

2012

Persons Affected by Traumatic Brain Injury in the Workplace; Implications for Employee Assistance Programs

Dale Margolin Cecka

University of Richmond, dcecka@richmond.edu

Follow this and additional works at: <http://scholarship.richmond.edu/law-faculty-publications>



Part of the [Disability Law Commons](#), and the [Health Law and Policy Commons](#)

Recommended Citation

Dale Margolin Cecka, Portia L. Cole and Fatima M. Smith, *Persons Affected by Traumatic Brain Injury in the Workplace: Implications for Employee Assistance Programs*, 27 J. Workplace Behav. Health 227 (2012).

This Article is brought to you for free and open access by the School of Law at UR Scholarship Repository. It has been accepted for inclusion in Law Faculty Publications by an authorized administrator of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

Persons Affected by Traumatic Brain Injury in the Workplace: Implications for Employee Assistance Programs

PORTIA L. COLE, PhD

*Department of Sociology, Social Work and Criminal Justice,
Virginia State University, Petersburg, Virginia, USA*

DALE MARGOLIN CECKA, JD, and FATIMA M. SMITH, MSW

School of Law, University of Richmond, Richmond, Virginia, USA

Employee Assistance Programs often provide behavioral health services to employees. The article discusses issues related to employees affected by traumatic brain injury such as psychosocial challenges that may accompany reentry into the workplace. Strategies that employers may utilize to accommodate such challenges are presented. Implications for practitioners are explored within the context of the Americans with Disabilities Act, disability management, and human resources.

KEYWORDS Americans with Disabilities Act (ADA), disability management program (DM), employee assistance program (EAP), human resources (HR), reasonable accommodations, social work, traumatic brain injury (TBI)

Employee Assistance Programs (EAPs) can play an important role in helping employees, as well as their family members, balance the demands of work and personal life (Jacobson & Attridge, 2010). In addition to work–life balance challenges, a growing segment of the population finds themselves returning to work with primary or comorbid health condition(s) that may also meet the criteria for disability as defined by the Americans with Disabilities Act of 1990 (ADA). According to the Kessler Foundation (2010), 21% of people with disabilities age 18 to 64 work either full-time or part-time, which is a 14% drop

Address correspondence to Portia L. Cole, PhD, Department of Sociology, Social Work and Criminal Justice, Virginia State University, Trinkle Hall 106 PO Box 9036, Petersburg, VA 23806, USA. E-mail: pcole@vsu.edu

from 2004 (35%). Furthermore, the survey noted that most employers have a general lack of knowledge about disability law. Although the ADA, along with other law and policy initiatives, has attempted to improve employment opportunities for qualified people with disabilities (Blanck, 2005), the survey also noted a shared belief among employers and disabled persons that the ADA, before recent amendments took effect, has been ineffective.

Of interest, persons affected by traumatic brain injury (TBI) increasingly are reentering the community and becoming more integrated into work settings (Wehman, Targett, West, & Kregel, 2005). Wehman et al. (2005) also pointed out that meaningful, productive employment is one way to substantially enhance recovery for persons with TBI. Among the competitively employed who suffered a midcareer TBI, several factors were found to affect their work readjustment (Kissinger, 2008). According to Power and Hershenson (2003), these factors include emotional investment, psychosocial adjustment, injury severity, prior career successes, existence of support during TBI rehabilitation, self-concept, and impact of prior occupational, academic, and social achievement. These factors could serve as a catalyst for EAP intervention with an employee affected by TBI. According to Cagney (1999),

EAPs target employees whose performance shows a pattern of decline which is not readily explained by supervisory observations of their job circumstances as well as those employees who are aware of personal difficulties that may be affecting or may start to affect their work lives. (p. 61)

Thus, this article has three aims: (a) to broaden our understanding of TBI and implications for persons with this condition in the workplace, (b) to provide guidance to EAP professionals and employers regarding strategies to accommodate the needs of persons with TBI, and (c) to increase awareness of employment discrimination allegations that may have implications for EAP practice. A level of employer awareness is important, as EAPs are often provided to help protect the employer from liability and legal issues (Jacobson & Attridge, 2010). This article takes a preventive approach by acknowledging that employers and employees may need additional guidance regarding the intricacies of an evolving legal landscape.

The authors further refined their approach by using categories Chima (2005) outlined to encourage EAP professionals to carry out an "employee assistance educator role" on behalf of those affected by disabilities in the workplace. The categories include personal education (e.g., providing employees with consistent information about disabilities and the workplace), social education (e.g., providing employees with information about societal stereotypes and misconceptions about people with disabilities), and legal education (e.g., providing employees with information about discriminatory practices). Chima (2005) noted, "Employees need to be consistently provided information about job-related ADA complaints/cases that occur around the nation" (p. 53). Overall, the objective is for the EAP educator to

integrate all these levels to develop an organizational culture with a cohesive whole that unites different people without undermining their differences (Chima, 2005).

This focus upon TBI is in part due to the findings regarding poor employment outcomes that represent a global health issue resulting in financial and social burden (Ownsworth & McKenna, 2004). Ownsworth and McKenna (2004) also contend that loss of employment potential has many personal consequences that influence self-identity, autonomy, and emotional well-being. Employment outcome represents one of the best indications of real-world functioning that can be assessed in more clearly defined terms than other psychosocial outcomes (Kissinger, 2008; Prigatono, 1989; Wehman et al., 2005). The ability to predict vocational outcome using evidence-based guidelines is important in a number of contexts, including rehabilitation planning, the development of specialized vocational support services, and individual and family role adjustment (Cattelani, Tanzi, Lombardi & Mazzucchi, 2002; Simpson & Schmitter-Edgecombe, 2002). A conceptual model developed by Ownsworth and McKenna (2004) may assist in providing EAPs and employers with a visual representation of the interplay of variables related to employment outcome (see Figure 1).

To truly understand the nature of TBI and its effects on the work environment, it is important to recognize the prevalence and incidence of TBI. Tiesman, Konda, and Bell (2011) noted that “describing the magnitude of the problem, identifying at-risk sociodemographic and occupational subgroups, and documenting trends are vital first steps when developing prevention strategies” (p. 66). According to Faul, Xu, Wald, and Coronado (2010), from 2002 through 2006, on average, approximately 1.7 million U.S. civilians sustained a TBI annually; of these, approximately 1.4 million were treated and released from the emergency department, 275,000 were hospitalized and discharged alive, and 52,000 died. The Traumatic Brain Injury Model System National Data Center (2001) reported that approximately 59% of 2,553 persons who sustained a TBI in the United States were competitively employed at the time of their injury; one year postinjury, only 24% of persons who sustained a TBI were competitively employed. What happened to the others? Some individuals decide not to return to work, whereas others attempted to return to work but are unsuccessful in doing so. From an employment perspective, a key concern is that the highest percentages of TBI cases are found among those in their prime earning years (Kissinger, 2008; Yasuda, Wehman, Targett, Cifu, & West, 2001).

