



Diversity and the ADA

What is Diversity in the Workplace?

Broadly defined, workplace diversity is the understanding, valuing, and effective management of the ethnic, socio-economic, and gender variety or diversity within an organization's workforce and among its customers. Many companies have recognized the importance of addressing the issue of diversity and are moving forward to establish and develop successful diversity initiatives. A primary catalyst causing workplace diversity is the demographic shift of the U.S. population and, therefore, of the U.S. workforce.

Demographic studies show that the composition of the population in the U.S. is more diverse than it has ever been, and it continues to diversify. According to the Census Bureau, the nonwhite population, which comprised less than one-third of the U.S. population at the turn of the century, is expected to increase to nearly half of the U.S. population by the year 2050. As the number of persons with disabilities grows, so too does the number of persons of color living with a disability. According to the 2000 census, 16.8 million people with disabilities are also minorities. Minority persons with disabilities are disproportionately represented among the unemployed, and the employment outlook for them is bleak.

Given these changes in the population and in the labor market, there is an increased reliance on non-traditional workers and the opportunity for organizations and individuals to capitalize on the array of ideas, creativity, and potential

contributions inherent in a diverse workforce. Attracting, recruiting, developing, and retaining a qualified workforce from diverse populations is, and will continue to be, critical for business survival and organizational success.

What Is the Americans with Disabilities Act?

The Americans with Disabilities Act (ADA), passed in 1990, is legislation that is intended to “establish a clear and comprehensive prohibition of discrimination on the basis of disability” and to ensure access and participation in society for persons with disabilities. The statute is specifically directed at employment, public accommodations, public services (i.e., services delivered by state and local governments), transportation, and telecommunications. Title I of the ADA prohibits employers with 15 or more employees from discriminating against qualified persons with disabilities in all terms, conditions, and privileges of employment, including recruitment, pre-employment screening, hiring, benefits, promotions, layoff, and termination. The ADA also applies to labor organizations, employment agencies, and joint-management committees.

The ADA requires employers to provide reasonable accommodations to qualified persons with disabilities that will enable them to perform the essential functions of jobs held or desired. An employer may not deny an employment opportunity to a qualified applicant or employee with a disability because of a request or need for a reasonable accommodation. An employer does not have to provide an accommodation if it can demonstrate that it would impose an undue hardship on its business.

Addressing Diversity and the ADA

The term diversity can encompass several dimensions, such as race, ethnicity, gender, age, religion, sexual orientation, and disability. Diversity, disability, and human resource professionals need to be aware of these dimensions when helping their companies recruit and retain employees, sell in the marketplace, and define diversity within their organizations. Persons with disabilities, including minority persons with disabilities, have the ability to make positive contributions in the workplace and to the success of organizations.

Today, diversity initiatives are less “affirmative action”-oriented in that they now reflect both valuing diversity and managing diversity. Valuing diversity involves recognizing and appreciating the differences of individuals. Managing diversity emphasizes developing company policies, goals, and a culture that optimizes the productivity of all employees, by understanding their unique needs, motivations, and contributions. Also, model initiatives have revealed that diversity initiatives require the visible support of and commitment from senior management.

Successful diversity initiatives can include an array of programs. Generally included is some form of training, as well as efforts to change the communication norms of the organization. Specifically, employee surveys, employee networks, diversity management training, mentoring programs, and the use of company intranets are frequently put in place to assess and broaden the attitudes of employees and management. Many corporations also examine their reward systems to ensure that employees are not being evaluated on their personal style, but rather on the merits of their work. As a part of the initiative, flexibility is sometimes incorporated into the work schedule.

Employers are also making strides in assuring compliance with ADA employment provisions in their work environments. This may mean training staff on the following topics relating to ADA implementation:

- Employment pre-screening and applicant interviewing under the ADA
- The interplay of the ADA with other state and federal employment and non-discrimination laws
- Writing job descriptions that clearly identify essential job functions
- The reasonable accommodation process
- Career equity/promotional considerations for persons with disabilities
- Non-discriminatory performance appraisals
- Employee relations with employees with disabilities (minority and non-minority)
- Customer relations with customers with disabilities
- Negotiation/conflict management in the reasonable accommodation process

In summary, the implications for employers of addressing and understanding diversity and disability as related considerations include:

- Enhanced recruitment and retention efforts
- Improved productivity
- Expanded training programs that include both diversity (ethnicity, gender, and religion) and disabilities
- Expanded policies and programs
- Improved morale

What Is Reasonable Accommodation?

