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PREVIEW

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**Compliance with the 1990 Americans with Disabilities Act
(ADA): The effects of test administration accommodations on
the learning-disabled and the nondisabled**

Durr, Margaret Louise, Ph.D.

The University of Nebraska - Lincoln, 1993

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PREVIEW

COMPLIANCE WITH THE 1990 AMERICANS WITH DISABILITIES ACT
(ADA): THE EFFECTS OF TEST ADMINISTRATION ACCOMMODATIONS ON
THE LEARNING DISABLED AND THE NONDISABLED

by

Margaret L. Durr

A DISSERTATION

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The Graduate College at the University of Nebraska
in Partial Fulfillment of Requirements
For the Degree of Doctor of Philosophy

Major: Psychology

Under the Supervision of Professors Lisa Leahy Scherer
and Richard L. Wikoff
Lincoln, Nebraska

May, 1993

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Compliance With the 1990 Americans With Disabilities Act (ADA): The Effects

of Test Administration Accommodations on the Learning Disabled .
and the Nondisabled

BY

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COMPLIANCE WITH THE 1990 AMERICANS WITH DISABILITIES ACT
(ADA): THE EFFECTS OF TEST ADMINISTRATION ACCOMMODATIONS ON
THE LEARNING DISABLED AND THE NONDISABLED

Margaret L. Durr, Ph.D.

University of Nebraska, 1993

Advisors: Lisa Leahy Scherer and Richard L. Wikoff

With the passage of the Americans with Disabilities Act of 1990, employers are seeking methods to properly comply with the legal tenets of this law. One potential area of research for Industrial/Organizational Psychologists concerns the effect of different test administration accommodations on the employment test scores of disabled applicants. In the present study, 57 learning disabled (LD) and 59 nondisabled (ND) subjects were tested to identify the effect of test administration time accommodations (extended time and unlimited time) on the scores on a commonly used employment screening device, the Wonderlic Personnel Test (WPT). The study also examined which test administration time limits best predicted performance on three clerical job tasks.

The results indicated that the ND outperformed the LD under the 12-minute, the 18-minute, and the untimed conditions. Untimed test scores exceeded timed test scores for both groups. The ND also outperformed the LD on the first clerical task, but there were no significant differences in their average performance for the second and third tasks.

A regression analysis was utilized to determine whether task performance was related to the group (LD vs. ND), the test score (ND 12-minute and LD untimed) or the interaction between the group and the test score. The analysis revealed there was a significant relationship to test score, a marginal difference for the group and no significant interaction. These results indicate that the WPT is equally predictive of task performance when employing standard administration for the ND and unlimited time for the LD. Due to the significant difference in the group scores, caution must be used when setting cut-off scores so that the LD are not selected out of the applicant pool. The most appropriate accommodation suggested by these findings is that unlimited time should be provided for LD taking the WPT while maintaining a standard administration time limit for the ND.

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PREVIEW

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PREVIEW

INTRODUCTION

Compliance With the 1990 Americans With Disabilities Act (ADA): The Effects of Test Administration Accommodations on the Learning Disabled and the Nondisabled

The passage of the Americans with Disabilities Act of 1990, henceforth referred to as ADA, has presented many challenges to American employers attempting to comply with the legislation. Although the scope of the ADA extends far beyond the employment context, the theory and research evidenced from Industrial/Organizational (I/O) psychology has the most obvious applications to the selection, training, placement and retention of disabled employees. Despite the practical utility of the existing knowledge in I/O psychology, many questions remain unanswered and are in need of empirical study. The research avenue pursued in this investigation is employment testing. Given the variety of disabilities covered in the ADA and the number of employment tests available, much research is needed to determine which particular tests are both valid and fair predictors of the performance of people with particular disabilities. Prior to presenting the specific focus of this study, the conditions leading to the passage of the ADA will be presented.

