The Rehabilitation Professional, 22(4), pp. 207–216

The P Problem and the Estimation of Worklife Expectancy Losses in Personal Injury Cases

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Abstract. To the extent that vocational rehabilitation experts assert worklife expectancy losses in personal injury cases, they must understand, and be prepared to analyze, the participation rate and the employment rate components of worklife expectancy. It is shown that 79-91 percent of the statistical decline in worklife expectancy for the self-defined disabled is a decline in participation rates, not the employment rates which are the more typical focus of forensic vocational analysis. The problem is enlarged because voluntary declines in participation due to injury may fail the duty to mitigate damages.

At least eight factors have been identified, which might be quantified by Forensic Economists based upon a vocational rehabilitation report and lead to differentiations of pre- and post-injury earning capacity and other scenarios (Brookshire, 2014). The most common, and most obvious, is a differentiation of likely earnings levels between pre- and post-injury scenarios. However, if worklife expectancy (time in the labor force and/or time working) reductions can be scientifically estimated by a vocational rehabilitation expert, and quantified by an economist, this worklife difference may be a significant part of a lost earning capacity estimate, perhaps the largest factor in the loss estimate, or the only component of lost earning capacity in a particular case. This possible loss element, and the scientific basis for establishing such a loss component, has been a contentious issue among both vocational rehabilitation experts and forensic economists.

Not only the methods of quantifying loss of earning capacity due to worklife differences but also the data used in such quantification have been criticized in numerous studies and articles. Two widely used data sources are the *Current Population Survey* (CPS) and the *American Community Survey* (ACS). These two surveys provide data on persons who self-define themselves as being disabled via their answers to questions. It has been argued that the CPS and ACS surveys do not provide accurate or reliable data on the earnings or employment of people with disabilities (Ciecka et al. 2002; Jones, 2005; Jones, 2006; Ireland, 2009). Originally, the CPS and ACS disability questions were created only as a guide for the government survey administrator. Their purpose was to direct the survey questions so that if a respondent answered "Yes" to a disability question, they could be asked further questions concerning their sources of income. The CPS and ACS data were not intended to be used to make a specific disability diagnosis or draw conclusions about an individual (Hale, 2008). A devastating criticism is that in the CPS March Supplement surveys, where persons may self-define themselves as disabled, the responses of the same household can be matched from one year to the next. When government researchers studied these comparisons for 2003 versus 2004 CPS March Supplements, approximately one-third of persons who self-defined themselves as disabled in one year did not do so in the other year (Burkhauser, 2006). Thus, there is little scientific basis to use these government data to suggest that large chunks of a working lifetime are lost due to disability. Notwithstanding these criticisms of the data sources which underlie the quantification of a partial disability loss, this paper will focus on another large problem for vocational rehabilitation experts and forensic economists who attempt to quantify economic losses from reduced worklife expectancy in personal injury cases.

Understanding Definitions Related To Worklife Expectancy

The U. S. Bureau of Labor Statistics and U. S. Department of Labor have specific definitions for the two sub-components of working life and their combination (see U. S. GPO, 2014), which can be illustrated with a simple example. Assume 1,000 persons in a relevant

population, 800 are either employed or actively seeking work (participating in the labor force), and 720 of these 800 are actually employed. Important values are as follows:

$$\text{Participation (P) Rate} = \frac{800}{1{,}000} = 80\%$$

$$\text{Employment (E) Rate} = \frac{720}{800} = 90\%$$

$$\text{Employment-to-Population Ratio} = \frac{720}{1{,}000} = 72\%$$

$$\text{Joint PE Rate} = 80\% \times 90\% = 72\%$$

A common mistake is that the employment-to-population ratio is labelled as the "employment rate", and one may believe that the only important numbers in the above are 720 and 1,000. In fact, the joint PE rate is always equal to the employment-to-population ratio, and declines in the value of the ratio, perhaps because of injury, represent declines in the participation rate, declines in the employment rate, or a combination of both.

