

Increasing the Employment Rate of People with Disabilities

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Twenty years after the passage of the Americans with Disabilities Act (ADA), the more than 50 million people with disabilities in the United States continue to face pervasive unemployment and underemployment, and a disproportionate number live in poverty. This paper examines topics related to the employment of people with disabilities, including legal protections against discrimination in employment, recent employment statistics, and current efforts to improve employment outcomes. It also explores how increasing the employment of people with disabilities would increase the disability market and strengthen the purchasing power of this group and the economy overall.

The Americans with Disabilities Act and Employment

The ADA was signed into law on July 26, 1990, and was intended to provide a “clear and comprehensive national mandate for the elimination of discrimination” against people with disabilities.¹ The ADA’s employment provisions were modeled on provisions barring discrimination in federal employment contained in the Rehabilitation Act of 1973, as amended. The Rehabilitation Act also provides for affirmative action in the hiring of people with disabilities by federal agencies and federal contractors.

As originally adopted, the ADA included a clear declaration that employers shall not “discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” A disability was defined as an impairment that substantially limits a “major life activity.” A qualified individual with a disability was further defined as one who “with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.” The ADA required employers to provide a reasonable accommodation, if such accommodation was necessary to allow an employee to perform the essential functions of the job, unless it caused undue hardship to the employer. A few examples of the types of reasonable accommodations an employer may undertake include making existing facilities readily accessible to and usable by individuals with disabilities, modifying work schedules, and providing qualified readers or interpreters.

Congress’s intent in passing the ADA was subsequently stymied by a series of restrictive court decisions that narrowed the scope of who qualified for protections under the ADA. In *Sutton v. United*

¹ In addition to prohibiting discrimination in employment, the ADA prohibits discrimination in the provision of state and local government services, including public transportation and public accommodations. The ADA also provides for access to telecommunications services by requiring the establishment of telecommunications relay services and closed captioning of public service announcements.

Airlines and two related decisions in 1999, the Supreme Court ruled that people who are able to function well with the help of “mitigating measures” such as eyeglasses or medication should not be considered substantially limited, even if they are substantially limited in their natural or unmitigated state.² In practical terms, this meant that people with a host of disabilities and chronic illnesses were no longer covered by the Act. As such, they were no longer entitled to receive the accommodations that might be necessary for them to control and treat their conditions. For example, a diabetic who needed periodic breaks to eat and take medication might no longer be entitled to a scheduling modification as a reasonable accommodation.

The effects of the court decisions were magnified by other rulings, notably the 2002 Supreme Court decision in *Toyota v. Williams*, in which the courts narrowed the scope of what constitutes a major life activity. The plaintiff in *Williams* was an assembly line worker in a car manufacturing plant who, as a result of carpal tunnel syndrome and tendonitis, could no longer perform certain functions of her job. The Supreme Court held that in determining whether an individual is “substantially impaired” and therefore covered by the ADA, the proper test is whether the individual has an impairment that prevents or restricts the individual from doing activities that are “of central importance to most people’s daily lives,” such as performing household chores, bathing, brushing one’s teeth, and dressing. The Supreme Court expressed doubt that work constituted a major life activity under the ADA.

In 2008, advocates for people with disabilities were successful in getting the ADA Amendments Act passed and signed into law. The ADA Amendments Act rejects the findings of the Supreme Court holdings in *Sutton* and *Williams* by defining major life activities to be “construed in favor of broad coverage of individuals” and stating that mitigating measures (other than ordinary eyeglasses or contact lenses) are not to be considered in determining whether an impairment substantially limits a major life activity. The ADA Amendments Act recreates a solid foundation on which to build policies and programs focused on bringing more people with disabilities into the economic mainstream.³ Such initiatives are critical to increasing labor force participation and employment among people with disabilities, and ultimately to strengthening their economic well-being.

Employment Statistics

Too few people with disabilities are employed. In 2008, the Current Population Survey (CPS) began including questions aimed at identifying the population with disabilities. The CPS is a monthly survey of households conducted by the U.S. Census Bureau for the Bureau of Labor Statistics (BLS). It provides a comprehensive body of data on the labor force, employment, unemployment, and persons not in the labor force. The data reported below are for the civilian, non-institutional working-age population (between 16 and 64 years of age). These data are not yet seasonally adjusted, as there are not sufficient years of data to make such adjustments.

² The two companion cases were *Murphy v. United Parcel Service* and *Albertson’s Inc. v. Kirkinburg*.

