

# A Comparison of Male and Female Title I ADA Discrimination Allegations in Relation to Employer Characteristics

Lynn C. Koch, Ph.D.,  
University of Arkansas;  
Amy J. Armstrong, Ph.D., CRC,  
Allen N. Lewis, Ph.D.,  
Jessica E. Hurley, M.S., CRC,  
Pamela H. Lewis, Ph.D.,  
Brian T. McMahon, Ph.D., CRC,  
Virginia Commonwealth University

**Abstract:** This investigation determined if there is a difference in the proportion of Title I workplace discrimination allegations filed by females in comparison to males under the Americans with Disabilities Act (ADA) in relation to the employer characteristics. Findings are reported and implications for future research and vocational rehabilitation practice.

**Keywords:** employment, gender, Americans with Disabilities Act

Although recent statistics indicate that 56% of adults with disabilities in the United States are female (Kessler Foundation & National Organization on Disability, 2010), research related to disability and employment discrimination has historically attempted to take a gender blind approach and has neglected to explore the influence of gender on the employment discrimination experiences of individuals with disabilities (Asch and Fine, 1988; Kutza, 1985; Mudrick, 1988). Most of this research has assumed the irrelevance of gender (Asch and Fine, 1988) despite the fact that research in related fields has unequivocally established that workplace discrimination based on gender is still prevalent in the U.S. employment arena. Also concerning is the relative absence of research examining employer characteristics that are related to gender-by-disability discrimination. One exception is a study completed by Rumrill, Roessler, McMahon, Hennessy, and Neath (2007) who found that women with multiple sclerosis (MS) were more likely to file ADA Title I discrimination allegations against employers in the service industries and men with MS were more likely to file allegations against employers in the construction, manufacturing, and wholesale industries.

Given that the combined role of gender and employer characteristics in predicting the employment discrimination experiences of people with disabilities has not received adequate research attention, the purpose of our investigation was to compare the gender of individuals across disability categories who filed employment discrimination claims under Title I of the Americans with Disabilities Act (ADA) with respect to attributes of the employers against whom claims were filed. By examining the organizational context in which these claims derive, we can obtain a gender driven vantage point on how successful the ADA has been in engineering positive social attitudes towards disability.

Disability, Gender, and Employment Discrimination

Females with disabilities are one of the largest and most marginalized groups within our society (Nosek & Hughes, 2003; Jans & Stoddard, 1999) based on their status as females as well as being identified as persons with a disability (Menz, Hansen, Smith, Brown, Ford, & McCrowey, 1989; O'Hara, 2004; Traustadottir, 1990). They outnumber males with disabilities and constitute from 8% to 21% of the population of females in the United States, depending on the data source used (Jans & Stoddard, 1999; Erickson, Lee, & von Schrader, 2010). Although males between the ages of 5 and 15 tend to have higher rates of disability than females; the rate of disability reverses later in age, as females have higher rates of disability between the ages of 16 and 65 (U.S. Census Bureau, 2000).

Females with disabilities are less likely to be employed than males with disabilities and females without disabilities, and those who are employed earn less than both these comparison groups (Hill, 1985; Kregel & Wehman, 1989; Emmett & Alant, 2006; U.S. Department of Labor, 1991; Bowe, 1992; Baldwin, Johnson, & Watson, 1993; U.S. Census Bureau, 1994, 2001; Baldwin and Johnson, 1995; Burke, 1999; Kaye, 2001; Randolph & Andresen, 2004). Among labor market participants, 31.8% of males with severe disabilities and 89.9% of males with moderate disabilities compared to 27.7% of females with severe disabilities and 73.0% of females with moderate disabilities either worked, looked for a job, or were on layoff status during the last four months of 1994 (Hale, Howard, & McNeil, 1998). In 1999, Jans and Stoddard reported that males with a mild disability earned 55% more than females with a mild disability. In the case of a severe disability, males earned 26% more than females. In comparison to females without disabilities, according to Smith (2007), disability is the strongest relative predictor of unemployment with the gender factor of being female the next significantly strong predictor of unemployment across time for the total population.

