

# *Communicating the Americans with Disabilities Act*

## *Transcending Compliance: 1996 Follow-up Report on Sears, Roebuck and Co.*

by Peter David Blanck  
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## Executive Summary

**T**he Americans with Disabilities Act of 1990 (ADA) continues to shape employment, governmental services, telecommunications, public accommodations, and perhaps most important, public attitudes. The ADA is the most comprehensive federal law to address discrimination against an estimated 50 million Americans. Its implementation remains the subject of intense public policy debate.

Since 1990, The Annenberg Washington Program has examined the implementation of the ADA, as part of the Program's ongoing studies of health and social issues. In 1991, the Program issued a report on telecommunications services mandated by Title IV of the ADA, and in 1993 a White Paper on the challenges involved in implementing ADA's employment provisions, set forth in Title I of the Act. In 1994, the Program issued a report on communications technology, inclusive education and the ADA, which also appeared in an accessible CD-ROM format.

The Annenberg Program issued its first report examining the pre- and post-ADA employment practices of Sears, Roebuck and [Co. in](#) 1994. The 1994 Sears Report used interviews, observations and archival data as sources. Since 1994, the Sears Report

has been used in corporate, educational, governmental, and media-based training and awareness programs regarding ADA Title I implementation.

The present report, *The 1996 Sears Report*, attempts to (1) further stimulate discussion and debate of the issues that Sears and other companies face regarding ADA Title I implementation; (2) provide hard data, with a special focus on the costs and benefits of workplace accommodations and on dispute avoidance and resolution practices that *transcend* ADA Title I compliance; and (3) identify the broader implications of Sears employment-related experiences and philosophy for future policy-making.

Part One of the present report sets forth five core implications drawn from Sears experiences:

1 The impact of the ADA on American business is evolutionary, not revolutionary.

© Universal design and access fulfill the objective of including persons with and without disabilities into productive work force participation.

© Efforts to educate management and the work force about the ADA and the capabilities of persons with disabilities must be based on facts, not on myths.

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4 Starting from a base of ADA compliance, companies can look beyond compliance to transcendence, in ways that make strong economic sense.

**O** Far from creating onerous legal burdens, the ADA can provide employers and employees a framework for effective dispute avoidance and resolution.

The present report also sets forth new findings based on information collected at Sears from January 1, 1993, to December 31, 1995, including:

**O** *The average cost at Sears of providing workplace accommodations to employees with disabilities was \$45, less than half of the \$121 average cost from 1978 to 1992, the period studied prior to Title I implementation and reported in the 1994 Sears Report.*

*© Of more than 70 workplace accommodations studied at Sears, almost all accommodations (99 percent) required little or no cost.*

*© Of the 20 informal ADA-related disputes studied at Sears, more than three-quarters (80 percent) were resolved effectively, often through the provision of accommodations.*

4 *Of the more than 135 formal ADA complaints studied at Sears, almost all (98 percent) were resolved without resort to trial litigation—with 12 percent settled at an average cost of \$6,193; 9 percent withdrawn by the complaining party; 33 percent dismissed by the EEOC; 8 percent receiving a "right to sue" letter from the EEOC; 34 percent pending before the EEOC; and 2 percent in pending litigation.*

*© Roughly half (47 percent) of workplace accommodations, one-third (30 percent) of informal complaints, and half (43 percent) of formal complaints at Sears involve orthopedic impairments.*

The present findings, together with those described in the 1994 Sears Report, provide one of the most comprehensive views, over time, of corporate efforts designed to transcend ADA compliance.

## Introduction

*"ADA transcendence is a powerful workforce strategy for the 21st century"*

*Arthur C. Martinez, Sears Chairman and CFO*

**T**oday, Sears employs among its 300,000 person work force an estimated 20,000 persons with physical or mental disabilities (see Appendix A, for chronology of Sears ADA transcendence program). Although these numbers at Sears are not exactly proportionate to the estimated 50 million Americans with disabilities among an overall U.S. population approaching 300 million, they are representative of the scope of disabilities and related accommodations that enable productive, meaningful work force participation.

In the 1994 Sears Report, we asked the question of then Sears Chairman and CEO, Edward Brennan, "Is Sears approach effective for transcending compliance with the ADA?" In response, Brennan asserted what would become a central theme of the 1994 report: "At the bottom line, when Sears hires, works with, and accommodates qualified employees with disabilities, Sears enhances its customer base, employee morale, and its overall business strategy goals."

Sears 1995 income from continuing operations rose 19.6 percent to a record \$1.03 billion, compared with \$857 million in 1994. The record earnings were achieved on a 5.8 percent increase in 1995 revenues, which rose to \$34.93 billion from \$33.03 billion in 1994. "Sears performance in 1995 was outstanding, especially considering the tough retail climate during the holidays," says Sears Chairman and CEO Arthur Martinez. "We had our first billion dollar sales week in December, and achieved solid revenue increases in our stores thanks to the efforts of all employees throughout our organization."

"Everyone at Sears takes great pride in our surpassing \$1 billion in retail earnings for the first time," comments Martinez. "It is a milestone we are recognizing throughout the company because it confirms that our business strategy is on target and working."

The present report revisits many of the questions posed in 1994 to CEO Brennan and others at Sears regarding the company's business strategy of

"ADA transcendence," with a particular focus on ADA-related workplace accommodations and informal and formal dispute resolution. Many of the findings, based on information from the time period 1978 through 1995, raise new questions about U.S. corporate policy and the emerging work force of the 21st century of persons with disabilities.

As did his predecessor Edward Brennan, Sears Chairman Arthur Martinez views the company's continued success and its commitment to work force diversity as "mutually reinforcing trends." "Sears is poised to accelerate the successful implementation of strategic initiatives that benefit all our employees and customers," says Martinez. "By finding better and more efficient ways to serve our customers—who represent more than half of the households in the U.S.—and to attract and retain qualified employees with and without disabilities, we in turn enhance the value of Sears for our shareholders and employees. People add value."

## **Part One: Revisiting Five Core implications for the 21 st Century**

**T**he 1994 Sears Report highlighted the successes and challenges in Sears programmatic effort to diversify its workforce. Although the experiences of one such corporate "laboratory" may be insufficient for drawing sweeping conclusions about the ADA that apply throughout corporate America, in-depth study at Sears, based on information collected before and after ADA Title I implementation, suggests five core implications for management, workers, unions, policymakers and others.

Drawn from Sears experiences and confirmed in other empirical studies of ADA, the five core implications were first set forth in the 1994 Sears Report. They are revisited below, foreshadowing the central findings of the present report:

*The impact of the ADA on American business is evolutionary, not revolutionary. The view of the ADA's evolutionary-rather than revolutionary-effects are summed up by CEO Martinez: "ADA transcendence-the evolution of the law in practice-reflects an understanding by corporate America that work force and customer-base diversity make economic sense. Achievement of this goal is a major challenge facing corporate America in the 21st Century." The present report documents, among other findings, how the costs of providing workplace accommodations at Sears have declined over time (see Part 2A below).*

*© Universal design and access fulfill the objective of including persons with and without disabilities into productive workforce participation. The ADA encourages equality of access-to employment opportunities, to facilities, and to information. The 1994 Sears Report documented how innovative corporate solutions for providing workplace access have universal application and bottom line economic benefits. The present report further illustrates the ways in which the benefits of universal design and accommodation strategies are generalizable to employees without disabilities (for instance, as reflected in workplace safety and injury prevention programs) (see Part 2B below).*

*© Efforts to educate management and the workforce about the ADA and the capabilities of persons with disabilities must be based on facts, not myths. Systematic study is needed to inform policymakers, employees and employers and*

others about issues central to effective ADA Title I implementation. There exists a lack of systematic study on the issues surrounding Title I implementation and evaluation. Companies that are effectively and proactively implementing Title I demonstrate the ability to transcend this law. Sears has found that self-analytic study provides a process, structure and model to educate management and employees (*see* Part 4 below). According to CEO Martinez, "All employees must know that they have a meaningful stake in progress at Sears. All employees must understand the value of their contributions, and they then are free to take the risk to offer better approaches to doing business."

4 *Starting from a base of ADA compliance, companies can look beyond mere compliance to transcendence, in ways that make strong economic sense.* At Sears, the ADA has played an important catalytic role in creating and fostering a culture of independence among people with disabilities in the workplace.

"Sears has found that effective workplace accommodations for qualified employees or job applicants with disabilities result in bottom line economic benefits that far exceed the costs," says Harry Geller, formerly Sears Regional Diversity Manager and presently an Executive Recruitment Manager. Tony Rucci, Sears Executive Vice President of Administration (with oversight responsibility for human resources issues) explains that "in almost all cases, the low costs of accommodations for employees with disabilities have derived positive and substantial economic benefits to the company-in terms of service to customers, work productivity, effectiveness and efficiency" (*see* Part 2C below).

© *Far from creating onerous legal burdens, the ADA can provide employers and employees a framework for dispute avoidance and resolution.* The 1994 Sears Report showed one crucial aspect of ADA transcendence to be effective dispute avoidance and resolution. The present report examines in greater detail the successes and challenges associated with Sears efforts to resolve ADA-related disputes (*see also Special Feature: The ADA's Title I and the EEOC*, pages 12-15).

According to Mike Bass, Sears Director of Human Resources-Stores, "Sears has adopted an alternative dispute resolution process with good results-experiencing relatively few disputes for a company of this size, and resolving most ADA-related disputes at a low cost by keeping qualified people at work" (*see* Part 3 below). Barbara Lehman, Sears Director of Special Communications Initiative, comments: "We are committed to enhancing Sears informal approach to managing and solving workplace disputes on the front lines."

## SPECIAL FEATURE

### The AM Title I and the EEOC

**A**s the agency charged with enforcing the employment provisions of the ADA, the Equal Employment Opportunity Commission ("EEOC") has emphasized educational outreach, the dissemination of hard information, policy guidance and technical assistance to prevent discrimination from occurring. When a violation occurs, the Commission has emphasized the voluntary and informal resolution of disputes where appropriate and feasible. At the same time, the Commission has sought to achieve firm, fair and common-sense enforcement where noncompliance persists:

"This strategy seems to be working," observes EEOC Commissioner Paul Steven Miller, who points out that the EEOC has resolved over 36,000 charges of discrimination under the ADA in the

years since the law has been in effect, and as of September 30, 1995, only had to proceed in federal court in 122 cases.

Commissioner Miller notes that more than 5,800 individuals whose ADA charges have been resolved have recovered collectively more than \$71 million in monetary benefits without having to resort to full-blown litigation. Commissioner Miller and EEOC ADA Policy Director Peggy Mastroianni emphasize the need for continued ADA guidance based on hard facts and informed technical assistance. "As with all new labor statutes," notes Mastroianni, "employers and employees are going through a learning process concerning their respective rights and obligations under the ADA."

To assist in this learning process, the EEOC has published and distributed training materials-such as question

and answer pamphlets, fact sheets about rights of individuals with disabilities and responsibilities of employers-responded to public inquiries, and sponsored educational programs and public presentations across the country. Mike Bass, Sears Director of Human Resources-Stores, notes that the EEOC's "Technical Assistance Manual on the Employment Provisions (Title I) of the ADA" has been effective for Sears compliance managers in resolving ADA-related questions (*see* also pages 28-36, discussion of dispute resolution at Sears).

During 1995, the EEOC issued policy guidance on the definition of disability under the ADA and final guidance on pre-employment disability-related questions and medical examinations. Both documents, approved unanimously by the bipartisan Commission,

have stimulated effective Title I implementation strategies by the disability, labor and employer communities. Commissioner Miller views these recent policy documents as examples of the Commission's "rational, common sense approach" to interpreting and enforcing the ADA.

Under the leadership of EEOC Chairman Gilbert F. Casellas and pursuant to the recommendations of a task force headed by EEOC Vice Chairman Paul M. Igasaki, the Commission is currently implementing changes in its charge processing system, designed to reduce processing time and enable the Commission to devote more resources to meritorious charges. "These changes will result in more effective relief for charging parties and respondents," notes Commissioner Miller.

When an individual seeks to assert a charge of employment discrimination under the ADA, he or she is required to file a charge with one of the EEOC's field offices around the country (*see* Sears dispute resolution processes highlighted in Part 3, pages 28-36). The charge is then investigated by EEOC field officials. The majority of cases before the EEOC are resolved informally without the field office issuing a formal letter of determination (e.g., a "right to sue letter"), finding either cause or no cause for an ADA violation. This trend is consistent with the findings in the 1996 Sears Report-showing that more than half of the formal EEOC charges against Sears were either settled, withdrawn or dismissed (*see* Part 3, pages 33-34).

Until recently, the Commission followed a "full investi-

gation" policy, whereby it treated each charge of discrimination under the ADA (and the other statutes it enforces) similarly. Under this policy, the EEOC conducted a full investigation of each charge, even if the charge evidenced little or no merit. Not surprisingly, the full investigation policy, which has been in effect since the mid-1980s, is one of the contributing factors to the Commission's growing inventory of charges awaiting resolution (for instance, the 1996 Sears findings show that 34 percent of the EEOC charges filed against Sears are pending, *see* page 34).

