J Occup Rehabil (2008) 18:106–111
DOI 10.1007/s10926-008-9135-2

A Comparison of EEOC Closures Involving Hiring Versus Other Prevalent Discrimination Issues Under the Americans with Disabilities Act

Brian T. McMahon · Jessica E. Hurley · Steven L. West · Fong Chan · Richard Roessler · Phillip D. Rumrill Jr.

Published online: 23 April 2008

Abstract *Introduction* This article describes findings from a causal comparative study of the Merit Resolution rate for allegations of Hiring discrimination that were filed with the U.S. Equal Employment Opportunity Commission (EEOC) under Title I of the Americans with Disabilities Act (ADA) between 1992 and 2005. An allegation is the Charging Party's perception of discrimination, but a Merit Resolution is one in which the EEOC has determined that a discriminatory event did indeed occur. A Non-Merit Resolution is an allegation that is closed due to a technicality or lacks sufficient evidence to conclude that discrimination occurred. Merit favors the Charging Party; Non-Merit favors the Employer. *Methods* The Merit Resolution rate of 19,527 closed Hiring allegations is compared and contrasted to that of 259,680 allegations aggregated from six other prevalent forms of discrimination including Discharge and Constructive Discharge, Reasonable Accommodation, Disability Harassment and Intimidation, and Terms and Conditions of Employment. Tests of Proportion distributed as chi-square are used to form comparisons along a variety of subcategories of Merit and Non-Merit outcomes. *Results* The overall Merit Resolution rate for Hiring is 26% compared to Non-Hiring at 20.6%. Employers are less likely to settle claims of hiring discrimination without mediation, and less likely to accept the remedies recommended by the EEOC when hiring discrimination has been determined. *Conclusion* Hiring is not an unusual discrimination issue in that the overwhelming majority of allegations are still closed in favor of the Employer. However, it is counterintuitive that Hiring has a higher merit resolution rate than other prevalent issues. This finding contradicts the assumption that hiring is an "invisible process." Considering that the EEOC makes merit determinations at a competitive rate, it is clear that hiring is sufficiently transparent.

Keywords Hiring discrimination · Disability · Workplace discrimination · EEOC · Outcomes · Employment discrimination

B. T. McMahon (✉)
Departments of Rehabilitation Counseling and Physical Medicine/Rehabilitation, Virginia Commonwealth University, PO Box 980330, Richmond, VA 23298-0330, USA
e-mail: BMcBull@vcu.edu; btmcmaho@vcu.edu

J. E. Hurley · S. L. West
Department of Rehabilitation Counseling, Virginia Commonwealth University, Richmond, VA, USA

F. Chan
Department of Rehabilitation Psychology and Special Education, University of Wisconsin at Madison, Madison, WI, USA

R. Roessler
Department of Rehabilitation, Human Resources, and Communication Disorders, University of Arkansas at Fayetteville, Fayetteville, AR, USA

P. D. Rumrill Jr.
Disability Institute at Kent State University, Kent, OH, USA

Introduction

In recent years, a number of important investigations from the field of human resources management have been increasingly relevant to our understanding of disability and employment. There is perhaps no better example of this than a study by Huffcutt et al. [1] involving a meta-analysis of employment interviewing. These researchers developed a taxonomy of interviewing constructs reflecting the priorities

of employment interviewers. In order of overall effect size, the importance of these to employers was as follows (high to low): mental capability, job knowledge and skills, basic personality tendencies, applied social skills, interests and preferences, organizational fit, and physical characteristics including both general and job-related physical attributes. The authors went on to discover that there was a positive relationship between the more valid job constructs and employer emphasis, particularly by employers who used structured interview protocols. Reflecting on the findings by McMahon et al. [2] regarding the relative paucity of hiring allegations by Americans with disabilities, these findings may provide a partial explanation.

An equally compelling study was provided by Posthuma et al. [3] who exhaustively reviewed interviewing research and made eleven recommendations for future research. Among other important considerations, the authors called for more research that addresses disabilities, procedural justice, actual applicant outcomes (not just employer outcomes, attitudes, and reactions), and avoidance of single survey instruments.

