

Executive Summary

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A Comparison of the Implementation of the Employment Provisions of the Americans with Disabilities Act of 1990 (ADA) in the United States and the Disability Discrimination Act of 1995 (DDA) in Great Britain and Northern Ireland

By **Susanne M. Bruyère**, *Cornell University, October, 1999*

About the Survey

This summarizes the results of recently-conducted surveys in the United States, Great Britain, and Northern Ireland to assess employer response in each of these countries to their respective employment disability nondiscrimination legislation. Ten-page parallel surveys covering issues dealing with the respective employment provisions of the Americans with Disabilities Act of 1990 (ADA) in the U.S., and the Disability Discrimination Act (DDA) in the United Kingdom were administered to the membership of five different business organization membership groups. In the US, the survey was a collaborative effort of Cornell University, the Society for Human Resource Management (SHRM), the Washington Business Group on Health (WBGH), and the Lewin Group. In Britain, survey collaborators were Cornell University, the Employers' Forum on Disability and the Institute for Personnel and Development. The Northern Ireland survey was a collaboration between Cornell University and the Employers' Forum on Disability-Northern Ireland.

The survey results reported here are based on the feedback of approximately 1900 US, Great Britain, and Northern Ireland employer representatives, mostly HR representatives, since these were the largest member organizations surveyed, and HR practice and employment disability nondiscrimination was the focus of interest.

The Survey Sponsors

The collaboration of many sponsors in the U.S. and abroad has made this research possible. The initial research conducted in the United Kingdom, as well as the writing of this report, has been funded by the U.S. Department of Education National Institute on Disability and Rehabilitation Research (NIDRR) for a Mary E. Switzer Distinguished Research Fellowship (grant no. 72-0564834F) to Susanne M. Bruyère, Ph.D., from the Program on Employment and Disability in the School of Industrial and Labor Relations Extension Division at Cornell University, Ithaca, New York, U.S.A. However, over the course of three years, this funding agency and several other collaborators have enabled us to greatly expand both upon the scope of the work and our ability to disseminate its results. The Institute of Personnel and Development (IPD) in Britain supported the telephone survey effort for their own membership. The U.S. Department of Education National Institute on Disability and Rehabilitation Research funded a separate Research and Demonstration grant to Cornell University to fund the research which occurred with U.S. employers (grant No. H133A70005). The Institute for International Human Resources (IIHR) of the Society for Human Resource Management is making preliminary information about the report available on-line to its membership.

Survey Results

Organizations' Accommodations/Adjustments Process

Many of the organizations surveyed are responding to their respective disability nondiscrimination legislation by making accommodations/adjustments needed by applicants and employees with disabilities, including being flexible in HR policies and making existing facilities accessible to people with disabilities.

In the US, the HR staff either alone or in combination with others makes the final decision on accommodations. In Great Britain and Northern Ireland, this decision is most often made by managers or directors other than HR.

When asked whether data was kept on accommodations/adjustments, there again was a significant difference by country. In general, data is less often kept in Northern Ireland (56 percent do not keep data on adjustments) and Great Britain (35 percent of respondents do not keep data), compared to only 13 percent of all US respondents who do not keep data.

Organizations from all three areas report difficulty responding to requests to make information accessible for people with visual or learning impairments and making information accessible for hearing impaired people.

British and Northern Ireland employers reported more difficulty with making adjustments to medical tests to minimize discrimination of applicants with disabilities in the pre-employment process

US employers reported a greater degree of familiarity in the areas of: framing questions to applicants about the ability to perform specific job tasks rather than about the disability; restrictions on obtaining medical examinations and medical history; restrictions on eliciting information on medical issues affecting applicants' health and safety on the job; and knowing when to ask an applicant about how s/he would perform certain job tasks.

More British HR representative respondents than US or Northern Ireland respondents reported familiarity with adapting print materials used in the interview process to large print, diskette, or Braille for applicants with disabilities.

