

Empowerment Through Inclusion: Elevate Your Role as In-House Counsel

Guest and Dorsey Panelists

Christine Boucher, Deputy General Counsel & Chief Compliance Officer, Delta Air Lines, Inc.

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Program Materials

PowerPoint Presentation

Dorsey Publications

Dorsey Blog: Are Employers Required to Make Commuting Accommodations under the Americans with Disabilities Act? Matt Durham & Monica Delgado (SEPTEMBER 14, 2023)

<https://www.quirkyemploymentquestions.com/featured/disability-discrimination/are-employers-required-to-make-commuting-accommodations-under-the-americans-with-disabilities-act/>

Dorsey eUpdate: *Changing Rules Governing Artificial Intelligence in Employment*, Nicholas Pappas & Colin Seaborg (February 2, 2023)

<https://www.dorsey.com/newsresources/publications/client-alerts/2023/2/changing-rules-governing-ai-in-employment>

Dorsey eUpdate: Tensions Continue to Rise as Labor Organizing and Enforcement Both Increase Going in to 2023, Jack Sullivan & Nisha Verma (February 2, 2023)

<https://www.dorsey.com/newsresources/publications/client-alerts/2023/2/tensions-as-labor-organizing-enforcement-increase>

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Guest and Dorsey Speakers



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Agenda

- **Disability in the United States**
 - Legal Framework
 - Brief History
 - Disability Statistics
- **Disability Justice**
 - What
- **Disability Inclusion**
 - Why
- **Disability Inclusion**
 - How

Disability in the U.S. – The Legal Framework

- **Section 504 of the Rehabilitation Act**
 - Nondiscrimination under federal grants and programs
 - Applies to education, health care, housing, social services, parks and recreation
- **The Americans with Disabilities Act**
 - Applies to employment, public services, and places of public accommodation
 - Prohibits discrimination on basis of disability
 - Requires disability accommodations
- **EEOC announced in October 2023 that Disability Discrimination claims were up 77% in just completed fiscal year**

Disability in the U.S. - Brief History

- **Eugenics: 1880's – mid-20th Century**
 - Intentional end of disabled individuals in society; *Buck v. Bell*
 - Support from influential leaders in US and UK, also part of Nazi agenda
- **Institutionalization: 1900 – 1970s**
 - Was default option for disabled Americans
 - Parents of disabled children were encouraged to institutionalize children, forget about them, and move on with their lives, not even visiting
- **Reduced Institutionalization: Post WWII – 1970s**
 - 1972 Willowbrook expose
 - People with disabilities precluded from employment, education, transportation, and political and community engagement

Disability in the U.S. - Brief History

- **Disability Civil Rights Movement: 1960s – present**
 - Many early activists met at Camp Jened
 - Featured in documentary *Crip Camp | A Disability Revolution*
 - Served as incubator for many teenage activists, including Judith Heumann, Jim Labrecht, and Ed Roberts
 - The “504 Sit-In”
 - Began April 5, 1977 and lasted 30 days
 - Over government failure to enforce Section 504 of the Rehabilitation Act of 1973
 - Black Panther party joined activists during sit in and provided food and support

Disability in the U.S. - Brief History

- **Disability Civil Rights Movement: 1960s – present**
- **The “Capitol Crawl”**
 - March 1990 disability activists *crawled* up 83 steps to the entrance of the U.S. Capitol
 - Four months later, the activists’ demands were granted and Congress passed the Americans with Disabilities Act (ADA)
 - Signed into law by George H.W. Bush who said, “*Let the shameful wall of exclusion finally come tumbling down.*”
- **Disability Activism is Ongoing**

Disability Statistics

- **An estimated 1.3 billion people experience significant disability—16% of the world’s population.** (World Health Organization)

“Disability is part of being human and is integral to the human experience. It results from the interaction between health conditions such as dementia, blindness or spinal cord injury, and a range of environmental and personal factors.”

