

TOO HOT TO HANDLE?

ADA IMPACTS RESCUE INDUSTRY

by Eric Minton

In 1981, rescue organizations were sent a survey asking how they would handle people with disabilities in the event of an emergency. The survey drew a tepid, almost indifferent reaction. In fact, one of the few responses was a hand-scrawled, four-word note at the top of the survey: *"Too hot to handle."*

Although the subject of people with disabilities may have been too "hot" for some agencies to face more than a decade ago, officials agree that today, rescue organizations will get burned if they continue to ignore it.

The 1981 survey was issued by the California Specialized Training Institute (CSTI), an agency of the State Office of Emergency Services, and was issued almost 10 years before Congress passed the Americans With Disabilities Act. Popularly called the ADA, this all-encompassing civil rights law prohibits discrimination against the disabled in employment, government services, telecommunications, transit systems and public accommodations, including any "professional office of a health care provider, hospital or other service establishment."

Any rescue organization that be-

lieves this new law doesn't apply to it is ripe for lawsuits.

President Bush signed the ADA into law in a White House ceremony July 26, 1990. This January marks the first anniversary of the ADA's government service and public accommodations provisions. Regulations enforcing the law's employment provisions went into effect last July.

Yet there is an alarming amount of ignorance concerning the ADA in the world of rescue squads. For instance, a spokeswoman at the National Association for Search and Rescue said her organization had no knowledge of the ADA and no comment. The International Association of Dive Rescue Specialists also has not studied the law's impact on its membership. And the International Association of Fire Chiefs is just now putting together a task force to develop a position on the ADA. Is it simply lack of education, or is it a larger issue—the equal rights of people with disabilities—that rescue organizations still find too hot to handle?

Dismayed by the apathy toward her office's survey, Jan Bradford, chief of program development and administration with the CSTI, began teaching a course called "Disabled in Disasters"

for emergency management officials. Although aimed specifically at including people with disabilities in emergency planning procedures, the course also seeks to improve awareness of the disabled throughout the ranks of rescue workers. Bradford said she has since seen emergency policy manuals pay more attention to the disabled but thinks some areas in California are "still hesitant to bring it up."

TIME SCHEDULE FOR ADA'S ENACTMENT

July 26, 1990

Law enacted by Congress.

January 26, 1992

Government services and public accommodations provisions go into effect.

July 26, 1992

Title I employment provisions become effective for employers with 25 or more employees.

Civil actions under Title III can be brought against businesses that employ 11 to 25 employees and have gross receipts of more than \$500,000.

January 26, 1993

Title III civil action can be brought against businesses that employ 10 or fewer employees and have gross receipts of \$500,000 or less.

July 26, 1994

Employment provisions under Title I become effective for employers with 15 or more employees.



Defining the Disabled American

A few misconceptions may be keeping many rescue workers from fully understanding the ADA's potential impact on their offices. These misconceptions give rise to the questions: Why should the ADA change employment policies if rescue workers must meet stringent physical standards that many people with disabilities couldn't meet? And why should the ADA become a factor in the rescue service if all victims are treated as disabled anyway? Those misconceptions prevail through a too-narrow view of people with disabilities, a prejudice the ADA expressly intends to defeat.

According to the ADA, a "disabled American":

- Has a physical or mental impairment that substantially limits one or more of the major life activities
- Has a record of the impairment
- Or is regarded as having such an impairment

The first part of this definition includes not only the obvious disabilities—orthopedic, visual, speech and hearing impairments; anatomical loss; palsies; epilepsy; and mental retardation—but also mental and emotional illnesses; learning disabilities; and dementia and chronic diseases, such as cancer, diabetes, heart disease and AIDS.

Alcoholism is also defined as a disability, as is drug addiction. The ADA does not protect people currently using illegal drugs, but it does protect those in rehabilitation programs who are not using illegal drugs, those who have been rehabilitated and those erroneously labeled as drug users.

The second line of the definition includes people with a history of one of the covered conditions or those who have been misclassified. A person who once suffered a cardiac arrest cannot be denied employment because the employer fears a recurrence. Similarly, people who spent time in mental institutions cannot have that history held

U.S. DISABILITY STATISTICS

43 million Americans have physical or mental disabilities, and this number is increasing as the population grows older. Among those 43 million people are:

- 18.4 million with hearing impairments
- 8.2 million with visual impairments
- 2.1 million with speech impairments
- 26.8 million with arthritis
- 24.3 million with hypertensive disease
- 16.4 million with heart disease
- 1.6 million missing extremities or parts of extremities
- 1.2 million partially or completely paralyzed

(Figures total more than 43 million because of multiple disabilities.)

