

*Chapter 4*

## **OPPORTUNITIES AND OBLIGATIONS IN DEALING WITH THE DISABLED STAFF AND CUSTOMERS IN HOSPITALITY INDUSTRY**

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### **ABSTRACT**

Travel and Tourism is a high-growth industry, which is forecast to increase its total economic activity by 4.2% per annum worldwide in real terms over the next ten years (World Travel and Tourism Council, 2006). Travel and Tourism, when taking into account transportation, accommodations, food services, recreational facilities and the related services forms one of the world's most important and wide spread employers. Almost 9% of world employment is comprised of Travel and Tourism and is growing at a current rate of 1 in 11.5 new jobs. There are governmental policies, legal aspects, laws, procedures and moral obligations that relate to the treatment of the disabled staff and disabled customers. Moreover, there are even broader opportunities that can be derived from an understanding of this subject since disability is one of the factors that may cause social exclusion and poverty. In 21<sup>st</sup> century, people with disabilities are still underestimated as employees, consumers and active participants in society.

The purpose of this chapter is to provide a basic introduction to the Equal Employment Opportunities requirements for the Disabled and the Human Rights of Disabled Guests in the Hospitality Industry.

### **INTRODUCTION**

In general terms a common definition of disability is “a physical or mental impairment which has a substantial and long term adverse effect on a person's ability to carry out normal day to day activities” (Stevens, 2002). The rights or distinction of the handicap was slow in being recognized as a need by many national governments, even though it started in the 1880s

when Germany instituted the first general disability program (Dixon and Hyde, 2000). It was over 50 years later (1935) before the United States began to recognize the needs of the disabled, even though they are now seen as championing the cause.

There are legal aspects that relate to the treatment of the disabled and there are even broader opportunities that can be derived from an understanding of this subject. Although, it is the responsibility of all national governments to care for the well being of their citizens, especially those disabled among their population, we might come across news such as “According to the Ministry of Labor Wednesday, companies paid more penalties last year than the previous year for failing to meet a 2-percent job quota for the disabled.” This for the most part comes from most company’s inability to meet the needs of the disabled employee in obtaining equal facility access. Disability remains to be a health issue, not a political concern (Ustun, et.al., 2001), even though in many instances it has been politicized.

Data on the extent of disability among country populations are difficult to compare internationally since different countries have different definitions of what constitutes a disability and the level of disability, as well as the different degrees of political willingness to publicize such information. However, in just a general sense it is estimated that disability affects 10 to 20 percent of every country's population. This in essence is a monumental sum which constitutes about 1.32 billions people when taken world-wide. Likewise, this is an untapped workforce and a largely untapped market.

Travel and Tourism, when taking into account transportation, accommodations, food services, recreational facilities and the related services forms one of the world’s most important and wide spread employers. Almost 9% of world employment is comprised of Travel and Tourism and is growing at a current rate of 1 in 11.5 new jobs. It is projected that by 2016 that there will be 279 million people employed in the Travel and Tourism Industry (World Travel and Tourism Council, 2006).

The purpose of this chapter is to provide a basic introduction to I) the Equal Employment Opportunities requirements for the Disabled and II) the Human Rights of Disabled Guests in the Hospitality Industry.

The prime topics to be covered are what constitutes a disability; the legal requirements when dealing with employment and accessibility; types of disability, the current status of disability employment issues in the Hospitality Industry; improvements need to be made; how to comply with these requirements and future opportunities when dealing with the disabled staff; hiring techniques; accessibility and accommodation; confidentiality; termination of the disabled; applications of Laws and Policies; examples of prohibited discrimination in the hospitality industry; examples of discriminative treatments in Hospitality Industry; reasonable and justifiable discrimination; how hospitality industry service providers can deal with human rights issues; and some examples of settlements.

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## **PART I: EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS FOR THE DISABLED**

### **What Constitutes a Disability?**

When considering equal opportunity and age, race, or gender, disability is a more complex concept to define or measure due to its dynamic nature. Many organizations, including the World Health Organization, the United Nations, and many national governments and many scholars provide differing and broad definitions, classifications, frameworks and models for what constitutes a disability. Mashaw and Reno (1996) assembled more than 20 different definitions of what constitutes a disability is. These definitions were for the purpose of entitlement based on public and private considerations, government services, or for statistical analysis. Definitions vary in terms of an individual's health and the socioeconomic environment conditions in which the individual finds themselves, thus making it difficult to measure the degree of disability in an objective and consistent manner (Burkhauser and Daly, 2002). Employment and access depends on the severity of the impairment, the availability of employment, the availability of accommodation, the individual's rehabilitation, the presence of legal supports or protections, and the accessibility and understanding of government programs and organizations.

The Americans Disability Act (ADA) (1990) (<http://www.usdoj.gov/crt/ada/adahom1.htm>) defines disability as “a physical or mental impairment that substantially limits one or more major life activity, possessing a record of such an impairment, or being regarded as having such an impairment.”

Yet another definition provided by Canadian Employment Equity Act (1995) (<http://laws.justice.gc.ca/en/E-5.401/index.html>) challenged the physical phenomenon of disability, but by suggesting that it is not only the disability, but the person who is considered as having a disability. They stated:

Persons with disability means persons who have a long-term or recurring physical, mental, sensory, psychiatric or learning impairment and who (a) consider themselves to be disadvantaged in employment by reason of that impairment, or (b) believe that an employer or potential employer is likely to consider them to be disadvantaged in employment by reason of that impairment, and includes persons whose functional limitations owing to their impairment have been accommodated in their current job or workplace (Canadian Human Rights Commission, 1995).

This in essence gave a broad form to the term “disability”. There can be definite disadvantages to having such an all encompassing definition in that it leaves the definition to the disabled themselves. The ADA definition is more in line with most country's definition of a disability. It would be wise to refer to the specific sanction which sets out what a specific country considers to constitute a disability.

## **Types of Disability**

Types of disability vary in both classification and degree, to which one is limited in the performance of the daily tasks. As the severity of ones affliction comes about, it can be presumed that the disability will also limit the ability to perform given tasks. They can fall into generally three types, physical, mental or physiological in nature. The following listing will give you an idea of what is considered and what is not considered as a disability. Disabilities are deafness, blindness, any permanent condition requiring the wheelchair use, mental illness, cancer, communication disorders, learning disabilities, recovering alcoholism, multiple sclerosis, epilepsy, diabetes, heart disease, AIDS, recovering drug abuse, back or spinal ailments and amputees. Questionable items that are not considered disabilities are kleptomania, transvestism, pyromania, pedophilia and homosexuality (Perry, 1994).

