



Boosting Employment for People with Disabilities: Reforms Beyond the ADA

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According to a 2000 survey by the National Organization on Disability/Harris Poll, 67 percent of working-age people with disabilities would rather be employed than not.¹ This survey took place 10 years after the Americans with Disabilities Act (ADA) was enacted in 1990. The ADA's purpose is to prevent discrimination against people with disabilities so they can access “the same opportunities as everyone else to fully participate in public life.”² Congress enacted the ADA to increase the employment rate of Americans with disabilities.³ Now, more than 30 years after it was passed, there is little evidence that the ADA had much impact on that employment rate, and it may have initially reduced employment.⁴ Between 1990 and 2013, the employment rate for Americans with disabilities declined substantially.⁵ Then, between 2014 and 2023, the employment-to-population ratio for Americans with disabilities rose by more than 11 percentage points.⁶ As of 2023, however, only 37.1 percent of people with disabilities are employed compared with 75.0 percent of people without disabilities in the same age group.⁷

A closer look at the ADA's impact, how that impact is measured, and the concurrent effects of programs such as Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) point to the shortcomings of current disability policy and highlight new ways to increase the employment rate for people with disabilities.

The ADA's Impact on Employment

The ADA requires employers to “make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an ‘undue hardship’ on the operation of the employer’s business.”⁸ While accommodations make it easier and, in some cases, possible for people with disabilities to work and to remain employed, studies show that the perceived risk of expense can deter firms from hiring people with disabilities.

Accommodating workers with disabilities is usually not very costly and is often free.⁹ However, firms may experience uncertainty about accommodation costs. In one experimental study, Jennifer Shinall, a law professor specializing in employment and labor, demonstrates that because of this uncertainty, many employers are hesitant to hire someone with a disability, even though they would be willing to spend a considerable amount to provide accommodation for a worker they already employ.¹⁰

In another study, economists Christine Jolls and J. J. Prescott look at states that did and did not have a reasonable accommodation requirement before the ADA was enacted. They find that immediately following the enactment of the ADA, states that did not have accommodation laws experienced a decline in employment of people with disabilities relative to states that already had such a requirement.¹¹ This finding suggests that the accommodation requirement of the ADA likely contributed to an initial reduction in employment in states that did not require accommodation prior to its passage. However, Jolls and Prescott note that subsequent declines in employment did not appear to be causally linked to the ADA.

Studies also show that workers who receive accommodation are more likely to continue to work following the onset of a disability, implying that while the ADA's accommodations requirement might not increase the hiring of people with disabilities, it does positively affect the retention of employees who become disabled.¹² A study by Matthew Hill, Nicole Maestas, and Kathleen Mullen finds that in the two years following disability onset, workers who received accommodation were 40 percent more likely to continue to work than workers who did not.¹³

The ADA prohibits discrimination in the hiring and firing of people with disabilities, and while some studies show that this decreases the hiring of people with disabilities, other studies do not support that finding. In their studies, economists Daron Acemoglu and Joshua D. Angrist conclude that after the ADA was enacted, the employment of men and women ages 21 to 39 who qualify as having a disability declined more in mid-sized firms and in states with more ADA-related discrimination charges.¹⁴ However, economists Andrew Houtenville and Richard Burkhauser question Acemoglu and Angrist's results, noting that the decline in employment began in the mid-1980s and can be better explained by changes in SSDI and SSI eligibility rules.¹⁵ They also note an upward spike in employment of those with long-term disabilities in 1992, the year the ADA was implemented.¹⁶

Another study also provides evidence that laws attempting to help people with disabilities were associated with a decline in their employment.¹⁷ Using data that ends in 1995, Thomas DeLeire finds that beginning in 1990, the year the ADA was enacted, employment rates of men with disabilities decreased dramatically and continued to decrease until 1995.¹⁸ Employment rates declined in manufacturing, blue-collar, and managerial occupations and for those with and without college education.¹⁹ The employment rate of people with disabilities also fell relative to that of people without disabilities during that period.²⁰

The studies that find declining employment in response to the ADA suggest that some firms are reluctant to hire a person with a disability for fear of discrimination charges if the firm terminates this person. In contrast, economist Julie Hotchkiss finds no statistically significant decline in employment or labor force participation by people with disabilities following the enactment of state disability discrimination laws.²¹ She reaches this finding by looking at a subsample of states to estimate the effect of state laws similar to the ADA that were enacted between 1981 and 1991. Several other studies, such as one by Soojin Kim and Serena Rhee²² and another by Patrick Button, Philip Armour, and Simon Hollands,²³ did show a decline in transitions from employment to unemployment after the ADA, which implies that the ADA keeps people with disabilities in the workforce.