Nearly 6.5 million non-institutionalized people use one or more special aids to get around:

- 645,000 use a wheelchair.
- 689,000 use a walker.
- 613,000 use crutches.
- 205,000 have an artificial leg or foot.
- 66,000 have an artificial arm or hand.
- 2,714,000 use a cane or walking stick.
- 1,492,000 wear special shoes.
- 398,000 wear a leg or foot brace.
- 1,004,000 wear some other type of brace.

(Figures total more than 6.5 million because of multiple special aids.)

Source: President's Committee on Employment of People With Disabilities, based on 1984 figures from the National Center for Health Statistics.

against them.

The last prong is meant to protect individuals from negative attitudes. For example, a person cannot be denied employment because there is a rumor that he has AIDS.

Employment and the EEOC

Title I of the ADA covers employment practices and is the one most applicable to rescue squads. The general rule says entities "shall not discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement or discharge of employees, employee compensation, job training, and

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other terms, conditions and privileges of employment."

An attorney with the Equal Employment Opportunity Commission (EEOC), the federal agency empowered to enforce Title I, says she has heard concern among fire and rescue chiefs who are afraid they will be forced to hire somebody who is not up to the stringent requirements of a physically demanding job. "It is not an affirmative action law," said the attorney, who requested that her name not be used. "It specifically says 'qualified individual with a disability.'"

The individual with a disability must therefore meet the qualifications of the job. It is up to the employer to establish the physical or mental qualifications necessary to perform specific jobs. If a rescue job requires manual dexterity or driving, people with mobility or visual impairments wouldn't meet the qualifications.

THE INDIVIDUAL WITH A DISABILITY MUST MEET THE QUALIFICATIONS OF THE JOB.

"They can have physical standards that the rescue person has to meet, and the ADA wouldn't exclude that," the EEOC attorney said. "But if those requirements tend to screen out people with disabilities, you've got to have proof that they're job-related."

EEOC guidelines stress that job qualifications must be essential to the job—not incidental. The agency gives the following example: "An em-

ployer has a forklift operator job. The essential function of the job is mechanical operation of the forklift machinery. The job has a physical requirement of ability to lift a 70-pound weight, because the operator must be able to remove and replace the 70-pound battery that powers the forklift. This standard is job-related. However, it would be a reasonable accommodation to eliminate this standard for an otherwise qualified forklift operator who could not lift a 70-pound weight because of a disability if other employees are available to help this person remove and replace the battery."

What constitutes "reasonable accommodations" and "essential functions" must be determined on a case-by-case basis; interpretations of the rule will most likely be hammered out in court. The ADA, however, clearly establishes rules for several stages of hiring practices:



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- Job descriptions must explicitly detail required physical and mental qualifications.

- Application forms may not ask any questions related to medical history, disability or association with disabilities.

- Medical exams and psychological tests can be given only after a conditional job offer.

An EEOC analysis differentiates between medical exams and physical agility tests. An agility test can be given prior to a job offer provided it is given to all "similarly situated applicants or employees regardless of disability." The employer should be able to show that "the test is job-related and that the test or job cannot be performed with a reasonable accommodation."

Use of a medical screening prior to the agility test must be solely for the applicant's safety. The law's intent is to get employers to look at qualifications

LIST OF RESOURCES

Office of the Americans With Disabilities Act

U.S. Department of Justice
P.O. Box 66118
Washington, DC 20035-6118
202/514-0301
TDD: 202/514-0381

Equal Employment Opportunity Commission

1801 L St. N.W.
Washington, DC 20507
202/663-4264
TDD: 800/800-3302

Access Board

1331 F St. N.W., Suite 1000
Washington, DC 20004-1111
800/872-2253
TDD: 800/872-2253

President's Committee on Employment of People With Disabilities

1331 F St. N.W., Suite 636
Washington, DC 20004-1107
202/376-6200
TDD: 202/376-6205

Free information on how to accommodate the functionally disabled is also available from:

Job Accommodation Network (JAN)

West Virginia University
P.O. Box 6123
Morgantown, WV 26506-6123
800/526-7234, U.S.
(voice and TDD)
800/ADA-WORK, U.S.
(voice and TDD)
800/526-2262, Canada
(voice and TDD)

For help in adapting an office or job to suit specific needs of a disabled employee, contact your state's vocational rehabilitation agency. For a national directory, contact:

U.S. Department of Education

Centers for Independent Living Program
Rehabilitation Services Administration
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first so a disability does not automatically lead to a candidate's dismissal.

