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## Employers Should Move Beyond Mere ADA Compliance



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As we reflect on the 26th anniversary of the Americans with Disabilities Act, employers have an opportunity to assess their path forward: Continue the struggle to be minimally compliant, or do more by also actively embracing the underlying spirit of the ADA and enhancing opportunities for individuals with disabilities. For a whole host of reasons, embracing the ADA is the future.

For more than a quarter of a century, many employers have felt a level of exasperation with ADA compliance, partly because compliance is more complicated than with other federal civil rights statutes, and partly because the Equal Employment Opportunity Commission and Congress have repeatedly changed the rules. Rightly or wrongly, the EEOC pursues aggressive interpretations of the ADA. When the EEOC's positions are tested in courts, they win some and they lose some, thus altering the landscape to one extent or another. And, when Congress did not like some of the "employer friendly" Supreme Court decisions, Congress amended the ADA in 2008 to expand the scope of the law and nearly double the number of people entitled to its protections. A good day for people with disabilities, but an added layer of confusion for employers.

Even without the shifting sand, ADA compliance hasn't been easy. The easier part of compliance is not discriminating against people with disabilities — that's not a whole lot different than Title VII. The hard part is reasonable accommodation. Any legal concept that can be summed up by the words "case-by-case" is inherently messy and fraught with peril. Employers are better at complying with fixed and easily digested rules — you must do X when faced with Y circumstance. Except for a few fixed and settled rules, reasonable accommodation requires employers to think differently and consider how to "break the rules" — meaning allowing individuals with disabilities to perform the essential functions of a job differently than it may have been performed for decades.

Lost in the compliance thicket has been a great opportunity: to embrace the employment of individuals with disabilities. The ADA requires compliance, but, more importantly, the ADA also provides us the opportunity to increase the ranks of individuals with disabilities in our workforces. The ADA is a unique federal employment statute because it requires affirmative action in the context of reasonable accommodation and also permits affirmative action (in the true sense of that phrase) in the hiring and

advancement of individuals with disabilities. There is no such thing as “reverse” disability discrimination.

But why increase the hiring and advancement of individuals with disabilities? The first reason is the obvious human factor. If you are in need of inspiration, you might want to invest time in learning about the work of Best Buddies, JVS and the many other organizations devoted to connecting individuals with disabilities to employers. The strong capacity and desire of individuals with disabilities to contribute and to feel like contributors (described by some as feeling “normal”) is obvious and remarkable. Another source of inspiration is our wounded veterans and the incredible efforts they are making to return to work and to continue to contribute to the nation they were injured protecting.

The second reason is that existing and future employees will be delighted when their employer makes an affirmative effort to employ and advance individuals with disabilities. It is similar in effect to the robust and laudable community service programs established by many employers. Most employers have such programs because “doing the right thing” is, well, the right thing, and because it builds morale and gives employees a proud feeling that their employer is devoted to something in addition to generating profits. Proud employees are happy employees. In turn, happy employees are more loyal and more productive than their unhappier selves, or so the logic goes.

The third reason to embrace the ADA is because it will help bolster the bottom line now and in the future. In addition to lifting the pride, happiness and productivity of co-workers, individuals with disabilities tend to be loyal, hard-working and high-quality employees. Consider:

- 91 percent of workers with disabilities were rated either “average” or “better than average,” i.e., the same as their counterparts without disabilities.
- Workers with disabilities have equal or lower levels of absenteeism than people without disabilities.
- Workers with disabilities stay with jobs they occupy at a higher rate than workers without disabilities.
- People with disabilities comprise one of the largest underutilized labor pools and can help fill expected labor shortages over the next two decades as baby boomers retire. Among the 11 million non-employed working-age people with disabilities, 80 percent want to work now or in the future, and more than 1.6 million have college degrees.
- A large share of new jobs over the next 10 years can be performed by people with disabilities, as shown by the U.S. Bureau of Labor Statistics employment projections matched to occupational ability requirements. Technology, when deployed properly, is the great equalizer.

And, finally, embracing the ADA helps achieve the oft-stated (and sometimes vigorously pursued) goal of increasing diversity in our workforces. Individuals with disabilities fit neatly into the wider groups of people who are under-represented in the workforce, subject to stereotypes, and who suffer from unconscious or overt bias. We, too, bring powerful ideas and viewpoints to the table, help improve organizational decision-making, and help employers better reflect their customers and the diversity of the communities they serve. Oh, and as I can readily attest, the unfortunate likelihood is that most Americans are or will become disabled at some point in their lives — whether due to the inevitable effects of aging, or by accident or illness — so, if nothing else, we must all think of our potential future selves as we ponder the power of embracing the concepts underlying the ADA.

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