Changes to Health or Other Benefits Due to the ADA/DDA

In the US, on the average, only one in ten reported change in long-term disability, short-term disability, and life insurance policies as a result of the ADA. Greater change was reported in Britain and Northern Ireland, in such

areas as changes to absence management policies (35 percent in Northern Ireland; 33 percent in the British respondents), changes to ill health/sick pay policies, and pensions (approximately one in five in each of these areas). It appears that much more significant changes are resulting in Britain and Northern Ireland from absence management and ill health/sick pay policies, than is currently occurring in the US in long-term and short-term disability policies.

Barriers to Promotion and Training for People with Disabilities

In both the US and Great Britain, cost of training, supervision, and of accommodations/adjustments for applicants or employees with disabilities are not seen as significant barriers to the employment or advancement for persons with disabilities. Northern Ireland respondents did see the cost of adjustments as a major barrier.

The highest reported barrier for the US and Great Britain (and similarly high for Northern Ireland) were in the areas of lack of related experience and lack of requisite skills and training in the person with a disability. The next highest, similar across the three respondent groups, was supervisor knowledge of how to make an accommodation/adjustment for a person with a disability, and attitudes or stereotypes among co-workers and supervisors. All three groups report that visible top management commitment is the top way to reduce barriers for people with disabilities in the workplace.

In all the surveyed groups, the change most often made, but also seen as the most difficult to make was changing fellow employee or supervisor attitudes toward the employee with a disability.

Wheelchair accessibility, time flexibility in test taking, and communication access for people with hearing impairments were reported as the types of access reported most often provided across countries to ensure that people with disabilities have equitable access to meetings, promotional or social opportunities, and/or training.

ADA/DDA Dispute Resolution Process and Claims Experience

US respondents report significantly more claims across all areas than British or Northern Ireland respondents. The most common complaint filed across all areas was of alleged wrongful dismissal followed by failure to accommodate/make adjustments.

Many respondents reported having a dispute or grievance resolution process for accommodations/adjustments

(73 percent of US respondents, 67 percent of British, and 32 percent of Northern Ireland respondents).

The ADA/DDA and Labor Relations /Collective Bargaining Issues

Organizations in Great Britain and Northern Ireland were much more unionized than US organizations, but US unions were more often involved in the accommodation/adjustment process.

Of those who have union involvement in the accommodation/adjustment process in the US, unions were used most often to provide representation in discussions about the accommodation process (75 percent), and to provide advice/information on ways to accommodate or make adjustments for employees with disabilities (66 percent). The way in which unions were most often involved in Britain and Northern Ireland was consulting on revising employment policy (70 percent for the British Respondents), which was similar to respondents from Northern Ireland (68 percent).

Interaction with Other Employment Legislation

US respondents reported significantly less certainty about the interaction of the ADA and other employment and health and safety legislation than their British and Northern Ireland counterparts.

The areas where there was the greatest uncertainty for US respondents, were in coordination of the ADA and the Family and Medical Leave Act (FMLA), and the interplay between the ADA and work-related injury. Among respondents from Great Britain and Northern Ireland, the greatest degree of uncertainty was in the area of work-related injury and the DDA.

ADA/DDA Personnel Training Conducted

US respondents reported having conducted significantly more training in seven of the 12 listed areas.

The area training was most often conducted across all groups was nondiscriminatory recruiting (89 percent, 82 percent, and 60 percent respectively for the US, Great Britain, and Northern Ireland). Second most often conducted for US and British respondents was confidentiality requirements of the ADA and DDA (88 and 78 percent, respectively).

An area which respondents from all country groups expressed an interest in gaining further information on was accommodations/adjustments for persons with mental health disabilities.

Resources Used to Resolve ADA/DDA Issues

Across all three groups, legal counsel or advisor was selected as the resource most often used to resolve ADA/DDA disputes, and alternative dispute resolution as a least used resource.

Respondents from all country areas identify print/video resources and onsite consultation and technical assistance as the top two preferred mediums to address ADA/DDA issues.

Presence of a Disability Management Program and Contribution to the ADA/DDA

Approximately two-thirds to three-quarters or more of respondents in each of the country groups reported having formal or informal disability management, or return to work/retention programs, and that such programs contribute positively to ADA/DDA compliance.