Reasonable accommodation is any modification of or adjustment to a job, an employment practice, or the work environment that makes it possible for a qualified individual with a disability to apply for and perform the essential functions of a job.

Reasonable accommodation includes, but is not limited to, modification or adjustment of the application process to enable individuals with disabilities to apply for work, making facilities readily accessible to and usable by persons with disabilities, modifying work schedules, reallocation of non-essential job functions, acquisition or modification of equipment or devices, and reassignment to a vacant position. An employer is not required to reallocate essential job functions or to create “light-duty” positions.

An employer is not required to provide a reasonable accommodation if it can demonstrate that it would be an undue hardship to do so. Whether a reasonable accommodation creates an **undue hardship** is a factual issue depending on factors such as the nature and net cost of the accommodation and the size and nature of the business. The duty of reasonable accommodation is situation-specific.

What Is The Reasonable Accommodation Process?

To identify a reasonable accommodation under the ADA, the employer and employee may wish to engage in a flexible interactive discussion. Generally, if an individual with a disability wants a reasonable accommodation, he or she must request one. If the employer has already not done so, it should then determine the essential functions of the affected job and consult with the applicant or employee to determine the job-related limitations imposed by his or her disability. The parties should evaluate possible accommodations and select one that allows the employee to overcome the identified job limitations. While the employee's preference is given consideration, the employer has the discretion to choose between equally effective reasonable accommodations.

It is important that the concepts of non-discrimination and equal access for all persons with disabilities be part of an ongoing discussion in the workplace. Making an accommodation that meets an individual's specific needs is less difficult when organizations foster a climate that supports ADA compliance. For example, when a person has difficulty performing a nonessential job function and the employer accommodates that employee by reallocating the task, such a reallocation is usually easier when employees are prepared through prior training and ongoing group dialogue on accommodation issues.

The ADA contains strict confidentiality requirements pertaining to medical information obtained during a medical examination or inquiry. Medical information must be collected and maintained on separate forms and in separate medical files and be kept confidential. There are certain narrow circumstances when such information may be disclosed, including informing supervisors and managers about necessary work restrictions or accommodations.

What are some suggested strategies for heightening awareness of workplace diversity considerations, multicultural persons with disabilities, and the ADA?

Successful implementation of both diversity and ADA initiatives require efforts to change corporate culture and attitudes. Both suggest the need for staff training on non-discrimination practices, diversity awareness, diversity skills, flexibility in work schedules, and investigation of employee evaluation and reward structures. The parallel nature of these strategies suggests that the combination of disability and diversity initiatives is possible and would likely be advantageous to the success of both efforts.

Selected strategies that may both further diversity initiatives and implementation of the ADA include:

- Diversity initiatives that include active recruitment and retention of individuals of all backgrounds with disabilities in the workplace through collaborative agreements with state Vocational Rehabilitation agencies or local job placement services for individuals with disabilities.
- Development of targeted job programs for minorities with disabilities
- Development of a mentoring program for people with disabilities
- Making training, development, and promotional opportunities available to all minorities seeking job advancement. For individuals of all backgrounds with disabilities, this may include supplying needed supports to enable them to access training, considering new positions, or acquiring needed retraining when a disability occurs that prevents a return to the original job position.
- Integration of the nondiscrimination requirements of the ADA and Title VII of the Civil Rights Act for persons with disabilities in all facets of staff training and human resources practices.
- Making an organizational commitment to diversity by designating an organizational official to serve as a disability and diversity specialist.

These are only a few of many proactive initiatives that employers can take to recruit and retain individuals with disabilities in the workplace, thereby expanding their potential labor pool and maximizing human resources to enhance workplace outcomes.

Resources

Books:

Beyond Race & Gender, R. Roosevelt Thomas, Jr.

