

Sacred Heart University

# **The Impact of Ableism on Disability Discrimination in Employment**

Emily Crispino HN-300-D

Professor Jareb and Professor Moras November 29, 2020

Throughout history, people with disabilities have been stigmatized and considered inferior by many able-bodied people. People with disabilities struggle daily to obtain the same rights and opportunities as able-bodied people in every aspect of their lives. Employment is a specific area in which people with disabilities tend to face massive amounts of discrimination. Many employers fail to recognize the potential of candidates with disabilities and judge them based solely on their disability without considering things like their experience or qualifications.

The Americans with Disabilities Act, passed in 1990, was created in an attempt to eliminate disability discrimination as a whole. While it was a tremendous step towards equality for people with disabilities, it did not create total disability inclusion. Therefore, it is important to recognize that though the Americans with Disabilities Act was created to eliminate disability discrimination, ableism and implicit biases continue to play a significant role in the employment and treatment of people with disabilities in the workplace. Ultimately, stigmatizing people with disabilities and preventing otherwise qualified individuals from obtaining opportunities and advancements.

## **The Americans with Disabilities Act (ADA)**

The Americans with Disabilities Act, otherwise referred to as the ADA, was passed in 1990 by President George H.W. Bush. The enactment of the Americans with Disabilities Act was a major step towards equality for people with disabilities. The act is a civil rights law that prohibits discrimination against individuals with disabilities in many areas including employment, schooling, transportation, and businesses that are open to the general public (“Disability Discrimination”). The Rehabilitation Act of 1973 was created prior to the ADA but only made it illegal to discriminate against people on the basis of disability in Federal programs and in programs receiving Federal financial assistance (Midwest New Media). People with disabilities were not protected as a whole until the enactment of the ADA in 1990. Prior to the ADA, businesses were not required to be wheelchair accessible and employers were not required to provide disabled employees with reasonable work accommodations.

Though the Americans with Disabilities Act focuses on multiple areas of public life, employment is an extremely important area where specific laws have been set in order to protect people with disabilities in the workplace. The key component of the ADA regarding employment is that employers are required to provide all of their disabled employees with reasonable accommodations with the exception of undue hardship (“Disability Discrimination”). In simpler terms, employers must provide disabled individuals with accommodations that allow them to work comfortably and to the best of their ability. Examples of reasonable accommodations could

include modifying office equipment, such as the height of a desk, for employees that may use a wheelchair or providing flexible work schedules that allow employees to attend to matters related to their disability, such as medical appointments. The only exception to providing employees with disabilities reasonable accommodations is if doing so becomes a substantial financial burden on the company.

There are also other guidelines within the ADA that protect people with disabilities in employment. Employers are not permitted to ask potential candidates if they are disabled or ask about the severity of their disability at any point during the interview or hiring process (Midwest New Media). Employers are only permitted to inquire whether or not a candidate can perform the duties and responsibilities of the position with or without the use of a reasonable accommodation. Employers are also not permitted to require a candidate to take a medical examination prior to being offered a job. The passing of a medical examination can only be required once the job has been offered (Midwest New Media). These laws are in place in order to further protect people with disabilities in employment.

Reading these specific guidelines of the Americans with Disabilities Act may make it appear as though individuals with disabilities are provided equal opportunities in employment and are fully protected under the law. However, this is not entirely true. Though the ADA is meant to protect people with disabilities in employment and eliminate disability discrimination, the law does not protect people with disabilities from the impact of implicit biases. Individuals with disabilities continue to struggle obtaining job opportunities and advancements despite the enactment of the ADA. In many cases, an implicit bias or stigma results in an able-bodied candidate being selected for a position over a disabled candidate with the exact same qualifications. In these situations however, there is likely little to no proof that the candidate was denied the position as a direct result of their disability, making it impossible for legal action to be taken.

### **Defining Disability Discrimination**

Despite the protection that the Americans with Disabilities Act is supposed to provide for people with disabilities, disability discrimination still occurs in many different settings. The workplace is one of the leading locations for disability discrimination to occur. Disability discrimination can be simply defined as “discrimination that happens when an employer treats an employee protected by the Americans with Disabilities Act poorly because of the disability” (Hearing Health Foundation). The most common reasons for disability discrimination by employers are ableism and implicit biases.

