

Bodies in Contempt: A Mixed Methods Study of Federal ADA Employment Cases

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## ABSTRACT

This paper draws on theories of gendered organizations to examine discrimination against people with disabilities in the workplace. A sample of 200 cases which document disability discrimination lawsuits was drawn from the Westlaw legal database. Each case was coded for gender, job, disability and discrimination type and analyzed using binary and multinomial logistic models. Of those 200 cases, 34 were selected for in depth qualitative analysis. This study finds that disability type, job type, and gender do have an influence on the type of discrimination someone is likely to experience. In addition, the qualitative analysis finds that the social processes of discrimination differ based on job type and gender pointing to intersections of disability and class as well as gender and disability.

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## **Chapter 1: Introduction and Literature Review**

### *Overview and Significance*

Passed in 1990, the Americans with Disabilities Act is one of the most comprehensive disability rights laws in the world. The passage of the ADA is important because people with disabilities have long been excluded from the workforce because of their physical and mental differences. Title I of the ADA protects the rights of people with disabilities in the workplace. The law states that employers cannot discriminate against qualified people with disabilities in employment decisions regarding hiring or firing. In addition, the law requires employers to provide ‘reasonable accommodations’ to qualified employees with disabilities if they need them in order to perform their jobs. In 2001, the hostile work environments doctrine of Title VII of the 1964 Civil Rights Act was extended protect individuals covered under the ADA (Robert and Harlan 2006).

The ADA laws were passed partly in response to the high poverty and unemployment rates of people with disabilities. In a capitalist system where personal wealth is valued, it is important for people with disabilities to participate in the workforce so that they can earn a living and be economically independent. Indeed, some scholars argue that perceptions of disability are “inextricably linked to the [capitalist] mode of production” (Barnes 2000: 444). As the factory system separated the home from the workplace people’s value in society become linked to their employment roles which thus excluded and devalued people with disabilities who tended to stay home (Robert 2003). Therefore, employment is not only beneficial in terms of someone’s economic independence but in terms of their perceived value in society. Colin Barnes and Geof Mercer (2005) argue that while feminists have begun to challenge this paradigm whereby

a person's value is linked to paid employment, disability scholars have not been able to do the same.

In spite of the ADA protections, discrimination against people with disabilities still persists in workplaces. Attitudes about disability can also become embedded in organizations, Schur, Kruse and Blanck (2005) have shown that corporate culture can create attitudinal, behavioral, and physical barriers for workers and job applicants with disabilities. In another study, Schur (2002) found that employed men and women with disabilities were significantly less likely than their non-disabled coworkers to have given a presentation or speech at work or participated in decision making. Workplaces are often physically inaccessible for people with physical disabilities, and people with disabilities are socially marginalized in relation to their colleagues. The construction of workplaces that do not account for the bodies of workers with disabilities tends to naturalize the idea that people with disabilities do not belong in certain jobs and thus contributes to their disadvantage relative to those defined as able-bodied.

### *Sociology of Disability*

The public generally conceives of disability as an individual problem that exists in the bodies of individuals with disabilities. This is what has been referred to as the medical model of disability. Medical sociologists have previously classified disability as an extension of Talcott Parsons' sick role (Barnes, Mercer, and Shakespeare 1999; Parsons 1951). According to this theory, everyone in society has a social role to play. Illness is a deviation from the normal state of health and people who are ill take the temporary sick role which is legitimate and permissible as long as they strive to get well and return to their normal social roles. There are a few problems with extending the sick role to

disability. First of all, the sick role assumes that the patient desires and works to get well (Barnes, Mercer, and Shakespeare 1999; Haber and Smith 1971; Parsons 1951). This is problematic because many people with disabilities have permanent or even degenerative conditions and thus cannot maintain this desire. Therefore, it is not practical or desirable to exclude people with disabilities from social obligations in the manner of the sick role. Secondly, excusing disabled people from social obligations cuts them off from necessary social capital, which is important to both their physical and emotional well-being. For example, Schur (2002) found that work not only alleviated social isolation among people with disabilities, but also increased their level of life satisfaction and greatly increased their political participation.

Lawrence Haber and Richard Smith (1971) were among the first sociologists to question the sick role for disability. To them, disability can be accepted into normative frameworks through a process of adaptation to incapacity, recognition of inadequacy, attribution of responsibility and legitimation. In Haber's later article, "Some Parameters for Social Policy in Disability" (Haber 1973), he concludes that too much emphasis has been placed on the adjustment of people to circumstances rather than adjusting the environment to fit people. In his model the role of people with disabilities arises from interactions among all people involved. Adjustments should be made to accommodate disabled people into the work force and integrate them into more conventional social roles. This perspective is now called the social model or the minority group model. Rather than viewing disability as a consequence of individual impairments, these models instead claim that disability is caused by a society unable to accommodate a diversity of abilities. The minority group model, like the social model, views societal barriers

particularly, prejudice and discrimination against people with disabilities as the cause of disability and defines people with disabilities as an oppressed minority group (Hahn 1988). Harlan Hahn (1988) points out that while there has been much social science research on the social causes of the unequal status of other minority groups, people with disabilities are still viewed as inferior based on their physical limitations rather than being a part of an oppressed minority group.

Erving Goffman's (1963) book, *Stigma: Notes on the management of spoiled identity*, is one of the most well-known sociological texts that deals with disability. He defines stigma as an attribute, which reduces someone from a whole person to one who is tainted or discredited (Goffman 1963:3). For Goffman, there are three different types of stigma: abominations of the body, blemishes of individual character, and tribal stigma of race, nation and religion (Goffman 1963:4). Goffman frequently uses disability as an example of stigma particularly abominations of the body. However, he fails to examine the social causes of this stigmatization. Susan Wendell (1996) is critical of Goffman because she believes that he fails to see how someone with a disability could take pride in their disability status and find solidarity with other people with disabilities who are members of the same oppressed group. Instead, Goffman views pride in one's stigmatized identity to be a kind of coping mechanism. In spite of this critique, Goffman's work, along with the works of disability scholars such as Jacobus tenBroek and Irving K. Zola, inspired early disability advocates to find solidarity and argue that "disability is a social condition of discrimination and unmerited stigma"(Nielson 2012: 162).

Disability scholars have also been adopting feminist ideas and theories to their research for some time now. In their book, *Women With Disabilities*, Adrienne Asch and



Michelle Fine argue that, in the same way that feminists have separated biological sex from its social construct of gender, disability advocates have been interested in exposing the differences between the physical disabilities and social handicaps (Fine and Asch 1988). In addition, Wendell (1996) views the feminist concept of the ‘Other’ (Beauvoir, Borde, and Malovany-Chevallier 2010) as useful for understanding the experiences of people with disabilities. Men make women the ‘Other’ through a process in which women become defined in relation to men. In the same way, people with disabilities are made the ‘Other’ because they are defined by what they lack compared to the able-bodied ‘norm’ (Wendell 1996). Although disability scholars draw from feminism, feminists have yet to fully integrate disability into their work.

The proposed research project will examine discrimination in the workplace that disabled people experience as an oppressed minority group. I draw upon the minority group model of disability, feminist organizational theories and sociological methods to explore how employment discrimination for people with disabilities operates. In addition, this project examines intersections of oppressions particularly those based on gender, class and disability.

### **Theoretical Foundations**

Joan Acker (1990) has theorized that jobs are created within organizations with assumptions of a disembodied and universal worker. But in fact, Acker argues, this worker is implicitly male, and therefore men’s bodies, sexualities and relationship to procreation and paid work are assumed in the image of the worker. Acker’s insights can be extended to examine disability in the workplace as well. The disembodied worker is

not only comprised of a male body but is also able-bodied. Cockburn (1993) briefly explores the issue of disability in the workplace. She found that employers tend to disadvantage disabled workers by failing to remove barriers for them and by underestimating them (Cockburn 1993). In furthering Acker's concept of the disembodied worker by including disability, she states, "we measure ourselves against a model of physical perfection in contrast to which impairment is seen as a curse, an omen, a source of shame. The model [worker] is male and women's bodies are seen as less strong, less effective. The model is white. The model is physical fitness" (Cockburn 1993). She asserts that people with disabilities must claim their bodies and make them visible. It is important to challenge the ideology that disability comes from 'acts of God' and show that handicaps are created and perpetuated by organizational structures which act as barriers to disabled people's full participation in society and especially in the workplace. The presence and visibility of disabled people in workplaces is important for challenging organizational bias but this cannot happen without fair hiring practices and access to reasonable accommodations.

Iris Marion Young's (1990) work dovetails with gendered organization theorists in that she argues that inequality is embedded in institutions which have been built to exclude certain people. Young takes issue with ideas that people can achieve equality on the basis of everyone having an equal opportunity to compete for the same jobs. For Young, injustice is defined as oppression and domination and therefore cannot be solved without at least some restructuring of institutions and organizations. In her discussion of affirmative action, Young firmly believes that differential treatment is essential to achieving equality in the workplace. Differential treatment in some cases means

providing reasonable accommodations. The purpose of these accommodations is to restructure work environments and work demands in order to make them more accessible. Young seems to raise the stakes from the organizational theorists in that she is concerned with the inequality embedded not only in organizations themselves but also in the way we conceive of work in the first place. For Young (1990:200), workplaces are organized in a 'natural' hierarchy of intellect and skill. Underlying this is an assumption that the most competent and hardest working people will get ahead. This affects the image of disabled people in the workplace because the perception of people working with an accommodation is that they are not truly 'competing' and that they are naturally incompetent (Wilkerson and Frieden 2000).