With respect to the critical area of disabilities, a number of studies published in the 1990s were reviewed including Arvonio et al. [4], Cesare et al. [5], Charisiou et al. [6], Christman and Branson [7], Gething [8], Hayes and Macan [9], Hebl and Kleck [10], Henry [11], Herold [12], Nordstrom et al. [13], Macan and Hayes [14], Marchioro and Bartels [15], Miceli [16], Reilly et al. [17], Wright and Multon [18]. The reviewers observed [3]:

> … mixed results for the influence of disabilities on applicant ratings. Applicant voluntary disclosure of non-apparent disabilities and acknowledgement of apparent disabilities may increase ratings of employability (p. 77).

And so research surrounding hiring continues, and as it applies to persons with disabilities it appears that the old axiom that "Hiring is the most invisible process in the world" [19] has assuredly given way to the reality that hiring is markedly more complex. Researchers are now studying multifaceted psychological mechanisms, decision-making, the effects of applicant and interviewer training, contextual variables inside and outside of the organization, and non-traditional (e.g., electronic) interview formats. Yet the volume of vocational rehabilitation studies specific to hiring appears to be decreasing. Most are still analogue studies which relate to employer attitudes, selection bias, the applicant's impairment status, or the attribution of the applicant's impairment (e.g. [20–22]).

The U.S. Equal Employment Opportunity Commission (EEOC) was established by the *Civil Rights Act of 1964, Title VII*, with a mission of eradicating discrimination in the workplace. The U.S. Equal Employment Opportunity Commission (EEOC) is charged with the enforcement of a number of civil rights laws dedicated in whole or in part to the elimination of workplace discrimination in America. These include Title VII of the Civil Rights Act; the Equal Pay Act of 1963; the Age Discrimination in Employment Act of 1967 (ADEA): the Rehabilitation Act of 1973, Sections 501 and 505; the Civil Rights Act of 1991; and Titles I and V of the Americans with Disabilities Act of 1990 (ADA).

The ADA requires, in brief, that all personnel actions must be unrelated to the existence of or consequence of disability. The National EEOC ADA Research Project (Project) maintains a database of 369,231 allegations of workplace discrimination under the ADA. These allegations represent 100% of the population of interest to the Project and do not include charges of retaliation or charges which are investigated by various state Fair Employment Practices Agencies. Allegations in the Project database may involve one of 41 distinct personnel issues. In the interest of parsimony, however, Project researchers have limited this investigation to the five most prevalent issues which collectively include 75.6% of all allegations. These issues, frequencies, and definitions are outlined in Table 1.

"Closure" refers to the resolution of an allegation after a complete investigation by the EEOC has been conducted. A Merit Resolution closure is a resolution which indicates the EEOC's conclusion that the allegation had merit; i.e., workplace discrimination did indeed occur. Merit Resolution closures favor the Charging Party; i.e., the individual who initiated an allegation of discrimination. A Non-Merit Resolution closure is a resolution which indicates that the EEOC did not find sufficient evidence of discrimination, or the complaint was closed on the basis of an administrative technicality. Non-Merit Resolution closures favor the Employer. Table 2 depicts the total range of closure statuses used in this study: The first four rows constitute Merit Resolution closures; the remaining rows constitute Non-Merit Resolution closures.

The goal of the present study is to answer the following research questions:

1. Is there a difference between the rate of Merit Resolution closures for as compared to the same rate for the comparison group consisting of the four other most prominent discrimination issues (Non-Hiring)?
2. If such a difference exists, what factors are associated with this difference including:
   a. Subcategories of Merit or Non-Merit Resolution?
   b. Charging Party characteristics such as age, gender, or broad category of impairment?
   c. Employer characteristics such as size of workforce, industry designation, or geographic location?

