Disabilities in the Workplace

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Objective:

Identify advances in clinical assessment and management of selected healthcare issues related to persons with developmental disabilities

Discuss the ethical issues related to persons with developmental disabilities

Identify and emphasize attitudes that enhance the opportunities for persons with DD to achieve their optimal potential

Notes:
Disabilities in the workplace

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No disclosures

Objectives

- Understand the Americans with Disabilities Act.
- Understand what the act protects.
- Be able to evaluate a person with a disability for job placement.

Employment

- Right of citizenship
  - 2012 Equal Employment Opportunity Commission: 26,379 claims
  - 5,907 had merit
Americans with Disabilities Act
- July 26, 1990
- President Bush signed the law on the south lawn of the White House
- 3000 attended

Americans with Disabilities Act
- Civil Rights Act of 1964
  - "We are keeping faith with the spirit of our forefathers who wrote..."We hold these truths to be self-evident..."
- ADA
  - "It will ensure that people with disabilities are given the basic guarantees of freedom of choice, control of their lives, the opportunity to blend fully and equally into the mosaic of the American mainstream."

Americans with Disabilities Act
- "the world's first comprehensive declaration of the equality of people with disabilities...every man, woman and child with a disability can now pass through once closed doors into a bright new era of equality, independence and freedom."
Americans with Disabilities Act

- What was it like before? Bad and Ugly
- Employer could refuse employment to any disabled person.
- Illustrative examples:
  - Diabetics
  - People with epilepsy
  - Psychiatric history

Americans with Disabilities Act

- But, some Good was lost:
- Employers no longer allowed to offer services that were not work related.

To qualify for ADA:

2 criterion:

1. Disability listed:
   - Physical or mental impairment limiting life activity
   - Record of impairment
   - Regarded as having an impairment

2. Must be capable of essential job fx.
   - With or without an accommodation
Disabilities in the Workplace

- Legal Definitions:
  - Impairment: Loss of or the loss of use of any body part, system or function.
  - Disability: FIVE different legal definitions

Legal Def. of Disability

- **Insurance** [contractual]: *prevents performance of one's occupation.*
- **Worker's comp**: Impairment *caused by employment.*
- **FMLA**: Impairment results in the individual being unable to work.
- **Soc. Security**: Unable to be gainfully employed.

ADA Disability

- **ADA**: Impairment that limits one or more *major life activities.*
  - AMA, Guides to the evaluation of Permanent Impairment 5th ed
ADA major life activities

- Self-care: toileting, dressing, feeding
- Communication: writing, typing, seeing, hearing, speaking
- Physical activity: sitting, standing, walking, climbing
- Hand function: grasping, lifting, tactile discrimination
- Travel: riding, driving, flying
- Sexual function
- Sleep: nocturnal sleep pattern
- *AMA. Guides to the evaluation of Permanent Impairment 5th ed*

Americans with Disabilities Act

- What part of society was affected?
  - State and Local Government
  - Public Accommodations
  - Telecommunications
  - Transportation
  - Employment

Employment Changes

- ADA prohibits discrimination against qualified individuals with disabilities for employment.
- The employer is required to make reasonable accommodations.
- Unless accommodations impose undue hardship on the employer
  - Exclusions: Religious groups/drug abuse standards
Legal Definitions
- > 3 million legal cases
  - approximately 15,000 per year
  - Who is disabled?
  - Who is an employer?
  - Who is qualified?
  - What is reasonable?
  - What constitutes undue hardship?

Who's disabled?
- Self-care
- Communication: writing, typing, seeing, hearing, speaking
- Physical activity: sitting, standing, walking, climbing
- Hand function
- Travel: riding, driving, flying
- Sleep: nocturnal sleep pattern

Key Question:
- Can the person perform the
  - ESSENTIAL JOB FUNCTIONS
ESSENTIAL JOB FUNCTIONS

- Must be outlined in advance.
- Requires a job description.
- Must apply to all employees with the same job description.

Who is an employer?

- "employer": engaged in industry affecting commerce
- 15 or more employees each working day
  20 or more calendar weeks/year
- Not included: private clubs [tax exempt, not labor related]
- Native American Tribes [think casinos]

Grievance Issues

- Discharge 36%
- Suspension 22.1%
- Reasonable accommodation 8.2%
- Hiring 9.3%
- Promotion 2.2%
- Wages 2.3%
  J Occup Rehabil 2014, 24
Process:
- Employee/applicant must initiate request
  - Written form
- Employer & Employee/applicant
  - Identify barriers
- Identify accommodations + alternatives
- Employer: cost-effectiveness
- Employer implements
  - Employee has right to appeal

Is this candidate qualified?
- Disabled person:
  - Is this lifeguard disabled?
  - He's deaf

Is this candidate qualified?
- "I'm deaf, but I can watch for people with problems and I am not distracted by noise."
Is this candidate qualified?

- Requires a *Job Description*
  - Police candidate

Post-offer exam:
Weak hands

Reasonable Accommodation

- Respirators: 
  allergies, asthma
- Cedar box factory
- Diabetic work schedule
- Special training for people with learning disabilities

Where's the battle?

- What constitutes undo hardship?
  - Most often defined in financial terms:
    Examples:
    - Newspaper Reporter needs voice-activated software
    - Protection for employee with seizures
    - Protection from toxic exposure
Traumatic Brain Injury

- 2553 TBI
- 2001
- 24% returned to competitive jobs.
  - Cotie, Cedza Social Work Vol 9, 3, July 2014

Train Engineer

- Hit in head with I-beam
- Right-sided TBI
- Loss: judgement/awareness of social propriety

Happy Ending

- Hydroponic tomato greenhouse.
- Wanted to hire disabled people.
- Kept getting lost in the greenhouse.
- Accommodation:
  - Read signs.
For casual reading:

- www.ada.gov/pubs/ada.htm
- Draper W, ADA Perceived Disability Claims: A Decision-Tree Analysis, J Occup Rehabil (2014) 24
- Mullins J, The role of the rehabilitation placement professional in the ADA era, Work 6 (1996)