

## **Different Paths to Justice: The ADA, Employment, and Administrative Enforcement by the EEOC and FEPAs**

Kathryn Moss, Ph.D.\*, Michael Ullman, M.A.,  
Matthew C. Johnsen, Ph.D., Barbara E.  
Starrett, M.H.A., and Scott Burris, J.D.

---

**Under Title I of the ADA, individuals who believe they have been subjected to disability-based employment discrimination may file an administrative charge. This article looks at who files charges, over what issues, and with what outcomes in both Equal Employment Opportunity Commission (EEOC) field offices, and state and local fair employment practice agencies (FEPAs). The data for the article are computerized records of all ADA charges filed through March 31, 1998. The data indicate that individuals who rely on a FEPA to investigate their charge have a greater likelihood of obtaining a beneficial outcome than individuals who rely on the EEOC, but proportionately more individuals receiving a beneficial outcome are likely to receive monetary benefits from the EEOC than from a FEPA. Further, those who receive beneficial outcomes will probably receive greater monetary benefits from charges investigated by the EEOC than from those investigated by a FEPA. Copyright © 1999 John Wiley & Sons, Ltd.**

### **INTRODUCTION**

Under Title I of the Americans with Disabilities Act (ADA), individuals who believe they have been discriminated against in employment on the basis of a disability may file an administrative charge. The charge initiates an administrative dispute resolution process. Aggrieved individuals may also file a lawsuit, but only after pursuing their administrative remedies.

The US Equal Employment Opportunity Commission (EEOC) has primary enforcement authority for Title I. It shares responsibility with state and local Fair

---

\* Correspondence to: Kathryn Moss, PhD, Cecil G. Sheps Center for Health Services Research, University of North Carolina, Chapel Hill, 725 Airport Rd, Campus Box 7590, Chapel Hill, NC 27599-7590, USA.

Contract grant sponsor: National Institute of Mental Health; Contract grant number: ROI-MH57077.

Employment Practice Agencies (FEPAs) for receiving and investigating employment discrimination charges. The FEPAs enforce anti-discrimination laws in states and localities that are similar to the federal antidiscrimination laws. The EEOC has 50 field offices in 33 states and the District of Columbia. There are 125 FEPAs in 48 states, the District of Columbia, Puerto Rico, and the Virgin Islands. Usually, an individual may file a charge with either the EEOC or a FEPA. Either way, the charge is considered "dual-filed" under both the ADA and the applicable state or local law. FEPA investigations of charges that are dual-filed under the ADA or other federal employment discrimination laws are carried out under contractual arrangements with the EEOC. Thus, the EEOC maintains oversight responsibility for the work FEPAs conduct (State and Local Task Force, 1995).

This article is part of a larger study of the ADA employment discrimination charge process.<sup>1</sup> Previous articles focused on the time period of July 26, 1992 (the effective date of Title I implementation) through June 30, 1995 (Moss & Johnsen, 1997; Moss, Johnsen, & Ullman, 1998; Moss, *in press*). This article updates these analyses, extending the time period through March 31, 1998.

One purpose of the larger study is to monitor who is making use of the charge process and why. Complainants can be characterized by type of impairment, as well as issues over which charges are filed. The empirical study of who is filing complaints allows us to understand whether the ADA is fulfilling Congressional intent; that is, whether the people making use of the charge process are the ones Congress intended to serve.

A second purpose of the larger investigation is to evaluate the benefits obtained by individuals who file charges under Title I. For this purpose, one of the main outcomes is whether individuals receive any benefits as a result of filing an ADA employment discrimination charge. The type of benefits received is also considered (e.g., hiring, reinstatement, reasonable accommodation, cash settlements, and the amount of money involved). A third purpose of the ongoing study is to identify factors that are associated with those who receive benefits.

In this article, we look at who files charges, over what issues, and with what outcomes in both EEOC field offices and FEPAs. Summary findings are listed below with details and discussion to follow:

- (i) Since Title I went into effect (July 26, 1992), back and psychiatric impairments have been the most commonly claimed impairment in ADA-based charges. Other common claims have included neurological impairments and impairments related to extremities (i.e., loss of limbs or digits and non-paralytic orthopedic impairments of hands, legs, feet, and shoulders).
- (ii) Discharge has been the most commonly cited issue over which ADA-based charges have been filed. Other commonly cited issues have included failure to provide reasonable accommodations, terms and conditions of the job (i.e., allegations of inequitable rules or denial of applications of rules

<sup>1</sup> In March 1995, the first author obtained an Intergovernmental Personnel Act (IPA) position at the EEOC. This gave her access to two kinds of data: (i) the EEOC's computerized data system which includes detailed information on every charge the EEOC receives, as well as those which are dual-filed with FEPAs, and (ii) investigative files for charges filed with the EEOC. In working with the data and before publishing or disseminating the data or reports based on the data, the author and research staff are subject to the confidentiality provisions of Title VII of the Civil Rights Act of 1964 as incorporated into the ADA.

- pertaining to overall working conditions and employment privileges irreducible to monetary value), harassment, failure to hire, and discipline.
- (iii) People tend to have very different charge outcomes depending on whether their charge is investigated by a FEPA or an EEOC field office. Charges investigated by a FEPA are more likely to result in benefits for people who file them than charges investigated by the EEOC. However, charges investigated by the EEOC are more likely to result in greater actual monetary benefits for people who file them than those investigated by a FEPA.
  - (iv) People may receive very different charge outcomes, depending on which particular EEOC office or FEPA processes their charge.
  - (v) Regardless of whether a charge is investigated by the EEOC or by a FEPA, only a small percentage of charges result in new hires or reinstatements for people with disabilities. On the other hand, more than 2,400 individuals with disabilities have either been hired into new jobs or had their old jobs reinstated, and over 22,000 individuals have received benefits of some kind in the 5½ years since Title I took effect.
  - (vi) Regardless of whether a charge is investigated by the EEOC or by a FEPA, the percentage of ADA complainants who receive beneficial charge closures, such as settlements or conciliation agreements, has declined during the past three years. However, the size of monetary awards complainants receive has increased. Also, the percentage of cases in which the EEOC has found “reasonable cause to believe that discrimination occurred” has risen considerably.