## **Intersections**

### *Gender and Disability*

Gender has been shown to have an impact on the employment of people with disabilities, with disabled women having the highest rates of unemployment. Rather than examining the intersectionality of gender and disability as this paper proposes, researchers often talk about women with disabilities as having a 'double disadvantage' (O'Hara 2004; Randolph 2005; Deegan and Brooks 1985; Fine and Asch 1988) in order to explain their high unemployment rates. That is, using data from the disability Behavioral Risk Factor Surveillance System, Randolph and Andresen (2004) found that the association between disability and employment varied by gender. In all analyses, there appeared to be a higher risk of unemployment for women than with men regardless of disability.

Extensive qualitative research explores the unique work experiences of women with disabilities. In qualitative interviews conducted among three women with disabilities, Randolph (2005) found that they experienced discrimination in their workplaces due to: preconceived notions of what they can and can't do; attitudinal barriers; and difficulty gaining accommodations. A study of disabled women in Spain looked at women of two generations: young women (20-35 yrs) and older women (40-60 yrs). The respondents valued their work experience because it facilitated their financial and emotional independence; they gained social integration and recognition through work; and they enjoyed feeling liberated from their families by going to work (González 2009). However, they faced some barriers both because of their visible disabilities and stereotypes held by employers about disabled people as inefficient workers. Thus they tended to work extra hard in order to overcome these expectations. The respondents took great pride in their ability to complete tasks at home as well as at their jobs, they wanted to be effective in all spheres of their lives in order to demonstrate normalcy (González 2009).

Based on interviews conducted with women with disabilities focused primarily on their experiences in the workplace, Grimley Mason (2004) points out that many of these women have been directly affected by the failure of disability legislation and are suffering from poor counseling and inadequate educational opportunities as well as outright discrimination in hiring (Grimley Mason 2004). More than anything, her research provides good examples of the kinds of barriers disabled women face in employment. For instance, in one narrative, a woman disabled by multiple sclerosis and using a wheelchair was teaching a course in a large lecture hall. There was disability

access for students at the top of the stairs in the back of the lecture hall but there was no way for a professor in a wheelchair to enter the classroom (Grimley Mason 2004). The underlying assumption was that someone in a wheelchair would not be a professor of a class.

### *Class, Gender and Disability*

Class, operationalized by job type, has been shown to have a particular impact on the experiences of workers with disabilities. Harlan and Robert (1998) found that people in higher grade jobs and employees who knew of the ADA were more likely to ask for and receive accommodations. Women's requests for accommodations were denied more often than were men and people in lower grade jobs were also more likely to have their requests denied (Harlan and Robert 1998). Generally women's jobs were in lower grades than men's jobs, and the type of impairments women had was more incompatible with the work they did. For example, they found that the men often had mobility impairments, which did not seem to interfere with their ability to perform white collar work. By contrast the women tended to have chronic illnesses (diabetes, arthritis) which made it difficult for them to "conform to the rigorous regimentation of lower level clerical jobs" (Harlan and Robert 1998:414). Therefore, they found that women were more likely than men to request accommodations.

These gender differences illustrated by Harlan and Robert may also be interpreted as a class issue. Joan Acker views organization controls as being class controls in that they maintain the power of managers over workers (Acker 2006). The process of asking one's boss for accommodations and his/her power to either grant or deny these requests is an example of these controls. In addition, Schur (2003) found that people with disabilities

are almost twice as likely to work in part-time contingent jobs. While, as Schur points out, this can be a benefit to people whose disabilities require them to work more flexible schedules, such contingent jobs usually pay very little and incumbents often have very little power over their schedules. This mirrors research that has been done on women in contingent work. Women occupy a much higher percentage of contingent jobs than men. This has been understood to be a result of women's need for more flexible schedules in order to balance their family demands with their paid work. However, Spalter-Roth and Hartmann (1998) offer an alternative explanation: employers make decisions not to invest in female workers and steer them into part-time contingent work. In fact, contingent workers almost never have any control over their schedules and the majority of the women in contingent jobs do not have the 'breadwinning' spouse assumed to make contingent work a 'choice' for women (Spalter-Roth and Hartmann 1998). In fact, this group of women workers was more likely to make ends meet through welfare benefits. It seems possible that the same thing could be happening to people with disabilities, particularly women with disabilities. Robert and Harlan (2006) found that more than half of the women interviewed reported being steered into entry-level positions like clerk and other traditionally female jobs. At the same time, more than three-quarters of the men with comparable qualifications reported being placed in jobs with better career ladders. These studies illustrate how women with disabilities find themselves in lower grade jobs, which may make them more vulnerable to discrimination based on their disabilities.

### **Experiences of Workers with Disabilities**

#### *Reasonable Accommodations*

In a study of reasonable accommodations in organizations Harlan and Robert (1998) drew upon Acker's organizational theory to explore the issue of workplace accommodations. They interviewed employees with disabilities about their experiences asking for accommodations. They found that requests for changes to the physical space were more likely to be approved than requests for changes in work schedules or job functions. This could also be interpreted as a class issue. As discussed above, people in lower level jobs have less control over their schedules and these results may reflect the finding that people in lower grade jobs are less likely to have their requests for accommodations granted. Schartz et al (2006) point out that employers tend to perceive accommodations for disabled employees as costly. However, they also find that workplace accommodations are effective and inexpensive.

Harlan and Robert's (1998) interviews also revealed a number of social barriers that made it difficult for employees with disabilities to ask for or receive accommodations. The researchers noted that people who ask for accommodations face a kind of double-edged sword wherein they have to prove their disability in order to receive accommodations, but once they have, they may experience some stigma attached to their disability. This is especially problematic for people with nonvisible or non-apparent disabilities.

### *Discrimination*

Robert and Harlan (2006) examined the mechanisms of workplace discrimination for people with disabilities working in government organizations. The authors conducted in-depth personal interviews focusing on the mechanisms of discrimination rather than the motives. In other words, they examine *how* discrimination occurs rather than *why*.

They found two types of mechanisms: interpersonal and organizational. Interpersonal mechanisms refer to the ways that ‘workers’ and supervisors’ attitudes and perceptions about disability are manifested in their treatment of disabled workers. Specific interpersonal mechanisms that the authors identified in this study included marginalization, fictionalization and harassment. Tolerance of these acts were expressed in policies, procedures, rules decisions, and systems of resource and reward allocation. Individual acts of discrimination become embedded patterns of discrimination that lead to organizational mechanisms in the form of job segregation, low rates of promotion and reasonable accommodation and a hostile work environment.

In cases of marginalization, the disabled person was treated as an outsider in the workplace. Marginalization was accomplished through exclusion, avoidance, stilted (uncomfortable) interaction and staring (Robert and Harlan 2006). Harlan Hahn (1988) points out that nondisabled people may have a kind of existential anxiety in the presence of people with disabilities. He defines existential anxiety as “the threat of potential loss of functional capabilities by the nondisabled”(Hahn 1988:42). This may explain in part, why nondisabled people tend to avoid their colleagues with disabilities.

Another mechanism of discrimination is “fictionalization” wherein coworkers and supervisors impute a stigmatized status upon the disabled worker. These fictional identities, which included the “incompetent” worker and the “helpless” worker, allow supervisors and coworkers to feel justified in their discriminatory treatment of workers with disabilities. The fictional identities in this study were the “incompetent” worker and the “helpless” worker. Often there was also the assumption that disability and cognitive impairment went hand in hand (Robert and Harlan 2006). These embedded patterns of



discrimination were also exposed in a study of workers at a car factory, wherein researchers found that female, older and disabled workers were often viewed as unable or unwilling to perform their duties. The elimination of these workers in company restructuring was legitimated by these attitudes (Zanoni 2011). These fictional identities negatively affect disabled employees' opportunities and relationships in the workplace. Other studies have also shown that people with different types of disabilities are perceived in different ways. Generally, individuals with physical disabilities are viewed more favorably than those with mental, communication, and other types of disabilities (Wilkerson and Frieden 2000). Stone and Colella (1996:361) posit that, "observers use the nature of the disability to assign individuals to categories (e.g., mentally ill, physically disabled, drug addicted), and each disability category evokes different stereotypic perceptions and job related expectations about the person".

Finally, respondents in this study reported receiving harassment. The most common form of harassment was hostile and inappropriate joking. Often the workers with disabilities found that their supervisors would not take their claims of harassment seriously and had the attitude that the disabled worker should just put up with it. Another form of harassment occurred when coworkers felt they could delve into the personal lives of the worker with disabilities, asking them deeply personal questions and judging their personal decisions. Finally, the workers were harassed when their requests for reasonable accommodations were seen as "special treatment," particularly when they had to participate in the delivery of these accommodations. In an ADA discrimination law suit, *Robel v. Roundup Corp.*, a woman was harassed by her coworkers because she had filed a worker's compensation claim for a back injury and was placed on light duty work. The

harassment was motivated by a disability request for accommodations but was gendered in nature as her coworkers called her derogatory words typically used against women such as “cunt” and “bitch.”

### **Discrimination Charge Process**

If an employee believes s/he has been discriminated against in any way because of disability, s/he has the right to file a claim with the Equal Employment Opportunity Commission (EEOC). In a study of EEOC disability claims, Moss (2000) found that the four most commonly cited impairments were back impairments, psychiatric disabilities, neurological disorders and impairment related to extremities. Moss found that most of the people who filed ADA claims under the EEOC did not receive beneficial outcomes. This means that in practice, the ADA may not provide the protection that is intended. She notes that the majority of impairments cited in the cases, specifically, back injuries and psychological disorders, were nonvisible impairments that don't seem to fit the stereotypical image of disability (e.g. a person in a wheelchair). She suggests that as a result, they may be considered frivolous. Phillip D. Rumrill Jr. et al (2010), in a study of EEOC charges related to firing, found that discharge allegations were more likely to be filed by charging parties who are male; younger; have heart conditions, cancer, bipolar disorder, epilepsy, HIV/AIDS, alcoholism, drug addiction and intellectual disability. This shows how gender, age and disability type impact the type of discrimination experienced by individuals covered under the ADA.

