

## Overt Discrimination in the Workplace

### **Introduction to speaker**

Hello listeners and thank you so much for joining me today! As Ben mentioned my name is Ashley, I identify with she/her pronouns and I am a Black neurodivergent woman from Minneapolis Minnesota. My professional journey with a learning disability and the ways in which my mind interacts with the world around me is one of the reasons why I am so passionate about this topic. I know firsthand what it feels like to be misunderstood, underestimated, and counted out, and for that I hope I am able to make this message connect with you all on a personal level too.

The topic of this episode is disability employment law through exploration of compliance and how inclusion goes beyond policy. Together we'll uncover some of the ways ableism shows up on the job. Before the end of our time, we'll:

- Contrast scenarios with other protected classes to examine the pervasive issue of disability discrimination.
- Examine existing laws in place to prevent cycles of un-employment and poverty amongst the disability community.
- And Review best practices and common actions to ensure disability inclusion.

My goal is that every listener will leave feeling determined to uproot problematic areas in their own workplace to end the legacy of ableism and disability-based discrimination.

### **To kick it off, let's begin with reflection.**

I'm going to ask you a few questions. These are about you and your experiences in the workplace. Say your answers out loud if you can:

- Have you ever worked with colleague with a disability?
- Have you ever had a supervisor with a disability?
- Do you know about accessibility at your workplace?
- Do colleagues talk openly about their disabilities at work?

These are important to note, because they are questions that start to unravel the degree to which ableism has permeated our own workplace. How many questions were you able to answer "yes?"

More critical to consider, what is happening to cause so many of us to answer "no" to working with or being supervised by people with disabilities? Digging in even farther, isn't it strange that we don't often think or talk about disabilities on a consistent basis considering that 1 in 4 US citizens have a disability? By the way in case you weren't aware, that 1:4 stat includes apparent and non-apparent disabilities, such as depression, ADHD, and chronic health conditions.

**Ok, now that we know that 1:4 or 61 million Americans have disabilities, I want to move into “What Exactly is Going On Here?”**

- Simply stated, there are tremendous gaps in the landscape of disability employment. Taken from data gathered Nationwide in 2018 for the American Community Survey these are some of the staggering findings:
  - For Education Attainment: 15% of people with disabilities have a BA or higher, compared to 30% of people without disabilities.
  - In the Area of Employment: 37% of people with disabilities are employed vs people without disabilities who are employed at a rate of 80%.
  - The Average Household Income: is \$46,900 per year for people with disabilities vs \$74,400 per year for people without.
  - And finally, regarding Poverty: 26% of people with disabilities live below poverty line vs only 10% of people without.
  - To recap, people without disabilities are 2x more likely to attend college, and 2x as likely to be employed. While people with disabilities make approximately \$28,000 less per year, and are more than 2x as likely to live below the poverty line.
  
  - Likely you find the data as upsetting as I do, and I can promise you the more you dig the more you’d find. Of the hardest hitting notions, attitudinal bias is the highest reported and most significant barrier to attaining employment. To be clear, not a person’s real or perceived limitations, but what other people think them.
  
- You may be wondering, “How is this possible, aren’t there laws to prevent this?” The answer is yes. Let’s review a quick list of disability employment laws in place intended protect the rights of Americans with disabilities and ensure equal opportunity.
  - Rehabilitation Act of 1973: Prohibits discrimination on the basis of disability in programs conducted by federal agencies, in programs receiving federal financial assistance, in federal employment and in the employment practices of federal contractors.
  
  - Americans with Disabilities Act of 1990: A civil rights law prohibiting discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places open to the general public.
  
  - Workforce Innovation and Opportunity Act of 2014: Designed to strengthen and improve our nation's public workforce system and help get Americans, including youth and those with significant barriers to employment, into high-quality jobs and careers and help employers hire and retain skilled workers.

- Significant legislation, yet a trail of non-compliance. By reviewing a timeline of EEOC disability discrimination charges filed each year, you would find between 2010-2018 there were an 25-28k cases annually. In less than 10 years, there were a quarter of a million disability discrimination cases alone.