In addition, gender differences in occupational distributions suggest that the effect of disabilities on levels of labor force participation (i.e., part-time vs. full-time) will also differ between men and women. Acemoglu and Angrist (1998) found that females with disabilities between the ages of 21 and 39 worked fewer weeks from 1992 through 1995 than they did before the ADA was enacted. Males in the age range of 40 to 58 also exhibited a decrease in the number of weeks worked from 1992 to 1993. There was no effect on the employment rates of females with disabilities aged 40 to 58. However, females under 40 experienced a decrease in their levels of employment after the ADA became effective. This decrease has been confirmed by other researchers as well (e.g., DeLeir, 2000). In addition, in a telephone survey (Randolph & Anderson, 2004) of 66,592 respondents from disability surveillance programs and the Behavioral Risk Factor Surveillance System (BRFSS), the association between gender and employment was analyzed using logistic regression analysis. The researchers found that 13.9% of the respondents aged 18-64 had a disability. Those with a disability were older (mean age of 46.1), more likely to be females, and females were much more likely to be unemployed (55.1%) compared to males (45.3%).

Randolph and Anderson also collected information from 560 intellectually disabled adults to ascertain whether gender played an important role in their type of employment (Olson, Andrea, Yovanoff, & Mank, 2000). The findings suggested that women worked in jobs traditionally stereotyped by gender, had fewer hours than did the men, and therefore earned less money. Overrepresentation in low-status, socially isolating, monotonous occupations that are

associated with high stress and high turnover is problematic for all individuals with disabilities, but especially for women with disabilities (Baldwin, 1991; Bergmann, 1974; Merz, Bricout, & Koch, 2001; Tomaskovic-Devey et al., 2006). While it is not always known whether this phenomenon is related to gender differences in occupational choice, employer biases, or both, there is evidence that the career options perceived as open to people with disabilities are restricted. Smart (2008) described this phenomenon as occupational role entrapment and identified the "five Fs" (i.e., food, filth, flowers, filing, and folding) as the jobs in which people with disabilities are overrepresented. Bergmann (1974) attributed this phenomenon to occupational segregation (i.e., the unequal distribution of people across occupations resulting from the discriminatory actions of employers). Research based on occupational segregation on the basis of both gender and disability is limited; however, in an investigation of differences in the occupational segregation of women with disabilities in comparison to women without disabilities, Baldwin (1991) found no significant differences between the two groups and concluded that women with disabilities and women without disabilities both experience occupational segregation based on their gender. Related research on occupational segregation based on race and gender is more prevalent and has established that it is a common employer practice in the United States and limits both the type and range of employment opportunities available to women and minorities.

In sum, disability status coupled with being female consistently shows significance in predicting lower employment status and income in comparison to men or non-minorities with disabilities, and occupational segregation on the basis of gender further complicates the employment experience for women with disabilities. These issues are particularly concerning given that females' participation and earnings in the labor force indicate that more females than males will receive disability benefits in the future (U.S. Department of Health and Human Services, 1993) because, on average, females live about five years longer than males and therefore may have more aging-related disability issues (Altman & Bernstein, 2008).

### Employer Characteristics

As previously stated, research is sparse on employer characteristics in relation to discrimination based on both disability and gender. However, researchers have documented that organizational factors contribute to variations in the incidence of charges of race and sex discrimination against employers. Among these factors are size of the employer, extent of formalization of personnel and evaluation procedures, workplace norms regarding equity and civil rights, extent of supervisory control, degree of occupational segregation within the establishment, prevalence of female and minority managers, and the number of women and minorities in the workplace and across hierarchical occupational positions (Hirsh & Kornrich, 2008).

