

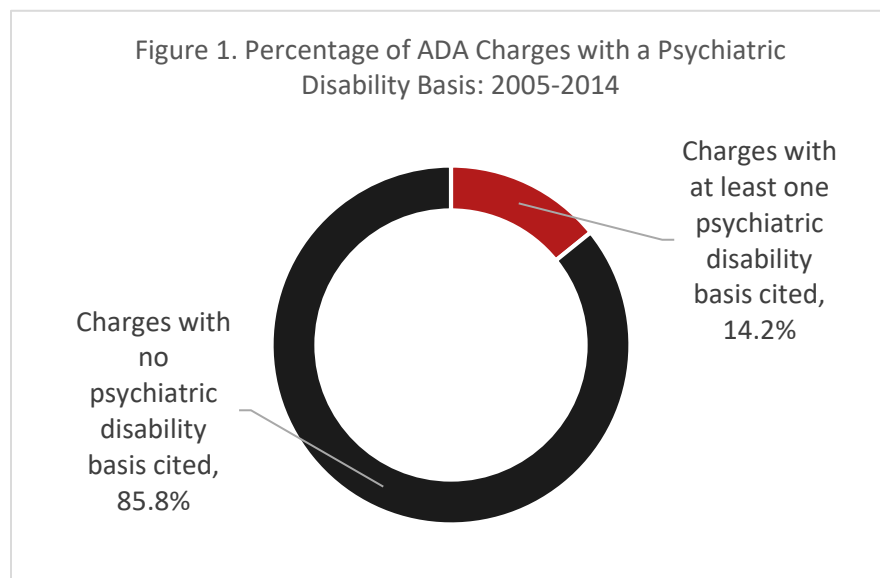
Research Brief: The patterns and context of ADA discrimination charges filed by individuals with psychiatric disabilities

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The study of disability discrimination in employment is complex; different approaches have demonstrated that individuals with a disability, including those with psychiatric disabilities, not only perceive but experience discrimination in employment (e.g., Ameri, Schur, Adya, Bentley, & Kruse, 2015; Kessler/NOD, 2010). Several researchers have studied disability discrimination using data from the U.S. Equal Employment Opportunity Commission (EEOC) on charges filed under Title I of the Americans with Disabilities Act (ADA). Such previous research has investigated both the characteristics and outcomes of charges filed by individuals with psychiatric disabilities, finding that these charges are more likely to cite certain issues such as harassment and less likely to result in a meritorious outcome for the charging party (An, Roessler, & McMahon, 2011; Ullman, Johnsen, Moss, & Burris, 2001). Employment discrimination is difficult to measure and these charges are certainly not a perfect source of information, as not all cases of actual discrimination are reported (likely very few are), and as some charges that are filed may not have merit. While recognizing the limitations, these data provide an important window into where and how employers struggle with implementation of the ADA, experiences that are otherwise very difficult to access.

ADA Charges with a Psychiatric Disability Basis: 2005-2014

Based on research with the EEOC charge data conducted by the Northeast ADA Center, this brief presents some descriptive information about charges that are filed under the ADA that cite a psychiatric disability. There were about 353,900 ADA charges filed during Fiscal Years 2005-2014 with either an EEOC office or a Fair Employment Practice Agency (FEPA); this



analysis focuses on the approximately 50,400 charges that cite a psychiatric disability. Psychiatric disabilities for this analysis include: Depression, Other Anxiety Disorder, Manic Depression, Other Psychiatric Disorders, PTSD, and Schizophrenia. As highlighted in Figure 1. Over 14% of charges cite a psychiatric disability. It



should be noted that a single charge may cite other bases in addition to a psychiatric disability.

Figure 2. Demonstrates that the percent of charges citing a psychiatric disability has increased over the time period. Interestingly, there was an increase in the percentage charges with a psychiatric disability basis in 2008 when the ADA Amendments Act was passed and again in 2010 when the related regulations were released.

