

Memorandum

Date: July 29, 1993

To: Senator Dole

From: Alec Vachon *N*

Re: ADA Article in Today's Washington Post

Comments on the attached article:

1. Correctly points out that 12,000 complaints have been filed with EEOC. What the article does not say is that of the 2,000 complaints resolved so far, 70 percent have been dismissed for lack of jurisdiction (e.g., alleged violation occurred before effective data of law) or because an investigation found no discrimination. If this trend continues, perhaps only 3,600 cases of the 12,000 will be valid. (N.B.: This dismissal rate is about the same as other laws enforced by EEOC, e.g., sex, race, and age discrimination). Also, given that ADA covers 70 percent of the labor force, or 77 million persons, this appears a stunningly low rate of complaints.

2. Column 2, Paragraph 2, quotes a labor lawyer who states that one of the biggest surprises is that most people filing complaints are current employees. This is only a surprise to people who have not thought about the principle causes of joblessness among people with disabilities -- which are a lack of job skills and education. ADA is no remedy for these problems.

But a real surprise may be that the SSDI trust fund will be a beneficiary of ADA. According to a 1987 study I conducted, if employers generally made accommodations (as ADA now requires) between 20 and 40 percent of people who would have otherwise left the labor force because of disability will remain in it. Fewer exits from the labor force, fewer applications for SSDI.

3. The final comment of the article is appropriately optimistic -- that it is becoming more acceptable to have a disability. Moreover, whatever ADA does or does not do for people with disabilities, ADA has moved policy thinking about people with disabilities to a new level of visibility.

Lastly, I am finishing an ADA anniversary statement for you, which should still be timely for next week. In order to provide a historical perspective on this and other projects, I have been cataloging and analyzing your record on disability since 1969.

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One Year Later Suits Alleging Discrimination

Common disability complaints is back injury, EEOC officials, mental impairments and others.

EEOC officials say it is too early to judge many of the initial common complaints from people with disabilities and how many are being litigated under the law. To be legitimate, an individual's impairment must be substantial enough to "materially limit him or her in a major life activity," such as hearing, seeing, speaking, breathing, performing manual tasks, caring for oneself, working. But the law is designed to cover a wide range of disabilities—not just the most severe.

The law has spawned the suits against businesses did not have, has left them mystified as to how best to respond to the

cases. Statistics show that most employers are not aware of the act and have not taken some steps to modify their policies—installing ramps, for example—few have addressed disability issues in their policies.

In a recent survey, the United States Business Association found that 60 percent of businesses had not made an effort to comply with the law. A majority declined to say whether they employed people with disabilities or what steps they had taken to improve accessibility.

Some companies are sitting on the sidelines, waiting to see whether this attorney general will enforce the law," said a chief lobbyist for the Rights Education and Development. "The make-or-buy success rests on this administration. I think they realize that." The agency has had to handle the flood of cases generated by the new law. Many new investigators, ultimately, many charges filed only now being investigated. The agency has filed hundreds of lawsuits. But the cases suggest that

ADA when it fired its executive director after he was found to have a brain tumor. The employee was awarded back pay, as well as punitive damages totaling \$200,000—the maximum allowed for a mid-sized firm.

Last week, the Inter-Continental Hotel in New York settled a suit brought by the Justice Department and agreed to spend more than \$1 million to install ramps for wheelchair users, to buy telecommunications devices for the deaf and to make other changes to accommodate disabled guests.

EEOC officials have received nearly 200 complaints from the Washington area and many more are being considered by local law firms.

One case under investigation involves a top salesman at a local retail store who was dismissed by his employer after suffering an epileptic seizure. The company argued that his condition posed a hazard and that the seizures would alarm customers, but the EEOC ruled that the employee's claim was justified and plans to file a federal suit against the company, a commission spokesman said.

Earlier this month, a lawsuit was filed against The Wiz, alleging that the chain's 13 local music stores are inaccessible to people in wheelchairs. The suit was the first filed by the Disability Rights Council of Greater Washington, which is spearheading the effort to survey local establishments for potential violations.

Other complaints have been settled out of court, including one involving a local company that agreed to restore the health benefits of an HIV-infected employee who filed federal charges.

Legal experts say hundreds of cases will have to be heard before employers get a sense of when workers have legitimate grounds for legal action.

Often, companies can accommodate disabled employees with little extra expense, said Joe Sellers, a member of the Washington Lawyers Committee for Civil Rights Under Law who is investigating more than 30 cases of alleged dis-

INSIDE: EEOC



The Equal Employment Opportunity Commission, the federal agency that handles workplace discrimination issues, has received nearly 12,000 complaints from people with disabilities in the first year of a landmark civil rights law—the Americans with Disabilities Act—designed to ensure equal treatment for all workers, among other provisions.