Employer industry is another factor that has been found to influence perceptions and allegations of discrimination based on gender and race, with different norms regarding equality and discrimination present in the labor and non-labor sectors (Hirsh & Kornrich, 2008)). In addition, the size of the employer has been discussed as a factor, with larger employers who are more likely to have formalized anti-discrimination policies and procedures presumed to have fewer discrimination charges based on race and gender. Conversely, norms of informality and

personal contact often associated with employers in smaller businesses may dissuade employees from filing claims against them (Hirsch & Kornrich, 2008). Finally, researchers have noted that the culture and working practices of the industry often combine to impede achievement of individuals who do not belong to the dominant worker group within the industry, whereas organizational cultures of employers that are embedded in a civil rights consciousness do the opposite (Dainty & Lingard, 2006).

## Methods

### Data Source and Study Variables

Using the Equal Employment Opportunity Commission's Integrated Mission Database,<sup>1</sup> we extracted a study-specific dataset which follows the exclusion criteria described in the Armstrong et al. article published elsewhere in this issue (2011). The dataset uses an allegation of discrimination as a unit of measurement, not the individual who filed the allegation. The dataset was divided into male and female groups, with Males comprising 51.497% and a frequency of 206, 014 and females 48.503%, and 194, 035. Employer variables analyzed consist of: Employer Industry, Employer Size, and Employer Region.

Employer Industry is based on the North American Industry Classification System (2002) and includes the following categories: Manufacturing; Health Care and Social Assistance; Public Administration; Educational Services; Retail Trades; Transportation and Warehousing; Professional, Scientific, and Technical Services; Administrative, Support, Waste Management, and Remediation Services; Other Services (except Public Administration); Finance and Insurance; Information, Construction; Accommodation and Food Services; Wholesale Trades; Utilities; Mining; Agriculture, Forestry, Fishing, and Hunting; Arts, Entertainment, and Recreation; Real Estate, Rental, and Leasing; and Management of Companies and Enterprises. Employer Size begins at 15 employees since this variable is based on the definition of employer size as covered under the ADA. It includes the following categories: 15-100 employees; 101-200 employees; 201-500 employees; and 501+ employees. Employer Region is based on the U.S. Census Regions and includes the following categories: Northeast; South; Midwest; West; Foreign and Territories; and Null.

### Research Questions

The following research questions guided this study:

- Is there a significant difference in the proportion of male vs. female allegations in relation to Employer Industry?
- Is there a significant difference in the proportion of males vs. female allegations in relation to Employer Size?
- Is there a significant difference in the proportion of males vs. female allegations in relation to Employer Region?

### Data Analysis

Non-parametric tests of proportions were conducted for each variable category to compare male and female allegations using Minitab 15. All alpha levels were set at < .001 and variable categories which fell outside of this range were judged to be without significance. Each variable's categories were ranked by z-score for comparison between male and female allegations.

### Results

Employer Industry categories with significantly more male than female allegations included: Manufacturing; Construction; Transportation and Utilities; Mining; Wholesale Trades; Public Administration; Administrative, Support, Waste Management, and Remediation Services; Agriculture, Forestry, Fishing, and Hunting; and Other Services Except Public Administration. Employer Industry categories with significantly more female than male allegations included: Health Care and Social Assistance; Finance and Insurance; Educational Services; Information; Retail Trades; and Accommodation and Food Services. Employer Industry categories with no significant difference between the proportion of male and female allegations included: Arts, Entertainment, and Recreation; Real Estate and Rental and Leasing; Professional, Scientific, and Technical Services; and Management of Companies and Enterprises. Employer Industry Results including z-scores are displayed in Table 1.