³ The Equal Employment Opportunity Commission is in the process of issuing new regulations to reflect the changes in the Act.

Labor Force Participation Rate

In June 2010, 7.4 percent (or 14,636,000 individuals) reported a disability. Of these, 33.7 percent participated in the labor force (i.e., were either working or actively looking for work). By comparison, among the 184,387,000 individuals with no disability, 77.7 percent participated in the labor force. While the labor force participation rate is helpful for identifying what percentage of the population is engaged in work or looking for work, it does not tell us what part of a population is employed, as explained below.

Unemployment

The unemployment rate gauges the tightness of the labor market, or how hard it is to get a job. In June 2010, the unemployment rate among people with disabilities was 15.6 percent. This is compared to an unemployment rate of 9.6 percent for people with no disability. One limitation of the unemployment rate measure is that it considers only people who are participating in the labor force and does not tell us anything about the number of people who may have become discouraged and have given up looking for work.

Employment-to-Population Ratio

Another way to measure employment status is to look at the percentage of working-age people who are actually working. In June 2010, this ratio was 28.5 percent for people with disabilities and 70.3 percent for people with no disability.

Taken together, the employment-to-population ratio, labor force participation rate, and unemployment rate provide a more complete picture of a population's employment situation than any one measure on its own. All three measures show a significant gap between the employment situation of people with disabilities and the employment situation of people with no disability.

Employment statistics can be used to support the development and monitoring of policy goals. Suppose our initial goal is to increase the employment-to-population ratio of people with disabilities by five percent, from 28.5 percent to 33.5 percent. Holding the number of working-age people with disabilities constant, this goal would entail increasing the number of employed working-age people with disabilities from 4,169,000 to 4,903,000—an increase of 734,000 individuals. Over a ten-year period, this would involve employers hiring and retaining an additional 73,400 individuals a year.

Purchasing Power

We know that increasing employment can raise individual and household incomes and thus the purchasing power of a population. To understand how increasing the employment-to-population ratio by five percent can increase the size of the disability market, we look at U.S. Census Bureau data from

the American Community Survey (ACS), which includes measures of population size and incomes for people with disabilities.

According to the 2008 ACS, 12.7 percent of the U.S. population reported a disability. Of these, 91.4 percent lived in households, while 8.6 percent lived in group quarters. Using households rather than individuals as the unit of analysis, there were 113,101,000 total households (including those living in group quarters) in the United States, of which 24.4 percent contained at least one person with a disability.

The ACS asks about household and individual pre-tax income from various sources.⁴ Summing income across households, total U.S. households had pre-tax income of \$8.1 trillion, of which \$1.4 trillion was held by households with at least one person with a disability. If we assume that the relationship between income and spending is the same for households with disabilities as households without disabilities, this suggests that the latter control almost 18 percent of spending in the United States. The pre-tax income of employed people with disabilities was \$274.2 billion compared to \$133.7 billion for people with disabilities who were not employed. This means that the average employed person with a disability had \$37,000 in pre-tax income, while the average non-employed person with a disability had \$12,000 in pre-tax income—a difference of \$25,000.

Before we can complete our calculations of the effect of increasing the employment-to-population ratio on purchasing power, we need to recalculate how many additional people would need to be employed using ACS data. The ACS indicates an employment-to-population ratio of 39 percent (7,362,000 employed individuals). A five percentage point increase in the ACS-based employment-to-population ratio to 44 percent (holding constant the number of working-age people with disabilities) would require hiring an additional 943,000 people.

If we assume that the 943,000 individuals who get jobs increase their pre-tax income by \$25,000, then the five-percent rise in employment for people with disabilities would result in a \$23.5 billion rise in the aggregate pre-tax income of working-age people with disabilities—substantially increasing the purchasing power of people with disabilities and their households. Advocates have long felt that the disability community does not receive as much attention from businesses as it should given its size. Increasing the purchasing power of this group could persuade more businesses to focus on this market, leading to improvements in accessibility, better customer service, and an increase in the use of universal design principles.

⁴ Income sources in the ACS include wages, salary, commissions, bonuses, or tips from all jobs; self-employment income (net income after business expenses) from one's own non-farm or farm businesses, including proprietorships and partnerships; interest, dividends, net rental income, royalty income, or income from real estates and trusts; Social Security Income or Railroad Retirement Benefits; Supplemental Security Income; any public assistance or welfare payments from the state or local welfare office; retirement, survivor or disability pensions; and any other regularly received income (e.g., Veterans' payments, unemployment compensation, child support, or alimony).

