
Research Report

Workplace Discrimination and Visual Impairment: A Comparison of Equal Employment Opportunity Commission Charges and Resolutions Under the Americans with Disabilities Act and Americans with Disabilities Amendments Act

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For individuals with disabilities, including those with visual impairments, unfair workplace practices may prevent employment or satisfaction with employment. Treatment and hiring decisions by an employer should be based on an individual's merit instead of the existence or consequence of a visual disability or impairment (that is, blindness or low vision). Unfavorable employer treatment of a qualified individual because of visual impairment is disability discrimination.

To guarantee equal opportunities and treatment in employment for individuals with disabilities, Congress enacted Title I of the Americans with Disabilities Act (ADA) in 1992. This law states, "No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment" (Americans with Disabilities Act of 1990). Although praised by many as the most significant civil rights legislation since the Civil Rights Act of 1964, critics argued that there was limited evidence that the ADA increased numbers of individuals with disabilities in the workplace (Blanck, 1996).

In addition, Supreme Court decisions involving the ADA demonstrated an increasingly narrowed interpretation of key provisions, resulting in limiting the scope and coverage of the law (Vierling, 2009). As a result, an increasing number of individuals with disabilities were found by the courts to not be disabled, including some with severe impairments (Petrla, 2009). Disability advocates expressed concern that Americans with disabilities appeared to be less protected in the workplace than was expected under Title I of the ADA. This raised concerns in Congress that the original intent of the ADA was not being upheld. Congress acknowledged that as a result of Supreme Court and subsequently lower court rulings, individuals with a wide range of considerably limiting impairments were not found to be disabled under the ADA (Smith & Allen, 2011). To restore the intended purposes and protections of the ADA, Congress proposed the ADA Amendments Act of 2008 (ADAAA). Under the ADAAA, the original definition of *disability* from the ADA was retained, however, components were expanded or clarified to allow more individuals with coverage (ADA Amendments Act of 2008). Therefore, the ADAAA was designed to have less emphasis on the evaluation of whether an individual was qualified for coverage and more emphasis on whether or not an employer had unlawfully discriminated against that individual (Vierling, 2009).

The U.S. Equal Employment Opportunity Commission (EEOC), which enforces the federal employment discrimination laws, continues to receive formal charges alleging workplace discrimination from individuals with visual impairments (EEOC, n.d.). The EEOC has an obligation to address each discrimination charge it receives. Cases that are promptly dismissed include charges that are submitted after the designated time restrictions, instances in which the EEOC has sufficient reason to believe

discrimination will not be able to be determined, or if the EEOC lacks authoritative jurisdiction (EEOC, n.d.). Other cases go to mediation, in which an EEOC mediator attempts to assist the employee and employer to reach a mutual agreement.

For cases in which EEOC has determined that a violation of the law occurred, EEOC attempts to return the individual who has been discriminated against to as close to the same position as he or she would have held had the discrimination never occurred. Obtaining voluntary settlements with the employer, which can include placement in a job, payback of wages, benefits, and lawyer and court fees, are pursuable actions of EEOC, as well as encouraging the employer to take steps to prevent discrimination in the future (EEOC, n.d.). If a settlement is not possible, a member of the EEOC legal staff determines if EEOC will file a lawsuit or if a notice-of-right-to-sue letter to the employee is more appropriate for the case.

Employment discrimination for individuals with visual impairments is a multifaceted problem. It is a concern that will likely increase as Americans are continuing to work into older age (Kampfe, Wadsworth, Mamboleo, & Schonbrun, 2008), since vision loss is associated with aging (Crews & Campbell, 2004; Kampfe et al., 2008).

Before this study, there had not been an examination of discrimination charges filed by individuals with visual impairments following the ADAAA and their resulting outcomes. Therefore, it was not possible to know the effect of the new legislation, which was intended to better protect against workplace discrimination, on this population. The purpose of this study was to identify where to focus resources regarding specific aspects of employment based on perceived discrimination and outcome resolutions from individuals with visual impairments. The following research questions guided this study:

- Are there differences between discrimination charges filed with the EEOC before and after the enactment of the ADAAA regarding a visual impairment?
- Are there differences between outcome resolutions before and after the enactment of the ADAAA regarding a visual impairment?

