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**A Question of Competence: How the ADA (Americans With
Disabilities Act) Affects the Hiring and Retention of Police Officers**

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**An Administrative Research Paper
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ABSTRACT

In July of 1990, President George Bush signed the Americans With Disabilities Act of 1990 (ADA). Prior to the signing of this Act, most Americans with disabilities were discriminated against in the workplace and were not given opportunities to apply for, or promote to jobs that they may well have been fully qualified for even though they were disabled. Law Enforcement agencies were, and still are, at serious risk of lawsuits and substantial financial losses for discriminating against the disabled. Research has been done, and most companies and law enforcement agencies have educated their employees on the Act in order to become or remain in compliance.

The research conducted for this paper was taken from various resources, mostly the Act itself and periodicals, training manuals and books. In conducting this research the conclusion may be drawn that most law enforcement agencies recognize the importance of following the guidelines of the Act in order to treat all applicants equally. There are, however, still some agencies in the United States who are not properly trained, or are simply not in compliance. It is these agencies that stand the potential risk of serious financial losses for their agency, community, and for the applicants themselves. In reading this paper, it is hoped that any agency that is not currently in compliance will understand the reasons that they should educate themselves and their employees on the penalties of discrimination in the workplace. Furthermore, that these agencies will recognize the disabled not as burdens, but as valuable contributing members of our society.

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INTRODUCTION

The Americans With Disabilities Act (ADA) was created, submitted, and passed through congress in 1990 to protect those members of our community from discrimination by employers due to any type of disability. Law Enforcement agencies have been constantly redefining their recruitment and hiring policies to accommodate those individuals who are protected under the Act. It could be hypothesized that many individuals who applied with these types of agencies before the law was passed were either discriminated against or disqualified by a disability when they could have performed the “essential” functions of a Police Officer.

The individuals who are responsible for hiring, screening, investigating and recruiting employees have a difficult job to do when a seemingly competent individual presents a disability that could potentially hinder them from performing the job to full capacity. They must provide that applicant with the same opportunity to be screened for employment as any other candidate. (Harrison, Maureen and Steve Gilbert, The Americans With Disabilities Act Handbook, Beverly Hills, CA: Excellent Books, pg. 45). They cannot disqualify an applicant based on their disability alone. Even if a department cannot discriminate, do they? My feeling is unequivocally “yes”. Do they discriminate intentionally? My feeling is “no”.

All departments have not educated themselves fully as of yet. It is in their best interest to do so and do so now. Hundreds of thousands of dollars have been lost by departments who were not in compliance and were ordered to pay restitution due to ignorance. This is a huge price to pay; money that could have been used within the department or community is paid out to someone who should have been treated equally.

REVIEW OF LITERATURE

It is hoped that this research will assist departments in understanding the ADA and understanding the importance of compliance. The ADA specifically states that an employer may only ask about an applicant's disability or give a medical examination after a conditional offer of employment has been made, thereby limiting impermissible consideration of disability. (Harrison, Maureen and Steve Gilbert, The Americans With Disabilities Act Handbook, Beverly Hills, CA: Excellent Books, pg. 45).

Police Departments across the country have had to revamp their hiring processes in order to avoid costly and difficult lawsuits, but how effective has this been for the agencies involved? Although it is crucial that all organizations be made aware of the impact this Act has made on their ability to screen out applicants before the interviewing process even begins, it is believed, that all agencies are not in compliance. The definition of disability by the ADA is that of "a person with a physical or mental impairment that substantially limits one or more major life activities". (Harrison, Maureen and Steve Gilbert, The Americans With Disabilities Act Handbook, Beverly Hills, CA: Excellent Books, pg. 39).

Retention of employees who were not disabled during the hiring process, but become disabled during their employment is another area of focus. All agencies, including law enforcement agencies are required to provide reasonable accommodations for these employees. (Harrison, Maureen and Steve Gilbert, The Americans With Disabilities Act Handbook, Beverly Hills, CA: Excellent Books, pg. 42).