In 1995, the Commission rescinded the full investigation policy and implemented a charge prioritization system in which charges that have clear merit are prioritized for investigation. Those that are facially without merit are

dismissed shortly after being received. In conjunction with the new charge prioritization system, the Commission is developing national and local enforcement plans to help target its resources towards meritorious cases that have broad effect in combating workplace discrimination.

In addition to the changes in the charging process, the Commission is currently instituting an alternative dispute resolution ("ADR") program to support mediation as a means of resolving charges in a timely, informal and less adversarial fashion (see also pages 36-37, Administrative Conference recommendations regarding voluntary mediation program of ADA charges). Commissioner Miller, who co-chaired the task force that recommended an expanded role for ADR, notes that the opportunities will be enhanced for fair and effective settlement

possibilities under the ADA (see also pages 38-41, *Special Feature-- Using Mediation to Implement Reasonable Accommodations*).

The EEOC's current litigation docket covers a range of issues and disabilities. The Commission has brought cases involving issues of hiring, promotion, reasonable accommodation, medical confidentiality, forced medical leave, hostile work environment, health insurance coverage, termination, employment terms and conditions, reinstatement and disability-related inquiries, among others.

Suits have been filed by the EEOC to address discrimination against individuals with disabilities affecting a range of major life activities, including deafness, blindness, AIDS, mental illness, epilepsy, cancer and diabetes. Roughly 10 percent of EEOC charges involve hiring issues, which, according to Peggy

Mastroianni, are often the most difficult discrimination cases to prove. The trend is consistent with the findings of the 1996 Sears Report, that 11 percent of workplace accommodations at Sears are requested by job applicants (see pages 21-22).

Commissioner Miller notes that "hiring cases are particularly important under the ADA given the substantial percentage of people with disabilities who are not working." Commissioner Miller cites as an example a hiring case involving a charging party who uses a wheelchair and who filed 7 job applications with a retail store (not Sears but another national retail chain) during a period when that particular store filled 108 positions. In that case, the Commission contends that the retail store discriminated in failing to hire the applicant and failing to provide him with reasonable accommodations.

**Commissioner Miller and Mastroianni are optimistic that the EEOC will continue to achieve substantial relief for charging parties under the ADA without having to resort to litigation, and that charges lacking merit will be dismissed in a timely, fair and efficient manner.**

**Looking to the future, Commissioner Miller concludes: "My expectation is that, over time, as employers become more familiar with the ADA and with the bottom-line economic benefits of hiring and promoting individuals with disabilities within their workforces, the vision of inclusion, empowerment and independence that is at the heart of ADA transcendence will take root in the American workplace. As this happens, our economy will become more competitive and public support programs will shrink."**



## **Part Two: Transcending Compliance with the ADA: Workplace Accommodations**

The present report and 1994 report highlight Sears as one among dozens of possible corporate role models that provide an important "laboratory" for studying the impact of the ADA. Case studies, such as those profiling Sears employees in the 1994 Report on pages 28-29, show how ADA transcendence serves to include and empower qualified people with disabilities in the workforce, in ways that make business sense.

The long-term effectiveness of Title 1, however, depends upon continued study, education and dialogue. Based upon learning from models such as Sears and other corporate leaders, the following goals must be achieved under Title 1:

- dispel myths about persons with disabilities.
- inform people of their rights and obligations under the act.
- equalize opportunities for advancement.
- empower employers and employees to make informed decisions.
- diffuse, avoid and resolve ADA disputes without formal litigation.

Available empirical information concerning these goals, and study of the employment experiences of qualified people with disabilities and attitudes toward their equal participation in the work force, is emerging and reveals progress and problems relative to these challenges (*see Special Feature Tracking an Emerging Work Force*, pages 46-47).

This part presents information on workplace accommodations at Sears during the time period from 1978 through 1995. The information is part of a new generation of ADA Title I analysis meant to transcend the limitations of individual case analysis.

"To date, long-term systematic information about workplace accommodations has not been readily available to policymakers charged with evaluating ADA Title 1, or to employers charged with making informed business decisions," says Paul Hearne, Chairman of the newly formed American Association of People with Disabilities, and President of the Dole Foundation on Employment of

Persons with Disabilities. "Information, like that presented in the 1996 Sears Report, reflects a third generation of study needed to ensure that American disability policy is working and effective well into the next century."

### A. Accommodations at Sears from 1978 to 1996

As documented in the 1994 Report, Sears philosophy of work force diversity transcends mere ADA compliance. Figure 1 presents, for the first time, the cost of providing workplace accommodations to Sears employees with disabilities sampled from 1993 to 1996 (see also Appendix C: Sears Model Accommodation Request Form, page 54).

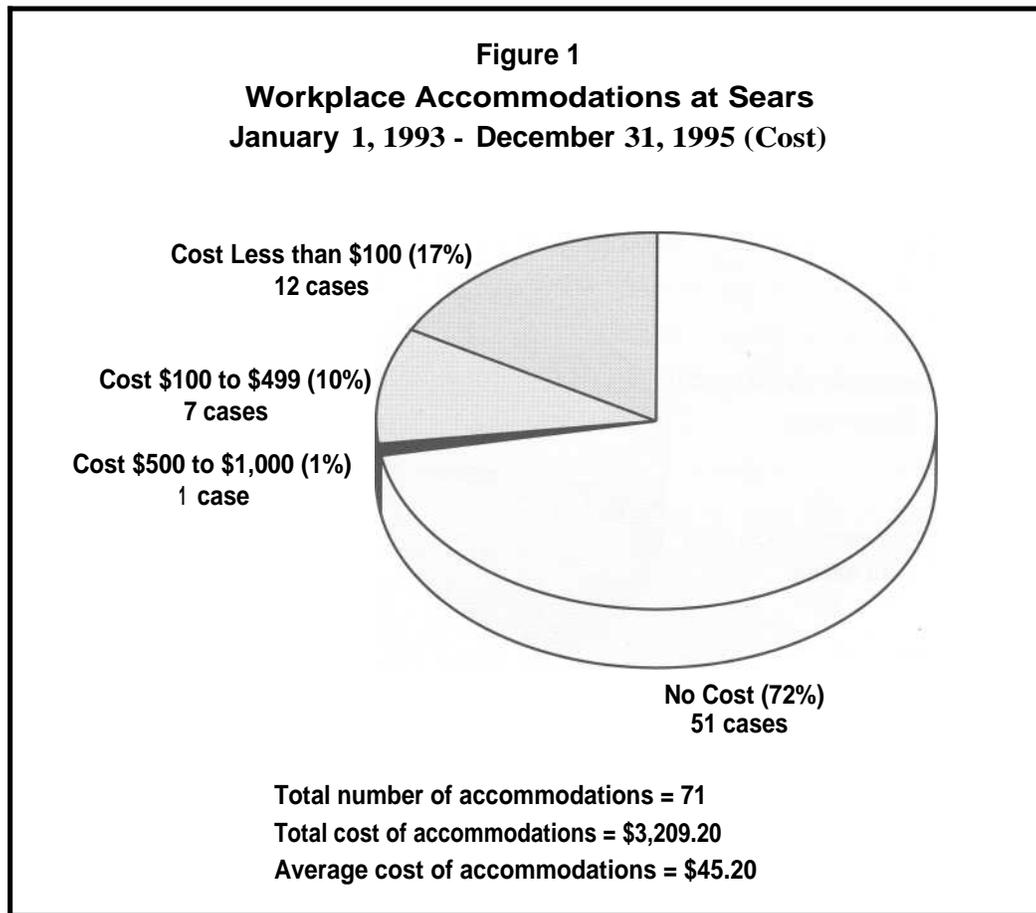
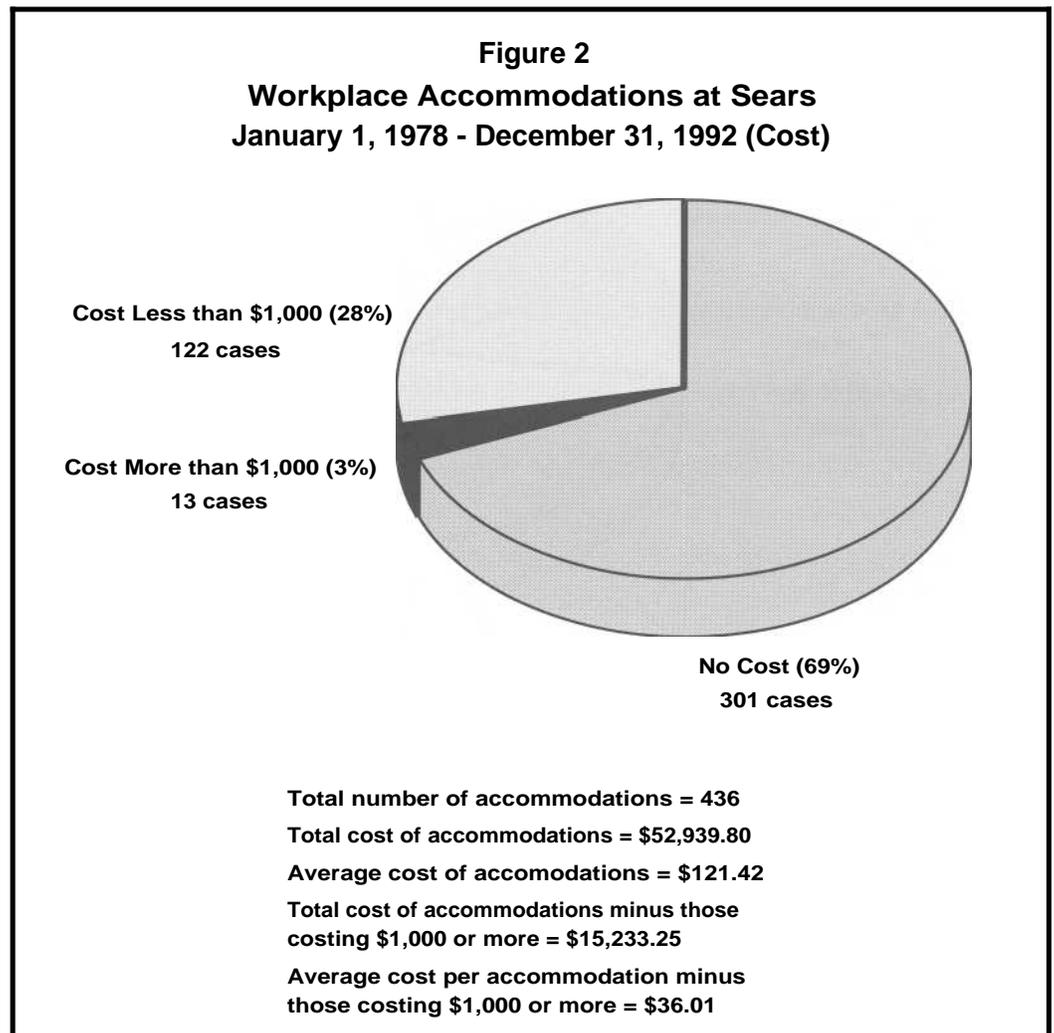


Figure 1 shows that, during the early effective years of ADA Title 1, almost all accommodations at Sears (99 percent) required little or no cost. A closer look at Figure 1 shows that 72 percent required no cost, 17 percent cost less than \$100, 10 percent cost less than \$500, and only 1 percent cost more than \$500, but not

more than \$1,000 (see Appendix D, pages 56-61, for detailed breakdown of accommodation type and cost by disability).

Figure 1 also illustrates that, for the 71 new accommodations studied during the years 1993 to 1996, the total cost was \$3,209. The average cost for these accommodations is \$45. Thus, from January 1, 1993 to December 31, 1995, the average cost at Sears of providing accommodations to employees with disabilities (\$45) is less than half of the \$121 average cost for accommodations from 1978 to 1992, reflecting the period studied prior to Title I implementation and reported in the 1994 Sears Report.

For purposes of comparison, the costs of providing accommodations to Sears employees with disabilities during the years 1978 through 1992, first presented in the 1994 Sears Report, are shown in Figure 2.



The analyses in the 1994 Report, reproduced here in graphic format, show that prior to Title I implementation almost all of the 436 accommodations studied at Sears required little or no cost (69 percent required no cost and 28 percent cost less than \$1,000). Those 3 percent of accommodations costing more than \$1,000-in which Sears provided universally designed technology-enabled groups of employees with and without disabilities to perform information-intensive jobs productively, cost-effectively and safely (*see, for example, the 1994 Sears Report Special Features, Breaking the Graphical User Interface Barrier, and Selective Placement Program Helps Blind, Visually Impaired Employees be Independent*).

Figure 2 also shows that the total cost of accommodations from 1978 to 1992 was \$52,939, with an average cost per accommodation of \$121. When removing from the total cost those accommodations involving purchases of advanced technology (i.e., the 3 percent of accommodations costing more than \$1,000), the average cost per accommodation for this pre-ADA Title I effective period is \$36, consistent with the \$45 average cost from 1993 to 1996.

Interpreting the findings regarding cost of accommodations in the 1994 Sears Report, *The New York Times* reported in 1995: "The degree to which companies [continue to] have trouble complying with civil rights legislation on behalf of disabled people appears to have more to do with their cultures than with the demands of the law." Thus, the findings for workplace accommodations from 1978 to 1996 illustrate Sears "evolutionary and not revolutionary" approach to ADA Title 1. For companies like Sears, with a culture of work force diversity and inclusion, implementation of Title I has resulted in business strategies that transcend mere compliance with the law.