Conditions Leading to the Passage of the ADA

The ADA has been called by sponsors the "Emancipation Proclamation for those with disabilities" (Gamble, 1990,

p. 5). Prior to the passage of the ADA of 1990, sponsors of the bill argued that Americans with disabilities were not adequately covered by existing statutes. The Rehabilitation Act of 1973 prohibited discrimination against the disabled employed in federal jobs and those participating in federally funded programs or activities. The 1988 Fair Housing Act also forbade housing bias against the disabled. However, the most all encompassing antidiscrimination legislation, the Civil Rights Act of 1964, did not provide Americans with disabilities protected class status. The Civil Rights Act of 1964 specified only five protected classes: race, color, religion, sex and national origin. It barred discrimination against members of these five classes in private-sector employment, public accommodations, and in the provision of services by state and local government (Hook, 1989). Unfortunately, individuals experiencing discrimination due to a disability did not have legal recourse under this major piece of antidiscrimination legislation (Bruening, Theisen, & Stevenson, 1991). According to congressional ADA bill sponsors, this gap in legislation was the reason the new law was necessary.

Senator Harkin, who has a deaf brother, chaired the Labor and Human Resources Subcommittee on the Handicapped and was one of the Senate sponsors of the ADA. He argued that existing law was deficient in its ability to protect

the rights of the disabled and made the following appeal to the Congress as reported in Hook (1989, p. 241):

If a black man walked into a restaurant and was turned away because of his color, that man could file a lawsuit and win. But if a person in a wheelchair was turned away from the same restaurant, it's not against the law. The ADA sends a clear and unequivocal message to people with disabilities that they are entitled to be treated with dignity and respect--and that they can and will be judged as individuals on the basis of their abilities, not on the basis of ignorance, irrational fears, or patronizing attitudes.

Further supporting comments were echoed by Pat Wright, executive director of the Disability Rights Education and Defense Fund, "You can't legislate attitudes, but you can level the playing field, and that's what the ADA is all about" (Rovner, 1990, p. 1477). The chairperson of the National Council on the Handicapped, Sandra Swift-Parrino, reaffirmed the necessity of the bill by stating:

For decades, the disabled have seen laws enacted by their elected representatives that prohibit discrimination for other categories of individuals. For decades, disabled Americans have had to live with the realization that there are no similarly effective laws to protect them... ADA's vision is of an America where persons are judged by their abilities and not on

the basis of their disabilities (Hook, 1989, p. 241).

The majority of Congressional members, as well as the President, agreed that the disabled were not adequately protected by existing law, and the ADA was signed into law on July 26, 1990. This comprehensive anti-discrimination statute is considered to be one of the most sweeping civil rights measures enacted in several decades (Gardner, Carton, and Douglas, 1990).

The sweeping intent of the Act is reflected in the fourfold purpose stated by Congress:

1. To provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
2. To provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;
3. To ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and
4. To invoke the sweep of Congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities (Bruening, et al., 1991, p. 1).

The following section will discuss the ADA in more detail, focusing especially on Title I of the Act.

Major Tenets of Title I of the ADA

The Act contains five major titles designed to prohibit discrimination against the disabled in private, state and local government employment, public transportation, public accommodations and services, state and local government services, and telecommunications (Breuning, Theisen, & Stevenson, 1991). Title I, which covers employment, is most relevant to the I/O psychologist. The Equal Employment Opportunity Commission (EEOC) is the government agency responsible for the administration of Title I. The sections below will describe the essence of Title I of the ADA, define the key terms of Title I, and will conclude with discussions of coverage, regulatory agencies, employer defenses, complaint procedures, and remedies for victims.

Title I statute. Title I of the ADA prohibits employers covered by the Act from discriminating against a qualified individual with a disability because of the disability of said individual in regard to the following: job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment (Bruening, et al., 1991, p. 2).

Employers are required to make "reasonable accommodations" for the known mental or physical disability unless doing so would impose "undue hardship." The law prohibits utilizing qualification standards, selection criteria or employment

tests which have a tendency to screen out disabled individuals unless the criteria used are job-related, consistent with business necessity and cannot be performed with reasonable accommodation. The following section will define several key terms which are necessary for understanding the intent of Title I of the ADA.