If the EEOC believes that the claimant has a cause for a lawsuit they will give the person a “right to sue” letter. At this stage individuals can take their case to court and sometimes the EEOC will represent them in their case. In an examination of the ADA

discrimination charges that have been tried in the court system, Ruth Colker (1999) found that defendants prevail in more than 93% of reported ADA employment discrimination cases. Konur (2007) replicated this study in England and also found an overwhelming pro-defendant outcome in Disability Discrimination Act (DDA) cases. Similarly, Harlan and Robert (1998) found that employees who knew of the ADA were more likely to ask for accommodations. But they also found that employees who seek accommodations are often no match for the employers who have expert legal counsel. Research on the ADA discrimination court process has suggested that federal court justices and judges have concentrated more on determining who deserves protection under the ADA than on whether discrimination against someone with a disability has occurred (O'Brien 2001). In addition, federal courts do not tend to comply with EEOC guidelines that they are not legally bound to follow (Colker 1999; O'Brien 2001). For example, nontraditional impairments such as, back problems and carpal tunnel syndrome are disabilities covered under the ADA only as long as they affect a 'major life activity' such as walking, standing, seeing, breathing, caring for oneself or working (O'Brien 2001). In other instances, federal courts apply the 'major life activities' standard so narrowly that very few people with disabilities will be perceived as qualified for protection (O'Brien 2001). The sick role, while not providing a valid way of defining disability, does at least shed some light on the way people with impairments are viewed in society. People in the sick role who are not trying 'get better' are viewed as deviant. This may be why people with non-traditional impairments are viewed with suspicion and, in the case of ADA discrimination lawsuits, treated as if they are trying to get something they don't deserve by lingering in the sick role.

In addition to the practical results for plaintiff's lives, these court cases influence how disabled individuals see themselves in relation to the law and the expectations they have for their own lives (Burriss and Moss 2000). In other words, court cases involving ADA discrimination do more than set legal precedents; they contribute to a 'legal consciousness,' and employers who are aware of these trends in litigation may have a narrower view of their obligations in providing reasonable accommodations (Burriss and Moss 2000). In addition, employment laws give workers a sense of legitimacy in conceiving unequal treatment as discrimination (Balser 2002).

### **Research Questions**

The combined works of Acker, Cockburn and Young suggest that the experiences of both women and people with disabilities are embodied in problematic ways in workplaces built on the assumption of an able-bodied male worker. In addition, these differences can intersect with class (operationalized as job type), having an impact on the experiences of people with disabilities in the work place. If work places are built for an able-bodied male, then how can disabled females gain access to these workplaces? How might class intersect with disability in ways that make certain workplaces less accessible than others? Women with disabilities have been shown to be at an extra disadvantage, one that appears to be heightened based on class. Research has shown that people with disabilities in lower grade jobs are more vulnerable to discrimination and less likely to receive requested accommodations. I will examine the differences in types of discrimination cited in ADA law suits between job types (of higher and lower class) especially how they intersect with gender, as women with disabilities are even more

likely to hold lower class jobs than men with disabilities. While researchers tend to look at gender and disability as an additive effect of gender discrimination PLUS disability discrimination, they have not explored how gender and disability interact to create a unique experience of discrimination for disabled women. By intersecting gender with disability type in my analysis, I intend to find whether women with particular types of disabilities have a unique experience of discrimination that isn't accounted for in additive models. Based on the literature to date, and the gaps in our understanding concerning gender, class and disability in the workplace, in this study I will ask:

- Does the intersection of disability, class and gender create a unique experience of discrimination for disabled women in the work place?

To address this general question, I will ask the following:

- What are the effects of gender, job type or disability type on the type of discrimination someone is likely to experience?
- Is the effect of gender changed by disability type?
- Is the effect of gender changed by job type?

## **Chapter 2: Methods**

I tested my research questions both quantitatively and qualitatively. I chose a mixed methods approach in order to gain a well-rounded picture of the discrimination experienced by disabled people in the workplace. I employ binary and multinomial logistic regressions to provide a broad picture of the discrimination likely to be experienced by people depending on their characteristics of disability, job type and gender in order to address my first research question: what are the effects of gender, job type or disability type on the type of discrimination someone is likely to experience? Since the dependent variable is nominal with five possible values I used multinomial logistic regression. This is a type of qualitative choice model which is used when the dependent variable takes a discrete number of mutually exclusive, and collectively exhaustive values (Borooah 2002:1). Multinomial logistic regression can test the likelihood of someone possessing the characteristics of each of the independent variables in my study claiming to have experienced one type of discrimination as opposed to the other types. Interactions can also be tested using statistical methods. Therefore, I created interaction terms for gender and disability type as well as gender and job type. The interaction variables will be used as independent variables in logistic regression models in order to answer the questions, is the effect of gender changed by disability type? And, is the effect of gender changed by job type?

Intersectionality is a complex theoretical concept. It may not be adequately tested through quantitative interaction terms. Therefore, qualitative methods will be used to examine the intersections of gender, disability and class further. This exploratory analysis

examines the ways that discrimination against people with disabilities operates for people of different types of disabilities in different classes of jobs. The qualitative analysis is meant to uncover themes that cannot be measured in the quantitative models.

### **Sample**

I use court cases as data to study workplace discrimination because they document instances where discrimination has allegedly occurred. Using the Westlaw database, I can code a sample for quantitative analysis as well as conduct a content analysis of the information contained in the summaries. The Westlaw database is one of the largest databases of primary law cases and is used by lawyers and academics. Each case in the Westlaw database has summaries which tell the story of the discrimination event and gives the perspective of the employee and the employer. Some cases are more descriptive than others and seem to tell the “story” of the plaintiff’s experience. These stories can read almost like interview data because they outline the events that occurred to make the plaintiff believe he or she was being discriminated against on the basis of disability. I use the Americans with Disabilities (awd-cs) data set which includes all federal cases which been determined to be related to Americans with disabilities.

I chose a random sample of 200 cases from the results yielded from a search using broad search terms such as: Americans with Disabilities Act, Americans with Disabilities, ADA, Title VII, discrimination, work, employment, and job. I limit my search to cases which occurred between 2012 to July of 2013 in order to read my results as an indicator of the contemporary situation. My initial search produced 586 results. I divided that number by 200 (my desired sample size) which returned a result of 2.93. This means that in order to get a sample of 200 cases from this sample I will have to

select every 3<sup>rd</sup> case. I used a random number generator to select my starting point which was 7. I started from the seventh case in the results. If a case was not relevant to my study, I skipped it and went on to the next case.

I manually coded each case into an Excel spreadsheet. By reading through synopsis and digest of each case, I coded the information I needed from the text of the documents. Some cases were arguing procedural matters, so I skipped those in favor of cases that were presented as civil rights cases. Scholars have used the Westlaw database to examine the outcomes of court cases. This project is unique because I am not coding for legal matters but rather conducting a content analysis in order to examine discriminatory *processes* in the workplace. The variables in this study are gender, job type, discrimination type and disability type.

## **Variables**

### *Independent Variables*

**Gender** is a dichotomous variable which was intended to be coded for whether the plaintiff is female or male. However, I added a third and fourth category to account for people who identify as transgender or transsexual. There was one FTM transgender person and one MTF transsexual person whose experiences will be analyzed in the qualitative portion of the study because these categories are not large enough for quantitative analysis.

**Class** was approximated by looking at the jobs of plaintiffs. Occupation is often used by social scientists as a measure of class. This is in part because, “occupation reflects a broader spectrum of the components of social class than does income” (Dickinson and Lind 2001:38). I input 12 job categories into my SPSS data. I compared my 12 job



categories with the EEOC job classifications to determine which ones went together. I transformed the job category into a category with three class levels: professional, working class and semiprofessional. In determining the class of each job I considered education level as well as job autonomy.

**Disability** In my initial coding for the quantitative data, I recorded the exact disability for each case. I then created categories based on what was found in my sample. I coded each disability category as a separate dummy variable because many of the cases had multiple types of disability. I combined the many types of disability in my data into larger, theoretically relevant categories for purpose of analysis. I combined back injury with chronic pain to create a category of nonvisible pain disability. I also combined mental illness and learning disabilities to create a category for nonvisible mental disabilities. Physical disabilities and chronic illness were both large categories on their own and were not merged with anything. I merged sensory impairments and chemical sensitivity into the “other” category along with pregnant, sleep disorders and old age. Separately, these variables did not have large enough numbers to warrant their own categories and there were no commonalities between them from which a unique category could have been formed. Overall, this category is smaller than the other disability types and if it was broken down in other ways, the categories would be too small for statistical analysis.

*Dependent variable*

**Discrimination** All of the plaintiffs in my sample made claims of disability discrimination. These categories represent the ways that the discrimination manifested. I have two variables for discrimination. First, I coded discrimination in five categories based on what was found in the sample. Those categories are, fired/demoted, denied

accommodation, not hired/denied promotion, harassment/retaliation, and multiple kinds of discrimination. The “multiple” category was created in order to examine the experience of discrimination for each individual in the sample. Each individual must be assigned to one discrimination category in order to make comparisons between discrimination types; some individuals experienced more than one type of discrimination and rather than selecting one discrimination category for those individuals I placed them into the “multiple” category. “Fired” is the reference category in the multinomial logistic regression so for that analysis, the individuals who experienced being fired as well as another type of discrimination were pulled out of the multiple category and put into the fired category. I did this because it does not make sense in this model to compare people who have been fired to people who have been fired as well as another type of discrimination. In order to examine the dynamics of multiple types of discrimination, I created a dummy variable for multiple types of discrimination. In this variable, the people who experienced more than one type of discrimination were coded as 1 and those who experienced a single type of discrimination were coded as 0. I tested this variable in a binary logistic regression model.