**Table 1. Males vs. Females Ranked by Z-Score**

| <b>Industry</b>  | <b>Males<br/>n</b> | <b>Males<br/>%</b> | <b>Females<br/>%</b> | <b>Females<br/>n</b> | <b>Favors<br/>Whom?</b> | <b>z-<br/>Score</b> | <b>p<br/>Value</b> |
|--|--------------------|--------------------|----------------------|----------------------|-------------------------|---------------------|--------------------|
| Manufacturing  | 40,519             | 19.668             | 12.975               | 25,177               | MALES                   | 57.62               | 0.000              |
| Construction   | 5,873              | 2.851              | 0.739                | 1,434                | MALES                   | 50.88               | 0.000              |
| Transportation and<br>Warehousing  | 13,032             | 6.326              | 3.138                | 6,089                | MALES                   | 47.82               | 0.000              |
| Utilities  | 3,955              | 1.920              | 0.808                | 1,568                | MALES                   | 30.52               | 0.000              |
| Mining   | 2,105              | 1.022              | 0.377                | 732                  | MALES                   | 24.63               | 0.000              |
| Wholesale Trades   | 4,452              | 2.161              | 1.372                | 2,662                | MALES                   | 19.01               | 0.000              |
| Public Administration  | 19,610             | 9.519              | 8.284                | 16,073               | MALES                   | 13.73               | 0.000              |
| Administrative,<br>Support, Waste<br>Management, and<br>Remediation Services | 8,760              | 4.252              | 3.591                | 6,968                | MALES                   | 10.78               | 0.000              |
| Null   | 37,027             | 17.973             | 16.690               | 32,385               | MALES                   | 10.72               | 0.000              |
| Agriculture, Forestry,<br>Fishing and Hunting                                | 1,186              | 0.576              | 0.450                | 874                  | MALES                   | 5.55                | 0.000              |
| Other Services<br>(Except Public<br>Administration)                          | 7,540              | 3.660              | 3.433                | 6,662                | MALES                   | 3.87                | 0.000              |
| Arts, Entertainment,<br>and Recreation                                       | 1,419              | 0.689              | 0.633                | 1,228                | NO SIG<br>DIFF          | 2.12                | 0.029              |

|   |                |                 |                |                |             |         |       |
|---|----------------|-----------------|----------------|----------------|-------------|---------|-------|
| Real Estate, Rental, & Leasing                  | 1,528          | 0.742           | 0.715          | 1,388          | NO SIG DIFF | 0.98    | 0.327 |
| Professional, Scientific and Technical Services | 7,300          | 3.543           | 3.514          | 6,818          | NO SIG DIFF | 0.51    | 0.611 |
| Mgmt. of Companies and Enterprises              | 34             | 0.017           | 0.017          | 33             | NO SIG DIFF | -0.12   | 0.902 |
| Accommodation and Food Services                 | 4,143          | 2.011           | 2.262          | 4,389          | FEMALES     | -5.48   | 0.000 |
| Retail Trades                                   | 15,334         | 7.443           | 7.954          | 15,434         | FEMALES     | -6.06   | 0.000 |
| Information                                     | 7,199          | 3.494           | 4.304          | 8,351          | FEMALES     | -13.20  | 0.000 |
| Educational Services                            | 8,268          | 4.013           | 6.365          | 12,351         | FEMALES     | -33.46  | 0.000 |
| Finance and Insurance                           | 5,706          | 2.770           | 5.549          | 10,767         | FEMALES     | -43.90  | 0.000 |
| Health Care and Social Assistance               | 11,024         | 5.351           | 16.828         | 32,652         | FEMALES     | -116.70 | 0.000 |
| <b>TOTALS</b>                                   | <b>206,014</b> | <b>100.001%</b> | <b>99.998%</b> | <b>194,035</b> |             |         |       |

The Employer Size category of 15-100 Employees was the only variable category which had significantly more male than female allegations. Similarly, the Employer Size category of 501+ Employees was the only variable category which had significantly more female than male allegations. All other variable categories for the variable of Employer Size showed no significant differences in the proportion of male and female allegations: Null; 101-200 Employees; and 201-500 Employees. Employer Size Results are shown in Table 2, including z scores.