A relatively new area of study is “occupational TBI” or TBI occurring at the workplace (Tiesman et al., 2011). Although Tiesman et al. (2011) focused specifically on occupational TBI fatalities, their analysis also revealed that over a 6-year period between 2003 and 2008, occupational TBI death rates declined by 23% (it is estimated that nearly 7,300 occupational TBI deaths occurred during this period). The financial costs of TBI are immense, with estimates of the lifetime costs for persons affected by TBI, including losses

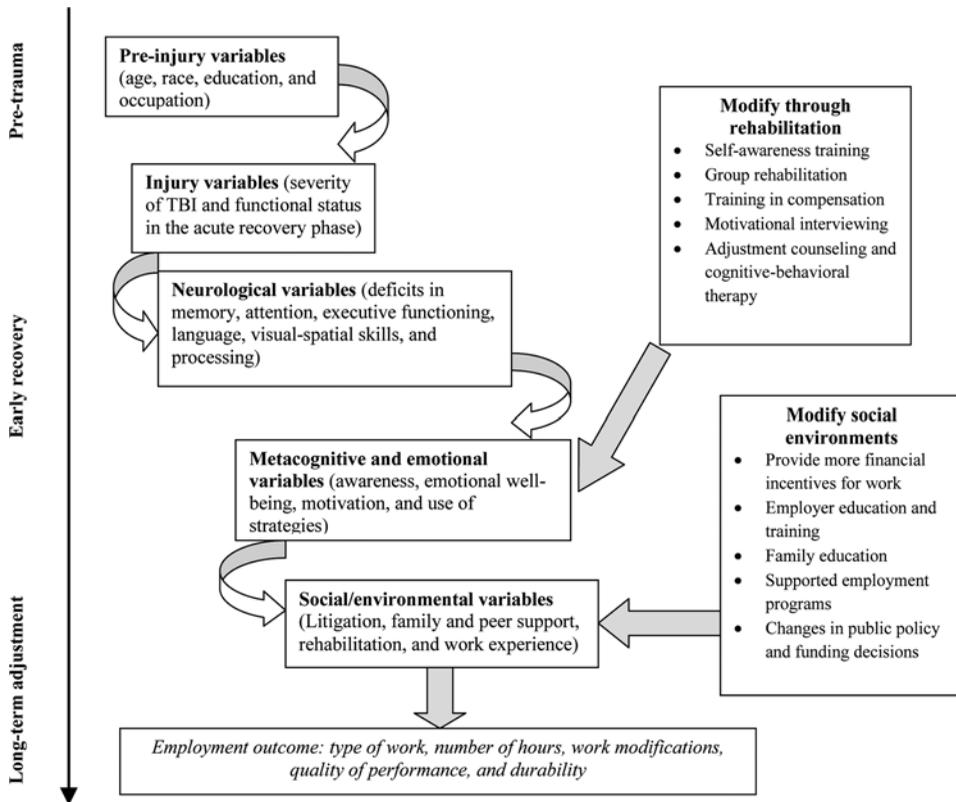


FIGURE 1 A conceptual model of factors related to employment outcome and interventions for improving employment potential following traumatic brain injury. Adapted from Ownsworth and McKenna (2004).

attributed to medical care and lost productivity, ranging close to \$60 billion annually (Finkelstein, Corso, & Miller, 2006). This may have significance for EAPs, which could encounter increasing numbers of individuals returning to work after sustaining a TBI due to postinjury survival rates. EAPs can work with employers to help develop an organizational infrastructure to support employees affected by TBI with their return to work.

According to Japp (2005), brain injury inevitably leads to time off work. Currently, the majority of moderately or severely injured brain injury patients do not return to work at the level enjoyed prior to their injury. Returning to work has enormous psychological ramifications. It is the final hurdle to getting their life back and tangible evidence that they are achieving progress. Returning to work is a psychological boost to employees' confidence. Having been out of employment through injury, most will have built enormous financial liabilities in terms of mortgage repayments and loans, and it is a relief to make any progress toward being able to repay some of the debts. These stressors are likely to spill over from home to work, and employment outcomes such as the type of work, the number of hours worked, and the

quality of work performance might be adversely affected. An EAP professional who is internally based in the organization would be the “first on the scene to assist the employee in taking the next steps toward problem resolution” (Oher, Conti, & Jongsma, 1998, p. 2).

TRAUMATIC BRAIN INJURY AND THE WORKPLACE

Brain damage associated with trauma is among the most common types of traumatic injury (Lemke, 2007) and is a major source of disability (Dixon, Layton, & Shaw, 2005). *TBI* is broadly defined as an injury to the brain from external forces, such as vehicular accidents, falls, violence, sports/recreational injury, or from penetration of the skull by a foreign object (National Institutes of Health Consensus Development Panel on Rehabilitation of Persons with Traumatic Brain Injury, 1999). Damage to the brain characterized as a “closed head injury” may occur from a blow to the head in which the skull remains intact, but the force of the blow causes the brain to move within the skull, resulting in injury. An “open head injury” leading to brain damage may occur from penetration of the skull by a foreign object injuring the brain directly or from damage occurring when the skull itself is fractured from a blow to the head and resulting bone fragments cause injury (Falvo, 2009). An example of an open TBI that breaks through the skull is a gunshot wound; an example of a closed TBI that does not penetrate the cranial contents is a closed head injury resulting from a motor vehicle crash (Mackelprang & Salsgiver, 1999).

The range of effects on the employee after sustaining a TBI is of particular relevance to employment and to informing types of strategies that EAP professionals might suggest to employers. For example, mild brain injury brings with it subtle residues in cognitive deficit that often go unnoticed. The employee may experience a range of symptoms, including fatigue, sleep loss, concentration, or memory impairment. Symptoms are not usually permanent and pass in a relatively short time frame. Although a few months is a relatively short duration to live with a cognitive deficit, it is certainly sufficient time to lose a job (Japp, 2005).

On the other end of the spectrum, moderate or severe brain injury can result in a host of unpredictable work-related problems that will have consequences for individuals who attempt to undertake work tasks. As a generalization, unless there are severe physical disabilities, employees affected by TBI can generally undertake single tasks or tasks where there is an obvious sequence of events. Dealing with multiple tasks simultaneously, or tasks requiring executive decision making such as prioritizing and negotiation, brings the greatest difficulty (Japp, 2005). EAP professionals may use this type of research to inform treatment planning for an employee affected by TBI. An excerpt from the following abbreviated case example cited in Kissinger (2008) underscores the utility of treatment planning as well as what appears to be a “missed” opportunity for EAP intervention.

Case Example—J.C.

“J.C.” is a 25-year-old male who sustained a TBI during a weekend pick-up football game. Since the football game, J.C. reports he had been absent or late for work at the bank where he works as a mortgage broker “nearly every day” for 2 weeks. J.C. was terminated after failing to adhere to the parameters set forth by his frustrated supervisors. J.C. reported the following: difficulty in decision making, headaches, periods of confusion, poor concentration, and problems with his eye–hand coordination.