## **B. A Closer Look at Accommodations at Sears from 1993 to 1996**

The 1994 Sears Report first documented the provision of workplace accommodations at Sears, based on information collected before and after initial ADA Title I implementation. The information presented in this report reflects a detailed examination of the long-term approach to the provision of accommodations at Sears.

The present report also provides a closer examination of the type, effectiveness and cost of workplace accommodations at Sears, using standardized means for gathering and analyzing information (*see Appendix C-Sears Model Accommodation Request Form*). One of the shortcomings that many companies have

found in implementing Title I is the lack of standardized data bases to compile information on disability, accommodations, costs and related economic impact analyses.

Figure 3 illustrates the percentage of Sears employees, separated by type of disability, requesting and receiving workplace accommodations from the period January 1, 1993 to December 31, 1995.

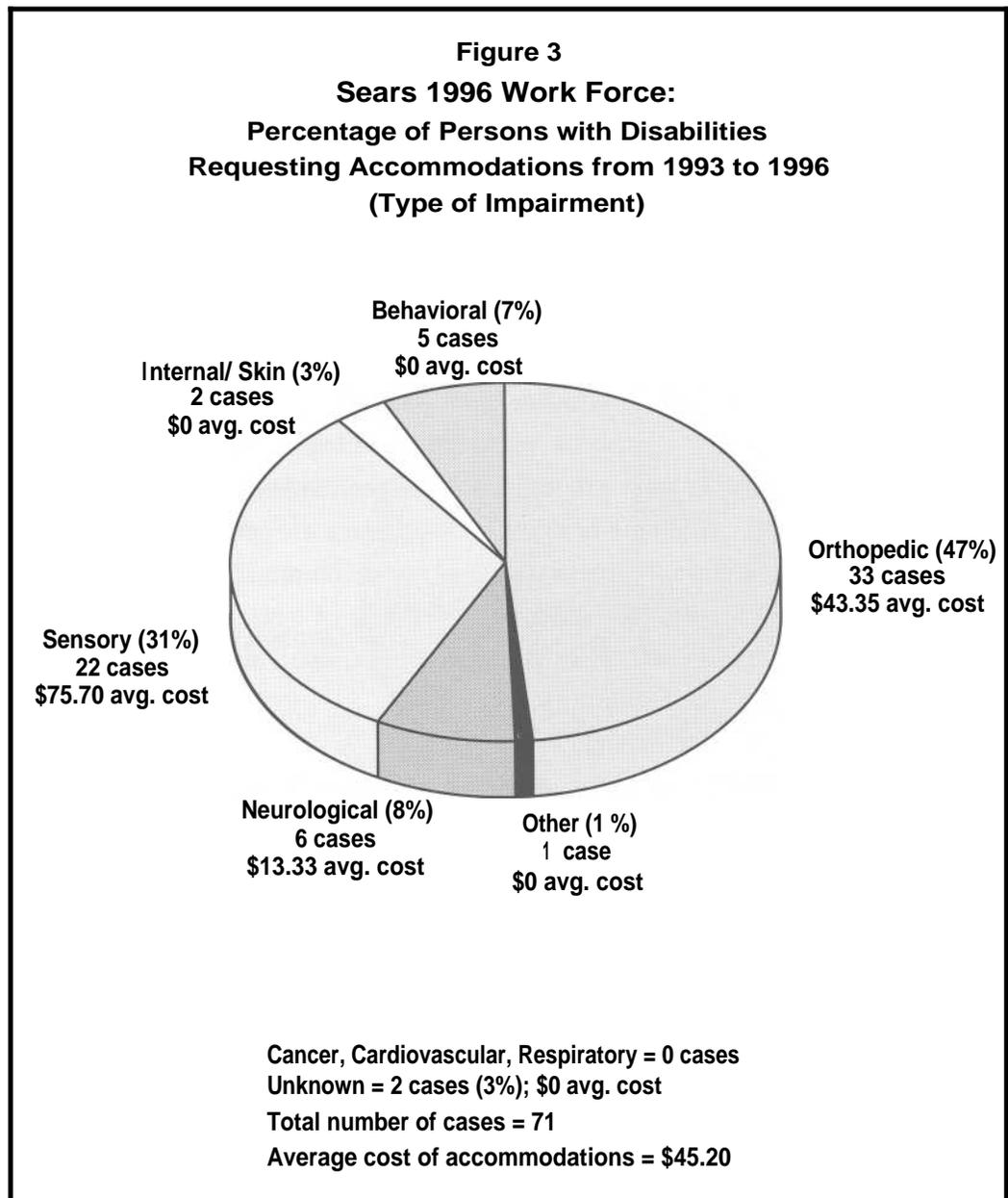


Figure 3 shows that almost half (47 percent) of the accommodations examined during this three year period involved orthopedic impairments. The average cost for accommodations for employees with orthopedic impairments is \$43. Roughly one-third (31 percent) of the accommodations involved employees with sensory impairments (primarily hearing and visual impairments) at an average cost of \$75 (see Appendix D, pages 56-61, for detailed breakdown of accommodations and costs). Neurological impairments account for 8 percent of the requested accommodations (at an average cost of \$13), and behavioral impairments for 7 percent (at an average cost of \$0).

Two general implications, among others, may be drawn from these findings. First, from a business planning perspective, the proportion of accommodations provided for employees with particular disabilities is consistent with the overall proportion of employees with similar disabilities in Sears 300,000 person work force (see 1994 Sears Report, Appendix B-Comparison of 1994 Sears Work Force Data and National Statistics, pages 44-46). Second, from an economic perspective, the direct costs associated with accommodations for any particular disability are low and do not deviate substantially from the overall average cost of \$45.

Appendix D depicts in greater detail the types of accommodations requested and provided at Sears during the period from 1993 to 1996, broken down by type of disability and cost of accommodation. The information in Appendix D is meant to serve as an archival data resource that may stimulate and guide future discussion regarding the provision of workplace accommodations. Additional information related to the provision of workplace accommodations at Sears, though not presented here in graphic format, may be derived from Appendix D and prove useful for future corporate ADA planning and transcendence:

Female and male employees tend to request accommodations in relatively equal proportions (women request 35 percent of accommodations provided, men 25 percent, in 39 percent of the requests employee gender is not identified).

© Most accommodations are requested by current employees (89 percent), with a smaller proportion (11 percent) requested by job applicants. This finding is consistent with trends in data compiled by the EEOC showing that roughly 10 percent of alleged Title I violations involve hiring decisions, while the remainder involve issues affecting current employees (see *Special Feature- The ADA's Title I and the EEOC* pages 12-15).

© Roughly half (44 percent) of accommodations are requested by employees in Sears retail sales work force and one-third (35 percent) requested by its merchandise and support staff. In addition, consistent with the seasonal nature of Sears work force, most accommodations (82 percent) are requested by part time employees, with 17 percent requested by full time employees (*see* 1994 Sears Report, pages 28-29, for case examples of accommodations for support and managerial employees).

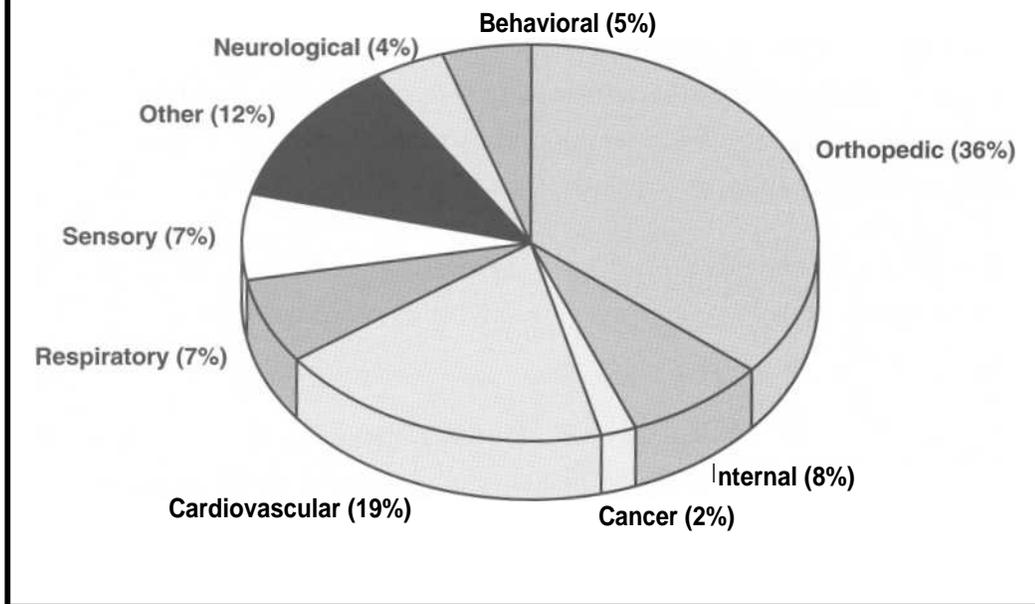
Finally, as described in the 1994 Sears Report, Sears regularly provides more expensive, state-of-the-art technology-based accommodations that enabled groups of employees with and without ADA-defined disabilities to perform jobs productively, safely and cost-effectively. Examples of how the benefits of these universal design and accommodation strategies are generalizable to employees without disabilities include: installing automatic door openers, that work in conjunction with security swipe card systems at a Sears Credit Card Operations Center, allowing employees in wheelchairs, on crutches and those unable to open the doors manually to enter (cost of system is \$1,198); installing Alva braille displays and related technology at a Sears Regional Credit Center, allowing employees with visual impairments and other vision problems to productively, accurately and efficiently perform their jobs (cost of system is \$21,000).

### **C. Trends in Accommodations at Sears from 1978 to 1996**

"Sears continues to encounter hundreds of workplace accommodations since the adoption of the ADA, most of which are not recorded formally," says Executive Vice President Tony Rucci. "In light of the trends identified in the preparation of this report, it is likely that fewer than 10 percent of Sears employees will self-identify as disabled and require workplace accommodations." This estimate is consistent with the findings of the 1994 Sears Report—since 1972, fewer than 10 percent of Sears employees who self-identified as disabled through the company's Selective Placement Program required any kind of accommodation at the time of self-identification (*see* Appendix A, pages 50-51, for Sears ADA programs).

Though requiring future study, Figure 4 sets forth the estimated percentage of persons with disabilities, by type of impairment, in the 1994 Sears 300,000 person work force.

**Figure 4**  
**Sears 1994 Work Force**  
**Percentage of Persons with Disabilities (Type of Impairment)**



Consistent with current trends, Figure 4 suggests that orthopedic impairments account for more than one-third (36 percent) of reported disabilities, followed by cardiovascular impairments (19 percent), internal impairments (8 percent), sensory impairments (7 percent) and respiratory impairments (7 percent). These trends suggest the need for future study to guide work force planning and ADA transcendence at Sears and at other organizations, including analysis of:

1 the extent to which particular back and spine injuries on the job account for a large proportion of disability identifications;

© the relation of workers' compensation programs, "Back to Work" programs and workplace strategies for maintaining a qualified, healthy and safe work force; and

© the reasons why large numbers of qualified employees and potential job applicants with "hidden" disabilities are unable or unwilling to self-identify in the workplace (see Appendix B, for information on Iowa Spine Research Center; see also Special Feature-The ADA's Title I and the EEOC, pages 12-15).

**Together, the findings at Sears reflect a comprehensive view of trends in the provision of accommodations during the time period studied. "In presenting the information on accommodations at Sears, we have not excluded requests that were deemed too expensive, and thereby not granted," says Harry Geller. "Neither cost alone, nor type or severity of disability, has driven Sears ADA transcendence strategies in the provision of accommodations."**

**The trend at Sears toward reduction in overall cost of accommodations, over the time period 1978 to 1996, is supported by other studies. Results of a 1995 Harris Poll of more than 400 executives show:**

- more than three-quarters of those surveyed (80 percent) report minimal or low increases in costs associated with the provision of workplace accommodations;**
- three-quarters of those surveyed report that the average cost of employing a person with a disability is not greater than employing a person without a disability;**
- the median cost for the provision of accommodations was \$233 per employee; and**
- from 1986 to 1995, the proportion of companies surveyed providing workplace accommodations rose from 51 percent to 81 percent.**

*The Special Feature-The Job Accommodation Network at Work*, pages 25-27, provides additional information related to the costs and benefits of workplace accommodations.

## SPECIAL FEATURE

### The Job Accommodation Network at Work

receptionist in an insurance office is involved in a car accident that results in short-term memory loss due to a traumatic brain injury; after she returns to work, her employer becomes concerned about the number of telephone messages that are not handled appropriately. A health care professional with multiple sclerosis is experiencing problems with fatigue. A publishing company is considering hiring a person with a severe vision impairment for a sales position that would involve considerable work with a computer. In each of these cases, the employers contacted the job Accommodation Network ("JAN") to obtain information about accommodations that could be used to hire or retain these individuals.

The 1994 and 1996 Sears Reports highlight many of the issues facing large employers,

rehabilitation professionals, and individuals with disabilities regarding the process for determining and implementing appropriate and cost-effective workplace accommodations. Some medium and smaller size organizations, however, lack a formal approach to addressing workplace accommodations. Obtaining information about particular accommodations can require contacting numerous vendors, research facilities, outside human resource specialists and others. As described in the 1994 Sears Report, medium and smaller size organizations also often encounter difficulty obtaining relevant information on workplace accommodations that involve rapid growth technology.

