Law Office Management

The Business Case for Disability Diversity in Legal Employment

By Cheryl L. Anderson

Legal employers increasingly recognize the diversity in their workplace is important to success. Yet many overlook disability diversity. Here's why that's a mistake.

Senior & Junior Law Firm is hiring a new associate. After looking through a pile of resumes, they select the top candidates to interview. Included in the pool is Sandra, who is top 10 at her law school with impressive co-curricular activities and externships and an excellent writing sample.

When Sandra arrives, Senior and Junior see she has braces on her legs and walks with a cane. Although they know better than to ask her whether she has a disability, they ask questions about job tasks that draw out the fact Sandra has a mild case of cerebral palsy. She explains that it has not kept her from being able to do anything so far in law school, and she doesn't expect it to affect her ability to practice.

Nonetheless, Senior and Junior decide to cut Sandra from the final pool. Their rationale is that they have other good candidates, so why pick someone who might be an inconvenience - perhaps a costly one - because of a disability?

What they didn't recognize is this: Diversity of all kinds is good for business.

Diversity efforts should include lawyers with disabilities

Law firms' commitment to diversity is often apparent on the home pages of their websites, where there may be a direct link to the firm's diversity policies. But few of those policies mention disability explicitly.

While the number of students with physical and mental disabilities attending and graduating from colleges and universities is increasing,\(^1\) the number practicing law has shown little growth.\(^2\) Attorneys with disabilities report experiencing discrimination by legal employers. In a 2004 survey of California attorneys with disabilities, for example, 45 percent reported they believed they had been denied employment because of their disability, with that number rising to 68 percent for attorneys with visible disabilities.\(^3\)

Individuals with disabilities' slow progress in legal employment is not due to their inability to handle legal tasks. To quote Richard Thornburgh, who spoke at the First Annual ABA National Conference on the Employment of Lawyers with Disabilities:

> By its nature, legal work is principally an intellectual and interpersonal endeavor. While this naturally forecloses some individuals from having the capacity to meet the "essential functions" of being employed as a lawyer, this also means that the vast majority of people with disabilities that affect physical or sensory functions can readily succeed on the
Legal employers are not required to hire attorneys unable to perform the essential functions of the position in question even with a reasonable accommodation. Often, however, attorneys with disabilities are excluded based on stereotypes and unfounded concerns about their ability to handle the demands of practice.

As the sidebar profiles indicate, lawyers with disabilities have been successful in a variety of legal settings. One of the goals of the Illinois State Bar Association Standing Committee on Disability Law, which this author recently chaired, has been to raise the profile of attorneys with disabilities and encourage firms to more actively include disability in their diversity recruitment efforts.

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**Brandy L. Johnson**

**FIRM:** Feirich/Mager/Green/Ryan in Carbondale

**PRACTICE CONCENTRATION:** workers’ compensation, employment law, insurance coverage and defense, appellate advocacy, medical malpractice, and personal injury litigation

**YEARS IN PRACTICE:** 10

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**What’s your biggest accomplishment in practice?**

An attorney’s reputation in the legal community is paramount. One of my biggest accomplishments has been earning the respect of my peers and acquiring a reputation as a proficient, congenial advocate. This has been a benefit to me in numerous ways, including:

1. client development and retention;
2. seeking and maintaining employment;
3. being recognized as trustworthy and credible by judges, arbitrators, and mediators;
4. serving as an authoritative presenter at seminars in my field of practice; and
5. having the opportunity to author articles and contribute to published texts.

**How has your disability affected your practice?**

My initial experiences are not unlike those discussed in the article. I graduated at the top of my class, had published several articles, held office in a legal society, and served as an editor on more than one legal journal. I did not disclose my disability when applying for jobs. While I had numerous initial interviews, I only received one second interview and, eventually, one job offer. I even had one firm cancel my interview the day after they learned of my disability.

Once employed, I learned the benefit of proving myself an asset to the firm and, over the years, the impact of my disability on my practice reduced to the point of being insignificant. While I still encounter physical barriers at times due to my wheelchair, I have been able to find a way to overcome them.

In the actual practice of law, my disability has, at times, made me more approachable and permitted me to better understand some litigants. When my disability has permitted me to be more relatable, I have found the opposing litigants tend to be more responsive and willing to work with me to reach reasonable resolutions. In cases involving certain medical conditions or issues, my firsthand knowledge has been of benefit and aided me in the litigation of the case.