What might J.C.’s employer have done differently? Employees and EAP professionals benefit from engaging in a treatment plan process because it forces both to think about outcomes and problem resolutions. Consultation with an internal EAP professional or an external EAP affiliate could have resulted in a treatment plan consisting of long-term goals, short-term objectives, and therapeutic interventions (Oher et al., 1998). The treatment plan process should also incorporate components of the Employee Assistance Program Core Technology, a unique approach to addressing work-organization productivity and “employee client” personal concerns affecting job performance (Employee Assistance Professionals Association [EAPA], 2011). For example, the planning process is consistent with EAP Core Technology Function #2, which entails confidential and timely problem identification and assessment services for employee clients with personal concerns (EAPA, 2010). EAP Core Technology Function #1 is also applicable in this scenario because it entails the use of constructive confrontation, motivation, and short-term intervention to address problems that affect job performance (EAPA, 2010). The focus for the EAP professional would have been to help J.C. to confront and acknowledge his difficulties. In other words, it appears that he was experiencing a level of denial. A short-term intervention might have ameliorated the frustration the employer experienced that led to the unfortunate dismissal of an employee who could have made valuable contributions to the organization.

THE ROLE OF EDUCATION IN EAP PRACTICE

The Personal Education Level

In the aforementioned case example, the EAP practitioner could function in the role of educator by providing information, explanations, and counseling to the employer and employees. As it relates to employees affected by TBI, it is also important to educate these employees about protections afforded to them by the ADA. Specifically, information regarding reasonable accommodations for those affected by disabilities in the workplace would fall under this category.

Reasonable accommodations are defined as any adjustments that allow people with disabilities to enjoy equal employment opportunities as long as

the required modifications do not result in “undue hardship for the employer” (ADA, 1990; U.S. Equal Employment Opportunity Commission [EEOC], 2011a). Gates (2000) suggested that accommodations are warranted when “gaps in functional capacity caused by the condition interfere with meeting specific requirements of the job” (p. 90). The provision of accommodations is designed to remove or mitigate the effect of physical, social, or environmental barriers on the ability of people with disabilities to perform essential job functions (MacDonald-Wilson, Fabian, & Dong, 2008). Accommodations are also controversial, as evident from complaints lodged with the EEOC as well as from focus group interviews with disabled employees (McMahon, 2006; McMahon et al., 2004).

For more than 15 years, employees have had difficulty proving discrimination in the employment context. Fewer than 5% of cases brought under the ADA result favorably for the plaintiff (Parry, 2011, p. 15). In 2008, Congress passed the ADA Amendments Act (ADAAA) to reinforce its original intent of protecting a broad scope of individuals with disabilities (ADAAA, 2008). The ADAAA is supposed to make it easier for disabled plaintiffs to qualify for protections and to shift the focus of lawsuits from whether a plaintiff is qualified to whether discrimination actually occurred. The ADAAA, however, does not apply to events that occurred before 2009 or to litigation pending under the original ADA.

Another aspect of the EAP serving at the personal education level is giving employees a sense of how the law protects their rights in the workplace. For example, Title I of the ADA protects “qualified individuals” with disabilities from discrimination in employment settings (Karger & Rose, 2010). The definition of a *qualified individual* has three parts: a person (a) who has a “disability,” (b) who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position held or desired, and (c) who can perform the “essential functions” of the position with or without “reasonable accommodation” (ADA, 1990). Thus, an individual must satisfy three requirements to qualify for protection under Title I. In addition, the person must also have a “disability,” for example, meeting one of the three criteria for *disability* as defined by the law. The definition of *disability* means, with respect to an individual: (a) a physical or mental impairment that substantially limits one or more major life activities, (b) a record of such an impairment, or (c) being regarded as having such an impairment. An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited within the scope of the legal definition of *disability* because of an actual or perceived physical or mental impairment. The individual must meet one of the three criteria for *disability* as described above. Under the ADAAA, most individuals qualify as “disabled” under the law, as long as they are substantially impaired in a life activity or regarded as having a record of such. In sum, the person must be “qualified” and “disabled” for protection under the law.

The ADA does not contain an exclusive list of medical conditions that constitute disabilities. Instead, the ADA has a general definition of *disability* that each person must meet. Therefore, some people with TBIs will have a disability under the ADA, and some will not. Individuals with a TBI will only qualify for ADA protection if their impairment meets at least one of the three criteria for “disability” and is able to meet all three of the criteria for “qualification.”

The Social Education Level

At the social education level, the EAP professional’s educator role involves providing employees with information that pertains to people with disabilities, specifically their overall disadvantages and problems in finding and retaining employment. The emphasis at this level may include societal stereotypes and misconceptions about people with disabilities. Stereotypes and misconceptions are often learned behavior and can be unlearned with adequate, proper information. Oftentimes, for those affected by TBI who are returning to work, a “resocialization” process might need to take place.

Moxley (2002) noted that EAPs (social workers in particular) who are involved in facilitating employment of people with disabilities likely adopt a person-in-environment perspective; and this, in turn, can make them sensitive to the significance of recommending a fit between the person with a disability and the work environment in which the person must function. The aim of the socialization process is to assist individuals with disabilities in (a) mastering the essential tasks of a job; (b) learning to function within a work group, including acquiring knowledge of organizational culture and learning to participate in such culture; and (c) expanding personal self-awareness as an employee. Furthermore, achieving clarity essentially informs employees with disabilities what is expected of them, the level of performance they must achieve, and the relationship of their work function. The following abbreviated case example cited from Japp (2005, p. 102) illustrates how an EAP professional might assist in the re-socialization process for an employee affected by TBI.

Case Example—Samantha

As with most people who have acquired a brain injury, Samantha was determined to return to her job as a manager trainee as soon as possible after her injury. In retrospect, she feels that the biggest mistake was trying to return to work too soon. She felt ashamed at not having the courage to confess to her coworkers that she needed help. She tried to be independent in managing her condition. Samantha attempted to treat her brain injury as if she had caught a cold. She told her coworkers, “Yes, I had a major injury, but I am fine now.” When she returned to her employer, Samantha was not placed back on the project she was working

on prior to her injury. She felt that everything had moved on while her life had remained static. She stated, "I had fallen off the merry-go-round." Finally, Samantha stated she tried hard to fit into the organization after her return to work but felt it was very much her versus the employer. A "them and me" sort of attitude existed. She described a climate of fear. The Human Resources (HR) department was of no help, generally taking the employer's side rather than remaining neutral. More surprisingly, her union supported her employer. Any suggested advances or a way forward always had a health and safety objective. She felt that the mechanisms her employer used to help actually hindered her. This included the training/learning technique of being moved from project to project every few weeks. This meant that she was not able to consolidate tasks or build relationships with colleagues. Discussions of progress on specific projects were aimed at the management staff, oftentimes excluding her. Eventually, the meetings were held without her. Counseling was available through the HR department, but she wondered, "How could HR understand?"