It should be noted that many economists define worklife expectancy as the sum of future years, and parts of years, participating (Skoog et al., 2011), while others focus upon future years employed (Millimet et al., 2010); life expectancy is a small variable also considered in either definition. The distinction in worklife definitions is rarely emphasized in personal injury cases, because a focus on worklife means discussing a difference in employment-to-population ratios (joint PE rates) between an injured plaintiff and either "all persons" or "non-disabled persons." This means an understanding of, and ability to analyze, changes in both participation rates and employment rates.

The Vocational Rehabilitation Expert and Worklife Losses

It is the role of vocational rehabilitation experts to establish a deviation of post-injury worklife expectancy below pre-injury worklife expectancy; certainly, economists are not trained to assess reductions in working life due to either physical or cognitive injuries (Barrett, 2014; Brookshire, 1987; Taylor, 2007). Yet, vocational reports, which discuss worklife expectancy in personal injury cases, may not make a distinction between the participation versus employment components of working life, or their analysis may only deal with declines in employment rates, or their analysis may indicate confusion between participation rate versus employment rate effects.

The focus by vocational rehabilitation experts on employment rates has existed since the early vocational literature relating to a quantification of reduced worklife expectancy (Dillman, 1988). Forensic Vocational Experts and their literature often discuss labor market access, employability, the ability to compete in the labor force, and/or the ability to obtain and maintain employment. All of these are employment rate issues. They relate to the demand-for-labor decisions of employers to hire or not, rather than the supply-of-labor decisions by individuals to try or not; the participation rate, stated simply, is the rate of try. Even in the often cited RAPEL model, where the "L" is a focus on labor force participation, insufficient help is available for actually quantifying a reduction in the participation (try) rate of a specific plaintiff, and discussions of longer search times and part-time employment, for example, mix participation and employment rate issues (Field, 2008; Taylor, 2007). Any discussion of reduced participation due to injury must be based upon recognition that the participation decision by an individual, as measured by the U. S. government, is a yes or no decision to try to find and hold a job or not. One does not participate for better or worse jobs. Neither does one "effectively participate." Effective participation would seem to mean that one who tries to find a job actually does find (and hold) a job, which is again an issue of the employment rate.

Further adding to Vocational Experts' and Forensic Economists' confusion are data sources such as Cornell (Employment and Disability Institute, 2014), which incorrectly state that they are providing statistical data on the "employment rates" of persons with disabilities, when they are really providing what labor economists know as joint PE rates. This confusion of terminology extends into the international arena where organizations such as the World Health Organization incorrectly refer to employment-to-population ratios as "employment rates" (World Health Organization, 2011). The Gamboa-Gibson statistical tables on worklife expectancy for the self-defined disabled explicitly re-define the correct terminology, joint PE rates, to incorrect terminology, "employment rates" (Gamboa & Gibson, 2010).

Yet, the proper distinction between participation rates and employment rates is not a nitpicky exercise, as seen in both extreme and more typical injury cases. In a case of catastrophic injury, the vocational opinion may be that residual earning capacity does not exist. This is not a conclusion based upon a zero wage rate when attempting to find work. Rather, it is the participation rate that has been forced to zero by the injury, which means that the PE rate is zero and post-injury earning capacity is zero. In a more typical case of either physical or cognitive injury, it may be true that the employment rate declines, even for a lower-paying set of jobs, but the ability to try to find a job is unaf-

fected. Thus, any decline in the PE rate must be established as a decline only in the employment rate.

The P Problem and Its Importance

A problem for Vocational Rehabilitation Experts (and Forensic Economists) is that they are better qualified, and more comfortable, assessing employment effects from personal injury than participation effects in most cases. This is important because 79-91 percent of the declines in employment-to-population ratios (PE rates) for the self-defined disabled are declines in participation rates, not declines in employment rates. To the extent that Forensic Vocational Experts rely, in their judgments of worklife declines, on available data sources and tables, it can be shown that the same data establish the dominance of participation rates in assessments of worklife expectancy losses.

