A study to determine local employers' perspectives regarding the Americans with Disabilities Act

Julia Latham Blanchard
A STUDY TO DETERMINE LOCAL EMPLOYERS' PERSPECTIVES REGARDING
THE AMERICANS WITH DISABILITIES ACT

A Thesis
Presented to the
Faculty of
California State University,
San Bernardino

by
Julia Latham Blanchard
June 1994
Approved by:

Dr. Joseph English Ed.D., First Reader
Dr. Ronald K. Pendleton Ph.D., Second Reader
ABSTRACT

This study was designed to explore the implementation strategies and effectiveness of a sample of major employers from several small suburbs of Los Angeles, in Southern California, regarding the Americans with Disabilities Act. Major employers were surveyed by phone with questions regarding personnel trained, the source of the training, and changes in policy or procedure which had been made as a result of the act, and what future training needs they anticipated.

Findings indicated that local employers did receive training at one time regarding the Act, however this did not result in policy or procedure changes for most businesses. Companies reported satisfaction with their training and did not anticipate a need for further training. Recommendations included suggested topics for rehabilitationists to pursue with local firms in order to obtain placements, which is the perceived optimum vehicle for change.
ACKNOWLEDGMENTS

I would like to dedicate this paper to my grandmother, who has supported my graduate work in so many ways, and has always believed in me.

I would also like to thank my husband and children for their tireless love, patience, and support in this, and all my endeavors.

Sincere thanks to my advisor, Dr. Joseph English, who has encouraged me, chastised me, and patiently waited for this project to come to fruition.

Lastly, I would like to acknowledge the support of my employer, Casa Colina Centers for Rehabilitation. The staff and administration have been a valuable resource in numerous ways, as well as a constant source of encouragement.
# TABLE OF CONTENTS

ABSTRACT ................................................................. iii

ACKNOWLEDGMENTS ...................................................... iv

LIST OF TABLES ........................................................ viii

I. INTRODUCTION .......................................................... 1

  Overview ................................................................... 1

  Background .................................................................. 3

  Nature of the Problem ................................................. 5

  Significance of the Study ............................................. 8

  Statement of the Problem ............................................ 10

  Purpose of the Study ................................................ 11

  Research Questions .................................................. 11

  Limitations ............................................................. 12

  Definition of Terms .................................................. 13

II. REVIEW OF LITERATURE ............................................ 19

  History of the Individual as Worker ............................... 19

  Legislative History .................................................. 21

  Demographics of Disability ........................................ 23

  The Employer's Perspective ....................................... 26

    Litigation .................................................................. 27

    Employee Benefits ................................................ 29

    Worker's Compensation .......................................... 31

    Return to Work Policies ......................................... 32

    Reasonable Accommodation .................................... 33
APPENDIX B: Title.................................................64
Response Data from Survey...............................65
APPENDIX C: Title.................................................68
EEOC Charge Receipt Listing............................69
BIBLIOGRAPHY..................................................70
LIST OF TABLES

Table 1
Distribution of Employer Establishments According to Type of Industry........................................47

Table 2
Distribution of Departments Represented by Survey Respondents.................................................48

Table 3
Distribution of Responding Employers by Number of Employees...................................................49

Table 4
Table Showing Percentage of Employers Receiving ADA Training by Source....................................53

Table 5
Table Showing Percentage of Employers Who Made Specific Changes by Type of Change..................54
Overview

The Americans with Disabilities Act (ADA) was a civil rights law. It is a basic affirmation of the principles of equality and fairness of our Constitution. These principles were the foundation of everything that is American. It was not a rehabilitation law. It was not an equal opportunity law. It was not a transportation law. It was not a public accommodations law. Yet, it impacts upon employment, transportation and public accommodations.

The Americans with Disabilities Act (ADA), signed into law in July of 1990, and effective July 1992, was historic legislation. Whether it was truly the salvation for the disabled population, which it's proponents hailed it to be, remains to be seen. The ADA was an extensive and complex piece of legislation. While all of the Titles within the Act had far-reaching implications for businesses and public and private entities, the most complex, and yet vague component, was Title I, the employment provisions.

TITLE I covered employment provisions prohibiting discrimination in any terms or conditions of employment for qualified individuals with a disability. It required that managers base employment decisions on the ability of the person to perform the job, not on the person's disability or
limitations. Furthermore, it required managers to "reasonably accommodate" individuals with disabilities when necessary.

TITLE II covers public service provisions which required that services offered by public entities be accessible and available to persons with disabilities. It also required the public transportation system to be accessible to persons with disabilities.

TITLE III covered public accommodation for persons with disabilities. By ensuring access to places of public accommodation, the ADA intended to provide individuals with disabilities the right to participate in and enjoy the goods, services, privileges, benefits and accommodations offered to the general public. The ADA required affirmative steps by businesses to remove physical barriers and also prohibited discriminatory policies and procedures in providing goods and services to the public. Additionally, auxiliary aids and services were required to break down communication barriers which made it difficult for persons with disabilities to shop, eat and otherwise participate in services offered to the general public. Furthermore, Title III also required that "readily achievable" modifications be made to existing public accommodations. Any new construction occupied after January 26, 1993 must be accessible as well.

TITLE IV covered telecommunication provisions. Under
this Title, common carriers of telecommunication services are required to provide telecommunication relay services to hearing-impaired and speech-impaired individuals. In a world of telecommunications where 1-800 numbers are common, the ability to access this world can be as important as the ability to access the physical world. Title IV insured that individuals with disabilities are able to communicate electronically.

TITLE V covered miscellaneous provisions which included prohibiting retaliation against, or coercion of an individual seeking to enforce his or her own or another's rights under the ADA. Title V also amended sections of the Rehabilitation Act of 1973 to exclude current users of alcohol and drug abuse from its coverage.

Background

The ADA was necessary because the provisions of the historic Civil Rights Act of 1964 did not extend to people experiencing disabilities. Other laws provided only limited protection against discrimination in employment for people with disabilities. The law was needed because Americans experiencing disabilities too often suffered gross, frequent and continuing discrimination.

There were no surprises in the ADA. Each of its provisions were an extension of existing legislation, regulation, or practice. It created no new bureaucracies,
or layers of administration. It used the tools of government already in place to achieve its goals.

While the Rehabilitation Act of 1973 provided fairly comprehensive protection, its reach was not as broad as federal or state laws prohibiting discrimination on the basis of race, color, sex, religion, age, or national origin. Federal contractors and recipients of federal funds are but two components of a much larger economic structure.

Since 1973 Congress has passed several other statutes prohibiting discrimination against individuals with disabilities. However, as former Attorney General Richard Thornbrugh noted during the congressional hearings on the ADA:

Existing federal laws are like a patchwork quilt in need of repair. There are holes in the fabric, serious gaps in coverage that leave persons with disabilities without adequate civil rights protections. (Lotito, Soltis, Pimental, 1992, p. 13)

It was not until 1988 that the ADA was actually introduced into Congress. The first ADA bill was a broader version of the one eventually passed by Congress. It would have barred discrimination against the disabled in employment, public accommodations, communications and broadcasting, housing, transportation, and state and local government services. The bill would have required retrofitting of existing buildings and transportation vehicles to achieve accessibility. Additionally, it would have set bankruptcy as the threshold to determine undue
burdens for making accommodations in public facilities. (Thompson, 1992)

Congressional hearings on ADA were held in the spring and fall of 1988. It was hailed by lawmakers as an extension of the Civil Rights Act and overdue "equal opportunity bill" for disabled Americans. Disabled people recounted to House and Senate committees the discrimination they faced in trying to find jobs, attend school or use public transportation. Business groups stated support for the goals of the bill, but expressed concern about its costs, unfamiliar terms and requirements (such as reasonable accommodation), and the possibility of lawsuits. (p. 17)

The revised ADA took into consideration objections the business community had raised about the original ADA. Contentious provisions, such as the retrofitting and the bankruptcy standard, were eliminated, and the bill was rewritten to conform with section 504. (Lotito, Soltis, Pimental, 1993) Coverage of housing was removed from the ADA after Congress passed the Fair Housing Amendments Act of 1988. (Thompson, 1992)

Nature of the Problem

The ADA, in it's entirety was complex, and produced problematic issues for employers in every aspect of their operation; human resources, plant operations, fiscal resources and communications/customer service. It was
reasonable to assume that businesses would seek outside resources (in the form of training and/or materials) to assist them in compliance efforts. This, therefore is a potential service that the rehabilitation professional could offer. Government entities acknowledged the expertise that rehabilitation counselors brought to the educational needs of businesses, as was evidenced in the following statement contained in a public document produced by the President's Committee on Employment of People with Disabilities, (1991):

The Vocational Rehabilitation staff can act as a recruiter and consultant for employers. They can conduct job analyses, and provide rehabilitation engineering services for architectural barrier removal and worksite modifications. Also, they can conduct awareness training for a company's management and supervisory personnel. (p.2)

As a potential provider of services, this author and other rehabilitationists (Harty, 1992) have anticipated a demand for their services as local business attempt compliance efforts. The above referenced document named six services in which vocational rehabilitation professionals may assist businesses: 1) consulting; 2) conducting disability awareness training; 3) job analyses; 4) recommendations for architectural barrier removal; 5) worksite modifications; 6) coordination of employer training.

