
A Case Study of an Exercise in Inclusiveness: The Americans with Disabilities Act in Local Government

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Abstract

Local government managers are faced with the difficult task of incorporating the values of the Americans with Disabilities Act into the work environment. To aid them in that process, they may look to training consultants. This article details an exercise used to help employees of a local government in Illinois better understand how the purposes of the Americans with Disabilities Act can be achieved.

INTRODUCTION

Government managers are faced with the responsibility of ensuring that their personnel are adequately trained in the numerous requirements of federal and state law. One recent requirement imposed on governments is the Americans with Disabilities Act (ADA), which has been implemented through managerial effort and court cases. Ultimately, of course, inclusion of all qualified workers into the workplace is the goal of the ADA. While both managerial effort and litigation are legitimate means of implementing the ADA, court cases can *only* ensure that discrimination does not occur and not that any degree of inclusion of individuals with disabilities occurs. Training of all levels of personnel in the ADA has become an attractive alternative to many managers.

There are at least two motivations for upper level managers to seek additional training in the ADA. Some managers may be seeking to avoid the cost of litigation and the resulting problems that can have long lasting financial and organizational impacts. Other managers may be persuaded that through training in the ADA some level of inclusion can be achieved within their organizations. While in some cases mixed motivation makes training of staff more complex, this is not a problem with regard to the ADA because adopting the goal of enhancing inclusiveness results in achieving the goal of lessening the likelihood of litigation, while requiring people to act in accordance with the law (thereby reducing litigation) may well result in a broader attitude toward inclusiveness. The difficulties of moving individual

employees beyond non-discrimination to acceptance, though, is regularly seen by people asked to do training for personnel in organizations covered by the ADA.

The Americans with Disabilities Act seeks to provide individuals with disabilities protections against discriminatory practices. Included under the ADA are prohibitions against discrimination in employment, provision of services, access to transportation, and access to public facilities. The issue of what actually is a disability has received increasing attention during the past decade. Baldwin (1997) notes that

Disability is a process rather than an attribute such as color, gender, or national origin. The process begins with an impairment. The nature and severity of the impairment, together with medical care and rehabilitation services, determine whether or not it results in permanent functional limitations. The process of moving from functional limitations to work disability is partly determined by the nature and severity of the underlying impairment, but other factors - such as job demands, attitudes of employers, societal expectations, and vocational rehabilitation - are also important. (p. 38)

The ADA defines the term disability as an impairment which substantially limits one or more life activities. Life activities included under the Act are walking, seeing, speaking, hearing, breathing, learning, performing manual tasks, caring for oneself, standing, working, lifting, reading, and sitting (*Technical Assistance*).

Non-discrimination in the provision of services by state and local governments is covered by Title Two of the ADA while all employment discrimination is covered by Title One. Local governments are required to abide by the standards in both Title One and Title Two. Court cases are one method of ensuring that such non-discrimination occurs (Koenig, 1999). A case in which employment discrimination is alleged can be described in general terms. It is important to understand that ADA law, like other forms of court-decided law, varies from circuit to circuit (Phelan, 1996). The law governing the application of the ADA must be carefully researched before any action is taken. In general, though, the process works in the following manner: Both state and federal administrative remedies must be exhausted before any suit can be filed, and suit, should it be filed, can only proceed after the Equal Employment Opportunity Commission files suit or gives a "notice of right to sue" to the claimant. At that point, the individual claiming discrimination must show that there is reason to believe that a discriminatory action took place.