Table 1 shows an analysis of worklife losses for average disabled persons using 2013 Current Population Survey data. In these calculations, the total joint PE decline in non-disabled versus disabled persons is attributed either to a decline in participation or a decline in employment. It is shown that the participation-induced decline for disabled persons in the joint PE probability is 90.8 percent. The employment induced decline is 9.2 percent (see Appendix).

Similarly, using 2012 ACS data, it is shown in Table 2 that the participation-induced decline for disabled persons in the joint PE probability is 85.2 percent, and the employment-induced decline is 14.8 percent. The ACS data may be further divided into specific disability cat-

Table 1
*2013 CPS Data. Analysis of Worklife Losses for Average Disabled Persons**

	Non-Disabled	Disabled	%Decline
(P) Participation Rate	76.2%	31.4%	58.8%
(E) Employment Rate	92.8%	85.3%	8.1%
PE Rate	70.7%	26.8%	62.1%

Note. The 58.8% P-induced decline is 90.8% of the PE decline of 62.1%. The 8.1% E-induced decline is 9.2% of the PE decline of 62.1%. The 58.8% P-induced decline is 94.6% of the PE decline of 62.1%. The 8.1% E-induced decline is 13.0% of the PE decline of 62.1%. These add to 107.6% because of an overlap issue. By mathematically eliminating this issue, the P-induced decline is 56.4% and the E-induced decline is 5.7% of the 62.1% PE decline. The P-induced decline of 56.4% is 90.8% of the 62.1% PE decline (56.4% divided by 62.1%). The E-induced decline of 5.7% is 9.2% of the 62.1% PE decline (5.7% divided by 62.1%). See Appendix. * Source: Bureau of Labor Statistics, "Persons With A Disability: Labor Force Characteristics-2013," USDL-14-1076, civilian non-institutional population, age 16-64, Released June 11, 2014.

Table 2
*2012 ACS Data. Analysis of Worklife Losses forAverage Disabled Persons**

	Non-Disabled	Disabled	%Decline
(P) Participation Rate	80.8%	40.5%	49.9%
(E) Employment Rate	91.3%	81.4%	10.9%
PE Rate	73.8%	33.0%	55.3%

Note. The 49.9% P-induced decline is 85.2% of the PE decline of 55.3%. The 10.9% E-induced decline is 14.8% of the PE decline of 55.3%. The 49.9% P-induced decline is 85.2% of the PE decline of 55.3%. The 10.9% E-induced decline is 14.8% of the PE decline of 55.3%. The 49.9% P-induced decline is 90.1% of the PE decline of 55.3%. The 10.9% E-induced decline is 19.7% of the PE decline of 55.3%. These add to 109.8% because of an overlap issue. By mathematically eliminating this issue, the P-induced decline is 47.2% and the E-induced decline is 8.2% of the 55.3% PE decline. The P-induced decline of 47.2% is 85.2% of the 55.3% PE decline (47.2% divided by 55.3%). The E-induced decline of 8.2% is 14.8% of the 55.3% PE decline (8.2% divided by 55.3%). * Source: U.S. Census Bureau, "Employment Status By Disability Status and Type," civilians, non-institutionalized, age 18-64, 2012 American Community Survey 1-Year Estimates.