Table 1 Target and comparison issues and their definitions

Group	*N*	Definition
Target group		
Hiring	19,527	Failure or refusal by an employer to engage a person as an employee
Comparison group	259,680	
Discharge	119,039	Involuntary termination of employment statues on a permanent basis
Constructive discharge	8,869	Employee is forced to quit or resign because of the employer's discriminatory restrictions, constraints, or intolerable working conditions
Reasonable accommodation	65,624	Failure to provide reasonable accommodation to the known physical or mental limitations of a qualified individual with a disability
Disability harassment/ intimidation	33,654	Bothering, tormenting, troubling, ridiculing, or coercing a person because of disability. For example: (1) making, allowing, or condoning the use of jokes, epithets or graffiti; (2) application of different or harsher standards of performance of constant or excessive supervisions; (3) the assignment to more difficult, unpleasant, menial or hazardous jobs; (4) threats or verbal abuse; or (5) application of stricter disciplinary measures such as verbal warning, written reprimands, impositions or fines or temporary suspensions
Terms/conditions of employment	32,494	Denial or inequitable application of rules relating to general working conditions or the job environment and employment privileges which cannot be reduced to monetary value. Examples include: (1) assignment to unpleasant work stations or failure to provide adequate tools or supplies; (2) inequities in shift assignments or vacation preferences; or (3) restriction as to mode of dress or appearance

Table 2 Types of closure statuses and their definitions

Closure type	Definition	Merit?
Withdrawn w/ benefits by charging party (CP)	Withdrawn w/ benefits (e.g., after independent settlement, resolved through grievance procedure, or after Respondent unilaterally granted desired benefit to CP w/o formal "agreement"	Yes
Settled w/ benefits to CP	Settled w/ benefits, where EEOC was party to settlement	Yes
Successful conciliation	Successful conciliation. EEOC has determined discrimination occurred, and respondent has accepted resolution	Yes
Conciliation failure	Conciliation failure. EEOC has determined discrimination occurred, but respondent has not accepted resolution	Yes
No cause finding	Full EEOC investigation failed to support alleged violation(s)	No
Admin closure-process	Administrative closure due to processing problems; e.g., respondent out of business or cannot be located, file lost or cannot be reconstructed	No
Admin closure	Administrative closure due to respondent bankruptcy	No
	Administrative closure because CP cannot be located	No
	Administrative closure because CP non-responsive	No
	Administrative closure because CP uncooperative	No
	Administrative closure due to outcome of related litigation	No
	Administrative closure because CP failed to accept full relief	No
	Administrative closure because EEOC lacks jurisdiction; includes inability of CP to meet definitions, respondent <15 workers, etc.	No
	Administrative closure because CP withdraws w/o settlement or benefits. Reason unknown	No

Project Design and Methods

The EEOC raw data were transferred to the Project from the EEOC via zip disk. Data needed to answer the research questions were extracted, coded, refined, and formatted in Microsoft Access using the a standard extraction criteria [23]. The result was a study-specific dataset in which the underlying unit of measure is the frequency of allegations, a ratio level of measurement. The design includes a number of variables:

- Closure Status of the Allegations involving the target issue, Hiring, vs. the comparison group issues, an aggregation of Discharge and Constructive Discharge;

Reasonable Accommodation; Disability Harassment and Intimidation; and Terms and Conditions of Employment allegations as listed in Table 1. Target group issues are known as "Hiring" and the comparison group issues are known as "Non-Hiring."

- Types of Closure Status, as defined in Table 2, include 4 types of Merit Resolutions and 10 types of Non-Merit Resolutions. Each type describes a final EEOC determination as to whether or not discrimination actually occurred.
- All closure status indicators are nominal variables.

Data were analyzed to answer stated research questions. Analyses included descriptive statistics and non-parametric tests of proportion on both allegations and Merit Resolutions using MINITAB.

Results

The findings pertinent to the direct comparison of closure types are presented in Table 3. First, the overall proportion of Merit Resolutions is markedly higher for Hiring allegations than for Non-Hiring allegations (26% vs. 20.6%). This suggests that all other factors being equal, a Charging Party has a 26% greater likelihood of prevailing in his/her charge of discrimination when the issue in question is Hiring.

There exist four types of specific Merit Resolution closure codes. The first row suggests that Employers tend to "dig in" around Hiring in that fewer allegations are withdrawn with benefits by the Charging Parties (4.7% Hiring vs. 5.8% Non-Hiring). This suggests that an independent settlement is achieved less often when the personnel issue in question is Hiring. However, when the EEOC is involved in mediating a settlement, there is no discernable difference in proportions for this type of Resolution (8.7% Hiring vs. 8.6% Non-Hiring).

