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Employment First in a Time of Pandemic¹

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Plain Language Summary

Employment First ensures that people with disabilities have real jobs for real pay. Changes are being made in laws and Medicaid policies. We were making progress towards competitive, integrated employment for people with disabilities. Unfortunately, the COVID-19 pandemic has halted progress towards employment first. Traditional employment supports are no longer available. Over 55% of employed people with disabilities have lost their jobs. We can make post-COVID-19 employment supports for people with disabilities better.

Employment First is a movement to deliver meaningful employment, fair wages, and career advancement for people with disabilities. Since 1988, the Association of People Supporting Employment First (APSE) has been on the front line of this movement, working to ensure “real jobs for real pay” for people with disabilities. The movement has accomplished much. However, despite growing evidence of the many positive contributions people with disabilities bring to the labor market, multiple societal and systemic barriers have prevented full inclusion and participation in the workforce.

The passage of federal laws that recognize the rights of people with disabilities to live, work, and participate in their communities have propelled and sustained the movement. Yet despite such landmark advances achieved through Title II of the Americans with Disabilities Act (ADA, 1990), as interpreted by the Supreme Court (*Olmstead v. L.C.*, 1998), and the Workforce Innovation and Opportunity Act (WIOA, 2014), the employment rate of people with disabilities has remained stubbornly at or near 35% as compared to 70% for the general population (U.S. Census Bureau, 2008-2018).

At the start of 2020, the Employment First movement was experiencing a new surge of momentum. The passage of WIOA established competitive, integrated employment as the first and preferred option for people with disabilities and we were beginning to see some tangible results. Progress was being made on compliance with the Medicaid Home and Community-Based Services (HCBS) rule, which requires Medicaid-funded services to shift away from congregate settings and into the community. Efforts to eliminate 14(c) certificates—the provision under the 1938 Fair Labor Standards Act that allows some businesses to pay individuals with disabilities below the minimum wage—had generated sufficient attention to warrant Congressional action by way of the introduction of the Transformation to Competitive Employment Act (HR 873 / S

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260). Most importantly, growth in both the labor market participation rate and the employment-to-population participation ratio of people with disabilities was outpacing rates for people without disabilities (Kessler Foundation & University of New Hampshire Institute on Disability, 2020).

Then, suddenly, the world changed.

The COVID-19 pandemic has challenged every aspect of our society and economy, and people with disabilities were not spared. In fact, during the early weeks of the crisis in the U.S., it became clear that people with disabilities were going to be disproportionately negatively impacted. For the Employment First movement, several issues quickly emerged. With the broad shut down of the economy and the mass shift to “work from home,” there were immediate implications for the disability employment service system. First and foremost was figuring out how to continue to provide critical supports to workers with disabilities who remained on the job as “essential employees.” Indeed, the types of businesses that were identified as essential during the pandemic, such as medical/healthcare facilities, retail distribution centers, and grocery stores, represent the very market sectors that have historically been most accommodating to hiring people with disabilities prior to the pandemic.

Many of these essential workers rely on supports from job coaches and employment specialists to navigate changes in business practices and job responsibilities. These supports are generally funded through vocational rehabilitation (VR) and/or Medicaid via payments to disability service providers. When the economy shut down, complicated state and federal regulations that define how services are delivered hampered the ability for VR and Medicaid dollars to flow. Provider agencies needed to quickly learn how to provide supports remotely, utilizing various forms of readily available technology, often without assurances that remote services would be reimbursed. This was just the tip of the proverbial iceberg in terms of barriers faced by people with disabilities who were already in the workforce, much less for job seekers with disabilities who were largely left in limbo. Despite the relatively quick response of VR and Medicaid to ensure that funding could continue, it was not fast enough for some parts of the country where disability services providers had to weigh decisions whether to furlough staff or close their doors entirely.

It will take some time to fully understand the true impact of the COVID-19 pandemic on the disability service system and employment outcomes for people with disabilities, yet early analysis paints a bleak picture. Preliminary data from a sample of five state intellectual and developmental disabilities (IDD) agency members of the State Employment Leadership Network (SELN) suggest that, for people with disabilities who were working on March 1, only 45% remained employed by mid-June. The remaining 55% were either furloughed, laid off, or needed to leave employment because of health and safety concerns (J. Butterworth, personal communication, June 10, 2020). Preliminary results of APSE’s national survey of disability employment services providers on the impact of the COVID-19 pandemic indicate that over 40% of provider agencies had to furlough or layoff employment specialists/job coaches, and those same agencies anticipate that only 50% of this displaced workforce will be rehired post-COVID. Additionally, 37% of provider agencies have closed down their supported employment programs

entirely (APSE, 2020).

Despite these challenges, there are positives that are emerging from the pandemic as well. Of those provider agencies that continued to deliver employment services and supports during the first 3 months of the pandemic, 53% reported success in assisting people with disabilities to fill essential jobs in their communities, with the largest job gains being reported in retail, the general service industry, and healthcare. Additionally, nearly 30% of facility-based prevocational training programs and 50% of facility-based day habilitation programs closed. Providers have indicated that many of these congregate setting closures will be permanent, which presents a unique opportunity to shift services and supports toward competitive, integrated employment (APSE, 2020).

This leaves us at a moment of contemplation. The COVID-19 pandemic has changed the way employment support services are provided. It has also changed the narrative about the role of people with disabilities in the workforce—it is no longer about charity or simply doing the right thing, but instead it is about doing what needs to be done. Approximately 1 out of every 4 adults in the U.S. is living with some type of disability (Centers for Disease Control and Prevention [CDC], 2018), and this number is likely to grow as a result of COVID-19. What we have learned during this time of crisis is that our economy simply cannot work if people with disabilities are not part of the workforce.

However, this particular moment is also about more than reacting and adjusting amidst a global healthcare crisis. The reinvigoration of the #BlackLivesMatter movement has forced some hard and overdue conversations to take place within the disability rights movement, where intersectionality has not been prioritized historically. Employment First can no longer be a movement to simply advance the civil rights of all people with disabilities to work and to be compensated equally. We cannot think about the future of disability employment services without also recognizing the other pandemic that we face—that of systemic racial and ethnic discrimination, which has led to significant disparities in the workforce for people of color. The employment rate of Black/African Americans is 70%, compared with the national average of 75% for all races combined. For Black/African Americans with disabilities, the disparity is even greater. Where the national employment rate for people with disabilities (all races) was 33%, it was a mere 25% for Black/African Americans with disabilities (National Disability Institute, 2019).

There is no doubt that the months and years ahead will be challenging. The disability services system will be forced to do more with even less, as “across-the-board” budget cuts are inevitable. We have a unique opportunity to lead the way in charting the pathway forward. It is imperative that we continue to be a force for change through proactive planning to ensure that services and supports are prioritized to meet the needs of those who need them most. We are, after all, a community that embraces the concept of universal design. When those with the most significant barriers are afforded opportunity and supported appropriately, everyone benefits.

We must ask ourselves, what is the system we WANT when we emerge on the other side and into the “new normal”? Let us name and build it together, because the “normal” we had before was not working equitably for everyone.

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