With the ADA now having impacted businesses for two years in some areas (see Appendix 2 - Statutory Dates), and
two years preparation time prior to these dates since the Act was passed in 1990, rehabilitationists have had to ask employers restrospectively, "What has this legislation meant to you?" "What changes have been made in your business as a result of the Act?"

If companies made changes in their policies and practices which benefit the disabled community, there may be no need for additional training or services. If however, changes were not made, then understanding the source of training (or lack thereof) may help both businesses and rehabilitationists to understand the lack of effectiveness. The difference between what exists, and what is suggested in the Act, will serve as the basis for the design of further training. However, before training is designed, some consideration should be given to whether employers perceive a need for training, and some employers may need to be "persuaded" that such training is to their benefit.

If training were needed, then the question "what exactly was the desired outcome?" must be addressed. In this case, rehabilitationists have determined that the desired outcome of this legislation was to provide equity in both the workplace, and in the community, for persons with disabilities. Employers, however, may have had different needs and desired outcomes which may have been driven by financial or legal obligations.
Significance of the Study

Moral, social and economic justifications could be found for changing the way individuals with disabilities have been treated in our society. During the hearings on the ADA, the Senate Committee on Labor and Human Resources heard testimony that established the compelling need to change the way individuals with disabilities are treated in our society. Justin Dart, the chairperson of the Task Force on the Rights and Empowerment of Americans with Disabilities, told the Committee that, based on the public forums his Task Force held in every state, there is overwhelming evidence that:

Although America has recorded great progress in the area of disability during the past few decades, our society is still infected by the ancient, now almost subconscious assumption that people with disabilities are less than fully human and therefore are not fully eligible for the opportunities, services, and support systems which are available to other people as a matter of right. The result is massive, society-wide discrimination. (Senate Labor Report at 8-9, 1989)

The Committee also considered the effect of these views on the ability of individuals with disabilities to obtain employment. The Committee found that individuals with disabilities experience staggering levels of unemployment and poverty. The non-employment and under-employment of individuals with disabilities has made them, according to then President Bush, "the poorest, least educated and
largest minority in America." (Senate Labor Report at 9, 1989)

The Committee also noted that discrimination against people with disabilities "negates the billions of dollars we invest each year to educate our children and youth with disabilities and train and rehabilitate adults with disabilities." (Senate Labor Report at 18) These individuals, without jobs to go to, do not have the opportunity to reap the benefits of that education and training. As a result, the government does not get an appropriate return on its investment.

The Committee heard testimony concerning the crucial need to draw individuals with disabilities into the labor pool because the United States faces a shortage of talented workers as the "baby boomers" more through the labor force:

The demographics have given us an unprecedented 20 year window of opportunity. Employers will be desperate to find qualified employees. Out of necessity, they will have to look beyond their traditional sources to personnel and work to attract minorities, women, and others for a new workforce. Our challenge is to insure that the largest minority, people with disabilities, is included. (Senate Labor Report at 17-18)

Legislation alone does not have the power to bring about the necessary changes in attitude and behavior to alter the course of history for people with disabilities (Mithaug, 1979). Businesses are faced with a variety of actual responses to implementing the ADA. "However,
compliance with the employment provisions of this legislation may likely be only at a minimally required level unless employers agree with an endorse the intent of the ADA" (Satcher and Hendren, 1992, p. 15)

This study has the potential to provide information that can be valuable in recommending and/or determining a course of action for rehabilitationists to facilitate the design and implementation of ADA-related training with local employers, depending upon the determined level of need.

**Statement of the Problem**

While a variety of services may be viewed by rehabilitationists as vital for businesses in their compliance efforts, do businesses perceive their importance and relevance to everyday operations? Satcher and Hedren (1992) suggest that rehabilitation counselors need to develop strategies for providing information to employers about the legislation, and make their expertise known and available for assistance in implementation.

In their survey of businesses, the Electronic Industries Foundation (1992) found that less than three-tenths of the respondents said that technical assistance had been sought by their company. Such statistics leave some difficult questions to be answered by rehabilitationists regarding the actual need by employers for technical assistance. Therefore, the problem was to determine if
outside assistance is not being sought (from rehabilitationists or others) by approximately sixty percent of businesses, then what resources are being used to facilitate compliance efforts and how effective have they been?

Purpose of the Study

The purpose of this study was to discover, through interviewing, how a selected group of local employers have responded to the ADA, both in terms of information acquisition, and resultant policy/procedure changes. Results of such information may aid rehabilitation providers to more accurately prepare for the actual needs of employers in the future.

Research Questions

As is consistent with a needs analysis, some retrospective information regarding what training (if any) has already taken place must be addressed, as well as the perceived quality of that training. Do employers perceive a need for training or assistance in their ADA compliance efforts?

There are a variety of free resources from the enforcement agencies assigned to the Act, such as the EEOC Technical Assistance Manual (1992), and publications from the Department of Justice, and the Architectural and Transportation Complaince Board. These publications were
intended to guide businesses in their compliance efforts, as well as to provide on-going assistance through the use of "hot lines". Have business used these resources for reference and training, or have they sought out other resources?

One measure of effective training has always been resultant change in behavior or policy. If training has taken place regarding the ADA, then one measure of its effectiveness will be to inquire of businesses if they made any specific changes in their policies and/or procedures which were a direct result of the Act.

**Limitations**

Businesses who have had to interpret legislation, and formulate policy, have had some inherent problems. Certainly individual policy makers have certain attitudes and stereotypes which were formulated well before introduction to a specific situation which may influence research outcomes. The decision to comply with the ADA may have been more a result of personal biases, than fiscal responsibility.
**Definition of Terms**

For purposes of this study, the following terms may be utilized, as defined in the EEOC’s Technical Assistance manual (1992):

**Auxiliary Aids and Services** - The term "auxiliary aids and services" includes--

(a) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
(b) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;
(c) acquisition or modification of equipment or devices; and

**Commercial Facilities** - The term "commercial facilities" means facilities--

(a) that are intended for nonresidential use; and
(b) whose operations will effect commerce.

Such term shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 242 or covered under this title, railroad rights-of-way, or facilities that are covered or expressly exempted form coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

Covered Entity - The term "covered entity" means an employer, employment agency, labor organization, or joint labor management committee.

Direct Threat - The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

Disability - The term "disability" means, with respect to an individual--
(a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
(b) a record of such an impairment; or
(c) being regarded as having such an impairment.

Employee - The term "employee" means an individual employed by an employer.

Employer -
(a) In General - The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this title, an employer means a person engaged in an
industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(b) Exceptions - The term "employer" does not include--

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under the section 501 (c) of the Internal Revenue Code of 1986.

Private Entity - The term "private entity" means any entity other than a public entity (as defined in section 201).

Public Entity - The term "public entity" means--

(a) any State or local government;

(b) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and,

(c) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103 (8) of the Rail Passenger Service Act).