**Table 2: Distribution of Allegations by Employer Size: Males vs. Females Ranked by Z-Score**

| Employer Size     | MALES<br>n     | MALES<br>%      | FEMALES<br>%    | FEMALES<br>n   | Favors<br>Whom? | z-<br>Score | p<br>Value |
|-------------------|----------------|-----------------|-----------------|----------------|-----------------|-------------|------------|
| 15-100 Employees  | 65,222         | 31.659          | 30.543          | 59,264         | MALES           | 7.62        | 0.000      |
| Null              | 11,392         | 5.530           | 5.295           | 10,275         | NO SIG DIFF     | 3.27        | 0.001      |
| 101-200 Employees | 23,311         | 11.315          | 11.226          | 21,782         | NO SIG DIFF     | 0.89        | 0.371      |
| 201-500 Employees | 21,777         | 10.571          | 10.652          | 20,668         | NO SIG DIFF     | -0.83       | 0.406      |
| 501+ Employees    | 84,312         | 40.926          | 42.284          | 82,046         | FEMALES         | -8.71       | 0.000      |
| <b>TOTALS</b>     | <b>206,014</b> | <b>100.001%</b> | <b>100.000%</b> | <b>194,035</b> |                 |             |            |

\*p < .001

Two categories for the variable of Employer Region had significantly more male than female allegations: Northeast and Midwest. The only variable category for the variable of Employer Region that had significantly more female than male allegations was Null. Employer Region categories that showed no significant difference between the proportion of male and female allegations included: West; Foreign and Territories; and South. Results for Employer Region, including z-scores, are depicted in Table 3.

**Table 3: Distribution of Allegations by Employer U.S. Census Region: Males vs. Females Ranked by Z-Score**

| Region                        | Males<br>n     | Males<br>%      | Females<br>%    | Females<br>n   | Favors<br>Whom? | z-<br>Score | p<br>Value |
|-------------------------------|----------------|-----------------|-----------------|----------------|-----------------|-------------|------------|
| Northeast                     | 19,988         | 9.702           | 8.678           | 16,838         | MALES           | 11.22       | 0.000      |
| Midwest                       | 50,080         | 24.309          | 23.548          | 45,691         | MALES           | 5.64        | 0.000      |
| West                          | 30,589         | 14.848          | 14.616          | 28,360         | NO SIG<br>DIFF  | 2.07        | 0.038      |
| Foreign<br>and<br>Territories | 641            | 0.311           | 0.330           | 640            | NO SIG<br>DIFF  | -1.05       | 0.296      |
| South                         | 69,509         | 33.740          | 34.000          | 65,972         | NO SIG<br>DIFF  | -1.74       | 0.082      |
| Null                          | 35,207         | 17.090          | 18.829          | 36,534         | FEMALES         | -14.32      | 0.000      |
| <b>TOTALS</b>                 | <b>206,014</b> | <b>100.000%</b> | <b>100.001%</b> | <b>194,035</b> |                 |             |            |

\*p < .001

## Discussion

### Employer Industry

The distinction between male allegations and female allegations is most notable as it relates to employer industry. Males file discrimination claims in more industries than females (9 vs. 6), and these claims are filed in traditionally male-dominated occupations. This finding is not surprising when interpreted in the context of occupational segregation. Research has established that the range of occupations in which women are employed is much smaller than the range of occupations in which men are employed. Although the U.S. Census recently identified more than 500 occupations, more than 30% of female employees in the United States work in just 10 of these occupations (Silva, 2003). Nor is it surprising that significantly more allegations were filed by females in the industries of accommodation and food services, retail trades, information, educational services, finance and insurance, and health care and social assistance given that women in general are employed at greater rates in these very industries. These findings provide evidence that occupational segregation in "pink-collar" fields is still a common occurrence in the American labor force, and from a career development perspective, could further restrict the range of occupational choices that both females and males with disabilities perceive as open to them.