The higher overall Merit Resolution rate for Hiring is driven almost entirely by "for cause" or conciliation findings, whether the employer accepts the Resolution and proposed remedies for breach (successful conciliations: 5.4% Hiring to 2.1% Non-Hiring) or the Employer does not accept the Resolution (non-successful conciliations: 7.2% Hiring vs. 4% Non-Hiring). In the latter instance, the Charging Party is given a "right to sue letter" by the EEOC and may pursue the case in civil court. It is also possible that the EEOC may join the Charging Party as a partner in that litigation. This markedly high level of Employer defensiveness (unsuccessful conciliations) suggests that

Table 3 Closure status, hiring vs. non-hiring allegations

Closure status	Hiring (*N*)	Hiring prop	Non-hiring prop	Non-hiring (*N*)	Diff in prop	Z	Sig level	Cohen's d
Merit								
Merit resolution favors charging party								
Withdrawn w/ benefits	919	0.047	0.058	15,076	−0.011	−6.94*	0.000	−0.0417
Settled w/ mediation	1,699	0.087	0.087	22,466	0.000	0.24	0.813	0.0063
Successful conciliation	1,048	0.054	0.021	5,563	0.032	19.69*	0.000	0.1093
Unsuccessful conciliation	1,415	0.072	0.040	10,354	0.033	17.20*	0.000	0.0765
Subtotal merit	5,081	0.260	.206	53,459	0.054	−199.95	0.000	−0.1171
Non-merit								
Non-merit resolution favors employer								
No reasonable cause	11,507	0.589	0.675	175,407	−0.086	−23.69*	0.000	0.0225
Administrative resolution favors employer								
CP uncooperative	589	0.030	0.014	3,690	0.016	12.81*	0.000	0.1096
CP withdraws w/o settlement/ benefits	407	0.021	0.015	3,787	0.006	5.97*	0.000	0.0755
EEOC lacks jurisdiction	1,424	0.073	0.064	16,540	0.009	4.80*	0.000	0.0327
CP not located	93	0.005	0.003	728	0.002	3.89*	0.000	0.1380
CP denies relief	19	0.001	0.000	101	0.001	2.58*	0.010	0.2965
Litigation	7	0.000	0.001	251	−0.001	−4.09*	0.000	−0.2538
Processing problems	219	0.011	0.012	3,239	−0.001	−1.50	0.109	−0.0417
Employer bankrupt	9	0.001	0.001	132	0.000	−0.30	0.767	−0.0924
CP non-responsive	172	0.009	0.009	2,346	0.000	−0.33	0.745	−0.0229
Subtotal non-merit	14,446	0.740	0.794	206,221	−0.054	−408.25	0.000	−0.0861
Merit + non-merit	19,527	1.00	1.00	259,680	0.00	–	–	–

* Significant difference

many employers are confident in the legitimacy of their hiring decisions despite the findings of the EEOC.

Merit Resolution findings and Non-Merit Resolution findings are mutually exclusive in a proportional dataset such as Table 3. If Merit Resolution findings are 'up" for Hiring, it follows that Non-Merit Resolution findings would be "down" for Hiring. And so it is that the key type of Non-Merit Resolution finding, "no reasonable cause," is markedly lower in the Hiring group of allegations. Stated differently, Employers are far less likely to be vindicated for allegations derived from the Hiring category than for the comparison group of other primary discrimination issues (59% Merit Resolution vs. 68% Non-Merit Resolution).

There exist a handful of administrative/technical closure categories which show significant differences. The following Non-Merit Resolution categories favor the Employer and show significantly higher proportions in the Hiring group: Charging Parties that are uncooperative cannot be located, or do not accept relief; lack of EEOC jurisdiction; and precipitous withdrawal. In brief, several types of closures involving administrative technicalities are more common among allegations related to hiring, with the exception of referral to litigation.

