

THE ADA @ 31:

A REVIEW OF EMERGING IMPLEMENTATION ISSUES

July 26, 2021 marked the 31st anniversary of the Americans with Disabilities Act (ADA). The ADA anniversary is an opportunity to celebrate the advances that people with disabilities have made under the ADA and look ahead to emerging ADA implementation issues, including:

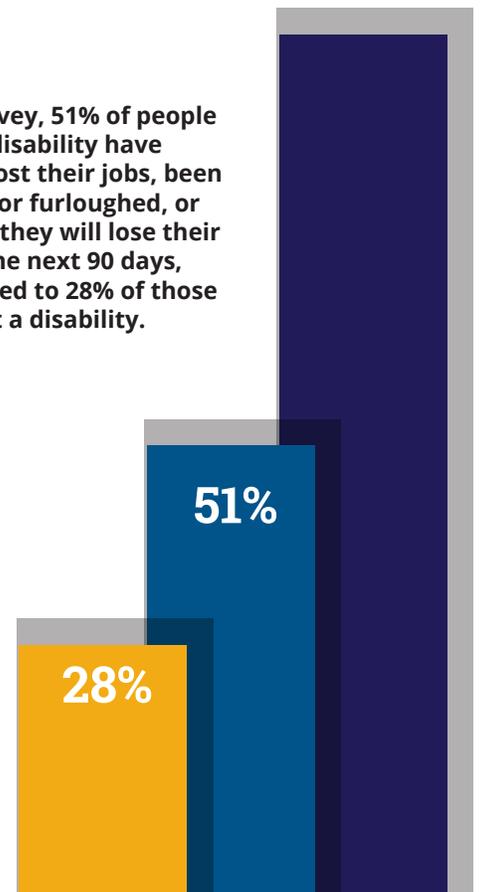
COVID-19 SAFETY AND HEALTH POLICIES AND PLANS, INCLUDING TELEWORK

Federal, state and local policymakers are issuing post-pandemic guidance, and businesses are developing reopening plans based on that guidance. While it is important that employers ensure that their plans take this guidance into consideration, it is critical that they are inclusive of individuals with disabilities as well. Health and safety plans that are disability-inclusive will consider, at minimum, how the ADA applies to particular situations such as telework, use of face coverings and vaccination.

In addition, recent data indicates that the pandemic has disproportionately impacted employment rates of both people with disabilities and Black, Indigenous and People of Color (BIPOC). A [survey](#) conducted by [Global Disability Inclusion](#) found that 51% of people with a disability have either lost their jobs, been laid off or furloughed, or believe they will lose their job in the next 90 days, compared to 28% of people without a disability.

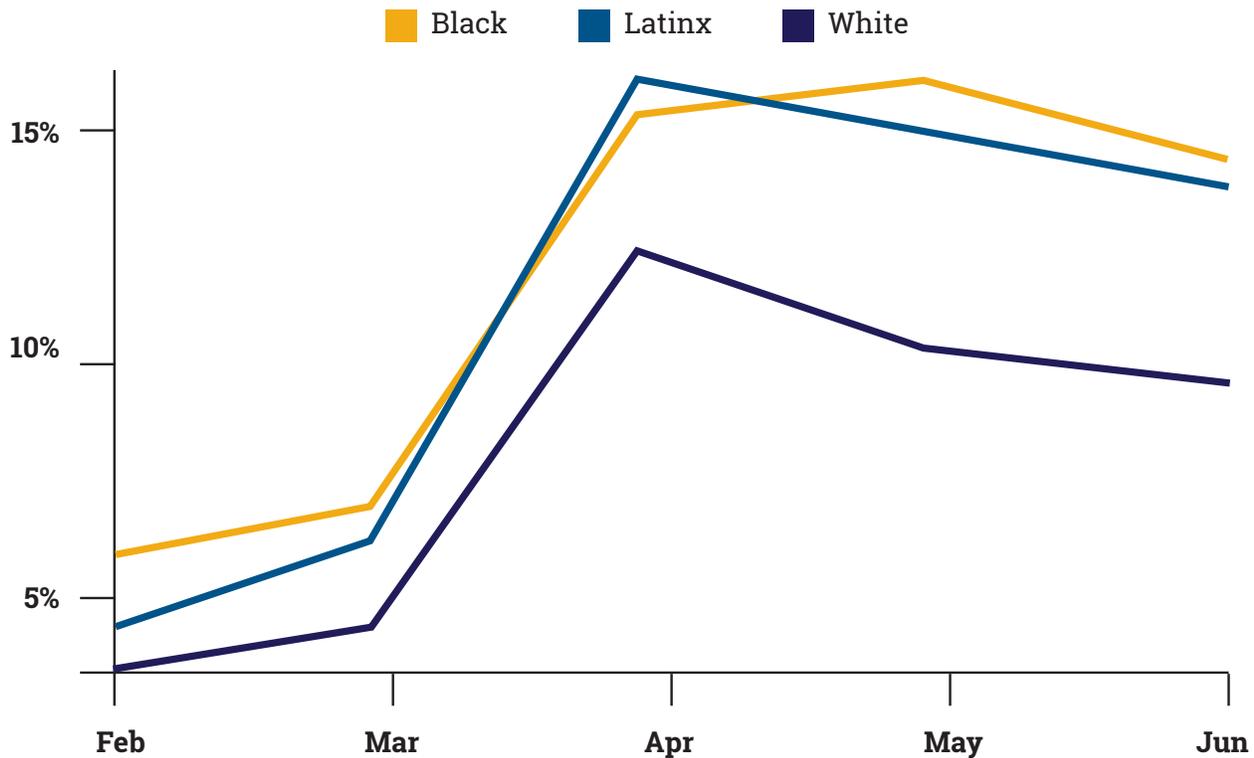
[Data](#) from the University of New Hampshire indicates that Black and Latinx Americans experienced significantly higher levels of unemployment and slower rates of job recovery during the pandemic than their White counterparts.