2010	2011	2012	2013	2014	2015	2016	2017	2018
25,165	25,742	26,379	25,957	25,369	26,968	28,073	26,838	24,605

**With that bleak of a big picture, it is important to know how this shows up in every day interactions too.**

- I want to take some time away from number crunching, data and stats, and talk you through common workplace scenarios that have a detrimental impact on people with disabilities.
- We know law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.
- It is illegal to harass an applicant or employee because they have a disability, had a disability in the past, or is believed to have a physical or mental impairment that is not transitory and minor.
- Despite all that, disability discrimination shows up at work. Here are a few real scenarios to help illustrate how:
  - First up is Restroom Restriction Telling employees they can't relieve themselves when they need to.
    - i. Our first Case: In 2017 in Kentucky, an Amazon call center employee asked managers for flexibility in the company's break schedule to accommodate bathroom needs stemming from Crohn's disease which is a painful, chronic and unpredictable inflammatory bowel condition. But instead, a supervisor accused him of stealing time and he was fired.
    - ii. Comparison: Can you imagine if an older employee protected by law based on age was accused of stealing time for needing to take frequent or sporadic bathroom breaks?

- The next violation is Career Suppression Which is essentially limiting employees right to work, or advance in their career based on their disability.
  - i. In this case: In the year 2000 in Wisconsin the EEOC brought a suit against Chuck E. Cheese following unsuccessful efforts to resolve the case through conciliation. The lawsuit, filed in federal district court was based on an administrative finding that a regional manager fired an employee from his job as a janitor after stating that Chuck E. Cheese did not hire "those kind of people." The firing took place despite the vigorous protests of the restaurant's manager, who was the employee's immediate supervisor.
  - ii. Comparison: Can you imagine a regional manager using that same phrase and taking the same action against a BIPOC employee in the year 2000? Furthermore, even after intervention continue to defend their decision?
  
- Moving into our 3<sup>rd</sup> workplace scenario, Accommodation Denial: A common response hiring managers engage in when discussing the notion of hiring a person with a disability is speculating on the person's ability to get the job done, or denying employees need for an accommodation:
  - i. Case in point: In 2015 in Minnesota, an employee requested a larger monitor at the cash register to accommodate vision issues she had related to diabetes, but she was simply sent home and had her hours reduced. Bath & Body Works' corporate human resources department was contacted by the employee but did not try to provide the larger monitor. Instead the store manager bought a cheap magnifying glass and humiliated the employee by presenting it to her in front of her co-workers.
  - ii. Comparison: Can you imagine a pregnant employee experiencing multiple changes to their body asking for a tool to ensure they can perform well, only to be mocked for needing support?
  
- My final scenario is Workplace Bullying: People with disabilities report workplace bullying at a much higher rate than colleagues without disabilities. Before I move into this last example, I want to give a content warning. The repeated behavior that took place is completely harmful and shows no regard for the employee's dignity.
  - i. Case/headline: In 2014 in Michigan, Herbruck hired a line worker, who also has ADD and Tourette's Syndrome. The employee was harassed by her supervisor and co-workers because of her ADD and Tourette's. They referred to her by using several different names and mocked the employee's Tourette's symptoms by biting their tongues and making exaggerated head movements. The employee complained to her supervisor and a human resources. After doing so, the supervisor intensified her

mockery of the employee, sped up the conveyer line, began to follow the employee during bathroom breaks, began to time their bathroom breaks, and berated the employee for wasting time.

The supervisor eventually followed the employee into the bathroom and was waiting as she exited the stall. The supervisor began to shout they needed to sign a disciplinary write-up and started jabbing a finger in the employee's face. The employee fled and reported the incident to the human resources representative who told the employee that she could not be transferred to another position and nothing could be done to address her concerns until she returned to her shift. Because of the intolerable working conditions, the employee resigned that day.

- ii. 2014 y'all. In 2014 the culture in this workplace was so fractured this employee who simply wanted to work was treated as though their value was meaningless. This example needs no comparison to point out how drastic the allegations are, or how overt the discrimination was. Instead I would like to ask you to ponder this: how long did it take for the workplace culture to get to a place where this behavior was accepted at so many levels within the organization? Also, if harassment to this degree was acceptable, how many less egregious violations we're occurring leading up to this case?
- Are you wondering, "But Ashley earlier you said there are laws preventing this type of thing." My answer is yes, and, though a person can take steps to fight for their rights under the ADA, that person must first make what's called a *Prima Facie* case. In this type of suit, *Prima Facie* is referring to the evidence the employee must present to move the case forward. This means that the burden of proof is with the employee to prove discrimination took place in order for a case to progress.
  - I want to close this section with a critical workplace topic. This is a good time to talk about disclosure. According to the Harvard Business Review, only about 39% of employees with disabilities disclose that with their employer. Based on the cases we reviewed, we can begin to draw our own conclusions as to why a person may not want to disclose their disability at work. Remember, one of the most significant barriers to employment that is reported is what non-disabled people think, believe and how they act towards people with disabilities.