### **Quantitative Strategy**

Once the sample of 200 cases had been coded, the data was analyzed using SPSS (version 21), a statistical software package. I used binary and multinomial logistic regression models to test my research questions. The binary regression model will test which types of people are more likely to experience multiple types of discrimination rather than a single type. Multinomial logistic regression will test which types of discrimination people with different types of disabilities, jobs or gender are likely to

experience. This is important because it will help us understand which populations of people with disabilities are more vulnerable to certain types of discrimination.

My first question is: Is there an effect of gender, job type or disability type on the types of discrimination people with disabilities experience in the workplace? To answer this question, I first ran a binary logistic regression model with multiple types of discrimination regressed upon gender, job type and disability. This model uses the dummy variable for multiple forms of discrimination. This model will show which kinds of individuals are more likely to experience multiple forms of discrimination in the workplace than a single form. Next, I ran a multinomial logistic regression model with type of discrimination regressed upon gender. Gender was coded for female so that male was the reference category. The MTF transsexual and the FTM transgender cases were left out of the quantitative analysis. For type of discrimination, the reference category was fired/demoted so that each model was testing whether it was more likely for someone to experience being denied an accommodation, not being hired, harassment or multiple kinds of discrimination than being fired or demoted. I chose fired/demoted as the reference category because it is the category with the highest frequency and I was interested in which variables led to experiencing types of discrimination in the workplace that may not lead to the loss of a job. This will give a picture of the experiences of people with disabilities in the workplace. Since firing is the reference category, people who had been fired in addition to another type of discrimination were removed from the multiple discrimination category and placed in to the firing category. The multiple category for this analysis consists of people who have experienced a combination of two or more of the categories, denied accommodation, hiring/denied promotion, and harassment.

After running a baseline model for gender I ran a model where type of discrimination was regressed upon gender, disability type and job type. The category for other type of disability was the reference category for disability and jobs were coded as professional, semiprofessional, and working class. Of those categories, working class was the reference category.

The second research question tested was, does the effect of gender change with the class of job the person holds? This question tests an interaction effect between gender and job type. In order to answer this question, interaction terms were created by multiplying the variable female with the variable for professional job and again with the variable for semiprofessional job. These new variables are women in professional jobs and women in semiprofessional jobs. These variables were added into a third model wherein type of discrimination was regressed upon gender, disability, job type and the interaction variables of women in professional jobs and women in working class jobs.

The third research question tested is, is the effect of gender changed by disability type? To answer this question, I created interaction terms between gender and every type of disability that was tested in previous models. These new variables were women with physical disabilities, women with chronic illness, women with nonvisible pain disabilities and women with nonvisible mental disabilities. I tested each of these interaction terms in one model along with the variables of gender and disability from model 2.

## Chapter 3: Results

### *Descriptive Statistics*

Tables 1, 2, and 3 contain descriptive statistics of the sample. Table 1 outlines the sample distribution among of the 5 categories of the dependent variable. Table 2 shows the frequency for the dependent variable of multiple forms of discrimination. Table 3 contains the descriptive statistics of the independent variables used in the analysis. The majority of the sample were women (50.5%), and working in working class jobs (49.3%) The disability variables used in the study were all about equal in representation (23-23.5%) and the category “other” was slightly lower (21.5%).

**Table 1**

#### **Descriptive Statistics: Type of Discrimination**

	N	%
Fired; demoted	137	68.5
Denied Accommodation	20	10
Hiring; denied promotion	14	7
Harassment; Retaliation	13	6.5
Multiple	16	8
Total	200	100

**Table 2**

#### **Descriptive Statistics: Multiple Forms of Discrimination**

	Frequency	Percent
Single Type of Discrimination	117	58.5
Multiple Types of Discrimination	83	41.5

Total	200	100
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This was a dummy variable with multiple forms of discrimination coded as 1 and single forms of discrimination coded as 0.

**Table 3: Descriptive Statistics: Independent Variables**

	Description	%	N
<b>Disability Type</b>			
Physical disability	<i>Paralysis, injury, amputation</i>	23.5	47
Chronic illness	<i>Cancer, HIV</i>	23.5	47
Non visible mental	<i>ADHD, mental illness</i>	23	46
Non visible pain	<i>Arthritis, back injury, carpal tunnel</i>	23	46
Other disabilities	<i>Chemical sensitivity, sensory impairment</i>	21.5	43
<b>Job Type</b>			
Working class	<i>Factory work, labor, Clerical</i>	49	98
Semiprofessional	<i>Social work, Teacher</i>	42	84
Professional	<i>Lawyer, Doctor</i>	8.5	17
<b>Gender</b>			
Female		.50	100
Male		49	98
<b>Interaction Terms</b>			
Female x Working class	<i>Women in working class jobs</i>	22	44
Female x Semi professional	<i>Women in semiprofessional jobs</i>	22.5	45
Female x Professional	<i>Women in professional jobs</i>	5	10
Female x Physical disability	<i>Women with physical disabilities</i>	9.5	19
Female x Chronic Illness	<i>Women with chronic illness</i>	10.5	21
Female x Nonvisible pain disabilities	<i>Women with nonvisible pain disabilities</i>	14	28
Female x Nonvisible mental disabilities	<i>Women with nonvisible mental disabilities</i>	13	26

## **Binary Logistic Regression**

*Is there an effect of gender, disability type and job type on the type of discrimination someone is likely to experience?*

Table 4 shows the results of a binary logistic regression where “multiple” forms of discrimination was regressed upon gender, disability and job type. This model shows that disability type does affect the type of discrimination someone is likely to experience. People with nonvisible pain disabilities are more than 3 times more likely than people without nonvisible pain disabilities to report multiple types of discrimination than a single type of discrimination. Nonvisible mental disabilities was nearly significant (.116) with a positive coefficient which indicates that people with nonvisible mental disabilities may also be more likely to experience multiple forms of discrimination. This model also demonstrates an effect of job type. Semiprofessional jobs was significant showing that there people in those jobs are about twice as likely as people in working class jobs to experience multiple forms of discrimination. These results which demonstrate which kinds of people are more likely to experience multiple forms of discrimination provides a link between the quantitative and the qualitative analyses.

**Table 4**

**Binary Logistic Regression: Multiple Forms of Discrimination**

Female	0.223
	[1.249]
Physical disability	0.7
	[2.013]
Chronic Illness	0.559
	[1.75]
Nonvisible Pain	1.33**
	[3.782]
Nonvisible mental	0.725
	[2.065]
Semi Professional	.715*
	[2.044]
Professional	-.622
	[.537]

\*\*p<.01, \*p<.05, #p<.1

**Odds Ratio in brackets**



## Multinomial Logistic Regression

*Is there an effect of gender on the type of discrimination someone is likely to experience?*

**Table 5**

### Multinomial logistic regression models

	Denied accommod ation	Hiring	Harass ment	Denied accommod ation	Hiring	Harass ment	Denied accommod ation	Hiring	Harass ment	Denied Accommo dation	Hiring	Harass ment
Female	0.862#	(-)1.189#	(-).14	0.964#	(-).997	(-).25	1.773*	0.286	0.363	1.206	(-)1.344	0.129
	[2.368]	[.304]	[.87]	[2.623]	[.369]	[.722]	[5.891]	[1.331]	[1.438]	[3.34]	[.261]	[1.138]
Physical Disability				(-)2.593*	0.854	(-).265	(-)2.813*	0.63	(-).482	....	0.592	(-).456
				[.075]	[2.349]	[.767]	[.06]	[1.877]	[.617]	....	[1.807]	[.634]
Illness				(-)1.493*	0.129	(-).815	(-)1.677*	0.1	(-).893	(-).631	0.075	(-).15
				[.225]	[1.138]	[.442]	[.187]	[1.105]	[.412]	[.532]	[1.078]	[.86]
Nonvisible Pain Disability				(-).933	....	0.388	(-)1.273#	....	0.095	(-)1.031	....	0.016
				[.393]	....	[1.474]	[.28]	....	[1.099]	[.357]	....	[1.016]
Nonvisible Mental Disability				(-).593	(-)1.013	1.583#	(-).657	(-).974	1.54#	(-).423	(-).618	2.057#
				[.552]	[.363]	[4.871]	[.518]	[.378]	[4.663]	[.655]	[.539]	[7.82]
Semi Professional				(-)1.028#	0.002	(-)1.90*	0.417	0.838	(-).709	(-)1.021#	0.061	(-)1.8*
				[.358]	[1.002]	[.149]	[1.518]	[2.311]	[.492]	[.36]	[1.063]	[1.165]
Professional				(-).009	(-).41	...	....	0.14	....	0.135	(-).389	....
				[.991]	[.663]	....	....	[1.151]	....	[1.144]	[.678]	....
Female x Semi Professional							(-)2.393*	....	....			
							[.091]	....	....			
Female x Professional							....	....	(-).128			
							....	....	[.88]			
Female x Physical disability										....	0.774	0.514
										....	[2.169]	[1.672]
Female x Illness										(-)1.752	0.13	....
										[.173]	[1.139]	....
Female x Pain Disability										0.108	1.739	0.514
										[1.114]	[5.69]	[1.672]
Female x Mental disability										(-).304	....	(-)1.081
										[.738]	....	[.339]

\*\*p<.01, \*P<.05, #p<.1

**Odds Ratio in brackets**

In model 1 (Table 5), type of discrimination was regressed upon gender before controlling for other variables<sup>1</sup>. The expected relationship between gender and type of discrimination was supported in this model. There was a significant result for female (.095) in the category of denied accommodation. There was a positive coefficient (.862) which indicates that women are more likely to report being denied an accommodation as the type of discrimination they experienced than being fired. The exponentiated coefficient (2.368) in this model indicates that women are more than twice as likely as men to report being denied an accommodation. This model also shows that women are about 70% less likely than men to report not being hired or being demoted as the type of discrimination they experienced. This model has a Nagelkerke R square of .045 which means that this model explains about 4.5% of the variability in type of discrimination. The Nagelkerke R square is a pseudo R square that is used to measure the goodness of fit of multinomial logistic regression models. This result demonstrates that gender may have an impact on the type of discrimination someone with a disability will report experiencing. However, this model only explains a small portion of the variability in type of discrimination.