- **About 1 out of 4 U.S. adults have a disability (27%)** (CDC)

Disability in the U.S. – Employment Statistics

- **In 2022, about 21 percent of people with a disability in the U.S. were employed—up from 19 percent in 2021 and the highest rate since the U.S. began tracking this statistic in 2008.** (Bureau of Labor Statistics)
- **So far, employment of people with disabilities is a few percentage points higher in 2023** (St. Louis Federal Reserve)
- **The unemployment rate for people with a disability (ages 16-64) fell from 10.8 percent in 2021 to 8.2 percent in 2022, but the unemployment rate for this group was still twice as high as it was for people without a disability.** (BLS)

Disability in the U.S. Legal Profession

- **ABA Profile of the Legal Profession 2022**
 - 2021 NALP Survey
- **865 lawyers at 641 law offices across the country reported having disabilities - 1.22% of the 70,980 lawyers in those offices.**
- **The percentage of law firm partners who reported having disabilities was 1.07%**
 - More than three times the percentage for most of the past decade (0.2% -- 0.3%)
- **The percentage of law firm associates who reported having disabilities was 1.25%**
 - About twice the percentage reported two years earlier (0.59%)

Disability Justice

- **Disability has historically been viewed through a medical lens as a "problem" that needs to be "fixed" for a person to achieve normalcy.**
 - This model is often rooted in eugenics, emphasizing what the ideal body should be and resulting in stigma, exclusion, and erasure of people with disabilities.

Disability Justice

- **A movement-building framework that recognizes how ableism and disability are interconnected with other systems of oppression and identities, including race, gender, and class, and this informs societal norms and structures**
 - **Ableism is prejudice, bias, or discrimination toward disabled people in the form of limited or lack of accessibility or regard that leads to exclusion, isolation, shame, or erasure.**
 - **Ableism requires people to fit a narrow ideal of what it means to be productive members of society in order to be accepted.**

Disability Justice

Ten principles of disability justice

1. **Intersectionality**
2. **Leadership by those most impacted**
3. **Anti-capitalism**
4. **Cross-movement organizing**
5. **Recognizing wholeness**
6. **Sustainability,**
7. **Cross-disability solidarity**
8. **Interdependence**
9. **Collective access**
10. **Collective liberation**

Disability Justice

- **Disability Justice seeks to dismantle oppressive systems and create an inclusive and equitable society where everyone—especially marginalized disabled communities—can thrive.**

“If I’m in a place where my access needs are being met, then my impairment isn’t so significant.”

Stacey Perk Milbern, a disability justice activist

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Disability Inclusion - Why

- SHRM findings show that **just 13% of U.S. workplaces have disability-specific inclusion initiatives**, and more than half of people managers have not participated in any disability inclusion training.
- *“It’s time we busted some myths about hiring people with disabilities. We’re talking about a **high-quality talent pool that remains untapped and underemployed for no good reason**. We must continue fighting for diverse, inclusive workplaces, because the future of the American workforce depends on sustainable employment opportunities for all.”*
 - SHRM President and Chief Executive Officer Johnny C. Taylor, Jr., SHRM-SCP

Disability Inclusion - Why

- Disability:In
- A recent report from Accenture found that companies that offered **inclusive working environment for employees with disabilities** achieved an average of:
 - **28% Higher Revenue**
 - **30% Greater Economic Profit Margins**
 - **2X Net Income of Industry Peers**

Disability Inclusion - Why

- **CEOs are IN - Disability:IN (disabilityin.org)**
 - 180 CEOs and counting have signed
 - ***“We stand to boost the American GDP by up to \$25 billion if we hire just 1% of the untapped talent with disabilities.”***
 - *We do this because it’s the right thing to do and it makes good business sense. Research reveals that leading disability-inclusive companies stand to gain as much as 28% higher revenue, double the net income and 30% higher economic profit margins than their peers.*
 - ***This is a growing topic for investors in driving sustainable performance. A global investor coalition, representing more than \$2.8 trillion in combined assets, called on companies they invest in to become more disability inclusive.”***

Disability Inclusion - How

- **2023 – 50th Anniversary of the establishment of the ABA’s Commission on Disability Rights**
- **ABA Pledge for Change: Disability Diversity in the Legal Profession**
 - Signed by corporations, law firms, law schools, and disability rights groups
 - *“The Pledge for Change: Disability Diversity in the Legal Profession calls on legal employers to affirm that their commitment to diversity includes people with disabilities, and to encourage others in the profession to make this commitment.”*

Disability Inclusion - How

- **What ABA Pledge for Change signatories can do**
 - *Start an affinity group*
 - *Mentor law students with disabilities*
 - *Conduct disability awareness/elimination of bias trainings*
 - *Hire an intern with a disability*
 - *Offer scholarships and fellowships for law students with disabilities*
 - *Support disability organizations*
 - *Partner with businesses and community leaders*
 - *Collect disability demographic data*

