

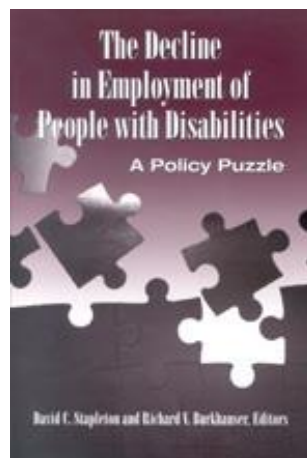
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# The Americans with Disabilities Act and the Employment of People with Disabilities

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## 7

# The Americans with Disabilities Act and the Employment of People with Disabilities

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A major goal of the Americans with Disabilities Act of 1990 (ADA) is to more fully integrate working-aged people with disabilities into the labor force and to increase their employment rate to be more in line with the rest of the population. At the time of its passage, ADA proponents believed that the ADA's antidiscrimination and reasonable accommodation mandates would accomplish this goal and increase both the employment and economic well-being of working-aged people with disabilities. Few would disagree with this ADA goal. In fact, the 1964 Civil Rights Act, despite great controversy at the time of its passage, has been shown to contribute to the achievement of this goal for blacks. In contrast, ADA critics today argue that instead of increasing their employment, the costs associated with these mandates had the unintended consequence of reducing the employment opportunities of those with disabilities.

This chapter summarizes the empirical evidence on the labor market consequences of the ADA. It will show that, to date, the ADA—as well as similar state-level legislation that preceded the ADA—has reduced the employment opportunities of those with disabilities. This evidence is consistent with the argument that accommodation and employment-protection costs can reduce the employment of the individuals these actions are meant to protect. This policy failure, rather than a disagreement on goals, is the basis for the case against the ADA as a vehicle for improving the labor market outcomes for working-aged people with disabilities. The ADA has not only failed to increase employment opportunities for people with disabilities but has actually reduced them. Hence, those interested in more fully integrating working-aged people with disabilities into the workforce and reducing their

dependence on government disability-related transfers should reconsider their support of the ADA as the vehicle for achieving that goal and instead focus on alternative policies.

## BACKGROUND

Many working-aged Americans are limited in their ability to function as a result of a health-related impairment—in 1993, 16 percent of men aged 18–62 reported a functional limitation, and 11 percent reported a work limitation owing to a health impairment (DeLeire 2001). Moreover, many American workers are at risk of disability as a result of a workplace injury. Reville and Schoeni (2002) find that 34 percent of working-aged adults with disabilities in the Health and Retirement Study say their disability was the result of a work-related injury or from the nature of their work. Social policy in the United States has increasingly focused on integrating working-aged people with disabilities into the labor force and reducing their reliance on disability transfer programs. The most important effort in this regard has been the passage of the ADA. This act, fashioned in large part on the civil rights protection granted to other protected minorities by the Civil Rights Act of 1964, was an attempt through mandates to achieve this goal for working-aged people with disabilities.

The ADA was passed on July 26, 1990, and became effective two years later. Although numerous states had laws providing employment protections for workers with disabilities prior to 1990 (Beegle and Stock 2002), the ADA represents the first federal law providing employment protections for workers with disabilities in the private sector (although the Rehabilitation Act of 1973 applied to federal contractors). There are two components of Title I of the ADA. First, the ADA bans discrimination in wages, hiring, firing, and promotion. Second, employers are required to provide “reasonable” accommodation for their disabled workers. Examples of reasonable accommodation include providing access to work areas, job restructuring, and special equipment or assistive devices.

These two provisions, while protecting individuals’ rights, also impose costs on employers. Further, the cost of accommodation is one

that is unlike costs that were associated with the civil rights protection under the 1964 Civil Rights Act. Enforced through the Equal Employment Opportunity Commission (EEOC) and through the courts, the ADA imposes litigation costs on firms. For example, firms that have settled with the EEOC have paid an average settlement of \$13,137 (U.S. EEOC 2001). Even without a judgment, however, the cost of defending a discrimination suit has been estimated to be as much as \$100,000 (Olson 1997).

