

THE EQUAL RIGHTS FOR PEOPLE WITH DISABILITIES LAW IMPLEMENTED TODAY IN ISRAEL

Ronit Zats, Adv

Abstract: The paper is aimed to draw professionals' and public attention to the difficulties facing people with invisible disabilities and focusing on lawyers with non-visible disabilities (NVD).

The occupational challenges lawyers with NVD bring up rise many questions regarding the characteristics of their coping with their disability and their integration in the workforce.

The aim of this pioneering study is to examine whether the Law on Equal Rights for People with Disabilities in Israel is really implemented for people with NVD, and especially for academics with NVD who have chosen to practice law. Furthermore, these findings may help to bring up the challenges these lawyers experience and how they cope with it, and it is expected to deepen our understanding of the phenomenon. In such way highlighted is the issue of the equal rights according the Law for accommodation needed and mainly attention is drawn to the existence of Lawyers with NVD.

Key words: invisible disabilities, lawyers work demands, ADA, ADA, accommodation.

1. Disability and Legal definition of the law

The relevant law in the U.S.A. is called the Americans with Disabilities Act (ADA) of 1990. It was signed on July 1990 and later amended in the ADA Amendments Act of 2008 (ADAAA), which was enacted on January 2009 (Wilson, Krulewicz, 2009).

The ADA is a wide-ranging civil rights law that prohibits, under certain circumstances, discrimination based on disability. Disability is defined by the ADA as "...a physical or mental impairment that substantially limits a major life activity" (Americans with Disabilities Act of 2008). The determination of whether any particular condition is considered a disability is made on a case by case basis. Certain specific conditions are excluded as disabilities, such as current substance abuse and visual impairment that is correctable by prescription lenses. Since the enactment of this law, the U.S Supreme Court was required to rule on issues challenging the definition of disability in the law. The scope of the ADA was significantly narrowed in *Toyota Motor Manufacturing Inc., Kentucky, vs. Williams*, when the Supreme Court sought to create a more demanding standard to qualify an individual as

disabled (Toyota Motor,... 2002). In effect, after the holding in the Toyota Motor case, an individual's impairment would have to incapacitate the ability to function without assistance in order to qualify as "substantially limiting a major life activity".

The ADAAA provision that an individual must only be substantially limited in a single major life activity will also benefit those with ADHD disability claims. Individuals with ADHD typically suffer from impaired or diminished cognitive abilities when compared to those of their peers, but are generally able to learn or perform reasonably well when given adequate accommodations (Toyota Motor ..., 2002). The ADAAA expands the category of "major" activities that might give rise to a disability by adding such activities as standing, lifting, bending, reading and concentrating, along with performing manual tasks, thinking, eating, sleeping, and communicating to the nonexclusive listing of potentially qualifying activities.

This new "broad" (to borrow a term from the ADAAA itself) definition of a "major life function" is likely to increase the number of claims by individuals who assert that they are disabled because of various learning, reading or concentrating disabilities (Wilson, Krulewicz, 2009).

2. Legal definitions of Law in ISRAEL regard NVD

The reality in Israel is the one of an ongoing discrimination against people with disabilities. The gap between current and desired reality concerning the rights of people with disabilities has led to recognition of the need to enact a special law, which would run directly to the problem of discrimination against people with disabilities and help to integrate them into society. In the wake of the United States (ADA), Israel began to implement legislation prohibiting discrimination against persons with disabilities in key areas of life such as employment and accessibility, and imposing obligations on the authorities, employers, and service providers of all kinds to prevent discrimination.

In 1998, the Knesset passed the Equal Rights for People with Disabilities Law, 1998, and it was enacted in January 1999. This Act aims to protect the dignity and liberty of persons with disabilities, to anchor their right to equal and active participation in all spheres of life, and to adequately address their special needs so as to enable them to live with maximum independence, privacy, and dignity, while exploiting their full potential. According to Section 5 of this law, a person with a disability is a person with a physical, mental or intellectual impairment, including cognitive, permanent or temporary, which makes performance in one or more major areas of life substantially limited (Equal Rights for Persons with Disabilities Regulations in Israel, 2013).

People with NVD often find themselves required to convince others that they really are disabled, not simply seeking some special unfair advantage. In this fashion, they are forced to bear the burden of proof. Thus, they face a double bind: either they forgo the assistance or accommodation they need – and suffer the consequences of attempting to do things they may not be able to do safely by themselves – or they endure the discomfort of subjecting themselves to strangers’ interrogations.

For those who are disabled, not receiving required assistance is not merely disappointing or frustrating; it may be an insuperable obstacle or a risk to health or life. While being forced to endure a stranger’s, cross-examination can be intensely stressful. Stress is unpleasant for everyone, of course, and it can wear anyone down. But the increased fatigue and decreased immunity that result from stress are likely to have a more profound effect on the health and well-being of people who are disabled. Revealing that one is disabled and having to make requests for assistance or accommodation that are often met with skepticism and hostility can have steep psychic and moral costs for persons with invisible disabilities (Davis, 2005).