## **STUDYING THE EMPLOYMENT DISCRIMINATION CHARGE PROCESS**

The all-too-frequent gap between the promise of public policies and their implementation has been much discussed (Pressman & Wildavsky, 1973; Murphy, 1974; Van Meter & Van Horn, 1975; Bardach, 1977; Moss, 1987, 1992; Wilson, 1989; Blumrosen, 1993). The ADA promises active and effective enforcement, however. As stated by Congress, it aims “to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities” and “to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities” (42 U.S.C. §12101(b)(2) and (3) (Supp. 1992)). Thus, our ongoing study of the employment discrimination charge process represents an attempt to determine the extent to which the legislative intent translates into benefits for people with disabilities.

An evolving goal of the study is to situate our research findings within the larger context of trends in equal employment opportunity law. The level of charge activity will reflect at least three variables: the rate of employer compliance with the ADA’s requirements, the size of the population protected by the ADA, and the willingness of individuals who believe they have been subject to discrimination to file charges (Burris & Moss, in press). All three variables are fluid over time, influenced by such factors as judicial interpretations of who is covered by the law and perceptions of the charge process and its outcomes.

In earlier work, we argued that several factors have created a climate favorable for individuals who feel they have been subject to employment discrimination (Moss, Johnsen, & Ullman, 1998). Among these are the presence of the EEOC and other governmental agencies created to enforce employment discrimination laws, the informal activities of the EEOC and other enforcement agencies, the low cost and relative ease of filing claims with the EEOC and FEPAs, the filing of more than a million employment discrimination charges since the passage of the 1964 Civil Rights law, the settling of hundreds of thousands of charges in favor of complainants during this same time period, and the tens of thousands of employment discrimination lawsuits filed during this period. In addition to increasing the willingness of individuals to file charges in good faith, these factors could also encourage employees to file mendacious claims or to file in retaliation for employment decisions actually unrelated to disability.

There are also significant factors at work that may be reducing the use of the charge process by people with disabilities who believe they have experienced discrimination. Empirical research suggests that most people who suffer discrimination and other legally recognized injuries do not sue (Felstiner, Abel, & Sarat, 1980; Kritzer, Vidmar, & Bogart, 1991; Burris & Moss, *in press*). Although individuals' awareness of ADA litigation has not been studied, a strong trend in the federal courts toward narrowly interpreting the ADA's definition of disability could be reducing willingness to bring legal claims (Frierson, 1997).

The effect of litigation and other contextual factors on employer compliance and the number of charges is complex. Employers who perceive that courts are interpreting the ADA narrowly, and are even hostile to the statute, might be more likely to assume that certain impairments are not protected disabilities or to refuse proposed accommodations as unreasonable. This could be expected to lead to more charges, particularly among individuals whose impairments diverge from popular conceptions of disability (e.g., we would expect to see more charges involving back problems or psychiatric disabilities, and fewer involving serious vision impairments or paraplegia, if employers are applying a narrow definition of disability). Similarly, employers may regard the reasonable accommodation requirement of the ADA as a species of "affirmative action" and interpret court decisions limiting affirmative action programs as signaling a repudiation of ADA requirements (Rubinfeld, 1997). On the other hand, the perception by employers that the ADA is stringently enforced and entails significant costs in defending charges may encourage greater compliance, ultimately reducing the number of charges. Both forces may play a role as employers learn more about evolving rules: higher compliance with respect to employees whose impairments are perceived to clearly fall within the legal definition of disability may be offset by a greater confidence in challenging the applicability of the law to employees with other impairments.

The US Supreme Court's first decision interpreting the ADA, handed down in June 1998, held that a person with asymptomatic HIV infection was disabled under the law (*Bragdon v. Abbott*, 1998). The decision's liberal approach to interpreting the ADA will probably reverse the narrowing trend in the lower courts to some extent. A broader approach to defining disability in the courts could be expected to influence the behavior of employees and employers and, ultimately, the number of charges.

Changes in the way the EEOC processes charges may also influence the outcomes of the charge process. From the early 1980s through June 1995, EEOC policy required full investigations of all charges (even those that appeared groundless upon intake). To reduce this large inventory of uninvestigated charges, the EEOC changed its policy in June 1995. The newer policy requires EEOC field office personnel to assign charges to one of three categories: (A) charges which fall within the EEOC's national or local enforcement plans (i.e., plans identifying priority issues for administrative enforcement and litigation) or charge for which there seems a high likelihood that discrimination has occurred are to be fully investigated; (B) charges for which evidence of discrimination is inconclusive are to receive further investigation to reclassify them into either "A" for full investigation or "C" for dismissal; (C) charges for which there is little or virtually no evidence of discrimination or charges in which the charging party or the employer is not covered under the ADA are to be dismissed.

A March 1998 EEOC report, titled *Priority Charge Handling and Litigation Task Force Report*, stated that the EEOC's priority charge handling procedures, together with its National Enforcement Plan, helped the agency progress in many areas. According to the report, the agency was particularly successful in reducing its national charge inventory and increasing the number of cases in its docket that challenge the most serious violations (Igasaki & Miller, 1998). The report provides a mid-term assessment of the progress of priority charge processing, as well as litigation reforms, which the EEOC began in 1995. The report did not attempt to differentiate the effect of its reforms on enforcement of the different laws for which it has responsibility and thus is not intended to shed light on the impact of the new charge priority policy on persons with disabilities.

## METHODOLOGY

### The Data

We obtained the data for this study from the EEOC's Charge Data System (CDS). The CDS is used by the agency to monitor and track processing and investigation of charges. It is also used to prepare informational, management, and statistical reports. It is operational in all EEOC offices. FEPAs also are linked to the CDS. Both EEOC field offices and FEPAs continuously enter and update information in the CDS system. When data are entered and updated, one copy is stored in local CDS databases, while another is transmitted to a computer at EEOC Headquarters. The latter computer consolidates the transmitted data, merging them into the national database which maintains data pertaining to discrimination charges (US General Accounting Office, 1989).