The ADA also provides protection for workers who become disabled after employment. In that instance, the employer will have to accommodate that worker, either through equipment modification, restructuring of the schedule or reassignment to another job.

The law is less clear on protection for volunteers. "Because job discrimination laws protect people in employment opportunities, the test is whether volunteer status is related to job opportunity," the EEOC attorney said. "If being a volunteer is required for regular employment or regularly leads to regular employment, then denying a group of people on the basis of disability is in violation of the EEOC regulations."

The EEOC can fine ADA violators, force them to pay the victim's court costs and, ultimately, force them to

hire the person. Furthermore, the Civil Rights Act of 1991 amended the ADA so that individuals can now seek personal damages in court.

While the EEOC has jurisdiction over Title I employment cases, the Justice Department presides over public service cases involving Title II (covering government entities) and Title III (covering public accommodations). And although complainants cannot seek punitive damages, the Justice Department is empowered to follow up complaints and investigate.

In addition to ordering changes, courts can order monetary damages to victims of discrimination and fine guilty parties up to \$50,000 for first violations and \$100,000 for subsequent cases. Whether the ADA could be used as an avenue for malpractice and negligence lawsuits against paramedics and rescue workers—on the basis of civil rights violations—is

an issue on which legal experts and Justice Department officials would not speculate.

ADA in the Field

All the legal experts seem to agree, however, that the issue is not likely to come up in day-to-day rescue work. Legal officers with the U.S. Coast Guard, who must adhere to the 1973 Rehabilitation Act, the ADA's precursor covering federal programs, say the disability laws haven't changed their rescue procedures because the Coast Guard already treats all victims as potentially disabled.

Other agencies feel the same way.

"If we're getting them out of airplanes, it doesn't make any difference between a pre-identified disability as opposed to a broken leg or severe laceration—the end result is going to be the same," said Dale Dunham, San Francisco International Airport (SFO) emergency planning coordinator.

Conditions for people with mental disabilities are also largely addressed in standard emergency procedures. Rescue workers commonly encounter the effects of mental stress in accident victims, and the variables such behavior cause are often similar to those of mental disabilities. Dunham said that during his airport emergencies, Red Cross, county mental health, clergy and medical personnel—all trained to handle mental disabilities—are immediately called to the scene.

However, a bone of contention concerns communication disabilities—people with hearing and speech impairments. "People use a wide range of communication devices," said Harriet McBryde Johnson, a Charleston, S.C., attorney practicing in disability rights. "Rescue workers have to communicate with deaf people and people with speech impediments. Even blind people, you've got to get information to them."

Millie Colson, coordinator of the South Carolina School for the Deaf and the Blind Community Resources Center, said rescue workers should

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learn basic sign language. "Know at least finger spelling to get basic information—what's your name, show me where it hurts, are you allergic to any medication—so that you can do something until you get an interpreter there."

For large-scale emergencies, Colson believes interpreters should be sent to the scene, a practice Dunham thinks unnecessary. At SFO, a bank of Red Cross foreign-language interpreters remains on standby, including sign-language interpreters, he says.

Officials say the issue is one to study, however, as are all scenarios involving people with disabilities. "It's better to answer these questions before being confronted with them in an emergency situation," said Johnson.

One way is through including people with disabilities in drills. Dunham said that in his four years at SFO, disabled victims have been included in tabletop exercises, but not in the annual crash exercises his office conducts.

Bradford recalled an earthquake drill her office conducted at the California state capitol building, where 1,500 people work—including people with disabilities—and thousands visit daily. The evacuation appeared to go without a hitch, she said, until her staff swept the building and found a visitor in a wheelchair at the elevator well on the fourth floor.

She said rescue workers must first learn awareness—awareness of the numbers of disabled residents and types of disabilities in their communities—and then include such people and conditions in their emergency planning, training and drills. "It's not something to be afraid of," she said. "If people approach it openly and are willing to communicate, it can be a very fulfilling part of their careers." ■

Eric Minton is a writer based in Charleston, S.C., who has written extensively on disabled rights.

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