

## ABSTRACT

Title of Dissertation:       DISCRIMINATORY PRACTICES CHARGED UNDER  
  EEOC: AN EMPIRICAL ANALYSIS OF INVESTIGATED  
  COMPLAINTS FILED BY THOSE WHO HAVE CANCER

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Previously unexplored data from the Equal Employment Opportunity Commission (EEOC) Integrated Mission System database is analyzed with specific reference to allegations filed by individuals with cancer of workplace discrimination under ADA Title I between July 27, 1992 and September 30, 2003. These allegations are compared to those from a general disability population on key dimensions of workplace discrimination—specifically, demographic characteristics of the charging parties, the industry designation, location, and region site of employers against whom complaints are filed, types of alleged adverse actions and resolution of these complaints.

Study results showed allegations derived from charging parties with cancer are more likely than those from the general disability population studied to involve issues of discharge, terms and conditions of employment, lay-offs, wages and terms conditions of employment and demotion. Compared to the general disability group, charging parties

with cancer were more likely to be female, approximately 47 years of age and Caucasian. Allegations derived from charging parties with cancer were also more likely to be filed against smaller employers (15-100 workers) or those in the service industries compared to those from the general disability population. Claims filed by those with cancer were likely to be found to have merit more than those filed from the general disability population. Implications for rehabilitation counselor education are addressed and recommendations for further research are provided.

DISCRIMINATORY PRACTICES CHARGED UNDER EEOC:  
AN EMPIRICAL ANALYSIS OF INVESTIGATED COMPLAINTS  
FILED BY THOSE WHO HAVE CANCER

by

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## DEDICATION

This dissertation is dedicated to my son, Hyatt Mason McKenna

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## CHAPTER I: INTRODUCTION

### Statement of the Problem

This is part of a nationwide study analyzing the database of investigated claims filed under ADA Title I. The database was provided by the federal Equal Employment Opportunity Commission (EEOC) through an agreement with the Virginia Commonwealth University. It was a first time study where the compiled EEOC database was being analyzed. The EEOC's Integrated Mission System (IMS) database provides information about the type of alleged discrimination, the region of the United States where the claim was filed, the nature of the industry against whom the claim was filed, and the outcome of the case. Individual demographic information of the charging party is entered into the database at the time of intake by the EEOC claims examiner. An individual may make multiple claims at the same time or over a period of time under the ADA Title I. The EEOC IMS data contains information about claims filed and not about each complainant's charge data history.

The nationwide study includes participating researchers from across the United States. At the time of this writing, one study focusing on employees with diabetes has been completed and was under review for publication (McMahon, West, & Mansouri, 2005).

The goal of this nationwide research effort was to increase understanding of the impact of ADA Title I as shown in the claims resolution process implemented by the EEOC from 1992 through 2003 (11.2 years). This study focused on the claims filed

against employers by individuals with cancer . Comparison was made between the general disability population and the cancer population.

According to Kraus, Stoddard, and Gilmartin (1996), 30.4% (5.2 million) people with disabilities are in the labor force. The unemployment rate among those with disabilities in the labor force is 12.3%. The unemployment rate for those without a work disability in the workforce is only 4.8%. Estimates are that 16.2 million working age people have a work limitation (10.5 % of the population 18-64 years of age). Kraus et al. (1996) reported that the highest percentage of 15 chronic health conditions that caused activity limitations in the year 1991 were malignant neoplasms. Astoundingly, the same report indicated cancer or malignancy *was not* noted as one of the major disabling conditions of *rehabilitated* state vocational rehabilitation (VR) program clients, although cancer was cited as the 9th largest reason for limitations in the work activity of the clients who receive services from state VR agencies. This indicates that people with cancer who access state vocational rehabilitation programs are having difficulty attaining and maintaining employment. Further, the rate of unemployment for those with disabilities may be increasing from the 1996 12.2% reported rate (National Organization on Disability (NOD), 2004). For example, a Harris Poll taken in the year 2000 showed only 35% of people with disabilities aged 18-64 reported being employed full or part-time compared to 78% of those who did not have disabilities (NOD, 2004). While the NOD is referring to general disabilities, those with cancer are also included in this population.