In 1984, well before the passage of the ADA, the President's Committee on Employment of People with

Disabilities established JAN to help meet the growing need for a centralized, cost-effective information source on developed and tested strategies for determining appropriate accommodation solutions. Since that time, JAN has provided information to organizations of all sizes on how to improve employment conditions for people with disabilities. JAN's staff provides information at no cost to businesses, rehabilitation professionals and people with disabilities about potential workplace accommodations.

Since 1984, and with the passage of the ADA in 1990, the number of requests handled by JAN staff members has grown more than tenfold—from 2,000 requests in 1984 to almost 25,000 requests by 1996. During the 1992 effective year of Title I of the ADA, the number of requests alone increased threefold from the prior year.

Over the years, JAN has tracked, among other information, the employment status (e.g., new hire, retention issues, etc.) of the person with the disability for whom the information on a workplace accommodation is requested. In a typical case, the individual at issue is working but the employer believes that an accommodation is necessary for the employee to be retained in their current job or to improve the individual's working conditions or capacity.

From 1985 through 1995, requests to JAN regarding information on issues related to employee retention or skills improvement rose dramatically—from roughly 1,000 requests in 1985 to over 16,000 requests by 1996. During 1985, requests involving retention or skills improvement accounted for more than half of the cases handled (58%); by 1995, however, these request,

accounted for nearly three-fourths of the cases (74%). During the same period, the number of requests concerning job applicants or new hires rose at a much slower rate.

These general trends reflect increasing numbers of employers seeking information about the retention of qualified individuals already working at a particular company. "Although the trends are encouraging, more study is needed of workplace accommodations that support qualified individuals with disabilities seeking to enter the work force," comments Tony Cohelo, Chair of the President's Committee on Employment of People with Disabilities. *See also Special Feature-Tracking an Emerging Work Force, pages 46-47.*

"One reason for the dramatic increase in the number of cases JAN receives annually is reflected in projects like the Sears Re-

port," said Cohelo. "The evolutionary nature of the ADA allows employers to develop knowledge that providing workplace accommodations for qualified persons with disabilities makes good economic sense." According to Barbara Judy, Director of JAN, "More than two-thirds (68 percent) of effective workplace accommodations implemented as a result of a JAN consultation cost less than \$500. Moreover, the median cost of an accommodation implemented as a result of a JAN consultation is approximately \$200, and almost two-thirds (63 percent) of the workplace accommodations implemented result in savings to the company in excess of \$5,000."

The savings associated with effective workplace accommodations tracked by JAN include lower job training costs, increased worker productivity, lowered insurance requirements and

claims, and reduced rehabilitation costs after injury on the job. In a recent JAN survey, employers reported that for every dollar invested in an effective accommodation, the companies realized an average of \$50 in benefits. "With figures such as these, more and more employers are turning to JAN for information about appropriate and cost-effective accommodations for their workers with disabilities," said Tony Cohelo.

And what about the outcomes from calling JAN in the cases mentioned at the beginning of this Special Feature?

- The insurance company implemented a universally applicable and compatible software package, allowing the receptionist with traumatic brain injury and other receptionists at the company without disabilities to receive incoming telephone messages

and to route the calls more efficiently and accurately than before the software was installed.

- The health care worker with multiple sclerosis was informed about his rights under the ADA, including the possibility of applying for a vacant position for which he was qualified and which required less movement about the facility. He also received information about three-wheeled scooters that would help him to conserve his limited strength. This employee reported subsequently that his employer supported the job reassignment to the open position because the employee's considerable experience would be an asset to the company. The employee purchased a three-wheeled scooter to help maintain his energy level.

- The individual with the severe visual impairment was hired by the publishing company after the JAN consultant forwarded information concerning how this applicant could effectively use the company's existing computer system with speech synthesis.

For information about how to contact JAN, see Appendix 13 of this report.

### **Part Three: Transcending Compliance with the ADA: Avoiding and Resolving ADA Disputes**

**T**he 1994 Sears Report described the ways ADA transcendence may involve corporate strategies that seek to avoid and resolve litigation and foster an environment of cooperation rather than confrontation in managing disability issues in the workplace. Through mid-1994, Sears had encountered six ADA-related employment lawsuits, with five of these related to the termination of the employee. The 1994 Sears Report also highlighted the low incidence of Title I complaints filed with the EEOC against Sears (*see* 1994 Sears Report, pages 39-40). This part examines in greater detail strategies for the avoidance and resolution of informal and formal ADA disputes, as part of Sears culture of ADA transcendence.

#### **A. Informal Avoidance and Resolution of ADA Disputes at Sears**

The informal ADA dispute avoidance and resolution process at Sears illustrates a commitment to ADA transcendence. As a component of the *Sears Ethics and Business Policy Assist Program*, an 800-telephone number ("help line") is available to employees for guidance on ADA-related ethics and business policy. Inquiries are confidential, and advice and follow-up information is provided by trained personnel.

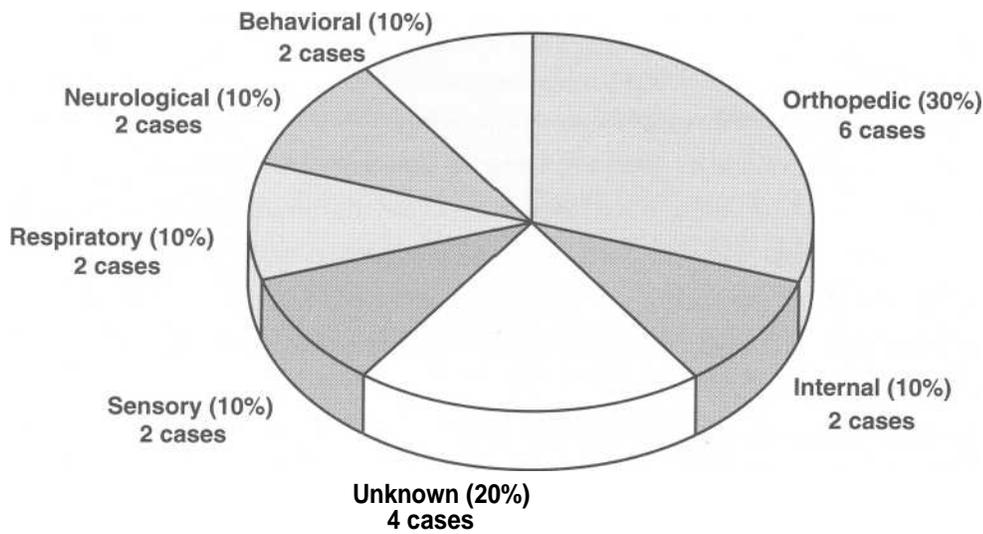
"The informal ADA dispute process is kept simple to meet the needs of employees on a variety of issues," notes Sears Executive Vice President Tony Rucci. At step one, an employee with or without a disability may seek guidance or report a concern, either to a supervisor or to the help line. If necessary, the employee and supervisor may call the help line together.

Appendix E (pages 62-66) sets forth a detailed breakdown of the types of ADA issues raised and addressed through the Sears help line, identified by type of disability. As documented in Appendix E, once contact is made with the assist program, staff may gather relevant information—for instance, review company policies or documentation of other similar resolutions. Program staff then may convey relevant information to the affected employee to facilitate an informed decision or provision of an accommodation. An identification number may be assigned to the request for confidential follow-up as necessary.

"At each stage of the resolution process, responsibility is focused toward the affected employees and supervisors, encouraging problem solving at the local level," comments Rucci. "The program reflects a commitment to ADA transcendence by fostering dialogue, a collaborative approach to problem-solving and the provision of accommodations, and when necessary, by providing confidential feedback and follow-up regarding dispute resolution" (*see also Special Feature-Using Mediation to Implement Reasonable Accommodations: The Case of a White-Collar Executive with Bipolar Mental Illness*, pages 38-41 [discussion of "Accommodation Plan"]).

Figure 5 illustrates the breakdown by type of disability of 20 informal ADA disputes at Sears that were studied from 1994 to 1996.

**Figure 5**  
**Informal Dispute Resolution at Sears**  
**January 1, 1994 - December 31, 1995 (Type Impairment)**



Total number of cases = 20

Of the 20 informal requests examined, roughly one-third (30 percent) involved orthopedic impairments, while 10 percent each involved sensory, respiratory, neurological, internal and behavioral impairments. Although examination of the cases identified in Figure 5 shows that more than three-quarters (80 percent) of the ADA inquiries sampled were resolved successfully, "Sears continues to better understand ADA issues and how to resolve them informally," says Ed Schloesslin, Sears Ethics Policy Manager.

One way in which Sears continues to provide confidential assistance to employees with hidden disabilities is through the company's Employee Assistance Program ("EAP") (see Appendix A-Chronology of Sears ADA Transcendence). In conjunction with the "help line," the EAP provides assessment and referral services for employees who need help with problems that could adversely affect their health or job performance, such as stress, depression or substance-abuse problems. In its first year of operation, the independently administered EAP served approximately 5 percent of the Sears work force (roughly 9,000 employees) (see 1994 Sears Report, pages 36-37, for more information on Sears EAP).

## **B. Formal Avoidance and Resolution of ADA Disputes at Sears**

### **Background**

"Sears has not seen the explosion of ADA litigation that many are claiming," says Hamilton Davis, Sears Assistant General Counsel. "And contrary to other criticisms of the ADA, there have been no reverse-discrimination lawsuits against Sears by employees without disabilities. As we learned in conducting the 1994 Sears Report, ADA transcendence has led to better workplace solutions, dispute resolution and enhanced workplace safety for employees with and without disabilities."

Sears continues to track the effect of Title I on formal ADA dispute resolution. From January 1, 1990 to August 10, 1995 (the period studied for this report), 141 Title I complaints were filed with the EEOC against Sears. Figure 6 presents the breakdown of EEOC filings by type of disability.

**Figure 6**  
**Formal Dispute Resolution at Sears**  
**January 1, 1990 - August 10, 1995 (Type Impairment)**

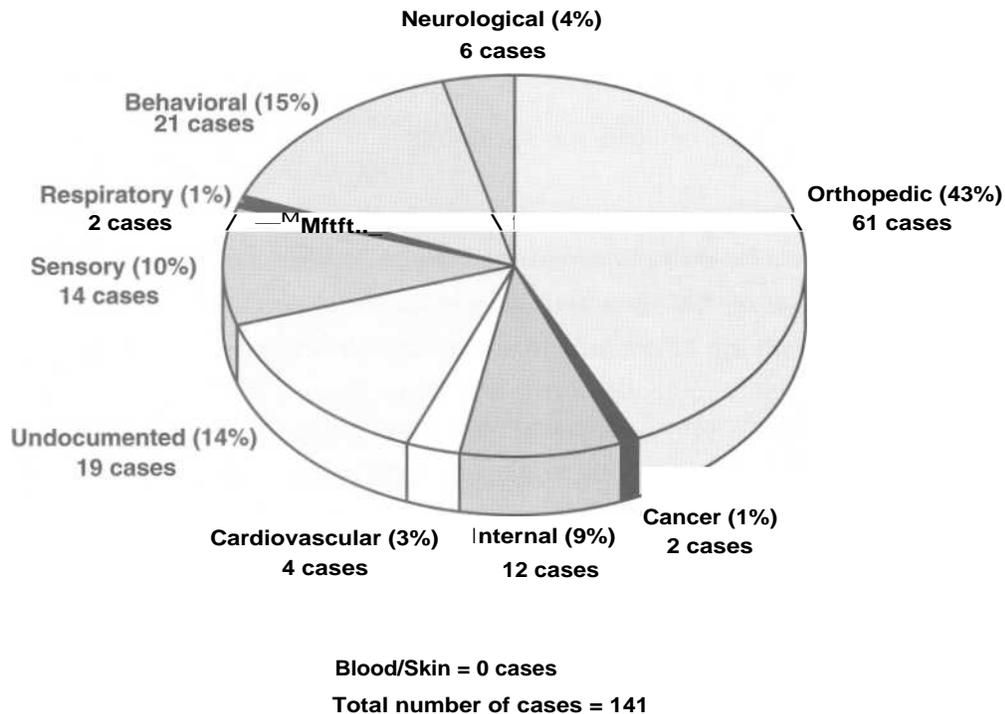


Figure 6 shows that almost half of the charges filed against Sears (43 percent) involve orthopedic impairments. The relatively high proportion of orthopedic claims against Sears may reflect factors inherent to a large retail business, particularly when compared to national trends showing that roughly 20 percent of all Title I charges raised to date involve orthopedic impairments (*see Special Feature-The ADA's Title I and the EEOC*, pages 12-15).

Figure 6 shows also that 15 percent of the charges against Sears involve behavioral impairments. By way of comparison, roughly 12 percent of all Title I charges filed with the EEOC to date involve behavioral impairments, primarily mental illness. "Additional study is needed at Sears, and at other companies, of the relation among particular job tasks, type of impairment claimed and other relevant employee characteristics," comments Redia Anderson, Sears Director of People and Cultural Diversity.

