

Contrary to legislative intent, ADA makes
the disabled less employable

The Unintended Consequences of the Americans with Disabilities Act

BY THOMAS DELEIRE

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CONOMISTS COMMONLY LAMENT PUBLIC POLICIES that transfer resources to a particular group because such policies ignore the “law of unintended consequences.” Economists point out, for example, that

the law of unintended consequences is at work when workers’ wages fall in response to a mandated increase in benefits or when employment falls in response to an increase in the minimum wage. As Henry Hazlitt said in *Economics in One Lesson*, “Depth in economics consists in looking for all the consequences of a policy instead of merely resting one’s gaze on those immediately visible” (p. 194).

The employment provisions of the Americans with Disabilities Act (ADA) exemplify the law of unintended consequences because those provisions have *harmed* the intended beneficiaries of the Act, not helped them. ADA was enacted to remove barriers to employment of people with disabilities by banning discrimination and requiring employers to accommodate disabilities (e.g., by providing a magnified computer screen for a vision-impaired person). However, studies of the consequences of the employment provisions of ADA show that the Act has led to less employment of disabled workers.

Why has ADA harmed its intended beneficiaries? The added cost of employing disabled workers to comply with the accommodation mandate of ADA has made those work-

ers relatively unattractive to firms. Moreover, the threats of prosecution by the Equal Employment Opportunity Commission (EEOC) and litigation by disabled workers, both of which were to have deterred firms from shedding their disabled workforce, have in fact led firms to avoid hiring some disabled workers in the first place.

That result is not surprising to students of economics. After all, if you raise the price of a good or service, you must expect that less of it will be bought. Likewise, theories of labor demand predict that when a group of workers becomes more expensive, firms will hire other workers or substitute capital for labor.

THE INTENDED BENEFICIARIES OF ADA

DISABLED AMERICANS ARE A LARGE AND ECONOMICALLY disadvantaged group. In 1995, according to the Survey of Income and Program Participation (a nationally represen-

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tative survey that queries individuals about their disability and employment status), 11.6 percent of men and women in the working-age population (ages 18 to 65) reported a health impairment that limited either the type or amount of work they could do. That percentage has been rising: in 1986, for example, 9.6 percent of the working-age population reported a disability.

We commonly think of the intended beneficiaries of ADA as persons with mobility, vision, or hearing impairments. ADA, however, covers a vast number of health impairments. The Act defines a disability as “a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, [or] being regarded as having such an impairment” (§3(2)). Major life activities include walking, lifting, seeing, hearing, breathing, and—most importantly for the employment provisions of ADA—working. In fact, mobility, vision, and hearing impairments represent merely 17 percent of the population of men with disabilities. By far the most prevalent of disabilities reported in surveys are bad backs and heart disease. Thus, ADA covers many more people than those commonly thought of as disabled. On the other hand, the disabled who are most often portrayed in newspaper articles about the excesses of ADA—the mentally disabled and substance abusers—represent only 6.7 percent of the disabled population.

As a group, people with disabilities earn less than people without disabilities. Despite receiving government-provided benefits, people with disabilities have relatively low incomes. The average annual income (including government transfers) of disabled men was only 61 percent of that of nondisabled men in 1992, and labor earnings of disabled men averaged only 47 percent of the earnings of nondisabled men.

These differences in earnings are explained partly by the fact that fewer people with disabilities work: only 53 percent of disabled men work compared with 89 percent of nondisabled men. However, disabled workers also receive lower pay when they do work; their average wage is only 79 percent of the average wage of nondisabled workers. In addition, people with disabilities often are additionally disadvantaged in that they are generally less educated, older, and employed in less-skilled occupations than are the nondisabled.

The fact that disabled people work less and earn less when they work is consistent with the view that people with disabilities face barriers in the labor market. The same fact is also consistent with the (almost tautological) view that a disability reduces a person’s productivity.

