
Morality on the Cheap

The Americans with Disability Act

Richard V. Burkhauser

The Americans with Disability Act (ADA), passed by the Senate in 1989 and by the House in 1990, promises to provide protection against employer discrimination. Under this act employers must make “reasonable accommodations” to disabled workers unless this would result in “undue hardship” on the operation of business. The legislation specifies examples of reasonable accommodations: job restructuring, part-time or modified work schedules, and reassignment to vacant positions. The legislation also explicitly includes provision of qualified readers, sign interpreters, or attendants for travel as examples of reasonable accommodation.

There are four main titles of the act. Title I incorporates the standards of discrimination set out in regulations implementing section 504 of the Rehabilitation Act of 1973, but will dramatically extend them to eventually include all employers of 15 or more workers. Title II extends the act to state and local governments. Title III covers access of customers in places of public accommodations such as restaurants, hotels, grocery stores, and other similar establishments and buses. Title IV covers accommodation in telephone services and telecommunications relay services. Each component of the act will have important impli-

cations for the American economy. Here I shall concentrate only on Title I.

The term “disability” is used in this act to mean: “(1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (2) a record of such impairment; or (3) being regarded as having such an impairment.” There was a heated debate in the Senate with respect to which impairments were to be included. For example, drug addiction was included in the original bill but specifically excluded in the final Senate bill, as were some rather esoteric, at least to this writer, sexual disorders. Because data on health conditions, let alone the numbers of people “who may be regarded as having such an impairment,” are not available, no one knows how many people will eventually be covered by this act. The committee report claims that as many as 41 million Americans would be covered.

One source of data on the disabled is the *Current Population Survey*. On the basis of this survey, Haveman and Wolfe estimated that around 10 percent of the working age population aged 18 to 64—approximately 15 million people—were either on a government-provided disability program or claimed to have a health condition that limited the amount or kind of work they could perform. Table 1, which is based on Haveman and Wolfe’s work, traces the economic well-being and earnings of disabled men over the past

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Table 1: Relative Well-Being and Work Effort of the United States Disabled Population, 1962-1984

	1962	1968	1973	1976	1980	1982	1984
Family Income ^a	n.a.	.74	.80	.80	.73	.66	.72
Earnings ^b	.61	.66	.74	.66	.58	.51	.54

Source: Compiled from Haveman and Wolfe (1990).

^a Ratio of real equivalent family income of disabled men to that of the families of nondisabled men.

^b Ratio of real earnings of disabled men to that of nondisabled men.

three decades. The family income of disabled men has been consistently below that of able-bodied men. The relative income of disabled men grew during the 1970s, peaked at 80 percent in 1976, and fell substantially during the early 1980s. Similarly, the wage earnings of disabled men rose to about three-quarters of the able-bodied male earnings in the early 1970s but have fallen substantially since then and were barely one-half those of able-bodied men in 1984.

Hence it is not surprising that policymakers should focus on ways of increasing the work opportunities of the disabled. Unfortunately, the principal charm of this act appears to be its ability to provide some help to the disabled at no cost to the federal government. The costs to the economy of the accommodations firms would be obligated to make under this act have not even been estimated, and the impact of the act on employer-employee relations has also been given little consideration.

Guaranteeing Equal Access to a New Protected Class

The historic civil rights legislation of the 1960s showed our commitment to ending discrimination based on race or sex. Federal intervention was justified as a means of guaranteeing equal justice, equal opportunity, and equal access to all citizens. Over the next two decades that commitment led to major government intervention into the private sector to redress discrimination. Government policy toward the disabled changed in the 1970s on the basis of a similar commitment to use civil rights legislation to integrate disabled people into an able-bodied society.

Health conditions lead to functional limitations that may or may not lead to the ability to perform in a job. This will depend on both an individual's

health condition and the structure of the job. Functional limitations in themselves do not limit individual productivity. For instance, if the rules of basketball stipulated that the game was to be played by persons sitting in chairs with wheels, paraplegics would probably be highly productive players.

