

Disability and Employment: Symposium Introduction

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EMPLOYMENT OF PEOPLE WITH DISABILITIES HAS BECOME AN IMPORTANT POLICY TOPIC in the past 15 years. Their low employment levels were a major factor behind the passage of the 1990 Americans with Disabilities Act (ADA) and the 1999 Ticket to Work and Work Incentives Improvement Act (TWWIIA). President Clinton issued an executive order in 1998 setting up the Presidential Task Force on Employment of Adults with Disabilities requiring the development of valid and reliable survey measures to track the employment status of people with disabilities. As further evidence of policy attention, the 2000 federal budget created a new Office of Disability Employment Policy in the Department of Labor, headed by a deputy secretary confirmed by the Senate.

This policy interest has been accompanied by a substantial increase in scholarly interest in disability and employment issues. While employment of people with disabilities has attracted some research interest for many decades, the past 15 years have seen a jump in research interest, much of it centered around the implementation and effects of the ADA (e.g., Berkowitz and Hill 1986; Mashaw et al. 1996; West 1996; Johnson 1997; Rupp and Stapleton 1998; Thomason, Burton, and Hyatt 1998; Blanck 2000; Krieger 2000; O'Brien 2001).

This topic attracts attention in part due to the large number of people with disabilities and consequently the large number of employers that deal with employees and applicants with disabilities who will continue to recruit in this population to help alleviate projected labor shortages. How many people with disabilities there are depends on the definition one employs—as will be seen, the definition of disability is one of the major quandaries in this field, presenting difficult issues for courts, policymakers, and researchers to sort through. At a minimum, there are the nearly 8 million Americans who have been certified by the federal government as eligible for disability income, whereas at the high end of estimates the 2000 Census found that 50 million

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Americans report some type of substantial impairment or activity limitation, of whom 33 million are of working age.¹ These large numbers have led to high percentages of firms making accommodations for employees and applicants with disabilities. A 1998 survey found that 95 percent of private firms have made some sort of accommodation for employees with disabilities (most commonly by making existing facilities accessible), and the same percentage have adapted their recruitment and preemployment screening processes (most commonly by making interview locations accessible and changing interview questions).² The large number of nonemployed people with disabilities means that employers increasingly may tap into this labor pool to help fill labor shortages as the baby-boom generation reaches retirement age and labor force growth slows down (Bureau of the Census 1996; Fullerton and Toossi 2001).

This symposium presents two articles that review existing work and contribute new evidence on disability and employment—the first analyzing claims of employment discrimination in violation of the ADA and the legal issues and outcomes for those filing complaints and lawsuits and the second analyzing post-ADA employment outcomes among people with disabilities. Given that the definition of disability is central to both papers, this introduction includes a brief overview of definition issues and the federal government’s efforts to develop new disability measures to track the employment status of people with disabilities.

Defining Disability: Basic Approaches

“When I use a word, it means exactly what I want it to mean.”

Queen of Hearts from Lewis Carroll’s *Alice in Wonderland*

The Queen of Hearts’ approach is often used in defining disability, with great divergence in what people “want it to mean.” It is a difficult concept to define rigorously: While many people may think they can easily recognize a disability, ready conceptions often break down when one seriously thinks about the wide range of personal abilities and how lack of an ability may or may not be limiting depending on a person’s other characteristics (e.g., education level) and living and working situation. The traditional definition of disability has been the “medical” definition, identifying disability as a

¹ Table QT-P21 (Disability Status by Sex 2000), at *factfinder.census.gov*.

² Tabulations provided by William Erickson of Cornell University from the employer survey summarized in SHRM/Cornell University (1999) and Bruyere (2000).

physical or mental abnormality located within the person (Hahn 1985, 1987). Under the medical definition, remedies for problems confronting people with disabilities focus on medically correcting the abnormality or helping the person adapt to his or her environment in order to function as well as possible with that abnormality. A second definition of disability, widely adopted in income maintenance and support programs, equates disability with an incapacity to work or great difficulty in working at gainful employment. This “economic” definition is reflected in criteria for Social Security Disability Income (SSDI) and Supplemental Security Income (SSI) and is the common survey question on work disability that asks whether one has a “health condition that limits the kind or amount of work” one can do. Unlike the medical definition, this type of definition recognizes that disability is, to some extent, determined by the opportunities available to an individual. Nonetheless, it falls short as a general definition of disability in large part because it excludes limitations in other types of activities—for example, some people may not regard themselves as limited in paid employment because they have the job they want (e.g., a quadriplegic in a law office) or never planned to have paid employment (e.g., a homemaker) but are still substantially limited by health conditions in housework, family life, or other activities.

