

History and Overview of the Americans with Disabilities Act

Introduction

The Americans with Disabilities Act (ADA) of 1990 is a culmination of nearly half a century of advocacy on behalf of the approximately 53.9 million individuals with disabilities. Beginning in the 1950s, veterans of the world wars and other activists fought to ensure that people living with disabilities – many who were heroes of the wars – were afforded the same opportunities as those without disabilities (North Carolina State University, 1997). This effort was the barrier-free movement and from its beginning grew legislation protecting the rights of individuals with disabilities.

The first significant federal legislation passed was the Architectural Barriers Act of 1968, which required all buildings designed, constructed, altered, or leased with federal funds to be made accessible. This was followed by the Rehabilitation Act of 1973 prohibiting discrimination against individuals with disabilities in federal agencies, public universities, federal contractors, and any other institution or activity receiving federal money. In 1975 The Education for Handicapped Children Act, now called the Individuals with Disabilities Education Act (IDEA) ensured a free, appropriate education for children with disabilities (North Carolina State University, 1997).

Proponents of the ADA

A major proponent of the ADA was the National Council on the Handicapped, an independent federal agency appointed by Ronald Reagan. It was this organization that penned the first draft of the bill. Another strong proponent, the leader of the disability community, the contact person for Congressional questions and the glue that held together the coalition of ADA advocates, was Pat Wright of the Disability Rights

Education and Defense Fund (DREDF). Other supporters included the American Hotel and Motel Association, the President's Committee on Employment of People with Disabilities, the Coalition for Citizens with Disabilities (made up of almost 100 organizations that provide services to people with disabilities), Ralph Nader's Disability Rights Center and the Leadership Conference on Civil Rights led by Ralph Neas. Another vocal group was AIDS rights activists. Passage of the ADA was crucial to this group as it gave legal leverage against discrimination to people living with HIV and AIDS.

Unlike many bills that pass through Capitol Hill, the Americans with Disabilities Act had strong bi-partisan support. The original Senate sponsors of the bill in 1988 were Lowell Weicker (R-Connecticut) and the House Democratic Whip Tony Coelho (D-California), and after they left Congress, Senator Tom Harkin (D-Iowa) and Representative Steny Hoyer (D-Maryland) stepped in as the sponsors. The bill had 58 Senate co-sponsors and 220 sponsors in the House (Mandel, 1989). When Senate Labor Committee Chair Ted Kennedy agreed to hold down costs per a request from George H. W. Bush, passage of the bill was, largely, a foregone conclusion.

Opponents of the ADA

Although, the bill enjoyed much bi-partisan support, not everyone backed the proposed legislation. Fearing huge hits to their bottom line due to lawsuits and the cost of compliance, several business groups opposed the legislation. Among the most vocal groups was the transit industry and food service organizations that feared a consumer backlash if forced to hire people with AIDS.

Also opposing the bill were the National Federation of Independent Business, the National Restaurant Association, the International Mass Retail Association, the American Bus Association, the National Tour Association and the United Bus Owners of America. The National Association of Retail Drugstores and National Association of Chain Drug Stores lobbied against illegal drug users and alcohol abusers being covered under the act. However, most opposition was surprisingly low key, as no one wanted to be labeled “anti-handicap.” In fact, many organizations opposing the bill took the position that the broad idea was sound but needed some critical changes.

Outside of the business arena, opposition included the Free Congress Foundation, a social and economically conservative think tank. The Employee Relations Law Journal wrote a naysay article highlighting the inadequacies of the proposed act (Lindsay, 1989) and Secretary of Transportation Samuel Skinner is reported to have gone contrary to the White House and opposed the ADA until the last minute (Johnson, 1989). Senator Orrin Hatch led a failed effort to add an amendment that would provide an annual refundable tax credit up to \$5,000 for small businesses to help pay for costs incurred in complying with the ADA (Conlan, 1989).

