

Northeast ADA Research Brief Series: ADA Employment Discrimination Charges Citing Harassment

Author: Sarah von Schrader, PhD

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Series introduction

The study of disability discrimination in employment is complex; different approaches have demonstrated that individuals with 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) (e.g., McMahon, Edwards, Rumrill, Hursh, 2005; von Schrader & Nazarov, 2015). This previous research has investigated both the characteristics and outcomes of charges filed by individuals with disabilities. Employment discrimination is difficult to measure and these charges are certainly not a perfect source of information, as relatively few experiences of discrimination are reported, and some charges that are filed may not have merit. Nevertheless, these data provide important insights and suggest areas employers may need to address to implement the ADA effectively.

ADA Charges Citing Harassment: 2005-2014

This brief presents some descriptive information about charges filed under the ADA that cite harassment and a summary of a qualitative analysis of case notes from a subset of the charge data. According to the EEOC, discriminatory behavior that qualifies as harassment under the ADA is unwelcome conduct based on disability, “Where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive”.¹

¹ From EEOC Website: <https://www.eeoc.gov/laws/types/harassment.cfm>



Harassment as an Issue on ADA Charges

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 54,700 charges that cite harassment as an issue.

As highlighted in Figure 1, just over 15% of ADA charges cite harassment. It is the fourth most common issue referenced on charges after discharge (cited on 58% of charges), reasonable accommodation (30%), terms and conditions (20%). It should be noted that a single charge may cite other issues in addition to a harassment.

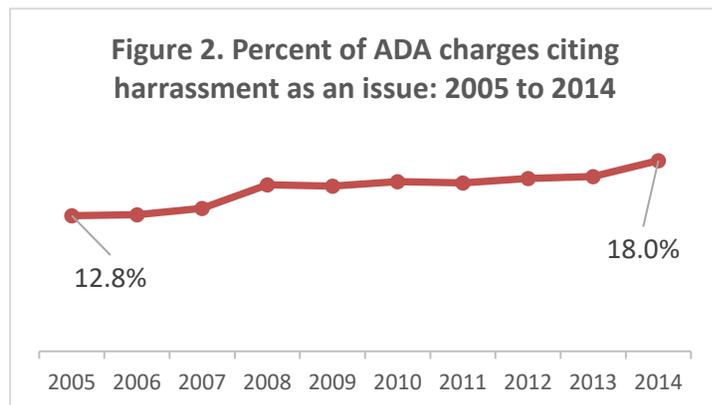
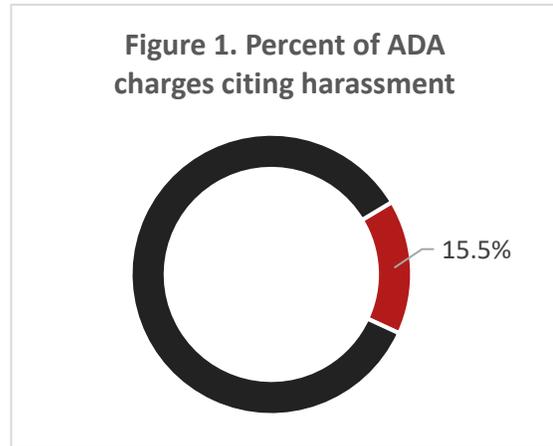
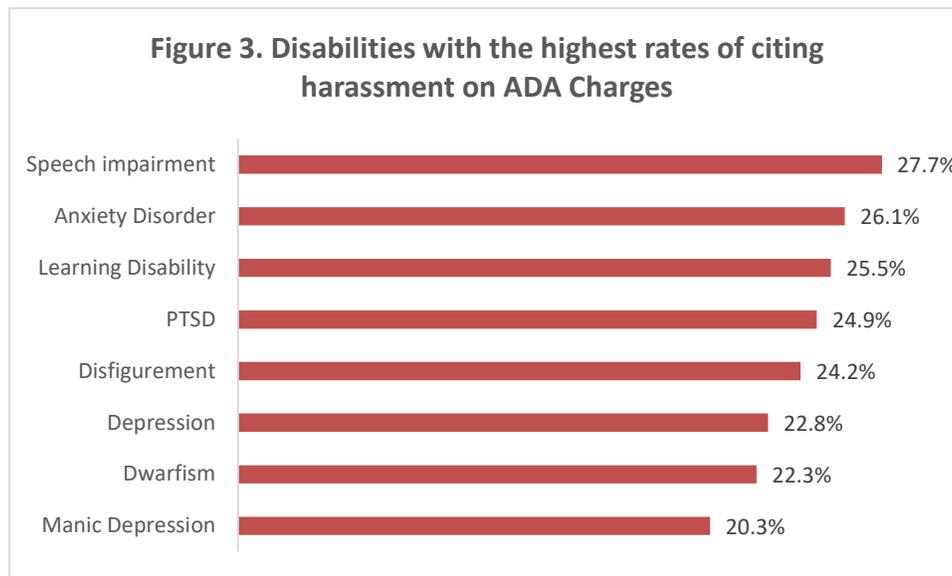


Figure 2 demonstrates that the percent of charges citing harassment has increased from about 13% to 18% from 2005 to 2014.

Charges based on certain disability types are more likely to cite harassment. Overall, the category of emotional/behavioral disabilities has the highest rate of citing harassment at 21%, while other groups cite harassment less often, including medical² (15% of charges cite harassment), orthopedic (14%), sensory (19%) or neurological (16%).

² Medical conditions include diabetes, cancer, heart/cardiovascular conditions, Asthma, etc. See Bruyere, von Schrader, Bjelland & Coduti(2010) to see how specific disabilities are mapped to each broad category.