Over the past 40 years, a broader “sociopolitical” or “social” definition of disability has gained ground, in part due to the disability rights movement’s efforts to change the status and treatment of people with disabilities (Hahn 1985, 1987). This definition views disability not as a personal characteristic but as a relationship between an individual’s characteristics and the environment. One implication of this view is that not only can many disability-related problems be solved but also disability itself may cease to exist if the environment is changed so that physical and mental impairments become trivial or irrelevant. The disability rights movement was a major force in developing and promoting this definition, holding that “disability stems from the failure of a structured social environment to adjust to the needs and aspirations of disabled citizens rather than from the inability of a disabled individual to adapt to the demands of society” (Hahn 1985:93). This view fed the push for the ADA, which rejected the idea that health or medical conditions themselves represent disabilities and—recognizing the crucial role of the environment—required greater accessibility of workplaces and public accommodations.³

³ See Parmet (2000) and Feldblum (2000) for discussions of the history of the legal definitions of disability prior to the ADA and O’Brien (2001) for a fuller review of the history of policy regarding employment of people with disabilities.

It is now standard to recognize the importance of the environment in disability and to distinguish disabilities from impairments and functional limitations (Altman 2001). An impairment is a medical abnormality (e.g., back problem, eye disease) that may lead to a functional limitation (e.g., difficulty in walking or seeing) that may lead to a disability (a limitation in a major life activity such as paid work, housework, or family life). The ADA defines a disability as “a physical or mental condition that substantially limits a major life activity,” or having a record of such a condition, or being regarded as having such a condition. The issue of how this definition is measured and applied in practice, in court cases, and in employment research is central to these symposium articles.

ADA Legal Outcomes and Issues

Lee’s article notes that since the ADA was passed, over 140,000 claims of employment discrimination based on disability have been filed with the Equal Employment Opportunity Commission (EEOC). These claims have been filed against a broad number of employers: Among private firms, 30 percent report experiencing an ADA disability claim, of which the most common are wrongful discharge (experienced by 19 percent of all employers), failure to provide reasonable accommodation (14 percent), harassment (8 percent), and unfair discipline (8 percent).⁴ When these claims come to the EEOC or to court, a major issue is whether the plaintiff meets the standard for having a disability that entitles him or her to protection under the ADA (unlike other antidiscrimination legislation such as the Civil Rights Act, where everyone is protected against discrimination based on sex, race, and other protected characteristics).

In deciding whether a plaintiff is covered by the ADA, courts have had to grapple with the meaning of the terms *substantially limits* and *major life activity* in the ADA’s definition of disability. As Lee shows in reviewing legal issues and outcomes of ADA employment cases, plaintiffs have a low win rate, in large part because judges have tended to use a narrow definition of disability that makes establishing ADA coverage very difficult (which some commentators say reflects a history of judges using the economic definition of work incapacity from their SSDI and SSI cases). The Supreme Court’s 1999 *Sutton* trilogy of cases made establishing an ADA-protected disability even more difficult because the Court ruled that a plaintiff must show that

⁴ Bruyere (2000:18) and tabulations provided by William Erickson of Cornell University.

he or she is substantially limited in a major life activity even when using any mitigating measures to reduce the impact of the disorder (such as medication or assistive devices like contact lens). This effectively allows employers to use a double standard, making a negative employment decision based on a person's underlying condition (e.g., epilepsy) but being able to claim immunity from a lawsuit because the mitigated condition does not represent a disability (e.g., the person can function well with medication)—in other words, the plaintiff may be “too disabled to work but not disabled enough to sue.” Lee explores how the Court's rulings appear to have shifted the strategies of many plaintiffs to claim that they are covered by the ADA due to being “regarded as” having a disability by an employer. Her evidence shows that plaintiffs using this prong of the disability definition since that time, however, have not done much better. Noting the near unanimity of legal scholars in criticizing judges' narrow interpretations of the ADA disability definition, Lee makes a case that the ADA should be amended to create a relatively low threshold for establishing a “disability,” and judicial attention could then focus on the law's requirement that the individual be qualified for the position.

