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Cornell University

Year 2001

Diversity and the ADA

Susanne M. Bruyere*

Jennifer Rhodes†

*Cornell University, smb23@cornell.edu

†Cornell University,

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Diversity and 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 has been updated by Jennifer Rhodes, Diversity Initiative Manager, Society for Human Resource Management, from the original, which was written in 1996 by Susanne M. Bruyère.

Cornell University was funded in the early 1990's by the U.S. Department of Education National Institute on Disability and Rehabilitation Research as a National Materials Development Project on the employment provisions (Title I) of the ADA (Grant #H133D10155). These updates, and the development of new brochures, have been funded by Cornell's Program on Employment and Disability and the Pacific Disability and Business Technical Assistance Center.

Cornell University currently serves as the Northeast Disability and Business Technical Assistance Center. Cornell is also conducting employment policy and practices research, examining private and federal sector employer responses to disability civil rights legislation. This research has been funded by the U.S. Department of Education National Institute on Disability and Rehabilitation Research (Grant #H133A70005) and the Presidential Task Force on Employment of Adults with Disabilities.

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.

For further information, contact the Program on Employment and Disability, Cornell University, 102 ILR Extension, Ithaca, New York 14853-3901; 607/255-2906 (Voice), 607/255-2891 (TTY), or 607/255-2763 (Fax).

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.

What is Diversity in the Workplace?

Broadly defined, workplace diversity is the understanding, valuing, and effective management of the ethnic, socio-economic, and gender variety or diversity within an organization's workforce and among its customers. Many companies have recognized the importance of addressing the issue of diversity and are moving forward to establish and develop successful diversity initiatives. A primary catalyst causing workplace diversity is the demographic shift of the U.S. population and, therefore, of the U.S. workforce.

Demographic studies show that the composition of the population in the U.S. is more diverse than it has ever been. According to the Census Bureau, nonwhites will represent more than one-third of the U.S. population by the year 2010 and close to half of the U.S. population by the year 2050. By the year 2005, the ethnic minority share of the workforce will likely reach 28 percent, up from 18 percent in 1980 and 22 percent in 1990. It is projected that by the year 2010, Hispanic-Americans will comprise the largest minority group in the U.S. As the number of persons with disabilities grows, so too does the number of persons of color living with a disability. Minority persons with disabilities are disproportionately represented among the unemployed, and the employment outlook for them is bleak.

Given these changes in the population and in the labor market, there is an increased reliance on non-traditional workers and the opportunity for organizations and individuals to capitalize on the array of ideas, creativity, and potential contributions inherent in a diverse workforce. Attracting, recruiting, developing, and retaining a qualified workforce from diverse populations is and will continue to be critical for business survival and organizational success.

What Is the Americans with Disabilities Act?

The Americans with Disabilities Act (ADA), passed in 1990, is legislation that is intended to "establish a clear and comprehensive prohibition of discrimination on the basis of disability" and to ensure access and participation in society for persons with disabilities. The statute is specifically directed at employment, public accommodations, public services (i.e., services delivered by state and local governments), transportation, and telecommunications. Title I of the ADA prohibits employers with 15 or more employees from discriminating against qualified persons with disabilities in all terms, conditions, and privileges of employment, including recruitment, pre-employment screening, hiring, benefits, promotions, layoff, and

termination. The ADA also applies to labor organizations, employment agencies, and joint-management committees.

The ADA also requires employers to provide reasonable accommodations to qualified persons with disabilities that will enable them to perform the essential functions of jobs held or desired. An employer may not deny an employment opportunity to a qualified applicant or employee with a disability because of a request or need for a reasonable accommodation. An employer does not have to provide an accommodation if it can demonstrate that it would be an undue hardship to do so.

Addressing Diversity and the ADA

The term diversity can encompass several dimensions, such as race, ethnicity, gender, age, religion, sexual orientation, and disability. Diversity, disability, and human resource professionals need to be aware of these dimensions when helping their companies recruit and retain employees, sell in the marketplace, and define diversity within their organizations. Persons with disabilities, including *minority* persons with disabilities, have the ability to make positive contributions in the workplace and to the success of organizations.

Today, diversity initiatives are less “affirmative action”-oriented in that they now reflect both *valuing* diversity and *managing* diversity. Valuing diversity involves recognizing and appreciating the differences of individuals. Managing diversity emphasizes developing company policies, goals, and a culture that optimizes the productivity of *all* employees, by understanding their unique needs, motivations, and contributions. Also, model initiatives have revealed that diversity initiatives require the visible support of and commitment from senior management.

