

Employment and Disability Institute
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Collection

Cornell University

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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 (DDA)
1995 in the United Kingdom

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Executive Summary

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WBGH

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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 (DDA) 1995 in the United Kingdom

Susanne M. Bruyère, *Cornell University*

About the Survey

This summarizes the results of recently-conducted surveys in the United States and Britain 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 four 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 survey results reported here are based on the feedback of approximately 1800 US and UK 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 in the US and the UK are responding to their respective disability nondiscrimination legislation by making accommodations/adjustments needed by applicants and employees with disabilities.

In both the US and the UK, the top changes reported by respondents were providing flexibility in HR policies and procedures and making existing facilities accessible.

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

When asked whether data was kept on accommodations/adjustments, there is a significant difference by country. In general, data is less often kept in British organizations (35 percent of respondents do not keep data), compared to 13 percent of US organizations who do not keep data.

Both US and British organizations report difficulty responding to requests to make information accessible for people with visual or learning impairments and making information accessible for hearing impaired people. US respondents reported more difficulty with making information accessible for persons with visual impairments (36% compared to 24% for British respondents).

British employers reported more difficulty with making adjustments to medical tests to minimize discrimination of applicants with disabilities in the pre-employment process (12% of British respondents compared to 4% of the US).

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 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, approximately one in 10 respondents reported making changes in health benefits as a direct result of

the ADA, while in the UK, up to one-third had made changes in their benefits. Greater change was reported in the UK, in such areas as changes to absence management policies, changes to ill health/sick pay policies, and pensions. It appears that much more significant changes are resulting in the UK from absence management and ill health/sick pay policies, than is currently occurring in the US in somewhat similar long-term and short-term disability policies.

Barriers to Promotion and Training for People with Disabilities

In both the US and 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.

Respondents from both countries saw lack of related experience and lack of requisite skills and training in the applicant or employee with a disability as the primary barriers to employment or advancement. The next most often cited was supervisor knowledge of how to make accommodations/adjustments; although these were statistically significantly different between the groups. Supervisor knowledge of how to make an accommodation/adjustment for a person with a disability was the third and fourth most often reported barrier from the US and UK respectively. Attitudes or stereotypes among co-workers and supervisors towards persons with disabilities was seen as the second most significant barrier among UK respondents, and fourth among US respondents.

Both countries report visible top management commitment and staff training as the top two ways to reduce barriers.

In both countries, 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 and time flexibility in test taking were reported as the types of access reported most often provided across both 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 respondents. The most common complaint filed across both countries was of alleged

wrongful dismissal followed by failure to accommodate/ make adjustments. Other areas that were notably higher for the US than for the UK were the areas of harassment and disciplinary action.

Many respondents reported having a dispute or grievance resolution process for accommodations/adjustments (73 percent of US respondents, 67 percent of UK respondents).

The ADA/DDA and Labor Relations/Collective Bargaining Issues

Respondent workplaces were more significantly unionized among UK respondents (59 percent) compared with US respondents (23 percent).

Where unions were involved in the accommodation/adjustment process, in the US, they most often provided representation in discussions about the accommodation process, and advice or information on ways to accommodate employees with disabilities. In the UK, unions were most often involved in consultations on revising employment policies, followed by providing representation in the adjustment process.

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 counterparts.

Among US respondents, the area of greatest uncertainty was the coordination between the ADA and the Family and Medical Leave Act (FMLA), and in the interplay between the ADA and work-related injury laws. Respondents from the UK reported the greatest degree of uncertainty 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 areas in which training was most often conducted in both countries was nondiscriminatory recruiting and hiring practices, followed by confidentiality requirements of the ADA/DDA.

An area in which respondents from both countries expressed an interest in gaining further information was accommodations/adjustments for persons with mental health disabilities.

Resources Used to Resolve ADA/DDA Issues

Across both countries, 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 both countries 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 four of five 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 certain countries, and the 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 assures 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)

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

Further Resources

■ Cornell University

Program on Employment and Disability
School of Industrial and Labor Relations
106 ILR Extension
Ithaca, NY 14853-3901, USA

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, UK

011-44-114-275-3275 (Voice)

<http://www.dfee.gov.uk/dfeehome.htm>

info@dfee.gov.uk

■ Employers' Forum on Disability

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London SE1 2NY, UK

011-44-171-403-3020 (Voice)

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■ Institute of Personnel and Development

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011-44-181-263-3284 (Voice)

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■ U.S. Equal Employment Opportunity Commission

1801 L St. NW
Washington, DC 20507, USA

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800-669-4000 (Voice)

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