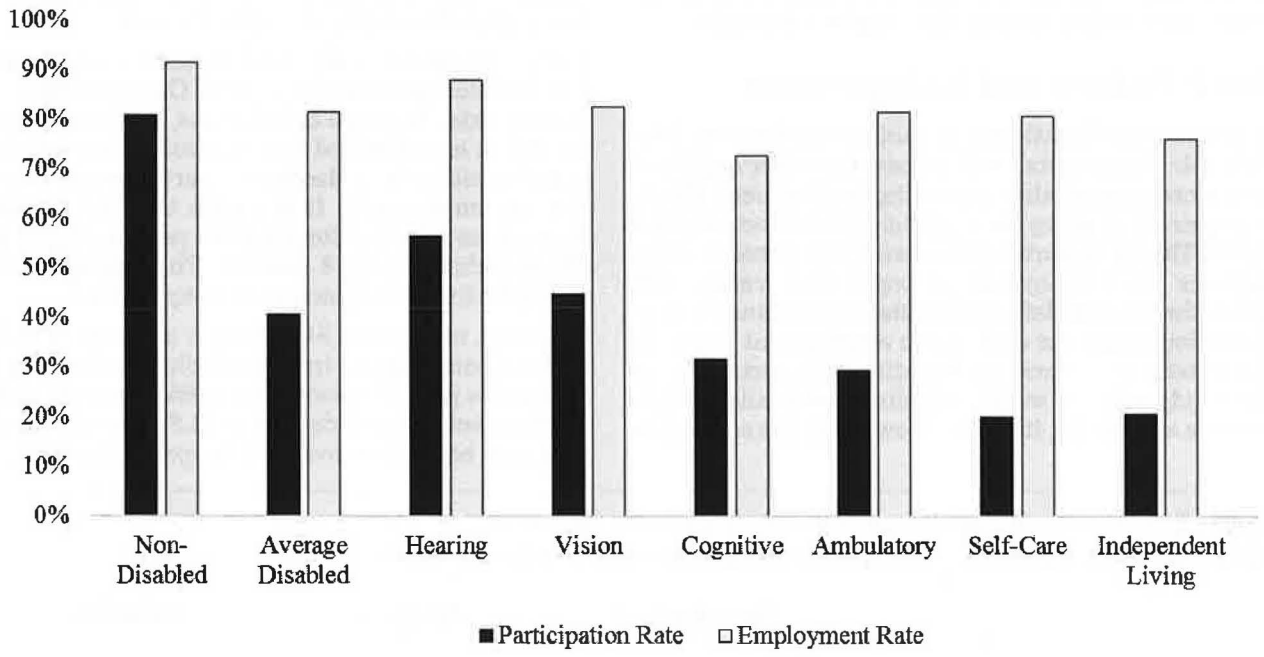

Chart 1. 2012 ACS Data: Participation and Employment Rates by Disability Types. Source: U.S. Census Bureau, *Employments Status by Disability and Type*, civilians, non-institutionalized, age 18-64. 2012 American Community Survey 1-Year Estimates.

egories. Depending on a respondent's answer to survey questions, they may be placed into one of six disability categories: hearing disability, vision disability, cognitive disability, ambulatory disability, self-care disability, or independent-living disability. A simple "yes/no" question is used to place individuals in the non-disabled or average disabled categories. While worklife analysis calculations for all disability categories are not presented here, Chart 1 graphically shows how participation and employment rates vary across all ACS categories of disability. Clearly, a decline in participation rates is the dominant factor in lower joint PE probabilities for persons with a disability.

The largest employment rate effect on the joint PE decline comes from the use of ACS data for cognitively disabled persons versus non-disabled persons. From this data set, the participation-induced decline for the disabled in the joint PE probability decline is 79.4 percent, and the employment-induced decline is 20.6 percent (United States Census Bureau, 2012).

The same results hold from data presented in the so-called "New Worklife Tables" (Gamboa & Gibson, 2010), because data from the historical section of the document provide the properly-defined participation rates and employment rates for non-disabled versus disabled persons. The participation-induced decline for disabled males in the joint PE probability decline is 89.5 percent, and the employment-induced decline is only 10.5 percent.

Finally, in certain types of personal injury cases, such as permanent injury to minor children, a vocational rehabilitation expert may assert a difference in education attainment due to the injury, and worklife expectancy does increase as education level increases. It remains true, however, that sources of worklife expectancy differences by education level show declines in PE rates are predominately declines in the rate of try. For males, approximately 63-75 percent of the statistical decline in worklife expectancy from one educational attainment category down to the next is due to a decline in participation rates. For females, a decline in participation results is 50-93 percent of the statistical decline in worklife expectancy from one educational level down to the next (Snyder & Dillow, 2013).