Discriminatory action can be shown by either proving that the employer has records showing discriminatory intent or by showing that (1) the individual had a defined disability, (2) the individual was qualified, (3) the individual applied and was rejected, and (4) the employer either hired someone without a similar disability or continued to seek applicants. Once this initial showing is made, the burden of proof then shifts to the employer, who can offer the defenses of the existence of a neutral reason or the existence of a business necessity. A neutral reason is one which is legitimate and non-discriminatory in nature. Examples of a neutral reason might be that the disabled individual had a criminal record or that the individual selected had superior education or training. The business necessity defense rests on the relationship between the job elements considered essential to the position and the absence of a particular disability. For instance, a truck driver's position should not be filled by someone with uncorrected low vision. Business necessity, though, cannot foreclose any person with a disability from a particular position. If accommodations can be made to permit consideration of the individual applicant, such accommodations must be considered. However, if those accommodations impose an undue burden on the employer they need not be adopted. Undue expense, therefore, is the third defense to an allegation of discrimination which violates the ADA. After the employer successfully asserts one of these defenses, the disabled applicant has the opportunity to show that the applicant is successful in that showing, or if the employer is unsuccessful in establishing a defense, the applicant will win the lawsuit. Courts have required the hiring of disabled individuals and have required the payment of monetary damages.

TRAINING LOCAL OFFICIALS IN THE AMERICANS WITH DISABILITIES ACT

The use of training exercises to aid personnel in the process of change is well established. These training exercises can be based in the present, when change is necessary to achieve a task at hand (*Amadei and Wade, 1996*) or more future oriented, to allow managers to revisit the ways in which they act (*Knox, 2000*). Interest has grown about benchmarking the effects of training in the public sector but training still seems to get short shrift when the sole purposes of training are enhanced efficiency and better management techniques (*Paddock, 1997*). Training appears to be especially desirable when the choice presented is to either train or be sued. Francis Leazes documents this motivation for training, noting that "an effective training policy can increase employee knowledge, improve skills and address attitudes so as to minimize negligent, harmful actions (*Leazes, 1995, p. 167*). While it is impossible to prevent litigation solely by conducting training activities, training is definitely a signal to employees and courts that the organization has acted responsibly with regard to the issue at hand. This attitude is a familiar one when dealing with sexual harassment policies and

training: merely alerting staff to the existence of prohibited activities and the legal consequences of engaging in those prohibited activities is not enough (*Eberhardt, Moser, and McFadden, 1999*). However, training does matter. The fact that employers train their employees on how to avoid the prohibited behavior may be considered in the process of assessing a claim of sexual harassment (*Stuart v. General Motors Corporation*) as will the lack of training.

The need for this training exercise in the Americans with Disabilities Act arose as part of a labor law training session accomplished for the heads of departments and selected staff employed by a growing suburb of Chicago. The reason for the training session was not uncommon: The newly hired manager felt that some portion of the staff had little or no knowledge of labor law. The individuals selected for the training session reflected the breadth of his concern. Included in the group of 28 people were individuals from the finance office, clerical staff, police force, and the planning and public works departments. In each case other than the police, the most senior administrator attended the session along with several personnel immediately subordinate to that administrator. In addition, the manager attended the training session. It became apparent, in the process of preparing for this training session, that covering the ADA would be difficult. The difficulty anticipated was that of making real to the participants the issues which must arise when making a job accessible to individuals with different types of disabilities. This was particularly important to such a diverse audience, because while not all the individuals would have the capacity to hire a disabled individual, it was clear that the individuals attending the training session would play a crucial role in incorporating future staff into the organization. To address this difficulty, and to make the session more profitable for all involved, the following exercise was developed:

1. Have small groups of employees from the same or similar departments define the essential job requirements of an entry level position;
2. Identify for these groups a number of different disabilities people applying for the entry level position might have;
3. After conducting the first portion of the training session, in which different ways that disabled individuals can be accommodated into many workplaces is discussed, challenge the members of the groups to come up with accommodations to ensure that discrimination is not occurring in the hiring process; and

4. Discuss additional accommodations, or the lack thereof, with the groups and make sure the group members understand the role of the business necessity defense.

Before the training session, it seemed certain this exercise would be sufficient to alert the participants (thinking as potential employers and co-workers) of ways in which the Americans with Disabilities Act could be applied to the local government employment setting. Employees attending the training session merely needed to understand that many jobs performed by local government employees could be done by disabled individuals, making education the focus of the training effort. The primary problem would be helping people to understand the role of making accommodations for disabled workers in the workplace.