Federal and Private Initiatives

The programs and policies of the public sector, nonprofit organizations, and private companies in recent years have yielded compelling individual success stories, yet the employment rate of people with disabilities has not improved since the passage of the ADA. It is time for more comprehensive measures to be instituted. In this difficult economy, people with disabilities are faced with bleak prospects for employment, but there are promising signs.

During its first year and a half, the Obama Administration has taken positive steps towards realizing the federal government's long-standing commitment to providing equal employment opportunity for people with disabilities. On July 26, 2010, the 20th anniversary of the signing of the ADA, President Obama issued an Executive Order on Increasing Federal Employment of Individuals with Disabilities. The order called for the federal government to employ an additional 100,000 people with disabilities over five years. This goal was first announced in Executive Order 13163 signed by President Clinton on July 26, 2000, the tenth anniversary of the signing of the ADA.

The new Executive Order includes specific requirements designed to establish the federal government as a model employer of individuals with disabilities. It requires the Director of the Office of Personnel Management (OPM) to design model recruitment and hiring strategies for agencies to increase employment of people with disabilities. It calls for mandatory training programs for human resources personnel and hiring managers. Further, the order requires every department and agency to develop its own plan for promoting employment opportunities for people with disabilities and to name a senior-level agency official who will be accountable for these plans. The Director of the OPM is required to create a system for regular reporting to the President, the heads of agencies, and the public on agencies' progress in implementing their plans. President Obama also underscored his personal commitment to disability equality by appearing in a public service announcement.

The federal government has also taken positive steps to strengthen the requirements of Section 503 of the Rehabilitation Act. Section 503 requires federal contractors to take affirmative action to employ and advance qualified individuals with disabilities. To date, the government has not enforced the affirmative action requirements for people with disabilities with goals and timetables like those used to enforce the affirmative action requirements for minorities and women. On July 23, 2010, the Office of Federal Contracts Compliance Program (OFCC) issued an Advance Notice of Proposed Rulemaking seeking comments on how it should revise the regulations under Section 503. Almost one-fourth of the civilian jobs in the United States are with companies that are subject to federal affirmative action requirements. Concentrated attention on hiring and advancing people with disabilities in this broad range of jobs could make a significant difference in their employment rate.

The Department of Labor's Office of Disability Employment Policy (ODEP) also provides a number of important services to support the employment of people with disabilities: the Job Accommodation Network, which assists employers in identifying and providing reasonable accommodations to people with disabilities; EARNWORKS, a consulting service that assists employers in recruiting and hiring people with disabilities; and the Campaign for Disability Employment, a collaborative effort to promote positive

employment outcomes by encouraging employers and others to recognize the value and talent people with disabilities bring to the workplace.⁵

Many private-sector companies have committed to voluntary efforts to improve employment outcomes for people with disabilities as part of their diversity and corporate responsibility efforts. Leaders of these companies are deeply committed to being employers of choice, and they are devoting resources to creating inclusive workplace policies and practices. Many companies share their successes and work to develop best practices through national, state, and local business leadership networks. With an enhanced focus by committed leaders and support from the government and nonprofit sector, perhaps we will finally begin to see an increase in the employment of people with disabilities.

In September 2010, Senator Tom Harkin, the Chair of the U.S. Senate Committee on Health, Education, Labor and Pensions, will host a summit in Washington, D.C. with the goal of developing a legislative agenda that can complement some of the efforts underway in the Obama Administration at the State level and in the private sector.

More Can Be Done

When President George H.W. Bush signed the Americans with Disabilities Act into law, he recognized that the ADA “promises to open up all aspects of American life to individuals with disabilities—employment opportunities, government services, public accommodations, transportation, and telecommunications.” While our society has become far more accessible to people with disabilities over the last 20 years, the promise of equal employment opportunity for people with disabilities remains largely unfulfilled. To strengthen the path toward equality and full access for people with disabilities, the public and private sectors will need to work together to increase employment opportunities and to address structural disincentives to employment. People with disabilities should not have to fear losing their health care and other public benefits if they pursue employment. Access to transportation, personal care assistance, education, and training must be improved for people with disabilities to participate fully in the 21st-century workforce. If concerted efforts by the public and private sectors result in a five percent increase in employment for people with disabilities, this will significantly expand the size and purchasing power of the disability market.

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⁵ The American Association of People with Disabilities is a member organization of the Campaign for Disability Employment.

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