The EEOC requires its field offices and FEPAs to enter standardized information about each charging party and charge into the CDS. This information includes the individual's impairment, race, national origin, gender, and age. It documents the filing and closing dates of all charges and the EEOC office or FEPA where the charge was filed, investigated, and closed. It describes the issue(s) over which the charge was filed, the status of the charge (whether it is open or has been

closed), and, if closed, whether there was a finding of “cause” or “no cause.” For all charges closed, it records the specific charge outcome.

While previous articles in the larger investigation explained that the EEOC was not able to provide us with all of its ADA data in computerized form (Moss, 1996; Moss, Johnsen, & Ullman, 1998; Moss, *in press*), the data reported in this article come from a computerized data set of records of *all* ADA charges filed from the date of implementation of Title I (July 26, 1992) through March 31, 1998.

## Data Analysis

Simple percentages were calculated in analyzing kinds of impairment most often cited in ADA charges, alleged violations cited in charges, and the outcomes of charges. We have not conducted significance tests for this paper. Tests of significance are designed to help in making decisions about population parameters. Because all our analyses provide actual population parameters of ADA-based charges and charging parties, significance testing is inappropriate.<sup>2</sup>

## RESULTS

### Number of Charge Filings

In the period between the effective date of Title I (July 26, 1992) and March 31, 1998, 175,226 charges had been filed under the ADA. Of these, 57% ( $n = 99,470$ ) had been filed with EEOC field offices and 43% ( $n = 75,753$ ) had been filed with the FEPAs.<sup>3</sup> Thus, in order to get a complete picture of the impact of the ADA on employment discrimination it is important to include both cases handled by the EEOC and those handled by FEPAs.

### Impairments Cited in Charges

Of the charges filed with the EEOC, individuals with one of four impairments comprised half of those filing. The four impairments most commonly cited were back impairments (17.2%;  $n = 17,092$ ), psychiatric impairments (12.4%;  $n = 12,313$ ), neurological impairments (10.6%;  $n = 10,568$ ), and impairments related to extremities (i.e., loss of limbs or digits or nonparalytic orthopedic impairments of hands, legs, feet, and shoulders) (9.5%;  $n = 9,451$ ). Any one of the many other specific impairment classifications represented no more than 4% of all charges filed.

The situation was generally similar with charges filed with the FEPAs. The four impairments most commonly cited were back impairments (12.7%;  $n = 9,630$ ), psychiatric impairments (9.4%;  $n = 7,141$ ), impairments related to extremities

<sup>2</sup> In our previous articles on the administrative charge process, we conducted significance testing because some of the data were derived from samples.

<sup>3</sup> The EEOC field office and FEPA filings total to slightly less than the total number of filings because in rare instances charges are filed at EEOC Headquarters in Washington, DC.

(9.2%;  $n = 6,935$ ), and neurological impairments (6.6%;  $n = 4,969$ ). Any one of the other specific impairment classifications represented 3.2% or less of all charges filed.

A major difference between the EEOC and the FEPAs involved “other impairments.” Impairments *not labeled* in the CDS database, called “other impairments,” represented 20.4% ( $n = 20,311$ ) of the EEOC charges. In contrast, “other impairments” comprised 32.3% ( $n = 24,493$ ) of FEPA charges.

There was another difference between the EEOC and FEPAs with respect to impairments cited in charges. In Particular, in the second half of 1997, psychiatric disabilities replaced back impairments as the most commonly cited impairment in Title I charges investigated by EEOC offices. Back impairments remained the most frequently cited impairment and psychiatric disabilities remained the second most frequently cited impairment in charges investigated by FEPAS.

### Nature of Allegations

The largest percentage of ADA charges filed with the EEOC consisted of individuals alleging they had been illegally discharged (52.4%;  $n = 52,119$ ). This is consistent with charges filed under other laws enforced by the EEOC. Other alleged violations were failure to provide reasonable accommodations (29.2%;  $n = 29,088$ ), terms and conditions (13.3%;  $n = 13,193$ ), harassment (12.0%;  $n = 11,915$ ), hiring (9.3%;  $n = 9,237$ ), and discipline (5.1%;  $n = 5,069$ ). Any one of the many other classifications of allegations were found in less than 5% of the charges.

The situation with the FEPAs was again similar. The most commonly cited allegations in charges filed with the FEPAs were job termination (54.5%;  $n = 41,271$ ), terms and conditions (25.2%;  $n = 19,112$ ); reasonable accommodations (12.3%;  $n = 9,307$ ), harassment (9.6%;  $n = 7,262$ ), and hiring (9.3%;  $n = 7,055$ ). Any one of the many other classifications of allegations were found in 3.3% or less of the charges filed with the FEPAs.

Again, allegations not labeled at all in the CDS database constituted a large percentage of FEPA charges, especially relative to the percentage of unlabeled allegations cited in EEOC charges. Unlabelled allegations constituted 10.7% ( $n = 8,118$ ) of FEPA charges, but only 3.2% ( $n = 3,173$ ) of EEOC charges.

### Whether Individuals Receive Benefits

ADA charges can be closed in six ways. Three bring some type of direct benefit to charging parties. “Withdrawals with benefits” are non-written, informal agreements between employers and charging parties that typically resolve a charge before the EEOC or a FEPA has completed its investigation and determined the merits of the charge. “Settlements” are formal, written agreements between employers and charging parties that resolve a charge before the EEOC or a FEPA issues a letter of determination on the merits of the charge. “Conciliation agreements” are formal, written agreements between employers and charging parties

Table 1. Outcomes of all ADA employment discrimination charges processed and closed by EEOC and FEPA offices through 31 March 1998.\*

Type of closure	EEOC		FEPA		Total	
	No. of closures	% of total	No. of closures	% of total	No. of closures	% of total
Withdrawal with benefits	5377	5.7	5573	10.8	10956	7.5
Settlements	4311	4.6	5894	11.4	10206	7.0
Successful conciliations	1165	1.2	555	1.1	1721	1.2
Total benefits	10853	11.5	12022	23.3	22883	15.7
Unsuccessful conciliations	2023	2.2	124	.2	2148	1.5
No cause determinations	47457	50.5	25969	50.3	73561	50.5
Administrative resolutions	33682	35.8	13486	26.1	47202	32.4
Total nonbenefits	83162	88.5	39579	76.7	122911	84.4
Total	94015	100.0	51601	100.0	145794	100.0

\* The EEOC field office and FEPA closures total to slightly less than the total number of closures because in rare instances cases are reviewed and subsequently closed by EEOC Headquarters. Since these cases can include cases filed with either an EEOC field office or a FEPA, we are excluding them from the comparison of EEOC field offices and FEPAs.

that resolve a charge after an investigation indicates reasonable cause to believe that discrimination occurred.