Behavioral difficulties, emotional and social manifested in childhood and adolescence affects the lives of adults suffering from ADHD disorder; academic, occupational and social family. These aspects are expressed by difficulties in organizing and completing tasks needed relating to higher education or employment, a higher percentage of failures in academics, difficulty in managing finances, dismissal from employment, lower incomes, many transitions, difficulty in finding a partner, developing and maintaining relationships between personal instability the family unit and higher percent of divorce (Waite & Ivey, 2009, Barkley, 2006, Biederman 2005). These findings are also reflected in the survey conducted by the pharmaceutical company McNeil-Janssen Pharmaceuticals, in 2008, among adults with ADHD, which approximately 60% of respondents agreed that ADHD affects their performance in responsibilities at home, in their relations with family and friends and their ability to succeed at work. Work problems included the ability to stay on task, organize and complete projects and tasks over time, and concentrate on track of what others say.

Based on data collected from employer’s people with invisible disabilities miss more work, they replace more jobs and prefer to find temporary jobs, avoid jobs that require concentration over time and jobs that require close supervision, they come grading lower work, low annual average salary than others and their social status is lower than those without invisible disabilities (Biederman, 2006). Hyperactive adults find themselves in careers that match their activity level: jobs that require great mobility, works with fast pace in which they may function better from those who do not have ADHD, they chose work space and physical

jobs, or jobs that require curiosity and sensation-seeking. They also connect to other adults who accept their activity level in understanding (Coetzer et al., 2009).

Workers with invisible disabilities encounter unique challenges compared to workers with other **concealable** identities and even workers with visible disabilities. These challenges occur not only in the decisions of whether to disclose the invisible disability in the workplace but also in the detection and acceptance of having a disability to disclose. Disclosure of disabilities in the workplace likely has implications for the individual worker's health, social relationships, and work performance as well as for an employing organization's outcomes (Santuzzi et al., 2014).

Some of them learn to control their impulsive to avoid unwanted reactions, but still many reported cases of damage to other people's feelings or the tendency to act without thinking ahead about the consequences (Silver, 2000).

3. Effects of NVD on lawyers

NVD can significantly affect a lawyer's core function - the ability to process information or to concentrate. It might be important to consider one description of the current state of the legal market: Law firms expect new associates to have advanced analytical skills and independent learning skills from the moment they start their careers (Lemond, Mizgala, 2012). Firms place a premium on those associates who are independent learners, who either know what they are being asked to do, or can figure it out for themselves. Law firms demand that the model attorney come "completely assembled" and "ready to work." Partners expect new associates to be able to read and digest appellate court decisions. They also expect new associates to make conclusions based on sound analysis and to communicate those conclusions both orally and in writing in a comprehensive and intelligent fashion. The practice expects lawyers to have honed cognitive skills such as fact sifting, rule finding, precision and observation during their schooling. Law firms look for those individuals who know the law and can apply the law. He also must be able to communicate those conclusions in both orally and in writing in a comprehensive and intelligent fashion.

Many attorneys with invisible disabilities were working in disability rights and in legal aid settings, but not in firms regarded as highly selective. Had well-intentioned firms steered them in that direction and away from their doors, or had the experience of discrimination based on disability left them committed to the disability rights fight (Basas, 2010). In considerations choosing a career path for many the decision was solely based on the likelihood of employment, the degree of accommodations available, and attitudinal climate for individuals with a NVD in the carrier path (McChesney et al., 2001).

Lawyers with disabilities have to educate the invisible disabled people around them and to sell themselves. “Bottom line, it comes down to the individual’s attitude toward their particular condition, how they handle it ‘Selling yourself’ is particularly important for disabled law students to develop interviewing skills and how to put the other person at ease with the fact that you have a disability. These highlight the continuing struggles faced by disfavored groups to bring diversity to the practice of law. The ABA and the federal Equal Employment Opportunity Commission (EEOC) brought together purposes: to facilitate the hiring of lawyers with disabilities including invisible disabilities, and to help promote them in the legal profession. Regrettably, lawyers with invisible disabilities continue to face discrimination, and believe that they were denied employment opportunities because of their invisible disabilities. Many of them indicated that they were denied jobs even though they graduated in the top 10 to 20 percent of their law school classes at higher-ranked schools than those who eventually received job offers once the firms discovered an individual’s invisible disability.

Law students appear to be very reluctant to disclose their disabilities to potential employers, since reasonable accommodation will not be available to those who choose to keep their disabilities a secret. The rate of non-disclosure reminds the decisions of gay and lesbian attorneys to stay in the closet because the stigma of being gay puts them at a competitive disadvantage. It would seem that a large number of law students with NVD believe that disability carries a stigma that would disadvantage them more than the legal rights created by the ADA would help (Job Accommodation Network :JAN 2013).

Conclusion

This pioneering study addressing the area of lawyers with NVD in Israel is groundbreaking and primary, and although Israel’s Equal Rights for People with Disabilities Law was enacted in 1999, it is far from the ADA in the United States where there is recognition of NVD in the U.S. law bar in giving support, accommodation, disclosure, and having data about lawyers with disabilities and differentiation among them while comparing in Israel there is no data at all and due to the stigma, most prefer to remain in the closet.

