

## Americans with Disabilities Act, 1990.

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When I was in college I became involved with persons who were disabled. As a sophomore, I was a "new student-week leader" for what were then called "handicapped" students. The disabilities of these students ranged from congenital blindness, to cerebral palsy, to polio. All had to come to college with different types of limitations; some with white canes, some with crutches, while others sat strapped or tied into wheelchairs.

Our group must have created quite a sight, struggling and groping their way across the unfamiliar campus, attempting to learn to navigate through the maze of walkways, buildings, between trees, up ramps, around large buildings, into elevators, and the inevitable obstacle of a building without an elevator.

These handicapped students were indeed pioneers on a progressive campus during the early days when disabilities were viewed with much pity and some disdain. This encounter had a profound effect on me and no doubt shaped my later interests.

As a doctor, much later, I encountered the inevitable disabled patient in a wheelchair entering my office with difficulty through a door designed for walking, not for the protruding side of a wheelchair. At one time I had my practice on a lower-floor office that required navigating some stairs. A patient with partial paralysis and arm and leg contractures gave me a fright three times a week when he would descend the stairs with his ataxic gait. He was of good humor though, tossing his cane ahead with a great crash followed by his loud laugh and my rush up the stairs to greet and rescue him before he'd fall (which he never did over the six months that I saw him).

With the passage of the Americans with Disabilities Act (ADA), a formal legislative effort has produced protection for the disabled person.<sup>1</sup> They are now protected legally from discrimination and can find accommodation and jobs. Perhaps you have noticed the "Down's syndrome" people who serve you at the local fast-food restaurant. They work very hard at their jobs and provide a much needed service. McDonalds supports this effort through its "McJobs" program by providing training (which is heavily subsidized) to this group of workers. However, the altruistic motive might be brought into question as workers are very hard to find for service industry at the entry level.

The ADA specifically refers to concerns in the area of employment and the types of accommodations that have to be made for the disabled worker. Essentially employers that employ 25 or more employees for each working day, in each of 20 calendar weeks in the current or preceding calendar year, will be covered by the statute for the first 2 years after passage of the law. After the first 2 years, employers with 15 or more employees are to be covered.

The introduction notes that the United States has some 43 million persons who have one or more physical or mental disabilities; with the aging of the population this segment is growing. The law states that there is to be no discrimination against any person in the areas of employment, housing, public accommodation, communications, recreation, institutionalization, health services, voting, and access to public services.

The ADA's goals are to establish a clear and comprehensive national mandate for eliminating discrimination against the disabled, coupled with clear, strong, enforceable standards; and to ensure a role for the federal government, using congressional authority for enforcement of the provisions of the ADA.

A definition of disability relates to an impairment of either a physical or mental nature that "substantially limits one or more of the major life activities of an individual, or if there is a record of such an impairment, or if the person is regarded as having such an impairment."<sup>1</sup>

Not all employers are included under the ADA. The federal government and government-owned corporations, Indian tribes, and bona fide tax exempt private membership clubs are all excluded. Religious organizations, for example, may give preference in employment to their own members and may require that employees conform to their religious tenets.<sup>1</sup>

The person with a disability must qualify for the job but prohibits the employer from discriminating in the hiring, advancement, discharge, compensation, training, or other terms, conditions or privileges of employment.<sup>1</sup> The concerns that have been voiced since the passage of the ADA relate to the amounts of accommodation that will have to be made in the workplace. The ADA specifies that the employer must make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability, unless to do so would impose an undue hardship. Thus, all screening tests for physical/mental purposes are prohibited unless these are job-related.

The impaired person, one with a disability, can be interpreted to include any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the major body's systems or any mental or psychological disorder, such as mental retardation or specific learning disabilities. As noted in the law, certain sexual deviations are not considered impairments and exclude persons exhibiting manifestations of, say, a bisexual nature, from consideration for a disability.<sup>1</sup>

Other areas where exclusions are provided for include compulsive gamblers, kleptomaniacs, pyromaniacs, and those who are using illegal drugs. No disability is given for alcoholism.

The ADA states that a "qualified person with a disability" means "a person who with or without reasonable accommodation can perform the essential functions of the job."<sup>1</sup> The employer has to make the judgment as to the essential functions of the job. If the person poses a threat to the health and safety of others, then they are not qualified for the job.