As the bill evolved other groups expressed concern as to how the law would affect them. The following passage is an excerpt from a white paper written by Jane West of the Disability Rights Education and Defense Fund for a 2000 International Disability Law and Policy Symposium. It demonstrates the extent of the concern.

There was opposition from multiple other sectors. The motion picture industry was concerned that it would have to caption all films; the entertainment industry did not want interpreters on stage with performers; the religious community stated that they

should not be covered by the bill at all, arguing separation of church and state. Increasingly narrow issues were raised. Owners of sports teams were concerned that they would not be able to expel drug users from their teams. Employers didn't want to be told that they had to hire certain applicants or that they could not fire certain employees. People who were blind did not want to be forced to accept an accommodation. Businesses did not want people with mental illness covered by the bill. Smokers raised the issue of whether or not smoking could be considered a disability.

Legislative Process

Between September 1988 and June 1989, The United States Senate Committee on Labor and Human Resources held hearings and determined there was a clear need to establish federal legislation to prohibit discrimination based on disability (Harrison & Gilbert, 1992). Dozens of individuals with disabilities testified and painted a picture of frustration, discrimination and dependence.

Among some of the most poignant testimony, Judith Heumann of the World Institute on Disability described how, as a five-year-old, she was refused admission to school because the principal told her she was a fire hazard (Harrison & Gilbert, 1992). In other testimony, advocates for the ADA described their vision for the future. Perry Tillman, a Vietnam veteran testified that: "I did my job when I was called on by my country. Now it is your job and the job of everyone in Congress to make sure that when I lost the use of my legs I didn't lose my ability to achieve my dreams" (Harrison & Gilbert, 1992).

The culmination of these hearings is stated in the findings and purpose statement of the ADA (1990) and paraphrased below. It exemplifies the profound impact the disability rights groups had on American legislators.

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) individuals with disabilities have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination,

(6) people with disabilities occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities have been discriminated against based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic selfsufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

Both the Senate and the House passed the bill and on July 26, 1990, President George H. W. Bush signed into law the Americans with Disabilities Act. In a statement upon signing the act he said, "The Americans with Disabilities Act presents us all with an historic opportunity. It signals the end to the unjustified segregation and exclusion of persons with disabilities from the mainstream of American life" (Harrison & Gilbert, 1992).

Enforcement

The ADA protects individuals in the areas of employment, transportation, public assistance, telecommunications and physical access (Americans With Disabilities Act, 1990). Because the ADA is all-encompassing, many federal agencies have ADA responsibilities:

- U.S. Department of Justice – file lawsuits in federal court to enforce the ADA – ADA clearinghouse
- Equal Employment Opportunity Commission (EEOC) – employment
- Department of Transportation (DOT) – public transportation

- Federal Communications Commission (FCC) – telephone relay service
- Access Board – accessible design guidelines
- Education Department (ED) – education
- Health and Human Services (HHS) – healthcare
- Department of Labor (DOL) – labor
- Housing and Urban Development (HUD) – housing
- Department of the Interior (DOI) – parks and recreation
- United States Department of Agriculture (USDA) – agriculture

(United States Department of Justice, 2002)

Equal Employment Opportunity Commission (EEOC)

The EEOC coordinates all federal equal employment regulations and policies and interprets employment discrimination laws. It was established by Title VII of the Civil Rights Act of 1964 and began operating on July 2, 1965. The EEOC enforces the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Equal Pay Act of 1963, section 501 and 505 of the Rehabilitation Act, Titles I and V of the ADA and the Civil Rights Act of 1991 (United States Equal Employment Opportunity Commission, 2002a).

Budget and Staffing

The EEOC has five Commissioners and a General Consul appointed by the President of the United States and confirmed by the Senate (United States Equal Employment Opportunity Commission, 2002a). The EEOC's budget for fiscal year 2002 is \$310 million and they employ 2,704 staff members (United States Equal Employment Opportunity Commission, 2002b).