Public policy toward the disabled in the 1970s was marked by the acceptance of the proposition that the disabled represent a distinct minority group, in the same way that blacks and women are considered groups who are subject to economic discrimination. That is, disabled people possess characteristics that distinguish them from other members of society, and on the basis of these characteristics, they may be discriminated against. Furthermore, just as one would not cure racial discrimination by making blacks white, the solution to the problems the disabled face does not lie in reducing the functional limitations of the disabled but in mandating changes in the network of private relationships that prevent this minority from being fully integrated.

The ADA is a compromise from the extreme view that accommodation for all jobs is a right possessed by workers regardless of their impairment. Hence, while this legislation extends coverage of protection against discrimination under

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the Rehabilitation Act of 1973 to private employers, it also contains language that explicitly recognizes that substantial expenditures may be necessary to accommodate the disabled fully and that this type of accommodation is different from that necessary to integrate blacks or women into the marketplace. Thus, employers are obliged to make only *reasonable* accommodations that would not create *undue hardship* on the operation of business.

Despite the recognition that costs rather than irrational discrimination might prevent complete



accommodation of the disabled in the marketplace, the test for discrimination in the act is one of “disparate impact,” not “disparate treatment.” Hence employers would bear the burden of proof that job requirements that impact disproportionately on the disabled are essential to the job. The plaintiff need not show that an employer intended to discriminate, but must merely show that such actions differentially affect the newly protected class—the disabled. Passage of this act will force all covered employers to bear the cost of either abandoning such job requirements or preparing documented evidence of their necessity.

But the definition of “undue hardship” is perhaps the most troublesome feature of the ADA. In a competitive marketplace a laborer is hired if the additional revenue he is likely to bring the firm exceeds the cost of employing him. This economic concept of comparing costs and benefits is not the one suggested in this act. Rather a “deep pockets” criterion appears to apply. Those firms that will not be unduly harmed by the cost of accommodation are obliged to provide it. In the hands of imaginative lawyers, whose fees are subject to payment by unsuccessful defendants, this could grow to be a substantially open-ended obligation for firms to share their wealth with the disabled regardless of the actual relation between the productivity of the disabled worker and the costs of accommodation.

It is not difficult to make an argument that low-income disabled workers deserve help. But it is far from obvious that the burden of this help should be assigned in this way. Traditionally we have used the tax system to redistribute income and have not required firms to employ workers whose value to them is less than their cost to the firm.

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work by the disabled. The major political appeal of this method of redistributing income is that it does not explicitly raise taxes or increase the federal budget. But it has substantial costs that would still be paid by someone—the public. The cost will appear in higher prices and lower earnings, reflecting not only the higher production costs resulting from accommodation but litigation costs to determine on a case-by-case basis exactly what constitutes an undue burden.

Nonetheless, this system might make sense if there were substantial evidence that the great majority of employers are refusing to accommodate the disabled when their value to the firm exceeds the cost of accommodation. This evidence would

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lead one to argue for close supervision from the courts to end such practices. But no systematic evidence of this type of behavior was presented at the ADA hearings. In fact, the entire picture of the disabled at the hearings and in the popular press appears to be far off the mark.

Who Are the Disabled?

The vast majority of people with health impairments were able-bodied workers for most of their lives. The recognition that disability is a *process* is critical to those interested in increasing labor force participation of the disabled. Despite the use of a wheelchair as the symbol of the disabled and the high profile of the sight- or hearing-impaired in the battle for disability rights, few of the disabled are blind, deaf, or in need of wheelchairs. Table 2 summarizes the recent data on the characteristics of the disabled. There were about 2.8 million people receiving Social Security Disability Insurance at the end of 1987. Nearly two-thirds of them were between ages 50 and 64. Among this older group, circulatory diseases (es-

Table 2: Characteristics of Disability Insurance and Supplemental Security Income Recipients