Qualified Individual with a Disability -

(a) The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the
essential functions of the employment position that such individual holds or desires. For the purposes of this title, consideration shall be given to the employer's judgement as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(b) An individual with a disability who, with or without reasonable modifications to tales, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Readily Achievable - The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include--

(a) the nature and cost of the action needed under this Act.
(b) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility.
(c) the overall financial recourse of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
(d) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

Reasonable Accommodation - The term "reasonable accommodation" may include-
(a) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
(b) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, with
other similar accommodations for individuals with disabilities.
CHAPTER II

REVIEW OF LITERATURE

History of the Individual as Worker

The notion that workers were to be selected and molded to fit the demands of rigidly designed production systems had its earliest roots in the industrial revolution. The early works of Frederick Taylor (1911), widely regarded as the "Father of Scientific Management" formed the basis, in part, for establishing this principle - a principle which remains firmly entrenched in many of our business practices to this day. Mass production and economic efficiency, as Henry Ford showed, were best effected by assembly lines in which workers were viewed collectively as one more cog in the production wheel. Accommodating the needs of a single individual or small group of individuals could disrupt the larger system. Yet the more recent "Human Relations" schools of management have sought to better incorporate the psychological, physical, social, and material needs of workers into their efforts at increasing production efficiency. Human factors engineering, ergonomics, and a variety of more modern personnel management techniques have placed an increased emphasis on accommodating the average worker’s needs and limitations. Once this is done, it is a small step to generalize these principles to unique
applications for the handicapped, educationally
disadvantaged and other groups. The dramatic improvement in
other countrys' manufacturing efficiency, most notably the
Japanese and the Swedish, can be attributed at least in
part, to this enlightened approach to job design,
ing engineering and operations management. (McCray, 1987)
Their success added ammunition to the claim that work
should be designed with the needs and limitations of
individual workers in mind. An in so doing, productivity
and overall job performance was increased.

If jobs could be molded to fit the capabilities of
workers, then clearly accommodations have an important role
to play. Employers have recognized that accommodations have
made workers more productive, improved safety, and increased
quality; whether a worker was handicapped or not. (Berkely
Planning Associates 1982). Change has always been
difficult. And, until the passage of federal legislation,
employers still had relatively little incentive to hire
handicapped persons and use accommodations to enhance their
job performance. Employers, quite rightly, continued to
have their own agenda. That agenda was to hire and employ
what they considered the most capable workers available, at
the most competitive cost possible. Most often this
translated into employing workers who were able to step into
existing jobs without need for any type of accommodation.
The employers' agenda has changed, particularly over the last decade. With an aging workforce, and federal legislation on affirmative action and nondiscrimination in employment practices, employers were forced to re-evaluate the benefits of accommodations. Employers have been largely uninformed about job accommodation and the process of planning and installing accommodations. As Berkely Planning Associates (1982) established, stepped up enforcement programs (such as the ADA) would most certainly serve as a powerful incentive to increasing accommodation efforts.

Legislative History

The Americans with Disabilities Act joined the following list of major civil rights laws.

Civil Rights Act (1957) - The first civil rights bill since Reconstruction, PL85-315 made it a federal crime to prevent persons from voting in federal elections and authorized the attorney general to bring suit when a person was deprived of his voting rights.

Civil Rights Act (1964) - The most sweeping anti-bias law, PL88-352 barred discrimination in employment on the basis of race, sex, religion and national origin; in public accommodations and federally funded programs on the basis of race, color, religion or national origin; and created the Equal Employment Opportunity Commission.
Voting Rights Act (1965) - PL89-110 authorized the appointment of federal examiners to register voters in areas found to have been discriminating and strengthened penalties for those who interfered with others' right to vote.

Age Discrimination in Employment Act (1967) - PL 90 prohibited job discrimination against workers or job applicants aged 40-65. It was amended in 1975 (PL94-135) to bar age bias in federally assisted programs, and in 1986 (PL99-592) to prohibit mandatory retirement in most jobs.

Fair Housing Act (1968) - PL90-284 prohibited discrimination on the basis or race, color, religion or national origin in the sale or rental of most housing. It also included provisions to protect civil-rights workers from injury or intimidation and provided for federal penalties for those convicted of rioting or encouraging others to do so.

Rehabilitation Act of 1973 - Primarily a reauthorization of programs to rehabilitate the handicapped. PL93-112 carried two little-noted provisions whose importance became clear only after the fact. Section 503 required that recipients of federal grants greater than $2500 institute affirmative-action programs to hire and promote "qualified handicapped individuals," while Section 504 said, that otherwise qualified handicapped individuals could not, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be
subjected to discrimination under any program or activity receiving federal financial assistance.

Civil Rights Restoration Act (1988) - Overriding President Reagan's veto, congress in PL100-259 overturned a 1984 Supreme Court ruling than anti sex-discrimination provisions of the 1972 Education Act Amendments applied only to the specific program or activity receiving federal aid and not to the entire institution. In reversing Grove City College v. Bell, Congress also specified that anti-bias provisions of three other laws applied to entire institutions if any segment received federal funding. The three were the 1964 Civil Rights Act, Section 504 of the 1973 Rehabilitation Act, and the 1975 Age Discrimination Act.

Fair Housing Act Amendments (1988) - PL100-430 gave the Department of Housing and Urban Development greater authority to enforce the 1968 law prohibiting housing bias against the handicapped and families with children.

Demographics of Disability

Disability among workers is greater than many people suspect. It includes limitations arising from visible conditions such as paralysis and invisible conditions such as heart damage and back pain. Although the onset of disabling impairments varies, the probability of experiencing an impairment that is disabling increases with
age. Over 20 million adults aged 18-64 describe themselves as "work disabled", that is, limited in the kind or amount of work they can do because of a chronic condition or impairment (U.S. Department of Health & Human Services, 1980). Most adults with disabilities are workers whose onset of disability occurred after age 45 (Murdick, 1978). Twenty-three percent of people who are work disabled report that their impairments are the result of injuries and accidents on the job (U.S. Department of Health & Human Services, 1980).

Highlights of the (1986) Louis Harris survey of persons with disabilities included the following:

1. A large majority (66%) of those not working said that they want to work.

2. Those who work are better educated, have higher incomes, and are more satisfied with life.

3. About three out of ten non-workers said that a lack of accessible or affordable transportation is an important barrier to work.

4. One out of three workers with a disability said that their employer made some sort of accommodation for their disability.

Disability is a significant issue for society as well as for the individual. At the end of 1985, approximately 4.6 million working-age persons were receiving monthly
disability benefits from either the Social Security disability program (OASDI), or the Supplemental Security Income (SSI) program. (Fitzgerald, Thompson-Hoffman, 1991) According to Berkowitz and Hill (1986) over $18 billion was paid out to Social Security Disability Income recipients in fiscal 1982. Another $4 billion was paid to Social Security Income recipients during the same period. In the period between 1970 and 1982, disability payments for persons between the ages of 18 and 64 "...more than doubled, from $60.6 billion to $121.5 billion in real 1982 dollars." Burkhauser and Haveman (1982) have estimated that additional indirect costs associated with disability exceed $2.3 billion annually. Yet, the amount of federal dollars invested in returning disabled individuals to productive employment through the State-Federal Vocational Rehabilitation Program barely exceeded $1 billion per year.

These numbers, and the steady increase in costs projected for the long term, have been alarming to not only employers but the nation itself. To the extent individuals with disabilities are unemployed, they are not wage earners. Employed individuals with disabilities would be taxpayers as well as consumer spenders. This benefit extends beyond the individual with a disability to the family. With a strong law prohibiting discrimination based on disability, children with disabilities would have greater access to childcare facilities and nursery schools. As a result, their
respective parents could more easily join the workforce as well.

The Employer's Perspective

It is obvious that there is a need for greater access, increased training, and decreased discriminatory practices for persons with disabilities. The Electronic Industries Foundation (1992) conducted a survey of businesses which indicated that 86% of respondents said they either strongly favored (29%) or favored (57%) the ADA. This corresponds to the results of a study by Satcher and Hendron (1992) which indicated moderate employer agreement with the ADA overall. Despite favoring the ADA, more than half of the employers in the EIF survey, believed that it is more expensive to employ an individual with a disability; 59% believed that training costs would increase; 53% believed that the ADA would encourage lawsuits; and 53% believed insurance costs would increase. Approximately half of the respondents believe it is more difficult to fire an individual with a disability. A like number believed that the average cost of employing an individual with a disability is greater than the cost of employing an individual without a disability in a similar job.

These figures were representative of a growing number of areas of concern regarding the consequences of the ADA. While many of these concerns were tied directly to the Act,
others were related to employer's perceptions regarding persons with disabilities. Issues regarding increased litigation, employee benefits, and the relationship of ADA to worker's compensation were identified as critical elements in compliance efforts.

Litigation

The ADA's employment discrimination provisions now are administered by the Equal Employment Opportunity Commission (EEOC), which also issued regulations for Title I. ADA charges continue to flow into the EEOC; 7,129 ADA charges had been received through March 31, 1993. By the end of February, 1993, the agency had issued 264 right to sue letters and had won its first ADA lawsuit obtaining a jury verdict of $572,000 against an employer for discharging an employee with terminal brain cancer (Lotito, 1993).

