

# Workplace Behavioral Responses to the Law

By David Baldrige

With John Waldo's lucid description of the Americans with Disabilities Act (ADA) in mind, David Baldrige turns to research on behavioral responses to this law.



Every time I drive on the freeway, I am reminded that behavioral responses, to even clearly stated laws, vary considerably. The speed limit might be clearly posted as 65 miles per hour but driver behavior varies from those who strictly adhere to the posted speed limit to those who interpret the posted speed limit as meaning that they should drive five to ten miles per hour faster, to those who completely ignore the posted speed limit. When a police car is spotted up the road, these divergent groups become much closer in their behavioral response with few, if any, drivers willing to pass a police car.

With that analogy in mind, I begin by impartially and unemotionally describing research on the behavioral responses of employers, supervisors, co-workers and employees with hearing loss to the ADA. To keep this discussion manageable, I focus primarily on requests for accommodation by people who are already employed. I then conclude by offering a few practical suggestions that people with hearing loss can use to advocate for themselves in the workplace.

## Underemployment

As one indicator of the limited impact of the ADA, a recent study found that only 21.6 percent of people with disabilities are in the labor force, compared with 70.0 percent of persons with no disability and other studies show that those fortunate enough to find employment are often underemployed. Accommodation is often essential to gaining and maintaining employment. Accommodation is also often essential for people with disabilities to contribute the depth of their talents and to enjoying equal access to the benefits of employment.

In examining employers' responses to the ADA, Wendt and Slonaker analyze 10,197 employment discrimination claims in Ohio and find three main patterns in the reasons why employers did not provide appropriate accommodation:

- Some employers sought to avoid inconvenience by not hiring people with disabilities, ignore employees' disabilities and accommodation requests;
- Other employers transfer, demote, or

reassign people with disabilities to avoid accommodation; and,

- Some employers use absenteeism as an excuse to discipline or discharge employees rather than offer accommodation in the form of schedule flexibility.

In another study Williams-Whitt investigates factors that contribute to accommodation difficulties in the United States and find four key contributing elements:

- 1) Managerial reluctance and bias related to added workload and questions about disability credibility
- 2) Managers frequently exclude the employee with a disability from accommodation planning discussions
- 3) Managers over-investigate disability legitimacy and under-investigate accommodation options
- 4) In some cases, union-management tension strains communication and increase distrust.

While these findings are discouraging, I believe that most employers and supervisors are good and reasonable people who want to treat people with hearing loss fairly and passage of the ADA indicates general social and political support.

At the same time, in running an organization, employers face many ongoing, complex and competing challenges. To survive, if not prosper, employers need to minimize uncertainty, risks and threats and understandably resist constraints to their ability to run their businesses. They also seek to maximize their flexibility and ability to manage, maintain competitive advantage, and keep costs low. In this light, the ADA is often viewed as one more constraint and a potential threat to organizational survival.

### Co-Worker Response

Co-workers can also, at times, respond negatively to accommodation requests. Again, I believe that most co-workers are fair and reasonable people who want to help people with hearing loss but they too typically care a bit more about their

own families and circumstances and might put their own needs first. In this light, accommodation requests can be seen as competition for scarce resources, threats to co-workers' social standing and ability to compete for employment rewards such as pay and promotion.

### There are three basic reasons that employers are willing to provide accommodation—economic, moral and legal.

Research also indicates that people with hearing loss often do not request needed accommodation. My research with Veiga and Swift finds that 67.6 percent of respondents to a survey withheld requests for accommodations at least once each year, and 59.9 percent withheld requests at least once each quarter. Common reasons for not requesting accommodation requests include: cost, compliance, imposition to others, and harm to the requesters' image. Simply put, people with hearing loss face a straightforward yet troubling dilemma. If I exercise my right to request workplace accommodation, will I be better or worse off?

In practice, it is important to assert one's legal rights whenever possible because our rights are only as extensive as we make them. It is important to understand that your odds of winning an ADA discrimination case are not good and to frame your accommodation requests accordingly. It has been suggested that there are three basic reasons that employers are willing to provide accommodation:

- Economic—providing accommodation because it makes good economic sense
- Moral—providing accommodation because it is the right thing to do
- Legal—providing accommodation because it is required by the law

Given that the ADA provides limited legal power to employees making accommodation requests, I encourage people with hearing loss to first focus

on economic benefits to their employer. The strength of your argument will rest largely on your demonstrated ability and potential to contribute to organizational success. How will having the accommodation allow you to add more value? Second, appeal to norms for fairness and inclusion. Employers and supervisors generally want to appear reasonable to themselves and to others. In a non-threatening way, appeal to this sense of fairness. The strength of your position will now rest more on your social capital. Do others generally like you, want to include you and want you to feel that you are being treated fairly? If so, you have more power to request accommodation even when you cannot justify the request economically.

Finally, if your employer is clearly violating the law, invoke your legal rights. Even if your odds of winning a case are not good, I believe that it is important for all of us to understand and assert our legal rights. You should, however, do so with realistic expectations regarding likely outcomes and knowing that your relationship with your employer, supervisors and co-workers might never be the same.

Regardless of your approach, it is important to remember that accommodation requests under the provisions of the ADA are intended to be an interactive process in which you and your employer work cooperatively to solve performance and equal opportunity issues. Be prepared to participate fully in this process by offering helpful suggestions regarding useful accommodations, use a give-and-take problem solving approach and involve your human resource department and other knowledgeable professional. **HLM**

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