## **The Legal Requirements when Dealing with Employment and Accessibility**

In general terms most national equal opportunity laws prohibits discrimination against people with disabilities and guarantees equal opportunities for individuals with disabilities in employment, transportation, public accommodations, state and local government services, and telecommunications. This covers all employment-related activities, including job application procedures, hiring, pay, benefits, job training, firing, promotions, and other terms, conditions, and privileges of employment.

There have been different governmental regulations, policies, quotas, fines, political approaches, applications and public awareness to each country and even to different regions within countries. Basically, these sanctions have addressed minimum standards by which the disabled are employed and how public access to facilities are met. Following are some selected examples.

The Americans with Disabilities Act (ADA) (1990) (<http://www.eeoc.gov/types/ada.html>) prohibits discrimination against people with disabilities and guarantees equal opportunities for individuals with disabilities in employment, transportation, public accommodations, state and local government services, and telecommunications.

Title I: Employment (<http://www.eeoc.gov/policy/ada.html>) prohibits covered employers from discriminating against people with disabilities in all employment-related activities, including job application procedures, hiring, pay, benefits, job training, firing, promotions and other terms, conditions, and privileges of employment. Covered employers include private businesses, educational institutions, employment agencies, labor organizations, and state and local government entities with 15 or more employees.

In Canada, the Employment Equity Act (1995) (<http://laws.justice.gc.ca/en/E-5.401/index.html>) only applies to federal Crown corporations and federally regulated private-sector organizations with at least 100 employees and is often referred to as the equivalent of the USA affirmative action programs.

In European Union countries European Employment Strategy was introduced in the Amsterdam Treaty in Luxembourg (1997) (<http://www.eurotreaties.com/amsterdamtext.html>) to create a new policy based on four main pillars: employability, entrepreneurship, adaptability and equality of opportunity. Each year the Labor and Social Affairs Council adopt a set of guidelines which each Member State must implement under its yearly National

Action Plan (NAP). Special attention is paid in the NAPs to the situation of people with disabilities, ethnic minorities and other disadvantaged groups.

One aim is to develop appropriate forms of preventive and active policies to promote integration of the disabled into the labor market. There are benchmarks and indicators to determine how different strategies affect people with disabilities. It is important to have comparable statistics as the NAPs are also used to compare the employment strategies in the Member States. People with disabilities are of course included in all other target groups, young people, long-term unemployed adults, the elderly, etc.

When we consider the Hospitality Industry and the application of these definitions, the broader context becomes quite specific. We can apply it to the whole realm of those employed within the Industry. For instance, the front desk attendant may be limited to personnel that have good hearing and sight and, certainly, those without mental retardation, however, what about those that are confined to wheel chairs. Does the front desk physically limit the possibility of using these personnel? Can the physical plant (the actual hotel itself) limit the personnel? The answer is yes and what can be done to accommodate those confined to wheel chairs. We would conjecture that the front desk can be lowered to allow those in a wheel chair a suitable employee in such a situation. But, is this the responsibility of the hotel owner, certainly not, but were it undertaken, it would show affirmative action. We would conjecture that it is the moral responsibility to accommodate the disabled person.

### **The Current Status of Disability Employment Issues in the Hospitality Industry**

The European Year 2003 (<http://www.eypd2003.org/>) was run by people with disabilities. As many disabled people say, "Nothing about us without us". A recent European survey presents that there is a serious lack of understanding of what disability means and how many people it affects. Disabled people are often excluded from society through poor education and unemployment, leading to poverty. The European Year 2003 was about raising awareness of the rights of disabled people to full equality and participation in all areas.

When we examine the current facilities, based on hiring policy and the accommodation of the disabled employees we find that older hotels have done little to accommodate the disabled. Their facilities may be faced with a requirement for considerable financial investment in order to bring them up to a standard which would permit the inclusion of the disabled. Even the movement around such facilities may be limited. In essence, the hospitality industry has, so far, been a follower rather than a leader when compared to other industries. In newer facilities there has been an attempt at least alleviate movement throughout the building, however, the implementation of complete handicap requirements may or may not have been accomplished, such as wheelchair access ramps, automatic doors, braille code, handicap toilet fixtures, etc. A large number of hotel buildings are old and therefore provide little flexibility in making modifications for the accommodation of employees or guests with disabilities. Further, there is stigmatization with the hiring of the handicap in that the management personnel feel that it will make the guest feel uncomfortable being served by the disabled.

The Hospitality Industry could potentially address personnel shortages were they to broaden their search by changing "their recruitment practices and employ more disabled, ethnic minority, long-term unemployed and older workers." Likewise by doing so the costs of

recruiting new talented employees could be reduced. Some of the major hotel chains have started doing this worldwide and have seen good results. This relates to both the employees and the broader customer base. As an example Hilton, has undertaken a program of improved access for the disabled and also effectively recruits employees from a broader spectrum, (Caterer and Hotelkeeper, 2005).

It has also been pointed out that persons with disabilities represent an important under-utilized labor source for hotel organizations (S. Gröschl, 2004). They are termed to be loyal, hardworking, team players, more concentrated on their job and more apt to be service oriented. With these qualities they are in many ways the ideal workers, when compared to their non-handicapped co-workers. For what ever handicap they may possess, they make up for it in their attributes. They are “a reliable source of motivated labour,” (Weisberg, 2005).

