industry

For industries involving utilities, information, real estate and leasing, professional, scientific and technical services, and health care and social assistance the merit rate is 18% which is far below the average merit rate for reasonable accommodation for individuals who are visually impaired (27%). This rate suggests that these industries understand the accommodation needs of visually impaired persons somewhat better than other industries. This is supported by the fact that this group includes those industries for which individuals need to be fairly well-educated: Employers who voluntarily contacted the Job Accommodation Network tended to do so for providing for fairly well-educated employees (JAN, 2008).

For industries involving agriculture, mining, construction, wholesale, arts, entertainment and recreation, and public administration the merit rate is 38%, far above the overall average merit rate for reasonable accommodation for individuals who are visually impaired. This rate suggests that these companies really do not know what to do to accommodate an individual who is visually impaired. Most of these industries are not "office-based", which suggests that these companies may be aware of reasonable accommodation but think that solutions do not apply to their industry. However, the high merit rate supports the assertion of Rumrill and colleagues (Rumrill, Schuyler, & Longden, (1997) that the employee is the best person to identify his or her on-the-job barriers and to determine ways to remove those barriers. Although, in general, there are still a significant number of non-merit resolutions suggesting that support services would still be beneficial to individuals who are visually impaired in these industries.

We would also like to point out one significant anomaly in the data in that public administration is included amongst industries with this very high merit rate. This seems very odd considering governments have had to comply with protections for people with impairments for a much longer time than private industries. Although we cannot think of an explanation for this, it behooves governments to address this issue to set a good example for private industry.

Conclusion

The major finding in this study is that, for individuals who are visually impaired, the merit rate for reasonable accommodation is significantly higher than the average merit rate for the other discrimination issues in the EEOC database combined. The characteristic of the CP's with this high merit rate (of 27%) was that they were within the age group of 16-54. Between the ages of 55-64 the merit rate dropped drastically (to 19%), to below the merit rate, for individuals who are visually impaired, for the other five common issues (23%). Then the merit rate for CP's over the age of 65 increased dramatically (to 34%), even compared to the age group of 16-54. Other characteristics of the CP, such as gender and race/ethnic makeup did not appear to factor into the variations in merit rate. These results suggest the need for resources for individuals who are visually impaired to assess and request accommodation needs over their entire career, not merely in vocational training before being hired or when first hired. It also raises the possibility that there is an "accommodation ceiling", appearing in the 55-64 age group, preventing the equal opportunity for the CP's to advance in their careers. Further investigation of this issue could provide key direction for those who develop assistive technology to aid in alleviating this problem.

Within the CP age group of 16-54, the type of industry of the respondent appeared to be an important component as to whether the resolution outcome was merited or not. By understanding which industries are most and least likely to have a merit outcome against them, stakeholders in the employment of individuals with visual impairments can develop strategies to counter discrimination in reasonable accommodation. Those industries that tend to understand reasonable accommodation for individuals who are visually impaired the best are: utilities, information, real estate and leasing, professional, scientific and technical services, and health care and social assistance. Those industries that tend to understand reasonable accommodation for individuals who are visually impaired the least are: agriculture, mining, construction, wholesale, arts, entertainment and recreation, and public administration. On the whole, industries that are less "office-based" seem to understand reasonable accommodation the least, suggesting more studies need to consider solutions to reasonable accommodation needs in more unique situations.

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