Samantha's case suggests several opportunities for the EAP professional and HR professional to collaborate at the social educational level. In addition to the social misconceptions and stereotypes directed at her by coworkers, it seems that the HR policy may not have been as inclusive of persons with disabilities as the ADA had intended. The EAP professional should work with the HR manager to take into account the history of disability and the ADA (Chima, 2002). Within this synthesis, several components need to be addressed, including reasonable accommodations, grievance procedures, promotion, and advancement (Salsgiver, 1998). In Samantha's case, no performance appraisal appears to be in place that rewards managers and supervisors for their accommodation of workers with disabilities. According to Chima (2002), "This will motivate supervisors and managers to avoid practices that limit, segregate, or classify job applicants or employees in ways that adversely affect their opportunities or status because of their disability" (p. 92).

Legal Education Level

According to Otto and Petrila (2009), "It is important that the EAP professional recognize trends in court decisions as well as the general contours of the ADA in providing treatments or assessments that may be affected by the statute" (p. 261). The EAP professional may become involved in ADA issues in a variety of ways. For example, the professional might be called upon by an employer to determine whether an employee has a disability within the meaning of the statute, to provide treatment to an employee with a disability, or to advise the employer on what might be a reasonable accommodation in a particular case (Otto & Petrila).

According to Chima (2005), this level of activity for EAP professionals in the role of educator provides information to all employees regarding the legal consequences of discrimination lawsuits. It costs about \$75,000 to defend against job-related ADA complaints (Hofius, 2000). According to Chima (2005), the EAP's goal

is to make all employees aware that any discriminatory practices or behavior has expensive consequences for an organization ... when companies pay expensively for biases of a group of employees, they pass the cost to consumers in higher product prices, thus making consumers innocent victims. (p. 53)

Although the intent of the ADA is clear, Title I claims have not fared well in the courts. Cases are often dismissed before trial because plaintiffs cannot prove that they are qualified for protection from workplace discrimination or that their employer acted in violation of the law. A search of LexisNexis, a database that provides researchers with access to billions of searchable documents and records from 45,000 legal, news, and business sources (www.lexisnexis.com/en-us/about-us/about-us.page), revealed that only a handful of people diagnosed with TBI since 1990 have brought claims; those that have sued have had only limited success (see Table 1). The ADAAA, which governs employer actions after 2009, may ameliorate some of the legal hurdles, but it is too soon to tell. Claims brought under the ADAAA are still in the early stages of litigation.

A fundamental problem with all ADA cases is that plaintiffs have to prove they are qualified to do the job but disabled enough to fit the criteria of the ADA. Plaintiffs cannot argue too vehemently that their "life activities have been substantially limited" without calling into question their ability to perform their job duties. This argument is of particular importance for plaintiffs and their treating professionals, who are often eager to testify to plaintiffs' strengths.

Under the ADA, the plaintiff in *Marvello v. Chemical Bank* (1996) (see Table 1) alleged only that the employer regarded him as disabled but still had to prove that the employer's perception of his disability fit the strict definition. In other words, the employee had to introduce evidence that the employer believed he was substantially limited in life activities. Proving employer perceptions with such specificity is extremely difficult. The ADAAA changes the definition of *regarded as* so that it no longer requires a showing that the employer perceived the individual to be substantially limited in a major life activity. Instead, it says that an employee is "regarded as" disabled if subjected to an action prohibited by the ADA based on an impairment that is not transitory and minor. Still, plaintiffs have to demonstrate that the employer's adverse decision was based on a perceived impairment.

TABLE 1 Cases Brought Under the ADA for Alleged Employer Discrimination Against Employees with TBI

Case name	Overview	Outcome
<i>Menchaca v. Maricopa Community College District</i> (2009)	<p>The plaintiff suffered a traumatic brain injury (TBI) while working as a student counselor for the defendant, a community college. The plaintiff returned to work after sustaining the injury but was terminated after she threatened her department chair. She alleged that the college failed to reasonably accommodate her disability by providing a job coach, improperly required her to undergo medical examinations, and unlawfully terminated her employment.</p> <p>The employer asked the court to dismiss the entire case so that it would not proceed to a jury.</p>	<p>The court allowed the plaintiff to present evidence to the jury on the following claims:</p> <ul style="list-style-type: none"> • That she was “disabled” under the Americans with Disabilities Act (ADA) because her mental impairment substantially limited the major life activities of caring for herself, working, and interacting with others. • She was a “qualified individual” under the ADA because the accommodation of a job coach could plausibly have enabled her to adequately perform her job. • Regarding the alleged unlawful termination, the court determined that the employee’s threat resulted from her disability and was not a separate basis for termination, and even if the exception for egregious and criminal conduct applied, a reasonable jury could conclude that her statement was not egregious.
<i>Blunt v. Aetna/US Healthicare</i> (2005)	<p>The plaintiff employee suffered a TBI in an automobile accident and began receiving long-term disability payments. The plaintiff sued her employer, alleging that the employer refused to consider her for employment until she stopped receiving long-term disability payments and therefore discriminated against her.</p> <p>The employer sought dismissal on the ground that the employee failed to file the ADA complaint within the statute of limitations.</p>	<p>The court did not allow the plaintiff to present evidence to the jury that requiring the medical examination was discriminatory. The employer’s behavior established that the employer was objectively justified in requiring the employee to undergo a medical examination. The employer’s motion to dismiss was denied. The court permitted the employee to present evidence that she should not be subject to time restrictions for filing. The court reached this decision after considering that the employee was representing herself and had a mental disability.</p>

(Continued)

TABLE 1 Continued

Case name	Overview	Outcome
<i>Marvello v. Chemical Bank</i> (1996)	<p>The plaintiff suffered from a TBI that had kept him from working since 1968. He had received public assistance in the form of Medicaid, Social Security Supplemental Income, and Social Security Disability benefits. The plaintiff applied for jobs at Chemical Bank between 1993 and 1994. The plaintiff contended that the defendant discriminated against him by denying him an interview because of his disability. The defendant contended that the plaintiff was not a “qualified individual” for reasonable accommodations under the ADA because he had told the Social Security Administration that he was totally disabled. The defendant alleged the plaintiff could not perform the essential functions of the employment position he desires with reasonable accommodation of his disability because the plaintiff made a prior representation to the Social Security Administration that he was totally disabled.</p>	<p>The court found the plaintiff could be a “qualified individual” under the ADA because that there was no evidence that the plaintiff had made inconsistent statements to the Social Security Administration or the potential employer regarding his condition. However, before the case could go to a jury, the court needed to determine (1) whether and when the plaintiff had in fact previously represented in a sworn statement that he was totally disabled and (2) whether, after the statement was made, if one was made at all, his condition improved.</p>
<p><i>EEOC v. OSI Restaurant Partners, LLC</i> (U.S. Equal Employment Opportunity Commission, 2011b)</p>	<p>The U.S. Equal Employment Opportunity Commission (EEOC) filed a lawsuit alleging that a restaurant violated federal law by firing an employee, John Woods, on the basis of his disability and/or because he needed a reasonable accommodation. The EEOC filed the lawsuit after first attempting to reach a pre-litigation settlement. The lawsuit seeks back pay, compensatory damages, and punitive damages for Woods, as well as appropriate injunctive relief to prevent any further discriminatory practices. Woods, who suffers from TBI, worked as a server from November 2009 to January 2010, when he was fired. The EEOC alleged that the restaurant terminated Woods’ employment because of his disability and/or because he needed a reasonable accommodation.</p>	<p>This lawsuit was filed on September 7, 2011. It has not been litigated yet.</p>

Note. In all cases, the defendant employer asked the court to dismiss the case before it went to a jury trial. The plaintiffs’ cases survived dismissal, and the court allowed the plaintiffs to proceed to trial. The actual jury findings or awards are not discussed because the jury outcome has no bearing on the law regarding the ADA and TBI.

