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Did The Americans With Disabilities Act Hurt Some People With Disabilities?

On the ADA's recent 20th anniversary some commentators argued that it has kept disabled people out of the workplace. But is that true?

by [Ben Adler](#) August 05, 2010



Mark J. Terrill / AP

People in wheelchairs form the letters A-D-A in commemoration of the 20th anniversary of the passing of the Americans With Disabilities Act, in front of Dodger Stadium, Sunday, July 25, 2010, in Los Angeles.

The Americans With Disabilities Act, passed by a Democratic Congress with support from Republican Senate leader Bob Dole and signed by President George H.W. Bush, is widely regarded as a major bipartisan achievement, in the same rarefied category of near-universally admired legislation such as the Civil Rights Act of 1964. In the 2008 presidential campaign, Barack Obama and John McCain both proclaimed their support for the continuing enforcement of the ADA, which gives civil-rights protections to people with disabilities and guarantees equal opportunity for individuals with disabilities in places of public accommodation and government services.

But did the law, which has touched nearly every American's life—more than 50 million Americans have disabilities, and if you've ever pushed a stroller through a curb cut or used a subway elevator you owe the ADA a thank-you note—actually do more harm than good? That's

the radical proposition advanced by some conservative and libertarian commentators in the wake of the ADA's 20th anniversary last week.

Kentucky Republican Senate nominee Rand Paul came out [against the ADA](#) earlier this year on the grounds that requiring business owners to accommodate people with disabilities is an unfair burden to place on them. This view, much like the [reservations Paul expressed](#) about the Civil Rights Act, represents a fairly extreme form of libertarian conservatism that would be unlikely to appeal to moderate voters.

But what if the ADA actually was bad for people with disabilities? Surely then no one would support it except trial lawyers hell-bent on finding grist for lawsuits. With that in mind, commentators with views similar to Paul's [attack the ADA](#) on both familiar antigovernment objections and the counterintuitive claim that people with disabilities have been pushed even further out of the workplace by it because employers are reluctant to open themselves—by hiring people with disabilities—to lawsuits or expensive legal requirements under the ADA. Walter Olson of the libertarian Cato Institute distilled the employment argument into [a blog post](#) referencing the startling fact that the rate of labor-force participation among people with disabilities has not improved since the law's enactment. (Currently about 60 percent of Americans with disabilities are unemployed.) *The New York Times's* Ross Douthat [argued](#) that Olson may be right and the ADA criticism should not be dismissed.

So, did the ADA do more harm than good? Not according to disability-rights leaders and experts, who consider the ADA an enormous success. But while they are unanimous in their view that the ADA has opened up numerous possibilities for the disabled and has dramatically changed our culture for the better, they have different views on the employment question.

“Because of the ADA,” according to Andy Imparato of the American Association of People with Disabilities (AAPD), “the built environment, the transportation, and telecommunications infrastructure are all better. People are able to stay in their homes [rather than being institutionalized] longer. We as a society expect more for people with disabilities. Disability is now a positive differentiator. You can't legislate disability identity and pride, but the ADA, and civil-rights movement around it, has taught young people with disabilities to keep their expectations high.”

“The ADA has been an enormous and singular success in resetting what our expectations and attitudes are,” concurs Jonathan Young, chair of the National Council on Disability.

And there is also unanimity in the disability-rights community that the costs to businesses cannot be shown to have suppressed employment among the disabled.

“When the ADA was enacted, there were all these stories of how hard it would be for firms to comply with it,” recalls Harold Pollack, a social policy expert at the University of Chicago. “They turned out to be greatly exaggerated.”

“We're in a place where we're relying on anecdotal evidence,” says Young. “There's no data to support [the supposed connection].”

“The fact that employment numbers for people with disabilities have been flat for 20 years is a problem, but not with the ADA,” says Imparato. “There are lots of reasons people with disabilities are not working.”

According to Imparato, a well-intentioned law that is partially responsible for the low employment rate is the Social Security provision for people with disabilities signed by President Dwight Eisenhower in 1956. That definition of disability, which has never been updated, is a person who suffers from “inability to engage in substantial gainful activity.”

“You shouldn’t require an 18-year-old to swear he can’t work and then retire for life,” says Imparato. “Instead of saying ‘I can’t work,’ you could say ‘I experience significant barriers to work,’ and you could specify what they are—transportation and so on—and then develop a plan to address the barriers.”

Likewise, Young notes that access to Medicaid, which is how many people with disabilities obtain health care, requires you to certify that you are unable to work. Young also points out that because many people associate disability with an inability to work, the workforce participation numbers may be a self-fulfilling prophecy. “People have adopted stigmatized notions of disabled people as unable to work,” explains Young. “If I’m not working I might be more likely to self-identify as disabled. If I have a job I may not say that.”

It’s also worth remembering that people with disabilities are a heterogeneous group, including some people with severe intellectual disabilities, for instance, for whom employment is not their primary concern.

Nonetheless, some experts are willing to concede that there may be a built-in disincentive to hire people with disabilities. The ADA bans discrimination in hiring practices, but it is much harder to prove that a given person wasn’t hired against all other candidates because of discrimination on the basis of disability. Once someone has been hired and worked somewhere, though, it is easier for the person to gather evidence of mistreatment or wrongful termination.

Antidiscrimination law faces the same problem in other domains,” says Pollack. “It’s hard to know why a firm didn’t hire me. But if a firm hires me, I work there for five years and then they let me go, I have a lot more info for a wrongful-termination suit. Critics are correct that this is an inherent challenge in antidiscrimination law: some violations are easier to punish than others. That doesn’t mean the ADA was misguided, just that it might need to be fine-tuned.”

In September, the ADA’s original sponsor, Sen. Tom Harkin (D-Iowa), will convene a summit on employment for the disabled, modeled on Obama’s various issue summits such as the health-care and economic summits from last year, with all the stakeholders represented.

Young says that, public policy changes aside, there are people with disabilities who could be integrated into the workforce today if employers just take the positive first step. “Many people with disabilities could be hired if people want to do it,” says Young. “Part of it is leadership from the top. There are corporations that make a commitment and it works.”