Designing & Implementing Successful Diversity Initiatives, Lawrence Baytos

Diverse Teams At Work, Lee Gardenswartz, PhD & Anita Rowe, PhD

Making Diversity Works: 7 Steps for Defeating Bias in the Workplace, Sondra Thiederman

Race Matters, Cornel West

Redefining Diversity, R. Roosevelt Thomas, Jr.

DVDs and Videos:

Blue-Eyed/Brown-Eyed
California Newsreel
149 Ninth Street/420
San Francisco, CA 94103
Phone: 415.621.6196
Fax: 415.621.6522
<http://newsreel.org>

Diversity Management, Roosevelt Thomas,
Society for Human Resource Management,
SHRMStore, 800.444.5006
<http://www.shrmstore.shrm.org>

Hotline:

ADA Disability and Business Technical
Assistance Center Hotline
800.949.4232 (voice/TTY)

Websites (Cultural Diversity & Disabilities):

Society for Human Resource Management
(SHRM) <http://www.shrm.org>

SHRM Diversity Web Page:
<http://www.shrm.org/diversity>
(SHRM membership number needed)

American Association of People with
Disabilities
<http://www.aapd.com>

American Institute for Managing Diversity
1200 West Peachtree Street, NW, Suite 3
Atlanta, GA 30309
404.575.2131
Fax: 404.575.2139
<http://www.aimd.org>

American Society for Training and
Development
1640 Kings Street, Box 1443
Alexandria, VA 22313
703.683.8100
Fax: 703.683.8103
<http://www.astd.org>

Catalyst
<http://www.catalystwomen.org>

Department of Justice ADA Home Page
<http://www.usdoj.gov/crt/ada/adahom1.htm>

Institute for Corporate Diversity has a web
site that provides access to diversity news and
resources.
<http://www.diversity-online.org/>

The Job Accommodation Network has useful information about working effectively with employees with disabilities.

PO Box 6080

Morgantown, WV 26506-6080

800.526.7234 (voice)

877.781.9403 (TTY)

<http://janweb.icdi.wvu.edu>

National Association for the Advancement of Colored People (NAACP)

<http://www.naACP.org>

The National Forum on People's Differences maintains an interactive web site that allows visitors to pose diversity-related questions that are answered by experts.

<http://www.yforum.com>

National Multicultural Institute

<http://www.nmci.org>

Equal Employment Opportunity Commission
(Best Practices Study Results)

131 M Street, NE

Washington, DC 20507

800.669.4000 (voice)

800.669.6820 (TTY)

For publications call 800.669.3362 (voice)

800.669.3302 (TTY)

<http://www.eeoc.gov>

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The U.S. Equal Employment Opportunity Commission has reviewed it for accuracy. However, opinions about the Americans with Disabilities Act (ADA) expressed in this material are those of the author, and do not necessarily reflect the viewpoint of the Commission or the publisher. EEOC interpretations of the ADA are reflected in its ADA regulations (29 CFR Part 1630), Technical Assistance Manual for Title I of the Act, and Enforcement Guidance.

Cornell University is authorized by NIDRR to provide information, materials, and technical assistance to individuals and entities that are covered by the Americans with Disabilities Act (ADA). You should be aware that NIDRR is not responsible for enforcement of the ADA. The 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 Act, nor binding on any agency with enforcement responsibility under the ADA.

The Equal Employment Opportunity Commission has issued enforcement guidance which provides additional clarification of various elements of the Title I provisions under the ADA. Copies of the guidance documents are available for viewing and downloading from the EEOC web site at:
<http://www.eeoc.gov>

About this Brochure

This brochure is one of a series on human resources practices and workplace accommodations for persons with disabilities edited by Susanne M. Bruyère, Ph.D., CRC, SPHR, Director, Employment and Disability Institute, Cornell University ILR School.

It has been updated in 2011 by Laura Herzog, Director, EEO/Diversity & Inclusion Programs, Cornell University ILR School, from the original, which was written in 1996 by Susanne M. Bruyere. It was reviewed for legal accuracy by Beth Reiter, an independent legal consultant, Ithaca, N.Y., with assistance from Sara Ferguson, a Cornell University Employment and Disability Institute ILR student research assistant.

The full text of this brochure, and others in this series, can be found at www.hrtps.org.

More information on accessibility and accommodation is available from the ADA National Network at 800.949.4232 (voice/ TTY), www.adata.org.

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