Like Title VII of the Civil Rights Act of 1964, the ADA provides for equitable remedies, including job reinstatement, back pay and front pay to disabled employees and attorneys' fees. With the passage of the Civil Rights Act of 1991, the additional remedies of compensatory and punitive damages, as well as right to jury trial were added to ADA claims (Hunsicker, Jr. 1990).

Given the legal costs, the pressure on business to settle rather than fight has been enormous. Under the threat of such costly enforcement, many companies will seek
loopholes to avoid taking on disabled applicants, because they fear costly litigation. As of December 31, 1992 the EEOC had resolved 308 ADA complaints. Of those, nearly half ended with the accused employer giving money or other benefits to the complainant. In only 17% of the resolved ADA charges have employers been cleared of discrimination by the EEOC. Even in the most frivolous ADA complaints, businesses are estimated to spend $10,000 in attorneys fees in preparation work alone. (Frum, Brennan, 1993).

Additionally, employers have been concerned that they may become targets for litigation by disability advocacy groups. A survey by Alexander & Alexander Consulting Group (1992), which resulted in a report titled "Advocacy Group and Business Survey on the Americans with Disabilities Act", indicated that such fears may be unfounded. Seventy-four percent of surveyed companies believe that advocacy groups will actively assist in enforcing compliance among businesses. Another 45 percent of companies also believed that advocacy groups would use "testers" to uncover noncompliance, although no advocacy groups reported plans to use testers. Fifty-two percent of surveyed businesses also expect advocacy groups to help finance litigation. Only 36 percent of advocacy groups surveyed said they would participate directly in litigation.

Such statements by advocacy groups have been tempered by their decided dedication to encouraging their
constituents to aggressively put businesses to the task of complying by educating them regarding their rights. In the survey, almost all advocacy groups reported providing "technical assistance" to members so that they appreciate the scope of their rights under ADA.

Employee Benefits

The ADA has pushed employers to hire disabled employees, but the lack of a coherent approach to providing health care may severely limit the process. Employers have been caught in the middle; between the needs of newly-hired disabled employees and what the insurer has been willing or able to offer.

The ADA stated that nothing in its provisions would be construed to prohibit or restrict an insurer from underwriting, classifying or administering risks based on state law. Health insurance for the disabled has been complicated due to "pre-existing clauses" found in major health insurance policies. (Koen, Hartman, Crow, 1991)

The courts in all states recognize the validity of insurance policy provisions that exclude liability caused by pre-existing conditions. Although use of a pre-existing condition clause is legally sound, non-payment of a claim based on such a clause is an often litigated subject. Assuming an increase in employment of disabled Americans, even more litigation involving denials of claims based on
the pre-existing condition can be expected. For example, In January of 1993, the EEOC held that a New York City health-care plan run by the Mason Tenders District Council violated the ADA when it dropped HIV coverage. The EEOC opinion showed that employers could not use self-insurance as a way to avoid covering people with expensive disabilities" (Yang, Anderson, 1993)

In 1987, the National Association of Insurance Commissions (NAIC) revised its Long-Term Care Insurance Model Act. The revised model removed the pre-existing conditions clause for employer groups. For states who adopted the model, it should be noted that, it does allow pre-existing condition clauses in policies issued to individuals and in discretionary group contracts. (Koen, Hartman, Crow, 1991)

In an effort to discover alternative ways of addressing the issue of employees who are medically uninsurable, at least 20 states have passed legislation creating comprehensive health insurance associations known informally as "risk pools". (Koen, Hartman, Crow, 1991). Funding, of course, has been a primary issue as the costs have been borne by employers. A secondary consideration is that employers who force a high-risk employee to obtain insurance from a risk pool rather than from the group plan offered to other employees may face discrimination charges.
Worker's Compensation

The relationship between Worker's Compensation and the ADA has not been readily apparent to many employers at the outset. The worker’s compensation system in America is a critical issue. Worker’s compensation costs dictate the number of employees that many businesses can afford to hire and, in some cases, whether they can afford to stay in business at all. To add to the ever-increasing burdens upon employers in the worker’s compensation system, injured workers represent the greatest ADA vulnerability to employers.

The ADA did not recognize injured workers as a separate protected class. It is only when an injured worker meets the criteria to be considered a qualified individual with a disability that the person has rights under the Act; and then, the individual would have only the rights that other persons who meet the same criteria would have. The numbers of claims filed with the EEOC as of 8/7/93, listed by disability and basis, are presented in Appendix 3. Review of this charge sheet clearly illustrated that the greatest percentage of ADA claims were made by current employees; only 13.1% of total charges were on the basis of hiring.

The conflict between the worker’s compensation system and the ADA cannot easily be solved by employers. The ADA required that employers consider what persons with a disability can do, not just what they cannot do. The
worker's compensation system evaluates impairment and loss of function. It is only by doing this that benefits can be fairly paid. The problem has come about when employers have depended totally on these kinds of evaluations to make return-to-work decisions. (Pimentel, Bell, Smith and Larson, 1993). It is the system's emphasis on inability that makes it difficult for injured workers to return to work and for employers to make objective decisions about employees.

Return to Work Policies

The "Early Return to Work Policy" was a policy stimulated by the Rehabilitation act of 1973 and made mandatory under specific conditions under the ADA. Specifically, the act provided that employers make "reasonable accommodation" for disabled employees. The ADA has had direct application to early return to work policies, yet the concept has been spreading slowly and achieving only partial acceptance. This was evidenced by a national study in 1986 which indicated that only 8% of all American corporations had in-house early return to work programs for the disabled (Schwartz, 1986)

In a related study, Shoemaker, Robin, and Robin (1992) examined patterns of acceptance within corporations, of early return to work policies. This study identified three key beliefs which led to negative perceptions regarding early return to work: belief that early return to
work raises costs and lowers productivity; belief that early return to work involved occupational difficulties (on site difficulties in accommodating the returnees’ working requirements); belief that early return to work increased absenteeism and insurance costs. Their study revealed that 48% of employers surveyed in the state of Michigan had accepted return to work policies, which was significantly higher than the Schwartz study of 1986. This still left a startling 52% of employers who were resistant to the changes which the ADA seeks to implement.

**Reasonable Accommodation**

People with disabilities (which includes some persons with on-the-job injuries) have been restricted in employment opportunities by many kinds of barriers. Some of these were physical barriers that made it difficult to gain entry into a workplace or to utilize existing equipment. Rigid work schedules limited opportunities for persons with disabilities, as have unnecessarily restricted ways of accomplishing tasks. Reasonable accommodation is a modification or adjustment to a job, the work environment, or the way things are usually done that enables a qualified person with a disability to enjoy equal employment opportunities. The ADA required reasonable accommodation.

Reasonable accommodation has been typically uncomplicated and inexpensive. Berkely Planning Associates
(1982), in a study of accommodations provided to handicapped employees by federal contractors, showed that in over 51% of the accommodations reported, no expense was involved. In over 30% of the remaining cases, the accommodation cost ranged between $1-500. The study also established that accommodations contribute to increased productivity, worker safety, reduced turnover and other tangible benefits. Unfortunately, Shoemaker, Robin, Robin (1992), reported in their survey of Michigan employers that overall, accommodations were believed to be costly. Employers have been uninformed about job accommodation and its benefits, and understandably so. One of the difficulties in encouraging both employers and rehabilitation professionals has been the fact that relatively few training resources have been available in the past. While many agree that job accommodation works, there are few training resources which thoroughly define the job accommodation process, key legal concerns, and the specific tools and techniques of job accommodation. As a means of promoting effective accommodations, a toll-free network of job accommodations was made available to the public in relationship to passage of the ADA. (EEOC, 1990)

The Trainer's Perspective

Rehabilitationists have had an opportunity to become training specialists in relation to the ADA. Training and
development professionals have a key role to play in the improvement of human performance within an organization. The most common type of Human Resources development has been identified as training. It has generally been associated with reaching short-term or immediate goals. It is directly associated with improving the present, job-related performance of an individual through the acquisition of new knowledge, skills, and attitudes. The impact of an effective training program is felt when individuals return to the work place to apply new knowledge, skills, and attitudes. (Sullivan, Wircenski, Arnold, Sarkees, 1990)

**Curriculum Design**

As with any training endeavor, Rehabilitationists have had to consider the training models and theory which are most appropriate for the needs of business. Effectively transmitting information to employers, has meant that the focus must be upon the need for maintaining a professional trainer’s role. One phase of training was discovered to be curriculum design. The curriculum design phase begins with the process of determining whether a need for training exists. This is accomplished by means of the needs analysis process. The ultimate goal of the needs analysis process is to determine the difference between present performance and desired performance. The difference between what presently exists and what is required indicates the training that may
be needed. (Kaufman, 1988) The results of the needs analysis process are examined to determine whether a need for training exists.