The Additional P Problem: The Duty to Mitigate

Those who would attempt to estimate lost earning capacity from PE declines face a significant problem in addition to the difficulty of dealing with the P variable, but it is also a "P" problem. A reason that Forensic Economists subtract residual, or post-injury, earning capacity from pre-injury earning capacity is the legal principle that an injured plaintiff has a duty to

mitigate damages. This legal principle is also known as the Doctrine of Avoidable Consequences. The amount of damages must be reduced by harm that a plaintiff might have avoided by reasonable effort after the tort. One elaboration of "reasonable effort" is that it not involve undue risk, expense, burden, or humiliation. The burden of establishing a failure to mitigate damages rests with the defense (Lord, 2012; Purver, 2013).

The logic of the duty to mitigate in a post-injury scenario applies to participation rates more clearly and powerfully than to employment rates. It would not seem that an individual, in attempting to find a job, bears an unreasonable risk, expense, burden, or humiliation. The employment rate, on the other hand, involves decisions by employers to hire or retain an individual who is participating. An individual could sabotage an employment opportunity, of course, but the participation rate of a specific person involves the decisions and actions of that particular person to try or not to try. Any voluntary decline in participation after an injury may disappear as a source of lost earning capacity because it fails the duty to mitigate damages.

Research has not extended into the reasons for non-participation as this might relate to the duty to mitigate and the calculation of lost earning capacity in personal injury cases. Moreover, adequate data are not available to separate out involuntary declines in P rates from voluntary declines in most personal injury cases. The lack of a scientific basis for dealing with the participation rate declines which dominate worklife statistics for the disabled is coupled with the lack of a scientific basis for dealing with the duty to mitigate damages embedded in reduced, statistical P rates and PE rates.

Allow us to conclude the above with what the problem(s) of participation rates may mean to forensic vocational experts—and the forensic economists who utilize their work:

1. Unless a Vocational Rehabilitation Expert is knowledgeable and comfortable with relevant literature on worklife expectancy, and the participation and employment components of possible reductions in worklife due to injury, he or she may wish to refrain from asserting a specific worklife expectancy loss in a personal injury case.
2. Conclusions about worklife losses, based upon statistical sources discussed in this article, cannot support a worklife loss analysis which does not emphasize a decline in the ability to try to find work.
3. When worklife loss input is provided to a forensic economist as a foundation for loss calculations, the vocational rehabilitation expert should be prepared to discuss participation versus employment rate reasons for declines in worklife expectancy due to injury.
4. Within the topic of participation (try) rate declines, the vocational rehabilitation expert should be prepared to discuss voluntary versus involuntary declines in participation and how any voluntary declines relate to the duty to mitigate damages.
5. Vocational rehabilitation experts should understand that worklife expectancy differences by education level, like differences by self-defined disability status, are dominated by differences in participation rates, not employment rates.
6. The vocational rehabilitation expert on the defense would certainly investigate the participation versus employment nature of a worklife loss asserted by his or her plaintiff counterpart and should understand issues of involuntary versus voluntary declines in labor force participation and of voluntary non-participation and the duty to mitigate.

Further research on the participation component of worklife declines due to injury would seem to be an important area of research and inquiry by vocational rehabilitation experts. Interdisciplinary research with forensic economists would also be important and useful. The concept of worklife expectancy losses in personal injury cases is straightforward, but the problem(s) of the participation component in worklife expectancy losses is a significant challenge to be addressed.

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Appendix

Table 1, "2013 CPS Data Analysis of Worklife Losses for Average Disabled Persons," can be used as an example to illustrate a problem in calculating the percent of both the participation (P) rate and employment (E) rate declines attributable to the total joint participation and employment (PE) rate decline. If calculated intuitively, the P-induced decline in Table 1 (58.8%) is 94.6% of the total PE decline of 62.1%. Similarly, the E-induced decline (8.1%) is 13.0% of the total PE decline. However, 94.6% + 13.0% = 107.6%. Why does this happen?

Chart 2 is a visual representation of the PE rate analysis, again using Table 1 as an example. Point "B" (92.8%, 76.2%) on the coordinate plane represents the participation and employment of non-disabled individuals, and point "D" (85.3%, 31.4%) represents the participation and employment of average disabled persons. The light gray region P1,B,C,P2, then, represents the effect of the decline in participation and the dark rectangle region A,B,E1,E2 represents the effect of the decline in employment. The rectangle A,B,C,D is an area where the two regions overlap. It is this overlap that results in a "double-count" in the P and E declines attributable to the total PE rate decline and that causes our values to add up to over 100%.