Ableism is defined as discrimination in favor of able-bodied people. People that are ableist may believe that able-bodied people are superior and more capable than individuals with disabilities. In many cases, the presence of ableist employers results in high levels of disability discrimination in employment. This discrimination can begin as early as the hiring process and can continue even after a position is offered. Common examples of disability discrimination as a result of ableism in the workplace include harassment, lack of reasonable accommodations, and inappropriate interview questions (Hearing Health Foundation).

Implicit biases also play a role in the discrimination of people with disabilities in the workplace. Implicit biases differ from ableism because they are attitudes that exist unconsciously as a result of stereotypes. This means that an employer could potentially discriminate against a candidate with a disability as a result of a stigma or stereotype and not be aware that it is why they are doing so. The impact of implicit biases on people with disabilities is substantial because it limits their opportunities and advancements in the workplace as a result of stereotypes that most likely do not even apply to them.

### **Types of Disability**

The greatest misconception about disability as a whole is that all people with any form of disability have the same capabilities and level of functioning. However, this could not be further from the truth. People with disabilities should not be stigmatized based on the sole fact that they have a disability. There are an infinite number of disabilities that a person could possess, and spectrums exist even within most disabilities. Therefore, each individual with a disability is completely different and has capabilities and skills that are unique to them and not their disability.

According to many experts, including the World Health Organization, disability can be broken down into three dimensions. These dimensions are impairment, activity limitation, and participation restrictions (“Disability and Health Overview”). Impairment involves an individual’s physical or mental functioning. Examples of impairments can range anywhere from the loss of a limb to severe memory loss. Activity limitation involves difficulty seeing, hearing, walking, or problem solving. Similarly, participation restriction relates to an individual having difficulty with normal daily activities such as working or obtaining health care services. The ICF differentiates activity limitation and participation restriction by stating that activity “is the execution of a task or action by an individual” and participation “is a person’s involvement in a life situation” (“Disability and Health Overview”).

Impairment is the dimension of disability with the most variability. Within the dimension of impairment, there are both structural and functional impairments. Structural impairments are defined as significant problems with either an internal or external component of the body. “Examples of these include a type of nerve damage that can result in multiple sclerosis, or a complete loss of a body component, as when a limb has been amputated” (“Disability and Health Overview”). Functional impairments include the complete or partial loss of the function of a body part. This could mean pain that never subsides or a lack of mobility in joints. People with different disability impairments have very different physical and mental capabilities due to their impairment and the severity of it.

There is also variety in where disabilities come from. While some people are born with disabilities, others may become disabled after severe accidents like car crashes. The most common injury related disabilities are traumatic brain injuries, otherwise known as TBI’s, and spinal cord injuries. Some people with disabilities begin to show signs of disability at the developmental stages of life like early childhood. Disabilities like autism spectrum disorder and attention-deficit/hyperactivity disorder, also referred to as ADHD, typically become apparent at this stage of life. Disabilities present at birth can either be a result of single genes, chromosomes,

or a mother's exposure to substances like drugs and alcohol. An example of a single gene disorder could be muscular dystrophy and a very common example of a chromosomal disability present at birth is down syndrome ("Disability and Health Overview").

The amount of variability that exists within disability is tremendous and it is very ignorant for people to believe that all people with disabilities have the same capabilities and that those capabilities are inferior to those of able-bodied people. This idea is a prime example of ableism and allowing stereotypes and implicit biases to play a role in the judgement of an individual based solely on the presence of a disability. Every disabled individual has their own set of unique skills and capabilities that should be taken into consideration when seeking employment or advancement in employment. However, this is often not the case. People with disabilities tend to be stigmatized by employers that lack an education on the variability that exists within disability. This results in individuals with disabilities receiving unfair treatment and discrimination in employment.