**What can legal employers do to improve the experience of lawyers with disabilities?**

Remember the individual is, first and foremost, a colleague. Let the disability fade into the background, placing emphasis instead on the attorney’s personality, work ethic, and abilities. Employers that are willing provide a supportive work environment and be open minded to accommodations will often find themselves rewarded with a loyal, hardworking, long-term employee.

Finally, I would encourage employers to create a work environment where management is approachable, disabled attorneys are encouraged to offer suggestions concerning their needs, and the overall atmosphere is one of acceptance.

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**The power of diversity**

Why have corporations and large (and many small) law firms embraced diversity in hiring?

- They are committed to the principles of equal opportunity.
- Their clients expect it (the “business case”).
• Their prospective employees expect it.

• Equal opportunity is the law.

• They find they produce a better product if more experiences and points of view are represented in the problem-solving process. As one company puts it, "[a] greater number of innovative ideas and solutions are created from a group of people with different perspectives and backgrounds than from a homogeneous group whose members might basically act and think alike."6

How does disability diversity fit within the general diversity embrace?

• Individuals with disabilities have a history of exclusion and denial of equal opportunity, including lawyers with disabilities.7

• Clients likely come from families with one or more persons who have a disability. Nearly 30 percent of the 70 million American families have at least one family member with a disability. The disability market, which includes customers with disabilities and their extended networks (family members, friends, colleagues, support service providers, etc.), is a trillion dollar segment. People with disabilities purchase products and services from companies that understand and meet their needs.8

This attitude spans beyond the disability market. A recent poll by the University of Massachusetts found that 87 percent of Americans surveyed say they prefer to patronize businesses that hire people with disabilities.9 The incidence of clients with disabilities is likely to be even higher for those who practice elder law, health care law, and other categories where the client is likely to be older. Recent statistics indicate that one out of every two people over age 65 has a disability.10

• Law students have attended law school with students with disabilities, whom they see simply as colleagues.

• Both the ADA and Illinois state law prohibit disability discrimination and mandate reasonable accommodations.11

• Attorneys with disabilities bring unique experiences, points of view, and problem-solving skills to the table. "[T]he creativity that people with disabilities develop to navigate their daily lives helps in problem-solving on the job."12

Attorneys with disabilities can, for instance, help legal employers anticipate the needs of clients with disabilities, enhancing the legal employer's relationship with those clients. They may also bring that unique insight to their legal arguments.

Attorneys with disabilities, through their life experiences having to negotiate often hostile environments, may have innovative approaches to day-to-day practice that produce previously unrecognized efficiencies in time and resources. What would clients think of a firm that refused to consider an applicant with a disability because they didn't want to accommodate his or her workplace needs? Why would they expect that firm to be good at solving their problems?
Despite diversity being good business, lawyers with disabilities continue to report difficulty obtaining employment. One common reason is concern about the cost of accommodation. But most accommodations require little to no out-of-pocket cost. Those that do have an average one-time cost of less than $500. Law firms easily spend that much or more on other recruitment activities, like taking summer associates to lunch or baseball games.

Beyond hiring applicants with disabilities, it's not uncommon for an attorney already with the firm to develop a disability and seek some type of accommodation. The Job Accommodation Network reports that 83 percent of the employers who contacted it for guidance did so in order to retain or promote a current employee. Companies reported multiple benefits from doing so: "(1) the accommodation allowed the company to retain a qualified employee, (2) the accommodation increased the worker's productivity, and (3) the accommodation eliminated the costs of training a new employee." Also, firms may mistakenly believe an attorney with a disability will have attendance problems or be unable to handle the rigors of practice. The data contradicts these concerns. "General studies of the employment records of people with disabilities show that they're often more reliable and yield markedly higher levels of employee retention than their non-disabled peers."

Moreover, the EEOC indicates legal employers "are not required to lower or eliminate production standards for essential functions, either quantitative or qualitative, that are uniformly applied." This means that while an attorney with a disability might need a reasonable accommodation to assist her in meeting a billable hour requirement, she would not be entitled to be exempt from that billable hour requirement.

Some legal employers may avoid hiring an individual with a disability for fear they won't be able to discharge that individual for
failing to perform. Of course, as noted above, the attorney must be able to perform the essential functions of the legal job. An employer has a right to discharge any attorney who cannot do so, whether that attorney had a disability or not.

The ADA requires only reasonable accommodation, and accommodations that eliminate essential functions are not reasonable. A firm that seeks to avoid hiring an attorney with a disability out of a misplaced fear about future lawsuits deprives their practice of someone who may uniquely broaden and deepen the firm's assets.

