



WALL OF EXCLUSION: THE AMERICANS WITH DISABILITIES ACT'S FAILURE TO CLOSE THE EMPLOYMENT GAP

EXECUTIVE SUMMARY BY **SHAULI BAR-ON** | AUGUST 2020

The nearly 30% gap between PWD employment rate and the general population employment rate, which has existed since before the ADA, reflects poorly on the federal government and the ADA's goal to provide an equal opportunity for all Americans seeking work. The number of ADA filings have skyrocketed over 400% between 2009-2013 and have continued rising substantially each year since.¹

To promote a more inclusive workplace environment while at the same time saving corporations litigation costs, the government should employ an incentive-based approach to hiring people with disabilities as opposed to a punitive-based regulatory policy. This paper synthesized secondary synthesized from American Care Survey, Federal Reserve employment database, and U.S. Courts database as well as gathered primary data on how ADA cases are handled from a number of plaintiffs lawyers.

The main findings of this paper include the following: (1) The representation of people with disabilities in the workforce has barely improved since the passing of the ADA, (2)The ADA's enforcement mechanism -- the civil court system -- has proven ineffective in preserving the rights of people with disabilities, (3) Employers have a monetary incentive to settle cases instead of making accommodations or changing their hiring practices, and (4) Monetary incentives for hiring PWDs has been the most effective way of increasing PWD employment rates. This paper then compared the PWD employment rate in states with state-specific tax incentives for businesses to hire PWDs with the United States' total PWD employment rate to assess whether state incentives are impactful. These were the findings:

In Maryland, the employment rate for PWDs began rising just before 2015, likely in the months when the Maryland Disability Employment Tax Credit was debated and passed.² In Utah, the PWD employment rate dropped in the beginning of 2017, just a few months after the tax credit was no longer available to employers.³ In Texas, following the expiration of the Texas Franchise Tax Credit in 2008, the employment rate for PWD in Texas declined, to the point where in 2018 it was nearly identical with the U.S. PWD employment rate.⁴

In light of the data gathered, the paper recommended the following: instead of a punitive ADA which awards



promote an inclusive workplace. Three of the four states that award state tax incentives for hiring people with disabilities have better employment rates for people with disabilities than the national average.

Ending the employment gap for PWDs is more than a civil rights issue; it is a cultural one. Employing PWDs should not be done for fear of punishment and likewise should not be a mere goodwill gesture. An affirmative-action-like law, coupled with an informative campaign by NGOs like VOSAP for the benefits of hiring PWDs may spark a cultural shift that eventually ensures equal opportunity for all Americans.

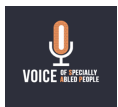
¹“2019 Litigation Trends Annual Survey.” Norton Rose Fulbright , 2019.

<https://www.nortonrosefulbright.com/-/media/files/nrf/nrfweb/knowledge-pdfs/final---2019-litigation-trends-annual-survey.pdf>

² K. Lisa Yang and Hock E. Tan Institute on Employment and Disability. “Report Generator.” Disability Statistics, Cornell University, www.disabilitystatistics.org/reports/acs.cfm?statistic=2.

³ Ibid.

⁴ Ibid.



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WHY THIS MATTERS TO VOSAP

VOSAP has been advocating for D&I as relates to Persons with Disabilities, promoting their employment. VOSAP has worked with the Govt of India for putting in financial incentives for Employers who train and hire SAPs. This research project aimed to analyze data and identify the failings of the ADA in bridging the employment gap in the US since inception of ADA 1990. VOSAP has a Corporate Connect program with proprietary DII framework, designed to work with corporate leaders and HR in companies interested in hiring SAPs as part of an Inclusive and diverse workforce that strengthens their bottom line and creates an Inclusive work environment.

ABOUT VOICE OF SPECIALLY ABLED PEOPLE INC.

The Voice of Specially Abled People (VOSAP) is a global advocacy organization built on the principles of Empowerment of Specially Abled People. In Special Consultative Status with UN ECOSOC, VOSAP is working to create an Inclusive and Accessible world by accelerating implementation of UN Sustainable Development Goals (SDGs) and goals of UN CRPD (Convention on the Rights of Persons with Disabilities) treaty. The organization has created the VOSAP Mobile App through which volunteers can take a pledge to volunteer and rate the accessibility of public places, creating a crowdsourcing platform to aggregate demand for accessibility.