In this regard, analyses of the demographic information derived from Figure 6 and associated with the Title I charges filed with the EEOC against Sears show:

- 54 percent are filed by men employees and 46 percent by women.
- 72 percent are filed by non-minority employees and 21 percent by minority employees (see 1994 Sears Report, page 46, for comparative figures).
- 97 percent are filed by non-supervisory employees (primarily sales and support staff personnel) and 3 percent by management employees.
- 1 percent are filed by Sears job applicants.
- 22 percent are filed by individuals between the ages of 15 years and 35 years, 44 percent by those between the ages of 36 years and 55 years, and 24 percent by those age 56 years and older (roughly 20 percent of all Title I charges filed with the EEOC to date also raise claims of age discrimination).

Another prominent issue facing Sears and many other companies is the relation of ADA Title I protections to state workers' compensation laws, particularly in circumstances when employees are injured on the job.

Figure 7 illustrates the Title I filings against Sears broken down by the period of disability occurrence.

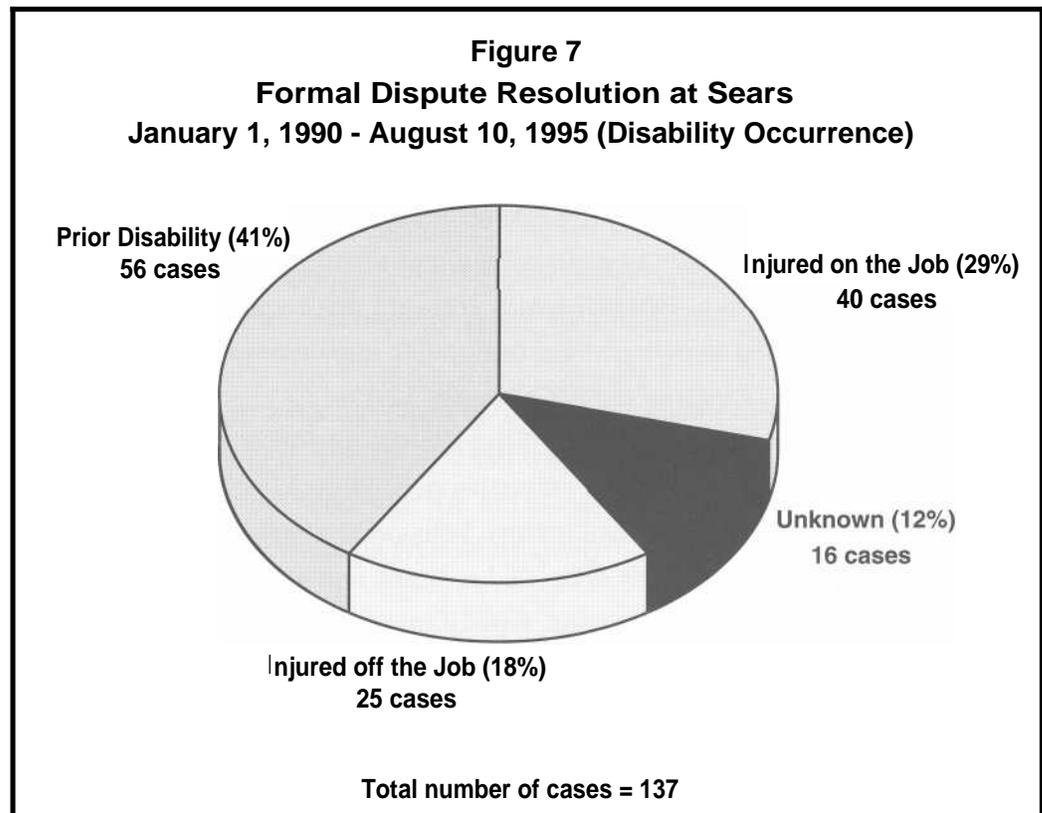


Figure 7 shows that almost half (41 percent) of the Sears employees who filed charges with the EEOC evidence a disability prior to their employment at Sears or to their current job at Sears. More than one-quarter (29 percent) who filed charges were injured on the job, and 18 percent were injured off the job. "Contrary to popular view, these trends suggest, at least with regard to Sears, that the bulk of ADA Title I issues involve qualified employees with pre-existing disabilities seeking the protections of the law," said Peggy Mastroianni, Policy Director at the Equal Employment Opportunity Commission (*see Special Feature-The ADA's Title I and the EEOC*, pages 12-15).

In support of this conclusion, analyses of the Sears data show that three-quarters (75 percent) of those employees injured on the job, and 48 percent of those injured off the job, raise complaints involving orthopedic impairments. In contrast, of those Sears employees reporting disabilities prior to their employment, one-quarter (28 percent) involved orthopedic impairments, while one-quarter (27 percent) involved behavioral impairments, 17 percent sensory impairments, and 12 percent internal impairments. "The Sears findings do not support the critique that Title I claims reflect, in large part, issues that would otherwise be raised under traditional workers' compensation laws," comments Mastroianni.

Additional study is needed of ADA transcendence strategies that enable qualified individuals with disabilities to return to work safely and cost-effectively, thereby reducing workers' compensation costs and unemployment levels. Consistent with the findings in this report, the Occupational Safety and Health Administration (OSHA) estimates that work-related orthopedic impairments account for one of every three dollars spent on workers' compensation. OSHA estimates that employers spend \$20 billion a year on direct costs for workers' compensation, and up to five times that amount for indirect costs. At the University of Iowa's Spine Research Center, medical, legal, business and policy expertise are combined to assist individuals with back and spine impairments and their companies develop safe and cost-effective return to work strategies and workplace accommodations (*see Appendix B*, for information resources).

### **Procedural Status of Formal ADA-Related Complaints**

Another area that Sears and many companies track are the resolution patterns and procedural status of Title I charges filed with the EEOC. Figure 8 illustrates the status of 138 Title I charges filed with the EEOC against Sears, studied during the period from 1990 to mid-1995.

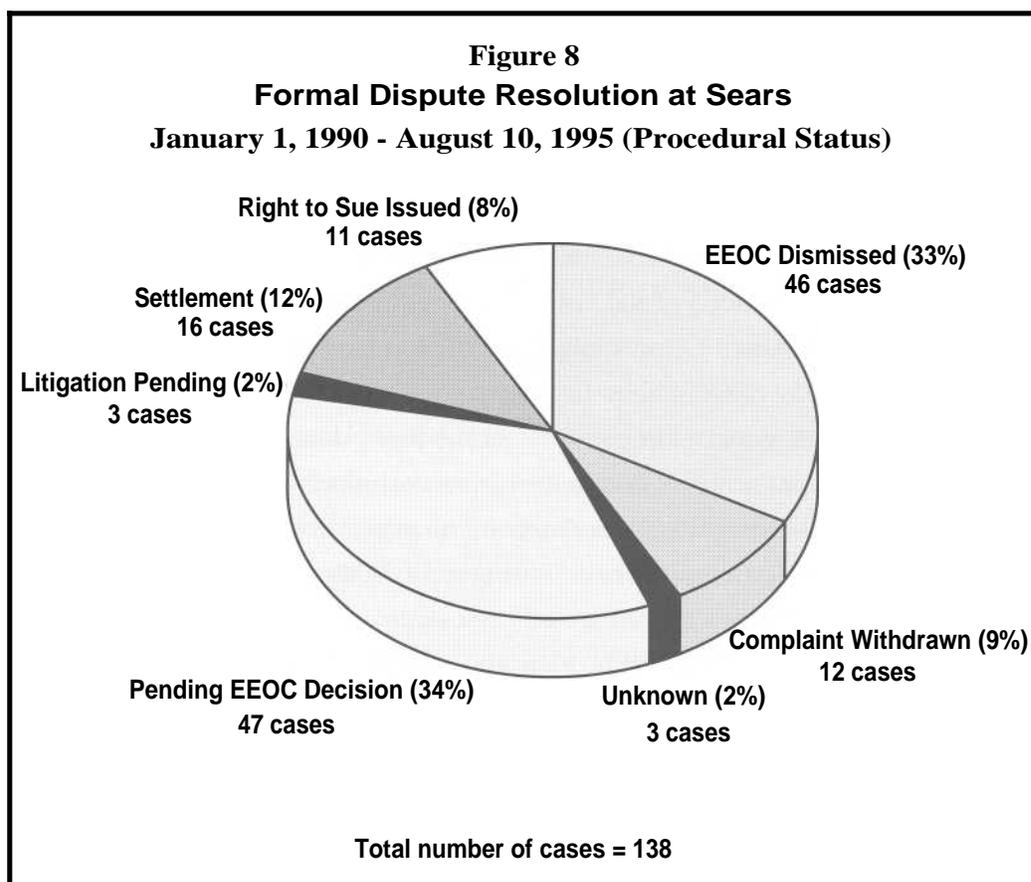
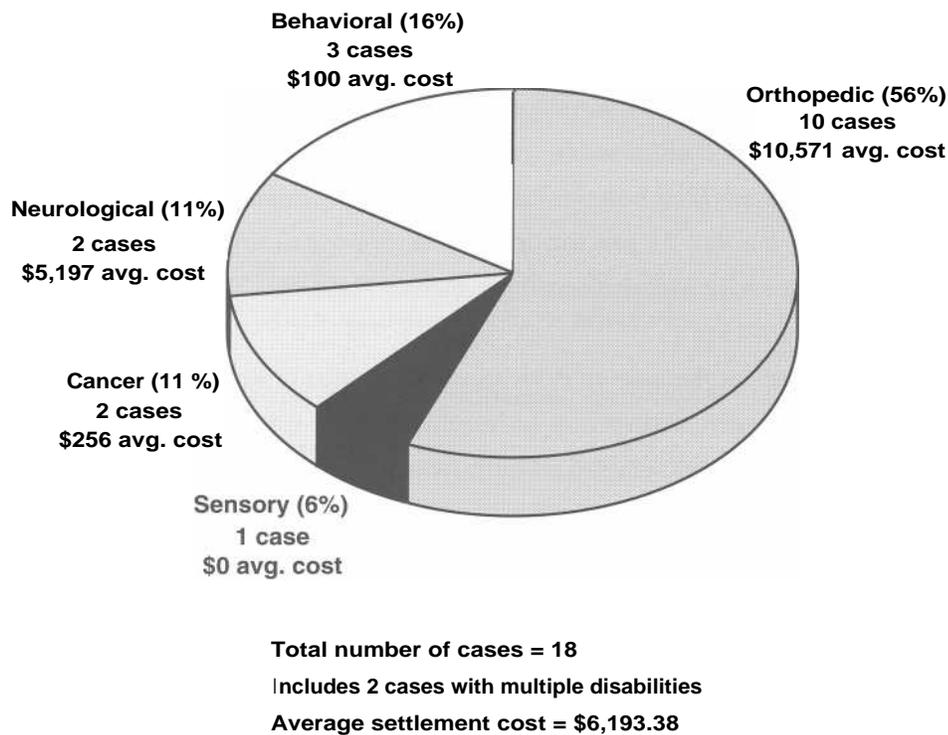


Figure 8 shows that almost all (98 percent) of the 138 formal charges filed with the EEOC were resolved without trial litigation—with 12 percent settled, 9 percent withdrawn, 33 percent dismissed, and in 8 percent of the cases a "right to sue" letter issued by the EEOC. In 34 percent of the cases, a decision is pending by the EEOC, while trial court litigation is pending in only 2 percent of the cases.

"Most striking is the finding that the overwhelming majority of formal Title I charges are resolved without resort to protracted litigation," notes Sears attorney and Senior Compliance Manager Joe Lakis. "The most effective resolutions often involve compensatory payments and the provision of accommodations enabling qualified employees to return to work."

The effective settlement of Title I charges is another major challenge facing companies (*see Special Feature--Using Mediation to Implement Reasonable Accommodations: The Case of a White-Collar Executive with Bipolar Mental Illness*, pages 38-41). Figure 9 examines settlement costs associated with the resolution of 18 Title I charges against Sears, examined separately by type of disability.

**Figure 9**  
**Formal Dispute Resolution at Sears**  
**January 1, 1990 - August 10, 1995 (Settlements by Disability)**



Of the cases studied, the average settlement cost to Sears was \$6,193. As shown in Figure 9, settlement costs by type of disability range from a high of \$10,571 average for orthopedic charges (compared to \$16,700 average settlement in all Title I charges involving back impairments) to a low of \$0 for those with sensory impairments.

Figure 9 shows also that the majority of settlements (56 percent) at Sears involve orthopedic impairments. "In contrast, roughly 11 percent of all Title I charges settled involve back impairments," according to Peggy Mastroianni. "For purposes of its analyses, the EEOC includes as settlements cases in which a charging party withdrew his or her claim with benefits." The average processing time for settled charges before the EEOC is 258 days.

"Viewing the findings of the 1996 Report as a whole, Sears formal commitment to ADA Title I dispute resolution has generated a positive effect throughout the company," says Mike Bass, Sears Director of Human Resources-Stores. "The

result reflects a corporate culture of helping employees to pursue productive, safe and stable careers at Sears, and when disputes arise, focusing on effective and timely problem-solving."

### **C. Trends in Avoidance and Resolution of ADA Disputes**

As of December 1995, more than 54,000 ADA-related complaints have been filed with the EEOC. When broken down by type of disability, the national trends show that 19 percent involve orthopedic impairments (primarily back-related), 11 percent involve behavioral impairments (primarily emotional and psychiatric impairments), 11 percent involve neurological impairments, and 5 percent involve sensory impairments (*see Special Feature-The ADA's Title I and the EEOC* pages 12-15).