Employment Outcomes Following the ADA

The definition of disability is a major issue not just for judges and litigants but also for researchers, as explored in the Kruse and Schur paper that assesses employment trends of people with disabilities since the ADA was passed. Some prior research has found that the ADA was followed by decreased employment of those who report a work disability (a health condition limiting the kind or amount of work one can do), which has been taken as evidence that the ADA has hurt employment of people with disabilities due to employer concerns about costs of accommodations and possible lawsuits. These results have been criticized, however, based on concerns over whether the work disability measure adequately reflects ADA coverage and has kept the same meaning over time. For example, the ADA may have decreased the stigma of disability so that more people were willing to report a disability; also, some people who would have reported a work disability before the ADA may not have reported one after the ADA if their workplaces became more accessible so that they were no longer limited in their work. This and other measurement issues may have caused changes in the composition of those reporting a work disability such that the apparent employment decline does not reflect the actual employment situation of the ADA-covered population.

The Kruse and Schur article tackles these definitional and measurement issues by constructing alternative disability measures using the Survey of Income and Program Participation (SIPP), which contains a variety of data on specific impairments and functional limitations, such as the ability to walk, see, hear, and go outside alone. These data therefore allow broader measures of disability that may more closely correspond to the ADA definition. The results are found to differ by measure: In particular, there was a decline in employment of people reporting work disabilities following the ADA's implementation (consistent with prior research) but an increase in employment of those reporting any of a broad array of functional impairments and activity limitations who do not receive disability income. The article also examines the relative employment of people with disabilities across the business cycle, in part to address the possibility that people with disabilities were especially likely to be laid off in the 1990–1991 recession, which could help account for their apparent drop in employment following the ADA. While some results suggest greater procyclicality of their employment, this appears to have little influence on the post-ADA employment trends among the different disability measures.

The contrary employment trends using different disability measures indicate that the definition and measurement of disability and the role of disability income are extremely important in assessing employment outcomes, leading Kruse and Schur to urge caution of both positive and negative findings based on existing disability measures. Their results highlight the importance of recent efforts by the federal government to develop new disability measures to track employment outcomes, which we review briefly here.

The Federal Government's Efforts to Develop New Disability Measures

The definition and measurement of disability are clearly crucial for analyzing the employment situation of people with disabilities and the success of programs to increase their employment. What constitutes an acceptable disability measure is far from straightforward. The long-used work disability measure, as described earlier, has been subject to several criticisms because it likely excludes many people with disabilities who are able to work (effectively asking, "Are you too disabled to work?") and excludes non-work-related disabilities that are also protected by the ADA.

To address this, the U.S. Bureau of Labor Statistics (BLS) began in 1996 to develop a disability measure that could be used to regularly measure the

employment and unemployment rates of people with disabilities. Initial efforts included placing two test questions on the 1996 SIPP survey concerning any long-term conditions that make it difficult to perform common daily activities, and the answers were then compared with the more extensive disability measures that are part of the SIPP disability supplement. The results were not satisfactory: Using the full SIPP disability battery as a benchmark, the test questions properly classified about 95 percent of the people who had no disability, 63 percent of those with a severe disability, and only 8 percent of those with a moderate disability.⁵

Shortly after these questions were rejected, President Clinton issued Executive Order 13078 (on March 13, 1998) that established the Presidential Task Force on Employment of Adults with Disabilities. It also mandated that the BLS, working with other agencies, “shall design and implement a statistically reliable and accurate method to measure the employment rate of adults with disabilities” and that “data derived from this methodology shall be published on as frequent a basis as possible.” The task force established the Employment Rate Measurement Methodology (ERMM) Work Group with representation from 17 federal agencies. These agencies had diverse interests: Some just needed a count of the total number of people with disabilities, whereas others wanted a count of those with severe disabilities or wanted identification of specific disabilities, such as mental impairment.

Faced with a mandate to develop a “reliable and accurate” measure of disability, one of the first findings of the ERMM Work Group was that some of the questions on the government’s main disability survey—the SIPP—appeared to have low reliability. Using the longitudinal nature of the SIPP, an analysis found noteworthy discrepancies between answers to the same disability questions asked 1 year apart—for example, only 61.7 percent of those reporting use of a wheelchair in the first period also reported use of a wheelchair 1 year later, whereas only 25.2 percent of those reporting a severe vision impairment in the first period also reported such an impairment 1 year later. While these discrepancies were due in part to real changes in disability status, there appeared to be a large role played by measurement error, question wording, or other survey problems.⁶

⁵ Those with a moderate disability according to the full SIPP battery were mostly classified as not having a disability by the test question, possibly due to great subjectivity in saying that it is “difficult” to perform common daily activities.

⁶ Measurement error is exacerbated in longitudinal comparisons (where many apparent “switchers” are misclassified in one of the periods) and in making estimates of low-prevalence characteristics (such as severe vision impairments, where the measurement error rate is larger relative to the estimate than for a high-prevalence characteristic).