### **Disability Discrimination Statistics**

There is a long history of disability discrimination in employment and there are many statistics that prove how prevalent it is despite the enactment of the Americans with Disabilities Act in 1990. A study was conducted using population data from the Disability Supplement in order to assess rates of discrimination in employment among people with disabilities over the age of 18. The goal of the study was to determine if the ADA was completely successful in providing equal employment opportunities to people with disabilities. "The analysis suggests that nearly a 10th of all adults with disabilities who were in the workforce during the 5-year period immediately following the passage of the ADA experienced some form of job discrimination" (Jae & Olney). This means that one in every 10 individuals who were supposed to be protected by the ADA still faced some form of job discrimination due to their disability. The people who reported to have faced discrimination in the workplace tended to be younger and poorer with more severe disabilities than those who said that they did not face any discrimination. This is thought to be the case as age and income are additional factors that often lead to the discrimination of individuals seeking employment. The study revealed that the combination of a disability and a young age or low-income level made it almost impossible for people to obtain employment. Therefore, allowing the study to report that the ADA was not completely successful in eliminating disability discrimination in employment.

An additional study was conducted to analyze the ADA and EEOC disability code "BLINDVIS", which is the code for vision impairment. The study was conducted in order to recognize discrimination against employees that are visually impaired. A group of visually impaired employees were observed throughout the duration of the study in order to recognize the presence of any mistreatment or violations. After conducting the study, 42 EEOC employment rights violations were revealed (Victor). The violations found as a result of the study were split into four subcategories in order to further analyze the data. These categories were entitled job acquisition, job satisfaction, job retention, and "other discrimination" (Victor). The point of the study was to prove that the passage of the ADA did not allow for total equality in employment for people with disabilities. The results of this study prove this point by finding employment rights violations in every stage of the employment process. While this study was only conducted

on those employees with vision impairments, it can be implied through previous research that the results of this study are true of all people with disabilities who are seeking equal opportunities in employment.

Other statistics show that the employment rate among people with disabilities is the lowest of any group in the United States (Jae & Olney). This is strongly connected to the workplace disability discrimination that exists specifically during the interview process. Results of a recent Harris Poll show that only a third of United States residents with disabilities are currently employed, compared to a 90% employment rate for the general working-age population (Jae & Olney). Additionally, employment rates among people with disabilities have barely changed since the passage of the ADA. This means that the Americans with Disabilities Act was not able to provide employment opportunities and protection under the law in the workplace as effectively as it was created to do.

These statistics provide significant reason to believe that substantial barriers still exist for people with disabilities when it comes to employment and that the Americans with Disabilities Act has not been able to completely eliminate them. It is alarming that people with disabilities are still reporting discrimination in the workplace when they are supposed to be provided with reasonable accommodations and treated the same as able-bodied employees. The rates of employment among people with disabilities should be increasing and the world should be moving in the direction of inclusivity. However, it is evident that disability discrimination in employment still exists and people with disabilities are continuously struggling to find opportunities and advancements despite all of the qualifications that they may possess.

### **Discrimination in AI Interviewing**

As technology has continued to progress, it has become fully integrated into our society and has allowed for a tremendous amount of efficiency and advancement in many aspects of life. Artificial intelligence is a newer form of technology that has changed the world we live in drastically. Artificial intelligence software has the capability to simulate human behavior and activity in order for tasks to be completed that would typically require a person, without the need for a physical human body. While there are countless positive aspects of AI software, there are negative aspects as well, especially for people with disabilities.

Many employers have begun to use artificial intelligence software in order to conduct interviews without the need for human interviewers. Companies like HireVue have created very successful businesses and platforms as a result of this AI interviewing practice. Using artificial intelligence software in order to conduct interviews allows employers to focus their time and energy on things that may be more productive for the company than interviewing multiple job candidates. Especially in the early stages of interviewing for a position, there can be many benefits for a company to use a program like HireVue to conduct their interviews. However, the practice of AI interviewing is not without its flaws and has actually been proven to be discriminatory against people with disabilities.

The way that AI interviewing works is by asking a candidate a series of questions and recording their responses. Those responses are then analyzed using artificial intelligence technology in

order to determine if the candidate is a good fit to move on to the next stage of the hiring process. However, the issue with this system is how the responses are analyzed. The technology is programmed to search the footage for specific things like eye contact and the ability to sit up straight. Often times, these factors are more crucial than the content of a candidate's responses. For a person with a disability who may be in a wheelchair or struggle with eye contact, they would not receive a very high score and would most likely not receive an additional interview using a program like HireVue despite any qualifications that make them a good fit for the position. "The problem that people with disabilities face through this kind of AI is, even if they have a strong set of positive qualities for certain jobs, the AI is unlikely to highlight those features and could generate low scores for those individuals" (Engler).