It should be understood that not all facilities are required to meet handicap and disabled requirements. Further, the laws do not require that employers hire unqualified individuals. If there are two potential employees, one being handicapped and one able-bodied, the employer is not required to hire one over the other; however, by hiring the disabled, it will help the organization to meet mandated quotas. If the task required to be accomplished by the specific position is beyond the capability of the individual by the fact of the disability, then the employer is not required to hire the particular person. For instance if the position requires the potential employee to inter-react with the clientele and the disability of the person, makes communications impossible then they would be unsuitable for the position. Each position should be analyzed to assure that the needed skill set and skill level is well defined. From this definition, an analysis can be performed to determine whether any of the skill sets preclude particular disabilities from performing vital functions required of the position. Once a particular skill set is identified as being an exact requirement of a position, and then a further analysis can be performed to determine if a work-around is possible in order to accommodate a given set of handicaps. Given that there are means by which constraints can be overcome, then an assessment of the drawbacks from implementing one or more of the alternatives should be listed. By going through this brain-storming session, all possibilities should be listed. One never knows when the most ridiculous or outlandish idea actually brings about a creative idea that would otherwise have been overlooked. Especially during this exercise, the financial consequences should be factored-in. Under most disability laws, an individual with a disability must be qualified to perform a given task, meaning that they must meet the job requirements and perform the essential job related tasks with or without reasonable accommodations. In this regard what constitutes “reasonable accommodation”? There are certainly fine lines between some needs to receive accommodation. If, however, in the course of normal business, a company would be required to provide an accommodation to a customer or client then it only stands to reason that such an accommodation should be provided to disabled employees, i.e. wheel chair ramps, braille marking, automatic door openers, and handicap hardware. The laws do not require you to do anything that would in essence be dangerous or degrading to the individual, such as placing a blind person on a forklift or having an amputee as a doorman.

There are also the "Exclusions" and "Restrictions" in Restaurants and Other Food Service establishments under ADA. In order to protect the public from diseases transmissible through food the ADA provides a guide for Restaurants and other Food Service Employers regarding the issue of employee health for the ones working around food. There are the Big 4 pathogens (Salmonella Typhi, Shigella spp., Shiga toxin-producing Escherichia coli, Hepatitis A virus)

addressed by FDA Food Code. Those 4 pathogens and a list of infectious and communicable diseases are to be published by the Centers for Disease Control and Prevention (CDC). Symptoms of gastrointestinal illness such as diarrhea, vomiting and fever are also included in the FDA Food Code. Employers must follow the Restrictions and Exclusions in the document "How to comply with the Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers" ([http://www.eeoc.gov/facts/restaurant\\_guide.html](http://www.eeoc.gov/facts/restaurant_guide.html)).

Even the law establishes statutory limits on the application of the hiring quotas; especially small businesses may or may not have to comply with the disability laws. Businesses with less than a specified number of employees (in most instances 15) are not covered by the employment provisions. Again, even employers in many instances don't have to provide reasonable accommodation, if that accommodation would cause an employer "undue hardship." In this instance an "Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an organization's size, financial resources and the nature and structure of its operation."

## Hiring Techniques

The hiring and screening process for any entity (regardless of it being within the hotel industry or other industry) must take special steps to assure that it provides an equal employment opportunity to all applicants. It must also take affirmative actions to recruit from as broad a field as possible, thus assuring that it reaches out to as many groups, whether minority or disabled. In doing so, it will enhance its workforce and assure that by diversity it has in essence complied with the existing laws.

In order to do this, as stated above, the job description must be well defined and have been thought out to assure that there are no ambiguities within its definition and its explicit essential requirement. During the recruitment stage, this description should be set out to all of the applicants, in the same terms. The institution can not change the terms based on a case by case basis.

The ADA ([http://www.eeoc.gov/facts/restaurant\\_guide.html](http://www.eeoc.gov/facts/restaurant_guide.html)) lets the employer hire the most qualified person for the job, regardless of disability.

To be qualified, a person with a disability must:

- meet job-related requirements (such as having the required education, experience, skills or licenses) and
- be able to perform the job's "essential functions" (that is, the duties that are central to the job) with or without a reasonable accommodation.

During position interviews there must be distinctions between permissible and discriminatory questions. The interviewers must at all times be sensitive to questions which may be termed "disability related". These questions are those which specifically elicit information regarding a person's health or physical condition, which could be construed to eliminate them from being considered for a position. Questions should have many possible responses, not just responses which apply to a disability. It can at some times seem that the interviewer is walking a tightrope. It should further be noted that an organization can not even ask for a person to be subjected to a medical examination until after a conditional job offer

has been made to an applicant. After such an offer has been made, disability questions can be raised, however, it should be noted that at this point the employer has made a determination that the applicant will be able to fulfil the needs of the position. It is now up to the applicant to make his/her own assessment of being able to meet all of the needs of the position based on their own knowledge of their abilities, certainly taking into account any disabilities. Likewise beyond this point the employer may require a physical examination (provided that it is conducted for all applicants for such positions) and raise issues certainly regarding any potential impairment to performance. At all times medical information regarding either applicants or employees is of a private nature and of a confidential nature.

During any point within the interview the applicant may ask that reasonable accommodation be made by the employer in order that the applicant can perform the needs of the position. The employer may also after the offer has been made ask if the employee needs reasonable accommodation due to the fact that there is an (1) obvious disability, (2) the applicant has a latent condition which he has made the employer aware of and/or (3) the applicant has made a direct request for accommodation.

The employer needs to state specifically the attendance requirements that are expected for the position for which the applicant has applied. Then should the applicant states that he/she will need time off for medical reasons, the employer has the right to ask the nature of the reason for the person being off and their previous absenteeism from a previous job. You, however, cannot ask an applicant how many days an applicant was sick.

Other items which can be ask, that may or may not apply to a disability are the use of drugs, drinking habits (you, however, cannot imply that they suffer from alcoholism), criminal records and licenses and certifications. These subjects can be asked provided that they do not infer a disability.

When considering those subjects that are taboo, the interviewer cannot come straight out and ask whether an applicant is disabled or whether they require reasonable accommodation in order to fulfil the requirement of the position for which they have applied. Any question which is explicit and would require the applicant to state that they had a disability and thus prejudice their position in being equally employed.

You may not ask an applicant how many days they were sick or how many days of sick leave they took over the previous year. This in essence would point to the fact that they had a disability or chronic ailments and would thereby prejudice their selection, regardless of their ability to perform the works for which they are applying.

The interviewer should not ask whether the person is capable of performing normal day to day activities such as being able to walk or lift or even just standing. By doing so, again, this would prejudice against the applicant regarding his ability to perform the position for which they had applied. Likewise, the applicant cannot be asked regarding worker's compensation history, or social programs which they have drawn from. Nor may you ask the applicant any question regarding health related history of themselves or their family members, alive or deceased. They cannot be asked regarding any legal use of drugs or medication or treatments which they may have received. Questions of this nature would raise question as to ones potential for health impairment or disability which would also prejudice against the applicant being hired.