Definition of key terms of Title I. One of the most important and controversial aspects of the ADA is how it defines "disabled." The ADA defines the disabled as: persons with a physical or mental impairment that substantially limits one or more of the major life activities, persons with a record of such impairment, or individuals who are regarded or perceived as having such an impairment. The above definition excludes pregnant women, persons currently using illegal drugs, compulsive gamblers, current illegal drug users with psychoactive substance use disorders, individuals with gender identity disorders which did not result from physical impairments, kleptomaniacs, pyromaniacs, transvestites, transsexuals, exhibitionists, pedophiliacs, voyeurs and other persons with sexual behavior disorders. Homosexuals and bisexuals are not considered to be disabled and are therefore not covered by the ADA. Also excluded are physical characteristics such as hair color, eye color, left handedness, weight, height, or muscle tone that are within a normal range and not the result of a

physiological disorder. Rehabilitated drug users are covered under the Act.

Under the Rehabilitation Act of 1973, the EEOC further defined an impairment as a physiological disorder, anatomical loss, or cosmetic disfigurement affecting any major system(s), or a psychological or mental disorder such as mental retardation, mental illness, or specific learning disabilities. Enactment of the ADA does not preempt federal, state, or local legislation which provides equal or greater protection to employees. This act also does not preempt state tort claims which may provide for remedies against the employer which are greater than those available under the ADA (Berens & Tate, 1991). Therefore, this definition further clarifies the EEOC's intent when referencing a "disability."

The Act also includes a definition of "major life activities." The ADA defines the disabled as persons with a physical or mental impairment that substantially limits one or more of the major life activities. These consist of caring for oneself, performing manual tasks, walking, seeing, speaking, hearing, breathing, learning, and working.

A "qualified individual with a disability" refers to a disabled individual who, with or without reasonable accommodation, can perform the essential functions of the job. The EEOC defines the term "essential functions" as the fundamental job duties of the employment position the

individual with a disability holds or desires. The term "essential functions" does not include the marginal functions of the position. The identification of these functions is left up to the employer, with any written job description prepared prior to advertising or interviewing applicants considered to be evidence of the intent of the employer. The job descriptions may be subjected to validation, however, and will not be considered as conclusive evidence if found to be discriminatory (Bruening, et al., 1991).

A "reasonable accommodation" for the mental or physical impairment(s) of a disabled individual must be made unless the accommodation is shown to cause an "undue hardship" for the employer. Employers will bear the burden of proof regarding accommodation issues and will therefore be required to demonstrate that an individual's requested accommodation was not reasonable due to the undue hardship involved (O'Hare & Schmidt, 1991). This shift of responsibility adds another area of concern for employers. Reasonable accommodations might include modifying existing facilities to allow ready accessibility for the disabled, work schedule modification, job restructuring, reassignment to a vacant position, modifying employment tests, employment test administration procedures, training materials, or company policies, and/or providing interpreters or readers. There are many types of accommodations which could be

considered as compliance under the Act. An employer is not required to make an accommodation if it is considered to cause "undue hardship." Several factors are considered when determining whether a particular accommodation would cause undue hardship: the nature and cost of the accommodation; the size, type, and financial resources of the covered employer; the size, type, and financial resources of the facility where the accommodation needs to be made; and the type of operation of the covered employer, including the composition, structure, and function of the workforce.

The last topics to be discussed in reviewing the major legal tenets of Title I of the ADA concern the coverage, regulatory agencies, the employer's defenses, the complaint procedure, and the remedies and damages available to those filing discrimination charges under the Act.

ADA coverage. The ADA reportedly covers over 900 disabilities, and there are some 43 million Americans having one or more physical or mental disability. This number is increasing as our population grows older. For the first two years after the effective date of July 26, 1992, the Act will apply to industries affecting commerce that have 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. Effective July 26, 1994, the Act will cover employers with 15 or more regularly employed workers. Entities covered by the Act include labor organizations, employment agencies,