Three other types of closure bring no direct benefits to charging parties. “Unsuccessful conciliations” are failures to achieve an agreement between employers and charging parties after an investigation indicates that there is reasonable cause to believe that discrimination occurred. “No cause determinations” are determinations that there is not reasonable cause to believe that discrimination occurred. “Administrative closures” are charges closed for other reasons without a determination of cause or no cause (e.g., a determination that the charging party is not a qualified individual with a disability, a decision that the employer is not a covered entity under the ADA, or a request by the charging party for a “right-to-sue” letter 180 days after the charge was first filed even if the agency processing is not complete<sup>4</sup>).

Table 1 shows that 145,794 ADA charges were closed as of March 31, 1998. Of these, 15.7% ( $n = 22,883$ ) brought some measure of benefit to charging parties. The data indicate, however, that charges investigated and closed by a FEPA were more likely to benefit complainants in some way than charges investigated and closed by the EEOC. As Table 1 reveals, 23.3% ( $n = 12,022$ ) of the charges

<sup>4</sup> Some right-to-sue letters eventually result in benefits for charging parties. In some cases, a charging party or attorney requests a right-to-sue letter, even if the EEOC or a FEPA has not finished processing the charge, because the case seems strong. In such cases, the nonbeneficial outcome received administratively may be a strong case where a beneficial outcome is received—not before the agency, but eventually in court. These cases are not included in the analysis for this paper because the Charge Data System does not include information about them. They most likely constitute a small group, however, because the cost of attorneys and the difficulty in getting attorneys to take ADA cases prevents most people from filing lawsuits. Furthermore, there has been an increasing tendency of federal courts to deny protection to individuals who bring ADA claims. It is also important to note that right-to-sue letters may also be issued when the EEOC or a FEPA makes a no cause determination or when conciliation attempts fail and the EEOC decides not to sue on the charging party’s behalf. Again, some of these right-to-sue letters may eventually result in a judicially obtained beneficial outcome.

investigated and closed by a FEPA resulted in some sort of benefit, compared to 11.5% ( $n = 10,853$ ) of the charges investigated and closed by the EEOC.

In addition to indicating the number of charges closed, Table 1 also provides information about determinations by EEOC and FEPA investigators that there is reasonable cause to think that discrimination occurred. Referred to as "cause findings," these can result only in conciliations, either successful or unsuccessful. The rows in Table 1 describing successful and unsuccessful conciliations represent only 1.3% of the total FEPA charge closures and 3.4% of the total EEOC charge closures. These low percentages are consistent with criticisms the EEOC frequently receives for making too few cause determinations (Selmi, 1996; Seymour, 1995, 1997; Blumrosen, 1994, 1993; Norton, 1992; US General Accounting Office, 1994, 1988, 1987).

It is important to note that withdrawal-with-benefit outcomes and formal settlements probably would have resulted in more "cause" determinations if their investigations had been concluded. It is also important to point out that the percentage of "cause" findings by the EEOC has increased considerably during the last several years. This will be discussed in detail later in the paper.

### Nature and Amount of Benefits

The EEOC's Charge Data System tracks three types of benefit resulting from charge closures. "Actual monetary benefits" are provided by an employer to the person making the complaint and/or a group of similarly situated employees through back pay, remedial relief, compensatory damages, or punitive damages. "Projected monetary benefits" are remedies to be provided by an employer during a one-year time period through hiring, promotion, reinstatement, or accommodations that would bring monetary returns. "Nonmonetary benefits" can also be provided by employers. Examples include providing a charging party with a positive job reference, referring a charging party to a job, providing a charging party or a group of similarly situated individuals with union membership, or posting anti-discrimination notices in an employment setting.

Table 2 shows the actual and projected monetary benefits and nonmonetary benefits resulting from charges investigated by EEOC offices and FEPAs that

Table 2. Types of benefit received by charging parties from 26 July 1992 through 31 March 1998\*

		EEOC	FEPA	Total
Actual monetary benefits	Mean \$ per closure	\$19231	\$8370	\$13932
	Median \$ per closure	\$5646	\$2400	\$3695
	No. of closures	6510	6346	12909
	% of total rec'd benefits	61.4%	59.2%	60.3%
Projected monetary benefits	Mean \$ per closure	\$24860	\$19867	\$23691
	Median \$ per closure	\$17500	\$12916	\$16492
	No. of closures	2936	910	3851
	% of total rec'd benefits	27.7%	8.5%	18.0%
Nonmonetary benefits	No. of closures	3823	4520	8398
	% of total rec'd benefits	36.1%	42.2%	39.2%

\* The computations of this table were based on all ADA-based charges that resulted in benefits.

brought benefits to charging parties. The percentage of beneficial charges that resulted in nonmonetary benefits was higher for charges investigated by FEPAs than for charges investigated by EEOC offices. EEOC office-investigated charges that resulted in benefits for complainants, however, resulted in a higher percentage of monetary benefits, both actual and projected. Also, charges investigated by EEOC offices that brought benefits to complainants resulted in distinctly higher monetary benefits, both actual and projected.<sup>5</sup>

Table 2 presents both mean and median monetary benefits because both are important in describing benefits resulting from ADA charges. Like many economic analyses, the distribution of monetary benefits is skewed. When describing dollar amounts received by the “typical” charging party, the median is a good alternative to the mean because the distribution is skewed (in this case, a relatively few charges have resulted in very high dollar amounts which cause the mean and median to be quite different). When trying to understand the EEOC’s recent policy emphasis on prioritizing particularly strong cases, the mean may be useful in understanding the overall impact of these higher monetary awards received in such cases.

### New Jobs and Reinstatements

Many observers argue that a large percentage of charges of employment discrimination brought under the ADA are frivolous (Bovard, 1995; Mathews, 1995, 1993; Will, 1996; Zuriff, 1996; Olson, 1997) and that the goal of increasing employment opportunities for people with serious disabilities has not been met (Auberger, 1994; Redenbaugh, 1994). In an effort to address this issue, we analyzed the number and percentage of charges that resulted in new jobs and reinstatements. Table 3 presents the results of this analysis.