The primary purpose of the needs analysis process is to ensure that there is a need for training and to identify the nature or the content of the training program. Therefore, the needs analysis process is the most important step in the development of a training program, because all other activities involved in the design, delivery and evaluation of training stem from this process.

**Needs Analysis**

The term needs analysis has been best defined as the discrepancy between present performance and desired performance, that is, the difference between what is, and what ought to be. This difference indicated the training that may be needed. (Braden, 1988) Because the ADA has now been in effect for many of its components, it may seem more appropriate to be conducting an evaluation of training, which is more retrospective in nature. Evaluation concerns itself with gaps between that which has been achieved through efforts and targets which were previously set. (Kaufman, 1988) While evaluation may be the process that employers are internally pursuing now relative to ADA training, for the rehabilitation professional, a needs assessment may be more appropriate, as it may indicate gaps
between current results (of employers’ training) and those which we have identified as desired.

**Identifying Performance Problems**

Projected performance problems for employers might be reflected in the existence of architectural barriers for the public or employees, discriminatory hiring practices, lack of appropriate work accommodations, negative stereotypes of the disabled by administration, managers, and supervisors, etc.

In their trainer’s manual, Sullivan, Wircenski, Arnold, and Sarkees (1990) suggested that after determining applicable performance problems, the following determinative questions about employers should be addressed:

1. Identify the knowledge, skills, and attitudes necessary to perform (what out to be)
2. What exactly is the desired outcome?
3. What is the effect if there is no training?
4. Can existing personnel (within the organization) deal with this without additional training?
5. Options for training (who should be trained)
6. Means of training (train during, train a trainer at each location, learn by doing, etc.)
7. Can the problem best be solved through training?
8. Who should train? (train using existing persons, vs. outside resources or consultants)
9. Is the financial investment in training worth the expected results?

Employers' answers to these questions may be critical in determining whether rehabilitationists have a place in employer training. Considerations which will impact some of the answers, are projected here.

1. The knowledge, skills, and attitudes necessary to perform a job can be classified into one of three domains: cognitive, psychomotor, or affective. The first domain is called the cognitive domain, which focuses on the knowledge necessary to perform a job or task. The second domain of learning is the psychomotor domain, which pertains to the skills essential to performing a particular task or operation. The last domain of learning is the affective domain, which addresses the attitudes necessary to perform a task. (Sullivan, Wircenski, Arnold, Sarkees, 1989)

2. In this instance, the cognitive and the affective domains would be involved. Cognitively, all managers and supervisors must have knowledge of the content of the Act, in order to evaluate appropriate changes in their specific policies and procedures. The affective domain of employer's attitudes toward disabled employees has been studied (Yuker, 1986 and 1987, Florian, 1978), and certainly will be a training concern in this instance.

3. The possible outcome of lack of training would be unanticipated violations of the Act, with subsequent
sanctions. Considering the financial impact of defending such accusations, it would seem prudent to obtain even marginal training.

4. Cognitive information can be obtained about the law, and disseminated to employees, without incurring additional training. Attitudinal training, as with any diversity training, is not achieved through cognitive means, and will usually involve individuals in a training experience of some type.

5. The ADA has impact at every level, whether it be the task of attitudes of co-workers, or the supervisory issues of accommodation by management. Although technical information regarding the Act is best understood at the management level, overall familiarization should take place at all levels.

9. Ideally, the goal for employers will be to access a previously untapped resource, as well as potentially lowering their worker's compensation liability through understanding of early return to work policies and procedures which are compatible with ADA intent.

Attitudes

Satcher and Hedren (1992) determined in their study of employer attitudes relevant to the ADA, that "...compliance with the employment provisions of this legislation may likely be only at a minimally required level unless
employers agree with and endorse the intent of the ADA." (p.16), and "the employment community may be resistant to the intent and provisions of the ADA and points out a need for developing strategies for providing information to employers about this legislation..." (p.17)

This, then, was the challenge; what, if any, compliance actions would employers/facilities make, if attitudinal barriers were not addressed first? Coming into compliance with the act, presupposes employer agreement with, not only the fundamental principles of the legislation, but the means of achieving those principles.

In considering the most needed training component or service to employers, it was obvious that employers and all services or facilities, had to become familiar with the needs and concerns of the disabled community in order to effectively serve it. In a Gallop poll, taken in February of 1992, 87% of employers responded that they were supportive of the provisions of the ADA. However other surveys indicated that up to 75% of employers have not received any additional training regarding the implementation of the Act, nor attitudinal or informational material regarding the needs of the disabled community, and the benefits to employers that may be available. What then is the likelihood that this legislation will be effective?
Summary

The significant difference between the trainer's perspective (the rehabilitationist), and the concerns of business, was the goal. The employer's response to the ADA may be centered upon what they have determined as their goal, which may be ADA minimalism, while the rehabilitationist is looking at what they have determined "should be" the results of employer's efforts - full integration and implementation.

Employers have financial concerns, stemming from perceived increases in litigation, as well as increased benefit payments. They may be unaware of the benefits of job accommodation to improve overall worker productivity, and to lower their worker's compensation premiums. Rehabilitationists have always championed the rights of disabled individuals, however they may have "missed the mark" in correctly interpreting the needs of employers with regard to implementation. Completing a viable needs analysis of the business community, before making assumptions regarding their concerns or willingness to proceed with implementation strategies has been overlooked in the past, and may be aided by this study.
CHAPTER III
DESIGN OF THE STUDY

Introduction

There have been numerous quantitative studies on employer's reactions to the ADA, particularly close to, or prior to implementation dates, but they have not yielded information which was useful in understanding the process whereby "real" change would be undertaken by the average business. Most of these studies took place before necessary actions were mandated by the law. If the rehabilitation community wishes to take on the role of training, then it must understand and assess the process of internalization to determine if training is truly an appropriate means of facilitating the changes that the ADA intended.

The purpose of this study was to examine the sources of training regarding the ADA used by local businesses, and their perceived usefulness. This study also endeavored to explore the discrepancy between what rehabilitationists have determined as the goal of the ADA, and the existing state of actual policies and procedures developed by local employers.

Research Design

Qualitative research, in contrast to quantitative research, employs primarily inductive reasoning. Inductive reasoning allows one to explore and discover with an emerging research design rather than test deductions from
theories in a predetermined design. (Sullivan, Wircenski, Arnold, Sarkees, 1989). In order to effectively answer the research questions of this study, it was evident that, even if employer's answers were similar, the explanation of the "process" whereby they came to these similar conclusions would be different. To understand and document such a process would not be quantifiable, nor deductively derived. For in such a process is inevitably the influence of emotions, experience, and attitudes. And this too, was the reason for an ethnographic approach to this question; because there was a high level of emotion, and attitude influencing the topic. Law does not directly translate into action. Laws are interpreted and responded to in varying degrees, hence the need for an extensive judicial system.

Models and Theory

In the field of education, when there is a desire to compare the difference between what exists, and what is desired, a needs analysis is recommended. Much like the steps involved in determining a data collection technique for research, the trainer must choose which vehicle of needs assessment will be used; observation, interview, questionnaire, examining existing information or documents, testing, or unobtrusive means. (McMillan, Shumacher, 1989)

In this case, the interview was chosen over other techniques for several reasons. Sample questions from a
draft of an objective questionnaire were distributed to a small group (12) of local employers. While these employers commented that the questions were clear, they were unable to determine the relevance of the questions to the ADA without explanation (i.e., questions regarding current company policies regarding return to work). Secondly, the information gleaned from these questionnaires did not adequately answer the research questions. These sample questionnaires and 2 personal interviews have led this author to believe that businesses may not be well enough informed about the ADA to answer objective questions appropriately or accurately. In this way, the ethnographic interview, may itself serve as a vehicle of education through its interactive nature. As Sullivan, Wircenski, Arnold and Sarkees (1989) suggest,

The interviewer may use a general interview guide, but not a set of specific questions worded precisely the same for every interviewee. Rather, there may be a few general questions, with considerable latitude to pursue a wide range of topics. The interviewee can shape the content of the interview by focusing on topics of importance or interest. (p. 57)

**Research Questions**

A questionnaire was constructed that served as a basis for understanding the broad concept of compliance, while leaving room for asking related questions as they developed in the interview. The overriding goal was to gear the interview specifically into the process and outcome of
compliance efforts while addressing the following research questions:

1. Do employers perceive a need for training in their compliance efforts?
2. What resources have been used for training?
3. What specific changes in policies or procedures have businesses actually implemented in response to the ADA?

