A Human Resource Perspective on Implementing the ADA

This brochure is one of a series on human resources practices and workplace accommodations for persons with disabilities edited by Susanne M. Bruyère, Ph.D., CRC, SPHR, Director, Program on Employment and Disability, School of Industrial and Labor Relations – Extension Division, Cornell University. It was written by Susanne Bruyère. Kay N. Robinson, SPHR, and Assistant Vice Chancellor, developed a previous version of this brochure.

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The full text of this brochure, and others in this series, can be found at: www.ilr.cornell.edu/ped/ada. Research reports relating to employment practices and policies on disability civil rights legislation, are available at: www.ilr.cornell.edu/ped/surveyresults.html

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More information is also available from the ADA Technical Assistance Program and Regional Disability and Business Technical Assistance Centers, (800) 949-4232 (voice/TTY), www.adata.org

Human Resource (HR) professionals are key players in business organizations' implementation of the employment provisions of the Americans with Disabilities Act of 1990 (ADA), which prohibits, among other things, discrimination based on disability in the workplace. HR professionals are involved with recruitment, pre-employment screening and testing, and the reasonable accommodation process, as well as benefits, performance management, disability leave, and other parts of the employment process. Because of this broad involvement, they are in a key position to help their organizations realize the intent of the ADA and minimize disability employment discrimination. The purpose of this publication is to point out some places where the contribution of HR professionals can help business organizations create a culture and process that will facilitate the accommodation requirements of the ADA and minimize the likelihood of discrimination against applicants and employees with disabilities.

Approximately 14 percent of Americans have some form of disability.1 Many of these individuals are unemployed or underemployed, compared to their non-disabled peers, and represent a significant and as yet untapped U.S. labor pool.

In order to examine continuing barriers to employment for people with disabilities in the years since the passage of the ADA, the Society for Human Resource Management (SHRM) partnered with Cornell University to conduct a survey of SHRM membership in the fall of 1998. The research was based on the premise that the implementation of the employment provisions of disability nondiscrimination legislation is often a function of HR professionals, who are typically responsible for employment policies and practices that affect the hiring and retention of workers with and without disabilities.2 This guide offers suggestions for maximizing the contribution of HR professionals toward implementation of the ADA, and makes recommendations based upon what this survey revealed about SHRM members.

1) Encourage applicants with disabilities, and minimize needless discrimination in the application, pre-employment screening, and testing process.

Approximately 34 percent of men and 35 percent of women with disabilities in the United States were employed during 1999, compared to 95 percent of men and 82 percent of women without disabilities.3 Although the ADA does not require affirmative action, as the Rehabilitation Act does for federal contractors of $10,000 or more and for recipients of federal funds, these statistics affirm that people with disabilities remain a largely untapped labor pool. HR professionals can encourage and facilitate application by individuals with disabilities for open

1 U. S Bureau of the Census (2000) Supplementary Survey Summary Tables, QT-02. Profile of Selected Social Characteristics: 2000
2 Copies of the full SHRM report are available from the SHRM Store at 1-800-444-5006. An Executive Summary is available on-line at http://www.ilr.cornell.edu/ped/
3 U.S. Bureau of the Census (2000). Current Population Survey 2000. Washington, DC: U.S. Department of Commerce.

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positions by making sure that local agencies that provide vocational rehabilitation services are aware of job openings. Some of these agencies are state vocational rehabilitation agencies (listed in the yellow pages of your phone book), supported employment or community rehabilitation programs, one-stop or workforce state investment centers, and others.

HR professionals can also assist entry for individuals with disabilities by minimizing needless screening-out of people with disabilities for positions with pre-employment screening and testing. Job applications and job interviews should not include medical or disability-related inquiries, nor inquiries about prior workers' compensation claims; indeed, the ADA bans such inquiries before a conditional job offer is made. Any preemployment medical screening must occur post-offer, and other pre-employment screening that does occur should be consistent with actual job needs and business necessity.

In addition, the recruitment, application, and interview processes must be made accessible to candidates with mobility, visual, and hearing disabilities. Having recruitment materials and application forms in alternate formats, and knowing where to access sign language interpreters in your community are examples of good preparation for access. Further information about preemployment screening and pre-employment testing is available in other brochures in this series.

2) Review all employment process policies, procedures, and forms for disability discrimination and access considerations

The recruitment and applicant screening process is a good first place to start your assessment of the organization's policies and procedures in regard to effective outreach to people with disabilities, and minimizing barriers in the application and screening processes. However, the ADA applies throughout the employment process. Therefore, HR professionals must scrutinize the entire employment process with disability nondiscrimination in mind. For example, benefits programs, such as medical and hospitalization, accident, life insurance, retirement, and workers' compensation programs should be examined to assure equity for persons with disabilities in these employee benefit plans. Although employers can use actuarial data as approved by their state insurance boards, disability-specific exclusions or limitations are prohibited.