A more recent study by Patrick Button and Mashfiqur Khan suggests that stronger antidiscrimination provisions positively affect employment levels of people with disabilities.²⁴ The study looks at increases in the number of people who applied for and received SSDI in response to the 1983 reforms that raised the age of eligibility to begin collecting Social Security.²⁵ Among younger cohorts whose eligibility age for Social Security old-age benefits increased, a larger percentage applied for and received SSDI than earlier cohorts, but this effect was moderated by strong state antidiscrimination laws. In states that use a broader medical definition of disability than the ADA uses for identifying discrimination, there was a smaller increase in the number of people who applied for SSDI than in other states.²⁶ Likewise, the increase in the number of people who received SSDI was less in states where there are more robust antidiscrimination laws and larger settlements.²⁷

Some argue that the ADA would be more effective in increasing employment rates if it was more fully enforced and suggest that the Equal Employment Opportunity Commission (EEOC) should pursue more hiring discrimination cases.²⁸ Because hiring discrimination is difficult to identify or prove, some proponents of more enforcement advocate for sending testers—people who are members of the protected class, such as those with disabilities—to apply for jobs.²⁹ In the past, the EEOC has engaged testers to present resumes “precisely reflecting advertised qualifications.”³⁰ But in an appropriations bill approved in 2015, Congress specifically prohibited the EEOC from using federal funds to pay for using false applicants to determine whether to proceed with a discrimination investigation.³¹

The Difficulty of Measuring the ADA’s Impact on Employment

One weakness with studies that show a post-ADA employment drop for people with disabilities is how they measure disability, which may be endogenous to policy changes. In other words, since a person is counted as having a disability if they self-report having a “health condition limiting the kind and amount of work” they can do, those policy changes that enhance some people’s ability to work could also change their disability status.³² If firms provide accommodations in response to the ADA that make it easier for people with disabilities to work, fewer employed individuals may report having a work-limiting condition.³³ This could skew results, making it seem as though a higher proportion of people with disabilities are outside the labor force.

A different kind of policy change has led to another measurement flaw. In a study that explores the supply-and-demand side of the labor market, Hotchkiss provides data showing that the rise in the number of people with disabilities who are not in the labor force is largely owing to the reclassification of unemployed people as having a disability.³⁴ Following welfare reform in the 1990s, many welfare recipients applied for disability status. States that cut general assistance benefits experienced an above-average rise in applications for SSI benefits.³⁵ States save money if some of those receiving general assistance or Temporary Assistance for Needy Families (TANF), which is paid for at least partially out of state budgets, can instead qualify for disability benefits, which are funded by the federal government.³⁶ The effect of changes in incentives to apply for SSDI and SSI may explain some of the observed reduction in employment of people with disabilities following the enactment of the ADA.

Considering the evidence discussed above, the most that can be said is that the ADA has had little impact on employment for people with disabilities and may, in fact, have reduced employment rates in its early years in states that did not already have accommodation laws.

Other Approaches to Increasing Employment Rates Among People with Disabilities

The number of individuals receiving SSDI and SSI has grown substantially since 1970.³⁷ Growth in the percentage of the population receiving these benefits between 1984 and 2004 can be attributed largely to increases in the value of benefits relative to the earnings of low-income workers, less strict eligibility criteria that make it easier for those with some kinds of disabilities to qualify for benefits, and, to a lesser extent, need caused by economic recessions.³⁸ At least some of the observed employment reductions, which some have blamed on the ADA, are likely the result of changes in these safety-net programs that reduce incentives to work full time. Below are recommendations for changes to SSDI and SSI that might increase the employment rate of people with disabilities.

1. Offering partial disability payments

Many people who apply for disability benefits and stop working have work capacity that can be supported. Nicole Maestas, a health economist, summarizes the empirical literature on the residual work capacity of SSDI recipients.³⁹ One study finds that among applicants on the margin of qualifying for SSDI (applicants who qualify for and receive benefits after being rejected and reapplying), the rate of employment would have been 28 percentage points higher if they had not received SSDI.⁴⁰ Another study finds that the employment rate of marginal applicants would have been 48 percentage points higher had they not received SSDI benefits.⁴¹

People with disabilities can still qualify for full SSDI or SSI benefits while working, as long as their income does not exceed the Substantial Gainful Activity (SGA) level. When someone who receives SSDI benefits earns an income that exceeds the SGA level for more than nine months, they lose

eligibility for these benefits. SSI benefits phase out at the rate of one dollar for every two dollars of earned income.⁴² This creates barriers to working more hours.