*Is there an effect of gender, disability type and job type on the type of discrimination someone is likely to experience?*

Model 2 (Table 5) shows that the significance of gender remains in the denied accommodation category even when variables for disability and job type are added to the model. The Nagelkerke R square in this model is .249 meaning that it explains about 25% of the variability in type of discrimination. A relationship between disability and type of

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<sup>1</sup> The category for “multiple discrimination” was run in these models but had no significance. It is not included in the table.

discrimination is supported by this model. People with physical disabilities have about 90% lower odds of being denied an accommodation rather than being fired relative to people without physical disabilities. Similarly, people with chronic illness have 78% lower odds than people without chronic illness of claiming being denied an accommodation rather than being fired. In addition, people nonvisible mental disabilities were almost five times ( $\text{Exp}(B)4.871$ ) more likely to experience harassment as the type of discrimination they experience compared with people without nonvisible mental disabilities.

The expected relationship between job type and discrimination was also supported by this model. First, people in semiprofessional jobs were about 64% less likely than people in working class jobs to report being denied an accommodation rather than being fired. People in semiprofessional jobs were also 85% less likely than people in working class jobs to report being harassed compared to being fired. This situates people in working-class jobs as more likely to be denied an accommodation and be harassed in the workplace rather than being fired.

*Is the effect of gender changed by job type?*

Model 3 Tests the interaction terms for gender and job type. This model has a Nagelkerke R squared of .328 which is the best model fit statistic of all the models in this study and means it explains about 33% of the variability in type of discrimination. The interaction between gender and job type was confirmed in this model as I found a significant interaction for women in semiprofessional jobs under the category “denied accommodation.” It has a negative coefficient meaning that women in semiprofessional

jobs are less likely than those in working class jobs to report being denied an accommodation. This indicates that the effects of gender and the effects of class observed in previous models may have been due to the interaction of women in working-class jobs. Also in this model, the variable for nonvisible pain disabilities gains significance so that people with nonvisible pain disabilities are about 92% less likely to report being denied an accommodation rather than being fired compared to people without nonvisible pain disabilities. All the other variables maintained their significance except for semiprofessional jobs which loses significance under the category of harassment.

*Is the effect of gender changed by disability type?*

Model 4 (Table 5) tests the interaction terms of gender and disability<sup>2</sup>. This model had a Nagelkeke R square of .291 meaning that it explains about 29.1% of the variability in type of discrimination. None of the disability interaction terms showed any significance in this model. In addition, some of the significance from previous models was lost in this model. However, nonvisible mental disabilities was significant and had an exponentiated coefficient (7.82) which indicated that people with nonvisible mental disabilities in this sample are almost eight times more likely than people without nonvisible mental disabilities to report experiencing harassment as the type of discrimination that they experience instead of firing. In addition, semiprofessional jobs maintained significance in both the denied accommodation category and the harassment category.

*Summary*

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<sup>2</sup> Because this sample is so small, some of the variables were unable to show results under some categories in the model. They are indicated with dots (...) in the table.

Overall, these findings show that type of disability, gender and job type are related to type of discrimination. Physical disability, nonvisible pain disabilities and chronic illness were the only disability variables to have significance that were inversely related to a type of discrimination. Here, people with physical disabilities, nonvisible pain disabilities and chronic illness were less likely than people without those types of disabilities to claim to have been denied an accommodation. In contrast with the other variables, physical disabilities may be more visible and thus less contested when accommodations are requested. This also supports the literature that suggests that accommodations in physical space are more likely to be approved than changes in scheduling. The findings for chronic illness and pain disabilities is not supported by the literature. These models indicate that people with these types of disabilities are more likely to be fired than to cite denied an accommodation as the type of discrimination they experience. Pain disabilities was significant in the binary regression model for multiple types of discrimination. If people with pain disabilities have claims of being denied an accommodation which are associated with being fired, they would not show up in the multinomial regression where people with more than one type of discrimination including firing had been placed in the category fired.

In addition, job type and gender are strong indicators of being denied an accommodation. People in working class jobs and females were both more likely to experience being denied an accommodation than being fired. The interaction term for women in semiprofessional jobs was significant in the denied an accommodation category showing that they were less likely than women in working class jobs to report being denied an accommodation compared to being fired. Women in semiprofessional

jobs, then, may be more vulnerable to being fired than being denied an accommodation. People in working class jobs tend to have very little autonomy or control over their schedules. Women in working class jobs tend to work in clerical positions compared to men who may work in jobs which tend to be unionized. This is important in the case of accommodations where an employee has to request an accommodation from their supervisors who have to the power to either grant or deny the request. For people with disabilities, it is more difficult to have accommodation requests granted in jobs with very little autonomy. Unions can offer some protection of the rights of the workers but the jobs that women usually hold tend to not be unionized. In addition, people in working class jobs were more likely than the other job types to report being harassed as the type of discrimination they experienced rather than firing. Also, people with nonvisible mental disabilities were more likely to experience harassment than firing compared to people without nonvisible mental disabilities. Mental disabilities are a highly stigmatized form of disability which may be why people with those kinds of disabilities are more vulnerable to harassment in the workplace.

### **Qualitative Analysis**

For the qualitative data there is a sample of 34 cases which were taken from the sample of 200 used for quantitative data. Demographics of this sample are shown in Table #6, which appears below.

**Table 6**  
**Qualitative Data Sample Sizes by Gender**

Gender		Discrimination				Disability					Job		
		Fire	DA <sup>3</sup>	Hire	Harassment	Phys.	CI <sup>4</sup>	NVP <sup>5</sup>	Mental	Other	Working class	Semi Pro	Pro.
Male	16	14	1	1	5	3	5	3	4	2	7	5	4
Female	16	10	8	1	10	6	7	4	2	2	3	6	7
Trans	2	0	0	1	0	1	0	0	2	0	1	1	0
Total	34	24	9	3	15	10	12	7	8	4	11	12	11

As can be seen, the sample included 16 women, 16 men. 1 female to male transgender person and 1 male to female transsexual. <sup>6</sup>The disabilities represented in this sample include 12 people with chronic illnesses, 10 people with physical disabilities, 7 with nonvisible pain disabilities, 8 with nonvisible mental disabilities and 4 “other” disabilities (1 sensitivity to light, 1 pregnant and 2 visual impairments). The disabilities outnumber the sample size because some people had multiple disabilities. In terms of job categories, 11 people held working class jobs, 12 were in semi-professional jobs, and 11 held professional positions.

For my qualitative analysis, I used NVivo to manage the data. In the initial step of data analysis, the cases were coded for the same variables that were used in the quantitative analysis (gender, disability type, job type, discrimination type). The process of developing the codes for the quantitative data was both deductive and inductive. In the first phase of coding, the codes are meant to stick close to the data and summarize each piece of data (Charmaz 2006). In this phase I labeled and sorted the data according to the

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<sup>3</sup> Denied Accommodation

<sup>4</sup> Chronic Illness

<sup>5</sup> Nonvisible pain disability

<sup>6</sup> The distinction between transgender and transsexual is that the transsexual person has had sex-reassignment surgery while the transgender person has not.

predetermined categories from the quantitative analysis. The categories for discrimination were predetermined by me during the coding of the quantitative data and each case was coded accordingly. However, the categories for disability type were created after coding the disability type for each case, and thus were generated from the data. While the job type for each case was noted in the preliminary coding for the quantitative data, this part of the study used the predetermined categories of working class, semiprofessional and professional for job types in order to examine class differences in the type of discrimination experienced by people with disabilities.

After the initial coding, I began a process of axial coding. Axial coding specifies the dimensions of a category and gives coherence to the emerging analysis (Charmaz 2006). During this phase, I examined the relationships between my categories and focused on the social processes that can explain how and/or why there are difference between my categories in the type of discrimination experienced. It is this phase of my methodology that is exploratory and differentiates the qualitative analysis from the quantitative analysis.

## **Results**

In this section I will outline the themes that were found in my qualitative analysis of these data. These themes will be outlined by the types of discrimination that were analyzed as the dependent variable in the quantitative portion of my study. I do not use a “multiple discrimination” category here because it is possible here to examine the multiple discriminations for each case on an individual basis. The qualitative method allows me to name and examine each of the kinds of discrimination experienced by each



plaintiff who claims multiple discrimination in ways that were not possible when it was treated as a categorical variable.

In exploring my research question, “Do gender, disability and job type have an effect on the type of discrimination someone is likely to experience?” my analysis reveals some of the nuances and processes of discrimination that may not be apparent in the quantitative analysis.

### **Being Fired**

In this sample, the majority of respondents report being fired, though this is even more frequent for the men (14 out of 16 men and 10 of 16 women). What the qualitative analysis shows are two common processes by which people with disabilities in this sample were fired: through a restructuring of jobs in the company, and by being deemed unqualified for the job due to disability.