Disability Inclusion - How

- **ABA Commission on Disability Rights**
 - [ABA Wide 21-Day Disability Equity Habit-Building Challenge © \(americanbar.org\)](https://www.americanbar.org/disability-equity-habit-building-challenge)
- **Videos and discussion questions on:**
 - **Disability Identity/ Pride/ Culture**
 - **Intersectionality**
 - **Ableism/ Disability Justice**
 - **Disability Language / Etiquette**
 - **Disability Rights Laws**
 - **Inclusion & Accessibility**
 - **Employment**
 - **Media Representation of Disability**

Disability Inclusion - How

- ABA Commission on Disability Rights
- [Resources \(americanbar.org\)](https://www.americanbar.org)
 - Resources related to the state character and fitness questions addressing mental health (listing and a podcast)
 - Information on law schools' disability-related programming
 - Testing accommodation information
 - Toolkit for planning accessible meetings and events—in-person and digital meetings
 - A guide to court access for individuals who are deaf and hard of hearing
 - State-by-state listing of resources made available by state and local courthouses for persons with disabilities

Disability Inclusion - How

- SHRM, in collaboration with the Office of Disability Employment Policy (ODEP) at the U.S. Department of Labor and ABLE today, has launched the **2023 Disability Inclusion Pledge** to give HR professionals and business executives the tools they need to build better workplaces for disabled workers.
 - 87% of survey respondents indicated a positive return on investment in hiring individuals with disabilities.
 - Organizations that invest in employing individuals with disabilities cite improvements to their organizational reputation and corporate social responsibility as key drivers.

Disability Inclusion - How

[Disability Equality Index - Disability:IN \(disabilityin.org\)](https://disabilityin.org)

- Originally a joint initiative of Disability:IN and the American Association of People with Disabilities (AAPD)
- The leading independent, third-party resource for the annual benchmarking of corporate disability inclusion policies and programs, and is now trusted by **more than 70% of the Fortune 100 and nearly half of the Fortune 500.**
- Since its inception in 2015, participation in the United States edition of the Disability Equality Index has grown 6x – **from 80 companies in the inaugural year to 485 in 2023.**

Disability Inclusion - How

[Disability Equality Index - Disability:IN \(disabilityin.org\)](https://disabilityin.org)

- *“An objective, reflective, forward-thinking, and confidential disability rating tool designed to assist business in advancing inclusion practices.”*
- Designed to **helps** companies build a **roadmap of measurable, tangible actions** across: Culture & Leadership, Enterprise-Wide Access, Employment Practices, Community Engagement, and Supplier Diversity.
- Participating companies receive a score, on a scale of **zero (0)** to 100, with those scoring 80 or higher earning the distinction of **“Best Places to Work for Disability Inclusion”** for the benchmark year.

Disability Inclusion - How

- **Launching an employee resource group for employees with disabilities can help employees feel welcome through shared experiences.**
- **Workforce training initiatives can help dispel stigmas surrounding disabilities and prepare managers to interview, onboard, and work with people with disabilities.**
- **Providing educational opportunities and town hall forums for employees with disabilities helps recognize and meet their unique needs.**

Disability Inclusion - How

- Evaluate whether employee benefit programs support the well-being of employees with disabilities.
- An employee concierge service can help support workers and families with complex, chronic, and ongoing care needs.
- A special-needs planning service can connect disabled employees to experienced consultants.

Disability Inclusion – How

Additional Information and Resources

<https://www.americanbar.org/groups/diversity/resources/celebrating-heritage-months/disability-pride-month/aba-wide-21-day-disability-equity-habit-building-challenge/>

https://www.americanbar.org/content/dam/aba/administrative/mental_physical_disability/ABAPledgeforChange_Brochure.pdf

<https://www.americanbar.org/groups/diversity/disabilityrights/>

<https://www.americanbar.org/groups/diversity/disabilityrights/resources/>

Disability Inclusion – How

<https://cripcamp.com/>

<https://disabilityin.org/in-the-news/law-360-more-disabled-lawyers-at-work-than-you-think/>

<https://disabilityin.org/releases/ceo-letter-on-disability-inclusion/>

<https://disabilityin.org/what-we-do/disability-equality-index/>

<https://employingabilities.org/>

https://pledgeinclusion.shrm.org/?_ga=2.127565450.623343456.1699394636-1254352718.1698968936

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