The evidence on the magnitude of the cost of accommodation to firms is thin. What evidence exists suggests that these costs are small on average (Berkeley Planning Associates 1982; Job Accommodation Network 1999). However, as I have argued elsewhere (DeLeire 2000b), these data seriously underestimate the potential costs of accommodations by including accommodations that would have been granted even in the absence of the law and by counting certain accommodations as zero cost because they do not involve the purchase of equipment. For example, the studies count job restructuring as zero cost despite large costs this accommodation can impose on firms. Despite shortcomings, these studies have found that a potentially important fraction of accommodations are quite expensive. For example, while the Berkeley Planning Associates study found that the average cost of accommodation was small, the study also found that 8 percent of accommodations cost more than \$2,000, 4 percent cost more than \$5,000, and 2 percent cost more than \$20,000 (which in 2001 dollars would be more than \$3,700, \$9,300, and \$37,000, respectively). Moreover, this survey reports only the costs of accommodations made, not the costs of accommodations that were requested and denied. It is reasonable to suspect that the costs of denied accommodations would exceed the costs of those that were granted. Therefore, the average costs of new accommodation requests under the ADA are likely to be much larger than the average costs reported in these surveys.

### **Defining Disability**

The most common image of those targeted for ADA protection is of working-aged people with mobility, vision, or hearing impairments. The ADA, however, covers a much broader set of health impairments. The ADA defines disability as “a physical or mental impairment that

substantially limits one or more of the major life activities of . . . [an] individual, a record of such an impairment; or being regarded as having such an impairment” (ADA 1990). Major life activities include walking, lifting, seeing, hearing, breathing, and working. In fact, the set of individuals with mobility, vision, and hearing impairments represent only 17 percent of the population of people with disabilities, according to the Survey of Income and Program Participation (SIPP). The other 83 percent of people with disabilities in the SIPP have back impairments, impairments arising from stroke, heart problems, asthma, diabetes, cancer, high blood pressure, kidney or stomach problems, are HIV positive or have AIDS, have a mental disability, or have a substance abuse problem (based on author’s calculations from the SIPP).

Although the ADA potentially covers a much broader set of impairments than is commonly understood, still uncertain is which members of the population with impairments are considered to be part of the class protected by the ADA. The EEOC and the courts have disagreed over how broadly disability is defined under the ADA. For example, in *Toyota v. Williams*, the Supreme Court unanimously ruled that an individual with carpal tunnel syndrome who could still do tasks central to most people’s daily lives was not disabled under the ADA. The EEOC had previously taken the position that they were. If the EEOC and the courts have been uncertain over who is protected by the ADA, surely employers have been even more uncertain. For such employers, this uncertainty is likely to have further increased their risks and costs associated with hiring people with disabilities.

Moreover, eligibility to sue under the ADA is determined by the courts on an individual basis. Many individuals who have filed claims against employers through the EEOC or the courts have been found not to be protected by the ADA. The claims and lawsuits filed by these individuals are not costless to employers. Even a successful defense of a claim can cost a firm tens of thousands of dollars. In addition, because there is a lottery aspect to any court proceeding, where judge or jury determines the facts of the case, some individuals will be successful in their claims when identical individuals will be unsuccessful. Therefore, even if an employer believes an individual with disabilities is not protected by the ADA (either because he or she is unable to be reasonably accommodated, would be unable to perform the essential functions of the job even with accommodations, or is not in fact limited

in a major life function), the employer still may believe that there is a risk of being sued by this individual. Moreover, individuals who end up not being covered may face reduced employment opportunities—because of employers’ fear of lawsuits—yet ultimately not receive remedies when they do sue because they are not, in fact, protected by the ADA.