DEFINING ESSENTIAL JOB REQUIREMENTS

The exercise prepared for the group relied on there being some commonality of training or organizational experience within smaller groups of the 28 participants. Fortunately, the large group broke out into smaller groups nicely. The finance office, clerical staff, police, public works personnel, and planners were all represented in separate groups. The most successful groups, those who showed the ability to think creatively about how a person with a disability might be able to accomplish the tasks required by that portion of the organization, were those which had more than five participants.

The first step for each group was to select an entry level position for the group. For the police officers, this position was an individual in charge of receiving and maintaining evidence. Both the clerical staff and the members of the finance office selected a secretarial position. The public works personnel chose a street maintenance worker, and the planners selected a building inspector. After each group had selected the position for which a disabled person might apply, each group was asked to identify the essential functions for that position.

Once the position was selected and defined by each group, the groups were encouraged to describe the responsibilities of the job as completely as possible, drawing on their knowledge of what actually was accomplished by individuals in the position described *and* those behaviors which could legitimately be expected of new employees. While taking that approach elicited some laughter as people suggested that their own work load could be shifted to new hires, each group did honestly consider if there were additional responsibilities which new employees should be expected to take on. Some possible new job elements were capacity to maintain a web site, prior knowledge of specialized software, and management training for those

individuals being hired by departments with a history of promotion into management. The inclusion of extra responsibilities was not an accident. At the beginning of the training session on the ADA, several comments were made which indicated that people believed that when hiring a disabled worker, it is necessary to allow for the fact that less work is done by that person. It was important, therefore, that each group realize that the job they were designing was as challenging, if not more challenging, than the one which currently exists.

After allowing 15 minutes for thorough development of the list of job requirements, I walked around the room and discussed with each group the position they had identified. As already noted, these included an individual in charge of receiving and maintaining evidence, a secretary, a street maintenance worker, and a building inspector. Not surprisingly, the descriptions were very complete, including, in the case of the individual responsible for receiving and maintaining evidence, the ability to speak Spanish. The officers defended this element of their job description by noting that a portion of the population with which they interact is Hispanic and that this individual would be charged with dealing with those individuals on occasion. Each group felt quite good about the job description they had developed and several individuals reported that they now understood for certain that a disabled individual would not be able to complete the job, making the ADA a moot point for that particular department.

DEFINING DISABLED APPLICANTS

The second step of the exercise was to consider the case of each of five disabled individuals applying for the job that had been described. The disabilities listed include low vision, epilepsy, paraplegia, depression, and alcoholism. Each of the individuals with a disability was currently receiving treatment or was engaged in self help activities which made them eligible for protection under the ADA. For example, the alcoholic was no longer drinking and the person with depression was using a combination of medical and non-medical resources to combat the depression. For each disability listed, the groups had to show what accommodation could be made to allow the applicant to successfully compete the job, or if the claim was that no accommodation could be made, what essential job functions prevented the possibility of accommodation. Ultimately, the discussion of possible accommodations rested almost entirely on the portion of the training session already accomplished in which physical aids used to allow the disabled to function with ease in a work place was discussed, as few individuals in the session had experience with the listed disabilities.