Although data indicate high unemployment rates of people with general disabilities, studies from the American Cancer Society (2003) show that approximately 3.92 million (40%) people out of 9.8 million people with disabilities who are cancer

survivors below the age of 65 are contributing to the workforce (CancerControl, 2004). This increase in numbers may in part be due to early detection and treatment. More people are surviving cancer and more people are surviving cancer for longer periods of time post-diagnosis. Longer survival rates for people with cancer have contributed to increased social and economic costs of the disease. Economically, the National Institute of Health (NIH) estimated overall costs for cancer in the year 2002 at \$171.6 billion: \$60.9 billion for direct medical costs (total of all health expenditures); \$14.5 billion for indirect morbidity costs (cost of lost productivity due to illness); and \$95.2 billion for indirect mortality costs (cost of lost productivity due to premature death) (American Cancer Society, 2003).

Approximately 14% of the 9.8 million estimated cancer survivors were diagnosed over 20 years ago (CancerControl, 2004). Individuals with a history of cancer are surviving and thus could possibly be pursuing employment long after their initial diagnosis of cancer. While more cancer survivors are working, studies indicate that they may experience workplace discrimination and face barriers in entering or re-entering the workforce. For example, two to three percent of the charges filed and resolved under ADA have been related to individuals with cancer (Zamuda, 2000). Of note, the first employment discrimination claim filed under the Americans with Disabilities Act to reach a jury was brought by a cancer survivor in 1993. Charles Wessel was fired by a security investigations company, where he was an executive director, because his lung cancer had spread to his brain. He was ultimately awarded \$50,000 in compensable damages (one year's salary) and \$150,000 in punitive damages. The District Court for the Northern District of Illinois found that punitive damages were appropriate because

Wessel's employer intentionally fired an excellent worker because he was dying (Hoffman, 1996).

Workplace discrimination has continued to be a major concern of cancer survivors and cancer advocacy groups. This concern is evidenced by the study initiated by *Working Woman Magazine* (2004) and AMGEN, a bio-technology company which produces pharmaceuticals, including pharmaceutical interventions which target cancer. They conducted a random telephone survey of 500 cancer survivors employed at the time of their treatment, 100 supervisors and 100 co-workers in May of 1996. Findings showed that women with breast cancer experienced job discrimination despite the legal protections offered by the ADA and the Family and Medical Leave Act (P.L. 103-2). Results also indicated that workers with cancer reported being fired or laid-off at five times the rate of other workers in the United States. Thirty-one percent of supervisors felt that the employee needed to be replaced. Sixteen percent of employees with cancer had a family member lose their job due to absence to care for the survivor. Fourteen percent of cancer survivors responding to the survey reported their work responsibilities were decreased as a result of their diagnosis.

#### Need for the Study

Counselor educators are tasked to prepare rehabilitation counseling students with tools to help empower practicing rehabilitation counselors to understand the medical and psychosocial aspects of disability as well as to be aware of how the public vocational rehabilitation (VR) service system can assist people with disabilities, such as cancer, to return or remain at work (Eisenberg, Glueckauf, & Zaretsky, 1999). Watson (1990)

studied a database of over 400 AT&T employees who in 1987 had been diagnosed with cancer and whose cases were followed for two years. The purpose of this research was to identify groups who had more difficulty reporting to work and who needed additional assistance. Although vocational rehabilitation was not the focus of Watson's study, she found that respondents reported concerns regarding the problem of poor responsiveness and little initiative on the part of vocational rehabilitation agencies in meeting the needs of individuals with a history of cancer. Brown and Ming (1992) indicated that misconceptions and misinformation had greatly contributed to low utilization of the vocational rehabilitation service system by people with cancer.

While medical and psychosocial aspects of having cancer have been explored (Eisenberg et al., 1999), there is little research in the rehabilitation counseling literature that looks specifically at the population of those individuals who have formally filed a complaint with the Equal Employment Opportunity Commission, secondary to a diagnosis of cancer, under Title 1 of ADA (McMahon, Shaw, & Jaet, 1995).

#### Purpose of the Study

The purpose of this archival study was to provide meaningful information in regard to the work discrimination experienced by Americans with a history of cancer as compared to those experiencing other forms of disability. This was accomplished by studying data from the comprehensive EEOC databases of investigated complaints arising from Title 1 of the ADA from July 26, 1992 through September 30, 2003. There was lack of research on strategies to assist qualified persons with obvious, hidden, or perceived disabilities who were entering the workforce (Blanck & Marti, 1997). It was

expected that results of this study could help rehabilitation counselors by providing a more specific understanding of the employment discrimination barriers the cancer population they serve might encounter. Perhaps this understanding could lead to increased responsiveness as well as more successful vocational rehabilitation interventions for those individuals.