Kruse and Schur (Chapter 8) and Blanck, Schwochau, and Song (Chapter 9) argue that policymakers should only be concerned with the well-being of people with disabilities who are within the ADA protected class. However, uncertainties surrounding who is protected by the law (and who will sue, even if ultimately unsuccessful) suggest that the ADA could have an effect on individuals with disabilities who are not covered by the law. The ADA could likewise assist individuals who are not covered by the act. For example, accommodations, such as modifications to work environments, made by employers for protected workers may also benefit workers with disabilities who are not covered by the ADA, and may improve their employment outcomes. In either case, a narrow, legalistic view of the impacts of the ADA misses the larger population of people with disabilities of interest to policymakers.

## **THE A PRIORI CASE AGAINST THE ADA**

Prior to passage of the ADA, several authors argued that the ADA would not lead to a better integration of working-aged people with disabilities into the labor force or improvement in their economic well-being. I review these arguments in this section.

In their critical analyses of the ADA, both Weaver (1991) and Rosen (1991) point out that the ADA differs from federal civil rights protections for minorities and women in that it not only bans discrimination but also requires firms to provide “reasonable” accommodations to its employees with disabilities. Further, they argue that the costs of accommodation would represent a barrier to increasing employment opportunities and would reduce the demand for disabled workers and thus the number of disabled people employed (Rosen 1991 p. 23; Weaver 1991, p. 11). Weaver also predicted that the ADA would lead

to distributional effects as well; firms would have relatively greater incentive to employ workers with disabilities who require little accommodation.

Epstein (1992) argues, as part of a more general argument against all antidiscrimination legislation when applied to labor markets, that the ADA is not the best way to assist people with disabilities in the labor market. He contends that protected groups are better served by freedom of contract (employment at will) and competitive labor markets in which entry is unfettered. Employers would have no reason to avoid hiring impaired workers out of (the mistaken) fear that they are less capable given that they would be free to fire any worker, impaired or not, who does not work productively. Workers with impairments would have greater levels of employment—although with fewer guarantees of continued employment—while employers would gain greater experience at employing workers with impairments.

Burkhauser (1990) argues that the ADA would be less effective at inducing employers to provide accommodations for people with disabilities than would a tax credit (or other type of subsidy) to employers for such accommodations. However, he also argues that the mandated-accommodation approach of the ADA was favored politically because it was off budget; that is, it did not involve any budget outlay or tax offsets by the federal government.

Acemoglu and Angrist (2001) present a model in which the ADA could reduce employment of people with disabilities by increasing employer costs (including costs of accommodation and potential costs of litigation). However, they also show that the ADA possibly could increase employment of people with disabilities through its implicit hiring subsidy. This implicit hiring subsidy is caused by employers' fear that an applicant with a disability who is not hired may sue. Thus, it is may be less expensive to hire an applicant with a disability.

Therefore, on theoretical grounds, the ADA could have led to an increase or to a decrease in the employment of people with disabilities depending on the relative importance of accommodation costs, firing costs, and hiring costs. To measure the impact of the ADA, I turn next to a review of the empirical studies of the ADA's effects.

## **EMPIRICAL STUDIES—THE WEIGHT OF THE EVIDENCE AGAINST THE ADA**

To date, two major studies have used national data sets to examine the employment effects of the ADA: DeLeire (2000b) and Acemoglu and Angrist (2001). The methods used in these studies are similar to those in studies that examined the impact of the Civil Rights Act of 1964; that is, they examine trends in employment rates of people with disabilities relative to people without disabilities around the time the ADA was passed. The literature measuring the impact of the 1964 Civil Rights Act on the economic status of blacks includes studies by Freeman (1973) and Brown (1984), both of which found an upward shift in relative black economic status following 1964. (For a complete discussion of this literature and of the effect of civil rights policy on black economic progress, see Donohue and Heckman [1991]). These studies all examine black-white earnings ratios over a period of time spanning the passage of the Civil Rights Act. Findings that relative earnings increased post-1964 are taken as evidence that the act had positive effects. It is important to note that the preponderance of the evidence from studies using this method is that the Civil Rights Act did reduce employment discrimination and increase the employment of blacks.