A word about effect sizes is in order. In order to examine more closely the magnitude of the effect, Cohen's d is provided for all variables which in every instance is "small." This makes it difficult to say with certainty that these are appreciable real-world effects. However, extreme values in Cohen's d (high or low) are not unusual in population level data such as these, and small differences in proportion may have substantial impact. Each discriminatory event is an insidious violation of civil rights with serious psychological, financial, career, and integrity consequences to all parties concerned. A proportional difference of 26.0% vs. 20.6% translates to 1054 such events.

Furthermore, the most aggressive end users of these findings include agencies such as the National Network of ADA Centers and the EEOC itself. They are charged with reducing and someday eliminating workplace discrimination. When considered as an odds ratio, a Hiring Resolution is 1.26 times more likely than other issues to reflect actual (vs. perceived) discrimination. Is this a difference that can be ignored when substantial resources are being allocated for training, outreach, technical assistance, or investigation? The target group proportion is not a percentage out of 100%; it must be contrasted with the comparison group proportion to achieve meaning.

Conclusion

As with all issues involved in workplace discrimination, the Resolution of allegations tends to favor the Employer, especially when administrative closures are classified as Non-Merit Resolution closures, as occurs in the Project. (It is worth noting that the Merit Resolution rate under the ADA is similar to that for protected classes under the Civil Rights Act.) With respect to the first research question, the overall Merit Resolution rate for Hiring of 0.260 is 26% higher for Hiring than for other prevalent forms of discrimination (0.206). This magnitude of difference is both statistically and pratically significant. Desribed in terms of odds ratios, it indicates that a Hiring allegation is 1.26 times more likely to be meritorious than an allegation involving other prevalent discrimination issues. This also suggests that the hiring process is more transparent than historically believed. From the business perspective, employers are at greater risk for an unsuccessful outcome when the issue is Hiring.

With respect to the second research question involving subcategories of Merit Resolution and Non-Merit Resolution closures, employers are less likely to settle claims of Hiring discrimination without mediation. Employers are also less likely to accept the remedies recommended by the EEOC when hiring discrimination has been determined.

Naturally, employers favor Non-Merit Resolution closures. An examination of these subcategories reveals that employers are less likely to be involved with administrative closures (technicalities) involving Hiring, but more likely to prevail in these subcategories than when Non-Hiring issues are involved. Most important, the frequency of Employer vindications (no reasonable cause) is lower on Hiring issues by a margin of 0.589–0.675%, a substantial difference of 8.6%. Again, this demonstrates that employers who believe it is more difficult for charging parties to prove an allegation of hiring discrimination are very wrong.

To some extent, these findings provide comfort both to employers and to providers of training and technical assistance regarding the ADA. First, the level of complaint activity under the ADA related to Hiring is very modest, with less than 1,500 allegations processed by the EEOC each year. By any measure, all projections of a "flood of allegations" related to Hiring around the enactment of the ADA were, to be kind, hysterical. But note should be taken that hiring is far more transparent than it was decades ago, and when Hiring allegations are brought under the ADA they have a tendency to "stick" at a higher rate than for other employment actions. As graduation rates increase for high school and college students with disabilities, and as imminent worker shortages unfold, more applicants with disabilities will be forthcoming. Employers would do well to maintain a focus on abilities and qualifications, and give thorough consideration to reasonable accommodations when necessary to expedite worker-job fit.

Acknowledgments This study was supported through the VCU Coordination, Outreach and Research Center for the National Network of ADA Resource Centers, National Institute on Disability and Rehabilitation Research, U.S. Department of Education (PR# H133A060087). Appreciation is extended to Dr. Ronald Edwards, Office of Research, Information and Planning, U.S. Equal Employment Opportunity Commission. Database support was provided by Dr. Mehdi Mansouri.