#### *Restructuring of jobs*

Restructuring of jobs refers to the way that jobs may be rearranged in a company so that some positions are eliminated. Regardless of job type, people with disabilities in my sample found themselves lost in this shuffle and without their jobs as a result. Such reshuffling allows employers to let go of workers with disabilities whom they may perceive as less valuable employees for what appears to be nondiscriminatory reasons.

For instance, a tractor operator was working “swing-shifts.” After he was diagnosed with fibromyalgia, his doctor recommended he switch to a straight shift because the swing-shift would exacerbate his symptoms. He was able to get a straight shift job until the company restructured; this change meant that one straight shift tractor operator had to become a rotating shift worker. Regardless of his disability restrictions,

this man was transferred to the rotating shift job because he was the least senior of the tractor operators. He was laid off when, after two weeks of working the rotating shift, he submitted another doctor's note requesting a straight shift. There were no more straight shifts.

In a similar case, a man who was an aircraft mechanic with a shoulder injury was given strict lifting restrictions. He was accommodated by being reassigned to the parts-turn-in job which he could perform with his restrictions. Later, however, the company restructured their scheduling, and this position was no longer available on his new schedule. He was offered the position of aircraft monitor which paid less than his previous job. Ultimately, then, his choice was between losing pay or losing his job. His injury became worse and his restrictions kept him from being able to do even that job and the only job he was able to do, parts-turn-in, was still not available on his schedule.

While the previous examples are of men in working-class jobs, similar narratives also emerged for women in semiprofessional and professional jobs. In one case, a woman was a vice president at a bank. After taking some time off to deal with breast cancer, she came back to find that the bank was streamlining and looking for people to layoff. She was chosen for a layoff, no one was hired to replace her, and her job duties were distributed among the remaining employees. In another case, a bookkeeper with multiple sclerosis found that after taking time off to get treatment for a flare-up of her disease, the company was restructuring and eliminating her position. The company outsourced her duties to an outside bookkeeper. She claimed a coworker said he overheard her supervisors discussing whether the cost of her payroll was "worth it," given her condition. Indeed, she was one of the highest paid employees in that office.

The restructuring effect did not happen to the men in my sample who held semiprofessional or professional jobs nor did this happen to women in my sample who held working class jobs. This may point to an intersection between gender and job type. In other words, while there may not be an apparent gender effect in terms of firing, difference becomes visible when we look at the different ways in which firing occurs, and this is analyzed by job type and gender.

*Not qualified due to disability*

Another important process by which people with disabilities may be fired is seen in many of the cases, especially in physical jobs, in which the person is fired because the restrictions of their disability makes them “not otherwise qualified for the position.” Use of this language is geared toward the stipulation in the ADA that, in order to qualify for protection under the ADA, someone has to be qualified for the job and able to do it with accommodations. Employers in my sample have used this as grounds to fire people with disabilities if their disability restrictions mean they aren’t able to do the duties of the job. This can be tricky when the duties of the job are purely physical and the disability restrictions are also physical. An employer only has to accommodate someone who is qualified for the job, in such a situation it may be possible for the employer to refuse to accommodate because the employee is not qualified for the job. If their medical restrictions seem to go against the duties of the job, then they are deemed not qualified for the job and the employers also could argue that they are not qualified under the ADA.

For instance, a woman working in a factory who had developed carpal tunnel syndrome was restricted from doing repetitive motions with her hands. According to her employer “over two-thirds of the position involved using hands ‘to finger, handle, and

feel' and reaching with hands and arms (Ivey v. First Quality Retail Serv.).” When she requested an accommodation to switch tasks every 15 minutes her request was denied and she was fired because she was unable to perform the functions of the job. The employer stated that they had no obligation to accommodate her or keep her employed because she is not qualified for the job. Her disability, which was acquired at work, means that she is no longer qualified for the job. Nor is she qualified to make a claim of discrimination under the ADA as long as she is unable to perform the essential functions of the job.

Similarly, a man who was a locomotive machinist was ordered to see an eye doctor when his coworkers complained that he seemed to have trouble seeing. He was indeed diagnosed with a degenerative vision disability. He was given many restrictions including, “no walking on uneven surfaces; no more than occasional bending or stooping; no operating vehicles or machinery; no climbing ladders or scaffolds; no working on unprotected heights; no more than occasional lifting of greater than 20 pounds; and no job that requires more than 15 degrees visual field (Hohn v. BNSF Ry. Co.).” While his supervisor says he was willing to work with him to find another job to do, the company doctor said there was nothing that didn't go against the restrictions. He lost his job. An important point here is that while his restrictions went against the basic duties of the various jobs available, the employer/company never discussed how these jobs might be modified and done with accommodations for his restrictions. This kind of disqualification seems to be particularly salient in working class, physically demanding jobs. In this class of jobs, it is all too easy for an employer to dismiss someone with a physical disability. In both themes, restructuring and disqualification due to disability, the employer is able

terminate the employment of a person with a disability while at the same time claiming that the person was not fired.

One important finding in my analysis is that more men than women claim being fired as the sole form of discrimination they face. As I noted above, the majority of women say they were fired; but in addition, women are more likely to cite multiple forms of discrimination. It may be that while men with disabilities are more at risk for losing their jobs, women with disabilities may suffer more negative treatment during their employment.

### **Not Hired**

The category of “not hired” due to disability is the smallest in both the quantitative and qualitative samples. For this reason, it failed to yield any significance in the quantitative models. However, in the qualitative analysis, I found that “not hired” shared one of the themes related to being fired: having a disability seemed to disqualify them for their jobs.

### *Not Qualified Due to Perception of Disability*

Two out of the three cases in this sample that reported not being hired as the type of discrimination they experienced, reported being perceived as unqualified on the basis of their disability. For example, a man with an impressive resume who walks with a cane interviewed for a job at a radio station. When he was walking away he overheard someone say, “We don’t need any more people with disabilities here.” He was not hired. In the second case, a woman who was born without a left arm did not make it through the training to become a school bus driver because of what she claims to be the

discriminatory attitude of her trainer. She was told, for example, that she would need extra training hours because of her arm compared to another trainee. She was also told that she wouldn't be able to drive certain buses because the doors are difficult to open. In both of these cases, they were perceived as unqualified for the job based on their visible disabilities.

### **Denied Accommodation**

In contrast with being fired and not being hired, being denied an accommodation is a type of discrimination that someone may experience during their employment. Half the women (8 of 16) in the sample reported discrimination that related to being denied a reasonable accommodation, compared to only one of the men. This supports the quantitative findings that showed women were more than twice as likely as men to report being denied an accommodation. The lone man in the sample who claimed to have been denied an accommodation stated in his law suit that he was fired without being given the opportunity for accommodations. In this case, being denied an accommodation was linked to a claim of discriminatory firing. However, some of the plaintiffs brought law suits regarding being denied an accommodation while they were still employed.

The qualitative findings for being denied accommodations tend to confirm and illuminate the quantitative results, where I found that, people with physical disabilities were about 90% less likely than people with other kinds of disabilities to report being denied an accommodation as the type of discrimination they experience in comparison to being fired. The literature also suggests that changes in physical space are more likely to be granted than accommodations regarding scheduling. Indeed, in this sample this seems to be the case. For instance, a woman with back pain disability was granted a chair with

lumbar support as an accommodation but was not granted the accommodation of working from home when her pain flares up. Similarly, a woman with a chronic illness had been allowed to work from home and even work during irregular hours in the night or weekend in case she needs to lie down during the day. When she got a new supervisor he was constantly challenging her right to this unusual accommodation and attempted to make her come into the office for 15 hours a week. Conversely, a woman who uses a wheelchair was granted a flexible schedule in order to attend medical appointments and a woman with a pain disability which made her physically impaired was granted the accommodation of working from home on days when the elevator isn't working. Here, women with more obvious physical impairments are granted accommodations in scheduling while women with nonvisible pain disabilities or illnesses are not.

In my qualitative sample, many of the claims of being denied an accommodation came from people with chronic illness and nonvisible pain disabilities. This seems to counter the quantitative finding that people with these disabilities were less likely to report being denied an accommodation. This can be explained by the fact that many of these claims are associated with being fired and thus would not have shown up in the quantitative finding for being denied an accommodation. In fact, this may be accounted for in the finding that people with nonvisible pain disabilities are more likely than people without nonvisible pain disabilities to report multiple forms of discrimination. In addition, the quantitative data show that women in working class jobs are more likely to experience being denied an accommodation than being fired.

### **Harassment/Retaliation**

Harassment or retaliation was claimed by more than half (10 of 16) of the women in the sample compared to 5 of 16 men. This means twice as many women than men claimed to have been harassed in the workplace. To illuminate these differences, I discuss these cases separately by gender.

### *Women*

Of the 10 women who claimed harassment, 6 claimed to have been harassed based on their disability. In addition, three claimed they were sexually harassed, 2 women claimed they were retaliated against, and one woman alleged both sexual and disability harassment.

### *Disability Harassment*

There were only 3 women in the sample from working-class jobs, and all three of them claim to have been harassed on the basis of their disabilities. For instance, one woman who was a postal employee and who hurt her back on the job describes an incident when her supervisor bullied her into signing an agreement to work five hours a day instead of the four hours she had been working as an accommodation (workers' compensation supplemented her pay). He kept her in his office and wouldn't let her leave until she signed. Another woman working in a factory reported that her co-workers laughed at her and called her "Robocop" because of the brace she wore on her wrist. This supports the quantitative finding that people in working class jobs are more likely than the other job categories to report being harassed than being fired.

Such instances were not confined to women in working-class jobs, however. Two women in professional jobs reported being harassed by their supervisors because of their chronic illnesses. In addition, a woman with a mental disability who worked in a semi-



professional job reported that private details of her medical condition were released to her co-workers, who then used this information to intensify the harassment in which they were already engaged.