Procedures

An ethnographic interview questionnaire consisting of seven basic questions was useded to guide the interviewer through exploration of policies regarding implementation of the Americans with Disabilities Act. These questions were not used exclusively, and some questions were restructured based on answers to previous items. Several examples of compliance issues and policy changes were mentioned during interviewing as a means of insuring relevant responses.

A list of local employers was obtained from American Business Directories, which categorizes businesses by type, size, and geographic location. They derived their information from the phone company listings, and used telephone verification of the company's existence, as well as to obtain additional information to aid their cross-referencing process. Purposeful sampling strategy was used to analyze a sub-group of employers within a 10 mile
radius of our focus, which is a rehabilitation facility in Pomona, California. Assumptions regarding further stratification were made, including the exclusion of "public entities" defined as those being government related. These entities have been involved for 20 years in implementing the Rehabilitation Act of 1973, which required government agencies to abide by hiring and accessibility standards for the disabled. Much of the ADA was structured around these same standards. It was estimated that these facilities have already faced compliance issues and changes in policies and procedures, years before the ADA was a factor. Companies with less than 100 employees were not included in the survey, as they have had the least amount of exposure to liability due to the staggered implementation dates based on facility size (see statutory dates in Appendix 2). Employers with more than 100 employees were most likely to have sought outside resources such as consultants, or formal training. Those with fewer than 15 employees are not subject to enforcement of some Titles.

**Population Characteristics**

Casa Colina Centers for Rehabilitation is located in Pomona, California, on the eastern border of Los Angeles County. This was chosen as the central point of this study, as Casa Colina is a potential provider of training services regarding the ADA. A small sampling of major employers
(those with more than 100 employees), within a 10 mile radius of this facility was chosen, excluding those who were government related. Samples were drawn from Pomona, and the surrounding cities of Montclair, La Verne, Ontario, Chino, Claremont, Upland, and San Dimas.

75 businesses were initially identified as meeting the criterion for this study. Phone verification of these businesses narrowed the sample, as it was discovered that 12 of these businesses were no longer in operation or were in the midst of closure; 17 of the remaining 63 firms were unavailable for interview, or indicated that they did not wish to participate. The only identifying information requested on the survey was the type of business, the number of employees, and the title of the person answering the questions. This provided anonymity to the respondent and the organization.

<table>
<thead>
<tr>
<th>Type of Industry</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manufacturing</td>
<td>70%</td>
</tr>
<tr>
<td>Construction</td>
<td>2%</td>
</tr>
<tr>
<td>Retail Sales</td>
<td>4%</td>
</tr>
<tr>
<td>Service</td>
<td>4%</td>
</tr>
<tr>
<td>Utilities &amp; Communication</td>
<td>4%</td>
</tr>
<tr>
<td>Health Care</td>
<td>7%</td>
</tr>
<tr>
<td>Distribution</td>
<td>9%</td>
</tr>
</tbody>
</table>

Table 1
Distribution of Employer Establishments According to Type of Industry
This interviewer phoned each of the businesses and requested to speak with a representative from the Human Resources Department. At the time of referral to this department, the interviewer identified herself as being a student at California State University, San Bernardino, conducting a research survey on the Americans with Disabilities Act. At that point a referral to the correct individual in charge of implementation was made. If that person was not able to respond to the call, and could not be reached on call back, a secondary source was used. As a result, the people completing the surveys represented a variety of departments. This is shown in Table 2.

Table 2

<table>
<thead>
<tr>
<th>Department</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human Resources</td>
<td>61%</td>
</tr>
<tr>
<td>Safety</td>
<td>16%</td>
</tr>
<tr>
<td>Administration</td>
<td>23%</td>
</tr>
</tbody>
</table>

The responding organizations represented a broad range of employer sizes. The number of respondents of each size are shown in Table 3.
Table 3

Distribution of Responding Employers by Number of Employees

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Small</td>
<td>&lt;250</td>
<td>61%</td>
</tr>
<tr>
<td>Medium</td>
<td>251 - 999</td>
<td>35%</td>
</tr>
<tr>
<td>Large</td>
<td>1000 - 4999</td>
<td>4%</td>
</tr>
<tr>
<td>Very Large</td>
<td>&gt;5000</td>
<td>0%</td>
</tr>
</tbody>
</table>

**Treatment**

Consistent with a critical research methodology, (Croomer, 1984), the data collected with this study were treated analytically, rather than normatively. According to Croomer (1984),

The function of critical social theory (the theory underlying critical science) is to allow people to understand the values and actions in social affairs and, therefore, to change that world to minimize human suffering and maximize human development and responsibility. This contrasts sharply with the interpretive science paradigm for research which describes the world. (p.37)

Congruous to the Critical Science criteria of validity, which Croomer (p.45) identified as "reasoned reflection", the data were analyzed for common threads or trends. Results were then categorized using comparative percentages for areas of commonality. Adjunct to this process was a factoring of common reasons, causes, or actions that may have led to observed commonalities. Consideration was also given to the source of the
information, and percentage representations were given to the demographic data.

**Limitations**

Because a qualitative research design was selected, with interviews being the research methodology, the possibility exists that the interviewer influenced the outcome, either in style of questioning, or verbal inferences. Results of interviewing, unlike quantitative studies, are difficult to analyze and report systematically.

"Qualitative research develops context-bound generalizations". (McMillan, Shumacher, 1989) Therefore, as we studied a small sample of employers, generalizations regarding the outcomes, based on the narrow geographic limits, as well as the use of this research approach are difficult.
CHAPTER IV
FINDINGS AND DISCUSSION

The Problem

A review of the literature indicated that employers understood the intent and scope of the Americans with Disabilities Act, however there were perceived barriers to full compliance. Whether employers perceived a need for training with respect to implementation, and who they received that training from has not been researched. If training has already taken place, then has that training effected real changes in policy and procedure? This study examined these topics and sought to answer the following specific research questions:

1. Do employers perceive a need for training in their compliance efforts, as demonstrated by their responses to interview questions regarding previous training, and anticipated needs for training within the next year.
2. What resources have been used for training, as demonstrated by responses to interview questions regarding training resources used or in use.
3. What specific changes in policies or procedures have businesses actually implemented in response to the ADA, as demonstrated by responses to interview
questions regarding policy and procedure changes made in response to the ADA.

Findings

The data were analyzed to determine the participation in training for ADA compliance, the resources used, and the effectiveness of that training in bringing out policy and procedural change. Additionally, data was gathered on anticipated needs for further training. Results are summarized as follows, and are illustrated in Table 1. Specific survey responses, by category are reported in Appendix B.

Research Question 1

Do employers perceive a need for training in their compliance efforts, as demonstrated by their responses to interview questions regarding previous training, and anticipated needs for training within the next year?

Responses to questions 4 and 10 of the interview questionnaire formulate the basis for understanding this research question. The majority of employers (73%), did acknowledge receiving some type of initial training regarding the ADA. All of the respondents indicated that they do not anticipate any further training regarding the ADA within the next year.
Table 4

Table Showing Percentage of Employers Receiving ADA Training by Source

<table>
<thead>
<tr>
<th>Received Training</th>
<th>74%</th>
<th>52%</th>
<th>Chamber/Trade Association</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>52%</td>
<td>Parent Company</td>
</tr>
<tr>
<td></td>
<td></td>
<td>26%</td>
<td>OSHA/Safety</td>
</tr>
<tr>
<td>Received No Training</td>
<td>26%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Research Question 2

What resources have been used for training, as demonstrated by responses to interview questions regarding training resources used, or in use?