It was expected that this study could provide important insights into the nature and scope of employment discrimination against Americans with cancer. Knowledge of the employment discrimination experiences of this population could possibly facilitate more meaningful strategies for the prevention and timely resolution of discriminatory activity as well as better training for counselors who work with those with cancer. For instance, if it is learned that discrimination is more prevalent in service industries (as opposed to manufacturing or others), then industry specific training of rehabilitation counselors and employers of individuals with a history of cancer could ensue to minimize the risks. If persons with cancer prevail more often in the complaint resolution process with one type of discrimination (e.g. harassment) over others (e.g. wages), then additional research can be conducted to discover the reasons for this occurrence.

### Significance of the Study

The study is of potential importance to rehabilitation professionals who are assisting individuals with cancer with their entrance, maintenance or reentry into the workforce. The analysis of this data is expected to provide recommendations for further research and curriculum development in the field of rehabilitation counseling. For instance, courses which teach the rehabilitation counseling trainee job placement

interventions for people with disabilities can incorporate the findings of this study. This will serve to increase understanding of the employment barriers of those with a history of cancer. This information could be helpful to students studying the medical aspects of disability or the civil rights legislation borne out of rehabilitation as a social movement.

The EEOC also hopes to benefit from this study, which is why it allowed the high level of access to the databases. The EEOC is committed to providing training and technical assistance, outreach and education programs to assist stakeholders with their prevention efforts. EEOC provides publications, information materials, speakers, interactive workshops, small business liaison services, and specialized training on a wide-range of ADA topics. Because the EEOC is a law enforcement agency, it has neither the budget nor the capabilities to conduct research, as was done in this study. Findings from this study could contribute to EEOC training materials with a new level of specificity and relevance for specific industries and consumer groups, such as the American Cancer Society.

To date, the EEOC has received and resolved approximately 328,738 complaints of job discrimination involving the Employment Provisions of the Americans with Disabilities Act in the 11.2 years covered in this study. Of these, 6,812, approximately 2%, were filed by Americans with cancer. Access and analysis of the outcomes of the EEOC complaints could enlighten those in the rehabilitation counseling profession on varying types of alleged discriminatory practices. This information could help empower the rehabilitation counselor to educate both the employer and the employee with cancer on the rights and responsibilities of employees under the ADA. Education about discriminatory practices could enhance the positive employment experiences of those

with cancer. It may also improve employer awareness of the need to accommodate an employee with cancer.

This study examined data of complaints filed with EEOC, under ADA Title I by those with cancer and those from the general disability population. Specifically, it examined the nature of the discriminatory act, the demographic characteristics of the charging party, the type of allegations, and the region, employer size, and specific industry against which the allegations were filed. It also examined the outcomes of the claims filed; whether they were found to be with merit or without merit under Title 1 of the ADA. These key dimensions were compared with those from the general disability population.

#### An Overview of the EEOC Claims Process

Filing a charge of discrimination under ADA Title I entails following procedures outlined by the EEOC (Federal Laws, 2004). Any individual who believes that his or her employment rights have been violated may file a charge of discrimination under EEOC. In addition, an individual, organization, or agency may file a charge on behalf of another person.

A charge may be filed by mail or in person at the nearest EEOC office (Federal Laws, 2004). To identify a local EEOC office, a complainant may contact the EEOC's toll free number (1 800 669 4000 or 1 800 669 6820 TTY). The EEOC representative will also explain the complaint process to the caller. EEOC also has a website at <http://www.eeoc.gov> which provides the appropriate forms and information needed to file a claim.

Filing a complaint includes sharing information about the party's name, address and telephone number; the name, address and telephone number of the employer, employment agency, or union that is alleged to have discriminated, and number of employees (or union members), if known; a short description of the alleged violation or event that caused the complaining party to believe his or her rights were violated and the date(s) of the alleged violation (Federal Laws, 2004).

Before a private lawsuit can be filed in court, it is required that charges be filed with EEOC. A charge must be filed with EEOC within 180 days from the date of the alleged violation in order to protect the charging party's rights. This 180-day filing deadline is extended to 300 days if the charge also is covered by a state or local anti-discrimination law (Federal Laws, 2004).