It can be shown that the light gray rectangle P1,B,C, P2, as a percentage reduction from the non-disabled PE rate, rectangle P1,B,E1,0, is equal to the percent decline in participation. This will be referred to as *Equation 1*:

$$\frac{P1 \times E1 - P2 \times E1}{P1 \times E1} = 1 - \frac{P2}{P1} = \frac{P1 - P2}{P1} = \%\Delta P$$

Similarly, the dark rectangle A,B,E1,E2 as a percent reduction from the non-disabled PE rate is equal to the percent decline in employment.

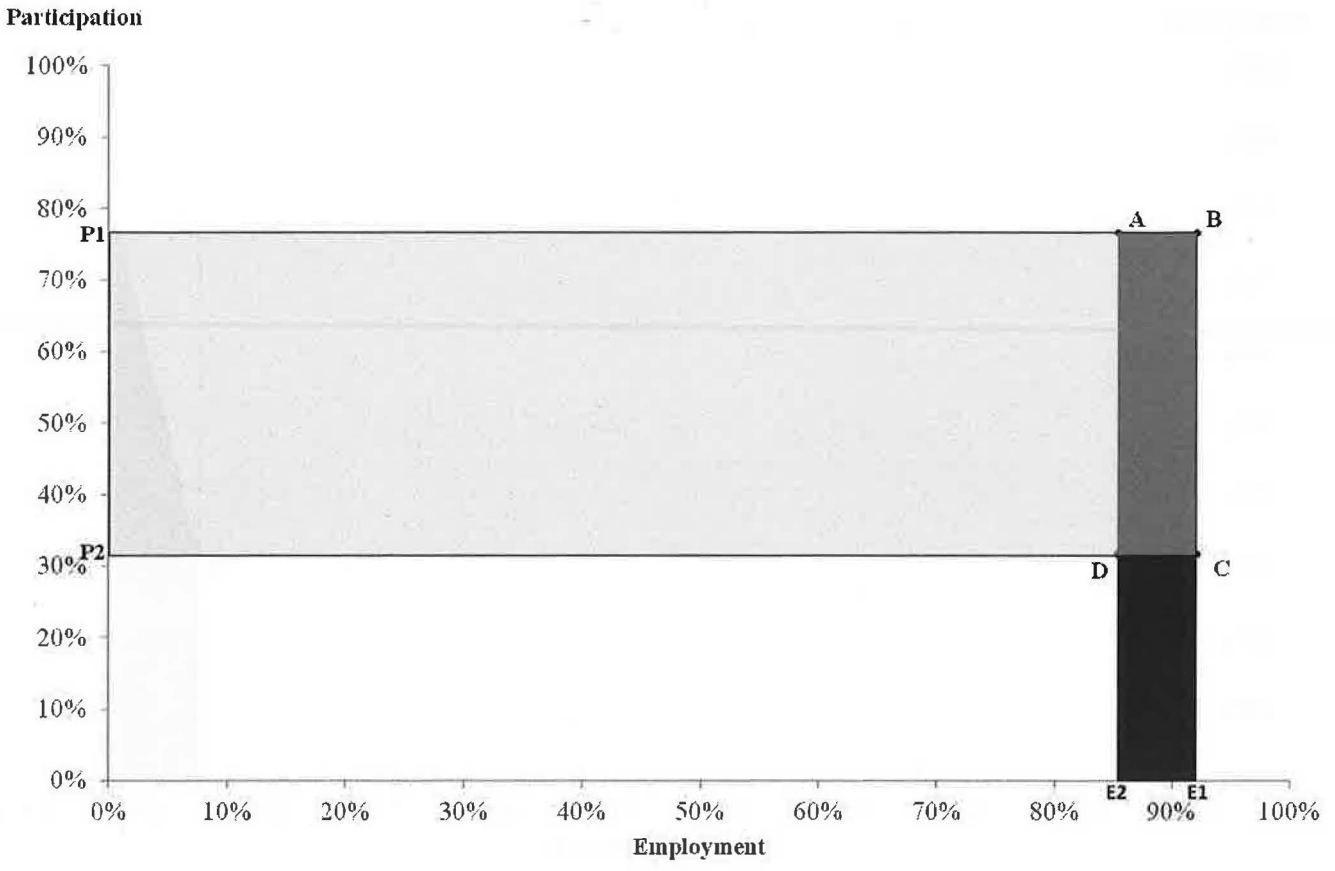

Chart 2. The overlap in PE decline with disability.

We can subtract out the area of the rectangle A,B,C,D to correct for the overlap of the two regions. It can be shown that the area of this region as a percent reduction from the non-disabled PE rate is equal to the percent change in participation multiplied by the percent change in employment. This will be *Equation 2*:

$$\frac{(P1 - P2) \times (E1 - E2)}{P1 \times P1} = \frac{P1 - P2}{P1} \times \frac{E1 - E2}{E1} = \%\Delta P \times \%\Delta E$$

Combining *Equations* 1 and 2, we have:

$$\%\Delta P + \%\Delta E - \left(\%\Delta P \times \%\Delta E\right) = \%\Delta PE$$

This will be referred to as *Equation 3*. As is shown in Chart 3, the double-count problem may be resolved by dividing the overlap section exactly in half and allocating each portion to either the P or E decline. Dividing the overlap region in half is appropriate because the decline in both the P and E occupy the same overlap region. Starting with *Equation* 3 and dividing the overlap region in half gives us *Equation 4*:

$$\%\Delta P - \left(\tfrac{1}{2}\right)\left(\%\Delta P \times \%\Delta E\right) + \%\Delta E - \left(\tfrac{1}{2}\right)\left(\%\Delta P \times \%\Delta E\right) = \%\Delta PE$$

where the first two terms can be thought of as the P-induced decline and the second two are the E-induced decline. We can insert our P and E values from Table 1 into *Equation 4* and divide by the percent decline in the PE rate to see the correct P-induced and E-induced declines.