The empirical studies of the impact of the ADA, described below, have a similar design as those used to evaluate the Civil Rights Act. For the most part, they examine relative employment rates before and after the enactment or implementation of the ADA to infer its impact. Acemoglu and Angrist (2001) and DeLeire (2000b) also employ additional comparisons that help shed light on whether any changes in employment trends are the result of the ADA. Because the ADA was enacted (and implemented) for all people with disabilities simultaneously,<sup>1</sup> it is difficult to disentangle alternative explanations why disabled employment has fallen. In response to this problem, Beegle and Stock (2002) examine the employment impact of state disability laws that were implemented between 1970 and 1990. In this section, I review each of these studies.



## Data Sources and the Definition of Disability

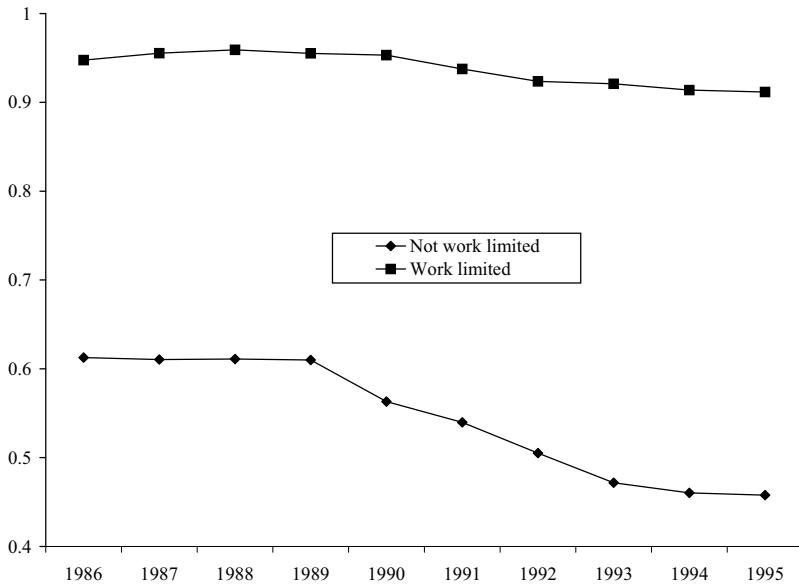
DeLeire (2000b) uses data from the 1986 through 1993 panels of the SIPP on a sample of men aged 18 to 64. These data contain information on whether each individual worked in the previous four-month period as well as a large number of demographic characteristics of the individuals. Disability is measured by a self-report of a “health impairment that limits the type or amount of work an individual can do.” Acemoglu and Angrist (2001) use data from the Current Population Survey (CPS). Beegle and Stock (2002) use data from the 1970, 1980, and 1990 Decennial Censuses. As in the SIPP, the measure of disability available in the CPS and in the Census is a self-reported work limitation.<sup>2</sup> As discussed by Burkhauser, Houtenville, and Wittenburg (Chapter 2), although this is not an ideal measure for establishing the working-aged population with disabilities, employment trends in this population are not significantly different from those using other measures of disabilities.

## The Employment Effect of the ADA: Evidence from 1990–1992

Both DeLeire and Acemoglu and Angrist examine employment trends around the time the ADA was passed and implemented to empirically assess the effect of the ADA. Both studies estimate empirical models of employment and interpret declines as evidence that the ADA had a negative impact on the demand for disabled employment. Acemoglu and Angrist, using the CPS, estimate linear regressions of weeks worked and control for a large set of demographic characteristics—age, race, education, and region all interacted with year dummies. DeLeire, using the SIPP, estimates probit models of employment and controls for age, education, marital status, race, industry, and occupation. Importantly, both studies use individuals without disabilities who have similar skill levels as a comparison group by which to measure the post-ADA experiences of those with disabilities.