This line of questioning may not be pursued to third parties such as previous employers or references. Items which apply to health may only be undertaken as explained above. As a note of caution, it is also discrimination not to hire a person who has a disabled person in their

care (generally family) and the same line of questions which apply to those disabled apply. The hotel might think that by the fact that the applicant has a disabled person in their family they will have to have more time off for the care of such an individual. If the applicant meets all of the requirements set out to perform the job, then the mere fact of a disability can not be used as an excuse for not hiring that individual.

Again, it is vital that the institution set out a job description, which defines the essential needs of the specific job and set these out in writing. You should not list marginal or superficial needs in the job description. By over doing a description in this regard, many courts have found this a proof of bad-faith on the part of the employer (Perry, 1994).

## **Accessibility and Accommodation**

Why does the hospitality industry need to be concerned about accessibility? In essence, there are three prime reasons, that being (a) there is a moral obligation; civilized societies have an obligation to remove barriers which prevent disabled access if no more than the fact that it is the right thing to do, (b) the disabled employees and clients represent a considerable business potential (from the standpoint of good employees, but also that they wield a considerable financial spending power), and, lastly, as societies face their moral obligations, there will be laws to require the business entity to provide accessibility (Springer, 2001). It should also be noted that certain government agencies are now offering incentives for the hiring of the disabled, in that they will subsidized the purchase of certain equipment which enhance or make possible their performance. These incentives can take the form of direct grants or tax write-offs. It is no longer a burden in hiring the disabled. In fact there are more reasons for their inclusion in the work force than are draw backs.

By including the disabled, it builds up the individual's personal esteem, allows them to become more self-sufficient and provides them an environment by which they can succeed (NRN Editorial, 2006).

Accommodation addresses another aspect of the disabled person's dilemma in obtaining gainful employment. By providing a means to supplement or overcome or negate the disabled person's inability to meet a certain aspect of their handicap. Providing accommodations for people with disabilities is expensive. Statistics show that the majority of workers with disabilities do not need accommodations in order to perform their assigned jobs. The U.S. Department of Labor's Office of Disability Employment Policy, estimates that 66% of accommodations requires less than \$500. Many of the cases cost nothing at all, but are just a change in methodology.

Unqualified applicants are not being discriminated against under the disability laws if they are not hired, so long as they cannot perform the essential functions of the position for which they are applying, with or without reasonable accommodations.

## **Confidentiality**

When it comes to the privacy of conditions which relate to a persons disability, laws in general protect the rights of the disabled. In general terms, only supervisors and managers may be told about accommodations which are required in order for the employee to perform

his or her job. This includes any restrictions which apply to their work conditions and duties which they may not be able to perform. From the practical standpoint, certainly their fellow employees will become aware of the accommodations, but from the standpoint of the reasoning for the accommodation, that information is confidential and at the discretion of the disabled to share such information.

Likewise, first aid and safety staff members may be informed of any condition which might have to be taken into account in an emergency situation. They are as well restricted to share this information with any other individual, unless required to administer health care or removal from an emergency condition.

The hotel may be required to relinquish information regarding a person's disability to government officials who are dealing with compliance with meeting disability requirements. The hotel may also be required to provide information to government agencies that deal with worker's compensation and insurance carriers depending on governmental regulations. When dealing with this sort of matter it would be advisable to consult with the hotels law counsel.

The last consideration in regards to confidentiality is the storage of this sensitive data. Records regarding an employee's medical conditions cannot be maintained in the employees personnel file. Sick leave and requests for unspecified leaves are the exception to this case. They may be kept in personnel records. All other files, notes, doctor's reports, interview notes and medical leave requests must be kept separate in an area which has limited access to manger or above. They may not be introduced as grounds for dismissal once a person has been hired. They in essence are for information purposes only.

Many of the positions offered to the disabled, especially those with mental disabilities has been relegated to behind the scenes, such as in the kitchen, in the stock room or on the loading dock, never at the "Front of the House" (Steintrager, 2001). Given proper training and supervision, the disabled can be an asset in many positions that come in direct contact with the clientele. It is only now being implemented and given a chance, these employees appear to serve as dedicated hard workers. It is agreed that strong job coaches and employment specialists are needed assure the proper placement is achieved, but by following up on these new trends, both hotel and disabled persons benefit in a positive way.

## **Termination of the Disabled**

Termination of any employee is a difficult task and has to be performed under only the proper conditions. It should be noted that termination for lack of work, theft, conviction of an offence which reflects on the hotel and misconduct are all grounds for dismissal so long as they are being applied in a like manner through out the hotel. The termination may not be in any way related to the disability. However, this is not always the case, if for instance, the employee's disability poses a direct threat health and safety of either himself, or any other employee or guests, or to the workplace itself, then the hotel may find it necessary to discharge the disabled person. A disabled person may be terminated if after assuming a position it is determined that in fact they are unable to perform the essential requirements of the position for which they were hired, with or without a reasonable accommodation.

In the hospitality industry behaviour is of the utmost importance. Disability does not constitute an excuse for not performing a job's essential tasks and, likewise, conduct standards are required of all of the employees. Conduct standards are common among all

employees and the failure to abide by these requirements can be a reason for termination regardless of which employee violates these requirements. This includes getting along with fellow employees, guests and supervisors and this forms a part of a legitimate job requirement. Termination is appropriate so long as the standard is applied common throughout the organization.

## **PART II: DISABLED GUESTS IN HOSPITALITY INDUSTRY**

### **Challenges in 21st Century Hospitality**

With the 21<sup>ST</sup> Century just starting, there are many challenges. Some that can be met and some that are beyond our reach. In hotel management one such challenge is to make our facilities and our services all inclusive and accessible for ALL, including those of us with disabilities. "WHY"? Among various reasons, it is a moral obligation; secondly, it's governmental policy and, moreover, it's a legal requirement; but it makes good business sense to not turn away customers, regardless of them being able body or disabled.