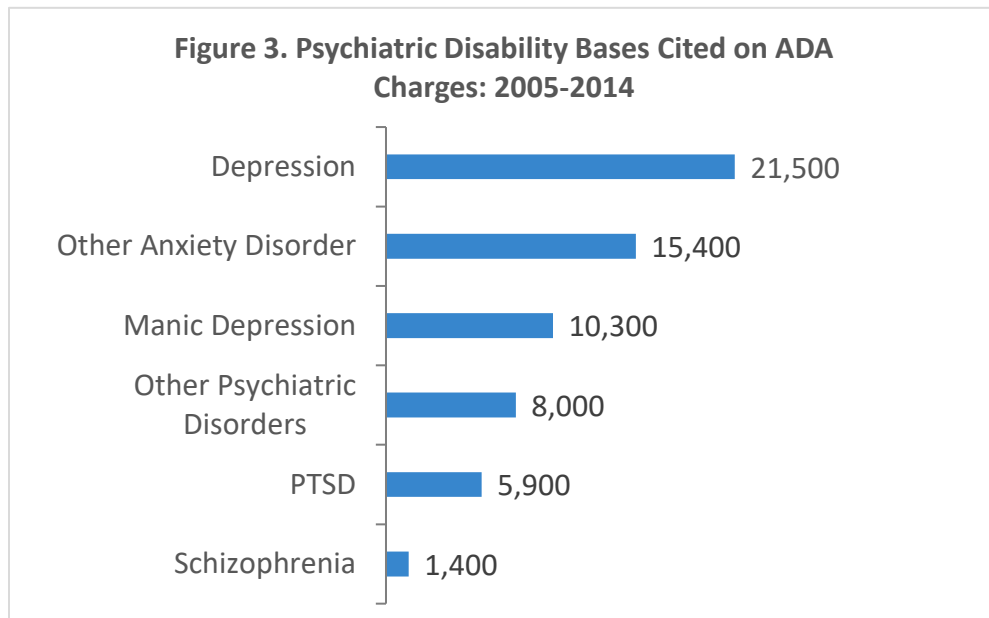
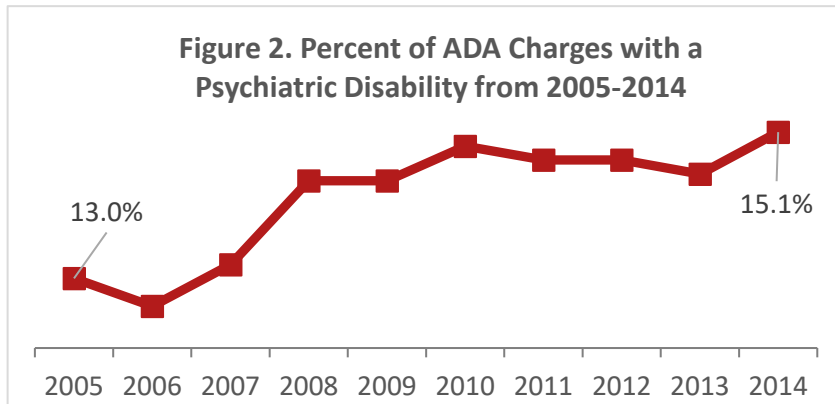
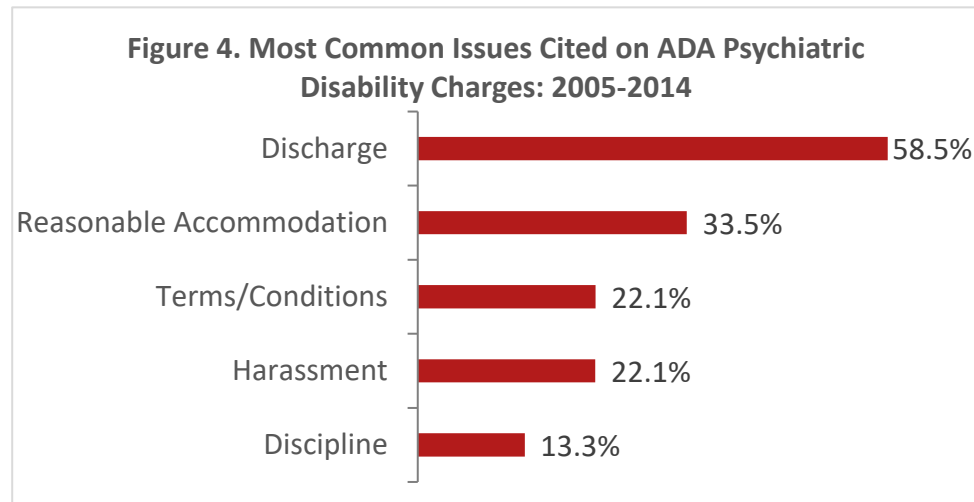


Figure 3 presents the specific bases cited on the approximately 50,400 ADA charges citing a psychiatric disability, including depression which is cited on about 21,500 charges (or about 43% of charges citing a psychiatric disability)

followed by Other Anxiety Disorder cited on 15,400 charges (or about 31% of charges citing a psychiatric disability). Less common are Manic Depression (20% of charges citing a psychiatric disability), Other Psychiatric Disorders (16%), PTSD (12%), and Schizophrenia (3%). Note that more than one basis may be cited on a single charge.



