

Transcending Title I of the Americans with Disabilities Act: A Case Report on Sears, Roebuck and Co.

Author: Peter David Blanck

Source: Mental and Physical Disability Law Reporter, Mar–Apr 1996, Vol. 20, No. 2, pp. 278–286

Published by: American Bar Association

I. Introduction

More than any other law, Title I of the Americans with Disabilities Act of 1990 (ADA) has shaped public attitudes toward the employment of persons with disabilities. Title I of the ADA is the most comprehensive federal civil rights law to address employment discrimination against potentially millions of Americans. Its implementation remains the subject of intense public policy debate.

This article is part of a series examining the pre- and post-ADA Title I employment practices of Sears, Roebuck and Co. from 1978 to 1996. The article has three central goals:

1. To stimulate further discussion and debate of the issues that Sears and other companies face regarding ADA Title I implementation.
2. To provide data collected from 1978 to 1996 on the costs and benefits of workplace accommodations and on dispute avoidance and resolution practices that transcend minimal ADA Title I compliance.
3. To identify the broader implications of Sears employment-related experiences and its philosophy for future policy making in this area.

Studies at Sears and elsewhere have suggested five core implications for effective ADA Title I implementation, each capable of empirical analysis:

4. The impact of the ADA on American business is evolutionary, not revolutionary.
5. Universal design and access fulfill the objective of including persons with and without disabilities into productive workforce participation.
6. Efforts to educate management and the workforce about the ADA and the capabilities of persons with disabilities must be based on facts, not myths.
7. Starting from a base of ADA compliance, companies can look beyond mere compliance to transcendence, in ways that make strong economic sense.
8. Far from creating onerous legal burdens, the ADA can provide employers and employees a framework for effective dispute avoidance and resolution.

Sears employs among its 300,000-person workforce an estimated 20,000 persons with physical or mental disabilities, not all of which are ADA-protected. Although these numbers are not exactly proportionate to the estimated numbers of Americans with ADA-protected disabilities, they are representative of the scope of disabilities and related accommodations that enable productive, meaningful workforce participation.

In light of a growing concern — some argue a “backlash” — against ADA implementation to date, the five core areas identified above warrant study. In 1995, the House Committee on Economic and Educational Opportunities requested that the General Accounting Office evaluate the impact of Title I of the ADA on employers and persons with disabilities. The impetus for the congressional request was based, in large part, on anecdotal stories reported in the press and elsewhere about the costs and burdens associated with ADA Title I compliance. At the same time, some in Congress have sought to repeal the law; others are seeking to narrow its scope.

II. Emerging Findings

A. Workplace Accommodations at Sears from 1978 to 1996

Data on the cost of providing workplace accommodations to Sears employees with disabilities were collected for two periods: 1978–1992 (pre-ADA effective date) and 1993–1996 (post-effective date).

Post-ADA Period: 1993–1996

During the post-ADA period, almost all accommodations sampled at Sears (99 percent) required little or no cost:

- 72 percent required no cost
- 17 percent cost less than \$100
- 10 percent cost less than \$500
- 1 percent cost between \$500 and \$1,000

For the 71 accommodations studied during 1993–1996, the **total cost was \$3,209** and the **average cost per accommodation was \$45**.

Pre-ADA Period: 1978–1992

Prior to Title I's effective date, almost all of the 436 accommodations studied at Sears required little or no cost (69 percent required no cost; 28 percent cost less than \$1,000). The total cost of accommodations from 1978 to 1992 was \$53,000, with an average cost per accommodation of \$121. When removing accommodations involving advanced technology purchases (i.e., the 3 percent costing more than \$1,000), the average cost per accommodation is \$36 — consistent with the \$45 average cost from 1993 to 1996.

Accommodations by Impairment Type (1993–1996)

The distribution of Sears employees requesting and receiving workplace accommodations, by type of disability, breaks down as follows:

- Orthopedic impairments: 47% — average cost \$43
- Sensory impairments (primarily hearing and visual): 31% — average cost \$75
- Neurological impairments: 8% — average cost \$13
- Behavioral impairments: 7% — average cost \$0
- Internal/skin: 3%
- Unknown: 3% — average cost \$0
- Other: 1%

From a business planning perspective, the proportion of accommodations provided for employees with particular disabilities is consistent with the overall proportion of employees with similar disabilities in the Sears workforce. Neither cost alone nor severity of disability has determined Sears' business strategy toward the provision of workplace accommodations.

From an economic perspective, the direct costs to Sears associated with accommodations for any particular disability are low and do not deviate substantially from the overall average cost of \$45.

Benchmarking Against External Data

Sears' findings are consistent with other studies. The Job Accommodation Network (JAN) provides information on workplace accommodations at no cost to businesses, rehabilitation professionals, and people with disabilities. Key findings from JAN include:

- More than two-thirds of effective workplace accommodations implemented as a result of a JAN consultation cost less than \$500.
- The median cost of a JAN consultation accommodation is approximately \$200.
- Almost two-thirds of JAN-implemented accommodations result in savings to the company in excess of \$5,000.
- For every dollar invested in an effective accommodation, employers realized an average of \$50 in benefits.