Would it be good for business, namely representing individuals, for the firm to become known as one that wouldn't hire, perhaps wouldn't even interview, an individual with a disability? Just as clients would turn away from a firm that refused to hire people of color and women out of similar fears, clients might be expected to have the same response to a firm that fails to accept otherwise qualified attorneys who are disability diverse. Such word gets around.

Recommendations

Legal employers who want to do a better job of hiring and retaining attorneys with disabilities can start with a pair of online government resources: the EEOC's Fact Sheet on Reasonable Accommodations for Attorneys with Disabilities and the Office of Disability Employment Policy's Employer Assistance and Resource Network's guide to interviewing applicants with disabilities. They should also consider the following tips.

- Update employment policies to provide confidential ways for employees to provide information about their disabilities and seek assistance with accommodation. Encourage attorneys who need assistance to raise the issue without fear that it will slow their career advancement.

- Don't dwell on the "reasonable accommodation" label. Regard it simply as problem-solving to help keep a valuable employee or recruit a new one.

- Establish a mentoring program for attorneys with disabilities. Consider setting up an "employee resource group" specific to employees with disabilities, and include both individuals with and without disabilities. Such a group might extend to individuals whose family members have disabilities. Include partners and shareholders to show the firm's commitment to the success of all attorneys in the organization.

- Sign the ABA Commission on Disability Rights Disability Diversity in the Legal Profession Pledge for Change. Starting in 2014, the ABA Commission on Disability Rights has established a new award, the Champions for Disability Inclusion in the Profession, which will recognize Pledge "signatories who are making measurable progress and engaging in innovative practices to recruit, retain and advance lawyers with disabilities." Self-nominations are permitted.

Diversity is good business, and the business case for making sure your policies and practices include disability diversity is strong. Doing so will help you make sure you're truly hiring the best candidate for the position.

Cheryl L. Anderson is a professor at Southern Illinois University School of Law where she teaches Disability Discrimination Law, Employment Law, and Advanced Appellate Advocacy. She is immediate past chair of the ISBA Standing Committee on Disability Law.

Justice Sotomayor has type 1 diabetes. She was diagnosed at age seven and ever since has given herself four or five shots of insulin every day. In her memoir, My Beloved World, she describes how learning to manage her diabetes taught her life skills she used to apply to other aspects of her life.

"[B]elieving that my life now depended on this morning ritual [of sterilizing insulin syringes and needles], I would soon figure out how to manage time efficiently: to get dressed, brush my teeth, and get ready for school in the intervals while the pot boiled or cooled. I probably learned more self-discipline from living with diabetes than I ever did from [the nuns at Catholic school]."

2. The National Association for Law Placement (NALP) collects data on attorneys with disabilities and found in its most recent report that only 13% of reporting firms had at least one attorney with a disability, and that among summer associates, "only a handful" were reported as having a disability. Nat'l Ass'n for Law Placement, Reported Number of Lawyers with Disabilities Remains Small, NALP Bulletin (Dec. 2009), available at http://www.nalp.org/dec09disabled. In a separate report from the same time period, NALP found that the overall employment rate of graduating law students with disabilities was 7.6% lower than the entire class of 2009. Nat'l Ass'n for Law Placement, Jobs & JDs 47 (2009) (finding that 88.25% of all legal graduates in 2009 were employed, but only 80.7% of graduates with disabilities were). The American Bar Association (ABA) Commission on Disability Rights reported that in 2012, 4.65% of ABA members surveyed indicated they had a disability, down from 6.87% in 2010. ABA Comm'n on Disability Rights, Goal III Report 12 (2013).


5. The Americans with Disabilities Act (ADA) makes it unlawful to discriminate against a "qualified individual," which is defined as "an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8) (2006).


9. Id.

10. ABA Report, supra note 4, at 11 (comments of Richard Thornburgh).


12. ABA Report, supra note 4, at 11-12 (comments of Richard Thornburgh).


14. Id.

15. ABA Report, supra note 4, at 12 (comments of Richard Thornburgh).


17. Id.

18. ABA Report, supra note 4, at 11 (comments of Richard Thornburgh).


20. Id.

21. 29 C.F.R. § 1630.2(o) (2012) (noting employers are "not required to reallocate essential functions").

22. EEOC Fact Sheet, supra note 19.


The nomination form can be found at http://www.americanbar.org/groups/disabilityrights/initiatives_awards/champions.html?cq_ck=1366730879607.

Member Comments

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