There is a possibility for companies like HireVue to adjust their AI interviewing technology in order to accommodate for people with disabilities. However, it would be a tremendously difficult task due to all of the variety that exists within disability. AI training data would need to be adjusted to account for people with all types of disabilities in all job models. Without diverse training, an AI system would not be able to learn any characteristics demonstrated by people with disabilities who were later successful. With some of their qualities ignored, these candidates would be pushed towards the middle of the distribution, and since most applicants for any specific job do not get hired, applicants with no similar, high-performing past employees do not stand a chance. (Engler)

Therefore, people with disabilities are at an even greater disadvantage when interviewing for positions using artificial intelligence programs than they already are with the disability discrimination that exists in employment. The use of AI interviewing software should not be allowed without accommodations for people with disabilities because their discriminatory nature goes against the guidelines of the Americans with Disabilities Act and does not allow people with disabilities to be provided with the same opportunities in employment as able-bodied people.

### **Ableism's Impact on People with Disabilities**

Since the passage of the ADA in 1990, people with disabilities have been provided with slightly more protection and equality in employment. However, it is a much more difficult task to eliminate the ableism that exists in many places of work. Ableism is present in many work environments and has extreme effects on employees with disabilities. While employers may hire people with disabilities for jobs, many individuals with disabilities are not treated equally once they begin working in these positions. This is especially true for people who have disabilities that may be considered "invisible". While their disabilities are still present and have an impact on the way that they live their lives, the needs of people with disabilities that are not clearly and physically visible are often disregarded in the workplace. This can often times result in a lack of reasonable accommodations for people with disabilities despite the fact that the ADA guarantees them.

The culture that exists in many workplaces is responsible for creating ableist environments and simultaneously discriminating against people with disabilities. These ableist environments make many people with disabilities uncomfortable asking for the accommodations that they need

despite their right to them. “Lots of employees with disabilities often experience work as inhospitable or incompatible with their preferred ways for dealing with their symptoms, despite the protections of the ADA. Although individual experiences vary greatly, virtually all employees run up against cultures of workplace ableism” (Levy). A common need for people with certain disabilities including fibromyalgia and spondylitis would be performing therapeutic exercises at various times throughout the day. The purpose of these exercises is to relieve pain in muscles and joints that may occur as a result of certain disabilities. In cases where an employee with one of these disabilities feels uncomfortable in their work environment, they may choose not to complete these kind of exercises despite them being essential for their health and wellness.

Ableist work environments can also have very negative effects on the mental health of employees with disabilities. An employee with a disability working in an extremely ableist work environment may feel uncomfortable or excluded from the culture of the workplace. Therefore, resulting in a decline in their happiness and mental health. A lack of inclusivity, especially in the workplace, can definitely take an emotional toll on people with disabilities. One of the biggest goals held by disability advocates is a universal increase in inclusion for all people with disabilities. The passage of the ADA is greatly responsible for taking major steps in the direction of this goal. However, work still needs to be done in order to completely eliminate ableist work environments and cultures in order to provide total equality and inclusion for employees with disabilities.

### **The Importance of Education Amongst Employers**

A lack of education is greatly responsible for all of the disability discrimination that is present in the world today. Many people are not educated on disability, making them ignorant in many ways and unable to understand that people are not defined by their disabilities. Disability inclusion is something that should be taught to kids at a young age so that when they become adults they are able to understand that every individual with a disability is unique with their own set of skills and attributes. Educating people on what disability can look like and how to practice disability inclusion could play a tremendous part in eliminating disability discrimination as a whole.

It is especially important for employers to be educated on disability and the rules and regulations that protect employees with disabilities. If all employers had a better understanding of disability and how to accommodate those with disabilities, they would be able to understand the strengths and weaknesses of their employees with disabilities and allow for them to thrive in accepting work environments. This ignorance amongst many employers that exists as a result of a lack of education is what leads to uncomfortable and discriminatory work environments for individuals with disabilities. This lack of education may also explain why many employers tend to pass judgements about people with disabilities based on implicit biases because they were never properly educated on disability.