### *Sexual Harassment*

Of the three women with disabilities who were sexually harassed, two were in semi-professional jobs and one was in a professional job. In one case, a woman with multiple sclerosis worked as an employee concerns coordinator at a power plant. She reports that she was being sexually harassed by coworkers who submitted anonymous reports to her with vulgar comments about her body and about her husband, who also worked at the plant. She was also subjected to prank phone calls and the posting of personal documents intended to humiliate her. Another woman with physical and mental disabilities, who worked as a lab assistant, reported that her coworkers referred to her in a sexually derogatory manner and physically harassed her by intentionally bumping into her. A woman in a professional job who was an executive position also brings claims of sexual harassment and sex discrimination. Although her sexual harassment claims are not elaborated on in the brief, it does outline the incident leading to her being fired where in an argument with her supervisor he said to her, “sit down little girl” and when she didn’t sit he told her to “get out.”

### *Men*

#### *Disability Harassment*

Of the five men who claimed harassment, 3 were harassed based on their disability. Of those three, two were men with intellectual disabilities. Both of these reported being called names like, “dummy” and “retard” by their bosses. Their bosses

also encouraged the coworkers to participate in the name-calling. The men were also treated very badly by their employers. One, a church janitor, worked twenty-five hours a week until the other janitor left. He then took over all the janitorial duties, working 40 hours but was told he could only be paid for 25 hours. The other man worked construction and his boss would repeatedly physically harass him with “titty twisters” and “Charlie horses” even after he asked him to stop. Finally, the boss shoved him and when the disabled man swung back at him he knocked off the supervisor’s respirator mask which he was wearing for workplace safety. The disabled man was fired for this action but the supervisor who instigated the incident was merely put on suspension. These cases also illustrate the effect of class on harassment in the workplace that was found in the quantitative models.

#### *Sexuality and Race Harassment*

One man in this sample, who identified as gay, claimed he was harassed because of his gender, for displaying gender atypical behavior. In addition, an African American man with attention deficit hyperactivity disorder (ADHD) reports that his coworkers used racial epithets around him. These cases, in addition to the large number of harassment cases among women with disabilities, seem to indicate that people with disabilities who are also members of other minority groups may be more vulnerable to harassment; or at least that harassment on the basis of disability may manifest as racial or sexual harassment for people who belong to those groups.

#### **Gender Discrimination**

In this section, I outline an unexpected finding: people who are gender atypical are claiming protection under the ADA. Of the 200 cases collected for analysis, three cases involved people with atypical gender behavior. This sample of three includes a transgender man, a transsexual woman, and a gay man (discussed above) who engages in gender atypical behavior, such as taking the last name of his husband.

The first case concerns a man who was born female but has identified as male since he was a child. He first submitted an application to UPS in 2006, and at that time he was presenting himself as a female and submitted the application under his birth name. He was offered the position at that time but declined it because he was interested in a job somewhere else. He submitted another application in 2008 again with his female birth name but by this time he had started to present himself as a male. He is claiming discrimination based on an experience when he went to the second interview with his breasts taped down and wearing men's clothes. Part way through the interview someone came in and whispered something to the interviewer; the plaintiff was told then that UPS wasn't hiring. While UPS asserts that they did not hire him because his job history seemed to indicate that he didn't stay in one job for very long, the same interviewer hired several other people around the same time with sporadic or even no job history. The plaintiff asserts he was discriminated against because of his gender, sexual orientation and disability. He had mentioned in the interview that he would only work part time because he was receiving Social Security disability benefits for a mental illness.

Similarly, a gay man claimed he was discriminated against because of his sexual orientation. He was made fun of for taking his husband's name after their marriage and his supervisor refused to call him by his chosen name. He was also harassed and was not

given the same opportunities as other employees in his position. He was eventually fired for taking time off for his grandfather's funeral. He has HIV and had asked for an accommodation at work because of that. He is thus claiming both disability and gender discrimination

In both of these cases, the plaintiffs, while both having nonvisible disabilities, have "come out" to their employers about their disability. The transgender man cited his mental disability as the reason he was only looking for part-time employment in his interview and the gay man has asked for accommodations related to his HIV. In order to allege discrimination, the employer must be aware of the person's minority status. In these cases, coming out as disabled qualifies these individuals for protection under the Americans with Disabilities Act. In addition, in both of these cases the plaintiff has had contact with the employer before and after the incidence of gender non-conformity. In the first case, he had previously interviewed for the job as a woman. In the second case, the man has worked for the company under his parental name before he changed to his married name. Because of the interaction before and after it can be argued that these men are being discriminated against on the basis of their gender non-conformity. These two cases also demonstrate the tenuous position of LGBTQ people in the workplace. That is, they may have decided that it was better for them to sue based on their rights as people with disabilities, even though they were discriminated because of their gender or sexuality.

In the final case, there is no separation between LGBTQ identity and disability. Here, a transsexual woman claims she was discriminated against by maintaining that transsexuality is a physical disability and gender identity disorder is a mental disability.

She is a police officer and claimed she was discriminated against when she was denied a chance to train to become a canine handler. The qualification for the training depended on passing physical tests. She was told she failed the running test. However, the test she took was not stratified by age and gender even though that is how the test is supposed to be graded. She would have passed the test if it was stratified for a female cadet. She believes the reason she was not given the opportunity training is because she was discriminated against for being transsexual. Transsexuals are excluded from protection under the ADA, however there may be some variation in this by state. For example, in California transsexuals are granted protection under the ADA. In this particular case, which was in Connecticut, the woman was regarded as a member of a protected class by the court because of her gender (female) and her mental disability. Gender Identity Disorder is included in the DSM manual of psychological disorders and is therefore a qualifying medical condition under the ADA. Unfortunately for my analysis, the court did not make a judgment about whether her being a transsexual qualifies her as having a physical disability because, in the court's opinion, she was already qualified for consideration under the ADA because of her mental disability (gender identity disorder).

### *Summary*

Overall, my qualitative analysis has provided insight into a couple of areas of the types of discrimination experienced by people with disabilities in the workplace. First, the processes by which firing can occur were revealed, patterns which cannot be discerned when looking at the broad category of "fired". Specifically, the narratives show patterns of employers terminating employees with disabilities in ways that may make it seem that the disability is not to blame. The first method is through restructuring, in

which the job held by someone with a disability has been eliminated in company restructuring. This process appears to happen in similar ways across all job categories and to both men and women. The second process occurs when an employee is disqualified due their disability. Although this also happens across job categories, it has a unique function in physically demanding, working-class jobs where the employer is able to use the language of the ADA against the employee. In addition, there was a related theme in “not hired” wherein people with disabilities claimed they were not hired for jobs because of perceptions of their disabilities.

This analysis also shed light on the types of discrimination that occur during employment. The qualitative data show that many of the claims of being denied an accommodation were regarding accommodations in scheduling which were primarily brought by people with pain disabilities and chronic illness.

Finally, this analysis revealed some intersections in the data. First, there may be an intersection between disability and class in relation to some kinds of discrimination, such as harassment, in that most of the cases among both women and men where disability harassment occurred was in more working-class jobs. The effect of class on harassment was supported by the quantitative data but the effect of gender is only seen through in depth qualitative analysis. In other cases, the harassment took other forms based on the intersecting identities of the employee. Women had a much higher instance of harassment than men and much of this harassment manifested as sexual harassment. In addition, intersections of gender and disability were present in instances of non-typical or trans gender identity.

Finally, the quantitative data found that women in working-class jobs were uniquely positioned to experience being denied an accommodation as the type of discrimination that they experienced. The qualitative data supported the gender effect in being denied accommodations but there were not enough women in working class jobs in this sample to explore this intersection.

## Chapter 4: Discussion and Conclusion

### *Discussion*

This project was framed by feminist theories of gendered organizations (Acker 1990, Cockburn 1993) which argue that jobs in organizations are created for what is assumed to be a universal worker but is actually an able-bodied man. Further, Iris Young (1990) argues that these biases cannot be overcome through equal treatment. Rather, organizations need to be restructured and oppressed groups, like people with disabilities, require special treatment in order to achieve equality. I expected to find that women with disabilities would have a unique experience of discrimination because of both the gendered and able-bodied norms embedded in organizations. My quantitative and qualitative analysis has supported this expectation in part and has also revealed intersections between disability, gender and class.

### *Class*

The discrimination category, “fired” was broken into two sub categories when I examined it through qualitative analysis. This revealed two mechanisms of discrimination that cannot be seen when analyzing the category of firing more generally. In both of these mechanisms, *restructuring* and *disqualified due to disability*, the employer is able to terminate the disabled employee for seemingly nondiscriminatory reasons. In addition, the class of job becomes significant in the category of *not qualified due to disability*. Here, working class jobs that are more physical in nature are able to fire people whose disabilities cause them to have physical restrictions. In other words, an employer has to accommodate someone with a disability who is qualified for the job. In more professional



jobs, qualifications could take the form of certification or education. However, physical, working class jobs where the qualifications are physical leave people with disabilities more vulnerable to losing their jobs. This distinction also makes people with disabilities more vulnerable during periods of widespread unemployment when most of the few jobs that are available are these kinds of physical jobs that tend to be unaccommodating to people with disabilities. While it seems like a simple proposition that physically impaired people cannot do physical work, there is clearly organizational biases embedded in these decisions about how the work is supposed to be done and what kind of worker is supposed to do it. For example, the woman with carpal tunnel syndrome who worked in the factory had proposed an accommodation that she would switch tasks every 15 minutes to avoid repetitive motions that would exacerbate her condition. Not only did the employer fire this woman because her disability rendered her unqualified for the job but they also refused the accommodation in part because no one has ever done the job that way before. Organizational biases make it almost impossible to imagine alternative ways of doing jobs that make these jobs available for people who have disabilities which otherwise appear to disqualify them for the job.