Persons affected by TBI have had a particularly difficult time proving impairments under the ADA because the common impairments associated with TBI—thinking, remembering, and concentrating—were not considered by the courts to be “life activities” before the ADAAA. A plaintiff could argue that there is an impairment in the life activity of “working” but would risk portrayal of being incapable of performing the job at hand. Furthermore, as courts have interpreted the ADA, plaintiffs are only considered substantially limited in “working” if they are unable to perform a broad range of jobs for which people of similar education and skill were qualified.

Because TBI impairments can be unpredictable, varying in context and severity, it is a challenge for employees to describe their condition and propose reasonable accommodations. For example, a person with TBI may become forgetful, but only during certain activities, or may remember some types of assignments better than others. It can also be disconcerting if an employee becomes suddenly withdrawn or seemingly hostile, but brain trauma can have this effect when a person is faced with unfamiliar settings or new acquaintances. The employee’s health care specialists are best able to thoroughly understand typical behavior patterns.

These nuances further complicate TBI claims. Some courts will only find that there is discrimination if a disability or perceived disability is the primary motivation for the adverse decision. Therefore, an employer can easily argue that other factors influenced its decision, especially when a person with TBI behaves in ways that are difficult to characterize. Forgetfulness can be interpreted by an employer not as a disability but as poor performance. Withdrawn behavior may be attributed to a bad attitude when in fact the employee is showing symptoms of brain trauma.

By the same token, employees with TBI can be productive and function without incident almost all of the time, which may result in individuals being reluctant to disclose their TBI. According to Granger (2000) and Madaus, Foley, McGuire, and Massaro (2003), people with disabilities are often extremely hesitant to disclose a disability to an employer in the workplace. This is most often an issue for individuals whose disability is not apparent and when the disability is one that is associated with more stigma than others, such as psychiatric disabilities, TBIs, or other cognitive disabilities (Conyers & Boomer, 2005; Ellison, Russinova, MacDonald-Wilson, & Lyass, 2003). A desire to be treated as “normal” and a fear of discrimination or a hostile work environment prevents many from coming forward (Fesko, 2001). Past negative experiences with requesting accommodations and the perception that employers lack a genuine desire to provide accommodations are other significant barriers to disclosure and requesting accommodations (Frank & Bellini, 2005). This may be the right decision for some people, but, as discussed, employees are not entitled to a reasonable accommodation unless they ask for one. If a reasonable accommodation can help employees

with a TBI, it may be in their best interest to disclose, but they will have to weigh privacy concerns.

These factors have made TBI claims largely unsuccessful in the EEOC process and in the courts, but there is hope. Prior to the ADAAA, courts at least recognized that TBI can be a qualified disability although several plaintiffs had their claims dismissed: for example, *Pare v. City of Bristol* (2005), *Evans v. Davis Memorial* (2000), and *Phillips v. Wal-Mart Stores* (1999). With the 2011 guidance from the EEOC on implementing the ADAAA, employees and employers now have more comprehensive tools to collaboratively address disabilities and prevent litigation (EEOC, 2011a). When filing a claim is necessary, the ADAAA's explicit expansion of qualified individuals should better effectuate the rights of TBI employees.

IMPLICATIONS FOR EAP PRACTICE

Historically, EAPs have provided behavioral health services to employees and their covered dependents, including early intervention, assessment, and referral, as well as short-term counseling for personal problems that have the potential to negatively affect work performance and/or productivity (Jacobson & Jones, 2010; Maiden, 2001). The EAP field may want to take a closer look at curriculum content areas for future training along with the development of professional work groups or task forces to stimulate further dialogue regarding practice standards and outcome measures within the return-to-work population.

A promising trend for EAP research is to examine the effects of EAP collaboration with disability management and return-to-work (RTW) programs for employees with primary or comorbid health conditions (Attridge & Wallace, 2010). Implementing a RTW program can meet the employer's duty to accommodate and facilitate the return of disabled employees to the workplace. These programs are based on the philosophy that people can safely perform progressively more demanding levels of work while also participating in the process of recovery and getting medical and/or mental health care for their problem. Workplace accommodations can be done in many areas for when the employee is back at work, either part-time or full-time. It is common for such accommodations to be modified or even discontinued as the employee recovers.

EAP practitioners should be encouraged to utilize the Job Accommodation Network (JAN) web site that provides information on accommodations solutions through its Searchable Online Accommodation Resource (SOAR), guidelines for employers and employees on steps to develop accommodations, and other resources (<http://askjan.org/>). JAN also offers free individualized technical assistance for professionals, employers, and people with disabilities about accommodations issues. Professionals may call a toll-free number for guidance (800-526-7234).

TABLE 2 Work Accommodations for Individuals With Traumatic Brain Injury (TBI)

Issue	Accommodations/Examples
Employee-supervisor relationship	<ul style="list-style-type: none"> • Make eye contact when speaking with employee • Ask employee to repeat important information • Focus on essential job functions that are clearly stated
Supervision style	<ul style="list-style-type: none"> • Provide a written agenda for meetings • Keep abrupt changes to a minimum
Work scheduling	<p>Use of:</p> <ul style="list-style-type: none"> • Calendars • Established routines during the day and across days • Personal digital assistant (PDA) or appointment book • Pictures/diagrams of problem-solving techniques such as flowcharts
Job duties	<p>Use of:</p> <ul style="list-style-type: none"> • Smaller job steps to improve sequencing • Mentoring by a coworker or retired worker • Reduced workday or week • Job sharing • Scheduled break time • Scheduling demanding job tasks early in the day
Meeting deadlines	<ul style="list-style-type: none"> • Work with employee to develop a checklist of steps for new or complex tasks • Plan for employee to have uninterrupted work time • Divide large assignments into smaller tasks and steps
Stamina	<ul style="list-style-type: none"> • Reduced workday or week • Job sharing • Scheduled break time
Concentration limits	<ul style="list-style-type: none"> • Give tasks that are of particular interest to the employee • Allow the employee to work on one task at a time • Refocus employee's attention to the details of the activity • Provide the employee with frequent breaks • Allow use of headphones or earplugs to drown out external noise • Encourage an uncluttered workspace • Provide a cubicle or private space away from main thoroughfare, when applicable
Emotional response	<ul style="list-style-type: none"> • Generate an initial work schedule with a gradual increase of hours to decrease stress and anxiety about returning to work • Allow the employee to take 5-minute breaks as needed to use stress management techniques • Recognize your own emotional reactions to the person with the brain injury • Remain calm, assured, and confident if an emotional reaction occurs • Allow personal telephone calls during work hours to professionals to access needed support • Give periodic praise, positive reinforcement, and constructive feedback • Provide sensitivity training to coworkers
Training needs	<ul style="list-style-type: none"> • Retrain as necessary to bring employee up to speed on aspects of his or her job that may have changed during his or her absence • Retrain; any new training may need to be done slightly differently for an employee who is coping with a brain injury