References

1. Huffcutt AI, Conway M, Roth PL, Stone NJ. Identification and meta-analytic assessment of psychological constructs measured in employment interviews. J Appl Psychol. 2001;86(5):897–913.
2. McMahon BT, Hurley JE, Chan F, Rumrill P, Roessler, Richard. Drivers of hiring discrimination for Americans with disabilities. J Occup Rehab. 2008; in press.
3. Posthuma RA, Morgeson FP, Campion MA. Beyond employment interview validity: a comprehensive narrative review of recent research and trends over time. Personnel Psychol. 2002;55:1–81.
4. Arvonio L, Cull I, Marini I. Employment interview perceptions of persons with visible disabilities. Int J Rehabil Res. 1997;2(3): 413–24.
5. Cesare SJ, Tannenbaum RJ, Dalessio A. Interviewers' decisions related to applicant handicap type and rater empathy. Hum Perform.1990;3:157–71.
6. Charisiou J, Jackson HJ, Boyle GJ, Burgess PM, Minas IH, Joshua SD. Employment interview skills best predict employability of schizophrenic patients? Psychol Rep. 1989;64:683–94.
7. Christman LA, Branson DH. Influence of physical disability and dress of female job applicant on interviewers. Cloth Text Res J. 1990;8:51–7.
8. Gething L. Nurse practictioner's and preservice teachers' attitudes towards people with disabilities. Aust J Adv Nurs. 1992; 9(3):25–30.
9. Hayes TL, Macan TH. Comparison of the factors influencing interviewer Hiring decisions for applicants with and those without disabilities. J Bus Psychol. 1997;11:357–71.
10. Hebl MR, Kleck RE. Acknowledging one's stigma in the interview setting: strategy or liability? Paper presented at the Annual Conference of the Society for Industrial and Organizational Psychology, Atlanta, GA, April, 1999.
11. Henry DB. The employment interview and persons with disabilities: an investigation using the elaboration likelihood model of persuasion. Doctoral dissertation, University of Illinois-Chicago, 1993. Dissertation Abstracts International, 54, 3884.
12. Herold KP. The effects of an interviewee's self-disclosure and disability on selected perceptions and attitudes of interviewers. Doctoral dissertation, University of Southern Mississippi, 1995. Dissertation Abstracts International, 57, 28.
13. Nordstrom CR, Huffaker BJ, Williams KB. When physical disabilities are not liabilities: the role of applicant and interviewer characteristics on employment interview outcomes. J Appl Soc Psychol. 1998;28:283–306.
14. Macan TH, Hayes TL. Both sides of the employment interview interaction: perceptions of interviewers and applicants with disabilities. Rehabil Psychol. 1995;40:261–78.
15. Marchioro CA, Bartels LK. Perceptions of a job interviewee with a disability. Special issue: psychosocial perspectives on disability. J Soc Behav Pers. 1994;9(2):383–94.
16. Miceli NS. An investigation of bias toward persons with disabilities m employment selection decisions. Doctoral dissertation. University of Oklahoma, 1996. Dissertation Abstracts International, 57, 3580.
17. Reilly NP, Bocketti S, Maser S, Gregson S, Records M, Strickland C, et al. Perceptions of prior disabilities in structured selection interviews. Paper presented at the Annual Conference of the Society for Industrial and Organizational Psychology, New Orleans, LA, April, 2000.
18. Wright GE, Multon KD. Employer's perceptions of nonverbal communication in job interviews for persons with physical disabilities. J Vocat Behav. 1995;47:214–27.
19. Drehmer DE, Bordieri JE. Hiring decisions for disabled workers: the hidden bias. Rehabil Psychol. 1985;30:157–64.
20. Bordieri J, Drehmer D, Taricone P. Personnel selection bias for job applicants with cancer. J Appl Soc Psychol. 1990;20:244–53.
21. Gouvier WD, Steiner DD, Jackson WT, Schlater D, Rain J. Employment discrimination against handicapped job applicants: an analog study of the effects of neurological causation, visibility of handicap and public contact. Rehabil Psychol. 1991;36:121–9.
22. Gourvier WD, Sytsma-Jordan S, Mayville S. Patterns of discrimination in Hiring job applicants with disabilities: the role of disability type, job complexity, and public contact. Rehabil Psychol. 2005;48(3):175–81.
23. McMahon B. Workplace discrimination against Americans with disabilities. Richmond, VA: Virginia Commonwealth University, Rehabilitation Research and Training Center on Workplace Supports and Job Retention, 2006.