EEOC notifies the employer that a charge has been filed. There are several different ways in which the charges can be handled. A charge may be assigned for priority investigation if the initial facts appear to support a violation of law. When the evidence is weaker, the charge may be assigned for follow up investigation to determine whether it is likely that a violation has occurred. EEOC can seek to settle a charge at any stage of the investigation if the charging party and the employer express an interest in doing so. If settlement efforts are not successful, the investigation continues. In investigation of a charge, EEOC may make written requests for information, interview people, review documents, and, as needed, visit the facility where the alleged discrimination occurred. When the investigation is complete, EEOC discusses the evidence with the charging party or employer, as appropriate. The charge may be selected for EEOC's mediation program if both the charging party and the employer express an

interest in this option. Mediation is offered as an alternative to a lengthy investigation. Participation in a mediation program is confidential, voluntary, and requires consent from both charging party and employer. If mediation is unsuccessful, the charge is returned for investigation. A charge may be dismissed at any point if, in the agency's best judgment, further investigation does not establish a violation of the law. A charge may be dismissed at the time it is filed if an initial in-depth interview does not produce evidence to support the claim. When a charge is dismissed, a notice is issued in accordance with the law which gives the charging party 90 days in which to file a lawsuit on his or her own behalf (Federal Laws, 2004).

EEOC has procedures for resolving cases. If the evidence obtained in an investigation does not establish that discrimination occurred, this will be explained to the charging party. A required notice is then issued, closing the case and giving the charging party 90 days in which to file a lawsuit on his or her behalf. If the evidence establishes that the discrimination occurred, the employer and the charging party will be informed of this in a letter of determination that explains the finding. EEOC will then attempt conciliation with the employer to develop a remedy for discrimination. If the case is successfully conciliated, or if a case has earlier been successfully mediated or settled, neither EEOC nor the charging party may go to court unless the conciliation, mediation, or settlement agreement is not honored. If EEOC is unable to successfully conciliate the case, the agency will decide whether to bring suit in federal court. If EEOC decides not to sue, it will issue a notice closing the case and giving the charging party 90 days in which to file a lawsuit on his or her own behalf (Federal Laws, 2004).

EEOC provides several remedies available when employment discrimination is caused by intentional acts or by practices that have a discriminatory effect. These remedies may include the following: (a) back pay, (b) hiring, (c) promotion, (d) reinstatement, (f) front pay, (g) reasonable accommodation, (h) other actions which will make the individual “whole,” (i) payment of attorney fees, (j) expert witness fees, (k) court costs, and finally, (l) compensatory and punitive damages also may be available where intentional discrimination is found. Damages may be available to compensate for actual monetary losses, for future monetary losses, and for mental anguish and inconvenience. Punitive damages may also be available if an employer acted with malice or reckless indifference. In cases of reasonable accommodation under the ADA, compensatory damages may not be awarded to the charging party if an employer can demonstrate that “good faith” efforts were made to provide reasonable accommodation. The employer may be required to take corrective or preventive actions to cure the source of the identified discrimination and minimize the chance of its recurrence as well as discontinue the specific discriminatory practices involved in the case. `

### Research Questions and Hypotheses

The following questions guided this study:

*Research Question 1.* Are EEOC charges filed by complainants with cancer under ADA Title I found to merit significantly more than EEOC complaints filed by the general disability population under ADA Title I?

*Research Hypothesis 1.* There is no difference in regard to how many complaints are found to be with merit vs. non-merit between complaints filed by complainants with cancer and those filed complaints by the general disability population.

*Research Question 2.* Does the nature of the adverse employment action claims filed with EEOC by individuals with cancer differ from those with other disabilities?

*Research Hypothesis 2.* There is no difference in patterns of employment discrimination among EEOC complainants with cancer as opposed to claimants with other disabilities.

*Research Question 3.* Does adverse employment actions filed as complaints with EEOC differ as a function of age, ethnicity, and gender for those complainants with cancer versus those from the general disability population?

*Research Hypothesis 3.* There is no difference in patterns of employment discrimination complaints among complaints filed with EEOC with respect to age, sex, and ethnicity between complainants with cancer and those with other disabilities.

*Research Question 4.* Do adverse employment actions differ for complainants with cancer as a function of the employer's industry, size, and region of operation?