HOW ADA WORKS

THE EMPLOYMENT MANDATES OF ADA HAVE TWO BROAD goals. One goal, which is similar to that of other civil rights legislation, is to ensure that people with disabilities have

Table 1

Effect of ADA on Employment of Men with Disabilities

	Employment rate (percent) and change in employment rate (percentage points)	
	Men with disabilities	Men without disabilities
Before enactment of ADA (1985-1990)	59.8	95.5
After enactment of ADA (1991-April 1995)	48.9	92.4
Change in employment rate	-10.9*	-3.1*
Employment effect of ADA	-7.8*	

* Change is significantly different from 0 at a 95-percent confidence level.

access to types of employment from which they traditionally have been excluded. The second goal, which is similar to that of antipoverty programs, is to increase job opportunities for disabled people. Therefore, the employment provisions of ADA consist of two parts:

- Section 101(8) prohibits wage and employment discrimination against “qualified individuals with a disability.” A qualified individual with a disability is “an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position.”
- Section 101(9) requires an employer to provide a “reasonable accommodation”—a change in the work environment that results in an equal employment opportunity for a person with a disability.

To meet the reasonable accommodation provision of Section 101(9), an employer may be required to modify facilities, redefine jobs, revise work schedules, provide special equipment or assistance, give training or other forms of support, or eliminate nonessential job functions. A business can avoid an accommodation only if it would cause “undue hardship” to the nature or operation of the business.

The mandates of the ADA have a major effect on employment decisions because of the costs they can impose. Section 101(9) is a significant element of ADA’s employment provisions because providing reasonable accommodations can be costly for employers. Unfortunately, there is little evidence about the costs of accommodation. The evidence at hand comes from the President’s Job Accommodation Network (JAN) and studies of federal contractors under the Rehabilitation Act of 1974, such as the study conducted by Berkeley Planning Associates (BPA) in 1982. JAN reports that the median accommodation under ADA costs \$500 or less. The BPA study found that the average cost of an accommodation is very low—approximately \$900—and that 51 percent of accommodations cost nothing.

In spite of such results, it would be wrong to conclude that ADA has little effect on employers. First, both sources underestimate the costs of accommodation by including only monetary costs. Allowing a disabled employee to work a more flex-

ible schedule, for example, might not increase a firm's out-of-pocket expenses, but it does increase a firm's costs.

Second, the burden of ADA is not the less-expensive accommodations that very likely would have been made even in the absence of a government mandate but rather the more expensive ones. According to JAN, 12 percent of accommodations cost more than \$2,000 and 4 percent cost more than \$5,000. The BPA study found that 8 percent of accommodations cost more than \$2,000, 4 percent of accommodations cost more than \$5,000, and 2 percent of accommodations cost more than \$20,000.

The costs of litigation resulting from ADA also can be high. Since enforcement of the Act began in July 1992, it quickly has become a major component of employment law—one to which employers increasingly have had to respond. Through the end of fiscal year 1998, 108,939 ADA charges had been filed with EEOC, and 106,988 of those charges had been resolved. Of the resolved charges, 86 percent were either dropped or investigated and dismissed by EEOC but not without imposing opportunity costs and legal fees on employers. The other 14 percent of the charges led to a finding of discrimination by EEOC or a private settlement at an average cost to employers of \$14,325 (not including opportunity costs and legal fees).

Although employers can be and are sued for discriminatory hiring, most litigation under ADA arises when employees are fired. The two most common violations of ADA alleged in charges filed with EEOC have involved, first, discharge, layoff, or suspension and, second, failure to provide reasonable accommodation. Thus, firms may have responded to the prospect of litigation by reducing their hiring of the disabled.

HAS ADA WORKED AS INTENDED?

ALTHOUGH ADA MAY HAVE CAUSED EMPLOYERS TO ACCOMMODATE people with disabilities, the cost of complying with the Act may have reduced the demand for disabled workers and thereby have undone ADA's intended effects. To determine the employment effect of ADA, I analyzed data for a sample of men aged 18 to 65 from the Survey of Income and Program Participation (SIPP).

Table 1 compares changes in the employment rates of disabled and nondisabled men before and after enactment of ADA. Employment of men with disabilities fell by 10.9 percentage points following the enactment of ADA, while employment of nondisabled men fell by 3.1 percentage points. Thus, ADA reduced the employment of disabled men by 7.8 percentage points.

Has ADA reduced employment

of disabled workers of all types or have ADA's negative effects been concentrated in a few demographic categories? Using the sample of working-age men from the SIPP data, I estimated the effects of ADA on employment rates for disabled men according to their level of education, type of disability, and age (specified by decade of birth). I controlled for such other factors as occupation, industry, minority status, length of disability, and whether a disability resulted from an injury. Table 2 reports the effects of ADA by age cohort, educational level, and type of disability. Relative employment fell in all cases, and all but 2 of the 24 estimates are statistically significant at the 95-percent confidence level.