"Study is needed on the role of education and communications in avoiding and resolving ADA-related disputes; in helping people understand their rights and obligations under the act; and in empowering people to make informed decisions," comments Wyoming Senior Assistant Attorney General Dennis Coll, who has been counsel in the settlement of two large ADA-related class action lawsuits. Federal, state and local governments recently have funded pilot projects around the country to address these and related issues (*see Appendix B-Other Information Sources*). In July of 1995, for example, the results of a U.S. General Accounting Office ("GAO") study of 1,500 employers with more than 100 employees showed that 89 percent use internal alternative dispute resolution ("ADR") approaches to resolve employment discrimination complaints.

Consistent with the findings from the 1995 GAO study, indications are that many employers are using alternative dispute resolution under the ADA's Title I to enhance equality in job opportunity. The findings at Sears illustrate that proactive ADR processes, as opposed to reactive litigation strategies, often lead to cost-effective accommodations enabling qualified employees with disabilities to work (*see Special Feature: Using Mediation to Implement Reasonable Accommodations: The Case of a White-Collar Executive with Bipolar Mental Illness*, pages 38-41).

In 1995, the Administrative Conference for the United States recommended that ADA Title I enforcement agencies-such as the EEOC, Federal Communications Commission and the Department of Transportation-establish a joint committee to develop a program for voluntary mediation of ADA cases under all of the law's titles. The program would use trained mediators to resolve disputes,

engage in educational efforts regarding the use of mediation and develop criteria for referral of cases to mediation.

"The Administrative Conference believes that mediation is the dispute resolution technique that offers greatest immediate promise for resolving ADA cases quickly and to the satisfaction of the parties involved," says Professor Ann Hodges, Reporter for the Administrative Conference of Dispute Resolution under the ADA.

The Administrative Conference recommendations include extensive study and evaluation of ADA mediation programs, similar to many of the objectives identified in this report, including analysis of:

- types of cases in which mediation is most effective;
- reduction in costs and processing time associated with mediation;
- satisfaction level of parties involved in mediation;
- impact of mediation on other litigation rates; and
- rate of compliance with mediated settlements.

Corporate policies supporting formal mediation of ADA disputes have the potential to preserve relationships between the parties, to empower them to take responsibility for resolving their disputes, and to develop lasting solutions that enhance the lives and productivity of all employees with and without disabilities.

## SPECIAL FEATURE

### Using Mediation to Implement Reasonable Accommodations: The Case of a White-Collar Executive with Bipolar Mental Illness

Increasing numbers of employers are turning to alternative dispute resolution ("ADR") to implement reasonable accommodations and to defuse potential employment litigation. Informal dispute resolution processes, such as mediation, are being used that lead to cost-effective reasonable accommodations enabling qualified employees with disabilities to work (*see* Part 3 of this report). Nevertheless, fashioning appropriate and cost-effective accommodations that satisfy the needs of qualified employees with disabilities working under different job standards and corporate policies is challenging. This is particularly so when qualified employees reveal "hidden" mental disabilities.

To illustrate the potential benefits of using informal mediation in providing workplace accommodations, this *Special Feature* presents

the case of a white-collar employee with bipolar mental illness. Although this case reflects the experiences of an actual employee, the facts have been changed to protect the participants' privacy and to address concepts related to ADA transcendence.

#### The Case of Mike Johnson

Mike Johnson was a thirty-five-year-old account executive for Perfect Technologies, a large nationwide distributor of communication systems. By 1993, Mike had held this position for five years and was considered an excellent employee, often exceeding his sales goals and developing national accounts.

After a recent sales campaign, Mike checked himself into a mental health facility, where he was diagnosed as having bipolar mental illness. Mike reported his illness to his supervisor and applied for

short-term disability benefits, as well as for time off under the Family & Medical Leave Act. After a three-week period of hospitalization and rest, Mike told his supervisor that he was ready to return to work. Mike returned to work, and after one month on the job appeared to be performing satisfactorily.

Mike's supervisor then noticed that most evenings Mike worked extremely late and that occasionally Mike did not arrive at work until lunch time. After being back on the job for two months, Mike told his supervisor, "I feel stressed out again and wish there were an alternative."

#### Point 1. Ignore or Address Mike's Disability

When Mike used his disability leave, and when his supervisor suspected Mike had a disability, what should Mike's supervisor have done?

Mike's supervisor concluded that by initiating an informal dialogue with Mike, the firm might avoid harm to Mike and potential losses in Mike's productivity. During a closed-door meeting, Mike explained his condition to his supervisor, stating that his psychiatrist was prescribing medication for his condition and that he was attending weekly counseling sessions.

#### **Point 2. Get the Facts**

Perfect determined that Mike's condition qualified for protection under the ADA and examined the ways that Mike's disability limited his work: for instance, Mike's work was limited during his manic phase by his tendency to overload his schedule; when depression set in, Mike would wake up late for work, miss appointments and experience fatigue.

#### **Point 3. Identify Reasonable Accommodations**

Mike's supervisor was the initial source of information

about potential accommodations. Perfect developed a list

of accommodations that

Mike's supervisor and management reviewed to evaluate their cost and effectiveness.

Next, a formal problem-solving dialogue with Mike was initiated. To reduce

Mike's apprehension, Mike was informed in advance and

in writing about the meeting, who would attend the meeting and the anticipated agenda. Mike was also given

a written list of the proposed accommodations in advance of the meeting so that he

would have time for review and to think of others to suggest.

suggest.

#### **Point 4. Implement the "Accommodation Plan"**

The meeting began with a discussion of the principles that governed the relationship between Perfect and Mike.

They agreed to potential accommodations and established a time line for implementation. Mike and his supervisor developed a method for evaluating the effectiveness of the accommodation plan, which appears at the end of this

*Special Feature*. The accommodation plan was not a formal contract, but a road map. Because Mike's job responsibilities were cyclical-consisting of periods of performance and travel followed by periods of inaction-the plan included "short-term" and "long-term" accommodations.

## **Point 5. Evaluate the Accommodation Plan**

After the initial period under the plan, Mike and his supervisor met to evaluate its effectiveness. After discussion, it was agreed that the short-term accommodations would not be eliminated, and that a second six-week plan would be implemented, under which Mike's productivity requirements and responsibilities would increase. The evaluation included a written analysis by Mike and his supervisor.

### **Analysis**

According to Sidney Wolinsky, Director of Disability Rights Advocates, "A few years earlier, Perfect might have solved Mike's case by terminating him upon his return from hospitalization. If he had been unable to find subsequent employment, Mike's lost wages could have exceeded several million

dollars, litigation could have resulted, and many of Perfect's clients could have been displeased." Even if Mike's case could have been settled without resort to formal litigation but with Mike finding new employment, the average settlement for cases involving mental illness before the EEOC is roughly \$18,800 (compare Sears settlement costs, set forth in Figure 9 at page 35).

The direct and indirect costs associated with the Accommodation Plan were low, roughly \$30,000 for a multi-million dollar firm. The mediation strategy enabled Perfect to avoid the cost of losing a valued employee and to support Mike during his recovery.

"Perfect's approach produced other benefits that transcended ADA compliance; for instance, Perfect's human resources staff was trained in using mediation under the ADA, and Mike and his

supervisor acted as mediators for others in the company with disabilities," says Wolinsky. "The direct and indirect benefits from using mediation to implement reasonable accommodations for qualified employees far outweigh the high costs associated with potential litigation under Title L"

## **Accommodation Plan for Mike Johnson**

### **Purpose**

Employee Mike Johnson and his supervisor met to initiate a dialogue regarding Mike's disability.

### **Principles**

A. Mike's privacy must be respected.

B. Mike has a mental disability, bipolar disorder, that, at times, affects his job

C. Perfect is committed to offering effective workplace accommodations to Mike.

D. Mike and his supervisor want Mike to return as a productive employee and to improve his job skills.

E. Mike's supervisor must serve clients in a timely fashion.

### Tasks

The level of performance expected of an account executive is:

[Mike's job description].

### Accommodations

#### A. Short-Term

The following accommodations will be provided to Mike as support for resumption of his job responsibilities and are anticipated to be in place for six weeks.

1. A co-worker, designated as a support person for Mike, will accompany him on trips

that require an overnight stay outside Mike's base city.

2. The number of sales calls Mike will make will equal one-half of those required by his normal schedule.

3. Mike's rate of pay will remain at his average for this period in the previous calendar year.

4. Emergency and new customer calls will be minimized.

5. Mike's supervisor will learn the characteristics of bipolar disorder and maintain an open-door policy.

6. Perfect will engage a neutral advisor to evaluate the plan of accommodation.

#### B. Long-Term

7. Flexible scheduling to accommodate Mike's need to attend doctor appointments and therapy sessions.

8. Access to a private work office space to minimize interruptions to Mike during periods of stress.

9. During the next annual performance review, Mike's supervisor will not use information gathered during Mike's period of hospitalization or period of short-term accommodations in considering whether Mike qualifies for a promotion or raise.

### Assessment

A. Mike and his supervisor will meet weekly, and more often if necessary, to discuss Mike's performance.

B. Mike must return to an appropriate level of productivity, with the provision of accommodations.

### Reaffirmation

This is not a contract, but a voluntary statement by Mike and his supervisor to facilitate a positive work environment for Mike, his supervisor and their colleagues and to assure that Perfect's clients are served in an effective manner.

## Part Four: New Challenges and Emerging Questions

**M**any believe that the ADA has reflected a dramatic shift in American public policy toward the equal employment of persons with disabilities. Yet studies differ in their conclusion of whether the ADA has played, or will play, a significant role in enhancing labor force participation of qualified persons with disabilities and in reducing dependence on government entitlement programs. At a minimum, the resulting dialogue has been illustrative to small and large corporate entities as they attempt proactive compliance strategies.

Several core facts are emerging, some of which have been highlighted in this report:

**O** Contrary to popular misconceptions, it is widely understood that the ADA does not require employers to hire individuals with disabilities who are not qualified, or to hire qualified individuals with disabilities over equally qualified individuals without disabilities. *Every manager at Sears interviewed for purposes of this report understood Title I of the ADA as an anti-discrimination law and not as a preferential treatment law.*

© "Evolutionary" ambiguity remains in the concept of discrimination and in the required provision of accommodations under Title I of the ADA. Yet, as a result, some argue that Title I distorts the market value of American labor, requiring employers to take "affirmative" and unduly costly measures to accommodate persons with disabilities. These conclusions are not validated by the findings in the present report:

- The costs of accommodating qualified workers at Sears is low and the relative economic, productivity and safety-related benefits high;
- The costs of not accommodating and not retaining qualified workers at Sears is relatively high, with the average administrative cost per employee replacement of \$1,800 to \$2,400;
- There is no evidence that ADA implementation and transcendence have distorted the value of labor in the Sears work force;

- There have been no "reverse-discrimination" cases at Sears-consistent with findings from a 1995 Harris Poll of business executives that 79 percent of those surveyed believe that the employment of people with disabilities is a boost to the economy, while only 2 percent believe it poses a "threat to take jobs" from people without disabilities;
- Virtually all Title I disputes studied at Sears have been resolved at a low cost without extensive trial litigation, keeping qualified employees at work.

*Thus, the findings at Sears do not reflect a trend under Title I of the ADA toward preferential treatment in the workplace, at the expense of economic efficiency, workplace safety and business sense.*

© *Future research must identify the variables to be studied to achieve an understanding of the nature of an individual's disability and its relation to employment opportunity and career advancement.* Questions such as the following may be studied:

- How may substantial limitations change over time for individuals with different disabilities, and for qualified women and men, younger and older workers and workers from different ethnic groups with varying disabilities?
- What objective measures, in addition to employment rates and accommodation costs, are valid indicators of effective Title I implementation (e.g., quality of jobs attained, income levels, and job search rates)?
- How do individual and workplace strategies enhance ADA transcendence?
- What are the emerging employment opportunities facing persons with severe disabilities?
- How does ADA transcendence enhance employers' economic competitiveness?
- How will structural labor market forces and an increasingly global economy affect ADA transcendence strategies?

4 *Working assumptions are emerging that will help guide future study so that employers, policymakers, courts and others may more effectively evaluate ADA implementation, including:*

- The study of disability policy requires interdisciplinary analysis, grounded in medicine, psychology, economics, law, ergonomics and other fields;
- Disability is a function of limitations in skills or capabilities *and* barriers in attitudes and an individual's work and living environment;
- For all people, disabilities coexist with individual strengths and capabilities;
- With appropriate supports, the abilities of qualified persons with disabilities improves; and
- Disability is a natural part of the human experience.

© *Companies must continue to establish systems that objectively measure the costs and benefits of accommodating people with disabilities into their work forces.* Large corporations such as Sears, or smaller companies through cooperatives or associations, increasingly require data collection systems that identify positive and challenging trends in ADA implementation to assist in business planning, dispute avoidance and educational efforts (*see Special Feature-The Job Accommodation Network at Work, pages 25-27*). In evaluating future business strategies, examination is needed of both direct and indirect costs associated with ADA implementation, such as staff time spent on the planning of an accommodation or the impact of an accommodation on training and work requirements of fellow employees (*see Special Feature-Tracking an Emerging Work Force. pages 46-47*)



## SPECIAL FEATURE

### Tracking an Emerging Work Force

**S**ince 1989, Peter Blanck and his colleagues have conducted an investigation of employment integration and economic opportunity under Title I of the ADA. The investigation follows the lives of some 5,000 adults, adolescents and children with mental retardation, collecting information on an array of social science, legal, economic and health-related measures.