Diagnostic Groups	All Beneficiaries			Newly Enrolled		
	Below 50	50-64	All	Below 50	50-64	All
Disability Insurance						
Mental Disorders	33.7	14.6	21.4	47.7	15.0	29.7
Circulatory Diseases	7.6	27.2	20.2	7.4	25.9	17.6
Musculoskeletal Diseases	11.9	21.7	18.2	6.4	16.4	13.1
Neoplasms	2.8	3.9	3.5	8.7	16.1	12.8
All Others	44.0	32.6	26.7	30.1	26.6	26.8
Total	100.0	100.0	100.0	100.0	100.0	100.0
Total (millions)	.99	1.78	2.77	.19	.23	.42
Total (percent)	35.7	64.3	100.0	53.7	46.3	100.0
Supplemental Security Income						
Mental Disorders (other than retardation)	26.0	19.9	24.1			
Mental Retardation	35.4	8.4	26.9			
Circulatory Diseases	2.8	20.2	8.2			
Musculoskeletal Diseases	3.3	16.0	7.3			
Neoplasms	1.7	2.3	1.9			
All Others	30.8	33.2	31.6			
Total	100.0	100.0	100.0			
Total (millions)	1.57	.74	2.31			
Aid to the Blind (millions)	.04	.02	.06			
Total All Programs (millions)	2.60	2.54	5.14			
Total Aged 18-64 (millions)	2.28	2.54	4.82			

Source: Derived from tables in the *Annual Statistical Supplement of the Social Security Bulletin* (1988)

pecially heart conditions), musculoskeletal diseases (especially arthritis), mental disorders, and neoplasms (i.e., cancer) accounted for two-thirds of all conditions. For the disabled under age 50 mental disorders alone accounted for one-third of all cases.

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Older clients dominate the disability insurance program, in part, because most recipients remain on the rolls until they die. But the picture does not greatly change if one looks at the newly enrolled in a given year. Table 2 also shows the characteristics of those who first came onto the disability

insurance rolls in 1986. About 420,000 people did so, and almost one-half were aged 50 and over. Almost three-quarters of these older enrollees had one of the four previously discussed conditions. Of the younger workers, almost one-half suffered from mental disorders.

The other major financial aid program for the disabled is Supplemental Security Income. Started in 1974, this program provides means-tested benefits to those whose disabilities are severe enough to qualify for disability insurance benefits but whose previous work history is not sufficient to make them eligible to receive these benefits. More than 2.3 million people were on the supplemental income rolls at the end of 1987. Mental disorders are the most common health condition for these recipients. Retardation is the major component of mental disorders for the young and is an important component for those aged 50 to 64.

The prognosis for the disabled to return to work has traditionally been poor. The sad prospect is that few people currently receiving either of these benefits will ever return to work. Some people argue that the benefits from these programs are

sufficiently generous that they dramatically reduce the incentives to work. If this were the case, one would expect that those people who were denied disability insurance benefits would quickly return to work, but Social Security Administration studies of rejected applicants in the 1970s found extremely low labor force participation rates for unsuccessful applicants as well. Recently, Bound reviewed data from the 1978 Survey of the Disabled and found that just under 30 percent of rejected disability insurance applicants were employed and only about two-fifths of them were working full time.

This should not be very surprising. Disability is often a process; veterans of the disability insurance system, both successful and unsuccessful, are at the end of that process. We can infer from Table 2 that most health conditions first affect an individual's ability to work in the last two decades before normal retirement age. Quite often, disabled workers have had substantial experience in the labor force. Their health condition may be acute—a heart attack or stroke, which then requires a period of rehabilitation—or chronic—arthritis, which eventually leads to a reduced ability to work.

Whether an impaired worker returns to the job after an acute health emergency or continues on the job as a chronic condition worsens bears little resemblance to the decision to work of those who have long since left the job they held when their impairment first occurred. A successful disability insurance recipient must have been unable to work in any "substantial gainful activity" for a period of five months, and he cannot expect to be able to work for at least one year.