Complaint charges

Below are the most common types of charges alleged in the complaints; figures do not equal 100 percent because one person can file more than one charge in a complaint:

Discharged from work because of disability	48%
Employer failed to provide reasonable accommodation	22%
Disability prevented worker from getting job	13%
Harassed because of disability	10%
Unfairly disciplined because of disability	7.2%
Denied benefits because of disability	3.6%

Types of disability

The most common disabilities those who file complaints allege they have:

Back impairment	18%	Neurological impairment	3.7%
Mental illness	9.8%	Diabetes	3.6%
Heart impairment	4.3%		

SOURCE: Equal Employment Opportunity Commission

THE WASHINGTON POST

a "fairly simple" change in work schedule.

While some changes can be achieved inexpensively, labor lawyer Esposito conceded that additional costs often are incurred.

"Even if it's just a change in a work schedule that's needed, somehow, someone from somewhere has to be brought in to do that job when the other person can't," said Esposito.

Esposito said he agrees with the spirit of the law, but is discovering many cases of people trying to abuse it by bringing dubious charges.

A woman sued one of his clients, saying she needed to start her workday one hour later because her medication made it difficult for her to wake up in the morning. In that case, Esposito said, the woman never asked the company for the later start

provisions of the law are phased in. Beginning this week, for example, telephone companies must provide relay services for hearing-impaired individuals, with violators subject to action by the Federal Communications Commission. Such services have been available in the Washington area for more than a year.

Ultimately, the new law's success will be measured by how the lives of those with disabilities are improved, advocates said. And slowly, improvement seems to be occurring.

Officials at Gallaudet University for the deaf said the number of corporations recruiting on campus has tripled since 1990, an increase attributed largely to the new law.

"It usually takes a while for any civil rights law to have an impact," said Robert Weinstock, who until recently oversaw career counseling

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The Disabilities Act, One Year I

EEOC Deluged With Nearly 12,000 Complaints Alleging Discrimination

By Liz Spayd
Washington Post Staff Writer

The Americans with Disabilities Act, key provisions of which took effect a year ago this week, has prompted thousands of U.S. workers to file discrimination complaints against their employers, an outpouring that over time could bring profound changes to the workplace.

Employment experts say the landmark legislation is effectively reshaping the definition of civil rights by challenging long-held axioms about what companies must do to accommodate every type of disabled person—whether an employee with back problems, a customer who can't reach store shelves or a job applicant who needs special equipment.

At the same time, surveys and other data suggest that after an initial rush to comply with the ADA, most businesses are now adopting a more complacent "wait-and-see" stance before significantly changing their premises or policies.

So far, nearly 12,000 complaints by individuals alleging discrimination have poured in to the U.S. Equal Employment Opportunity Commission, far surpassing the number of complaints filed by women and minorities in the first year after those groups were extended civil rights protection in 1964, records show.

The Justice Department, which enforces aspects of the disability law that ensure equal access to restaurants, movie theaters and other public spaces, is investigating more than 1,000 other complaints, officials said. "Maybe it's human nature not to do anything until you get caught short, but we're seeing widespread violations," said David Marlin, who heads a local advocacy group that is scouring nearly 200 restaurants, movie theaters, libraries and retail stores to find possible infractions.

The most wide-ranging legislation

the law does not say precisely who is covered and under what circumstances. Instead, it says only that employers must make "reasonable accommodations" to allow qualified disabled applicants to perform a job, unless the company can show that taking such steps would pose an "undue hardship" on its operations.

With that much latitude, many businesses feared an explosion of

Surveys and other data suggest that after an initial rush to comply with the Americans with Disabilities Act, most businesses are now taking a "wait-and-see" stance about significantly changing their premises or policies.

litigation from a segment of society that previously had no such legal recourse. Though the law has spurred a 20 percent jump in complaints to the EEOC, most were filed by employed people with disabilities that defy common stereotypes, such as those in wheelchairs.

"One of the biggest surprises is that in approximately 80 percent of the cases filed so far, it is a current employee who is charging discrimination," said Michael D. Esposito, a labor lawyer who represents large

The most common disability alleged in complaints is back injury, according to EEOC officials, followed by mental impairments and heart conditions.