The investigation, one of the largest of its kind, examines trends prior to and after ADA Title I implementation. Several central findings have emerged to date:

**O** From 1990 to 1995, unemployment levels for adult participants declined—from 36 percent in 1990 to 12 percent in 1995. At the same time, the proportion of those working in integrated employment settings more than doubled, from 8 percent in

1990, to 21 percent in 1995. These patterns were found regardless of the person's gender or race.

© Several factors alone and in combination predict success in competitive employment in 1995: individuals with higher job skills, better health status, higher involvement in self-advocacy programs and greater independence in living are most likely to attain employment.

© From 1990 to 1995, the earned incomes of participants increased. Younger relative to older individuals show strong increases in income and in attainment of competitive employment. Although the best predictor of 1995 income is job skill, independence in living and involvement in self-advocacy programs also predict income.

4 From 1990 to 1995, the proportion of participants involved in self-advocacy programs increase, roughly twofold.; self-reported accessibility to and satisfaction with work and daily life increase; the reported health status of the participants improves; and the proportion of persons living independently in the community rises substantially, from only 2 percent in 1990, to 32 percent in 1995.

© Over 80 percent of the participants who were either unemployed or in nonintegrated sheltered workshops in 1990 remain in "the black hole" of these settings in 1995. Movement from nonintegrated to integrated employment is limited for persons with all levels of disability, and true regardless of race and gender.

6 From 1990 to 1995, the participants' attitudes concerning their ADA rights and accessibility to work and daily life fluctuated. From 1990 to 1992, perceptions of Title I effectiveness increase, barriers to work and society are reported to be declining. Starting in 1992, perceptions of ADA rights and accessibility drop, and by 1995, reported levels remain below those [reported in](#) 1992, when Title I became effective.

Although it is too early to make definitive conclusions about the trends in the longitudinal study, the question may be raised "whether society is keeping the promises reflected in Title I, for equal opportunity to work for qualified individuals with disabilities?," says EEOC

Commissioner Paul Miller.

Senator Bob Dole comments: "Blanck [has asked] whether the ADA-or more broadly the policies, programs, and laws established by Congress and the federal government has improved the lives of people with disabilities.... Some people seem to think that evaluating the impact of the ADA is irrelevant, given that its purpose is to establish certain rights and protections. But I believe we have an obligation to make sure our laws are working. At the very least, we need to know that people affected by the ADA are aware of their rights and responsibilities and that its remedies are in fact available and effective."

## **Part Five: Conclusion**

**A**ssessing Title I implementation and ADA transcendence is, of course, a monumental task. No law, even one as far-reaching as the ADA, can be the sole reason for social change. Policymakers, employers, employees, researchers and others must assess how Title I implementation and transcendence is to be defined for legal, business and other purposes. These assessments will vary for employees with different disabilities and for businesses of different sizes and in different markets.

In the United States, the problems of chronic unemployment and underemployment faced by many qualified persons with disabilities are evident. Senator Tom Harkin has called the "black hole stagnation" facing qualified persons with disabilities a major barrier to a diversified work force of the 21st century. Evaluation and placement services are needed to identify the emerging work force of young qualified individuals with disabilities and to prepare them for competitive employment. Job retention and advancement strategies are required to help older individuals with disabilities keep jobs and achieve their full potential.

Many economic and social benefits associated with ADA Title I transcendence remain to be discovered and will need to be documented. Adequate economic data examining the effect of the population of qualified persons with disabilities able to join the work force is not available. The findings at Sears and elsewhere highlight an "emerging workforce" of qualified participants; in large part, reflecting a new generation of persons who have experienced inclusive education and whose families have advocated for their rights.

This report foreshadows the need for additional study of corporate policies and cultures that support equal employment opportunities for qualified persons with disabilities, particularly strategies that transcend mere compliance with the law. These strategies provide employers with needed economic incentives to hire qualified persons and with information on potential for their long-term work associations.

It is clear from experiences in the United States involving other anti-discrimination measures that law alone cannot guarantee integration, whether for persons with disabilities, persons of color, or women. We have marked the fifth anniversary of the passage of the ADA. On that July 26, more than two-thirds of working-age Americans with disabilities remained unemployed.

Much dialogue and study are needed to raise awareness and to foster ADA Title I transcendence. Work remains to fulfill the pledge under the ADA to promote higher standards of living, equal employment, and conditions of economic and social fairness for all persons, with and without disabilities. With more examples of corporate leadership, we can expect to witness continued progress beyond minimal Title I compliance toward ADA transcendence throughout the American workplace.

## Appendix A

### Chronology of Sears ADA Transcendence

The Sears chronology, summarized below, is illustrative for other companies in the development of ADA transcendence strategies.

#### Pre-ADA Activity at Sears

**1947:** Founding member of The President's Committee on Employment of People with Disabilities.

**1954:** Established Program for *the Employment of the Physically Handicapped*.

**1968:** Established a division of equal opportunity within national personnel department.

**1972 to present:** Established *Selective Placement Program*, that matches the talents and skills of people with disabilities with the requirements of jobs within Sears.

**1972 to present:** Established the *ABLE Program-Architectural Barrier Lessening and Elimination*-to remove barriers facing employees and customers with disabilities at all Sears facilities.

**1989 to present:** Participate in Program *Able Days*, a computer training program for people with disabilities by El Valor Corporation and the Illinois Department of Rehabilitation Services.

**1989 to 1991:** Examined *Merchandise Group Headquarters Design*, new headquarters facilities in Hoffman Estates, Illinois.

#### Post-ADA Activity

**1991 to 1993:** Established Corporate *Council on Disability Issues* to identify affected employment areas and implement policy to ensure fair treatment of people with disabilities under ADA Title I.

**1993 to present:** Corporate Council on Disability Issues replaced with a rotating *Diversity Council*, which includes employees with disabilities and direct managers of employees with disabilities.

**1991 to present:** Examined *Accessibility Requirements and Planning for Employees and Customers*.

**1991 to 1994:** Joined with other companies to form *Project Access*, an organization designed to aid in ADA compliance and in the employment of people with disabilities.

1991 to present: Established *Early Return-to-Work Program*, extension of the company's safety initiative, providing modified and temporary duty to shorten absence resulting from work-related injury.

1993 to present: Participate in *National Management Training Program*, recruiting 100 to 150 new associates annually into Sears National Management Training Program.

1993 to present: Beginning of five-year store renovation process to enhance accessibility and design.

1993: *ADA Training Videos*, available to employees, include issues related to the hiring of associates with disabilities and diversity in the workplace.

1994 to present: Provided more than 400 recruiters with training to manage interview situations in which an applicant self-identifies a disability or presents requirements for workplace accommodations.

1994 to present: Participate in *Job Fairs* for people with disabilities.

1994 to present: Established *Workforce Diversity Initiative*, using focus groups and employee surveys to define issues and strategies to help Sears effectively manage diversity.

1994 to present: Established *Sears Ethics and Business Policy Assist Program*, component for ADA-related dispute resolution.

1995 to present: *Education/Communications Programs*, to employees through newsletters, electronic mail, policy statements, teleconferencing and training materials.

1995 to present: *Sharing communications strategies*, responding to requests for information from other companies, conducting workshops and tours for business leaders of headquarters facility.

1995 to present: Continued participation on the Employers Committee of the President's Committee on Employment of People with Disabilities.

1995 to present: *Supported Employment Initiatives*, sponsored by non-profit organizations to help people with disabilities participate in meaningful employment.

1995 to present: *Sears My Opinion Counts" Surveys*, to all employees for measuring progress toward making Sears a compelling place to work.

1995 to present: *Town Hall Meetings-Planning for Success*, designed as a catalyst for employee input into strategic planning.

## **Appendix B Other Information on Resources**

**For further information on resources identified in this report, contact:**

### **The American Association of People with Disabilities**

**Paul Hearne, Chairman  
4401-A Connecticut Ave., NW  
Suite 223  
Washington, D.C. 20008  
800/840-8844**

### **The American Bar Association Commission on Mental & Physical Disability Law**

**740 15th Street, NW  
Washington, D.C. 20005-1009  
202/662-1570  
202/662-1012 (TDD)**

### **Disability Rights Advocates**

**Sidney Wolinsky, Esq.  
1999 Harrison St., Suite 2020  
Oakland, CA 94612  
510/273-8644**

### **Health Standards Programs**

**U.S. Department of Labor  
The Occupational Safety & Health  
Administration (OSHA)  
200 Constitution Ave. N.W.  
Room N3718, FP Bid.  
Washington, D.C. 20210  
202/219-7075**

### **Iowa Spine Research Center**

**James Weinstein, Co-Director  
Malcolm Pope, Co-Director  
Peter Blanck, Legal Policy  
University of Iowa  
200 Hawkins Drive  
Iowa City, IA 52242  
319/353-7139**

### **Job Accommodation Network (JAN)**

**West Virginia University  
918 Chestnut Ridge Rd., Suite 1  
P.O. Box 6080  
Morgantown, WV 26506-6080  
800/ADA-WORK**

**National Council on Disability**

Ms. Marca Bristo, Chair  
1331 F St., N.W., Suite 1050  
Washington, D.C. 20004  
202/272-2004  
202/202-2074 (TT)

**National Institute on Disability and Rehabilitation Research (NIDRR)**

U.S. Department of Education  
400 Maryland Ave., S.W.  
Washington, D.C. 20202-2572  
202/205-8134

**President's Committee on Employment of People with Disabilities**

1331 F St. NW  
Washington, D.C. 20004-1107  
202/376-6200  
202/376-6205 (TDD)

**Sears, Roebuck and Co.**

Associate Relations  
3333 Beverly Road  
Hoffman Estates, IL 60179  
708/286-0570

**U.S. Equal Employment Opportunity Commission (EEOC)**

1801 L Street, N.W.  
Washington, D.C. 20507  
202/663-4900  
202/663-4141 (TDD)

**U.S. Department of Justice  
Civil Rights Division  
Disability Rights Section**

P.O. Box 66738  
Washington, D.C. 20035-6738  
800/514-0301  
800/514-0383

**World Institute on Disability**

510 16th St., Suite 100  
Oakland, CA 94612-1502  
415/763-4100 (Voice/TDD)

## **Appendix C Sears Model Accommodation Request Form (Summary Format)**

**This form is to be used when a workplace accommodation is made or offered to a Sears Associate or job Applicant. The information supplied will be confidential and become part of a data base to help Sears expand its knowledge about the employment of and accommodations for persons with disabilities.**

**Units should complete an accommodation form when:**

- **Changes in the application process are required because of a disability.**
- **Job tasks must be modified.**
- **job duties must be transferred, or special equipment must be used.**
- **Work schedules require adjustment for disability accommodations.**
- **The physical facility or job-site requires modification.**
- **A change in job assignment is required because of a disability.**

**Refer to the Affirmative Action Manual for additional information.**

### **Complete the information below:**

**Sears Job Code and Employment Status:**

**Name, Title, Unit Location, Telephone Number and Date:**

**Describe the limitation and attach ADA job Profile (include Essential job Functions):**

**Describe the accommodation required and how it will help the job candidate perform essential job functions:**

**Source for providing accommodation: Sears, Associate, Agency, Shared, Insurance:**

**Period of and total cost of accommodation:**

### **If accommodation is not made, complete below:**

**Was an accommodation offered but refused by the candidate?**

**Were other accommodations offered after original refused?**

**If yes, what other accommodations were offered?**

**Describe accommodation(s) considered but not offered.**

**Explain why the accommodation was not offered (undue burden, safety, etc.).**

**List the name and title of the person that made the decision not to offer the requested accommodation.**



**Appendix D  
Workplace Accommodations at Sears:  
Sampled from January 1, 1993 to December 31, 1995**

**Detailed Breakdown**

**ORTHOPEDIC IMPAIRMENTS**

*DESCRIPTION OF ACCOMMODATION*

*COST AND ACTION*

**GENERAL MOBILITY IMPAIRMENT**

difficulty walking distances-provided use of wheelchair to assist access to entire facility

\$350-wheelchair purchase

difficulty walking distances-provided use of wheelchair to assist access to entire facility

\$350-wheelchair purchase

difficulty walking/standing

\$0-job modification with more sitting

difficulty walking, muscle and tendon disorder

\$0-monitor situation, no action

wheelchair user

\$500-restroom railing installed

wheelchair user, limited range of motion and hand movements, needs clarification information