(Continued)

TABLE 2 Continued

Issue	Accommodations/Examples
Communication	<ul style="list-style-type: none"> • Allow extra time in training for the employee to learn new tasks or information • Allow employees to attend trainings that are individualized and self-paced • Use an agenda and structure meetings • Be clear and concise • Establish and use consistent gestures or cues • Clarify new topics as they come up and offer to repeat what was said or answer questions • Politely interrupt and ask employee for a chance to speak • Give the person time to organize his or her thoughts and to respond to questions or requests • Give the individual your full attention • Designate a point person who understands the employee and can facilitate communication between employee and coworkers • Paraphrase what the person has said • Inform the employee you did not understand and ask him or her to repeat the statement • Ask the person to maintain a comfortable distance when having a conversation

Note. Adapted from Attridge and Wallace (2010).

In addition to consulting with JAN, EAPs can continue to serve a valuable role by coordinating care and supporting employees and their family through the RTW transitional period. It is particularly important for the EAP to be involved in supporting the employees' RTW due to the high overlap of behavioral health conditions and stress-induced illness issues with other chronic medical problems (Jacobson & Attridge, 2010). At least four types of accommodations should guide RTW programs designed for employees affected by TBI (Stock, 2006):

1. Training and other learning experiences that help employees think, reason, and make decisions.
2. Coaches that help employees think, reason, and make decisions.
3. Representatives that make decisions on behalf of these employees.
4. Modifications to lessen distractions in the work environment, such as providing enclosed workspaces or private offices, scheduling uninterrupted work time, dividing large assignments into a series of tasks, allowing more frequent breaks, adjusting lighting, or playing soothing sounds.

Accordingly, Table 2 provides strategies as recommended by Stock (2006) that employers may consider within the context of a collaborative dialogue with EAP, disability management (DM) program professionals, and human resource (HR) professionals.

DISCUSSION

Progressing Toward ADA Compliance in the Workplace

As the Samantha case example demonstrates, employees and employers should operate according to the original intent of the ADA, which was “reinstated” by the ADAAA. The landmark legislation sought to cover a broad range of individuals with mental and physical disabilities and enable them to lead integrated work lives. When following the spirit of the law, employers can also increase productivity by preventing sick leave, increasing morale, and expanding their applicant pool. Reasonable accommodations can be a sound investment; the 2011 EEOC regulations found it “apparent from surveys conducted of both employers and employees that there are significant direct and indirect benefits to providing accommodations that may potentially be commensurate with the costs” (Job Accommodation Network, 2011).

The first step is for an employer to establish a written disability policy that its entire workforce receives upon entry. This shall include a comprehensive procedure for handling reasonable accommodation requests. Individual considerations must be confidential between the employee, supervisor, and any other relevant person (such as a HR manager or EAP professional acting in a consultative role). Open and honest communication is the only way to reach an agreement. Moreover, the accommodation process should be interactive, with both parties willing to be flexible. Employees are under no obligation to accept an accommodation, but they are more likely to if they are given the opportunity to participate in the information-gathering and decision-making process. If an agreement over reasonable accommodations is stalled, alternative dispute resolution, particularly mediation (where the parties come to a joint decision), can be effective. In addition to EAPs keeping employers apprised of best practices in the provision of accommodations, EAPs may also help employers assess the relationship between reasonable accommodations, organizational values, and work culture.

As some of the challenges Samantha faced in the case example show, explicit organizational values and policies regarding diversity and disability in the workplace and organizational flexibility are positively related to accommodating employees with disabilities (Florey & Harrison, 2000; Gilbride, Stensrud, Vandergoot, & Golden, 2003). However, noninclusive organizational culture and nonresponsive management practices are organizational barriers to providing reasonable accommodation (Greene, 2002; Hosford, 1999). Similarly, Frank and Bellini (2005) and Williams-Whitt (2007) concluded that broken trust and betrayal between employees and an organization were barriers associated with an employee’s failure to request needed job accommodations.

EAPs could take an active role by brainstorming about initial steps toward a communication strategy highlighting how providing reasonable accommodations will help create a diverse, inclusive organizational culture (MacDonald-Wilson et al., 2008). The underlying motivation for employers to engage in such dialogue might also be viewed as an effort to protect employers from liability issues in the future. EAPs could also help to facilitate training on financial incentives, tax credits, and other potential new resources and benefits for providing accommodations in the workplace. EAP, rehabilitation professionals, and HR professionals should develop knowledge of these new resources to provide to employers.

The Role of Disability Management

As EAPs tread onto new terrain with the increasing demand to address the needs of employees upon return to work, coordination with disability management programs will be critical. According to Bruyère (2001),

The concept of disability management is a simple one—the aim is to connect all individual care, benefit, and case management components so they complement each other ... increasingly disability management programs coordinate with EAPs to improve overall workforce health, while also easing administrative burdens. (p. 2)

She specifically noted that although disability management and EAP engage in separate but complementary roles, EAP is considered a clinical resource, whereas disability management's expertise is aimed at how a condition such as TBI creates disability within the context of job performance.

Internal Versus External EAP

In recent years, there has been a shift from EAP professionals internal to corporations to a for-profit affiliate network model that has resulted in a number of EAP affiliates entering into subcontracts with EAP vendors to provide services on an as-needed basis (Jacobson & Jones, 2010). According to Cagney (1999), "The EAP logically fits into the constellation of human resources" (p. 64). Cagney also noted that "the internal EAP knows the work of the organization in a way that external vendors never will" (p. 64). Based on the Samantha and J.C. case examples, it seems that an internal EAP professional would be effective as he or she might be aware of historical patterns of the organization's interactions with employees affected by disabilities—that is, the organization's track record.

Shankar, Barlow, and Khalema (2011) noted that the external for-profit orientation

overlooks burgeoning evidence that mental health problems experienced by employees are often intricately related to factors such as stress arising

from work overload, perceived lack of control over work, poor work environment, stigma and discrimination in the workplace and impact of oppressive organizational culture and norms. (p. 276)

The Samantha and J.C. case examples provide anecdotal evidence regarding many of these factors. According to Gelber and Callahan (2010), persons affected by TBI may experience psychosocial challenges such as depression, stress, aggression, frustration, or mood swings. The concerns raised by Shankar et al. (2011) suggest that an internal EAP provider would be better suited than an external EAP provider to assess the interplay of factors associated with the work environment and these types of psychosocial challenges. Although the internal EAP provider might be better suited, future research could explore whether there are concerns on the horizon for external EAP providers regarding the RTW population.