There is a significant difficulty in contrast to the United States where the change in legislation in 2009 opened a way to include invisible disabilities as disabilities and an understanding that they have difficulties in ordinary life. In Israel, this awareness is not available, since the Bar also refers to lawyers with disabilities only for those with visible physical disabilities, and the way to recognize invisible disabilities is long.

It would be suggested to make amendments to laws relating to equality and equal opportunity as they refer to people with disabilities in Israel such as the amendment in US law

in 2009 (ADAAA) which included a wide interpretation of those with a disability and which between cognitive disabilities and mental disabilities and detailed those areas in which those with disabilities are restricted.

Emphasize the withdrawal with understanding, the Israeli Knesset is now dealing with a petition filed by Bar Association interns who claim that the Equal Rights for People with Disabilities Law is not implemented and that after the change in the Bar examination, there are no accommodations for those with NVD.

The way forward to trace

Further work and additional research is required in the area of lawyers, interns and law students with disabilities in order to evaluate the numbers, the trends and the distribution of the various disability types (visual, hearing, paralysis, unseen disabilities etc.) as well as the adaptations and concessions required for each specific case. Required are as well comparative research data of the numbers of students with disabilities who complete their academic studies and those who successfully pass the Bar Examination. Figures pertaining to trends, demographics and causes must be cross checked. Ruling given in relation to this population segment must be evaluated and legislative changes must be put forward in order to increase the employment possibilities available to lawyers and other academics with various kind disabilities.

Bibliography (Ordered according appearance in text):

1. Americans with Disabilities Act of 2008. Section 12102 – Definition of disability, Title 42, Chapter 126, Retrieved: 01.04.13, <http://www.ada.gov/pubs/adastatute08mark.htm#12102>
2. Toyota Motor Manufacturing (2002). *Kentucky, Inc. v. Williams*, 534 U.S. 184
3. Wilson, S.W., Krulewicz, .D. (2009). Disabling the ADAAA. *New Jersey Lawyer Magazine*, 256, 31-35.
4. Equal Rights for Persons with Disabilities Regulations in Israel (2013).
5. Davis, N. A. (2005). Invisible Disability. *Ethics*, 116 (1), 153-213.
6. Waite, R., Ivey, N. (2009). Promoting culturally sensitive ADHD services for women: An individual example and a call to action. *Journal of Psychosocial Nursing and Mental Health Services*, 47(4), 26-33
7. Barkley, R. A., Fischer, M., Smallish, L., Fletcher, K. (2006). Young adult outcome of hyperactive children: Adaptive functioning in major life activities. *Journal of the American Academy of Child & Adolescent Psychiatry*. 45, 192-202.
8. Biederman, J., Farone, S.V. (2005). What is the prevalence of adult ADHD? Results of a population screen of 966 adults. *Journal of Attention Disorders*, 9(2), 384-391.

9. Biederman, J., Faraone, S.V., Spencer, T.J., Mick, E., Monuteaux, M. C., Alvardi, M. (2006). Functional impairments in adults with self- reports of diagnosed ADHD: A controlled study of 1001 adults in the community. *Journal of Clinical Psychiatry*, 67(4), 524-40
10. Coetzer, G.H., Hanson, B., Trimble, R. (2009). The Mediating Influence of Role Stress on the Relationship between Adult Attention Deficit and Self-Efficacy. *Journal of Business and Management*. Fort Collins. Vol 15(2), 111-118.
11. Santuzzi, A.M, Waltz, P.R., Finkelstein, L.M., Rupp, D.E. (2014). Invisible Disabilities: Unique Challenges for Employees and Organizations. *Industrial and Org Psychology*, Vol. 7, 2, 204-219, at <http://onlinelibrary.wiley.com/doi/10.1111/iops.12134/full>
12. Silver, L.B. (2000). Attention –Deficit/Hyperactivity Disorder in Adult Life Child and Adolescent. *Psychiatric Clinics of North America*, 9, 511-523.
13. Lemond, S., Mizgala, D. (2012). Identifying and accommodating the learning- disabled lawyer. *Texas Law Review*, 69, 69-95.
14. Basas, C.G. (2010). The new boys: Women with disabilities and the legal profession. *Berkeley Journal of Gender Law &Justice*, 25, 32-124
15. McChesney, A., Nolan, R., Schmiege, M. (2001). Advancing Professional Opportunities and Employment Accommodation for Lawyers and Other Law Graduates, Who Have Disabilities, *Reach*.
16. Job Accommodation Network: JAN (2013). *Accommodation and compliance series: Employees with Learning Disabilities*. Morgantown, WV: A service of the U.S Department of Labor's Office of Disability Employment Policy.
17. A report from the American Bar Association for the legal profession (2009). In: J. W. Parry & W. J. Phelan, IV (Eds.). *The Second National Conference on the employment of lawyers with disabilities*. American Bar Association: Commission on Mental and Physical Disability Law. June 15-16, Washington, DC.

For contacts / _____ :

Ronit Zats, Adv, Israel

- : ronit@zats.co.il