52 percent of respondents who received training, obtained their training from internal training opportunities or industry business concerns. Only 2 respondents indicated that they had received assistance from private resources, and one of these was an insurance consultant. 10 percent of respondents indicated that they used resources other than those provided by their trainer for compliance (one example was the EEOC technical assistance manual). All respondents were satisfied with their training, and did not anticipate a need for further training.

Research Question 3

What specific changes in policies or procedures have businesses actually implemented in response to the ADA, as demonstrated by responses to interview
questions regarding policy and procedure changes made in response to the ADA.

As illustrated in Table 5, the vast majority of employers (72%) stated that they had made no real changes in policy or procedure as a result of the ADA. The small percentage of positive results were subgrouped as primarily responsive (87%) to hiring practices; interviewing techniques, application process, job descriptions, and pre-employment physical exams. Secondarily, employers were concerned with physical accessibility, and had conducted accessibility surveys and made some change (26%).

Table 5

<table>
<thead>
<tr>
<th>Made Changes</th>
<th>28%</th>
<th>26%</th>
<th>Change in Physical Access</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>87%</td>
<td>Changes in Hiring Practices</td>
</tr>
<tr>
<td>Made No Changes</td>
<td>72%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Discussion of Findings

Employers in this study perceived a need for generalized training in the early stages of the ADA phase-in dates. The source of the training received is significant, as private consultants were only mentioned by two respondents (and these were not disability or rehabilitation representative consultants). The vast majority of training
was conducted by the business community; either in-house
trainers or business affiliates in the respective trade
association or parent company. Resources used for
implementation were primarily limited to those supplied by
trainers, and did not include free government funded manuals
for technical assistance. As our review of literature
confirmed, businesses supported the ADA in theory, but
believed that it would increase their liabilities
significantly. Therefore training, conducted by business -
for business, may have been directed at avoiding litigious
concerns, and less concerned with addressing attitudes and
full integration.

The concept of ADA minimalism in training is
supported by further findings which indicate that while
training was obtained, it did not result in policy and
producedural changes in most cases. Some businesses
indicated that they had made changes in their policy
manuals, but that these had not translated into specific
actions. In particular, changes were not reflected in
return-to-work policies, which are directly affected by the
ADA. In spite of these lack of changes, and impending
litigation if violations are incurred, virtually all
respondents indicated that they were satisfied with their
training, and they did not anticipate needing any further
ADA training (from any source). Disability rights advocates
contend that stringent enforcement of the ADA, by the
respective enforcement agencies of the government, will ensure integration of the disabled into the workforce (Kilbury, Benshoff, Rubin 1992). While fear of litigation may have motivated the initial surge of training for the majority of employers, this evidently is not an ongoing motivational factor for continued training.

One additional factor in this survey was the shape of the local economy; as evidenced by the number of businesses who had closed within the past year, when attempting to complete the survey, there is a general turndown in business growth and development. Also, many individuals in Human Resources departments who were surveyed, indicated that due to down-sizing they did not have dedicated people for issues such as ADA implementation.
CHAPTER V

CONCLUSIONS, AND RECOMMENDATIONS

Introduction

The greatest hope for decreasing the number of people who are financially dependent due to disability and for increasing their quality of life is through encouraging employers to develop retention and return to work programs.

The major purposes of this study were: (1) to determine local employers' perception of their need for training with regard to implementation of the Americans with Disabilities Act; (2) to determine what resources have been used for training; (3) to determine if any specific changes in policy or procedure have been implemented in response to the ADA by local employers.

Conclusions

The passage of the ADA was certainly a monumental achievement for those who have worked so diligently for disability rights. However, the business community did not consult with, or seek out these disability rights advocates or rehabilitationists to help them in their compliance efforts. In fact, they did not seek out the governmental agencies assigned to enforcement of the legislation (i.e., the EEOC, or Department of Justice) for their training. Businesses have consulted with those whom they trust - other businesses. While advocacy and enforcement are critical in
educating the general public in order to alter their prejudicial attitudes and behaviors, it may not be so with businesses.

The fundamental principle which rehabilitationists, and advocates must rely upon is that of perspective. If ADA implementation can be turned into a management opportunity, which does not compromise sound human resource policy, then rehabilitationists will have achieved an avenue of communication consistent with business concerns.

This study showed that past ADA training models have resulted in overwhelmingly poor effectual changes being made with local employers. This however, is consistent with the results of past training by and for business, as evidenced by the outcome of previous civil rights legislation. The Civil Rights Act did not end discrimination. It could do nothing about prejudice. If current statistics marking the results of that legislation are any indication, then this legislation alone will not make a significant difference to the disabled community. The long-range outcomes, 30 years after the Civil Rights Act, show that unemployment among African-Americans as of June, 1992 was 15.5% while the rate for the white population was 6.8% (U.S. Department of Labor, 1992).

Can the ADA succeed for people with disabilities in the area of employment where the Civil Rights Act failed with African-Americans? Will the mere fact that
discrimination on the basis of disability is now illegal increase employment opportunities and decrease the astronomical rate of unemployment in the disabled community? If the sole source of training continues to be monopolized by business associations, then the answer is probably, no.

Recommendations

Based on the findings of this research, the following recommendations concerning training and consultation with the business community regarding employment of the disabled workforce seem appropriate:

1. Recommendation that rehabilitationists develop and offer training which addresses key businesses concerns such as worker’s compensation, and return to work, in place of traditional disability advocacy models which repel businesses. Solid research with companies who have been successful in the hiring of employees with disabilities, such as DuPont (Wolfe, 1973), as well as those who have accommodated and returned disabled employees to the workplace, will serve as a much improved model for compliance. Threats of litigation abound in the business world today. What business owners want now are innovative ways to manage a tough labor market, with spiraling costs. If rehabilitationists do not address business needs, they will not be involved in beneficial training efforts that do effect change.
2. Recommendation that further research be conducted as to the source of training for larger corporations. This study indicated that 52% of those who did receive training, were trained by parent companies. Because the geographic location of this study was in small communities, it would be helpful to conduct a similar study in a metropolitan city where larger firms could be surveyed to find out the source of their training. Although the outcome of parent-company trained businesses in this survey did not differ significantly from others, it may have been the result of watered-down company policies due to lack of funding for more intensive implementation.

3. While compliance with federal legislation has been a priority, it has not been a sufficient motivating factor for change, even in the face of costly litigation. Rather than the passage of additional or clean-up legislation on behalf of the disabled community, specific funding of vocational rehabilitation at the state level is needed, which centers upon funded placements and training, which may optimize full integration. As Hester, Decelles, and Planek (1988) suggested, the most powerful influencing factor in changing stereotypes and attitudes is first hand experience in working with disabled individuals. Getting more disabled individuals into the workplace will be the greatest influencing factor, therefore increasing employer incentives to hire those individuals will be more powerful than
increasing disincentives such as increased penalties for non-compliance.
TELEPHONE SURVEY INTERVIEW QUESTIONNAIRE

IDENTIFYING INFORMATION

1. WHAT IS THE NATURE OF YOUR BUSINESS?

2. APPROXIMATELY HOW MANY FULL AND PART-TIME EMPLOYEES DO YOU CURRENTLY HAVE?

3. WHAT IS YOUR TITLE

QUESTIONNAIRE

4. WHO IS RESPONSIBLE FOR IMPLEMENTATION OF POLICY REGARDING THE AMERICANS WITH DISABILITIES ACT?

5. WHO HAS BEEN TRAINED REGARDING THE ACT?

6. CAN YOU PLEASE LIST OR DESCRIBE FOR ME THE RESOURCES YOU HAVE USED FOR REFERENCE REGARDING THE ADA?

7. HAVE YOU FOUND THESE RESOURCES TO BE SATISFACTORY?

8. PLEASE DESCRIBE ANY SPECIFIC POLICY ACTIONS YOUR COMPANY HAS TAKEN IN RESPONSE TO THE AMERICANS WITH DISABILITIES ACT.

9. COULD YOU PLEASE DESCRIBE YOUR CURRENT RETURN TO WORK POLICY?

10. WHAT ADDITIONAL TRAINING OR INFORMATION REGARDING THE AMERICANS WITH DISABILITIES ACT DO YOU ANTICIPATE A NEED FOR?
RESPONSE DATA FROM SURVEY

Question 1: "What is the nature of your business?"

Types of businesses were sub-grouped as follows: 13 Service related business; 3 Health Care institutions; 4 Sales related businesses; 22 Manufacturing plants; 4 Distribution Centers.

Question 2: "Approximately how many full and part-time employees do you currently have?"