### **Closing Thoughts**

At a first glance of the Americans with Disabilities Act, it may appear as though people with disabilities are fully protected in the workplace and most likely face no discrimination when

seeking employment. However, it is evident after a further examination of disability statistics and what ableism truly means for employees with disabilities that disability discrimination is still a very common occurrence in the workplace. The potential of people with disabilities is rarely recognized and they are often times unable to obtain jobs or advance in their current positions as a result. Despite the qualifications of many of these individuals, a lack of education and the presence of ableism and implicit biases stigmatizes people with disabilities and limits the opportunities that they are provided. We need to do better as a society in order to practice disability inclusion in all facets of life, especially in employment. People with disabilities deserve opportunities that match their qualifications and should not be excluded as a result of their disabilities.

### **Acknowledgements**

I would like to thank everyone that provided me with advice and expertise when working on this paper including Professor Jareb and Professor Moras. I am very thankful for all of your contributions that aided me in creating this final product.



## Works Cited

“Disability and Health Overview.” *Centers for Disease Control and Prevention*, Centers for Disease Control and Prevention, 16 Sept. 2020, [www.cdc.gov/ncbddd/disabilityandhealth/disability.html](http://www.cdc.gov/ncbddd/disabilityandhealth/disability.html)

“Disability Discrimination.” *U.S. Equal Employment Opportunity Commission*, [www.eeoc.gov/disability-discrimination](http://www.eeoc.gov/disability-discrimination).

Hearing Health Foundation. “Equality for All: Understanding Disability Discrimination in the Workplace.” *Hearing Health Foundation*, Hearing Health Foundation, 12 Dec. 2019, [hearinghealthfoundation.org/blogs/equality-for-all-understanding-disability-discrimination-in-the-workplace](http://hearinghealthfoundation.org/blogs/equality-for-all-understanding-disability-discrimination-in-the-workplace).

Engler, Alex. “For Some Employment Algorithms, Disability Discrimination by Default.” *Brookings*, Brookings, 31 Oct. 2019, [www.brookings.edu/blog/techtank/2019/10/31/for-some-employment-algorithms-disability-discrimination-by-default/](http://www.brookings.edu/blog/techtank/2019/10/31/for-some-employment-algorithms-disability-discrimination-by-default/).

Kennedy, Jae, and Marjorie Olney. “Job Discrimination in the Post-ADA Era: Estimates from the 1994 and 1994 National Health Interview Surveys.” *Rehabilitation Counseling Bulletin*, vol. 45, no. 1, 2001, pp. 24. *ProQuest*, <https://sacredheart.idm.oclc.org/login?url=https://www-proquest-com.sacredheart.idm.oclc.org/docview/213916693?accountid=28645>

Levy, Nathaniel. “Workplace Ableism Is a Problem for ADA Rights.” *OnLabor*, 16 July 2019, [www.onlabor.org/workplace-ableism-is-a-problem-for-ada-rights/](http://www.onlabor.org/workplace-ableism-is-a-problem-for-ada-rights/).

Midwest New Media, LLC - [www.midwestnewsmedia.com](http://www.midwestnewsmedia.com) - (513) 742-9150. “Workplace Fairness.” *Disability Discrimination*, [//www.workplacefairness.org](http://www.workplacefairness.org), [www.workplacefairness.org/disability-discrimination](http://www.workplacefairness.org/disability-discrimination).

Victor, Callie M., et al. “Workplace Discrimination and Visual Impairment: A Comparison of Equal Employment Opportunity Commission Charges and Resolutions Under the

Americans with Disabilities Act and Americans with Disabilities Amendments Act.” *Journal of Visual Impairment & Blindness (Online)*, vol. 111, no. 5, 2017, pp. 475-482. *ProQuest*, <https://sacredheart.idm.oclc.org/login?url=https://www.proquest.com/docview/2253337804?accountid=28645>, [doi.https://dx.doi.org/10.1177/0145482X1711100509](https://dx.doi.org/10.1177/0145482X1711100509).