Methods

The study was a cross-sectional retrospective database analysis of discrimination charges under the ADA and ADAAA of the EEOC disability code “BLINDVIS” (vision impairment). The EEOC defines a *visual impairment* as a condition covering varying degrees of visual loss that may include blindness. *Blindness* is defined as “visual acuity of not better than 20/200 in the best eye with correction” (EEOC, n.d.). The collected data came from U.S. states and territories, and anywhere in the world where a U.S. citizen was employed by a U.S. company. There were 11,482 discrimination charges directly related to visual impairments filed under the ADA and ADAAA that were received between July 26, 1992, and December 31, 2011, the study’s time frame. Following a formal research proposal at Virginia Commonwealth University in Richmond, Virginia, the de-identified raw data was obtained on May 11, 2015, from the Integrated Mission System (IMS) database, a component of the National EEOC ADA Research Project.

The EEOC recognized 42 various types of employment rights violations (types of discrimination charges), which they categorized into issue codes. As has been done with previous research utilizing the EEOC dataset, this study grouped issue codes into four broader themes to provide a more meaningful interpretation of the results (McMahon, Shaw, & Jaet, 1995). These four themes represented distinct components of employment including job acquisition, job satisfaction, job retention, and “other discrimination.”

Discriminatory issues that pertained to obtaining a job were placed in the job acquisition category and issues that pertained to an individual's achievement and fulfillment from a job were placed in the job satisfaction category. The job retention category included charges pertaining to maintaining or continuing employment, and the other discrimination category included issues that did not fit under the other broad themes. Table 1 displays the specific categorical groups by types of discrimination charges from the EEOC database.

From the submitted discrimination charges, the EEOC distinguishes 14 different outcomes, called "resolution outcomes," divided into two categories. Resolutions favoring the individual submitting the charge, called "merit resolutions," indicate that the EEOC has determined discrimination occurred. Conversely, resolutions favoring the employer, called "nonmerit resolutions," indicate the charge submitted by the individual failed to support a violation of the law. Table 2 displays the specific categorical groups by the types of resolution outcomes from the EEOC database.

The discrimination charges and resolution outcomes were both nominal measures. Two time-period groups represented the discrimination charges and the resolution outcomes before and after the enactment of the ADAAA. The first represented the ADA (July 26, 1992–December 31, 2008) and the second represented the ADAAA (January 1, 2009–December 31, 2011). Pearson *chi*-squared analyses were used to determine if differences existed between the independent and dependent variables.

Results

The results of the first research question indicated there was a significant association between the categories of discrimination charges and whether the charge was filed before or after the ADAAA, $\chi^2(3, N =$

Table 1
Types of discrimination charges by categorical group.

Category	Type
Job acquisition	Advertising Apprenticeship Exclusion or segregated unions Hiring Prohibited medical inquiry Recall References unfavorable Referral Reinstatement Training
Job satisfaction	Assignment Benefits Benefits, insurance Benefits, pension Demotion Harassment Intimidation Job classification Maternity Promotion Reasonable accommodation Segregated facilities Segregated union locals Seniority Terms or conditions of employment Wages
Job retention	Constructive discharge Discharge Discipline Early retirement incentive Involuntary retirement Layoff Severance pay Suspension Tenure Waive Age Discrimination in Employment Act suit rights
Other discrimination	Other Posting notices Qualification standards Record-keeping violation Testing Union representation

11,482) = 102.98, $p < .001$. This was further validated by Cramer's V statistic (.095) of a small effect size, but which was still statistically significant ($p < .001$). Therefore, the strength of the relationship between discrimination charges and the two time periods was significant.

Table 2
Types of resolution outcomes by categorical group.