The purpose of this research is to provide insight to law enforcement agencies to avoid the potential risks, an example of which will be outlined, of discrimination against applicants or current employees when a disability is involved.

METHODOLOGY

The primary source of information will be periodicals, publications, the Internet, and the Act itself. It is anticipated that this paper may be used by other agencies as an outline before developing new or improved recruitment divisions. Some agencies may find, after perusing this data, that they have indeed been in violation of the Act. Hopefully these agencies will take steps to conform after reviewing the findings. This paper will begin with an outline of the ADA including examples and cases, will progress into testing and disqualification of applicants and will conclude with recommendations for compliance.

The Americans With Disabilities Act (ADA) was created, submitted, and passed through congress in 1990 to protect those members of our community from discrimination by employers due to any type of disability. It requires employers to refrain from discriminating against the disabled and requires that reasonable accommodations be provided to those who need them. A reasonable accommodation is any modification or adjustment to a job or the work environment that enables a qualified applicant or employee to participate in the application process or perform essential job functions. (Harrison, Maureen and Steve Gilbert, The Americans With Disabilities Act Handbook, Beverly Hills, CA: Excellent Books, pg. 42).

The reasoning behind the implementation and approval of the ADA came out of multiple complaints from the disabled surrounding the way that they were treated

compared to that of a perceived “able bodied” person. More than forty million Americans have some type of disability. (The ADA Title II Action Guide for State and Local Governments. National Institute on Disability and Rehabilitation Research, November 1992, 1). Before this Act was passed people were literally turned away at first glance by employers, including police departments. Can’t you just see a one-legged man walking into an old-school police department only to be told, “You can’t be a cop! You only have one leg!”? The joke was on that one-legged man until someone stepped up to the plate and said, “This is not right.”

FINDINGS

The Americans With Disabilities Act of 1990 was proposed initially in 1988 and again in 1989. It was then agreed upon, implemented, and signed into law by President George Bush (The ADA Title II Action Guide for State and Local Governments. National Institute on Disability and Rehabilitation Research, November 1992, 1).

Since the initial signing of the ADA, there have been modifications, one of which greatly impacts law enforcement agencies. Title II prohibits public entities from discriminating or excluding people from programs, services, or activities on the basis of disability (The ADA Title II Action Guide for State and Local Governments. National Institute on Disability and Rehabilitation Research, November 1992, 1). The police academy, for example, falls under a program. A public entity is any state or local government, department, agency, special purpose district, or other state or local government, and certain commuter entities (The ADA Title II Action Guide for State and Local Governments. National Institute on Disability and Rehabilitation Research,

November 1992, 5). The activities or programs that are covered under Title II are the operation of programs and services, all portions of employment, contract services, activity of state, local and judicial entities, and public transportation (The ADA Title II Action Guide for State and Local Governments. National Institute on Disability and Rehabilitation Research, November 1992, 5). Title II brought about one of the most commonly used phrases in employment today, “reasonable accommodations”.

Whenever you fill out an application with any employing agency, be it a grocery store or a police department, there is an area that clearly asks “Do you require reasonable accommodations to perform the required job functions?” Reasonable accommodations are simply that; making accommodations to better allow an employee to perform that job function. The definition is that of any change or adjustment to a job or work environment that allows a qualified employee (or applicant per se) with a defined disability to participate in the application process or to perform the job function equal to that of any employee without a disability (“The Americans With Disabilities Act- Title II Technical Assistance Manual” EEOC. Section II-4.3200, 20). There are, however, exceptions to the ADA and exceptions to who falls under these provisions. Those conditions excluded from protection under the ADA, Title II, and Title III are transvestism, transexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders (outside of physical impairment), sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance disorders from the use of illegal drugs (42 USC 12211). Homosexuals or bisexuals are also excluded, as those orientations are not considered disabilities under the Act (The ADA Title II Action Guide for State and Local Governments. National Organization on Disability, November 1992, 9).