The results in Table 3 support the conclusions of those who argue that only a small percentage of charges result in increased employment opportunities for people with disabilities. Although there is a small difference between charges investigated by the EEOC and charges investigated by a FEPA with respect to

Table 3. New jobs and reinstatements resulting from ADA employment discrimination charges through 31 March 1998

	EEOC		FEPA		Total	
	No. of closures	% of closures	No. of closures	% of closures	No. of closures	% of closures
Closure result						
New hires and reinstatements	1848	2.0	558	1.1	2407	1.7
All other closures	92167	98.0	51043	98.9	143387	98.3
Total	94015	100.0	51601	100.0	145794	100.0

<sup>5</sup> In analyzing the nature and amount of benefits, earlier articles in this investigation used individuals as the unit of analysis, not charges. One article (Moss, in press) set forth the problems with using individuals rather than charges. Now that data about all ADA charges are available in computerized form, we are able to change the unit of analysis to charges. The dollar amounts are actually relatively similar whether individuals or charges are the unit of analysis, but we believe that representing these outcomes by charges presents a more accurate picture.

complainants obtaining new jobs or getting old jobs back, neither group had much success in this area. Table 3 also shows that 2,407 charges resulted in individuals either being hired into new jobs or having their old jobs reinstated. While this is not a trivial result for those who were hired or reinstated, it would appear to fall short of the wide ranging impact expected for the more than 43 million Americans with disabilities.

### The Passage of Time

Implementation researchers have repeatedly found that translating important legislative and administrative policies into action proceeds slowly (Wilson, 1989; Goldman, *et al.*, 1992; Blumrosen, 1993). That finding underlies the relatively optimistic interpretation of our earlier study findings about ADA employment discrimination charges: we emphasized that despite the seemingly low benefits received by individuals who had filed ADA charges, the initial three years of Title I implementation saw thousands of people with disabilities receiving benefits of some type as a result of filing an employment discrimination charge (Moss & Johnsen, 1997; Moss, Johnsen, & Ullman, 1998; Moss, *in press*).

With additional data, we are able to compare charge resolutions from the initial three years of implementation (July 26, 1992 through June 30, 1995) with those from July 1, 1995 through March 31, 1998. Tables 4 and 5 present the results of the analysis.

Rows 1 and 2 of Table 4 show that benefit rates decreased considerably from the early to the later time period. EEOC field offices experienced a 7.1% decrease

Table 4. Outcomes of all closed ADA employment discrimination charges investigated by EEOC and FEA offices by time period

Time period	EEOC			FEPA			Total		
	Cases closed	Benefit rate (%)	% cause determ	Cases closed	Benefit rate (%)	% cause determ	Cases closed	Benefit rate (%)	% cause determ
7/26/92-6/30/95*	28285	16.5	2.9	17105	25.6	1.1	45447	19.9	2.2
7/1/95-3/31/98	65730	9.4	3.6	34496	22.2	1.4	100347	13.8	2.9
7/1/95-12/31/96	11388	8.4	1.5	5678	22.3	1.4	17070	13.0	1.5
1/1/96-6/30/96	12687	9.1	2.3	6306	21.7	1.1	19007	13.3	1.9
7/1/96-12/31/96	11734	9.6	3.5	6349	21.6	1.5	18128	13.7	2.8
1/1/97-6/30/97	11952	9.3	4.1	6849	22.6	1.6	18840	14.1	3.2
7/1/97-12/31/97	11518	10.2	5.8	6004	22.5	1.5	17530	14.4	4.3
1/1/98-3/31/98	6451	10.2	5.3	3310	22.5	1.5	9772	14.3	4.0

\* The number of cases closed during the 7/26/92-6/30/95 time period by EEOC field offices and FEPAs presented in this table differ very slightly from our previous articles. This is because the earlier data, provided to us by the EEOC in hard copy form, classified approximately 500 cases as being either EEOC field office closures or FEPA closures differently than they are classified in the newer computerized data set we recently obtained. Also, there were some rounding differences within the hard copy data themselves. Accordingly, the EEOC benefit rates in the previous articles were reported as 16.2% (Moss, *in press*), and 16.3% (Moss, Johnsen, & Ullman, 1998), in contrast to the 16.5% reported here, and the FEPA benefit rates in the previous article were reported as 26.6%, in contrast to the 25.6% reported here (Moss, *in press*).

Table 5. Type of benefit received by charging parties by time period\*

		7/25/92 – 6/30/95			7/1/96–3/31/98		
		EEOC	FEPA	Total	EEOC	FEPA	Total
Actual monetary benefits	Mean \$ per closure	\$15961	\$6865	\$11924	\$20838	\$9840	\$15272
	Median \$ per closure	\$4880	\$2000	\$3056	\$6729	\$2500	\$4000
	No. of closures	2537	2202	4790	2644	2710	5355
	% of total rec'd benefits	55.5%	55.5%	55.4%	67.0%	60.9%	63.8%
Projected monetary benefits	Mean \$ per closure	\$23541	\$16098	\$22068	\$26316	\$26099	\$26254
	Median \$ per closure	\$16640	\$13500	\$15828	\$18348	\$11980	\$16744
	No. of closures	1587	401	1993	853	342	1195
	% of total rec'd benefits	34.7%	10.1%	23.0%	21.6%	7.7%	14.2%
Non-monetary benefits	No. of closures	1679	1794	3527	1436	1812	3248
	% of total rec'd benefits	36.7%	45.2%	40.8%	36.4%	40.7%	38.7%

\* The calculations in Table 5 are based on all charges resulting in benefits.

(from 16.5% to 9.4%). FEPAs experienced a 3.4 % decrease (from 25.6% to 22.2%).

As mentioned previously, in June 1995 the EEOC changed its policy of viewing all charges of discrimination as equivalent to one of assigning priorities to charges. The implementation of new public policies such as the EEOC's charge priority policy, especially the beginning of implementation, is often slow and problematic (Wilson, 1989; Percy, 1989; Blumrosen, 1993). For this reason, we analyzed the data covering July 1, 1995 through March 31, 1998 in smaller six-month time blocks.