MAKING ACCOMMODATIONS

Clerical Staff Position

Both of the groups dealing with secretarial positions acknowledged that it would be relatively easy to alter the job position to hire a disabled person. The changes the two groups identified included a special screen enhancer for a low-vision person and shifting responsibilities of going for mail if the paraplegic person were hired. When pressed about their reasons for why responsibilities would have to be shifted, the first group replied that it was obvious that someone in a wheelchair would not be able to handle taking the mail to the post office, bringing the community's mail back and then delivering it throughout the building. When asked for more details about the task of going to get the mail and bring it back, members of the groups admitted that individuals use their own cars and not a vehicle supplied by the community. This made clear that a paraplegic individual who drives to work would not be barred from going to get the mail or bringing it back. The issue of delivering the mail throughout the building was solved by having people from the different departments come and get their own mail, an idea that received support from the clerical personnel in the room. No changes were perceived as necessary for the individual disabled due to depression, epilepsy or alcoholism. It had been made clear earlier that it is permissible to fire a disabled worker for not performing a job just as it is permissible to fire a non-disabled worker for not performing a job. While it might be the case that a person suffering from depression, epilepsy or alcoholism might need more flexibility in leaving the office to attend self-help sessions or go to doctor appointments, this type of flexibility was reported as already available through traditional scheduling practices.

Person in charge of police evidence

The officers who defined this job were seeking an individual who was bilingual, had been through the police academy, and had good organizational skills. There was some concern about the ability of a wheelchair-bound person to handle some of the larger pieces of evidence, but the police officers in this group agreed that much of the work could be handled by a person in a wheelchair. The individual with low vision was not perceived as a problem, other than the ability to keep the records of the property room would require a different system than a hand written log. Epilepsy was not seen as a disability which would compel the police force to make accommodations in this job other than some minimal scheduling accommodations for doctor visits that could be handled by the normal scheduling rules. The two disabilities which presented the largest problems were depression and alcoholism.

Some members of the group argued that the absence of depression would rise to the level of a business necessity, as the individual would have

access to firearms and would therefore be placing everyone at risk should the depression become uncontrolled. When reminded that a job characteristic can only be classified as a business necessity if the employer treats all employees not classified as disabled in the same manner as is being proposed for the disabled applicant, it became clear that the members of the training group did not understand what that meant. The meaning of the law with regard to the business necessity defense was made clear by asking what happened usually when officers on the force showed signs of depression. Were the officers immediately asked to surrender their weapons and removed from duty where they had access to weapons or were the officers treated for the depression? The police officers in the training session admitted that most often, individual officers would be treated for depression first, but if the symptoms of depression lingered for any length of time the officer would be reassigned. This discussion highlighted the fact that the police force's method of handling cases of depression would necessitate consideration of the applicant being treated for depression, as it clearly was not a business necessity that all officers be free of symptoms of depression to function. The group agreed that this was a reasonable resolution to the consideration of a person disabled by depression but was clearly was not pleased with this result. It appeared that there was acceptance that inclusion might be necessary under the law. However, that acceptance was tempered by an unspoken discomfort with the result. The discussion about alcoholism went along similar lines. A recovering alcoholic who applies for a position and seeks the protection of the ADA can be treated no differently than a recovering alcoholic who serves on the force. There was less rancor in the agreement to this argument, perhaps because the less often acknowledged case of depression had just been discussed or because these individuals were more familiar with the disease of alcoholism. It was clear from this discussion, though, that there would be difficulty in conceiving of a person suffering from depression or alcoholism being hired into this position.

Street maintenance worker

The job description developed for this position entailed lifting up to 70 pounds, operating one of the community's maintenance trucks by oneself, and working within the sewer system. In addition, the street maintenance worker would be responsible for filling out paperwork and for maintaining equipment. Each of these elements of the job was at first characterized as essential, especially the ability to lift 70 pounds and work in the sewers, although it did become apparent that there were other parts of the job which made it possible for disabled individuals to hold this position. Alcoholism, if the recovery program was sustained, posed no particular problem to the job unless the individual's license had been suspended. Epilepsy was viewed in the same manner as alcoholism, as was depression. The two problematic types of disability discussed were low vision and paraplegia. For both of

these cases, because it was the practice of the public works department to send out maintenance workers in individual trucks, the disability would be a functional bar to employment. It was suggested that two workers might be sent out together, but this was met with serious objections about cost and effectiveness of the work force. One member did note that it was possible to specially outfit a truck for a paraplegic, but then added that it would be impossible for a paraplegic to work in the sewer system. As an alternative to doubling up employees, I suggested that it would be possible to make accommodation for a disabled employee by reallocating the job assignments with the department. This suggestion was not viewed favorably. One member of the group commented "but if we do that, we'll have to redefine everyone's job, not just the disabled person's job." Some additional discussion was had, but it quickly became clear that the tasks of heavy lifting and working underground were a necessary part of this position as currently defined by the public works department, making the business necessity defense a possibility should this department be faced with an applicant with either low vision or paraplegia.