*Research Hypothesis 4.* There is no difference in patterns of employment discrimination between those with cancer and those from the general disability population with respect to the industry, size, or location of employer.

## Limitations of the Study

One of the limitations was that the data used for this study was based on per charge or allegation and not per individual. Since a single individual could file multiple complaints with the EEOC over a period of time, it would not have been feasible to individually count the charging party's demographic characteristics, pattern of complaints, and duration of alleged discrimination.

Another limitation was that there was no way of knowing the exact number of employees with cancer who may have had adverse employment experiences during the time frame of this study. This study only included resolved cases of those who had taken steps to file a claim with EEOC, under ADA Title I.

## Definition of Terms

*Investigated complaints.* In this study, investigated complaints refer to charges which have been filed and have proceeded through the decision-making procedures established for EEOC in order to determine if a claim filed has merit or not, and what steps towards resolution, in any, are appropriate.

*Charging party (CP).* Complainant with cancer or general disability who has filed a claim with EEOC, under ADA Title I.

*Complainants with cancer.* Represents 6,812 EEOC charges filed under ADA Title I by those with a reported malignancy.

*Equal Employment Opportunity Commission (EEOC).* EEOC is an independent federal agency created by Congress to enforce, educate, and provide technical assistance

regarding all federal laws prohibiting job discrimination, including the Americans with Disabilities Act, Title 1.

*General disability population.* Represents 174,610 EEOC charges, under ADA Title I filed by those with a known sensory, physical, or neurological impairment.

*Integrated Mission System (IMS).* EEOC Charge Data is located in the Integrated Mission System database compiled by the EEOC. The database includes information about the claims filed and investigated (processed) through the EEOC. In this study, the database consisted of investigated claims filed with EEOC under ADA Title I.

*Responding party.* Employer who is responding to a filed EEOC claim, alleging employer discrimination, under ADA Title I.

## CHAPTER II: LITERATURE REVIEW

The chapter will review the history of the American with Disabilities Act (ADA) and provide a brief overview of other federal legislation which impacts the employment of those with cancer. The role of EEOC in supporting the ADA will be reviewed. This will be followed by a review of the literature surrounding the experiences of employees with cancer and models of discrimination.

### Overview of the Americans with Disabilities Act

The Americans with Disabilities Act of 1990 (ADA; P.L. 101-336) is the most comprehensive civil rights legislation passed for individuals with disabilities (Adams, 1991). The ADA is designed to end discrimination against people with disabilities in employment, public transportation, public accommodations, and telecommunications (Rains, 1992). As indicated in Table 1, The ADA prohibits discrimination against qualified individuals with disabilities in all aspects of employment (e.g., application, hiring, advancement, discharge, compensation, training, etc.) [ADA, Sec. 102(a)]. The ADA prohibits some types of job discrimination by private employers, employment agencies, and labor unions, state and local governments, and the legislative branch of the federal government. Employers with 15 or more employees are covered under ADA.

Prior to the passage of ADA in 1990, the Rehabilitation Act of 1973 was the only federal law covering discrimination against individuals with disabilities. The Congressional Committee on Labor and Human Resources in its report to the Senate in 1989 regarding the need for a broader civil rights law for people with disabilities concluded that there was a compelling need to establish a federal prohibition on

Table 1

*ADA, P.L. 101-336: A Brief Overview*

ADA Title	Purpose
Employment (Title I)	Prohibits employment discrimination against qualified individuals with disabilities in all aspects of the employment process (recruitment, selection, hiring, training, promoting); Mandates employers to provide reasonable accommodations to enable qualified individuals with disabilities to access all aspects of employment.
Public Service (Title II)	Public services, which include state and local government, cannot deny services to, and must provide access to people with disabilities
Public Accommodations (Title III)	Mandates accessibility when “readily achievable” in public accommodations, including private transportation systems.
Telecommunications (Title IV)	Telecommunications companies offering telephone services to the general public must have telephone relay service.
Miscellaneous (Title V)	Prohibits coercing, threatening or retaliating against the disabled or those attempting to aid people with disabilities in asserting their rights under ADA.

discrimination against people with disabilities in America. The Committee concluded that federal and state laws in existence in 1989 were inadequate to address the discrimination faced by people with disabilities in such a critical area as employment in the private sector. The Governor’s Committee was in agreement (Gibson, 1998).