Equitable access to other benefits of employment, such as use of the cafeteria, in-house or contracted sports facilities for employee use, and other periodic recreational and social activities should also be examined for accessibility to employees with disabilities. It should be determined whether facilities are accessible to individuals who are mobility-impaired, and whether appropriate signage is in place for persons with visual impairments.

Employee training and other career development opportunities must be equitably available to the organization's employees with disabilities. Opportunities for advancement should be made available to all employees, and facilities and training approaches must be examined to ensure accessibility for employees with disabilities. Are web sites or print training announcements accessible to persons with visual and hearing impairments? Are training facilities wheelchair accessible, and are training materials available in alternate formats (large print, disk, audio-tape and/or Braille)?

Similarly, grievance, lay-off, termination, and discharge processes should be examined to ensure that individuals with disabilities are not disparately treated in these processes.

3) Create an organizational structure to support the accommodation process

The EEOC encourages an informal, interactive process between the employee and the representative of the organization to determine reasonable accommodations. The organizational representative may be the supervisor, the HR professional, or another person. The request for an accommodation may come from the individual to the immediate supervisor, but often is a multi-level problem solving process that is put into motion when an inquiry is made. In the Cornell University study of SHRM members, about one-quarter of respondents said that the HR person alone made the final decision about accommodations, while an additional ten percent said that the HR person was involved with other managers in making the decision.

Because an inquiry often will go to the supervisor, it is imperative that supervisors are aware of their organization's accommodation decision-making process. HR professionals should educate them about the accommodation requirements of the ADA, and let them know that the HR professional is available to assist in the problem-solving process. HR professionals can also point supervisors to resources to assist in determining what accommodations will effectively meet the needs of the individual. These may be resources within the organization or within the community at large, including ergonomists, health and safety professionals, or employee assistance professionals. In addition, if there is a cost involved with the accommodation, and the individual business unit is not able to meet that cost, a central office may be the place where additional assistance can be sought to help with financing a particular accommodation.

4) Organizational tracking and recording of accommodations

Although the ADA does not require data keeping on accommodations, it can be useful for organizations to put an accommodation tracking mechanism in place. This allows the organization to document a good faith effort to respond to accommodation requests from its personnel. Furthermore, it will build its institutional memory of effective accommodations for particular job categories and disability issues.

Almost half of the SHRM/Cornell survey respondents indicated that their organizations keep data on the accommodations made for employees with disabilities so that they will have information for future accommodations in similar situations. About one-third

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of respondents also keep data to fulfill regulatory reporting requirements, for use in dispute resolution, and for tracking accommodation costs. About a third of respondents said their organizations do not keep data on the provision of accommodations.

5) Top management commitment to disability nondiscrimination

No significant organizational change occurs without top-down commitment from organizational leadership. Similarly, to ensure effective recruitment, hiring, integration, and accommodation of individuals with disabilities, top management must affirm and effectively communicate the importance of recruiting and retaining individuals with disabilities. This can be part of a message about the importance of diversity, which should be made explicit to engage the administrative and supervisory structure of the organization in assisting with this effort. Conveying that top leadership sees this as not only a compliance issue but good business sends the right message and can be a significant motivator for more effective workplace compliance with the ADA. In the Cornell University study of SHRM members, high-level management commitment was seen as *the* most effective way to minimize continuing barriers for people with disabilities in the workplace.

6) Clarify position requirements and performance expectations
The ADA does not require employers to have written job descriptions. But properly prepared job descriptions are critical in effective performance management. Accurate job descriptions are a tool to effectively recruit and retain good employees, including people with disabilities. Job descriptions are a road map for supervisors, interviewers, medical staff, even applicants and employees throughout the employment process.

An up-to-date job description identifying the position's essential functions should be prepared prior to recruitment and posting. A copy can be given to applicants, so that a need for an accommodation can be identified and addressed, as necessary. Job descriptions can also be used to further clarify performance expectations once a person has been hired. Persons with disabilities can be held to the same performance standards as others in the job category, but necessary reasonable accommodations must be provided, unless it would be an undue hardship to do so.

7) Provide training and continuing communication on ADA requirements

Training is key. Training is important at all levels of the organization. Not just interviewers. Not just hiring supervisors or administrators, but all employees. Why? The ADA isn't just a law to provide equal access to individuals with disabilities. It's also about sensitivity, about looking at our behaviors and attitudes to determine whether we may be part of the problem in ensuring equal access. This allows us to make sure we are part of the solution in providing equal employment opportunity.