There have been many cases that have been filed since the ADA was signed into law in 1990. One would think that after 12 years, most employing agencies would be in compliance. Not so. There have been some fairly recent, and very high profile cases since then. One of the more visible and costly cases was that of The United States of America (Davoll, Clair & Escobedo) VS. The City of Denver and Denver Police Department. Denver Police Department had a lawsuit filed against them in 1997 that specifically outlined the following: "...Each year, several patrol officers ("officers") employed by the City and County of Denver Police Department ("DPD") become disabled - some due to injuries suffered in the line of duty - such that they can no longer effect a forcible arrest or shoot a weapon. Although these officers may have served on the DPD's police force for many years, they are not reassigned to jobs they still can perform. Instead, they are required to retire on disability. The City and County of Denver ("City") refuses to reassign them to vacancies for which they are qualified, within the DPD or elsewhere in the City and County. The financial repercussions for the officers are great: disability pensions may be less than half of the officers' former salaries, and officers on disability are responsible for securing their own health insurance. See Appendix A, Plaintiff United States' Statement of Undisputed Facts ("Fact") Nos. 46, 47. The City's policy discriminates in employment on the basis of disability in violation of both title I of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. S 12112, and title II of the ADA, 42 U.S.C. S 12132.1 The United States' Motion for Summary Judgment on Liability is limited to the United States' claim under title I; namely, that Defendants policy results in a pattern or practice of employment discrimination against individuals with disabilities. Specifically, Defendants' policy precludes them from making

complaints. Title I of the ADA prohibits employment discrimination on the basis of disability by public and private employers alike. 42 U.S.C. S 12111 et seq. Title II prohibits discrimination on the basis of disability in all services, programs or activities of state and local governmental entities. 42 U.S.C. S 12131 et seq. Defendants are the City and County of Denver, the Denver Police Department and the Civil Service Commission for the City and County of Denver in Civil Action No. 96-K-370...” (US Department of Justice. (1997, June 14) *The Americans With Disabilities Act Case Files and Settlements*. Washington, DC. Retrieved June 26, 2002 from the World Wide Web). This was an actual excerpt taken from the case in question of the United States of America (Jack Davoll, Deborah Clair & Paul Escobedo) VS. The City and County of Denver and The Denver Police Department. These former employees became disabled during the course of their employment as active, full duty police officers with a number of years of service behind them. The city, at that time, had a policy in place that did not offer disabled officers the ability to transfer to other civilian or administrative positions. They were treated as “new employees” and were required to go through entry level testing just as a new applicant would be. Their years of service and performance were not considered in this case. All three were unable to pass the required written or physical examinations for civilian positions and were terminated. When this case was tried, the judge clearly found the police department in violation of The ADA, Title II and awarded the three plaintiffs more than \$500,000.00 in back pay from 1997-1999 and demanded reinstatement of their employment even if jobs had to be created. (US Department of Justice. (1997, June 14) *The Americans With Disabilities Act Case Files and Settlements*. Washington, DC. Retrieved June 26, 2002 from the World Wide Web).

Normally, the ADA would not require the creation of a position for these plaintiffs, however, their attorney was able to prove that an “undue hardship” had been created and the order was given to the department to find a place for them or make one. As you can see in the case above, Law Enforcement agencies can be directly and negatively impacted by not adhering or complying with the guidelines of the Act itself (US Department of Justice. (1997, June 14) *The Americans With Disabilities Act Case Files and Settlements*. Washington, DC. Retrieved June 26, 2002 from the World Wide Web).

Most law enforcement agencies have implemented an interviewing and hiring process that flows from the application to initial interview, then the background investigation, then a physical assessment, a psychological evaluation and finally, an oral board interview. In most cases it is the application process that gets most agencies in trouble. When an obviously disabled applicant comes in to apply for the job, no one may, at that time, disqualify them. That person may be able to perform the job requirements just as well as another non-disabled applicant depending on the severity of their disability. There are numerous amazing stories of the disabled who are able to continue fully functioning after the loss of a limb with the use of a prosthesis? We cannot make that judgment initially. We must consider that applicant equally and allow them the same opportunity to proceed in the process as another applicant. Background investigators have the ability to disqualify an applicant in many different areas. Maybe that person beats their wife or children, or that person has a conviction in their background that was not disclosed. The applicant would be fairly disqualified based on their past history. But what happens when the applicant passes the background investigation passes the

interview and even passes the psychological evaluation or oral board if positioned prior to the physical assessment? Next comes the physical agility assessment. Surely the applicant would be disqualified at that time, right? Not necessarily. According to the ADA, public entities must make reasonable modifications to its policies, practices or procedures to avoid discrimination (“The Americans With Disabilities Act- Title II Technical Assistance Manual” EEOC. Section II-3.6100, 13).