Figure 4 highlights the issues that are most common on charges citing psychiatric disabilities. The six most common issues are similar to those cited on ADA charges more broadly, however, as highlighted in previous research, harassment is cited more often on charges citing a psychiatric disability (22% of charges) as compared to ADA charges overall during this period (15%).



Case Note Content Analysis of ADA Charges with a Psychiatric Disability Basis: 2013-2014

In a follow up to the above analyses of the charge data, we have begun preliminary analysis of charge case notes from the Form 5 charge intake form. This analysis provides more context and details about the alleged discriminatory act than are available in the charges data alone. For this analysis, we analyzed case notes of charges that had a merit outcome (a beneficial outcome for the charging party) and cited a psychiatric disability as basis. Using a conventional content analysis approach, we analyzed a total sample of 73 charges from fiscal years 2013 and 2014 that met these criteria. While preliminary, the findings were interesting in that they highlight where conflict arises.

Three broad themes and important findings from the case notes identified in the content analysis included:

- 1. The importance of flexibility in accommodating workers with psychiatric disabilities** – A description of the accommodation provided or requested by the charging party was described on 35 of the charges reviewed. While a variety of accommodations were requested, the most common was related to flexibility. Examples of requests for flexibility include: shift change, intermittent medical leave, variability in arrival and departure time, part-time work, working from home, transition to light duty after a leave, and a position transfer (or duty reassignment) when current work exacerbates disability. Regular medical appointments and medication changes were some reasons noted for the need for flexibility. In some cases, the accommodation was granted and, in other cases, it was not.
- 2. Leave and its impact on the employment relationship** – There was a description of a leave request on 30 of the charges. In some cases the leave was denied, in others the leave was granted. In many cases, the leave or leave request precipitated a series of employer actions that lead to the complaint. The leave request often was the point at which the employer



became aware of the psychiatric disability. Often this disclosure led to a change in the perceived employer behavior. For example, managers questioned the need for leave or requested earlier return to work. Several individuals were given poor performance evaluations after returning from a leave, while others were reassigned to lower level positions upon return or simply discharged while on leave.

3. **How workplace harassment manifests** – There was information about alleged harassment on 22 of the charges reviewed. While the harassment was typically related to the disability in some cases sexual harassment or age-related harassment were also cited. An example of disability-specific harassment included being forced to share information beyond what is required for an accommodation request, e.g., forced to tell coworkers about a mental health condition. Many described hostile remarks or actions by coworkers or supervisors, including attempts to marginalize or isolate the individual by taking away clients, sabotaging work, and setting meetings when the individual was unable to attend. In many cases, disparaging remarks were made referencing disability. On such occasions, the individual was called names or ridiculed, berated in front of others, and/or treated as if their mental health issues impacted their ability to do the job.

Summary

These analyses together provide some interesting insight into discrimination charges filed by individuals with disabilities. Over the time period from 2005 to 2014, the annual number of ADA charges has increased, as well as the percentage of those charges citing a psychiatric disability. Building understanding of psychiatric disabilities and effective accommodation in the workplace may be helpful in reducing perceived discrimination and improving the workplace experiences of individuals with psychiatric disabilities. In particular, employers may want to consider their policies and practices related to leave and accommodation. Offering flexibility, for example in schedule or work location, may help to retain employees with and without disabilities. Likewise, building a workplace culture that is accepting of differences and where workplace harassment is not tolerated can help in efforts to make individuals with psychiatric disabilities and others feel valued, comfortable, and safe in the workplace.

Notes

- This brief is based on “The patterns and context of ADA discrimination charges filed by individuals with psychiatric disabilities” a presentation by Sarah von Schrader at the Work, Stress and Health Conference in Minneapolis MN. June 7, 2017. For more information on this study please contact sv282@cornell.edu.
- The statistics reported in these materials are derived from data files obtained under an agreement from the U.S. Equal Employment Opportunity Commission. Summaries of data are based on our aggregations and do not represent the EEOC's official aggregation of the data.
- 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 ADA, nor binding on any agency with enforcement responsibility under the ADA.



- The Northeast ADA Center is authorized by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) to provide information, materials, and technical assistance to individuals and entities that are covered by the ADA. The contents of this presentation were developed under a grant from NIDILRR, grant number 90DP0088-01-00. NIDILRR is a Center within the Administration for Community Living (ACL), Department of Health and Human Services (HHS). The contents of this presentation do not necessarily represent the policy of NIDILRR, ACL, HHS, and you should not assume endorsement by the Federal Government.

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The Northeast ADA Center is a member of the ADA National Network funded by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR grant number 90DP0088). We provide information, guidance, and training on implementation of all aspects of the ADA. Our center is located at the Yang-Tan Institute at Cornell University. Our staff consists of individuals with and without disabilities who have extensive experience in the disability field.