SHRM membership respondents in the Cornell study reported conducting extensive training for their HR professionals, but significantly less training for supervisors in business organizations. To be truly effective, disability nondiscrimination training must reach to the supervisory level to inform supervisors of their responsibilities under the ADA. Useful training topics include: confidentiality requirements of medical information, nondiscrimination in the disciplinary or termination processes, nondiscriminatory recruitment and hiring practices defining essential job functions, and the accommodation process. Further information on training and the ADA is found in another brochure in this series.

8) If in a unionized environment, involve your union representatives

The union can play a role in helping an individual with a disability to get the accommodation they need to perform effectively in the workplace. Your unions are also subject to the ADA regulations. You will want to work closely with them to ensure there is flexibility in the contracts to allow accommodations to be made, if appropriate. The regulations suggest that the terms and conditions of a collective bargaining agreement may be used as a factor in determining whether an accommodation would be an undue hardship. However, you will want to look at all the factors and focus on good faith efforts with the union. The key is to focus on the joint legal obligation to ensure that an employee with a disability gets a necessary reasonable accommodation.

In the SHRM/Cornell study, respondents indicated that unions could contribute to the accommodation process in the following ways: providing representation in reasonable accommodation discussions, providing advice or information on ways to accommodate employees with disabilities, providing representation in grievance discussions when accommodation requests are denied, and consulting with employers on revising employment policies. Unions also provided information on the rights of employees with disabilities.

9) Use your disability management and diversity programs to support ADA compliance

Respondents in the Cornell University study reported that one of the areas where they made the most effort to make changes in response to the ADA was co-worker and supervisor attitudes towards people with disabilities. This was also seen as one of the most difficult areas to change. This feedback from SHRM members suggests that attitudinal issues continue to be a problem in the workplace for people with disabilities, and that continuing attention should be directed toward addressing attitudinal barriers. Diversity programs may be an area where sensitivity training or disability awareness training can occur. Again, affirming the organization's commitment to hiring and retaining individuals with disabilities in the workforce, as well as raising awareness of disability etiquette, can effectively assist in dealing with attitudinal issues in the workplace about people with disabilities.

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If your organization has a disability management or return-to-work program, this can be an area that supports ADA compliance. The structure and requirements of such programs lend themselves to increasing awareness of the importance of confidentiality, raising acceptance of people with disabilities in the workplace, increasing supervisor awareness of reasonable accommodation requirements, and creating an organizational structure for accommodations. The value of disability management programs in supporting ADA good practice was also shown by the Cornell University Study of SHRM Membership

10) Use internal and community resources to address accommodation needs

There are numerous individuals who, because of their role or their particular expertise, should be identified and engaged in the organization's overall accommodation process. Although the decision about an accommodation is unique to the individual, their disability, and the nature of their job, there are numerous resources that may be used for each individual's situation. Some of the specific experts that can contribute to identification of the most appropriate accommodation for a particular disability are ergonomists, physical therapists, occupational therapists, health and safety professionals, and employee assistance professionals. These are often individuals who are working within larger organizations whose expertise can be applied to the accommodation process as needed. In addition, benefits specialists and labor relations representatives may also be able to assist with a particular accommodation request. Identifying these individuals, and bringing them together on a regular basis to build a sense of the cultural appropriateness of accommodation and the importance of working together to generate positive outcomes is an important part of an effective accommodation process within an organization.

In addition to the above noted resources that may be found internally in any medium-sized and larger business settings, there are many community resources that can assist in the clarification and identification of accommodations for persons with specific disabilities. State vocational rehabilitation agencies have vocational counselors that can be of assistance, and in some cases can help with financing accommodations that are beyond the resources of the employer or the specific needs of the employment setting. In addition community centers for independent living can assist with accommodation inquiries that relate to facility accessibility or assistive technology, as well as helping the individual with personal needs such as housing and transportation. Many of these organizations are listed in the yellow pages of the phone book.

Conclusion

Implementation of the ADA program for your organization will take time and effort. But taking a proactive approach to outline your plan is much more effective than reacting later to specific issues or problems. You can take the cautious approach, the insightful approach, or the visionary approach. If employers are sensitive and programmatic in their implementation philosophy and plan, we will start to make some strides in equal employment opportunity for all individuals, including those with disabilities.

Resources

ADA Disability and Business Technical Assistance Center Hotline, 800/949-4232 (voice/TTY).

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Society for Human Resource Management 1800 Duke Street Alexandria, Virginia 22314 USA (703) 548-3440 (phone); (703) 535-6490 (fax) http://www.shrm.org

U.S. Equal Employment Opportunity Commission 1801 L Street, NW Washington, DC 20507 (800) 669-4000 (voice); (800) 800-3302 (TTY) (800) 666-EEOC (publications). http://www.eeoc.gov

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The Equal Employment Opportunity Commission has issued enforcement guidance which provides additional clarification of various elements of the Title I provisions under the ADA. Copies of the guidance documents are available for viewing and downloading from the EEOC web site at: http://www.eeoc.gov

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