Figure 7.1 illustrates the estimated effect of the ADA on relative employment rates of working-aged (18–64) people with disabilities. The top panel of Figure 7.1 plots the employment rate of men with and without disabilities from 1986 through 1995 using data from the SIPP. The bottom panel of Figure 7.1 plots the employment rate of men with

**Figure 7.1 Employment Rates of Men With and Without Work Limitations Disabilities, Aged 18–64: SIPP Data**



disabilities relative to that of men without disabilities. Neither panel controls for demographic characteristics. Although the employment of men without disabilities was slightly lower in the years following 1990, the employment of men with disabilities fell dramatically beginning in 1990, the year the ADA was passed. Empirical models of employment yield similar results and are reported in Table 7.1. I interpret Figure 7.1 as *prima facie* evidence that the ADA did not work as intended; rather than making it easier for people with disabilities to find employment, the ADA has made it more difficult.

Acemoglu and Angrist find similar results using the CPS when they examine weeks worked. There are, however, two differences between the findings from the CPS and those from the SIPP. First, Acemoglu and Angrist observe declines in weeks worked beginning only in 1992, the year the ADA became effective. Second, they observe steep declines primarily for men and women aged 21–39, and only slight declines for men aged 40–58, and they do not observe

**Table 7.1 Summary of Empirical Studies of the Effects of Disability Discrimination Laws**

	Employment rate (DeLeire)		Weeks worked (Acemoglu & Angrist)			Employment rate (Beegle & Stock)
	(1)	(2)	(3)	(4)	(5)	(6)
	Disabled	-0.26	-0.24	-	-	-
Post-law	-0.02	-	-	-	-	0.01
Post-law x disabled	-0.04	-	-	-	-	-0.12
1986 x disabled	-	-0.02	-	-	-	-
1987 x disabled	-	-0.03	-	-	-	-
1988 x disabled	-	-0.02	-0.41	-1.08	-0.49	-
1989 x disabled	-	-	2.00	0.67	-0.47	-
1990 x disabled	-	-0.03	-0.79	-1.33	-0.22	-
1991 x disabled	-	-0.06	-0.53	0.08	0.34	-
1992 x disabled	-	-0.06	0.57	-2.81	0.77	-
1993 x disabled	-	-0.07	-1.44	-4.37	-2.12	-
1994 x disabled	-	-0.07	-1.63	-5.00	-1.57	-
1995 x disabled	-	-0.07	-2.93	-3.93	-1.83	-
1996 x disabled	-	-	-2.68	-4.41	-0.75	-

NOTE: The data in this table can be interpreted as follows: Columns (1) and (6) show the difference in employment rates between people with and without disabilities in the first row, the change in employment rates for people without disabilities after the law was enacted in the second row, and the change in employment rates for people with disabilities (over and above the change for people without disabilities) in the third row. The first row of column (2) again shows the difference in employment rates between people with and without disabilities. Each row from the fourth onward shows the difference in the employment rate of people with disabilities relative to the employment rate of people without disabilities between the given year and 1989. For example, in the eleventh row, the -0.07 indicates that the employment rate of people with disabilities fell by 7 percentage point more than that for people without disabilities between 1989 and 1993. Columns (3), (4), and (5) show the difference in weeks worked between people with and without disabilities. For example, in the eleventh row, third column, the -1.44 indicates that the number of weeks worked by people with disabilities fell by 1.44 weeks since 1987 relative to the change in the number of weeks worked by people without disabilities.

SOURCE: Results from DeLeire (2000b, Table 4) are based on SIPP data for men aged 18–64. Results from Acemoglu and Angrist (2001, Table 2) are based on CPS data for men aged 21–39, women aged 21–39, and men aged 40–58, respectively. Results from Beegle and Stock (2002), Table 5, are based on census data for men and women aged 18–64. All studies measure disability as the presence of a work limitation and adjust for demographic characteristics.

declines for women aged 40–58. Their results change little when they add controls or employ alternative estimation methods.