Building inspector

The group of planners had selected the job of building inspector as their entry level position. This position was designed to require the ability to make certain that buildings met the physical requirements of the municipal code, filing paperwork following inspection, and talking with builders and property owners about the status of their property. The group of individuals who designed the job had all been in the job in the past and had a strong sense of the allocation of work within the position. As a group, they reported that it was typical that building inspectors spend 90% of their time actually walking through buildings. The remaining 10% of their time is allocated to paperwork and meeting with the public. There were no problems seen with any of the disabilities listed other than paraplegia. Because of the inability of a paraplegic to gain access to some buildings (for instance, those without entries wide enough for a wheelchair or those without some form of lift to basements or floors above ground) this group could not find an accommodation for this disability. Again, it was suggested that a reasonable accommodation might be to have building inspectors go out in pairs rather than individually. This suggestion was dismissed as impractical and a waste of taxpayers' money. I then suggested that perhaps it would be possible to have this disabled building inspector focus on issues of access, inspecting those buildings which were required to meet ADA accessibility requirements. The group responded that there were insufficient buildings in their community that were under such mandates for such a position to be created. Finally, the suggestion was made that accommodations could occur within the department rather than within the specific job. For instance, this might entail creating a position in which the disabled person is charged with

handling all paperwork and relations with the public. Again, this accommodation was rejected as impractical, as the inspector who has seen the physical state of the building needs to be the one filling out the paperwork and meeting with the citizens who are charged with the upkeep of the building. In short, this group was arguing that it is a business necessity to have building inspectors who can walk. When challenged about this characterization, the members of the group admitted that there had never been a building inspector who *lacked* the ability to move around a building without assistance, and that fact might be coloring their response.

ENDING THE EXERCISE

Throughout each group's presentation of the job description and possible accommodations, the other groups participated by asking questions and making suggestions about possible accommodations. The level of this participation was not extensive, and had not been one of the original goals of the training exercise. In hindsight it seems likely that more interaction may have permitted a broader understanding of inclusive practices and methods of moving disabled individuals into the local government workforce. One way to enhance participation might include having groups exchange job descriptions with each other so that individuals have an opportunity to see how others might view accommodations which could be made. The primary advantage of increasing participation would be to increase the amount of experience people have available to them with regard to particular disabilities. In place of general discussion after each group made its presentation, I discussed the issues of employment of disabled individuals raised by each group and offered some thoughts on how people might better be prepared for the disabled applicant. This portion of the training session clearly had an educational purpose, which fit well with the model of expert coming in to share information and insights into employment law. There was a straight forward imparting of information. Again, it is important to remember that this group of local government employees seemed to have little exposure to people with disabilities. Should this exercise be adapted to other groups, a degree of sensitivity to the level of knowledge of the group will be especially important at this point. It may be that among some groups a more interactive discussion can take place about the issues disabled applicants might raise. In this training session the fact that the discussion was originated by the consultant had the advantage of removing any sense of censure from superiors that might have existed if others in the training session had taken a more active role.

APPLYING THE EXERCISE TO OTHER GROUPS

The primary evaluation of an exercise used in training must be whether or not the lesson taught was retained by the individuals trained.

Unfortunately, no follow-up evaluation was possible in the circumstances which gave rise to these training sessions. When applying this exercise to other groups seeking ADA training, the first change which should be considered is the incorporation of evaluative tools to permit the trainer the opportunity to understand the level of sophistication at which the individuals being trained begin and end. In the most ideal circumstances, a delayed post test would be helpful in assessing the retention of the training material.