It's makes for good business first of all because Tourism and Travel Industry itself is a big market, yet this is also a big portion of that market. According to World Travel and Tourism Council (WTTC) report (2006), worldwide in 2006, it is expected to post US \$6,477 billion of economic activity (Total Demand) and it is forecast to grow to US \$12,119 billion by 2016. Moreover, in 2006, the Travel and Tourism Industry should contribute 3.6% to worldwide GDP. The broader Travel and Tourism Economy should contribute 10.3% to world GDP in 2006. Lastly, Travel and Tourism is a high-growth industry, which is forecast to increase its total economic activity by 4.2% per annum worldwide in real terms over the next ten years. Secondly, because apart from the direct benefit of being able to cater to a large populous of disabled people, it should be remembered that if you fail to meet the needs of one disabled customer you are invariably also turning away the business of their family, friends and perhaps even their working colleagues. Prager, J. H. (1999) in his article in the Wall Street Journal call the disabilities as the "Next Consumer Niche".

Increasingly, consumers expect companies to have a deeper commitment to the disabled. Urban Miyares, the president of the San Diego-based Disabled Businesspersons Association stays at the Marriott Hotels chain "because they hire people with disabilities." The Marriott chain consistently supports the inclusion and employment of people with disabilities. Invariable, the Marriott Foundation for People with Disabilities a organization sponsored by Marriott promotes the employment of young people with disabilities. They point out that 87% of the students they've placed with over 900 employers have been offered continued employment, as stated by Mark Donovan, the executive director of the program (Digh, P, 1998).

When considering the reasons for making facilities accessible we should consider the reasons one by one. We may well find that we can not afford not to perform this exercise. Take the moral obligation; let's say that, barring the other reasons, that we don't have to look after our disabled. This is to say that we feel no empathy for the disabled. We all stand a one in five chance of becoming disabled in one way or another through out our life. This does not take into account disabilities which come about with old age. When factored in the odds are

considerable that you will experience an ailment that would place you into this category. For instance in the US the elderly comprise approximately 12% of the population, yet they make up 34% of the disabled and 43% of those have a serious disability. The disabled, likewise, carry major financial buying power. One quarter of the Americans over 50 years or older control one half of the US buying power and three-fourths of its assets. They also represent a major users of the hotels in the US. Many people in these groups are not tied to school holidays or weekends for their holiday-taking. They can easily alleviate the problem of seasonality in the tourism business, in that they can adjust their holidays accordingly.

This is, likewise, the same through out the world. For example, there are at least 8.5 million disabled people in the UK alone, with an annual spending power of over £40 billion. Of these, at least 2.5 million travel regularly, but twice that many do not travel because the facilities are available to accommodate them.

It is, therefore, in our own interest that all facilities be made accessible. One's age catches up with all individuals and this is a group which constitutes a market that cannot be ignored.

## **Applications of Laws and Policies**

Government policy and legal requirement go hand in hand in that Government policy eventually translates into law. The current trend of government tends to point to the fact that most countries will have a policy which protects the rights of the disabled. It can be envisioned that these policies will tend to be expanded to cover most aspects of the hotel industry. When policy becomes defined into law, then as a business entity, you will have no choice but to comply with the requirements. This is currently the case in most countries now involved with tourism. It therefore, behooves us as professionals to become familiar with the current requirements for accessibility and equal opportunity with regards to disability.

In most countries it is illegal to refuse to serve anyone on the basis that they are disabled or even appear to be disabled. Likewise, the service that the hotel provides must be of equal quality for the disabled when compared to that provided the non-disabled. There also cannot be a difference made in charges applied to the disabled versus the non-disabled guest.

The American Disability Act (ADA) which officially took effect in 1990 makes it unlawful to discriminate against the disabled by providing them any service of lesser standard than that of able-bodied people for any reasons that relates solely to their disability. Moreover, a service provider must undertake reasonable adjustments within their establishment in order to accommodate the disabled. This can take the form of either a facility change or a service rendered change.

The U.S. Department of Justice makes ADA materials and literature readily available and free of charge. The ADA Title III Technical Assistance Manual (1993) can be obtained at (<http://www.usdoj.gov/crt/ada/publicat.htm>) and includes all current requirements that cover Public Accommodations and Commercial Facilities. All operators are encouraged to acquire a copy of this manual for reference purposes, if nothing else.

According to this document in restaurants, especially those located in a hotel, all dining areas that is open to the general public must have five percent of their fixed tables (but not less than one) accessible to the disabled. The raised and sunken dining areas should be accessible, however, inaccessible mezzanines do not fall under this requirement under certain circumstances. There are specified requirements for counters and bars, access aisles, food

service lines, tableware and condiment areas, raised speaker's platforms, and even vending machine areas. The manual is a comprehensive guide for disabled accessibility.

When considering the total number of rooms that are set aside for the disabled and are fitted out accordingly, 4% of the first 100 rooms and approximately 2% of rooms in excess of 100 must be accessible to persons with mobility impairments. They also have requirements for persons with hearing impairments (i.e., contain visual alarms, visual notification devices, volume-control telephones, and an accessible electrical outlet for a text telephone). In hotels with more than 50 rooms, an additional 1% of the rooms must be accessible rooms equipped with roll-in showers. Moreover, additional rooms must be accessible to persons with hearing impairments in the same percentages as above (i.e., 4% of the first 100 rooms and approximately 2% of rooms in excess of 100). There are special provisions for other disability requirements and it is highly advised to review your regional requirements.

In essence all hotels and restaurants are required to provide auxiliary aids and services to disabled customers. They are also required to modify their policies, practices and procedures to accommodate the disabled. This includes the policy for treatment of the disabled. The disabled must have access equal to that of the non-disabled. Though not yet a requirement, it can be envisioned that in the near future auxiliary aids consisting of induction loop system on a television in a common lounges so that the hard of hearing guests will have access these shared televisions.

Auxiliary service can even take on the need to serve the wheel chaired person breakfast in the room, should they not be able to access common dining rooms, especially if they are not physically able to be accessed by the disabled.

It is the responsibility of the Hotel management to assure that their personnel are fully aware of the provisions of the particular national laws or codes that apply to their establishment. It is also the responsibility of the Hotel management to assure that the facility fully meets the requirements of accessibility of the disabled. As an example, most hotels have a "no dog" policy regardless of the situation. Those blind that rely on guide dogs for their mobility may well have to be accommodated in the future with rooms set aside solely for this purpose. The whole situation needs to be thought out, with all of the implications. It even brings up the cleaning up of rooms or special furnishing. It can be envisioned that the room could potentially be given to a person with asthma after a dog had been in the room and could have a reaction to the fact. Care and thought needs to be given to these matters.