Breaking down the broader disability categories listed above into specific disability types provides further detail. Figure 3 presents the disability types with the highest rates of referencing harassment. Only those disability types with at least 100 charges during the period and referencing harassment at least 20% of the time are included. The figure demonstrates that on charges that identify speech impairment as a basis, almost 28% referenced harassment as an issue. As noted earlier, only 15.5% of charges overall cite harassment. Therefore, the rate of citing harassment on speech impairment charges is 12 percentage points higher than the harassment rate on charges overall. This was the highest rate observed for a specific disability type (note that speech impairment was grouped into the broader sensory category above). Many of the most common specific disability types listed in Figure 3 fall into the broad category of emotional/behavioral disabilities (e.g., anxiety disorder, learning disability, PTSD, depression, and manic depression).

Content Analysis of ADA Charge Case Notes: 2013-2014

In a follow up to the quantitative analyses of the charge data, we conducted a qualitative analysis of charge case notes focusing on the Form 5 intake form about the charge of discrimination.³ While the data summaries above include all charges, whether or not they had merit outcome (beneficial outcome for the charging party), for this analysis we focus on case

³ See https://www.eeoc.gov/eeoc/foia/forms/upload/form_5.pdf



notes with a merit outcome and that cite a harassment as an issue. Using a conventional content analysis approach, we analyzed a total sample of 73 charges from fiscal years 2013 and 2014 that met these criteria. The findings were interesting in that they highlighted where conflict arises from the perspective of the charging party.

Four broad areas and several interesting findings from the case notes are described below:

Experiences of disability harassment – Harassment on the basis of disability shares many of the same features of workplace harassment on the basis gender and race. However, in cases where the disability was not obvious, harassment often included disclosing information about the disability to those who would not need to know or excessive questioning about whether charging party had a disability. The following are the broad categories of harassment experiences reflected in the case notes on verified charges of harassment.

- Badgering comments related to disability, e.g., being subjected to jokes about disability, statements like you “should be euthanized;”
- Disclosing disability, e.g., perpetrator disclosing disability or making fun of disability in front of others, distributing flyer making fun of disability;
- Acts of exclusion, e.g., being locked out of buildings, excluded from meetings, trainings and office outings, requests for further documentation of disability;
- Actions to exacerbate disability, e.g. wearing strong perfume, changing assignment to require stair climbing, displaying threatening behavior like pulling out a knife;
- Discrediting, overworking, or questioning performance e.g., sabotaging machines, accounts deleted by colleagues, assigned unmanageable workload, constantly being threatened with disciplinary action, excessive monitoring of work and whereabouts, put on a performance improvement plan with unrealistic expectations;

Most perpetrators of harassment were supervisors or other “higher ups” – on the 56 charges where there was a description of who harassed the charging party, 72% indicated that it was a supervisor or higher up only, 14% indicated it was a coworker or coworkers only, and 14% indicated it was both a supervisor/higher up and coworker(s).



Based on workforce numbers, the distribution of charges by occupation group was not significantly different from the distribution of employed people with disabilities – There is no evidence that individuals with disabilities in certain occupational categories are more or less likely to file ADA charges citing harassment. For example, 27% of the civilian employed population with a disability (16 years and over) is employed in Management, business, science, and arts occupations⁴ while 22% of the harassment charges examined were filed by individuals in this occupation category (the difference is not statistically significant). Likewise, no significant differences were found for the categories of Service occupations, Sales and office occupations, and Manual occupations (Natural resources, construction, and maintenance/Production, transportation, and material moving occupations).

Often the harassment starts after a disability disclosure or accommodation/leave request. A common theme was harassment related to an accommodation request. Often the request was related to medical appointments or disability-related leave requests. The accommodation was sometimes granted and sometimes denied, but the harassment typically began shortly after the request. For example, when a leave was requested, the charging party indicated that excessive medical documentation was requested and/or further disclosure beyond what was needed to document the need for accommodation under the ADA. It was common that those who were granted leave were accused of abusing leave or received persistent criticism about the scheduling of medical appointments. Sometimes the request for an accommodation led to retaliation, such as requiring more demeaning tasks (that had not formerly been part of work expectations), increased yelling at the charging party, or moving the charging party a less desirable facility.

When harassment is reported, individuals were either ignored and/or retaliated against – When the harassment was reported, charging parties were told to “suck it up” by management or HR or they were instructed to just not to pay attention to the harassing words or actions. In other cases, the reporting immediately led to retaliation, including termination or being suddenly being assigned an excessive workload.

⁴ U.S. Census Bureau; American Community Survey, 2010-2014 American Community Survey 5-Year Estimates, Table S1811; generated by Sarah von Schrader; using American FactFinder; <<http://factfinder.census.gov>>; (18 December 2018).



Summary

These analyses provide interesting insight into discrimination charges filed by individuals with disabilities. From 2005 to 2014, both the annual number of ADA charges and the percentage of those charges citing harassment, have increased. Eliminating harassment from the workplace is an important goal for employers, and one that requires more than the typical response of implementing a training program. Creating a workplace culture that is accepting of differences and where workplace harassment is not tolerated can help in efforts to make individuals with disabilities and others feel valued, comfortable, and safe. Immediate action when harassment is witnessed or reported may help to diffuse a situation that if left unchecked, will likely lead to poor outcomes for the target of the harassment as well as others exposed to the harassment.

Notes

- The author would like to acknowledge helpful feedback received on this brief from LaWanda Cook, Wendy Strobel-Gower, Vicki Chang, and William Erickson.
- The content of this brief were presented at the 2018 NARRTC Conference in Washington, DC and some of the findings are also included in the paper *Unwelcoming Workplaces: Bullying and Harassment Of Employees With Disabilities* to be included in the 2019 Labor and Employment Relations Association (LERA) Research Volume.
- 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.



References

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