Table 7.1 summarizes the results from DeLeire, Acemoglu and Angrist, and Beegle and Stock. All three studies conduct additional analyses comparing the relative employment declines across groups and across states. These analyses provide further evidence that the ADA—as opposed to some other policy change—is responsible for the employment decline for people with disabilities.

First, Acemoglu and Angrist control for the fact that Social Security Disability Income (SSDI) and Supplemental Security Income (SSI) reciprocity rates increased over this period as well. They do so in three ways: they first examine employment trends only for nonrecipients; second, they control for the individual's SSDI and SSI receipt; and third, in each year, they control for the statewide fraction of individuals receiving SSDI and SSI. In no case do any of their results change substantially. That is, the declines in employment in the CPS following the implementation of the ADA are over and above those that could conceivably be the result of changes in SSDI or SSI policies. Acemoglu and Angrist also examine employment patterns by firm size. They found larger employment declines in medium-sized firms (those with 25 to 99 employees) than in smaller firms or larger firms. These findings are consistent with the ADA being the source of the employment declines because firms with fewer than 15 employees are exempt from the ADA, and very large firms are likely best able to absorb the costs of the ADA. They find no evidence, however, that the separation rate of people with disabilities fell, a fact they interpret as suggesting that the accommodation costs of the ADA might be a more important explanation for the decline in employment than the threat of lawsuits for wrongful termination. Finally, they find that employment, particularly of younger disabled men, fell more in states with a greater number of ADA-related EEOC charges than in other states.

### **State Disability Discrimination Laws**

Beegle and Stock (2002) use data from the 1970, 1980, and 1990 Censuses along with data on state-level disability discrimination statutes to determine the employment effects of these state laws—all of which preceded the ADA. Because, unlike the ADA, these state-level

antidiscrimination statutes were enacted in different states in different decades, it is easier to disentangle their effects on employment of people with disabilities from the effects of nationwide trends or changes in other policies. Some of these state laws were quite similar to the ADA, while others either had no accommodation requirement or did not cover mental impairments. In all cases, the resources dedicated to enforcement of these state laws likely were not as great as those of the EEOC to enforce the ADA.

How does the analysis of Beegle and Stock differ from those in DeLeire and Acemoglu and Angrist? The two latter studies, in their simplest form, compare employment rates of people with disabilities to those without disabilities before and after the act was passed. A potential concern is that something else, in addition to the ADA, happened around 1990–1992 that would affect employment rates of people with disabilities relative to employment rates of people without disabilities. Beegle and Stock use the variation in the timing of disability discrimination laws being passed in different states at different times. For example, Connecticut had a disability discrimination law in place by 1980 (enacted during the 1970s) while Rhode Island did not have a disability discrimination law in place until 1990 (enacted during the 1980s). Therefore, the authors can compare changes in employment rates of people with disabilities between 1970 and 1980 in Connecticut not only with changes in employment rates of people without disabilities between 1970 and 1980 in Connecticut, but also with changes in employment of people with disabilities between 1970 and 1980 in Rhode Island.

Beegle and Stock's findings are summarized in column (6) of Table 7.1. They find, as did the earlier research, that disability discrimination laws are associated with lower levels of employment of people with disabilities. Although the estimated effects of the state disability discrimination laws appear to be larger than the estimated effects of the ADA, the effects may not be comparable for several reasons. First, because Beegle and Stock use Census data, they measure the effects of the state laws over a longer period of time than do the studies examining the ADA. Second, the ADA was enacted on top of existing state disability discrimination law. Thus, the marginal effect of the ADA on employment rates might be smaller than would have occurred in the absence of these pre-existing laws.<sup>3</sup>