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Information from Global Disability Inclusion

Unemployment Rates by Race/Ethnicity from February to June 2020



Information from the University of New Hampshire Carsey School of Public Policy

RETRAINING WORKERS FOR THE POST-PANDEMIC ECONOMY

The post-pandemic economy will need to address trends already in process prior to the pandemic, as well as those that have developed or increased due to it. These trends include use of remote work, automation and digitization. To minimize the negative impact of these trends on people with disabilities, employers will need to teach employees new skills, whether they are additional skills to better perform a current role (known as “upskilling”) or a new set of skills to prepare a worker for a different role (known as “reskilling”). Consistent with the ADA, these efforts must be disability-inclusive at the initial design stages and provide reasonable accommodations at the implementation stages.

ACCESSIBILITY OF WEBSITES, ONLINE SYSTEMS, MOBILE APPS AND OTHER FORMS OF INFORMATION AND COMMUNICATION TECHNOLOGY (ICT)

When talking about ICT, “accessibility” and “usability” mean tools that can be used successfully by people with a wide range of abilities and disabilities. Areas where employers may need to address technology accessibility and usability include: web-based intranet and internet information and applications; email and other electronic correspondence; software applications and operating systems; telecommunications products; video and multimedia products; desktop and portable computers; products such as calculators, copy machines and printers; and online job applications.

THE GIG ECONOMY

The “gig economy” refers to situations where companies hire workers for specific short-term projects or “gigs.” Gig economy workers complete tasks on a project-by-project or client-by-client basis, often by sharing and selling goods and services on web-based platforms or apps. The design of online platforms or apps is of critical importance when it comes to how workers, customers and companies interact in the gig economy. Since the vendors in the gig economy are individuals, the platforms are the marketplace, and therefore need to be accessible to and usable by vendors and customers with disabilities.

ARTIFICIAL INTELLIGENCE

The use of [artificial intelligence](#) (AI) in the workplace is becoming increasingly common, including to screen applicants, streamline the application process and provide training. However, employers are recognizing the need to ensure that AI is supporting efforts to recruit, hire, retain and advance people with disabilities, not impeding it. Discrimination in the screening process may occur for many reasons, including systematic bias due to data used to train AI models, lack of representation in data sets and speech or other behaviors outside the AI’s training data (outliers).

VOLUNTARY AFFIRMATIVE ACTION

As more businesses across the U.S. are taking steps to become more disability-inclusive, some have developed voluntary affirmative action programs to proactively recruit and hire individuals with disabilities. Under Title I of ADA and other disability rights laws, pre-employment inquiries of disability status are generally prohibited to protect an applicant from discrimination. However, this protection does not preclude employers from proactively recruiting and hiring individuals with disabilities, as the ADA and other disability rights laws are meant to encourage and support practices that benefit individuals with disabilities, whether those disabilities are obvious or voluntarily disclosed.

CENTRALIZED ACCOMMODATION PROGRAMS

Key to fostering a disability-inclusive workplace is the adoption of straightforward policies and processes for providing effective and cost-efficient reasonable accommodations. A best practice in this regard is the establishment of a [centralized accommodation program](#) (CAP). CAPs can streamline the accommodation process by consolidating subject matter expertise necessary to assess, evaluate and implement effective and meaningful accommodations and ensuring robust consistent funding streams.

PERSONAL ASSISTANCE SERVICES

While provision of personal assistance services (PAS) needed on the job, such as assistance in eating, toileting and dressing, is not considered a reasonable accommodation under Title I of the ADA (or a matter of nondiscrimination under other federal civil rights laws), EEOC [regulations](#) implementing Section 501 of the Rehabilitation (nondiscrimination and affirmative action by federal agencies) mandate the provision of PAS as a form of affirmative action.

RESOURCES

- [EARN Policy Brief: Disability-Inclusive COVID-19 Workplace Health and Safety Plans](#)
- [The Conference Board Report: A U.S. Workforce Training Plan for the Post-Pandemic Economy](#)
- [EARN Webinar: Digital Accessibility: Driving Disability Inclusion in the Workplace](#)
- [Partnership on Employment & Accessible Technology \(PEAT\) Article: Universal Access to the Gig Economy for People with Disabilities](#)
- [EARN Checklist for Employers: Facilitating the Hiring of People with Disabilities Through the Use of eRecruiting Screening Systems, Including AI](#)
- [EARN Publication: Taking Disability into Account: Proactive Recruitment & Hiring Practices](#)
- [EARN Publication: Increasing Disability Inclusion: Centralized Accommodation Programs as a Best Practice](#)
- [Job Accommodation Network \(JAN\) Accommodation and Compliance Series: Personal Assistance Services in the Workplace](#)

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