As Table 2 shows, there are fewer than 3 million people on the disability insurance rolls and fewer than 5 million people aged 18 to 64 on all transfer programs targeted specifically at the disabled. This is far fewer than the 41 million disabled who are claimed to be covered under the ADA or the 15 million whom Haveman and Wolfe count as disabled. There may be, however, a large number of working-age people with serious work limitations who are not currently receiving benefits. For such workers, acceptance on the disability insurance rolls would mean eligibility for substantial disability benefits. For instance, Haveman, Halberstadt, and Burkhauser estimated that a worker with a wife and two children who earned median wage income over his lifetime would replace 85 percent of his predisability after-tax in-

Table 3: Allowances and Applications for Disability Insurance, 1970–1985

Year	Allowances (thousands)	Applications (thousands)	Ratio
1970	350	870	.40
1975	592	1284	.46
1980	397	1264	.32
1985	377	1169	.32

Source: Derived from the *Annual Statistical Supplement of the Social Security Bulletin* (1987, Table 60).

come with disability insurance benefits. If his earnings were twice the median, disability insurance would replace 54 percent of his predisability after-tax income. Net wage replacement is somewhat smaller for workers without dependents—49 percent for the median wage worker and 35 percent for the worker earning twice the median.

But applying for disability benefits has become an increasingly risky gamble. As Table 3 illustrates, in the 1980s the number of allowances per year was considerably lower than the number of applications. In 1985 only about 3 applicants in 10 were deemed eligible to receive benefits. Applicants for benefits must "invest" in not being

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able to work to maximize their chances of receiving benefits, and the review process can last for several years. It is not surprising that workers, especially older workers who have invested in not working for years, find it difficult to return to work even when they fail to become eligible for benefits.

Keeping individuals who have just become health-impaired on the job is much more malleable to public policy. For those who would like to see the disabled continue to work, the good news

Table 4: Employer Responses after Onset of Employee Health Condition^a (percentages)

	No Help	Help	All
Did Employer Help ^b	70	30	100
Worked after Onset ^c	54	94	67
Current Labor Force Participation	41	59	47
Applied for Disability Insurance	59	36	52

Source: 1978 Survey of Disability and Work.

^a Sample includes 348 men aged 59 or younger who have a health condition that limits their current work activities and who were aged 21 or over and employed at the time this condition began to limit their ability to work.

^b Response to "Did your employer do anything to help you out so that you could stay at work?"

^c Response to "At the time your health condition started to limit your ability to work, did you stay with the same employer?"

about the ADA is that it focuses on the importance of accommodation in the workplace as the critical issue in keeping health-impaired people on the job. Thus, it offers some hope of mitigating the adverse effects of health impairments on the ability to continue working, and may reduce the number of applications for disability benefits.

The bad news is that the ADA's insistence on a disparate impact test was made with little information on the way that firms are currently accommodating the disabled. It appears that proponents of the ADA are more interested in assigning blame than in encouraging more accommodation in the marketplace.

Information on employer-employee relations is difficult to gather, and this is especially true for the disabled. In deciding to pass the ADA, the Senate relied solely on anecdotal evidence. But national data on the disabled are available. Through the 1970s the Social Security Administration fielded national surveys of the disabled. Unfortunately, scheduled surveys in the 1980s were cancelled owing to lack of funding, so that the most recent evidence comes from the 1978 Survey of Disability and Work. Table 4 provides information on 348 men who suffered a health condition serious enough to limit their ability to work. Thirty percent had employers who provided some help so that they could stay at work. Of those workers, 94 percent stayed on the job after the onset of their disabling condition, while only slightly over one-half remained on the job without their employers' help. These data were retrospec-

tive so that we are also able to look at what workers were doing at the time of the survey, which in many cases was years after their work impairment first occurred. Almost two-thirds of workers who received help from their employers were still working, while less than one-half of the others were still employed. Finally, only about one-third of those workers who received help applied for Social Security Disability Insurance benefits. Almost 60 percent of the others applied for such benefits.