\$0-lower work space, wide pens, hand stapler, special sheet for payroll, task list

associate on crutches, difficulty walking

\$0-job modification, assist in retrieving merchandise, and no ladder climbing

wheelchair user

\$0-additional wheelchair donated to store, needs associate to push chair for work breaks

wheelchair user or crutches

\$0-lower cash register to ring up sales

problem with legs, difficulty standing

\$0-short shifts, 5-hour maximum

fibromyalgia-muscle swelling

\$0-parking provided close to building

congenital hip disorder, problem with walking

\$0-job reassignment as team supervisor, not required to lift

wheelchair user

\$0-work platform lowered

**AVERAGE COST FOR GENERAL MOBILITY  
IMPAIRMENT ACCOMMODATIONS**

**\$92.31**

## ORTHOPEDIC IMPAIRMENTS

<i>DESCRIPTION OF ACCOMMODATION</i>	<i>COST AND ACTION</i>
<b>BACK/HIP IMPAIRMENT</b>	
back problem/scoliosis	\$250-high back ergonomic chair provided
back injury	\$0-permanent alternate job assignment
permanent back injury	\$0-reassignment to sales job
hip replacement	\$0-reserved close parking space, hours modified and flexible
<b>AVERAGE COST FOR BACK/HIP IMPAIRMENT ACCOMMODATIONS</b>	\$62.50
<b>LIFT/CLIMB RESTRICTION AND IMPAIRMENT</b>	
lift, bending and climb restriction	\$0-modified job to exclude restricted tasks
applicant-no heavy lifting, climbing or bending	\$0-modification of job
applicant-no heavy lifting, climbing or bending	\$0-modification of job
applicant-no heavy lifting, climbing or bending	\$0-modification of job
lift restriction	\$0-job modification, associate moved from branch to office job
lift restriction	\$0-permanent alternate job assignment
stock replenisher, cannot climb ladder and needs safety instructions	\$0-reinforce safe behavior with instruction, no climbing and job modification
<b>AVERAGE COST FOR LIFT/CLIMB RESTRICTION ACCOMMODATIONS</b>	\$0
<b>FOOT IMPAIRMENT</b>	
pregnancy complication, feet swelling	\$0-allow to sit periodically
foot problem/pain	\$0-wears tennis shoes on sales floor
foot pain/foot surgery	\$0-wears tennis shoes on sales floor
foot pain/foot surgery	\$0-wears tennis shoes on sales floor
foot problems	\$0-wears tennis shoes on sales floor
foot problems/foot surgery	\$24-stool provided, allowed to sit all day
<b>AVERAGE COST FOR FOOT IMPAIRMENT ACCOMMODATIONS</b>	\$4

## ORTHOPEDIC IMPAIRMENTS

<i>DESCRIPTION OF ACCOMMODATION</i>	<i>COST AND ACTION</i>
<b>WRIST/ARM/SHOULDER IMPAIRMENT</b>	
carpal tunnel syndrome (unable to use price gun)	\$0-limited hours, alternative tasks
limited use of arm	\$0-assistance from other associate with tasks and provided rest periods
shoulder injury	\$0-assigned light duty (temporary)
<b>AVERAGE COST FOR WRIST/ARM/SHOULDER IMPAIRMENT ACCOMMODATIONS</b>	<b>\$0</b>
<b>AVERAGE COST FOR ORTHOPEDIC IMPAIRMENT ACCOMMODATIONS</b>	<b>\$43.35</b>

## SENSORY IMPAIRMENTS

<i>DESCRIPTION OF ACCOMMODATION</i>	<i>COST AND ACTION</i>
<b>VISUAL IMPAIRMENT</b>	
visual impairment	\$199.99-screen enhancer provided for register computer screen
visual impairment (cannot see register display)	\$0-job modification as replenisher
visual impairment	\$21.95-braille/large-print keyboard labels provided
visual impairment	\$0-magnifying glass provided to see shipping receipts
visual impairment (total)	\$0-job share (sighted person does merchandise work, person with impairment fills parts and service orders)
visual impairment (cannot drive after dark)	\$0-flexible work schedule during daylight hours
<b>AVERAGE COST FOR VISUAL IMPAIRMENT</b>	<b>\$36.99</b>

## SENSORY IMPAIRMENTS

<i>DESCRIPTION OF ACCOMMODATION</i>	<i>COST AND ACTION</i>
<b>HEARING IMPAIRMENT</b>	
hearing impairment	\$69.30-phone amplifier provided
hearing impairment	\$79.98-phone amplifier provided
hearing impairment	\$0-changed job from sales to non-sales position
hearing impairment	\$35-enhancer phone, installed bell enhancer and voice amplifier on phone
hearing impairment (total)	\$469-closed captioned TV provided in break room
hearing impairment	\$42-beeper set with card list of departments, and additional assistance provided
hearing impairment	\$42-beeper set with card list of departments, and additional assistance provided
hearing impairment (severe)	\$400-light-controlled fire alarm system installed
hearing impairment	\$0-one-on-one orientation with team members, assign one employee as support if communication problems occur
hearing impairment	\$50-handset amplifier in phone installed
hearing impairment	\$59.99-phone amplifier provided
hearing impairment	\$131.25-signing interpreter for interview and training, TDD device installed
hearing impairment	\$40-phone amplifier installed
hearing impairment (total)	\$25 (per hour)-interpreter assigned to sign for store-wide meetings
hearing impairment/reads lips	\$0-sensitivity/awareness training
hearing impairment (total)	\$0-volunteer interpreter assigned to sign for store-wide meetings
<b>AVERAGE COST FOR HEARING IMPAIRMENT</b>	<b>\$90.22</b>
<b>AVERAGE COST FOR SENSORY IMPAIRMENT</b>	<b>\$75.70</b>

## NEUROLOGICAL IMPAIRMENTS

*DESCRIPTION OF ACCOMMODATION*

multiple sclerosis-difficulty standing for long periods  
 reynauds disease-extreme pain in hands and feet, sensitive to hot/cold  
 epilepsy  
 brain surgery/hair shaved  
 severe headaches from permanent head injury  
 cerebral palsy (mild)

*COST AND ACTION*

\$0-4-hour maximum schedule, flexible two 10-minute breaks per 4 hours  
 \$80-electric stapler provided, changed job to clerical to sit, slower pace and temperature control  
 \$0-schedule shorter flexible shifts  
 \$0-wear hats at work  
 \$0-schedule modification and flexible rest periods  
 \$0 flexible work scheduling to accommodate public transportation schedules

**AVERAGE COST FOR NEUROLOGICAL IMPAIRMENT ACCOMMODATION**

**\$13.33**

## BEHAVIORAL AND MENTAL IMPAIRMENTS

*DESCRIPTION OF ACCOMMODATION*

slow comprehension  
 learning disability \$0-allow  
 mental illness  
 clinical nervousness  
 mental retardation

*COST AND ACTION*

\$0-careful and repeated instruction  
 work at slower pace  
 \$0-shorter shifts, consistency of duties planned, low-stress actions  
 \$0-limited to one job function on work team  
 \$0-flexible scheduling of work hours to accommodate public transportation schedules

**AVERAGE COST FOR BEHAVIORAL AND MENTAL IMPAIRMENT ACCOMMODATION**

**\$0**

## INTERNAUSKIN IMPAIRMENTS

<i>DESCRIPTION OF A ACCOMMODATION</i>	<i>COST AND ACTION</i>
allergic sensitivity, salesperson unable to wear pantyhose per company policy	\$0-waive dress requirement
diabetes, lower leg amputation	\$0-parking provided close to building
<b>AVERAGE COST FOR INTERNAL/SKIN IMPAIRMENT ACCOMMODATION</b>	<b>\$0</b>

## OTHER IMPAIRMENTS

<i>DESCRIPTION OF A ACCOMMODATION</i>	<i>COST AND ACTION</i>
employee's child with disabilities	\$0-schedule work hours flexibility
<b>AVERAGE COST FOR OTHER IMPAIRMENT ACCOMMODATION</b>	<b>\$0</b>

## UNKNOWN IMPAIRMENTS

<i>DESCRIPTION OF A ACCOMMODATION</i>	<i>COST AND ACTION</i>
not documented	\$0-allow to take lunch at 12:00 noon
not documented	\$0-allow to take lunch at 1:00 pm
<b>AVERAGE COST FOR UNKNOWN IMPAIRMENT ACCOMMODATION</b>	<b>\$0</b>

**AVERAGE COST FOR ACCOMMODATIONS \$45.20**

**Appendix E  
Informal Dispute Resolution at Sears:  
Sampled from January 1, 1994 to December 31, 1995  
(Type of Impairment)**

**Detailed Breakdown**

**Orthopedic Impairment**

**Issue:** Employee believes stockroom accessibility does not comply with ADA because stockroom does not accommodate his wheelchair.

**Resolution:** Employee met with Regional Diversity Manager about ADA compliance and advised that Sears would reconfigure stockroom for accessibility.

**Issue:** Employee with orthopedic disability believes designated handicapped parking not accessible to employee entrance. Employee indicated that he had not spoken to anyone on location about problem.

**Resolution:** Employee advised to contact District Manager with unit decision-making authority to discuss parking lot accessibility issue.

**Issue:** Employee in wheelchair has difficulty accessing stockroom.

**Resolution:** Companion employee will assist with merchandise retrieval from stockroom.

**Issue:** Employee concerned about wheelchair access to Sears store. Employee indicated she had not spoken to anyone on location about issues.

**Resolution:** Employee advised to speak with local management with decision-making authority about concerns. Employee advised to call back if not satisfied with local discussion.

**Issue: Employee with orthopedic and mental disability terminated for purchasing improperly priced store item and for low performance levels due to work absences.**

**Resolution: Employee advised to speak with Store Manager. Store Manager subsequently upheld termination because employee violated company policy and previously warned for similar incident.**

**Issue: Employee with nerve damage in feet questioned unit manager's unwillingness to allow employee to work hours prescribed by employee's doctor.**

**Resolution: Unit manager stated employee accommodated with stool and flexible scheduling. Exact prescribed work hours not consistent with particular requirements to perform job.**

## **Sensory Impairment**

**Issue: Employee without disability claims other employees in unit make jokes about deaf employee when deaf employee cannot read lips. Employee claims other employees make deaf employee perform disproportionate amount of assigned work tasks.**

**Resolution: Local management conducted store-wide training on disability, ADA issues and workplace harassment.**

**Issue: Employee with visual impairment needed information on procedures to request accommodation.**

**Resolution: Employee advised to discuss need and nature of accommodation with local management, who has decision-making authority, and to provide documentation for accommodation if necessary.**

## **Neurological Impairment**

Issue: Employee with permanent head injury and unable to stand. for long periods of time was told that, due to occupational safety and health regulations, he is not allowed to sit in file room in wheelchair.

Resolution: Regulations researched and unit advised to accommodate employee by allowing employee to perform tasks while using wheelchair.

Issue: Employee with multiple sclerosis who works on sales floor requested to sit at frequent intervals during work day.

**Resolution:** Employee provided stool and allowed to sit as necessary.

## **Behavioral Impairment**

Issue: Employee with mental disability written up by manager for repeated tardiness and for leaving work early. Employee believes other employees leave early. Employee indicates personal family problems. Employee believes inadequate instruction provided on job tasks and, due to mental disability, employee's work should be subject to higher error rate.

Resolution: Employee advised to discuss issue with Store Manager, who has decision-making authority to review employee's write-up. Employee advised to call back if not satisfied with conversation with Store Manager. No record of return call.

Issue: Employee with reading disability switched to different job position where he believed he was being "set up for failure." Employee believes he was moved to position because he was "different," in that he had reading disability.

**Resolution:** Local human resources staff and management investigated situation. Work hours in employee's area being cut; employee transferred to area with available work hours. Employee also made mistakes on price changes. Manager spoke to employee about mistakes and provided employee with list of resources to assist people with reading disabilities.

## **Respiratory Impairment**

Issue: Employee with asthma concerned about far locations of designated employee parking spaces.

Resolution: Employee allowed to park closer to building or in designated handicapped spots closer to building.

Issue: Employee with asthma and other (unknown) disability released from company for repeatedly not following company policy of counting and verifying register funds. Employee believes release due to asthma and not being part of department "clique."

Resolution: Store Manager stated release warranted. Employee previously reprimanded for similar policy violation. Employee had been reprimanded also for inability to work with others and inability to take directions without hostility.

## **Internal Impairment**

Issue: Job applicant on dialysis requested waiver of urinalysis portion of company drug-testing policy.

Resolution: Urinalysis requirement waived; employee hired.

Issue: Employee diagnosed as HIV positive and outwardly upset about condition. Employee spoke with Store Manager about possibility of quitting. Store Manager under impression employee resigned and surprised to see him at work following day. Employee wanted to continue employment with Sears and would like to know how to rectify situation.

Resolution: Employee advised to discuss with Store Manager whether he wanted to work for Sears. Employee advised to contact Center for Disease Control to learn more about HIV. Employee called back to say he would continue working for Sears and was grateful for advice.

## **Unknown Impairment**

Issue: Employee requested information on ADA compliance.

Resolution: Employee directed to Regional Diversity Manager trained in ADA compliance issues.

Issue: Employee with disability believes Store Manager not allowing employee to work more hours.

Resolution: Employee advised to have follow-up conversation with Store Manager about number of hours being worked and potential for additional hours. Employee advised to call back if not satisfied. Employee has not called back.

Issue: Employee with disability questioned Store Manager about not being considered for management position.

Resolution: Employee directed to appropriate Human Resource Manager to discuss skills needed. for various management positions.

Issue: Employee with disability questioned availability of handicapped parking spaces at headquarters, noting that in bad weather cars without proper handicap sticker use designated spots.

Resolution: Parking office made aware of problem and will monitor; police will ticket violators.



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