Enforcement

If an individual feels he or she has been discriminated against the individual files an administrative charge with the EEOC. There are several steps involved after a charge is filed:

After investigating the charge, the EEOC determines if there is "reasonable cause" to believe discrimination has occurred. If "reasonable cause" is found, the EEOC attempts to conciliate the charge by reaching a voluntary resolution between the charging party and the respondent. If conciliation is not successful, the Commission may bring suit in federal court. As part of the administrative process, the EEOC may also issue a Right-to-Sue-Notice to the charging party, allowing the charging party to file an individual action in court without the Agency's involvement.

(United States Equal Employment Opportunity Commission, 2002c).

Watchdog Groups

There are numerous groups that concern themselves with the civil rights of individuals with disabilities and monitor what is being done for them. One organization is the Disability Rights Commission (DRC). The DRC is an independent body set up by the Government to fight discrimination and promote equal opportunities. In addition, there are literally hundreds of others organizations monitoring the ADA from the American Civil Liberties Union to the Arc of the United States with hundreds of chapters all over the nation.

Conclusion

Sixteen years after the enactment of the ADA there are perhaps more questions than ever. The Act, as pointed out by its detractors, is broadly written with little definition. Interpretation of the law has been left, largely, to the courts and, as has been seen recently, that does not always bode a happy outcome for people with disabilities. Even the U.S. Supreme Court has, in the last two years, severely criticized the EEOC for its liberal interpretation of the law. The criticism does not seem to stymie the EEOC, however. In fact, if anything, they seem to have taken the Supreme Court admonition as a personal challenge to work toward expanding the protections of the ADA to even more people. According to a high-ranking attorney with the EEOC, "This is a marathon, and there are ups and downs...but I'm telling you we're not giving up." (Crawford, 1999).

References

- Americans With Disabilities Act of 1990, 42 U. S. C. A. § 12101 et seq. (West 1993).
- Barrett, J. (1989). Stores seek changes in disabilities bill. Daily News Record, 19 (201), 9.
- Conlan, M. F. (1989). House considers bill banning discrimination against handicapped. Drug Topics, 133 (20), 62.
- Crawford, D. (1999). ADA isn't disabled, says EEOC official. Business First-Columbus, 15 (48), 2.
- EEOC numbers show ADA claims on the rise (2002, May). Disability Leave & Absence Reporter, 1.
- Harrison, M., & Gilbert, S. (1992). The Americans with Disabilities Act handbook. Beverly Hills, California: Excellent Books.
- Johnson, M. (1989). Enabling act. The Nation, 249 (13), 446.
- Lindsay, R. A. (1989). Discrimination against the disabled: the impact of the new federal legislation. Employee Relations Law Journal, 15 (3), 333-345.
- Mandel, S. (1989). Disabling America. National Review, 41 (18), 23.
- National Council on Disability (1997). Equality of opportunity: The making of the Americans with Disabilities Act. Retrieved November 2, 2002 from <http://www.empowermentzone.com/history.txt>.
- North Carolina State University, Center for Universal Design (1997). History of universal design. Retrieved November 10, 2002, from http://www.design.ncsu.edu/cud/univ_design/udhistory.htm.

United States Department of Justice (2002). ADA homepage. Retrieved November 16, 2002 from www.usdoj.gov/crt/ada/adahom1.htm.

United States Department of Transportation (1997). Disability rights movement timeline. Retrieved November 6, 2002 from <http://www.fta.dot.gov/ada/time.html>.

United States Equal Employment Opportunity Commission (2002a). Statutory authority. Retrieved November 15, 2002, from <http://www.eeoc.gov/statauth.html>.

United States Equal Employment Opportunity Commission (2002b). Budget and staffing. Retrieved November 15, 2002, from <http://www.eeoc.gov/budget.html>.

United States Equal Employment Opportunity Commission (2002c). EEOC enforcement activities. Retrieved November 15, 2002, from <http://www.eeoc.gov/enforce.html>.

West, J. (2000). When to hold 'em and when to fold 'em: Lessons learned from enacting the Americans with Disabilities Act. Retrieved November 1, 2002 from <http://www.dredf.org/symposium/patwright.html>.