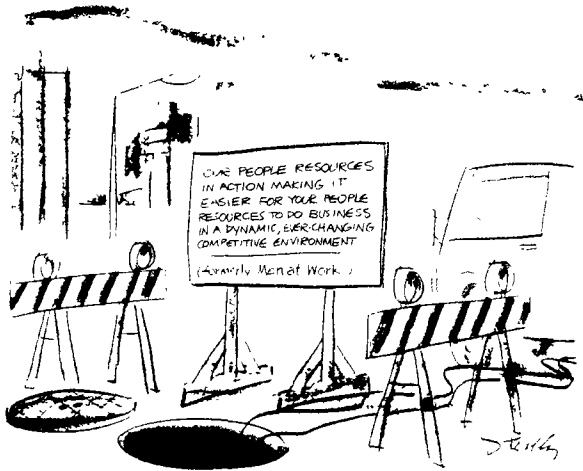
Using more sophisticated econometric analysis, Burkhauser and Kim show that the greater the portion of predisability income replaced by disability insurance, the faster an impaired worker left his job. But those workers whose employers took steps to enable them to stay on the job were significantly less likely to leave that job following the onset of a health condition that limited their ability to work.

These data, not considered in the congressional debates, confirm that the employer's willingness to accommodate employees who suffer a work impairment is a crucial factor in their continued work. But the data also show that a substantial percentage of employers are already making such accommodations. Hence, the image of insensitive employers' irrationally refusing to accommodate their disabled employees that was conjured up by the anecdotal stories quoted in the Senate testimony grossly simplifies reality.

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What is still not clear, however, is what influences an employer to provide accommodation. While employers may not "irrationally" refuse to accommodate workers when the costs of doing so are lower than the benefits, it is very likely that these same firms do not accommodate the disabled when the costs exceed the benefits. Hence,

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it is possible that it is this “rational” discrimination that dominates in the marketplace.

If the goal of federal policy is to address this rational discrimination and thus to increase the chances that a typical disabled person will stay in the labor force, several alternatives present themselves. The ADA compels employers to accommodate disabled workers, even when the costs to them of doing so exceed the benefits the firm receives, as long as those costs are not an undue burden. This requirement will surely increase accommodation of the disabled to some degree. But there are alternative policies that would recognize that all the benefits of an accessible workplace are not captured by employers and employees. Many of us may believe that the disabled should be able to work even when the value of their output does not equal the cost necessary to accommodate them in the workforce. If this correctly represents our attitudes about the disabled, then this “positive externality” makes it entirely appropriate for all of us to bear part of the costs of accommodation through direct government payments. And on these grounds, the use of the income tax to fund these payments is likely to represent an improvement over the arbitrary cost incidence implied by the current ADA. The test of these propositions, however, is the willingness of voters to tax themselves to pay the real costs associated with accommodation. It is a sad commentary on the political process that a whole range of alternatives that would entail explicit federal budget outlays were completely ignored in the ADA debates. But it is not surprising, given the new criteria of good policy in Washington—doing good on the cheap.

Post-Gramm-Rudman Morality

The unwillingness of Congress to fund new social legislation from the budget has resulted in a renewed interest in mandates as a means of achieving social policy ends. Two major examples of this trend are the minimum wage increase and the strong push during the last presidential campaign for a national policy that would follow Massachusetts in mandating medical insurance for all workers. In the drive for such mandates, the Sirens’ call of “no added costs to the federal budget” appears to have overpowered our nation’s leaders.

The speed with which the ADA has moved through Congress is testimony to the power of the Sirens’ song. When Sen. Orrin Hatch proposed an amendment last year that would have provided up to \$5,000 in tax credits to small businesses to help offset the costs of accommodating the disabled protected by this bill, Sen. David Durenberger opposed him by asserting that “the constraints of the budget deficit make it very difficult, if not impossible, to find additional federal revenues to help offset these costs. . . . [W]e have absolutely no idea what the costs to the Federal government will be if we adopt this amendment” (*Congressional*

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Record, 1989). The almost total absence of information about the cost of the legislation to business or to the economy, however, did not prevent the ADA bill from being passed last year in the Senate, absent Sen. Hatch’s amendment. The Sirens’ song is most seductive.

