

Are We Hurting or Helping the Disabled?

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The Americans with Disabilities Act (ADA) of 1990 was supposed to end discrimination against disabled workers. Instead, this act has generated lawsuits that have benefited trial lawyers more than the disabled.

Employment "discrimination" against the disabled means that they receive lower earnings and suffer greater unemployment than people with equal productivity. Under this generally accepted definition, companies do not discriminate if they pay disabled persons less than others simply because they are less productive. The ADA passed without evidence of systemic discrimination against disabled workers in any way comparable to the discrimination against blacks that gave rise to the civil-rights legislation of the 1960s.

Still, the ADA had strong bipartisan support in Congress because of concern about the employment prospects of the deaf, blind, and other truly disabled. Republican Senator Robert J. Dole, who lost the use of an arm during World War II, was a strong backer.

Congress allowed the definition of disability in the act to be vague. I predicted in this magazine in 1992 that the vagueness of the ADA and the litigious nature of the judicial system would encourage lawyers and workers to widen the concept of disability to absurd extremes.

TAKING A GAMBLE. So it is not surprising that the principal "disabilities" litigated under the ADA involve workers who charge discrimination over difficulties in coping with stress, drug addiction, alcoholism, obesity, or back problems that are impossible to verify. Lawyers see an opportunity to gamble before sympathetic juries with often ridiculous types of "disability" claims--or they hope for settlements by companies frightened of potential damages.

The Supreme Court recently decided in a 7-2 opinion against one class of disability arguments that would have enormously widened the scope of the act. Some workers claimed that they were covered under the ADA even though their problems were correctable by devices such as glasses to improve vision or by medications such as beta-blockers that reduce high blood pressure. Had these workers' view of "disability" been accepted, over two-thirds of adult Americans would have fallen under the act--including the seven out of nine justices who heard this case while wearing glasses.

The truly disabled may be the principal victims of the loose definitions of disability and the extensive litigation under the act. To prevent costly lawsuits, many companies apparently avoid hiring job applicants whom they believe would prove litigious under the ADA. Such behavior would explain the otherwise surprising results in separate studies by economists Daron Acemoglu and Joshua Angrist of the Massachusetts Institute of

Technology and Thomas DeLeire of the University of Chicago. They find that employment of disabled workers fell rather than rose since enactment of this law, mainly because of reduced hiring rather than greater firing of the disabled. The effect on employment was greatest in medium-size companies since small companies are largely exempt from the act.

BLOOD PRESSURE. Litigation is a bad way to determine whether companies discriminate against persons with disabilities, especially those who fall under the ever-expanding concocted concepts of "disability." Competition for workers, imperfect as that sometimes may be, is usually a much more effective way to encourage the hiring of productive employees. If some companies in a highly competitive environment earned lower profits because they did not employ persons who wear eyeglasses, take blood pressure medication, have back or hearing problems, and so forth, less ignorant and less prejudiced companies would seize the opportunity to hire these workers in order to raise their own profits.

The U.S. is not alone in greatly widening the definition of disability. The fraction of men and women who claim some disability has grown sharply during the past two decades in most European nations, even though people have become healthier and jobs have become less physically demanding. In the Netherlands, probably the most extreme example, 13% of the working-age population is considered partially or wholly disabled, and about one-third of men aged 55 to 64 collect a disability benefit.

The Americans with Disabilities Act is a misguided attempt to help the disabled, and the problems it created are getting worse as lawyers find new issues to litigate. Clearly, the scope of the act should be radically narrowed. But that may not be enough. Truly disabled workers might be better off if the ADA were scrapped altogether.