This also leads into the fact that the blind tend to remember where they have placed their belongings. When housekeeping takes care of a room they tend to tidy the area. The service staff must be sensitive to the needs to place things back in the same position that they were found to assure that the blind person can find their possessions.

The passage of the ADA in 1990, outlawing discrimination against people with disabilities, was a turning point. Many companies became compliant quickly and reaped the benefits of hiring workers with disabilities which far outweighed the costs. Many of the participants such as Pizza Hut, Inc.'s Jobs Plus™ Program championed the hiring of people with mental disabilities. By doing so their turnover rate dropped to only 20%, as compared to 150% turnover rate among similar organizations that use only non-disabled employees. After Carolina Fine Snacks in Greensboro, NC, began hiring people with disabilities in 1988, absenteeism dropped from 20% to less than 5%, and tardiness dropped from 30% of staff to zero (Digh, P, 1998). These are impressive numbers and they are representative of those establishments which followed suite.

## **Examples of Prohibited Discrimination in the Hospitality Industry**

By far the most common violation of the ADA is the lack of physical access for the disabled. This applies to those people confined to wheelchairs, those with walkers and canes. A barrier-free design of new buildings is a requirement and is now enforced by permit departments through out many countries. Prior to the construction permit is issued the design must be reviewed and approved. Even during the construction building inspectors visit the premises to assure compliance. Many older structures remain less accessible for persons with mobility disabilities, but this does not deter the application of the ADA requirements. When a modification is made to the existing structure that requires a building code, the building code department may well place a requirement that certain aspects of the ADA be implemented in order to obtain the building permit. This could easily take the correction of the addition of a ramp to the building entrance, widening of entrances that are too narrow, the addition of doors that automatically open, lowering of counters that are too high, correction of seating to allow access for a wheelchair, and even the relocation of washrooms to a more accessible area. It behooves a hotel owner of an older structure to consider upgrading their facility before they are faced with a building department refusing to issue a building permit or at least including these upgrades during your next remodel.

Possible one of the disabilities that is least accommodated in the hospitality industry is that of the hearing impaired. It should be noted that even the background music of many establishments is too loud that it prevents the use of hearing aids. Likewise, when checking out of restaurants or the front desks of hotels the cash register does not have visual display which would permit the hearing impaired to see the amount of the check. Granted these are things that are not thought of, however, they present real problems for those that are faced with hearing disabilities.

Persons with a visual impairment often find their needs are not accommodated as well. This can take on such things as poorly lit signage, small or light printing on menus or in pamphlets that is difficult to read, even the absence of Braille or raised lettering on washroom doors and in elevators prove to be major impediments to the blind getting around within a building.. These are small things but are often encountered in the hospitality industry.

As mentioned above those People who depend upon the assistive of guide dogs to help with everyday activities find that some restaurant and hotel operators are reluctant to provide them with service. Common examples include being told that there are no tables or rooms available when in fact they are available, and being placed in an obscure seat or room when better ones are available and are being offered to the non-disabled.

## **What Are the Examples of Reasonable Adjustments?**

In essence the law dictates that the hotel service provider take reasonable steps to avoid physical barriers which do not afford the disabled access and use of the premises. This means that in new establishments, elevators for the upper levels are an absolute must. Other levels of the facility may be accessed by ramps of a specified incline. Further, a specified number of rooms are required to be fitted with handicap hardware, especially in the restrooms. Likewise,

public toilets must have at least one stall fitted for the disabled. Most recent laws expect the operator to make “reasonable adjustments” so that they meet the needs of the disabled.

When determining the extent of reasonable, there are a number of factors that must be taken into account. The organization itself must be the first determining factor and related generally to financial capabilities, human and physical resources, the structure of the organization (major hotel chain or small private owner). An international hotel chain is placed in a different category from small local hotel and, likewise, an even smaller motel, to even a bed and breakfast. The requirements are the same, but the application is different. This does in no way mean that small businesses are exempt from provision of the law. However, the law does recognize that different methods apply based on the size and type of business.

If in fact the hotel has thought out how they can offer the disabled a comparable service, that in essence provide a method acceptable to the disabled then, in very general terms, they have met the intent of the law. This is not to say that we can ignore specific provisions. In most instances it is far more cost effective to comply with the letter of the law and follow guide lines.

It is not the intent of this text to provide legal advice and the individual should, once in the sector, consult with the organizations legal counsel on a specific case by case basis. However, we should note that the interpretation of the word “reasonable” is a grey subject and is open to discussion. Hotels should be proactive in anticipating the needs of their guests, especially those that are disabled. It would be highly advisable to consider the requests of the disabled that are current guests, in that they may well mirror the needs of other future guests.

## **Examples of Discriminative Treatments in Hospitality Industry**

Despite the governmental policies, the laws, public awareness and moral obligations, unfortunately, there, still, are common discriminative treatments in hospitality industry. Following are some of the examples (Human Rights in the Hospitality Industry, 2006)

Refusing to rent hotel rooms based on a disabled characteristics: a hotel operator refuses to rent a room based on a person’s disability. Some examples of this discrimination are:

- refusing to rent a room based on the excuse that the hotel is fully occupied when in fact that it is not fully booked;
- requiring hotel guests to pay a higher deposit than other guests;
- quoting a higher room rate based on the fact of a guest’s disabled characteristics;

Requiring a guest to vacate a hotel room on the assumption that he or she was responsible for a disturbance in the hotel, solely based on his or her disabled characteristics;

Rejecting or offering an inferior level of service in restaurants based on mental or physical disability: The most common examples of such discriminatory treatment

- refusing to seat a customer with a mental or physical disability during busy periods of the day;

- asking a customer with mental or physical disabilities to leave the restaurant after spending a set period of time in the restaurant, while not making the same demand of other customers;
- asking a customer with mental or physical disabilities to make a minimum purchase, while not making the same demand of other customers;
- seating a customer with mental or physical disabilities at the back of the restaurant, next to the washrooms, when there is plenty of more desirable seating available.