**Let's end with answers to the question: What Do I Do Now?**

First, how are you doing? Might be feeling disbelief, confusion, or even disgust? The good news is, these last few moments together I'll talk about what you can do to make your mark and disrupt this pattern of discriminatory policy and practices.

- A quick breakdown of easy do's and don'ts in the area of workplace culture to ensure belonging:
  - You should = recognize disability as the intersectional community it is, create an environment supportive human variation, and ensure everyone's success is a priority.
  - You should not = use fluffy but comfortable for non-disabled people language, separate working space or assignments based on ability, or ask people assumptive questions about their disability.
- And Remember those four questions we reflected on at the beginning? Here are a few tactical things you can do targeting the areas I was getting at:
  - Have you ever worked with a colleague with a disability? If you answered no, check in with your workplace about your recruiting and hiring practices and policies.
  - Have you ever had a supervisor with a disability? If you answered no, similarly check in with your workplace about your career progression and leadership development practices and policies.
  - Do you know about accessibility at your workplace? If you answered no, ask everyone you come in contact with until someone does. Then make sure there is a discussion about where that information should be so it's more readily available to everyone.
  - Do colleagues talk openly about their disabilities at work? If you answered no, I highly recommend you connect with leaders in your organization to open dialogue about making those discussions safe at work.

### **I hope you stay plugged in.**

There are all sorts of free resources available that help employers get caught up and stay on track with workplace accessibility and disability inclusion. Take a peek at:

- Job Accommodation Network (JAN)
- Employer Resource Assistance Network (EARN)
- Society for Human Resource Management (SHRM)
- Office of Disability Employment Policy (ODEP)
- Proposed Public Right-of-Way Accessibility Guidelines (PROWAG)
- Department for Education & Economic Development (DEED)

Additionally, there are disabled activists all around the world that can be found on varying platforms who are advancing human rights and centering on disability identity, culture, rights, justice and more. To round out the recommended resources list, here are some of my favorites:

- The National Disability Rights Network
- National Black Disability Coalition
- The Disability Visibility Project

### **Stay In Touch**

I'd love to keep the conversation going, so if anything comes up or you have any questions please reach out! My contact info along with the resources I just shared are listed in the show notes.

### **I want thank you again for joining me today. In closing:**

People with disabilities have been effectively segregated from participation in the workforce, proven by their rate of unemployment being at least twice that of the remainder of the US population across all 50 states. Laws are in place, but compliance with those laws only scratch the surface of disability inclusion opportunities for businesses to explore. This session opened direct and critical dialogue about compliance and accessibility with an audience of professionals most likely to influence meaningful change.

From now on, I encourage you to move forward in the world with this knowledge, a hunger for more information, and enough confidence and audacity to make aggressive and necessary advancements in your own workplace in the area of disability inclusion.

## **SHOW NOTES**

### **Learning Outcomes**

- Contrast scenarios with other protected classes to examine the pervasive issue of disability discrimination.
- Examine existing laws in place to prevent cycles of unemployment and poverty amongst the disability community.
- Review best practices and common etiquette to ensure disability inclusion.

### **Organizations & Resources**

- Job Accommodation Network (JAN) <https://askjan.org>
- Employer Resource Assistance Network (EARN) <https://askearn.org/>
- Society for Human Resource Management (SHRM) <https://www.shrm.org/>
- Office of Disability Employment Policy (ODEP) <https://www.dol.gov/odep/>
- The National Disability Rights Network: <https://www.ndrn.org/>
- National Black Disability Coalition <https://www.blackdisability.org/>
- The Disability Visibility Project: <https://disabilityvisibilityproject.com/about/>

### **Speaker's Contact Info**

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