To summarize Tables 1 and 2:

- ADA caused a decrease of about 8 percentage points in the employment rate of men with disabilities.
- ADA caused lower employment regardless of age, educational level, and type of disability.
- Those most affected by ADA were young, less-educated and mentally disabled men.

ADA is a striking example of the law of unintended consequences. ADA has reduced employment opportunities not only for disabled people as a whole but especially for the most vulnerable groups—the young (less experienced), less educated (less skilled), and mentally disabled—groups that find it most difficult to get jobs.

Why has ADA had these consequences? Firms generally have reduced their employment of the disabled because the Act has imposed higher accommodation costs than firms would voluntarily incur. The burden of cost has fallen especially hard on those workers least likely to have been accommodated voluntarily by firms in the absence of

Table 2

Effect of ADA on Employment Rates of Men with Disabilities by Age, Education, and Type of Disability

(Percentage-point differences from rates for men without disabilities)

Decade of birth	High school dropout	High school graduate	Some college education or college graduate
1930s	-11*	-2	-1
1940s	-16*	-7*	-6*
1950s	-15*	-6*	-6*
1960s	-17*	-8*	-7*
Decade of birth	Physical disability	Mental disability	Other disability
1930s	-3*	-20*	-8*
1940s	-7*	-23*	-11*
1950s	-6*	-22*	-10*
1960s	-7*	-24*	-12*

* Change is significantly different from 0 at a 95-percent confidence level.

ADA, namely, less-experienced and less-skilled workers and workers with mental disabilities, which generally are more difficult to accommodate than physical disabilities.

FINDINGS OF OTHER RESEARCH

THE RESULTS IN TABLES 1 AND 2 ARE CONSISTENT WITH other studies cited in the list of “Readings” at the end of this article. For example, in a 1997 study, I used data from the Panel Study of Income Dynamics to estimate employment regressions similar to those estimated using the SIPP data.

A 1998 study by Daron Acemoglu and Joshua Angrist confirmed those results by using data from a different source. Acemoglu and Angrist noted that, in principle, the antidiscrimination mandate of ADA that allows disabled workers to sue their employers for wrongful termination could increase the employment of disabled workers by reducing turnover. Acemoglu and Angrist argued, however, that such “firing costs” are more likely to have caused a reduction in the hiring of disabled workers, an argument confirmed by their empirical analysis of data from the Current Population Survey. They found that ADA caused a large drop in the number of weeks worked by disabled men but no drop in the number of weeks worked by nondisabled men; the drop in weeks worked by disabled men appeared to result from less hiring of disabled workers.

Acemoglu and Angrist also separately examined the effects of ADA on firms of small, medium, and large size. They found the largest drop in weeks worked was at firms of medium size. That finding is consistent with the conclusion that ADA reduces the employment of disabled workers because firms with fewer than 15 employees are exempt from ADA regulations and large firms are better equipped than medium-size firms to accommodate disabled workers.

WHAT SHOULD WE DO?

SUBSTANTIAL BARRIERS TO THE EMPLOYMENT OF PEOPLE with disabilities persist in spite of the employment mandates of ADA. In fact, the threat of litigation and ADA’s accommodation mandate may even raise the barrier for many disabled workers by raising the cost of hiring them.

What policies would better assist the disabled? If the cost of the accommodation mandate has led employers to reduce their employment of the disabled, should the nondiscrimination mandate be enforced more rigorously so as to raise the cost of noncompliance? Or is there a need for a new strategy for increasing the employment of disabled Americans?

One new strategy that holds promise is to create a Disabled Workers Tax Credit (DWTC)—modeled on the Earned Income Tax Credit (EITC)—as proposed by Richard Burkhauser, Andrew Glenn, and D.C. Wittenburg (see “Readings”). DWTC would provide a wage subsidy for disabled workers to encourage them to remain in or reenter the workplace after becoming disabled. The wage subsidy, even if given directly to workers, effectively would reduce the cost of hiring and accommodating them. That, in turn, would

increase the ability of firms to hire them.

Although DWTC is still being assessed, experience with EITC suggests that DWTC could work. Empirical studies have found EITC to be successful at increasing labor force participation and reducing poverty among poor families. (See the articles by Richard Burkhauser, Kenneth Crouch, and Andrew Glenn and by David Neumark and William Wascher.)

Although a DWTC-like program would be yet another government program, it is likely to be both cheaper and more effective than forcing the hiring of disabled workers through the employment mandates of ADA.

readings

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