## Employer Size

The finding that proportionally more allegations were filed by males against employers with 15 to 100 employees while proportionally more allegations were filed by females against employers with 500+ employees could be interpreted in several ways. For example, small businesses with fewer than 500 employees represent over 99 percent of all employers (Bruyere, Erikson, & VanLooy, 2006), and perhaps the industries in which the males in our study were more likely to be employed (e.g., manufacturing, construction, transportation and warehousing utilities, etc.) are clustered in small businesses. Conversely, employers with 500+ employees could be more likely to have a diversified workforce with more female employees, and the industries in which proportionally more female allegations are filed (e.g., health care and social assistance, finance and insurance, educational services, information, retail trades, accommodation and food services) are more likely to be clustered in businesses or organizations with a large number of employees. It is also likely that the acceptability of making a claim for women increases with larger organizations that tend to have more well developed ADA policies and procedures, arguably more widespread understanding of such issues across the board within the organization, and perhaps organizational cultures that support such claims.

## Employer Region

Proportionately more allegations are filed by males against employers located in the Northeast and Midwest regions of the U.S., with there being no regional pattern for females. On one hand, this finding is not surprising, given that labor unionization has traditionally been more heavily concentrated in these regions (Schmitt & Warner, 2010), and employees may feel more empowered to seek recourse if they have a union to represent them (Budd, 2006). On the other hand, women (with and without disabilities) accounted for 45.2 percent of unionized laborers in 2008, representing a 35.4 percent increase since 1980 (Schmitt & Warner, 2010). If this trend continues, it is projected that by 2020, women will represent the majority of unionized workers. Coupled with this trend, the number of unionized workers in the manufacturing industry is declining while it is increasing in the service industry and the public sector (Schmitt & Warner, 2010). Thus, because these are the very industries in which proportionally more female allegations in comparison to male allegations were filed, we can anticipate that the number of claims filed by women with disabilities will steadily increase in the coming years.

## Implications for Rehabilitation Professionals

In examining industry-related differences in the employment discrimination experiences of women and men with disabilities, it becomes apparent that gender-specific considerations in rehabilitation planning process are warranted. As Baldwin and Johnson (1995, p. 575) noted, "Efforts to reduce discrimination against women [and men] with disabilities will not be effective if they are based on the idea that gender is irrelevant." Thus, it is imperative that rehabilitation counselors understand the dual disadvantage of sexism and ableism that exists for women with disabilities (Reed, 1999). In this regard, rehabilitation counselors must be cautious not to steer consumers toward gender-stereotyped occupations. Female consumers, in particular, should be encouraged to pursue careers in fields that have traditionally excluded them on the basis of either or both disability and gender. Non-traditional occupations span all major occupational groups



and growth in the economy is projected to occur in many of these occupations (Women's Bureau, 2008). These offer higher entry-level wages and career ladders that provide numerous opportunities for growth and advancement. At present, jobs in information technology are among the fastest growing occupations in the labor market, but women are less likely than men to pursue educational training to prepare them for these occupations (Silva, 2003). Career development interventions that emphasize consideration and pursuit of non-traditional occupational goals should be implemented based on feminist principles such as choice, advocacy, equality and inclusion, and education and mentoring (Reed, 1999).

Along with encouraging consumers to consider non-stereotypical occupations as career goals, self-advocacy training that encompasses consideration of the dual disadvantage of sexism and ableism should be designed to (a) inform individuals with disabilities of differences in male and female reporting patterns in relation to employer characteristics. This may increase awareness and influence understanding and application of the ADA more evenly across the board. Self-advocacy training should also (b) increase consumer understanding of their rights as mandated by other civil rights protections in addition to the ADA, and (c) proactively prepare consumers to anticipate and respond to discriminatory behavior of employers, as employment discrimination against individuals who have traditionally been excluded from gender-stereotyped occupations is well documented.