Federal officials say it is too early to tell how many of the initial complaints are from people with bona fide disabilities and how many are merely abusing the law. To be legitimate, an individual's impairment must substantially limit him or her from performing "a major life activity" such as "hearing, seeing, speaking, walking, breathing, performing manual tasks, caring for oneself, learning or working." But the law is specifically designed to cover a variety of disabilities—not just the most severe.

If the new law has spawned the kind of complaints businesses did not expect, it also has left them mystified about how best to respond to the law.

While studies show that most businesses are aware of the act and have taken some steps to modify their premises—installing ramps for wheelchairs, for example—few have yet addressed disability issues in the workplace.

In a recent survey, the United Cerebral Palsy Association found that 76 percent of businesses had made some effort to comply with the law, but a majority declined to discuss whether they employed people with disabilities or what steps they had taken to improve their workplaces.

"A lot of companies are sitting back and waiting to see whether this president and this attorney general are willing to enforce the law," said Pat Wright, chief lobbyist for the Disability Rights Education and Defense Fund. "The make-or-break success of ADA rests on this administration, and I think they realize that."

The EEOC has had to handle the large caseload generated by the new law without any new investigators, and as a result, many charges filed

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New Accommodations, if Not Attitudes

While Barriers May Be Fewer, Everyday Activities Remain Difficult

Passengers aboard Metro's A-12 bus to Landover press up against their windows, peering out with a mixture of irritation and curiosity at a woman in a wheelchair trying to make her way through the door of the vehicle.

It is annoying to Dolly King that people stare, that some drivers can barely operate the bus's electronic lift and that she sometimes must wait more than 35 minutes before a bus arrives that is accessible to her and others in wheelchairs.

For all the good that is meant to come from the Americans with Disabilities Act, there is plenty to change before the world will seem substantially different to King. There is now a grab bar in the restroom of the local McDonald's that wasn't there before, and King notices that the Hecht's store at Landover Mall now displays a wheelchair sign to let the disabled know that sales clerks will offer assistance to those who need it.

But one law can't make people think differently, or erase the injustices of everyday life.

"Slowly, attitudes are changing, but you still get gawkers," said King, whose cerebral palsy keeps her in a wheelchair and limits the use of her hands. "People will call us 'retards' or say to me, 'Do you need help, little girl?'"

At 31, King says she can take care of herself. She doesn't want anything special from a new law, only enough to enable her to live a life on her terms.

If someone is going to achieve that, it is King. At a time when the unemployment rate for the disabled exceeds 60 percent, King has found a job taking credit card orders for Ticketmaster.

With the same telephone set and computer terminal used by every other operator, King types in information from callers, hunting and pecking on the keyboard with the forefinger of her right hand.

The Americans with Disabilities Act requires that companies make accommodations for disabled workers who need them, but the only special arrangement King needs is a little metal stand that helps her thumb through seating charts at local entertainment complexes.

In some ways, work is the easy part. She gets there on a van provided by a local chapter of United Cerebral Palsy. Getting to the store and maneuvering in a restaurant



BY MARY LOU FOY—THE WASHINGTON POST

Dolly King sometimes has a long wait before lift-equipped Metrobus arrives.

Traveling from King's Landover apartment to the New Carrollton Mall takes about 10 minutes by car. Not a driver, King goes to the bus stop about a block from her home, rides the bus to the subway, takes the subway to New Carrollton, and travels up a long, windy hill and across four lanes of traffic to the mall.

Because not all buses have a mechanical lift to hoist wheelchair users on board—and because the lifts often don't work when the bus does arrive—the trip to the mall can easily take 90 minutes, as it did one recent afternoon.

The vantage of a wheelchair reveals little details about life that some never see. King can see from blocks away whether a Metro bus is new, and consequently whether it has a chair lift. She knows that the clerks at Fashion Bug in the New

time to serve her and actively solicit her business. She knows that Jerry's Subs & Pizza has good sandwiches, but doesn't have a curb cut for wheelchair users.

King also has learned that it's generally better to go to a restaurant she has tried before, avoiding the hard discovery that another place's restroom may be suitable for only the able-bodied.

In the year since implementation of the disability law, King said she has seen more restrooms with wide stalls, more ramps for wheelchairs and more companies willing to hire people with disabilities. What will take longer to change is how the world reacts to someone like her, she said.

"People are still shocked when they hear I have a job, or they treat me like I have more of a disability than I think I do," King said. "You can't legislate attitudes like that."

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HELPS KEI

Oscar Welsh is mayor of a small Pennsylvania town not far from Bald Eagle Mountain. He lives eight miles from a nuclear plant that started generating electricity about 10 years ago.

Mayor Welsh is a man who prefers to arrive at his own conclusions.