Will the ADA Increase Employment of the Disabled?

Historically, the federal government has relied on the private sector to provide jobs for the disabled and has been much less willing to intervene directly in the labor market either to create jobs for the disabled, as is done in Sweden, or to set em-

ployment quotas for the disabled, as is done in West Germany. Hence, it is not clear from our past history how successful the ADA will be in increasing the labor force participation of the disabled. But a look at Sweden and Germany suggests that it is very difficult for the government to protect workers, let alone disabled workers, from the business cycle.

Because the federal government has relied on the private sector to provide jobs for the disabled and has been much less willing to intervene directly in the labor market either to create jobs or to set employment quotas for them, it is not clear how successful the ADA will be in increasing their labor force participation.

In Sweden the percentage of predisability income replaced by disability insurance exceeds the replacement rate in the United States, and Sweden's eligibility rules for disability benefits are much more liberal than ours. Thus, a Swedish worker without dependents who earned median wages over his lifetime would have 88 percent of his wages replaced. A worker earning twice the median would have 66 percent of his wages replaced. Furthermore, as Table 5 shows, the number of Swedish disability transfer recipients per thousand active workers far exceeds that in the United States. But what truly distinguishes Sweden from the United States or West Germany is its requirement that all disabled workers undergo re-

habilitation and accept a job if one is offered and its willingness to guarantee a government job for any worker unable to find private sector employment. During Sweden's peak unemployment year, 1983, the government not only increased transfers, but dramatically increased the number of jobs offered to the disabled.

Disability benefits in West Germany also replace a greater proportion of predisability income than in the United States. A worker without dependents who earned the median wage before his disability receives a 67 percent replacement and a 65 percent replacement if he earned twice the median wage. West Germany is also strongly committed to ensuring that physical or mental impairments do not result in the loss of work for the disabled. But unlike in Sweden, the government does not provide directly subsidized employment. Instead, private employers are required to employ one disabled worker for every 16 able-bodied workers. In the past decade the number of transfer recipients per thousand active workers has also substantially exceeded that in the United States, and during its recession of the mid-1980s, substantially exceeded that in Sweden.

Slack demand puts intense pressure on firms to reduce their payrolls in West Germany. The eligibility of older disabled workers for special early-retirement benefits makes them likely targets. In 1985 only 5.0 percent of covered jobs were held by disabled workers, so that the quota was not met. Employment among the disabled fell both because overall employment fell and because firms chose to pay fines for noncompliance rather than to maintain disabled workers in their jobs.

In the United States, our public-sector commitment to the disabled is much less than that in

Table 5: Disability Populations in the United States, Sweden, and Germany

Country	Disability Transfer Recipients per Thousand Active Labor Force Participants				Supported Work per Hundred Disability Transfer Recipients			
	1975	1980	1983	1985	1975	1980	1983	1985
United States (unemployment rates)	42	41	39	41	12 (8.3)	24 (7.0)	5 (9.5)	5 (7.1)
Sweden (unemployment rates)	78	79	73	74	19 (1.6)	26 (2.0)	38 (3.5)	28 (2.8)
Germany (unemployment rates)	68	77	93	97	38 (4.7)	49 (3.8)	40 (9.1)	34 (9.3)

Source: Compilation of tables in Burkhauser and Hirvonen (1989).

Sweden or West Germany. We have smaller ratios of disability transfer recipients, not because our population is less affected by work impairments, but because our criteria for eligibility are far more restrictive than those in these European countries. The demise of CETA (the Comprehensive Employment and Training Act) in 1981 ended our experiment with direct job creation in the United States. During our peak recession years, both transfers per recipient and supported work for the disabled fell.