### **Are the Measured Employment Declines Real?**

In a recent paper (summarized in Chapter 8), Kruse and Schur (2001) conduct an investigation of the trends in employment of people with disabilities in the early 1990s using data from the SIPP. The authors argue that disability can be measured in many different ways, both conceptually and using available data. The authors create 14 different measures of disability and show that, in contrast to the measures commonly used that show a decline in the employment of working-aged people with disabilities, some of these alternative measures show either no decline or an increase in employment. Because measures of functional limitations were available in the SIPP only beginning in the 1990 panel, Kruse and Schur estimate how employment (measured as the percentage of weeks worked) has changed since 1990. Because the ADA was passed on July 26, 1990, their data contain only a very short “pre-ADA” period with which to compare “post-ADA” employment. The authors conclude that studies that suggest that employment declined—in particular studies that suggest that employment declined as a result of the ADA—may be mistaken.

Although Kruse and Schur observe substantial declines in employment when the entire population of people with disabilities is used (based on either of the two broadest measures of disability—a work limitation or any functional “activity of daily living” (ADL) limitation), their preferred samples are based on specific subpopulations of people with disabilities. First, they exclude people with disabilities who report that they cannot work at all. Second, they use the population that reports a functional or ADL limitation, but not a work disability. These populations—in most of their specifications—represent less than one-half of the entire population of people with disabilities, based on a self-reported work limitation or any functional or ADL limitation.

The authors find that when people who are unable to work at all as a result of their disability are excluded from the sample of people with disabilities, there is no decline in employment. Moreover, when people who report a work limitation in addition to a functional or ADL limitation are excluded from the sample of people with disabilities (i.e., only those with a functional or ADL limitation but no work limitation are included), there is an increase in employment following the ADA.

One should not exclude individuals who say they cannot work as a result of their disability, however. Disability is not a medical condition, but rather the interaction of a medical condition with a person's environment. A person could report that "their health condition prevents them from working" because they did not receive reasonable accommodations or because they face discrimination. Therefore, unlike Kruse and Schur, I think it is incorrect to characterize individuals in this group as not being covered by the ADA because they are "not qualified" to work and, therefore, exclude them from analysis. In addition, excluding individuals with disabilities who do not work and who report that they are unable to work is essentially excluding the nonemployed—a major limitation in measuring the effect of the ADA on employment. Burkhauser and co-authors (Chapter 2) make a related point.

Nevertheless, the population who report a functional or ADL limitation, but not a work limitation, is an interesting one to study, and one that I examined in DeLeire (2001). These individuals do have health impairments that limit them in some way, but they self-report that their impairment does not limit the type or amount of work they can do. They are reporting that they are just as productive as they would be if they were not impaired, perhaps because they have already received a successful job accommodation or their impairment is irrelevant for their particular line of work.

Before extrapolating from the experiences under the ADA of this subsample of people with disabilities to those of people with disabilities as a whole, one should emphasize that the labor market experiences of this group are not typical. Even before the enactment of the ADA, people with functional or ADL limitations but no work limitations earned just 4 percent less than nondisabled individuals, controlling for observable characteristics such as experience and education, compared with almost 70 percent less for the remaining people with disabilities (DeLeire 2001).

According to Kruse and Schur (2001), individuals with any functional or ADL limitation but no work disability worked just 2.6 percent fewer weeks than nondisabled individuals in 1990, and worked 3.1 percent more weeks than nondisabled individuals in 1994. Although it is interesting and important to document that a significant subpopulation of people with disabilities earned just as much and worked just as

much as people without disabilities even before the ADA was enacted, these were not and are not the typical experiences of a person with a disability. As has been documented in countless studies, including several in this volume, the low employment rates and low earnings of people with disabilities are problems that policymakers must address and that the ADA was intended to address.