A 1995 Harris Poll of more than 400 executives found:

9. More than three-quarters reported minimal or low increases in costs associated with workplace accommodations.
10. Three-quarters reported that the average cost of employing a person with a disability is not greater than employing a person without a disability.
11. The median cost for the provision of accommodations was \$233 per employee.
12. From 1986 to 1995, the proportion of companies providing workplace accommodations rose from 51 percent to 81 percent.

B. Avoiding and Resolving ADA Disputes

A second major area of study involves the way transcendence of minimal ADA compliance fosters corporate strategies that avoid litigation and create an environment of cooperation rather than confrontation in managing disability issues in the workplace.

As a component of the “Sears Ethics and Business Policy Assist Program,” a “help line” is available to employees for guidance on ADA-related policy. Inquiries are confidential, and advice and follow-up information is provided by trained personnel. The program reflects a commitment to ADA transcendence by fostering a collaborative approach to problem-solving and the provision of accommodations.

Informal Dispute Resolution (1994–1995)

Of 20 informal ADA disputes studied at Sears from 1993 to 1996, the distribution by impairment type was:

- Orthopedic impairments: 30%
- Sensory, respiratory, neurological, internal, and behavioral impairments: 10% each
- Unknown: 20%

Roughly 80 percent of the informal ADA inquiries sampled were resolved successfully, including through the provision of reasonable accommodations, the revision of corporate or store policies, and the development of training and awareness programs on Title I compliance.

Example: In one case, a job applicant on dialysis requested a waiver of the urinalysis portion of the company’s drug-testing policy. After informal discussion and review of the applicant’s job qualifications, the urinalysis requirement was waived and the applicant was hired.

Formal EEOC Complaints (1990–mid-1995)

From 1990 to mid-1995, 141 ADA Title I complaints were filed with the Equal Employment Opportunity Commission (EEOC) against Sears. Key findings:

- 43% of charges involved orthopedic impairments (compared to ~20% nationally)
- 15% involved behavioral impairments (compared to ~12% nationally)
- 10% involved sensory impairments; 9% internal; 4% neurological

Virtually all (98 percent) of the 138 formal charges studied were resolved without trial litigation: 12% settled, 9% withdrawn, 33% dismissed, 8% resulted in a right-to-sue letter, and 34% had a pending EEOC decision. Trial court litigation was pending in only 2% of cases.

Disability Occurrence in EEOC Filings

Looking at the 137 EEOC cases by when the disability occurred:

- 41% of employees evidenced a disability prior to employment at Sears
- 29% were injured on the job
- 18% were injured off the job
- 12% unknown

These trends suggest that the bulk of ADA Title I issues involve potentially qualified employees with pre-existing disabilities seeking the protections of the law. The findings do not support the critique that Title I claims reflect, in large part, issues that otherwise would be raised under traditional workers' compensation laws.

Settlement Costs

The average settlement cost to Sears across 18 EEOC cases was \$6,193. Settlements by disability type included:

- Orthopedic impairments (56% of settlements): average cost \$10,571 (compared to \$16,700 national average for back impairment cases)
- Behavioral impairments: 16%
- Cancer: 11%; Neurological: 11%; Sensory: 6%

As of December 1995, national trends showed more than 55,000 Title I complaints had been filed with the EEOC. The EEOC resolved over 36,000 charges under Title I in the four years since the law took effect, and proceeded to federal court in roughly 125 cases.

III. New Challenges and Emerging Questions

The ADA has fostered a dramatic shift in American public policy toward the equal employment of persons with disabilities. Yet studies differ in their conclusions about whether the ADA has played, or will play, a significant role in enhancing labor force participation of qualified persons with disabilities and in reducing dependence on government entitlement programs.

Several central themes are emerging:

First: Contrary to popular misconceptions, the ADA does not require employers to hire individuals with disabilities who are not qualified, or to hire qualified individuals with disabilities over equally qualified individuals without disabilities. Every manager interviewed at Sears understood Title I as an anti-discrimination law, not a preferential treatment law.

Second: Many of the central concepts in Title I (e.g., the nature of discrimination or the required provision of accommodations) are evolving through the operation of the law in practice and through court interpretation. In the absence of data to the contrary, it is premature to conclude that Title I implementation distorts the market value of American labor. This conclusion is not validated by Sears findings, which show:

- The costs of accommodating qualified workers is low and the relative economic, productivity, and safety-related benefits high.
- The costs of not accommodating and not retaining qualified workers is relatively high — the average administrative cost per employee replacement is \$1,800 to \$2,400.
- There is no evidence that ADA implementation has “distorted” the value of labor in the Sears workforce.
- There have been no “reverse-discrimination” cases at Sears or elsewhere. A 1995 Harris Poll found that 79% of surveyed executives believe the employment of people with disabilities is a boost to the economy, while only 2% believe it poses a “threat to take jobs” from people without disabilities.
- Virtually all Title I disputes studied at Sears have been resolved at a low cost without extensive trial litigation, keeping qualified employees at work.