	Merit resolutions	Nonmerit resolutions
Type of resolution outcome	Withdrawn with benefits by the charging party Settled with benefits to the charging party Successful conciliation Conciliation failures	No cause finding Administrative closures (processing problems, respondent bankruptcy, charging party cannot be located, charging party being nonresponsive, charging party being uncooperative, charging party failed to accept full relief, charging party withdraws the allegation without settlement or benefits, outcome of related litigation, EEOC lacking jurisdiction)

Post hoc tests were performed with a Bonferroni correction using an alpha level of .05. The adjusted *p*-value used for significance was $p < .0125$, since there were four comparisons. Specifically, significance was found with:

- job acquisition discrimination charges, $\chi^2(1, N = 1,611) = 101.10, p < .0125$;
- job retention discrimination charges, $\chi^2(1, N = 4,104) = 18.21, p < .0125$; and
- job satisfaction discrimination charges $\chi^2(1, N = 5,489) = 8.35, p < .0125$.

In addition, there were not significant differences between other discrimination issues before and after the ADAAA.

Subsequent comparisons were made between the three individual categories that had significant associations to determine the effect sizes of each two-way relationship using a Phi statistic. The first comparison between job acquisition and job satisfaction indicated a Phi coefficient ($\phi = .112, p = .000$) of a statistically significant association, but with a small effect size. The second comparison between job acquisition and job retention also indicated a statistically significant association using the Phi coefficient ($\phi = .132, p = .000$) with a small effect size. The final comparison between job satisfaction and job retention indicated a nonsignificant association ($\phi = .012, p = .236$). Overall, none of the direct comparisons between the discrimination charge categories indicated strong relationships with one another.

The results of the second research question indicated there was not a significant association between outcome resolutions before and after the ADAAA, $\chi^2(1, N = 11,482) = .039, p = .845$. This result was further validated by a nonsignificant Phi statistic ($\phi = .002, p = .845$).

Discussion

JOB ACQUISITION DISCRIMINATION

Following the enactment of the ADAAA, job acquisition charges decreased by 8.6% compared to before it was established. Some explanations for the reduction in job acquisition charges include the fact that the ADA had been instituted for almost two decades by the end of the data collection for this study, giving employers sufficient time to learn, understand, and implement solutions to be in compliance with both the ADA and the ADAAA. During that time, techniques for removing negative attitudes held by employers toward hiring individuals with disabilities were recommended (Brostrand, 2006; Golub, 2006). In addition, other recommendations included methods for teaching employees to identify their disability-related employment needs (Rumrill & Scheff, 1997); employers identifying strategies to meet their legal obligations under the ADA (Unger, Rumrill, & Hennessey, 2005); and employees utilizing vocational rehabilitation agency services (Simpson & Rogers, 2002). The implementation of the above recommendations may have contributed to decreased

job acquisition discrimination against individuals with visual impairments.

On the other hand, it may not be job acquisition discrimination against individuals with visual impairments per se that has decreased, but rather the filing of discrimination charges. One reason for this outcome may be that individuals with visual impairments were already in their jobs when they developed a visual impairment. Thereby, discrimination due to vision impairment was not an issue during job acquisition.

JOB SATISFACTION DISCRIMINATION

Discrimination charges from the job satisfaction category increased by 3.6% under the ADAAA compared to those under the ADA alone. As a result of the ADAAA's expanded definitions, employers need to offer increased types of accommodations to greater numbers of employees for compliance with the law (Dorrian, 2014). Furthermore, advances in technology have greatly expanded opportunities for individuals with visual impairments, which offers this group greater parity with their nondisabled peers in the workplace (Gamble, Dowler, & Hirsh, 2004; Strobel, Fossa, Arthanat, & Brace, 2006). Accordingly, although perceived discrimination was once more prevalent for job attainment and retention (McMahon et al., 1995), the results of this study indicate a shift toward discrimination around conditions of job satisfaction, since this was the most common discrimination issue among individuals with visual impairments.

JOB RETENTION DISCRIMINATION

Discrimination charges from the job retention category increased by 5% under the ADAAA compared to the ADA. Results of a study of job retention for employees with disabilities indicated a lack of awareness of how to handle the employee's needs, fear that the employee would become a financial or legal liability, and the cost of accommo-

dations as reasons for dismissing a person with a disability from a position (Kaye, Jans, & Jones, 2011). Another study indicated that recruiting, training, and retaining employees with disabilities was a lower priority for managers than was recruiting, training, and retaining senior employees, young employees, and minorities (Lynch, 2013). The results of this study and previous research do not suggest a changing culture for decreased perceived job retention discrimination charges for individuals with visual impairments following the ADAAA.