A possible explanation for why employment rates increase for those who report a functional limitation and an ability to work is that members of this group do not require additional accommodations under the ADA. For example, DeLeire (2001) finds no wage gap for this group, suggesting that individuals with functional limitations but no work limitations require little in the way of accommodation. If so, employers would have little reason to avoid hiring them under the ADA. Alternatively, the ADA could be helping those workers with disabilities who are already employed and who have already received accommodation, and others with low accommodation costs, by providing them protection against unlawful terminations. However, the net effect of the ADA for individuals who are seeking employment and who require potentially expensive accommodations could be negative.

## **WHAT NEEDS TO BE DONE?**

Economic studies have shown that antidiscrimination laws such as the Civil Rights Act of 1964 have reduced labor market discrimination, promoted integration of protected classes (i.e., blacks) into the labor force, and improved their labor earnings and economic well-being. However, economic theory does not unambiguously predict such success. Hence, the success of the Civil Rights Act does not assure that the ADA has achieved similar goals for working-aged people with disabilities.

This chapter argues that ADA's antidiscrimination and reasonable accommodation mandates have made workers with disabilities more expensive for employers to hire. This has had the unintended consequence of reducing their employment rate, rather than changing societal norms, reducing discrimination, and increasing their employment.



To achieve the goals of more fully integrating working-aged people into the labor force and reducing their dependence on disability-based transfers, it is important to understand why the ADA failed where the Civil Rights Act succeeded. More effort is needed in exploring why the negative incentives of the ADA outweighed the positive ones. One possibility is that, unlike the Civil Rights Act, the ADA requires potentially expensive accommodations for workers with disabilities. An exploration of the degree to which the costs of accommodating workers with disabilities deters hiring should be undertaken.

As Houtenville and Daly show (Chapter 3), there is great variation in the socioeconomic characteristics of working-aged people with disabilities, and there has been significant variation in employment rate experiences across subgroups during the 1990s. More work needs to be done to explain why some workers with disabilities fared better than others over this period, when the ADA was enforced. However, simply ignoring the losses for the majority of individuals with disabilities and focusing instead on the gains to the minority whose employment improved, as several authors in this volume choose to do, is not appropriate, either methodologically or from a policy perspective, if the reasons for the distinction between these classes relate to the policy under review. Nonetheless, it is important to show that for some subpopulations, employment improved during the 1990s. For example, my work suggests that individuals whose disability onset occurred as a result of a work-related injury did not suffer a reduction in their employment during the 1990s (DeLeire 2000b). Kruse and Schur, as discussed above, find that employment rates for some groups of people with disabilities did not fall during the 1990s. A recent paper by Carpenter (2002) finds that employment rates of individuals whose disability was related to obesity (to whom ADA coverage was extended under *Cook v. Rhode Island* in 1993) increased during this period. A more complete understanding of the reasons behind this variation in outcomes within the broader population with disabilities will help us design policies that better meet the ADA's goal of integrating people with disabilities into the labor force.

## Notes

1. There are exceptions. Firms with 15 to 24 employees were not covered by the ADA until 1994. Also, in a 1993 federal court case, *Cook v. Rhode Island*, the ADA protected class was broadened to include workers with disabilities resulting from obesity (see Carpenter 2002).
2. In an unpublished paper, DeLeire (1997) also used the panel study of income dynamics to examine the impact of the ADA. Because the methods used and the findings were similar to those in DeLeire (2000b) and Acemoglu and Angrist (2001), they are not reported here.
3. It is still a challenge to distinguish the effects of disability laws from time trends, even with state variation in the timing of such laws. In an updated version of their study, Beegle and Stock (forthcoming) demonstrate this difficulty; one does not observe relative employment declines if one controls for disability specific time effects across states. These time effects reflect pre-existing trends for the 13 states which passed disability discrimination laws between 1980 and 1990, but may either reflect these trends or may reflect continued declines in relative employment resulting from the presence of disability discrimination laws for the 33 states that passed these laws between 1970 and 1980. In any case, the authors find declines in the relative earnings of people with disabilities regardless of whether these disability-specific time effects are controlled for.

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# **The Decline in Employment of People with Disabilities**

## **A Policy Puzzle**

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