Third: Future research is needed to identify the variables to be studied to achieve an understanding of the nature of an individual’s disability and its relation to employment opportunity and career advancement. Research questions include:

- What objective measures, in addition to employment rates and accommodation costs, are valid indicators of effective Title I implementation (e.g., quality of jobs attained, income levels, and job search rates)?
- How may substantial limitations change over time for individuals with different disabilities, and for qualified men and women, younger and older workers, and workers from different ethnic groups?
- How will structural labor market forces and an increasingly global economy affect ADA implementation strategies?

Fourth: Assumptions are emerging that will help guide future study so that employers, policymakers, courts, and others may more effectively evaluate ADA implementation. The study of disability policy requires interdisciplinary analysis, grounded in the fields of medicine, rehabilitation, psychology, economics, law, ergonomics, and others.

Fifth: Companies must continue to establish systems that objectively measure the costs and benefits of accommodating people with disabilities into their workforces. Large corporations such as Sears — or smaller companies through cooperatives or associations — increasingly require data collection systems that identify trends in Title I implementation to assist in business planning, dispute avoidance, and educational efforts.

Figure 10: Future Analysis of ADA Title I — Examples of Potential Study Areas

	Direct	Indirect
Costs	Accommodations (e.g., \$45 average in Sears study)	Staff time (e.g., human resources or in-house counsel time)

Benefits	Keeping qualified employees at work (e.g., 40 times more costly to end a work relationship with a qualified employee than to accommodate in Sears study)	Enhanced workplace design and safety (e.g., injury prevention programs or enhanced dispute resolution models)
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IV. Conclusion

Assessing Title I implementation is, of course, a monumental task. No law, even one as far-reaching as the ADA, can be the sole reason for social change. Policymakers, employers, employees, researchers, members of the disability community, and others must assess how Title I implementation and transcendence is to be defined for legal, business, and other purposes. These assessments will vary for employees with different disabilities and for businesses of different sizes and in different markets.

Much dialogue and study are needed to raise awareness and to foster ADA Title I transcendence. With more examples of corporate leadership, continued progress beyond minimal Title I compliance and toward ADA transcendence will be evident throughout the American workplace.

Appendix A: Workplace Accommodations at Sears

Sampled from January 1, 1993 – December 31, 1995

Note: The sampling of workplace accommodations was determined by the degree to which the disabilities presented were representative of those disabilities in the entire Sears workforce and the extent to which they were documented with specificity. The sampling technique reflects a conservative estimate of the direct costs of workplace accommodations.

ORTHOPEDIC IMPAIRMENTS	
Description of Accommodation	Cost and Action
General Mobility Impairments	
Difficulty walking distances — provided use of wheelchair to assist access entire facility	\$350 — wheelchair purchase
Difficulty walking distances — provided use of wheelchair to assist access entire facility	\$350 — wheelchair purchase
Difficulty walking/standing	\$0 — job modification with more sitting
Difficulty walking, muscle and tendon disorder	\$0 — monitor situation, no action
Wheelchair user	\$500 — railing restroom installed
Wheelchair user, limited range of motion and hand movements, need clarification information	\$0 — lower work space, wide pens, hand stapler, special sheet for payroll, task list
Associate on crutches, difficulty walking	\$0 — job modification: assist in retrieving merchandise, and no climbing ladders
Wheelchair user	\$0 — additional wheelchair donated to store, needs associate to push chair for breaks
Wheelchair user or crutches	\$0 — lower cash register so able to ring up sales
Problem with legs, difficulty standing	\$0 — short shifts, 5-hour maximum
Fibromyalgia — muscle swelling	\$0 — parking provided close to building
Congenital hip disorder, problem with walking	\$0 — job re-assignment as team supervisor, not required to lift
Wheelchair user	\$0 — work platform lowered
Average cost for general mobility impairment accommodations	\$92.31
Back/Hip Impairments	
Back problem/scoliosis	\$250 — high back ergonomic chair provided
Back injury	\$0 — permanent alternate job assignment
Permanent back injury	\$0 — job reassignment to sales job

Hip replacement	\$0 — reserved close parking space, flexible/modified hours
Average cost for back/hip impairment accommodations	\$62.50

Endnotes and References

Author affiliation: Peter David Blanck is a professor of law and of psychology at the University of Iowa, Iowa City, IA. He holds a Ph.D. from Harvard University and a J.D. from Stanford University, and is a member of the American Bar Association Commission on Mental and Physical Disability Law and the President’s Committee on Employment of People with Disabilities.

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