For charges investigated by the EEOC, Table 4 shows an initial very large decrease (from 16.5 to 8.4%) in benefit rates. Since then, the benefit rate has slowly edged up to 10.2%. However, this 10.2% benefit rate (the highest benefit rate for EEOC field offices in the various time blocks between July 1, 1995 and March 31, 1998) was 6.3% lower than the EEOC benefit rate of the July 26, 1992 through June 30, 1995 time period.

For FEPAs, Table 4 shows an initial decrease (from 25.6 to 22.3%). Since then, the rate has remained stable, between 21.6 and 22.6%. The highest benefit rate for FEPAs (22.6%) in the time blocks between July 1, 1995 and March 31, 1998 was 3.0% lower than the FEPA benefit rate of the July 26, 1992 through June 30, 1995 time period.

Table 4 reveals that the percentage of "reasonable cause" findings by the EEOC increased from 2.9 to 5.3% (an 83% increase). The percentage of "reasonable cause" findings by the FEPAs has remained consistently low, however, increasing by only .4%: from 1.1% in the earlier time period (7/25/92–6/30/95) to 1.5% by the end of the latter time period (7/1/95–3/31/98).

Table 5 shows the types of benefit resulting from ADA charges during the two different time periods. To account for inevitable delays in the implementation of most major policy changes, we have excluded the initial year of implementation of the new charge priority policy in this analysis. Of the beneficial charges that were investigated by the EEOC, there was a considerable increase in the percentage of those resulting in actual monetary benefits, in the size of the actual monetary benefits, and in the size of the projected benefits (and a decrease in the percentage

of those resulting in projected monetary benefits). Of the beneficial charges that were investigated by the FEPAs, there was also an increase in the percentage of those that resulted in actual monetary benefits, in the size of the actual monetary benefits, and in the size of the projected benefits. The increase in average actual monetary benefits for charges investigated by the FEPAs was not as large, however, as the increase in average actual monetary benefits for charges investigated by EEOC offices. Moreover, there was little difference between the earlier and later time periods in median actual monetary benefits for beneficial charges investigated by the FEPAs. With regard to average projected monetary benefits for beneficial charges investigated by the FEPAs, there was a considerable increase from the earlier to the later time periods. There was a decrease, however, in median projected monetary benefits for beneficial charges investigated by FEPAs.

### **Variation in Benefit Rates Within and Between EEOC and FEPA Offices**

There was considerable variation in benefit rates among field offices of the EEOC, with rates ranging from 4.5 to 19.2% and an overall benefit rate of 11.5%. There was even more variation in benefit rates among the different FEPAs, with rates ranging from 2.5 to 64.6% and an overall benefit rate of 23.3%.

## **DISCUSSION**

This article described an investigation of the ADA employment discrimination charge process. The analyses looked at the types of impairment cited in charges, the allegations made, and the benefits received. Our results make a contribution to the ongoing debate about the efficacy and efficiency of Title I, but must be interpreted with a proper recognition of their limitations.

Our finding that the two most frequently claimed disabilities in Title I charges are back impairments and psychiatric disabilities might be fodder for critics who assert that the ADA is being used by people with “minor” disabilities instead of more “serious” or “traditional” disabilities such as paralysis, vision, or hearing impairments. Arguably, this claim reflects a misunderstanding of the nature of back and psychiatric impairments, and, given the Supreme Court’s decision in *Bragdon v. Abbott* (1998), of the intended scope of the ADA. Many people with back impairments, psychiatric impairments, neurological impairments, and impairments related to extremities have substantially limiting disorders but can make very good employees with reasonable and inexpensive accommodations. Title I was meant to give those individuals who are qualified the chance to file a charge in order to improve their chance to work. The fact remains, however, that a large proportion of those individuals filing charges claim disabilities which are difficult for employers to assess, which diverge from common perceptions of serious disabilities, or which implicate concerns about the limits of coverage.

The data also show that most claimants receive unfavorable outcomes. Of the closed charges, only 2.7% ( $n = 3,869$ ) resulted in determinations of cause and

15.7% ( $n = 22,883$ ) brought benefits of any sort to those who filed them. Of these, 60.3% received actual monetary benefits and 18% received projected monetary benefits. The average actual monetary award was \$13,932 and the median monetary award was \$3,695. A mere 1.7% ( $n = 2,407$ ) of the charges resolved beneficially for complainants resulted either in new jobs or reinstatements.

Furthermore, for the charging parties, results can be significantly different, depending on whether the charge is filed at an EEOC or a FEPA office. Individuals who rely on a FEPA to investigate their charge have a greater likelihood of obtaining a beneficial outcome than individuals who rely on the EEOC. However, proportionately more individuals receiving a beneficial outcome are likely to receive monetary benefits from the EEOC than from a FEPA. Further, those who receive beneficial outcomes will probably receive greater monetary benefits from charges investigated by the EEOC than from those investigated by a FEPA.

Do these findings support the views of those who think that the ADA's employment provisions are being used by the "wrong" people, or are too often being abused by people without meritorious claims (Bovard, 1995; Mathews, 1995, 1993; Will, 1996; Zuriff, 1996; Olson, 1997)? We think not. First, any sweeping judgments about the success of Title I are premature. Implementation researchers have found repeatedly that translating important legislative and administrative policies into action proceeds slowly and requires years of adjustment, compromise, experience, and fine-tuning (Wilson, 1989; Goldman *et al.*, 1992; Blumrosen, 1993). Our data show that, at the very least, more than 2,400 individuals with disabilities have obtained new jobs or have been reinstated into old jobs after only 5½ years of implementation. In addition, 22,883 individuals are better off in some way during the same time period. Of these, 16,000 received some kind of monetary benefit.