RESOLUTION OUTCOMES

Under the ADA, 26.9% of the resolutions from discrimination charges from individuals with visual impairments resulted in a merit resolution, compared to 27.1% of the resolutions under the ADAAA. Therefore, following the ADAAA, there was only a .2% increase in merit resolutions from discrimination charges from individuals with visual impairments. In other words, resolutions that favored the employee, indicating that discrimination occurred, increased by less than 1% with the passing of the ADAAA. In addition, there was also a less than 1% change in nonmerit resolutions between the two time periods. Following the enactment of the ADAAA, nonmeritorious resolutions decreased by 0.2% from discrimination charges from individuals with visual impairments. Subsequently, 72.9% of all post-ADAAA discrimination charges from individuals with visual impairments resulted in nonmeritorious outcomes, indicating that discrimination did not occur.

A primary intent of the ADAAA was to shift the focus of the courts from determining if an individual had a disability to determining if workplace discrimination actually occurred (Vierling, 2009). The new language of the ADAAA allowed more individuals opportunities to demonstrate disabilities (Dorrian, 2014). Subsequently, individuals with impairments,

although considered disabled by the courts, were being found to be unable to perform essential job functions (Dorrian, 2014). It may be that individuals with visual impairments had surpassed the initial step of establishing that a visual impairment was a disability that substantially limited the major life activity of seeing, yet were unable to establish that they could perform the essential job functions. This explanation could reasonably explain the trivial increase in merit resolutions for individuals with visual impairments following the enactment of the ADAAA.

Implications for practitioners

Low vision practitioners, vocational rehabilitation service providers, job placement agencies, and Job Accommodation Network employees may all have opportunities to work with individuals with visual impairments regarding employment. Workplace discrimination experiences were most prevalent with aspects regarding job satisfaction, which includes issues with reasonable accommodations. Practitioners need to be aware of and knowledgeable about assistive technology, adaptive communication, and independent living devices that could supplement or enhance the capabilities of individuals to perform essential job functions needed for successful employment.

Practitioners should also be knowledgeable of the federal and state laws where they practice regarding workplace discrimination. The EEOC website (EEOC, n.d.) is a good starting place, with free resources and materials regarding types of workplace discrimination, coverage of the laws, how to file a discrimination charge, and prohibited employment policies and practices.

Professionals need to work one-on-one with individuals with visual impairments throughout the entire employment process, since job retention was the largest growing category of workplace discrimination. Each

employee possesses individual beliefs, inspiration, and abilities that can influence behavior differently when combined within the environmental context of the workplace. Assuming conflict in the workplace is not the same for all individuals with visual impairments, resolutions for overcoming these conflicts must also not be the same. Practitioners need to examine the employee and the workplace to determine the characteristics that support and detract from workplace success. Then, individualized coaching and counseling should address these concerns. Furthermore, engaging clients in role-playing activities to build confidence and autonomy for adversarial situations and promoting self-advocacy may also assist them to pursue parity in the workplace with their peers who are not visually impaired.

Limitations

This study examined a secondary database and, therefore, it was assumed that the original data was accurately received and recorded by the EEOC and IMS researchers. The dataset consisted of resolved cases from filed discrimination charges. Charges that were still pending resolution at the time of the study, and incidences that were not reported to the EEOC, could not be included. Therefore, the exact amount and types of workplace discrimination against individuals with visual impairments were unidentifiable. For example, the availability and quality of assistive technologies has vastly improved for workers with visual impairments, and it may be leading employers to make accommodations they have not made in the past, thus changing the overall number and type of charges being filed. However, the database does not reveal these details about discrimination charges. Finally, the study's time frame was concluded three years after the enactment of the ADAAA. This quick examination of the dataset may have overlooked an important learning

period for both employees and employers of changes in the law. Despite these limitations, the results provided a more inclusive perspective of workplace discrimination for individuals with visual impairments following the ADAAA and offered important recommendations for practitioners.

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