The average number of employees for these businesses was 197, and ranged in number from 95 to "thousands".

Question 3: "What is your title?"

Respondents represented the following departments:
Human Resources - 61%; Safety - 16%; Administration - 23%.

Question 4: "Who is responsible for implementation of policy regarding the ADA?"

Although titles for these individuals varied, in general they were representatives of the Human Resources department, with only 8 percent representing other departments, such as Environmental Services, or Safety Departments. 17% of respondents indicated that the position responsible for implementation policies was currently vacant, or had been laid off, without clear direction as to implementation responsibilities.

Question 5: "Who has been trained regarding the act?"

Respondents indicated that 26% of the businesses in this survey had received no formal training regarding the Americans with Disabilities Act. The remaining 74% of responses were representative of the following departments: 10% from Safety, 12% from Administration; 78% from Human Resources. 17% indicated that managers and supervisors had been trained regarding potential ADA issues. However, all of these indicated that managers and supervisors had been trained by in-house personnel, after they had received outside training.
When negative answers to the previous question were received, the following question, "What resources have been used for training?" was then re-worded to ask "If you had a question regarding an issue dealing with the ADA, what resource would you use?" Of those (12) indicating a negative response to having received training, 10 indicated that they would refer to another office within the firm, usually a corporate headquarters located in another city or state. The remaining 2 respondents "don't know" what they would do.

Question 6: "Please list or describe the resources you have used for reference regarding the ADA?"

Of those answering positively to having received training, most cited multiple sources for training and indicated that it was non-specific in nature. The sources of training can be generally grouped as follows: 26% received training in relation to OSHA seminars or publications; 52% indicated they had received training from their local Chamber of Commerce or industry trade affiliations; 52% indicated they had received training from their parent company.

Respondents indicated that 87% of those who had received training used only those materials from the trainer for reference. Respondents indicated that 5 businesses, or 10% owned a technical assistance manual from the EEOC, and used it for reference. Only 2 businesses indicated that they had used outside private consultants to aid them in their compliance efforts. One of these was an architectural firm, and the other was a representative of their insurance agency.

Question 7: "Have you found these resources to be satisfactory?"

All of the respondents indicated that they felt their current sources of information, as well as the training they had received were sufficient.

Question 8: "Please describe any specific policy actions your company has taken in response to the Americans with Disabilities Act?"

72 percent of respondents indicated that they had made no changes. Those respondents which indicated positive changes, indicated the following types of changes; 87% indicated changes in their hiring practices and 26% indicated changes in physical access.
Question 9: "Please describe your current return to work policy."

Respondents indicated that their return to work policies were informal, and were not written or formalized. With the exception of one respondent, all firms indicated that they did acknowledge a need for return to work acceptance, however 63 percent indicated that they did not become directly involved in the back-to-work process, and left coordination of efforts to their worker's compensation insurance carrier. While none of the respondents indicated that they had restructured their return to work policy as a result of the ADA, some (36%) indicated that their policies were new, and reflected changes in the recent worker's compensation legislation.

Question 10: "What additional training or information regarding the ADA do you anticipate a need for?"

All respondents indicated that they did not anticipate a need for any further training regarding the ADA.
APPENDIX C
<table>
<thead>
<tr>
<th>BASIS</th>
<th>BENW DISCPLN DISGSA HARASS HIRING LYFOFF PROMOT RE-HIRE ACCOM SUSPEND WAGES OTHER TOTAL BASIS CHGS CHGS</th>
<th>TOTAL ISSUES</th>
<th>TOTAL CHARGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>SA ALCOHOLISM</td>
<td>4</td>
<td>10</td>
<td>187</td>
</tr>
<tr>
<td>SA ALLERGY</td>
<td>7</td>
<td>6</td>
<td>62</td>
</tr>
<tr>
<td>SA ARTHRITIS</td>
<td>17</td>
<td>27</td>
<td>197</td>
</tr>
<tr>
<td>SA ASTHMA</td>
<td>7</td>
<td>20</td>
<td>101</td>
</tr>
<tr>
<td>SA BACK IMPAIR</td>
<td>68</td>
<td>123</td>
<td>1092</td>
</tr>
<tr>
<td>SH BLIND/VIS IMPAIR</td>
<td>11</td>
<td>25</td>
<td>167</td>
</tr>
<tr>
<td>SD IMPO/GENDER</td>
<td>5</td>
<td>4</td>
<td>41</td>
</tr>
<tr>
<td>SJ BRAIN INJURY</td>
<td>5</td>
<td>5</td>
<td>69</td>
</tr>
<tr>
<td>SK CANCER</td>
<td>24</td>
<td>20</td>
<td>184</td>
</tr>
<tr>
<td>SL CEREBRAL Palsy</td>
<td>1</td>
<td>7</td>
<td>34</td>
</tr>
<tr>
<td>SM CYSTIC FIBROSIS</td>
<td>1</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>SM HEARING IMPAIR</td>
<td>7</td>
<td>37</td>
<td>150</td>
</tr>
<tr>
<td>SM DIABETES</td>
<td>16</td>
<td>43</td>
<td>240</td>
</tr>
<tr>
<td>SP DISABILITY</td>
<td>1</td>
<td>1</td>
<td>27</td>
</tr>
<tr>
<td>SR DRUG ADDICT</td>
<td>2</td>
<td>8</td>
<td>121</td>
</tr>
<tr>
<td>SS DRUG ADDICT</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>ST EPILEPSY</td>
<td>4</td>
<td>16</td>
<td>180</td>
</tr>
<tr>
<td>SH GASTRO IMPAIR</td>
<td>4</td>
<td>7</td>
<td>59</td>
</tr>
<tr>
<td>SH HEART IMPAIR</td>
<td>10</td>
<td>41</td>
<td>300</td>
</tr>
<tr>
<td>SJ HEART BLOOD</td>
<td>2</td>
<td>19</td>
<td>71</td>
</tr>
<tr>
<td>SH HIV</td>
<td>49</td>
<td>20</td>
<td>117</td>
</tr>
<tr>
<td>SR MENTAL DISABILITY</td>
<td>0</td>
<td>3</td>
<td>10</td>
</tr>
<tr>
<td>SK KIDNEY IMPAIR</td>
<td>3</td>
<td>7</td>
<td>61</td>
</tr>
<tr>
<td>ST LEARNING DIS</td>
<td>8</td>
<td>21</td>
<td>123</td>
</tr>
<tr>
<td>TL LUNG IMPAIR</td>
<td>4</td>
<td>12</td>
<td>48</td>
</tr>
<tr>
<td>TC MENTAL ILLNESS</td>
<td>48</td>
<td>101</td>
<td>676</td>
</tr>
<tr>
<td>TC MENTAL RETARD</td>
<td>7</td>
<td>5</td>
<td>24</td>
</tr>
<tr>
<td>TE MISSING I</td>
<td>7</td>
<td>8</td>
<td>64</td>
</tr>
<tr>
<td>TF MENTAL DISABILITY</td>
<td>10</td>
<td>16</td>
<td>85</td>
</tr>
<tr>
<td>TG MUSCULAR DIS</td>
<td>0</td>
<td>7</td>
<td>25</td>
</tr>
<tr>
<td>TH NEURO DISABILITY</td>
<td>22</td>
<td>22</td>
<td>446</td>
</tr>
<tr>
<td>TI PULMONARY DISABILITY</td>
<td>0</td>
<td>4</td>
<td>14</td>
</tr>
<tr>
<td>TJ SPEECH IMPAIR</td>
<td>10</td>
<td>13</td>
<td>70</td>
</tr>
<tr>
<td>TK SPINAL IMPAIR</td>
<td>0</td>
<td>0</td>
<td>15</td>
</tr>
<tr>
<td>TK STUDENT IMPAIR</td>
<td>241</td>
<td>150</td>
<td>301</td>
</tr>
<tr>
<td>OR RETALIATION</td>
<td>53</td>
<td>147</td>
<td>400</td>
</tr>
<tr>
<td>TOTAL ISSUES</td>
<td>530</td>
<td>1081</td>
<td>6835</td>
</tr>
<tr>
<td>TOTAL CHGS</td>
<td>458</td>
<td>811</td>
<td>6151</td>
</tr>
<tr>
<td>TOTAL CHGS</td>
<td>9.6</td>
<td>7.2</td>
<td>48.7</td>
</tr>
</tbody>
</table>
BIBLIOGRAPHY