When the disqualification of people with disabilities is made to seem natural through organizational bias, people with disabilities who do work in these places could be met with hostility from their coworkers and supervisors. The quantitative data show that people with nonvisible mental disabilities are more likely than people without nonvisible mental disabilities to report being harassed as the type of discrimination they experienced. People in working class jobs were also found to be more likely to report being harassed rather than being fired. The qualitative also data showed that there is an

effect of class on harassment. Although harassment occurred across job types and took different forms such as, sexual or racial harassment, harassment based on disability was concentrated in the working class jobs for both men and women. The women who claimed disability harassment all worked in working class jobs and had physical or pain disabilities which meant that they either had to work with accommodations, or as in the case of the woman with one arm, appeared unqualified for the job. Of the men who had working class jobs, two were harassed for mental disabilities and one was harassed for his illness. It appears that there is a class effect in harassment which indicates that people with disabilities may be more likely to be harassed for their disabilities when they are in working-class jobs for which, due to organizational biases, they may appear to be unqualified. In addition, there may be a gender effect in the quantitative finding that people with nonvisible mental disabilities are more likely to cite harassment as the type of discrimination they face than people without nonvisible disabilities. The qualitative findings seem to indicate that this gender effect could mean that men with mental disabilities are vulnerable to disability harassment. However, this effect could also be accounted for by the fact that more men than women were in working class jobs and this is really a class effect. The literature reviewed examines harassment in the workplace against people with disabilities however, the literature does not specify the differences in harassment based on class that were illuminated in this study

The literature had suggested a class difference where women in lower level clerical jobs had disabilities that were less compatible with the duties of their jobs than men in white collar jobs whose mobility impairments did not interfere with their work (Harlan and Robert 1998). By including clerical work in the category of working class

jobs, my data supported this interaction. Harlan and Robert were right to point out that certain disabilities can be more or less amenable to certain kinds of jobs. In their study, these differences were observable based on gender and class of jobs. In my study, I found that physical, blue collar jobs were less accessible to both men and women who had pain or physical disabilities who were harassed or terminated. My study demonstrates that what is poised at this intersection is an able-bodied bias that informs the way that we conceive of work in the first place. When disability restrictions disqualify someone from being able to perform the essential duties of the job, then perhaps the essential duties need some restructuring.

#### *Visible and nonvisible disabilities*

The literature reviewed suggests that nontraditional impairments such as back pain and mental illness tend to be viewed as frivolous when people with these disabilities claim their ADA rights (O'Brien 2011). These impairments were coded as nonvisible disabilities in my study. People with nonvisible disabilities not only are viewed with skepticism by employers but they also take a risk by making their disabilities known. The literature also suggests, by asserting their ADA rights, people with nonvisible disabilities make their disabilities known and may then be more vulnerable to discrimination (Harlan and Robert 1998). My study supports these statements.

The quantitative data found that people with physical disabilities, chronic illness and pain disabilities were less likely than the other types of disability to claim being denied an accommodation as the type of discrimination they experienced rather than being fired. The qualitative analysis found that many of the accommodation requests that were being rejected by employers were being brought by people with chronic illness or

pain disabilities who wanted to work from home. This was in contrast to people with physical disabilities who were allowed to work from home when, for instance, the elevator was not working.<sup>7</sup> This points to a distinction between nonvisible and visible disabilities as well as so called nontraditional and traditional impairments. While the ADA is intended to cover pain disabilities and illness that may not appear disabling to outsiders, people with these kinds of impairments tend to be faced with more opposition when they assert their ADA rights than people with more traditional impairments. In two cases (discussed above) women with illness took time off of work only to find that they were being laid off when they came back. For both of these women, taking time off of work, made their disabilities highly visible to their coworkers and supervisors. This could be the reason that they were laid off in the seemingly impersonal process of restructuring.

In addition, the qualitative analysis found that many of the accommodation requests made by people with these nonvisible disabilities, tended to involve changes in scheduling and the location of work. This points to Iris Young's theory which argues that the way that we conceptualize work in the first place is discriminatory and excludes people with disabilities. This is extremely significant when examining accommodations where people with pain impairments and illness want to work from home so that they could rest and lie down occasionally and also would work nontraditional hours (2 a.m.) in order to make up for time lost during the day. These proposed accommodations run afoul of the traditional way of conceiving of work as something that is done in the office during prescribed hours of the day. To illustrate, a man with a back injury was asked to resign when his back pain worsened and he proposed the accommodation of working from

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<sup>7</sup> This might not have shown up in the quantitative data if it associated with being fired. In future research, with a larger sample, it would be possible to examine the different combinations of discrimination that occur.

home and coming to the office only for meetings. He was told by his employers that he couldn't do his job in that way because they needed someone, "at the helm." The phrase, "at the helm" invokes traditional images of how work should be without imaging an alternative. The effect of class on being denied an accommodation that was observed in the quantitative data can explain why there were conflicting findings in disability type for being denied an accommodation between the quantitative and the qualitative data. The denial of accommodations in scheduling has less to do with the types of disability of those who require the accommodations and more to do with the fact that people in working class jobs often have very little if any control of their scheduling.

### *Gender and Disability*

The qualitative data support a gender and disability intersectionality. Twice as many women reported being harassed in the workplace than men. The harassment experienced by women with disabilities sometimes took the form of sexual harassment. This could indicate that women with disabilities may be more vulnerable than men with disabilities to harassment in the workplace. In addition, some women claimed both disability and sex discrimination in their law suits. This supports the theoretical expectation that women with disabilities may be made to appear disqualified due to organizational biases based on both gender and disability. The literature reviewed showed that harassment was a common type of discrimination experienced by people with disabilities (Robert and Harlan 2006). However, the literature did not specify differences in harassment between men and women with disabilities as this study has shown..

So far, this project has supported the theory that organizations are both gendered and able-bodied. The analysis of gender atypical cases have shown that workplaces are

also sexualized (Britton 2008). The ideal worker is able-bodied/minded, male, heterosexual and cisgender. Three cases (discussed above) have shown the ways in which people with disabilities who do not conform to gender norms are discriminated against in ways that intersect gender, disability and sexuality. Robert McRuer (2006) has outlined a theory of compulsory able-bodiedness which is based upon and intertwined with Adrienne Rich's (1980) theory of compulsory heterosexuality. Both of these situate people with disabilities and non-heterosexuals outside the norm in similar ways. This system of compulsory heterosexuality has coerced women into heterosexual relationships by eliminating the element of choice. One does not choose to be heterosexual, that is just the norm. Compulsory able-bodiedness draws on this theory and even points out that able-bodiedness is even more prevalent as a non-identity, and is viewed as the natural way of being. Both non-heterosexuality and disability are outside the same norm which includes able-bodied heterosexuality. McRuer's compulsory able-bodiedness and the way that it intersects sexuality and disability adds a new dimension to theories of gendered organizations. This intersection goes beyond organizational theory in that it is not just about an ideal type of 'disembodied' worker that is created through organizational structures, it is about a presumed natural way of existing that is able-bodied and heterosexual. More research on the experiences of LGBTQ people with disabilities should be done to flesh out this intersection further.

## **Conclusion**

This study is different from other studies on disability discrimination because it uses an intersectional approach to examine the experiences of disabled women. The literature reviewed had studies of women with disabilities as well as studies of people

with disabilities more generally. None of those studies examined the ways that gender and disability intersect. Other studies have used court data to study disability discrimination but none have done so with a focus on gender. This study has found important intersections between disability and gender as well as disability and class. This is important because it can contribute to disability policy which affects the lives of disabled men and women in working class jobs and women with disabilities more generally. In addition, the qualitative findings of the ways in which people with disabilities are terminated from their jobs was not found in the literature. This is due in part to the unique nature of this study. Some studies interviewed people while they were employed and thus would not have been examining termination. Other studies, used similar data to this study's which includes termination but examined those data quantitatively and therefore missed the different processes through which people with disabilities are fired. These processes of termination should continue to be studied in more detail.

This study also found a very under researched intersection which is the intersection of gender, disability and sexuality. There has been extensive writing on the commonalities between queer theory and disability studies but none have concretized this intersection in the way this study has. The cases in this study of the discrimination of trans people with disabilities exemplifies this much theorized intersection between gender, sexuality and disability. While the sample of gender atypical people in this study was quite small, these findings indicate that this is indeed an important intersection to be studied, one that should be taken up in future research.

Further, this work can contribute to work in women's studies which deals with intersectional or interlocking matrices of oppression. Intersectional approaches have been used to show how race and gender combine to create distinctive opportunities for all groups (Brown and Misra 2003). While intersections of race and gender have shed light on inequalities in the labor market, disabled women's experiences and the experiences of trans people can also shed light on organizational barriers as well as what counts as an appropriate body in the workplace.

### *Limitations*

This project has some limitations. First, sampling from federal court cases does not give a rounded picture of the experiences of people with disabilities in the workplace more generally. This does not represent a sample of people with disabilities more generally, rather it is a sample of those who sue for discrimination. In addition, many people who feel discriminated against don't bring their cases to court, therefore this sample represents only a particular group of people. These people may be more litigious or more likely to have the resources needed to bring a law suit. The sample was too small to be able to examine various combinations of discrimination such as fired and denied an accommodation therefore a more generalized "multiple forms of discrimination" category was used. Also, with a bigger sample, it may be possible to make more precise disability categories rather than merging the categories as I did here. In addition, starting the project from quantitative analysis may have primed me to view my qualitative data less inductively because I was already exposed to broader trends in the data. Given that limitation, I did find themes in the qualitative which were grounded in those data.



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