Successful diversity initiatives can include an array of programs. Generally included is some form of training, as well as efforts to change the communication norms of the organization. Specifically, employee surveys, employee networks, diversity management training, mentoring programs, and the use of company intranets are frequently put in place to assess and broaden the attitudes of employees and management. Many corporations also examine their reward systems to ensure that employees are not being evaluated on their personal style, but rather on the merits of their work. As a part of the initiative, flexibility is sometimes incorporated into the work schedule.

Employers are also making strides in assuring compliance with ADA employment provisions in their work

environments. This may mean training staff on the following topics relating to ADA implementation:

- Employment pre-screening and applicant interviewing under the ADA
- Relationship between the ADA with other state and federal employment and non-discrimination laws
- Writing job descriptions that clearly identify essential job functions
- The reasonable accommodation process
- Career equity/promotional considerations for persons with disabilities
- Non-discriminatory performance appraisals
- Employee relations with employees with disabilities (minority and non-minority)
- Customer relations with customers with disabilities
- Negotiation/conflict management in the reasonable accommodation process

In summary, the implications for employers of addressing and understanding diversity and disability as related considerations include:

- Enhanced recruitment and retention efforts
- Improved productivity
- Expanded training programs that include both diversity (ethnicity, gender, and religion) and disabilities
- Expanded policies and programs
- Improved morale

What Is Reasonable Accommodation?

Reasonable accommodation is any modification of or adjustment to a job, an employment practice, or the work environment that makes it possible for a qualified individual with a disability to apply for and perform the essential functions of a job.

Reasonable accommodation includes, but is not limited to, modification or adjustment of the application process to enable individuals with disabilities to apply for work, making facilities readily accessible to and usable by persons with disabilities, modifying work schedules, reallocation of non-essential job functions, acquisition or modification of equipment or devices, and reassignment to a vacant position. An employer is not required to reallocate essential job functions or to create “light-duty” positions.

An employer is not required to provide a reasonable accommodation if it can demonstrate that it would be an **undue hardship** to do so. Whether a reasonable accommodation creates an undue hardship is a factual issue depending on factors such as the nature and net cost of the accommodation and the size and nature of the business.

The duty of reasonable accommodation is situation-specific.

What Is The Reasonable Accommodation Process?

To identify a reasonable accommodation under the ADA, if an effective accommodation is not obvious, the employer and employee may wish to engage in a flexible interactive process/discussion. Generally, if an individual with a disability wants a reasonable accommodation, he or she must request one. If the employer has not done so, it should determine the essential functions of the job involved, then consult with the individual requesting accommodation to determine the job-related limitations imposed by the individual's disability and how those limitations could be overcome with a reasonable accommodation. The possible accommodations should be evaluated and an effective accommodation selected. While the employee's preference is given consideration, the employer has the discretion to choose between equally effective reasonable accommodations.

It is important that the concept of non-discrimination and equal access for all persons with disabilities be an ongoing discussion in the workplace. Making an accommodation that meets an individual's specific needs is less difficult when organizations foster a climate that is agreeable to complying with the principles and requirements of the ADA. An example is when a person has difficulty performing a *nonessential* job function and the accommodation is to have other employees pick up some of those tasks. Effecting such a task reallocation is usually easier when employees are prepared through prior training and ongoing group dialogue on accommodation issues.

The ADA contains strict confidentiality requirements pertaining to medical information obtained during a medical examination or inquiry. Medical information must be collected and maintained on separate forms and in separate medical files and be kept confidential. There are certain narrow circumstances when such information may be disclosed, including informing supervisors and managers about necessary work restrictions or accommodations.

What are some suggested strategies for heightening awareness of workplace diversity considerations, multicultural persons with disabilities, and the ADA?

Successful implementation of both diversity and ADA initiatives require efforts to change corporate culture and attitudes. Both suggest the need for staff training on non-discrimination practices, diversity awareness, diversity skills, flexibility in work schedules, and investigation of employee evaluation and reward structures. The parallel

nature of these strategies suggests that the combination of disability and diversity initiatives is possible and would likely be advantageous to the success of both efforts.