One way to increase work incentives would be to reform SSI and SSDI so each program gives partial disability payments to those who retain some ability to work. The more a person's ability to work is reduced because of their disability, the larger their disability payment would be. The disability benefit would be proportional to a disability rating measuring how much an employee's work capacity has declined since the onset of their disability. For those with residual earnings capacity greater than the SGA floor, the disability rating would be calculated as follows:⁴³

$$([1 - \text{residual earnings capacity} \div \text{pre-disability earnings}] \times 100) \text{ percent.}$$

The government could set a ceiling for pre-disability earnings so that for those with pre-disability earnings above the ceiling, the ceiling would be substituted for pre-disability earnings in the formula. Anyone with post-disability earnings capacity greater than the ceiling would be ineligible for disability benefits. Anyone with residual earnings capacity below the SGA floor would get the full disability benefit.

Estimating residual earnings capacity is central to the process that the Social Security Administration (SSA) uses in deciding whether a person qualifies for benefits. Economist Nicole Maestas explains that part of this process includes assessing whether, if an applicant is no longer capable of performing a "vocationally relevant" job at which they worked in the past, their skills are transferable to other occupations that fall within the applicants' functional capacity.⁴⁴ Maestas says that although the existing medical-vocational guidelines used by the SSA to determine what other jobs an applicant can perform may need to be updated, an estimate of residual earnings capacity could be based on the occupations a person is capable of performing "with only a limited amount of on-the-job retraining" depending on strength, education and cognitive abilities, work experience, and age. She further argues that to estimate residual earnings capacity, the United States could take an approach similar to the one used in the Netherlands, where a physician assesses an applicant's functional capacity by having them take a survey and then comparing their assessed functional capacity with the functional capacity required by various occupations to determine a list of feasible occupations. The feasible occupations are then ranked by earnings, and the applicant's residual earnings capacity is estimated as the average earnings of the second-ranked occupation.

With a system of partial disability benefits, the question arises about whether someone who is receiving partial benefits and has difficulty finding a job should be eligible for full benefits while unemployed. A person with residual work capacity would have more incentive to work if they received unemployment compensation to supplement their partial disability benefit while they are unemployed and actively looking for work. Implementing a partial benefits system may require some pilot testing to ensure the SSA does not overestimate earnings capacity and that those who

are granted only partial benefits have a high probability of being able to find a job that pays as much as estimated.

One important advantage to this plan is that people could apply for and receive a partial disability rating while still working, thereby preserving their attachment to the labor force.⁴⁵ The biggest drawback of a partial benefits system is the possibility that disability expenditures could increase if people with disabilities who are currently employed apply for partial disability benefits.⁴⁶

2. Improving the timing of employment support services

Another reform to SSDI and SSI that would potentially increase the employment rate for people with disabilities would be to make vocational rehabilitation and other employment support services available to applicants for disability benefits. In the current model, the government offers employment services to SSDI or SSI recipients only, but not to applicants.⁴⁷ The benefits application process takes at least several months, and for those who are denied benefits, the appeals process may take several years. When individuals are out of the workforce, they may face challenges maintaining skills and employment networks. This is often the case for those who apply for and are denied benefits.⁴⁸ By providing employment services support to people *before* their application for disability benefits is processed, the government may keep some people from losing their existing jobs owing to their disability, while equipping others with the ability to find new jobs before their skills deteriorate from extended unemployment.

3. Rating employers' contributions to SSDI

Another idea for reforming disability policy would be for the government to experience rate employers' contributions to SSDI in a way that is similar to workers' compensation and unemployment insurance, an approach that seems to have reduced disability rolls in the Netherlands.⁴⁹ In contrast to the current payroll tax rate, which is the same for all employers, an experience-rated payroll tax rate would vary with the share of their workers who apply and qualify for SSDI. This would give firms an incentive to provide accommodation and rehabilitation instead of "assisting a worker onto the SSDI program following a health shock."⁵⁰ The problem with experience rating is that it makes it more costly for firms if more of their workers qualify for disability benefits and may motivate firms to "avoid hiring workers with disabilities or those who might plausibly become disabled."⁵¹

Conclusion

When the ADA was enacted, proponents hoped that it would substantially increase the employment and earnings of people with disabilities. But the ADA has not had much impact on the percentage of people with disabilities who are employed and might have reduced their employment in the first few years after it was enacted in states that did not already have laws requiring firms

to provide accommodations for people with disabilities. The employment rate of people with disabilities is still much lower than that of people without disabilities. By rethinking safety-net programs and providing vocational rehabilitation immediately following the onset of a work-limiting disability, policymakers can make progress in closing the employment gap.

About the Author

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Notes

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