CONCLUSION

Now that the ADAAA and its regulations have shifted the focus of the ADA from who is qualified for protection to how to prevent or determine whether discrimination has occurred, persons affected by TBI hopefully will fare better in the workplace. The amended federal law, coupled with the EEOC's specific guidelines, should enable employees affected by TBI to be more forthcoming about their disability, which will benefit the employees and their employers. When a civil rights bill has teeth, litigation is the last straw.

EAP practitioners can expand on their educator and advocacy role(s) by engaging in the mitigation and mediation of issues at the microlevel before there is a need to intervene at the macrolevel. By accessing the expertise of disability management program and human resource professionals who are well versed in RTW strategies and disabilities law, EAP practitioners will strengthen their ability to manage employee distress and the mental health needs of workers affected by TBI. These endeavors fully align with the professional's mission of service to the poor, the at risk, and the oppressed (Maiden, 2001).

REFERENCES

- ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553. Retrieved from <http://www.govtrack.us/congress/billtext.xpd?bill=h110-3195>.
- Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 (2006). Retrieved from <http://www.ada.gov/statute.html>.
- Attridge, M., & Wallace, S. (2010). *Able-minded: Return to work and accommodations for Workers on disability leave for mental disorders*. Vancouver, Canada: Human Solutions. Retrieved from http://www.humansolutions.ca/www.docs/HSreport_10.pdf.

- Blanck, P. (2005). Americans with disabilities and their civil rights: Past, present, future. *University of Pittsburgh Law Review*, 66, 687–719.
- Blunt v. Aetna, Civ. No. 3:04CV483 (CFD), 2005 U.S. Dist. LEXIS 13199 (D. Ct. June 30, 2005). Retrieved from www.ctd.uscourts.gov/Opinions/063005.CFD.Blunt.pdf.
- Bruyère, S. M. (2001). *The role of disability management programs in ADA compliance*. Retrieved from http://www.ilr.cornell.edu/extension/files/download/dm_and_ADA.pdf
- Cagney, T. (1999). Models of service delivery. In J. M. Oher (Ed.), *The employee assistance handbook* (pp. 59–69). New York, NY: John Wiley and Sons.
- Cattelani, R., Tanzi, F., Lombardi, F., & Mazzucchi, A. (2002). Competitive re-employment after severe traumatic brain injury: Clinical, cognitive and behavioural predictive variables. *Brain Injury*, 16, 51–64.
- Chima, F. O. (2002). Employee assistance and human resource collaboration for improving employment and disabilities status. *Employee Assistance Quarterly*, 7(3), 79–94.
- Chima, F. O. (2005). Persons with disabilities and employment: Implications for social work and rehabilitation roles and advocacy. *Journal of Social Work in Disability & Rehabilitation*, 4(3), 39–60.
- Conyers, A. V., & Boomer, K. B. (2005). Factors associated with disclosure of HIV/AIDS to employers among individuals who use job accommodations and those who do not. *Journal of Vocational Rehabilitation*, 22(3), 306–310.
- Dixon, T. M., Layton, B. S., & Shaw, R. M. (2005). Traumatic brain injury. In H. H. Zaretsky, E. F. Richter, III, & M. G. Eisenberg (Eds.), *Medical aspects of disability* (3rd ed., pp. 119–149). New York, NY: Springer.
- Ellison, M. L., Russinova, Z., MacDonald-Wilson, K. L., & Lyass, A. (2003). Patterns and correlates of workplace disclosure among professionals and managers with psychiatric conditions. *Journal of Vocational Rehabilitation*, 18(1), 3–13.
- Employee Assistance Professionals Association. (2010). *EAPA standards and professional guidelines for employee assistance programs*. Arlington, VA: Author. Retrieved from <http://www.eapassn.org/i4a/pages/index.cfm?pageid=804>.
- Employee Assistance Professionals Association. (2011). *Definitions of an employee assistance program (EAP) and EAP core technology*. Arlington, VA: Author. Retrieved from <http://www.eapassn.org/i4a/pages/index.cfm?pageid=521>.
- Evans v. Davis Mem'l Goodwill Indus., 133 F. Supp. 2d 24 (D.D.C. 2000).
- Falvo, D. R. (2009). *Medical and psychosocial aspects of chronic illness and disability* (4th ed.). Sudbury, MA: Jones and Bartlett.
- Faul, M., Xu, L., Wald, M. M., & Coronado, V. G. (2010). *Traumatic brain injury in the United States: Emergency department visits, hospitalizations, and deaths*. Atlanta, GA: Centers for Disease Control and Prevention, National Center for Injury Prevention and Control.
- Fesko, S. L. (2001). Workplace experiences of individuals who are HIV+ and individuals with cancer. *Rehabilitation Counseling Bulletin*, 45, 2–11.
- Finkelstein, E., Corso, P., & Miller, T. (2006). *Incidence and economic burden of injuries in the United States*. New York, NY: Oxford University Press.
- Florey, A. T., & Harrison, D. A. (2000). Responses to informal accommodation requests from employees with disabilities: Multi-study evidence on willingness to comply. *Academy of Management Journal*, 43(2), 224–233.