Selected strategies that may both further diversity initiatives and implementation of the ADA include:

- Diversity initiatives that include active recruitment and retention of individuals of all backgrounds with disabilities in the workplace through collaborative agreements with state Vocational Rehabilitation agencies or local job placement services for individuals with disabilities.
- Development of targeted job programs for minorities with disabilities
- Development of a mentoring program for people with disabilities
- Making training, development, and promotional opportunities available to all minorities seeking job advancement. For individuals of all backgrounds with disabilities, this may include supplying needed supports to enable them to access training, considering new positions, or acquiring needed retraining when a disability occurs that prevents a return to the original job position.
- Integration of the nondiscrimination requirements of the ADA and Title VII of the Civil Rights Act for persons with disabilities in all facets of staff training and human resources practices.

These are only a few of many proactive initiatives that employers can take to recruit and retain individuals with disabilities in the workplace, thereby expanding their potential labor pool and maximizing human resources to enhance workplace outcomes.

Diversity and Disability Resources

Books:

Beyond Race & Gender, R. Roosevelt Thomas, Jr.

Designing & Implementing Successful Diversity Initiatives, Lawrence Baytos

Diverse Teams At Work, Lee Gardenswartz, PhD & Anita Rowe, PhD

Race Matters, Cornel West

Redefining Diversity, R. Roosevelt Thomas, Jr.

Videos:

Blue-Eyed, Brown-Eyed, California Newsreel, 149 Ninth Street/420, San Francisco, CA 94103; Phone: 415/621-6196; Fax: 415/621-6522; Internet: <http://www.newsreel.org>

Diversity Management, Roosevelt Thomas, Society for Human Resource Management, SHRMStore, 800/444-5006 or www.shrm.org/shrmstore

Hotline:

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

Websites (Cultural Diversity & Disabilities):

Society for Human Resource Management (SHRM) <http://www.shrm.org>

SHRM Diversity Web Page: www.shrm.org/diversity (SHRM membership number needed)

American Association of People with Disabilities <http://www.aapd.com>

American Institute for Managing Diversity
Morehouse College
Box 83, 351-55 Westview Drive
Atlanta, GA 30314
(404) 756-1170
<http://www.aimd.org>

American Society for Training and Development
1640 Kings Street, Box 1443
Alexandria, VA 22313
(703) 683-8100.
<http://www.astd.org>

Catalyst
<http://www.catalystwomen.org>

Department of Justice ADA Home Page
<http://www.usdoj.gov/crt/ada/adahom1.htm>

The Disability Forum
<http://www.emplyease.com/disability>

Institute for Corporate Diversity has a web site that provides access to diversity news and resources.
<http://www.diversityonline.com>

Job Accommodation Network has useful information about working effectively with employees with disabilities.
918 Chestnut Ridge Road, Suite 1
Morgantown, WV 26506-6080
(800) ADA-WORK (voice/TTY).
<http://janweb.icdi.wvu.edu>

National Association for the Advancement of Colored People (NAACP)
<http://www.naacp.org>

National Association for Diversity Management provides a forum for worldwide networking on the topic of diversity.
<http://www.nadm.org>

The National Forum on People's Differences maintains an interactive web site that allows visitors to pose diversity-related questions that are answered by experts.
<http://www.yforum.com>

National Multicultural Institute
<http://www.nmci.org>

Presidential Task Force on Employment of Adults with Disabilities
http://www.dol.gov/dol/_sec/public/programs/ptfead/main.htm

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

Disclaimer

This material was produced by the Program on Employment and Disability, School of Industrial and Labor Relations-Extension Division, Cornell University, and funded by a grant from the National Institute on Disability and Rehabilitation and Rehabilitation Research (grant #H133D10155). The U.S. Equal Employment Opportunity Commission has reviewed it for accuracy. However, opinions about the Americans with Disabilities Act (ADA) expressed in this material are those of the author, and do not necessarily reflect the viewpoint of the Equal Employment Opportunity Commission or the publisher. The Commission's interpretations of the ADA are reflected in its ADA regulations (29 CFR Part 1630), Technical Assistance Manual for Title I of the Act, and EEOC Enforcement Guidance.

Cornell University is authorized by the National Institute on Disability and Rehabilitation Research (NIDRR) to provide information, materials, and technical assistance to individuals and entities that are covered by the Americans with Disabilities Act (ADA). However, you should be aware that NIDRR is not responsible for enforcement of the ADA. The information, materials, and/or technical assistance are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the Act, nor binding on any agency with enforcement responsibility under the ADA.

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>