The idea of reasonable accommodation includes making facilities accessible. This may include job restructuring, modifying work schedules, reassigning to vacant positions, acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials or policies, as well as providing readers or interpreters or other similar accommodations.<sup>1</sup>

Looking at the problem from the employer's vantage point brings up some concerns. An accommodation which produces an "undue hardship" for the employer is not required. The following factors are considered when judging the case of a purported "undue hardship" and are as follows:

- nature and cost of the accommodation;

- size, type, and financial resources of the specific facility where the accommodation is to be made;
- size, type, and financial resources of the covered employer;
- employer's type of operation, including the composition, structure, and functions of the workforce; and the geographic separateness and administrative or fiscal relationship between the specific facility and the covered employer.

As noted previously, an employer may only require medical examinations that are job related and are consistent with business necessity and only after an offer of employment has been made to a job applicant. The employer may ask, however, whether the employee can perform the job related functions.<sup>1</sup> Other provisions of the act relate to public accommodations and transportation. Accessibility is the primary concern.

One major concern of the chiropractor is to provide health care and advice in the area of the workplace. As the ADA and its accompanying rules emerge and are implemented, the chiropractor can, with appropriate knowledge, assist in the process. There is much to be done, but informed and sincere help is needed. Many disabled persons are going to enter the workplace as a result of the ADA and will become new contributing members to society through the incomes that they earn in their new-found occupations.

James Mueller, in his recent book, *The Workplace Workbook, An Illustrated Guide to Job Accommodation and Assistive Technology*, points to some special design efforts in the workplace to meet disabled needs. He identifies some characteristics which should be considered carefully:<sup>2</sup>

- walls -- avoid rough surfaces, protruding or hanging objects below 84 inches;
- provide full access with landings at least 60 inches long and 30 inches wide, at both ends of the ramps;
- use lever-operated, push mechanism or u-shaped pull handles 36 to 42 inches above the floor; provide textured handles on doors to hazardous areas, and many others.

He goes on to describe work stations from the industrial assembly line into the factory-oriented office and covers the salient features which make it usable for various conditions. He notes specific limitations and how to overcome the problem, for example, limitations of speech; in reference to "slow or indistinct speech or non-verbal communication, he notes that 135,000 Americans ages 18-69 report limitation of speech as a result of a chronic disabling condition. He suggests to minimize ambient noise and vibration; provide clear written instructions to minimize the need for verbal assistance; and orient work stations for face-to-face communication.<sup>2</sup>

He also covers areas that include difficulty in lifting, reaching, and carrying. He notes that 4.6 million U.S. workers, ages 18-69, report this as a limitation and experience a chronic disabling condition. He suggests to store items within 18 inches reach from body or use pullout shelves or a lazy-susan carousel; if space is cramped use suspended storage; use desk-top files/organizers; facilitate sliding rather than lifting of containers heavier than two pounds or provide a wheeled

cart or other aid for carrying materials; and to use securely enclosed carts or other equipment for messy or hazardous materials.<sup>2</sup>

Those who want to become involved within industry will be able to find companies who need to provide accommodations for their disabled employees. This population of workers will obviously have special characteristics which will require special considerations. We must also remember that this is a much neglected segment of our society which has some need for our concern. As chiropractors we can offer treatment; but we also can offer help in the workplace through assisting in the accommodation process and in preplacement screening for specific jobs.

We should remain in the forefront of this kind of effort where the rules for the game aren't fully defined. There is still a chance for us to define our role in this process in the areas in which chiropractors have expertise and authority.

There are many products available for the disabled to make their life easier. Familiarity with some of these devices is useful and can provide assistance to those needing help. Much of the equipment is concerned with mobility: light-weight wheelchairs used for playing sports or motorized standing frames that provide the upright posture we take for granted. There are many other accommodation devices for the hearing impaired, the sightless, and those with balance and coordination problems, as well as speech. There are visual display terminals and special keyboards activated by alternate means, such as blowing into a receptor which turns on a switch, which in turn operates the keyboard.

Much of what we do with the ADA depends upon how involved we want to get with disabled persons. If we want to do a good job with this population, then we have to be informed and make an effort to help. With the evidence of our assistance, the disabled community will respond to us in a positive way. We have special tools and talents in this area; let us show them and pass along the benefits.

### *References*

1. The Americans with Disabilities Act of 1990: U.S. House of Representatives Report 101-596. Washington, D.C., July 12, 1990.
2. Mueller, James: The Workplace Workbook, An Illustrated Guide to Job Accommodation and Assistive Technology. Dole Foundation, Washington, D.C., 1990.

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