The ERMM Work Group reviewed disability questions from all existing surveys in an effort to find questions that could be adapted easily. As it turned out, there were virtually no question sets with known psychometric properties, there was little or no testing on the question sets that were available, and for those that had been tested, results were not available from sponsoring organizations. One question set that was attractive to the ERMM Work Group initially was the group of six disability questions on the 2000 Census long form. The Census questions had been subject to cognitive testing, where individuals are asked the questions in a laboratory setting and then interviewed about how they interpreted the questions and decided on a response. BLS's first take on the cognitive tests was that while some of the questions seemed to perform well enough, changes were made in the test questions based on the cognitive interviews, and those changes were not tested in subsequent interviews. Also, the last two questions were not tested (whether a physical, mental, or emotional condition causes any difficulty going outside the home or in working at a job or business). From a dress rehearsal for the new Census and disability questions in California and South Carolina, the data came back with some startling results. People who were classified as having a problem working at a job or business had a higher employment rate than those who responded they had no difficulty with any of the activities posed in all the questions. Something appeared to be very wrong with the questions—how could people with a work disability have a higher employment rate than people with no disability at all?⁷ These results illustrate the difficulties of ascertaining disability status and the importance of question testing.

The BLS originally planned to test question sets in supplements to the monthly Current Population Survey (CPS), with a split-panel design so that several existing question sets could be tested and the results could be compared to a “gold standard” survey administered to the full supplement. Finding a “gold standard” of questions proved elusive, however, and some of the question sets appeared not to work well in their original context (such as the Census questions). Two other difficulties were that splitting the sample would reduce the power of the tests (a particular problem given the low prevalence rates of some of the types of disabilities), and plans for a CPS supplement have to be in the works about 2 years in advance of its administration. The BLS could have had to wait as long as 3 years to find

⁷ The Census asks, “Because of a physical, mental, or emotional condition lasting 6 months or more, does this person have any difficulty in doing any of the following activities?” with “Working at a job or business” listed as the fourth activity. There may have been a tendency to answer “Yes” to the fourth activity only if one currently works at a job or business but has difficulty in doing so and to answer “No” if one is not employed and therefore does not currently experience difficulty at any job or business.

out how the question sets performed, with no guarantee of success and the possibility that BLS and the ERMM Work Group would not have anything to show after several years of work.

Therefore, the BLS and the ERMM Work Group changed their plans, deciding to test individual questions rather than question sets, since a question from one set may complement a question from another set. Individual questions were identified as candidates from a number of surveys and then were tested with cognitive interviews to learn if respondents have any difficulty understanding the questions or recalling the answers and what individuals hear and think when certain questions are put to them. After three waves of interviews (between which the research team met and decided if modifications were called for), 20 questions were selected.

During the process of selecting candidate questions, the BLS also identified a test vehicle: the National Comorbidity Survey (NCS) fielded by the Harvard School of Health Care Policy and funded primarily by the National Institute of Mental Health. The NCS is based on lengthy face-to-face interviews, for which respondents are compensated. It includes extensive questions on mental health and physical well-being, which can be used to determine which conditions are and are not identified by the various test questions and combinations of questions. Based on analysis of the 20 test questions on this survey dataset, the BLS and the ERMM Work Group hope to identify several appropriate disability questions that can be placed on the monthly CPS to measure the employment status of people with disabilities. Should this test fail to produce a “statistically reliable and accurate” measure, the ERMM Work Group and the BLS can point to the record of an acceptable scientific procedure that led to that result and develop a “plan B” to use (or design) some other vehicle besides the CPS to obtain employment statistics on the disability population.

These extensive efforts to develop a new disability measure, which will provide a basis for the next generation of research on disability, clearly reflect the policy importance of employment of people with disabilities. As this symposium shows, the low employment rates of people with disabilities are an ongoing problem more than a decade after the ADA was passed. Their continuing low employment rates are due in part to restrictive judicial opinions of the ADA and to the disability income system. The size and direction of the employment trends, however, appear to depend on who is identified as having a disability—it is a fluid, heterogeneous category that people move in and out of (more so than with other demographic characteristics, despite the occasional sex-change operation). The definition and measurement of disability are clearly central and complex issues for judges, policymakers, and researchers. The millions of people with impairments and health conditions that often limit major life

activities and the fact that nearly everyone has a disability at some time in their lives point toward large economic and personal stakes in disability that justify much more research and continued policy attention.

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