- Frank, J. J., & Bellini, J. (2005). Barriers to the accommodation request process of the Americans with Disabilities Act. *Journal of Rehabilitation*, 71(2), 28–39.
- Gates, L. B. (2000). Workplace accommodation as a social process. *Journal of Occupational Rehabilitation*, 10(1), 85–98.
- Gelber, D. A., & Callahan, C. D. (2010). Neurologic examination of the patient with traumatic brain injury. In M. J. Ashley (Eds.), *Traumatic brain injury Rehabilitation, treatment, and case management* (3rd ed., pp. 3–27). Boca Raton, FL: Taylor and Francis.
- Gilbride, D., Stensrud, R., Vandergoot, D., & Golden, K. (2003). Identification of the Characteristics of work environments and employers open to hiring and accommodating people with disabilities. *Rehabilitation Counseling Bulletin*, 46(3), 130–139.
- Granger, B. (2000). The role of psychiatric rehabilitation practitioners in assisting people in understanding how to best assert their ADA rights and arrange job accommodations. *Psychiatric Rehabilitation Journal*, 23(3), 215–223.
- Greene, J. K. (2002). Accommodation in the workplace: An application of procedural justice theory. *Dissertation Abstracts International: Section B: The Sciences and Engineering*, 63(3-B).
- Hofius, J. (2000, July 26). Let's get beyond victimhood disabilities act. *Houston Chronicle*, p. 29A.
- Hosford, V. L. (1999). Integrating managerial cognitions: Disability, diversity, and the ADA. *Dissertation Abstracts International Section A: Humanities and Social Sciences*, 59(8-A).
- Jacobson, J. M., & Attridge, M. (2010). Employee assistance programs (EAPs): An allied profession for work/life. In S. Sweet & J. Casey (Ed.), *Sloan work and family research network encyclopedia*. Retrieved from <http://wfnetwork.bc.edu/encyclopediaentry.php?id=17296&area=All>
- Jacobson, J. M., & Jones, A. L. (2010). Standards for the EAP profession: Isn't it time we all start speaking the same language? *Journal of Workplace Behavioral Health*, 25, 1–18.
- Japp, J. (2005). *Brain injury and returning to employment*. Philadelphia, PA: Kingsley Publishers.
- Job Accommodation Network. (2011, September 1). *Workplace accommodations: Low cost high impact*. Retrieved from <http://www.AskJan.org/media/LowCostHighImpact.pdf>.
- Karger, H., & Rose, S. R. (2010). Revisiting the Americans with Disabilities Act after two decades. *Journal of Social Work in Disability & Rehabilitation*, 9, 73–86.
- Kessler Foundation. (2010). *NOD survey of employment of Americans with disabilities*. Retrieved from <http://www.2010disabilitysurveys.org/octsurvey/pdfs/surveyresults.pdf>
- Kissinger, D. B. (2008). Traumatic brain injury and employment outcomes Integration of the working alliance model. *Work*, 31, 309–317.
- Lemke, D. M. (2007). Sympathetic storming after severe traumatic brain injury. *Critical Care Nurse*, 27(1), 30–37.
- MacDonald-Wilson, K. L., Fabian, E. S., & Dong, S. (2008). Best practices in developing Reasonable accommodations in the workplace: Findings based on the research literature. *Rehabilitation Professional*, 16(4), 221–232.

- Mackelprang, R., & Salsgiver, R. (1999). *Disability: A diversity model approach in human service practice*. New York, NY: Brooks/Cole.
- Madaus, J. W., Foley, T. E., McGuire, J. M., & Massaro, J. (2003). Identifying relationships between functional limitations, job accommodations, and demographic characteristics of persons with psychiatric disabilities. *Journal of Vocational Rehabilitation, 18*(1), 15–24.
- Maiden, R. P. (2001). The evolution and practice of occupational social work in the United States. *Employee Assistance Quarterly, 17*(1/2), 119–161.
- Marvello v. Chemical Bank, 923 F. Supp. 487 (S.D.N.Y. 1996).
- McMahon, B. (Ed.). (2006). *Workplace discrimination and disability*. Richmond, VA: Virginia Commonwealth University Rehabilitation Research & Training Center on Workplace Supports & Job Retention.
- McMahon, B., Wehman, P., Brooke, V., Habeck, R., Green, H., & Fraser, R. (2004). *Business, disability and employment: Corporate models of success, A collection of successful approaches reported from 20 employers*. Richmond, VA: Virginia Commonwealth University Rehabilitation Research & Training Center on Workplace Supports & Job Retention.
- Menchaca v. Maricopa Community College District, 595 F. Supp. 2d 1063 (D. Ariz 2009).
- Moxley, D. P. (2002). Social work strategies and tactics in the workplace: Socialization of people with disabilities. *Journal of Social Work in Disability & Rehabilitation, 1*(3), 43–60.
- National Institutes of Health Consensus Development Panel on Rehabilitation of Persons with Traumatic Brain Injury. (1999). Rehabilitation of persons with traumatic brain injury. *Journal of the American Medical Association, 282*(10), 974–983.
- Oher, J. M., Conti, D. J., & Jongsma, A. E. Jr. (1998). *The employee assistance treatment planner*. New York, NY: John Wiley and Sons.
- Otto, R. K., & Petrila, J. (2009). Legal issues critical to employee assistance programs. In M. A. Richard, W. G. Emener, & W. S. Hutchison, Jr. (Eds.), *Employee assistance programs wellness/enhancement programming* (4th ed., pp. 254–263). Springfield, IL: Charles C Thomas.
- Owensworth, T., & McKenna, K. (2004). Investigation of factors related to employment outcome following traumatic brain injury: A critical review and conceptual model. *Disability and Rehabilitation, 26*(13), 765–784.
- Pare v. City of Bristol, 386 F. Supp. 2d 43 (D. Conn. 2005).
- Parry, J. W. (2011). *Equal employment of persons with disabilities: Federal and state law accommodations, and diversity best practices*. Chicago, IL: American Bar Association.
- Phillips v. Wal-Mart Stores, Inc., 78 F. Supp. 2d 1274 (S.D. Ala. 1999).
- Power, P. W., & Hershenson, D. B. (2003). Work adjustment and readjustment of persons with mid-career onset traumatic brain injury. *Brain Injury, 17*(2), 1021–1034.
- Prigatano, G. P. (1989). Work, love, and play after brain injury. *Bulletin of the Menninger Clinic, 53*, 414–431.
- Salsgiver, R. O. (1998). The Americans with Disabilities Act and inclusive personal and employment policy. In A. Daly (Ed.), *Workplace diversity: Issues and perspectives* (pp. 116–131). Washington, DC: NASW Press.

- Shankar, J., Barlow, C. A., & Khalema, E. (2011). Work, employment, and mental illness: Expanding the domain of Canadian social work. *Journal of Social Work in Disability & Rehabilitation, 10*, 268–283.
- Simpson, A., & Schmitter-Edgecombe, M. (2002). Prediction of employment status following traumatic brain injury using a behavioural measure of frontal lobe functioning. *Brain Injury, 16*, 1075–1091.
- Stock, S. (2006). *Employment of persons with brain injury in Oregon*. Retrieved from <http://www.oregon.gov/DHS/vr/cep/braininjury-stock.pdf>.
- Tiesman, H. M., Konda, S., & Bell, J. L. (2011). The epidemiology of fatal occupational traumatic brain injury in the U.S. *American Journal of Preventive Medicine, 41*(1), 61–67.
- Traumatic Brain Injury Model Systems National Data Center. (2001). *Traumatic Brain Injury Facts and Figures, 7*(1), 8.
- U.S. Equal Employment Opportunity Commission. (2011a). *Fact sheet on the EEOC's final regulations implementing ADAAA*. Retrieved from http://www1.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm?renderforprint=1.
- U.S. Equal Employment Opportunity Commission. (2011b). *Outback Steakhouse sued by EEOC for disability discrimination* [press release]. Retrieved from <http://www1.eeoc.gov/eeoc/newsroom/release/9-7-11b/cfm>
- Wehman, P., Targett, P., West, M., & Kregel, J. (2005). Productive work and employment for persons with traumatic brain injury: What have we learned after 20 years. *Journal of Head Trauma Rehabilitation, 20*(2), 115–127.
- Williams-Whitt, K. (2007). Impediments to disability accommodation. *Industrial Relations, 62*(3), 405–432.
- Yasuda, S., Wehman, P., Targett, P., Cifu, D., & West, M. (2001). Return to work for persons with traumatic brain injury. *American Journal of Physical Medicine & Rehabilitation, 80*(11), 852–864.