## **Discrimination May Be Reasonable and Justifiable**

In some circumstances, discrimination is reasonable and justifiable. A service provider, for instance, may refuse to offer services to some people based on one or more disabled characteristics if that refusal is necessary for the provider to meet the objectives of its service.

- For example if a person is disrupting the quiet environment of a restaurant to the extent that other customers are being disturbed. However, the restaurant operator will need to show that the disabled customer was accommodated to equal extent until it became a situation that imposed an “undue hardship”. Your placement of the disabled person at first was among all customers thus not showing discrimination and then in order not to disturb a majority of the customers that were at the adjacent tables you moved the disabled person to a more isolated location (again this may in fact place the disabled at the back of the restaurant). You have made a reasonable attempt to accommodate the disabled.
- Just because other customer’s feel uncomfortable being around the disabled is not a sufficient reason for a restaurant operator to move or not seat a disabled person, this applies to all forms of disability. The mental disabled are protected from this form of discrimination. For example, it is not reasonable or justifiable to provide a different level of service to a person simply based on another customer’s comments or requests. Perhaps, it should be handled by inviting the customer expressing displeasure to take the obscure table.
- On the other side of the coin the service provider’s is required to ensure a safe environment for both employees and customers, to protect their establishment from damage. These obligations in the US are set out under the Gaming and Liquor Act (online at [www.qp.gov.ab.ca/documents/Acts/G01.cfm?frm\\_isbn=0779721373](http://www.qp.gov.ab.ca/documents/Acts/G01.cfm?frm_isbn=0779721373)). For example, refusing to serve customers who are intoxicated. This could be construed to discriminate against persons with disabilities related to alcohol, but it is reasonable and justifiable to refuse to serve the person for the protection as stated above.

## **How Hospitality Industry Service Providers Can Deal with Human Rights Issues**

The subject of dealing with the disabled is an inevitable reality, and regardless of ones feeling on the matter it is a subject that must be dealt with. As a manager in the hospitality

industry there are great opportunities for those that do face up to the responsibilities. Hospitality establishments are at the front line of organizations that can become discrimination-free. If the correct decisions are taken at this point in time you can be assured to reap the benefits in even the short term.

Here are some thoughts and strategies to be considered:

- Your customers, clients, and guests should be treated fairly regardless of their position in life. The misfortunes of life should not stand in the way of people striving for self respect.
- Don't make assumptions about the disabled's abilities or needs.
- Educate your staff regarding human rights legislation that prohibits discrimination and make them aware of their obligations.
- Promote organizational awareness of providing accessible services to all people regardless of their disabilities.
- Contact organizations dealing with the disabled in order to obtain help for in educational workshop or seminars on human rights in the hospitality industry. Assign a manager/staff member to be the contact for human rights issues.
- Perform a survey of your establishment to determine where it really stands for accessibility of the disabled.
- Identify policies which are in place that may restrict service.
- Interview and hire the disabled when they meet the needs of your establishment. Make accommodations which allow them to perform up to levels that are needed.

## **Augmented Case Law**

Human Rights Case Law is constantly evolving, based on cases that come before the courts and human rights tribunals. The following legal cases set important legal principles as well as standards for the hospitality industry in providing discrimination-free services.

For further information on this ever evolving subject we would advise reading some case studies. There is a wealth of knowledge on the internet but we would recommend you review the Freedom of Information/Privacy Act (FOIA) Branch of the Civil Rights Division, U.S. Department of Justice. They operate an electronic reading room which contains ADA documents that address recent court cases and settlements. Refer to the following: (<http://www.usdoj.gov/crt/ada/settlemt.htm#anchor502508>).

The following cases have been gleaned of the names of the complainant and the establishments for privacy, however, they come from are actual hearings and court cases.

### **Case 1**

A complaint was filed under title III of the Americans with Disabilities Act of 1990 ("ADA"), with the United States Department of Justice against a Restaurant Owner/Operator of a Restaurant in Virginia. The Department of Justice complaint alleged that on in 2003, a patron being led by a seeing eye dog was told to leave the Restaurant for no other reason than the fact that he had the dog. The court ruled that this was discriminatory under the Disabilities

Act and as such the Owner/Operator was directed to, “as soon as practicable, but in no event more than thirty days (30) from the effective date of the ruling and subsequent agreement, post the following notice, in minimum 24 font print or larger, in a conspicuous place in the Restaurant: “Individuals with disabilities and their service animals are welcome at the *Restaurant’s Name*.”

The Owner/Operator shall adopt and distribute to all Restaurant employees the Restaurant Policy Regarding Services Animals for Customers with Disabilities. The Owner/Operator shall train the Restaurant’s current employees as to their obligations under the ADA with respect to service animals so as to ensure that persons with disabilities accompanied by service animals have access to its Restaurant equal to persons without disabilities. Furthermore, during the life of the Agreement, employees hired by the Owner/Operator to work at the Restaurant shall be trained and informed of the Restaurant’s Service animal policy within 24 hours of hire. The Owner/Operator, within sixty (60) days of the effective date of this Agreement, shall submit a written report to the Department outlining its compliance.”

## **Case 2**

A very large motel owner/operator through out North America was charged with non-compliance with providing accessibility through out their facilities located in the US. They had not provided adequate number of rooms fitted for the disabled and had not properly trained their employees to deal with the disabled. In August, 2004 the court ruled in favor of the United States against the motel chain, that they had failed to comply with Title III of the ADA. As part of a settlement agreement the hotel chain was to provide it staff with ADA training, perform comprehensive ADA surveys of all of its facilities, and prepare detailed plans and cost estimates of what it would require to bring each of its facilities into compliance with ADA. Both the scope of performing this survey and the monetary requirements needed to perform the remedial actions were so great that the chain requested a time extension to perform the ADA upgrades. The court granted the extension.

## **Case 3**

A joint complaint was filed with the Department of Justice regarding a Missouri hotel alleging violation of Title III of the ADA multiple architectural barriers to the access of the hotel. Even the rooms that were designated for the disabled were not properly fitted to accommodate a person’s with disabilities. The court ruled in favor of the United States against the hotel and a settlement agreement. The hotel owner professed that he wished to be in full compliance with the ADA and therefore undertook a remodel of the hotel. It was agreed that the hotel owner would ensure that individual’s with disabilities, including those in wheelchairs, would have an opportunity to enjoy all of the amenities of the facility. He was required to provide a minimum of four fully accessible rooms and to modify signage in the hallways so as to designate sleeping rooms. This signage was to be in both raised letters and in Braille and be mounted at 60 inches above the floor level in compliance with ADA

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standards. In addition to the four fully fitted rooms, three other rooms were to be fitted for the hearing impaired.