Another factor to be considered in organizing training sessions is the relative ranks of the employees being trained. In many settings it may be preferable to train individuals who all are of the same rank within the organization or even those of the same rank within the same department. Golembiewski (1995) refers to this model as the traditional bureaucratic model. In it, supervision is based on functional separation, with similarly trained specialists accomplishing similar work responsibilities under the oversight of an individual responsible for advancing that specialist view. There are benefits to training accomplished in this manner. Often there are fewer organizational barriers to overcome, as individuals share a world view, and there are implicit understandings about how organizations should function as well as how organizations actually do function. The alternative to the traditional bureaucratic model which Golembiewski puts forth is that of the postbureaucratic structure. In this structure, supervisors are responsible for managing the work of individuals who do not share the same specialist orientation. Instead, employees reporting to the same supervisor may be trained in different functions, and this pattern of non-specialization is repeated throughout the organization. The benefits to training which reflects a postbureaucratic structure include the greater ability to communicate across organizational divisions and a more developed view of the organization.

Similar choices must be made when setting up training exercises. What advantages can be gained from using a traditional bureaucratic model? Are there advantages to using a postbureaucratic model? In ADA training, it would seem that the postbureaucratic model may provide for greater learning, as employees without supervisory responsibilities are allowed to see the different elements that enter into the hiring decision making process and supervisors are given a first hand view of the office from the perspective of the staff. This learning process is not limited to hiring decisions. While one of the primary purposes of the ADA is to ensure that people with disabilities are given a chance to enter the workforce, the workforce itself will be changed by the inclusion of disabled workers in its population. The postbureaucratic model, which allows for greater feedback, will clearly advance the incorporation of both disabled and non-disabled workers in the workplace. Another advantage of the adoption of the postbureaucratic model is increasing the possibility that people in the population being trained have experiences with individuals with disabilities. The greater the diversity of the training group, the more likely it is that someone within the groups can offer

personal experiences with disabilities. The last advantage is that it is possible that individuals trained together, when faced with the employment of an individual protected by the ADA, will have others within the organization to turn to for support or additional information. The way in which the training session is devised is an important choice and one that should be made before any training actually begins.

An additional concern about training must be addressed at this point. There are, of course, many ways in which training activities occur. Action training, classroom or retreat training, and observation of other workplace environments all hold the potential to alter the ways in which employees think about or do their jobs. Each method of training holds clear advantages: action training may make more possible immediate change; classroom/retreat training may allow greater control in the dissemination of the information and perceptions about that information; and observation may allow greater opportunity for a clear view of the workplace environment, unimpeded by personal attachments to the job being accomplished. The choice between these types of training, or a combination of the three, must be considered *before* the training session is planned. For the training session described here, where the purpose of the session was to educate local government employees on several different employment law topics, the classroom training session seemed most appropriate. Ultimately, the decision about the type of training exercise used must rest on the combined factors of resources, desired outcome, and need to cover additional material.

The purpose of this exercise was to highlight for these local government employees the fact that jobs in local government need not be limited to individuals without disabilities, and that local governments should be ready to receive and process applications from individuals with disabilities. That message got across. However, another message was relayed back. *That* message was that some of the barriers to the inclusion of disabled individuals into the workplace are only secondarily related to the institutional barriers which have been erected over time and are more primarily related to the ability of individuals to alter their ways of thinking about individuals with disabilities. While this exercise did highlight for people the ways in which a disabled worker could be incorporated into their local government employment pool, it also served the purpose of illuminating how they think about the Americans with Disabilities Act and the inclusion of disabled workers into the workforce more generally. This was the objective of the exercise -- to highlight the potential for disabled employees in this community's workforce. The other purpose was education of employees so that the potential for litigation is minimized. However, the long term amelioration of litigation is a vastly more difficult problem. Only by removing the non-institutional barriers to the inclusion of disabled employees will the protections created by the ADA be a natural part of the employment process, rather than a special case requiring judicial enforcement.

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