Sweden can ensure higher employment for its disabled than can West Germany or the United States because the Swedes are willing to accept the added costs of such employment. Work by Burkhauser and Hirvonen suggests that it is this distinction, rather than any advantage the Swedes demonstrate in rehabilitation, that explains their commitment to work for the disabled. But even the Swedes are not totally indifferent to costs, and during their 1980s recession, they relaxed their policy of guaranteeing a job to older disabled workers and encouraged them to accept transfer benefits. West Germany also has a greater commitment to providing work for the disabled than has the United States, but despite quotas, employment of the disabled fell in the 1980s. Even a much greater commitment to the importance of work for the disabled was not sufficient to ensure that work during economic downturns. It is unlikely that case-by-case enforcement of the ADA will fare much better as a protection against the reality of the business cycle.

Are There Alternatives to the ADA?

Congress recognized that discrimination against the disabled is qualitatively different from discrimination against blacks or women. Hence, unlike under Title VII of the Civil Rights Act, the costs of accommodation are legally relevant under the ADA. Unfortunately, no serious evaluation of the potential benefits and costs of accommodation under this act was performed. Accommodation in the workplace through the provision of readers for the blind, sign interpreters for the hearing-impaired, or physical changes for the wheelchair-bound are real costs that must be borne by somebody. But so are the more-difficult-to-measure costs of allowing more flexible schedules or even part-time work for those whose health conditions reduce their stamina or require more of their time and energy to perform per-

sonal maintenance. Equally difficult to measure are the costs of providing a less-stressful environment for those with mental illness or less-complex jobs for the mentally retarded. Nonetheless, it is these more subtle costs that are relevant to the silent majority of the disabled who are not blind, hearing-impaired, or wheelchair-bound. And it will be these subtle issues that will keep our judiciary busy over the next decade as it determines what the obligations the ADA creates actually mean.

Because this Congress was not willing to commit budget outlays or tax preferences to offset the costs of the increased commitment to the disabled promised in the ADA, alternative means of achieving the same end were summarily dismissed. In fact, Congress almost killed one incentive employers now have to accommodate the disabled. Currently, section 190 of the Tax Code provides a deduction of up to \$35,000 a year for removing architectural and transportation barriers. This provision was extended for only 9 months by the Senate, and attempts to broaden its definition of accommodation to that required under the ADA were also rejected.

It is expensive to accommodate disabled workers. The ADA puts the initial burden of accommodation on employers and forces their compliance through the courts. But eventually most of us will bear this burden through higher prices

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and lower factor earnings. Broadening tax deductions or providing a tax credit to employers willing to hire or retain as well as retrain disabled workers would make this cost explicit, but it also would recognize that we all must pay to accommodate the disabled. Tax credits are a much less obtrusive way than mandates to encourage behavior in the marketplace, and they are likely to be

more successful in achieving our goal of a more accessible workplace for the disabled.

Conclusion

The ADA is another federal exercise in morality on the cheap. The strongest argument its supporters can muster is that it will not increase the cost to the federal budget. But this type of cost-benefit analysis completely ignores the added costs to the economy that such legislation entails. It is perfectly reasonable to argue that disabled workers should be accommodated in the workplace. It is highly likely that such accommodation has and will continue to have a positive effect on the ability of the disabled to continue to work. But extending current tax deductions or providing tax credits for such accommodation would be much more likely to achieve this end and to do so without the arbitrary distribution of costs and the blunt stick of court-enforced compliance.

Postscript. President Bush signed the Americans with Disability Act on July 26.

Selected Readings

- Bound, J. "The Health and Earnings of Rejected Disability Insurance Applicants." NBER Working Paper #2816 (1989).
- Burkhauser, R. and Hirvonen, P. "United States Disability Policy in a Time of Economic Crisis: A Comparison with Sweden and the Federal Republic of Germany." *The Milbank Quarterly*, Vol. 67, Supp. 2 (1989).
- Burkhauser, R. and Kim, Y.-W. "Employer Responses to Health Impairments of their Workers." Vanderbilt University Working Paper (1990).
- Haveman, R. and Wolfe, B. "The Economic Well-Being of the Disabled: 1962-1984." *Journal of Human Resources*, Vol. 25, No. 1 (1990).
- Haveman, R., Halberstadt, V., and Burkhauser, R. *Public Policy toward Disabled Women*. Ithaca: Cornell University Press, 1984.