#### **Case 4**

A group of disabled individuals who had formed an organization decided to have one of their social gatherings within a local inn for coffee before the regular meeting. Due to their disabilities the group was treated in a discriminatory manner and was asked by the waitress to leave the establishment. She went further by stating that the manager did not want retarded people in the inn. A complaint was filed with the the British Columbia Human Rights Board of Inquiry and a ruling was issued that the inn had in fact discriminated against the individuals in question. The inn had used the excuse that one of the individuals had acted intoxicated and therefore they were refused service. As it had turned out the man who had acted intoxicated had in fact suffered from polio from childhood and was unsteady on his feet. He had also had brain surgery which had given him a slurred speech. This had been explained to the waitress a number of times, yet she still refused service. The man in question likewise had a leg brace on which was visible. The ruling was given against the inn based on "Differential treatment of persons with mental disabilities is discriminatory." They further cited that the inn should have made reasonable decision as to the fact of intoxication, which it did not.

#### **Case 5**

A complaint was filed in the Human Rights Board of Inquiry regarding a discriminatory action of a restaurant to serve a woman who was required to inject herself with insulin in the abdomen before breakfast and dinner meals daily. Further she was required to eat within 30 minutes of this injection. While attending a dinner at the restaurant in question, she discreetly injected herself in the stomach and a waiter observed her performing the process. The waiter immediately informed her that it was a disgusting act and immediately reported the action to the manager, whereupon, both individuals informed her that the act was disgusting and they proceeded to ignore and not serve all individuals at the table. With the time limit on the effects of the shot the woman who had taken the insulin had no choice but to leave due to the effects that the insulin might have on her.

The court did find in her favor and ruled that the restaurant had been differential in its treatment of the woman based on a physical disability and that this was discriminatory.

#### **Case 6**

A man who was blind and did use a guide dog was refused entry into a restaurant Manitoba Province of Canada and filed a complaint with the Manitoba Court of Queen's Bench. The complaint alleged that upon entering the restaurant, the owner stopped him and stated that he would have to leave his dog outside the premises, to which he refused. The owner then stated that he would have to prove that he was legally blind, to which the man was

insulted and left the premises. The court found in favor of the blind man citing that he had the right to have his dog with him at all times out of necessity. They declared that the restaurant was discriminatory and that the owner had no reasonable basis for refusing the blind man service. A visually impaired person has the right to accommodation when requiring the entrance into a restaurant with his guide dog.

## CONCLUSION

It has been said that the future will judge us by the way that we treat those of us who are least able to take care of themselves. This applies to our disabled. They are one of us, and as such, deserve all of the same rights and opportunities to enjoy life, be productive and have self respect. As stated earlier, the possibilities of becoming disabled are very high, certainly higher than winning the lottery. It behooves us to bring the hospitality industry to the highest level of providing employment and services to the disabled. We will be judged on how we meet this challenge and we will be rewarded in many ways by meeting the needs of our disabled.

In these competitive environment it is essential for the hotel industry and each individual establishment within it to analyze their competitive advantage and enhance what ever it is that they have to sell at a premium. These advantages can be “things such as the physical attributes of our properties, their locations, the wide variety of features offered and their rates” (Frietag, 2005). We tend to fail to look at our staff and place the importance on their ability to enhance these advantages (Collins, 2007). With the figures quoted above regarding staff retention, absenteeism and timeliness, as well as the enthusiasm displayed by the disabled, certainly this is an untapped resource. Further, given the purchasing power of the disabled, in many instances just waiting for the facility that provides accessibility and respect, how can we not overlook this untapped market?

It only makes sense that with the reams of new laws that encourage the industry to bring about change, how establishments can postpone compliance. How can the industry not take on a proactive role in meeting these challenges, both at home and on an international basis? In the US during FY 2006 alone there were over 15,000 court cases which resulted in almost \$50 million of fines and settlements made in favor of the disabled (<http://www.eeoc.gov/stats/ada.html>). Again in the US, there are tax incentives for those companies that want to bring their facility in compliance with their ADA and EEO provision and yet there would still be this many cases and charges paid out.

The hotel industry has not even begins to tap the human resources available, nor have they made the provisions which would allow them to market their facilities to these forgotten customers. I do not see how a business that is now expanding at an unprecedented rate can afford not to reach out for the golden band that is offered by hiring the disabled and luring them to their facilities to equal services. The choice rests with each hotel manager and owner. I am certain that the right decision will be made that bests meets the need of the organization.

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- <http://www.eurotreaties.com/amsterdamtext.html> The Treaty of Amsterdam
- [http://www.eeoc.gov/facts/restaurant\\_guide.html](http://www.eeoc.gov/facts/restaurant_guide.html) How to comply with the Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers
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- <http://www.eypd2003.org/> The official website of the European Year of People with Disabilities.
- ([http://www.albertahumanrights.ab.ca/publications/Bull\\_hospitality.pdf](http://www.albertahumanrights.ab.ca/publications/Bull_hospitality.pdf) Case law
- <http://www.usdoj.gov/crt/ada/stdspdf.htm> U.S. Department of Justice ADA Standards for Accessible Design
- <http://www.usdoj.gov/crt/ada/adahom1.htm> ADA Home page

<http://www.usdoj.gov/crt/ada/publicat.htm#Anchor-14210> ADA Regulations and Technical Assistance Materials

<http://www.opsi.gov.uk/acts/acts1995/1995050.htm> DDA Disability Discrimination Act 1995 (c. 50) 1995 Chapter 50

<http://www.opsi.gov.uk/acts/acts1995/95050--c.htm#19> DDA Discrimination in other areas, goods, facilities and services

[http://www.albertahumanrights.ab.ca/publications/Bull\\_hospitality.pdf](http://www.albertahumanrights.ab.ca/publications/Bull_hospitality.pdf) Alberta Human Rights and Citizenship Commission, Human Rights in the Hospitality Industry