Implications of the Study

People with disabilities still represent a largely untapped employment resource in many countries around the globe, being often greatly under or unemployed compared to their non-disabled peers. In the United States and the United Kingdom, employment disability nondiscrimination legislation has been passed in an attempt to address this inequity. The research described in this report is based on the premise that the implementation of the employment provisions of these pieces of disability nondiscrimination legislation falls largely in the realm of the functioning of human resource (HR) professionals. HR professionals are responsible for the recruitment, pre-employment screening and other workplace practices that effect the hiring and retention of workers with and without disabilities. The purpose of this research is to identify how HR professionals have responded to this legislation to date, and what further can be done to support their very critical role in minimizing workplace discrimination for people with disabilities.

With a shrinking labor force in some countries, and an increasing need for skilled labor in certain industries, it is timely to explore effective recruitment and workplace integration of employees with disabilities. Legislation such as the Americans with Disabilities Act of 1990 and the British Disability Discrimination Act 1995 are significant legislative mandates to move us socially, culturally, and economically toward a realization of employment equity for people with disabilities. In addition, the increasingly global nature of enterprises necessitates that

human resource professionals become knowledgeable of evolving nondiscrimination legislation that transcends cultural bounds, such as protections afforded persons with disabilities. Knowledge of these requirements better assure that HR professionals are operating in compliance with such legislation in their HR policies and practices. In addition, however, structures and systems such as disability management and return to work programs may not only assist in such ADA/DDA compliance, but even more importantly contribute to minimizing the negative impact of disability and ill health on employee well-being and overall organizational effectiveness.

Full Survey Reports Available

A copy of the full survey report is available from the Cornell University Program on Employment and Disability at 607-255-7727 (Voice); (607) 255-2891 (TDD); 607-255-2763 (Fax); or e-mail Susanne M. Bruyère at smb23@cornell.edu. Copies of individual survey reports for each of the membership organizations are available either from Cornell University or the membership organization at the contact information below:

■ **SHRM:** To order a copy of the full survey report, call the SHRMStore at 1-800-444-5006. The cost is \$39.95 (US) for SHRM members and \$49.95 for non-members (item code 62.17023).

■ **WBGH:** Call 202-408-9320 (Voice), 202-408-9332 (Fax), or 202-408-9333 (text telephone)

■ **Employers' Forum on Disability:** Call 44-171-403-3020 (Voice), or 44-171-403-0404 (Fax)

■ **Employers' Forum on Disability — Northern Ireland:** Call (018206) 24526 (Voice) or (018206) 62325 (Fax)

■ **Institute of Personnel and Development:** Call 44-181-263-3284 (Voice), or 44-181-263-3333 (Fax)

Further Resources

■ **Cornell University**

Susanne M. Bruyère
Program on Employment and Disability
School of Industrial and Labor Relations
106 ILR Extension
Ithaca, NY 14853-3901, United States
607-255-7727 (Voice)
607-255-2891 (TTY)
607-255-2763 (Fax)
<http://www.ilr.cornell.edu/ped>
ilr_ped@cornell.edu

■ **Department for Education and Employment (DFEE)**

Moorfoot
Sheffield S1 4PQ
United Kingdom
011-44-114-275-3275 (Voice)
<http://www.dfee.gov.uk/dfeehome.htm>
info@dfee.gov.uk

■ **Employers' Forum on Disability**

Nutmeg House
60 Gainsford Street
London SE1 2NY, UK
011-44-171-403-3020 (Voice)
011-44-171-403-0404 (Fax)

■ **Employers' Forum on Disability in Northern Ireland**

Banbridge Enterprise Centre
Scarva Road Industrial Estate
Banbridge BT32 3QD
Northern Ireland
(018206) 24526 (Voice)
(018206) 62325 (Fax)

■ **Institute for Personnel and Development**

IPD House
Camp Road
London SW19 4UX
9-011-44-181-263-3333 (Fax)

■ **U.S. Equal Employment Opportunity Commission**

1801 L St. NW
Washington, DC 20507

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