If the public entity, can, however, demonstrate that the modifications would fundamentally alter the nature of it’s service, program, or activity it is not required to make the modification (“The Americans With Disabilities Act- Title II Technical Assistance Manual” EEOC. Section II-3.6100, 13-14). As an example, if the applicant were stunted in growth and only stood 4’9” in height, the department could expect the applicant to complete the same obstacle course as a person of normal height. It would be in the department’s best interest for compliance purposes to ask the applicant what reasonable accommodations would be necessary for them to complete the assessment. If the applicant asked for a stool to boost their ability to scale a 15’ wall, the department would need to comply to allow the applicant the ability to take the assessment. If the applicant were unable to complete the course with the reasonable accommodation supplied, the department would not be in violation of the ADA. This would be an example of an accommodation that would not have to be made by the department that would not fundamentally alter the program. On the other hand, if a wheelchair bound applicant passed all preliminary testing and got to the same obstacle course major modifications would have to be made in the course itself. Ramps would need to be installed, walls would need to be removed and the entire program would need revamping.

This is where the department can demonstrate that these types of extreme modifications would alter the nature of the test, therefore legally disqualifying the applicant based on their inability to perform an “essential job function” as opposed to marginally or incidentally (US Department of Justice. (2001, June 7). *Questions and Answers: The Americans With Disabilities Act and Hiring Police Officers*. Washington, DC: Retrieved June 16, 2001, from the World Wide Web).

CONCLUSIONS

It is believe strongly believed that most police departments are in compliance with the ADA. In perusing the ADA database there were very few new cases involving police departments and their applicants or employees. It is further found that the top officials have recognized and emphasized the importance of not discriminating against the disabled, or for race, creed, religion, age or ethnicity. One department that has been publicly recognized for their outstanding compliance is the Greensboro North Carolina Police Department. In 1995 they were recognized for implementing an “ADA Task Force” that consisted of members from all city agencies, including the fire and police departments. By taking this step to communicate with one another monthly, they have avoided most lawsuits stemming from an ADA violation. (“Implementing The Americans With Disabilities Act: Case Studies of Exemplary Local Programs”. The United States Conference of Mayors, April 1995). Greensboro also implemented in 1990 the “Mayor’s Council for Person’s with Disabilities” that meets monthly with the disabled public to hold a forum outlining anything that could be improved or enhanced within the city. These citizens live in Greensboro, hold jobs in Greensboro, and have applied for jobs in

Greensboro, thus each discussion proves valuable due to first hand accounts from it's citizens who are affected by discrimination.

There are still some departments out there that have not complied. These departments are taking a huge monetary risk and negative publicity risk in their non-conformance. These departments, large or small, should buy books, reference materials and read articles on the ADA and how it directly impacts their hiring practices. Agencies should train their employees; especially those involved in the hiring process, on the Act and put together Q&A's for the most commonly violated areas of the Act. A good example is the Greensboro, North Carolina Police Department in putting together task forces and panels to communicate with their disabled citizens and employees. But most importantly education is the best key. Most often, people who are missing limbs or who are wheelchair bound recognize their limitations and do not apply for positions in which they feel they could not fundamentally perform the required job functions. There will be, however, the day when someone does do this and the department who gets this applicant needs to be ready. Will they be? We can only hope. In answering the original research question of the compliance of departments to the Act, the answer is that most departments comply. For those who don't, their unwillingness to do so opens them up for huge monetary losses and perceptive value.

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