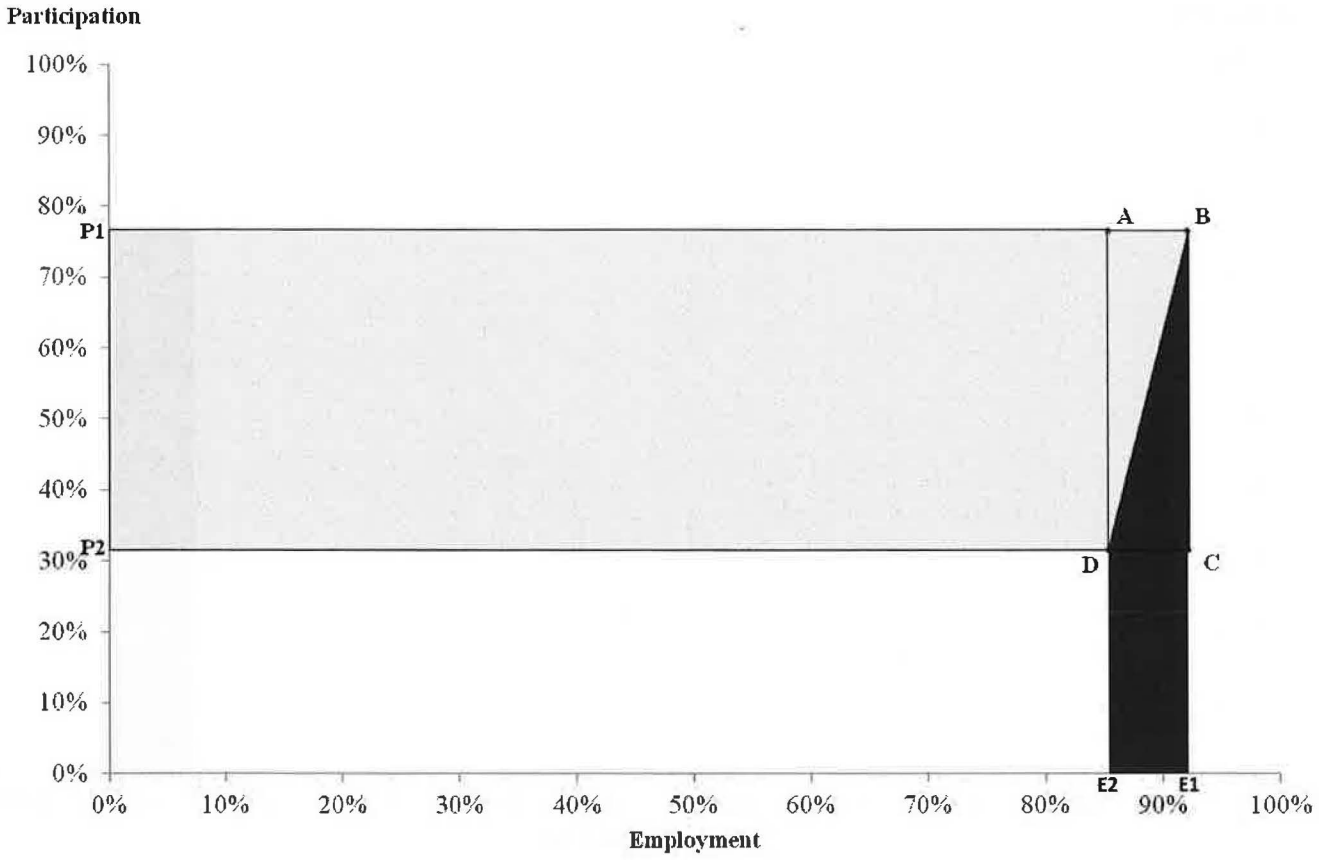

Chart 3. Allocating the overlap.

Substituting in the values from Table 1 into *Equation 4*, we have:

$$58.8\% - \left(\tfrac{1}{2}\right)(58.8\% \times 8.1\% - \left(\tfrac{1}{2}\right)(58.8\% \times 8.1\%) = 62.1\%$$

$$(58.8\% - 2.4\%) + (8.1\% - 2.4\%) = 62.1\%$$

$$56.4\% + 5.7\% = 62.1\%$$

Dividing through by 62.1% will then give the percentage contributed by P and E towards the decline in the PE:

$$\frac{56.4\%}{62.1\%} + \frac{5.7\%}{62.1\%} = 100\%$$

Therefore, our P-induced decline is 90.8 percent of the total PE rate decline and the E-induced decline is 9.2 percent of the total PE rate decline.

Adjusting for the overlap issue by using our final derived equation, *Equation 4*, provides a way to measure the effect of both participation and employment declines on the total PE decline of disabled persons and corrects our raw percentage figures so they add up to 100 percent. All figures and values regarding the P and E-induced declines of the total PE rate decline discussed in the paper are calculated using *Equation 4*.

Editor's Notes: Typically, American Psychological Association format is required for publications in Rehabilitation Professional. I offered the current authors an opportunity to present information and data in an alternative format, not typically used in this journal. I also allowed the authors to interchangeably use the terms chart and table as needed. Lastly, it is important to note that the issues of worklife, worklife expectancy, life, and life expectancy are very important constructs in the fields of Vocational Rehabilitation and also Forensic Economics. Considering their importance, it is recognized that numerous and various opinions have been developed not only about the methodology to calculate life and worklife expectancy, but also the value (both positive and negative) of respective tables utilized to calculate life and worklife expectancy. The present article was reviewed by peers in both Rehabilitation Counseling and Forensic Economics, meeting stringent criteria of logical progression of ideas, academic merit, and quality of presentation. Experts in the fields of worklife and life expectancy are encouraged to offer response, rebuttal, support, or additional commentaries regarding this article. These rejoinders may be submitted directly to me, with contact information noted in the masthead of the present journal.

Theodore Scott Smith, Editor