These findings also have implications for providing technical assistance to employers. Regional disability technical assistance and business centers (DBTACs) should target general training to all employers about the reporting patterns of males and females in relation to industry characteristics. Brief training interventions can be developed that have a twofold purpose: (1) to illuminate current reporting patterns of males and females as they relate to employer characteristics, and (2) to generate ideas on why these patterns prevail by way of brief focus groups. Ideas generated from the second purpose can then be packaged in a palatable manner as part of standard educational efforts about the ADA and other anti-discrimination legislation as per the efforts of DBTACs and other entities that interface routinely with employers around ADA topics. These entities can also develop short issue briefs to disseminate to employers and private rehabilitation professionals that outline these reporting patterns and strategies that employers can implement to decrease the likelihood that their employees will file discrimination charges with the EEOC.

## Future Research

In considering future research directions, the limitations of the current study should be noted. First, we only examined allegations of discrimination in relation to employer characteristics and not the EEOC's legal outcome or resolution of those allegations. Therefore, additional research is needed to examine the role of gender and employer characteristics in predicting outcomes. A limitation of the data set used is that specific occupations within industry are not designated. Thus, there is no way to determine if differences between men and women with disabilities occur in relation to the status of jobs they occupy. An investigation of specific jobs held by charging parties in relation to gender is thus warranted. Future research is also needed to examine the interaction effects of employer characteristics with charging party characteristics on discrimination allegations. Regardless of whether the industry differences

found in this study reflect cross-industry worker characteristics or actual gender by disability employer biases, there is a need to examine in greater detail how industry type influences both the rate and type of allegations filed with the EEOC and employer responses to the on-the-job needs of male and female workers with disabilities. Finally, there is a need to design, implement, and evaluate rehabilitation interventions that prepare women with disabilities for employment in non-traditional, high growth occupations where they will earn higher wages. An examination of strategies that have been implemented to increase labor force participation of females in science and engineering fields could help to inform the design of these interventions.

**Lynn Koch, Ph.D.**, is professor of Rehabilitation Education and Research Rehabilitation, Human Resources and Communication Disorders at the University of Arkansas. Dr. Koch is a certified rehabilitation counselor and former vocational rehabilitation counselor and has authored or co-authored more than 70 publications related to disability, vocational rehabilitation, and rehabilitation education.

**Amy J. Armstrong, Ph.D., CRC** is an associate professor at Virginia Commonwealth University, Department of Rehabilitation Counseling. Dr. Armstrong has 27 years experience working in the field of disability, community integration and employment.

**Allen N. Lewis, Ph.D.**, is associate professor and chair of the Department of Rehabilitation Counseling in the School of Allied Health Professions at Virginia Commonwealth University in Richmond, VA, USA. Dr. Lewis has had a 27-year career as an academic, administrator, program evaluator, and clinician in public health and disability services systems.

**Jessica E. Hurley, M.S., CRC** is a Ph.D. candidate at Virginia Commonwealth University, School of Allied Health Professions. Ms. Hurley has a M.S. in Rehabilitation Counseling and has over 20 publications, primarily in the area of employment and disability.

**Pam Lewis, Ph.D.**, is a post doctoral fellow in the Department of Rehabilitation Counseling in the School of Allied Health Professions at Virginia Commonwealth University in Richmond, VA, USA. Dr. Lewis has had a 30-year career in public mental health, and is currently employed at the Virginia Department of Medical Assistance Services.

**Brian T McMahan, Ph.D., CRC** is a full professor at Virginia Commonwealth University and holds appointments in four schools including the School of Medicine's Department of Physical Medicine and Rehabilitation. Currently, Dr. McMahan studies workplace discrimination and disability for the U.S. Equal Opportunity Employment Commission.

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#### Endnote

<sup>1</sup> The EEOC is the agency responsible for enforcing Title I of the ADA, which prohibits employment discrimination against people with disabilities. The EEOC maintains the Integrated Mission System (IMS), which is used to track the filing, investigation, and resolution of all allegations of workplace discrimination under federal statutes. Through an Interagency Personnel Agreement between the EEOC and Virginia Commonwealth University, study researchers have access to a de-identified version of the database. More information can be found on the EEOC-ISM website, <http://www.eeoc.gov/eeoc/foia/ims-pia.cfm>