The more important reason for caution in judging the overall success of the process by these data is that they represent an unknown, and probably small, fraction of the total number of instances in which the ADA influences an employment decision. They do not include instances in which people with disabilities suffer discrimination but take no action. More importantly, charge data do not address "compliance without enforcement," the voluntary non-discriminatory behavior that would be the best measure of the overall success of the ADA (Burriss & Moss, *in press*). The existence of the ADA and the authority of the EEOC to enforce it present a powerful stimulus for employers to comply with its requirements. The need to respond to a charge, the possibility of investigation by the EEOC or a FEPA, and the chance of being the target of judicial proceedings stimulate many employers who do not initially comply to seek settlements when disputes arise. There is a predominance of legal settlements and "withdrawal-with-benefit" resolutions among those who benefit from their ADA charges. The finding that 14.5% of beneficial outcomes out of a total of 15.7% are either withdrawal-with-benefit resolutions or formal settlements strongly attests that the presence of the law and the risk of administrative enforcement present high motivational impact for employers. It is only in some cases resulting in withdrawal-with-benefit resolutions or formal settlements that EEOC or FEPA investigators actually are involved in the negotiations leading to the settlements.

In a similar interpretation of findings about the consequences of the 1964 Civil Rights Act on female and African American workers, Blumrosen (1993) described how the legislation encouraged employers to comply with the values contained in

the law, notwithstanding demographic and political changes that have reduced the impact of employment discrimination in recent times. Blumrosen makes an important point: in considering the impact of equal employment opportunity laws, statistics about charges and cases reveal only the "tip of the iceberg." The growing presence of knowledgeable and sophisticated human resource personnel in larger firms has meant an increase in the implementation of equal employment opportunity laws without direct government intervention (Edelman, 1992). Corporations are adopting policies to inform managers and workers of ADA requirements and to help them achieve compliance without direct EEOC or FEPA intervention. Because of these additions to corporate structure and awareness, EEOC statistics about charges and lawsuits show only one aspect of the consequences of laws such as the ADA. Widespread compliance would be expected to produce a pool of charges in which it is less clear that the individual's claim is meritorious and that the impairments are "disabilities" as defined under the ADA.

There can be little doubt that many Title I charges are frivolous. It does not follow, however, that the charge process is failing or even that it is being widely abused. The administrative charge process is designed to provide a relatively inexpensive and quick means of resolving disputes between workers and employers. It is very easy for an employee who suspects discrimination to file a charge, even the employee who lacks hard evidence to support the claim (as is often the case even in ultimately meritorious cases). There is no fee, no lawyer is required, and charges can be filed by mail or faxed to agencies. The initial screening of weak or malicious cases, which in standard litigation is performed by lawyers and court clerks, comes after filing in the ADA charge system.

On the other hand, the data presented here may be cause for concern about the effectiveness and fairness of the charge process for claimants with meritorious claims. Our results show that individuals whose employment discrimination charges were investigated both by EEOC offices and FEPAs during the last several years were less likely to benefit from their charge than those whose charges were investigated during the first three years of implementation. As previously noted, the last several years have seen both a growing number of court decisions narrowly interpreting the ADA and a change in EEOC charge handling procedures. It is conceivable that either or both of these factors could have contributed to the decreasing benefit rate. Given that both the EEOC and the FEPAs experienced reductions in benefit rates, it is a reasonable conjecture that, as courts have ruled against a growing number of ADA plaintiffs, employers have become less fearful of sanctions and see less reason to settle with charging parties. A more likely explanation, however, is that both the court decisions and the EEOC's change in its charge handling procedures have contributed to the reductions. The EEOC's decrease in benefit rates is twice as large as the decrease of the FEPAs. Furthermore, while the EEOC plans to pay increasing attention to settlement and mediation at all stages of charge processing, its recent emphasis has been on reducing its inventory and identifying cases that challenge the most egregious violations (Igasaki & Miller, 1998).

In 1995, an EEOC Task Force was created to assess the FEPA program and the EEOC's relationship with the FEPAs. The Task Force found that the computers provided by the EEOC to some of the FEPAs were too small for the volume of charges they processed. Many FEPAs have data transmission problems due either

to aging modem equipment or inadequate phone lines. At least seven FEPAs must duplicate data entry efforts by entering the data into their own system and then again into CDS. Although many larger FEPAs have a staff person knowledgeable in computer matters who is responsible for overall data entry, many others have few or no staff sufficiently trained in computer procedures. According to the Task Force, these problems result in slow and inefficient data processing as well as inaccuracies (State and Local Task Force, 1995, p. XII-3).

Our results lend support to the Task Force's conclusions. When examining the earlier FEPA data provided to us in hard copy form, Moss (*in press*) found both some data missing and many unclassified charges (*i.e.*, much more use of the "other impairment" category and of unlabeled allegations). Furthermore, in three of the FEPA offices, large discrepancies were found between the number of individuals reported as having received benefits and the number of reports which resulted in charges. When examining the newer FEPA data for this article, some missing data and many unclassified charges were still found. It seems obvious that effective oversight and administration of EEOC and FEPA field offices depends on accurate and timely data entry into the CDS. Without these, it may be difficult to fully understand the impact of ADA-based employment discrimination charges as well as the differences between the EEOC and FEPA charge processing.

## CONCLUSION

Perhaps the most important finding in this study is an apparent need for more uniform implementation of the Title I charge process. People tend to have very different charge outcomes, depending on whether the EEOC or a FEPA processes and closes a charge. While a much higher percentage of individuals whose charges are investigated by FEPAs receive benefits, a much lower percentage of such people receive monetary benefits. They also may receive very different types of charge outcomes, depending on which particular EEOC office or FEPA processes their charge.

During the last several years, the EEOC has taken decisive action in dealing with some of the problems pertaining to charge processing. It has made progress in reducing the length of time taken to process charges, in decreasing the inventory of charges awaiting resolution, in focusing investigative resources onto strong cases, in increasing its rate of "reasonable cause" determinations, and in increasing the monetary benefits received by charging parties. It is hoped that it will now focus more attention on settling cases, on mediation,<sup>6</sup> and on the nature of charge resolutions investigated by FEPAs.

In sum, the findings presented here suggest some correspondence between the promise of the ADA and actual outcome. They also generally support the concept of a federal agency directly and uniformly enforcing a federal law that remains much needed by individuals. If effective and equitable enforcement is

---

<sup>6</sup> The EEOC has recently instituted a mediation program. Its March 1998 report, *Priority Charge Handling and Litigation Task Force Report*, stated that the agency has started to see a sizable increase in the number of mediations occurring at its field offices as well as an increase in the number of cases resolved through mediation. In 1999, the EEOC received a substantial budget increase intended in large part, to dramatically expand the agency's ability to offer mediation.

to be expected from the EEOC, the answer seems to lie more with appropriation of adequate resources than with dismemberment and shifting enforcement responsibility into separate state and local enterprises.

## REFERENCES

- Auberger, M. (1994, November). Who are the disabled? *Newsweek*, 80.
- Bardach, E. (1977). *The implementation game: What happens after a bill becomes law*. Cambridge, MA: MIT Press.
- Blumrosen, A. W. (1993). *Modern law: the law transmission system and equal employment opportunity*. Madison, WI: University of Wisconsin Press.
- Blumrosen, A. W. (1994). *Oversight hearing on the Equal Employment Opportunity Commission: Hearing before the subcommittee on select education and civil rights of the Committee on Education and Labor*. (103rd Congress, 2nd Session). Testimony to US House Committee on Education and Labor.
- Bovard, J. (1995, June 22). The disabilities act's parade of absurdities. *Wall Street Journal*, A16.
- Bragdon v. Abbot. 118 S.Ct. 2196. (1998).
- Burris, S., & Moss, K. (in press). A road map for ADA Title I Research. In P. Blanck (Ed.), *Employment, Disability Policy, and the Americans with Disabilities Act*. Chicago, IL: Northwestern University Press.
- Edelmann, L. B. (1992). Legal ambiguity and symbolic structures: Organizational mediation of Civil Rights Law. *American Journal of Sociology*, 97, 1531-1576.
- Felstiner, W. L. F., Abel, R. L., & Sarat, A. (1980). The emergence and transformation of disputes: Naming, blaming, claiming. *Law and Society Review*, 15, 631-654.
- Frierson, J. G. (1997). Heads you lose, tails you lose: A disturbing judicial trend in defining disability. *Labor Law Journal*, 48, 419-430.
- Goldman, H. H., Morrissey, J. P., Ridgely, M. S., Frank, F. G., Newman, S. J., & Kennedy, C. (1992). Lessons from the program on chronic mental illness. *Health Affairs*, Fall, 51-68.
- Igasaki, P. M., & Miller, P. S. (1998). *Priority charge handling and litigation task force report*. [On-line]www.eecoc.gov/task/pehlit-1.html.
- Kritzer, H. M., Vidmar, N., & Bogart, W. A. (1991). To confront or not to confront: Measuring claiming rates in discrimination grievances. *Law and Society Review*, 25, 875-887.
- Mathews, J. (1993, December 6). Having doubts about disabilities act. *Washington Post*, A21.
- Mathews, J. (1995, April 16). Disabilities act failing to achieve workplace goals. *Washington Post*, A18.
- Moss, K. (1987). The "Baby Doe" legislation: Its rise and fall. *Policy Studies Journal*, 15, 629-651.
- Moss, K. (1992). *Implications of employment complaints filed by people with mental disabilities*. Washington, DC: Mental Policy Resource Center.
- Moss, K. (1996). *Psychiatric disabilities and employment discrimination charges under the Americans with Disabilities Act*. Washington, DC: Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services, Protection and Advocacy Program.
- Moss, K. (in press). The ADA employment discrimination charge process: How does it work and who is it benefiting? In P. D. Blanck (Ed.), *Employment, Disability Policy, and the Americans with Disabilities Act*. Chicago, IL: Northwestern University Press.
- Moss, K., & Johnsen, M. (1997). Psychiatric disabilities and employment discrimination charges under the Americans with Disabilities Act: A study of charge processing in North Carolina. *Psychiatric Rehabilitation Journal*, 21, 111-121.
- Moss, K., Johnsen, M., & Ullman, M. (1998). Assessing employment discrimination charges filed under the ADA. *Journal of Disability Policy Studies*, 9, 81-105.
- Murphy, J. T. (1974). *State educational agencies and discretionary funds*. Lexington, MA: Lexington.
- Norton, E. H. (1992). *Oversight on activities of the Equal Employment Opportunity Commission (EEOC): Hearing before the subcommittee on employment and productivity of the Committee on Labor and Human Resources*. (102nd Congress, 2nd Session). Testimony before the US Senate Committee on Labor and Human Resources, .
- Olson, W. (1997). *The excuse factory*. New York: Free Press.
- Percy, S. L. (1989). *Disability, civil rights, and public policy: The politics of implementation*. Tuscaloosa, AL: University of Alabama Press.
- Pressman, J. L., & Wildavsky, A. B. (1973). *Implementation*. Berkeley, CA: University of California Press.
- Redenbaugh, R. (1994, November). Who are the disabled? *Newsweek*, 80.
- Rubinfeld, J. (1997). Essay: Affirmative action. *Yale Law Journal*, 107, 427-471.

- Selmi, M. (1996). The value of the EEOC: Reexamining the agency's role in employment discrimination law. *Ohio State Law Journal*, 57, 1–64.
- Seymour, R. T. (1995). *Civil Rights Act and EEOC News*, (19).
- Seymour, R. T. (1997). *Civil Rights Act and EEOC News*, (28).
- State and Local Task Force. (1995). *State and local task force report*. (unpublished report prepared for EEOC Chairman Gilbert F. Casallas). Washington, DC: EEOC.
- US General Accounting Office. (1987). *EEOC Birmingham office closed discrimination charges without full investigation*. (Report No. HRD 87-81).
- US General Accounting Office. (1988). *EEOC and state agencies did not fully investigate discrimination charges*. (Report No. HRD 89-11).
- US General Accounting Office. (1989). *EEOC's charge data system contains errors but system satisfies users*. (Report No. IMTEC 90-5).
- US General Accounting Office. (1994). *EEOC's expanding workload increases in age discrimination and other charges call for new approach*. (Report No. HEHS 94-32).
- Van Meter, D. S., & Van Horn, C. E. (1975). The policy implementation process: A conceptual framework. *Administration and Society*, 6, 445–488.
- Will, G. (1996, April). Moral defect or medical problem? *San Diego Union Tribune*, 2.
- Wilson, J. Q. (1989). *Bureaucracy: What government agencies do and why they do it*. New York: Basic.
- Zuriff, G. E. (1996). Medicalizing character. *The Public Interest*, Spring 94–99.