Prior to the 1980s, there was evidence of a movement toward improving public policy for people with disabilities in the United States (Silverstein, 2000). The Rehabilitation Act of 1973 was significant for defining a disability as including those individuals with a history of a medical impairment, such as cancer. This Act (Public Law 93-112) was the first to provide protection against disability discrimination. The Rehabilitation Act prohibits public employers and private employers that receive more than \$2,500 annually from the federal government from disability-based employment discrimination (Section 504, 29 U.S.C., Section 794). These types of employers include public schools, hospitals, federal contractors, and state and local governments. This law protected people with disabilities, as defined under the law, including cancer survivors, in hiring practices, promotions, transfers, and layoffs.

As stated, the Rehabilitation Act of 1973 only addressed discrimination by federal agencies and entities who were recipients of federal assistance (Gibson, 1998). Employers in the private sector, places of public accommodation, or state and local government agencies that did not accept federal assistance were not included under federal mandates until the advent of the ADA in 1990.

Disability advocates commenced to resolve the disparity between the disability discrimination legislation governing the private sector and those governing the public sector. The ADA was drafted and was eventually passed in to law in July of 1990, with an implementation date of July 26, 1992. Many of the provisions of the ADA were lifted directly from Section 504 of the Rehabilitation Act of 1973.

## ADA Title I and Individuals with Cancer

The present study focuses on Title 1 of the ADA. Title 1 of the ADA prohibits employers from discriminating “against a qualified individual with a disability because of the disability of such individual” in regard to terms and conditions of employment, including hiring, termination or promotion.

In the ADA, the term “disability” replaces the term “handicapped” used in the Rehabilitation Act of 1973. The ADA definition is three-pronged. An individual with a disability is anyone who has “a physical or mental impairment that substantially limits one or more of the life activities of such individual” (first prong); “record of such an impairment” (second prong); or as “being regarded as having such an impairment” (third prong) (EEOC, 1992, page II-2). The ADA prohibits discrimination against individuals with a “disability,” a “record of a disability,” or those who are “regarded as having a disability.”

To qualify as a disability covered by ADA, an impairment must substantially limit a major life activity (EEOC, 1992). Major life activities include walking, speaking, seeing, hearing, breathing, learning, performing manual tasks, caring for oneself, and working. From the time of diagnosis, most of those with cancer fall into the parameters of at least one of the three-pronged descriptions which define disability under the ADA. (Hoffman, 2000). While the ADA does not specifically mention cancer survivors, past legal rulings have effectively granted them equal protection under the legislation. All employees with cancer, whether the employee is cured, in remission, or is not responding

to treatment is potentially considered to have a “disability” under the ADA (Hoffman, 1996).

The ADA prohibits discrimination to almost all job-related activities, including, but not limited to:

- not hiring an applicant for a job or training program;
- firing a worker;
- providing unequal pay, working conditions, or benefits, such as pension, vacation time, and health insurance;
- punishing an employee for filing a discrimination complaint; or
- screening out employees with disabilities.

In addition, employers may not discriminate against workers because of their relationship or association with a person with a disability.

Despite this mandate, and the subsequent court rulings, some EEOC charges that have been referred to courts to settle disputes have ruled that cancer survivors do not have a disability as defined by ADA. In some of these cases, for example, *Ellison v. Software Spectrum* (5<sup>th</sup> cr. 1996), *Madjlessi v. Macy's West, Inc.*, 993, F. Supp. 736 (N.D. AAL 1997) (Hoffman, 2000) courts have ruled that cancer survivors are unqualified (for protections under Title 1) because these individuals were capable of working during or after treatment; thereby nullifying the requirement of having an “impairment that substantially limits major life activity.” Paradoxically, if the cancer survivor is too ill to work, some courts have found these individuals not qualified for protections under ADA

because they cannot perform the essential functions of their jobs (Gibson, 1998; Hoffman, 2000; Korn, 2001; Marr, 2003; NCCS, 1997).

#### Other Federal Legislation Impacting Employees with Cancer

Listing all federal, state, and local legislation which has impacted the employment of those with disabilities, specifically cancer, was beyond the scope of this study.

However, this section highlights major federal legislation currently impacting employment of those with disabilities, including cancer.

Table 2 summarizes legislation that has had a positive impact on employees with a history of cancer. The Consolidated Omnibus Budget Reconciliation Act of 1986 requires public and private employers with more than 20 employees to permit employees to extend their health insurance coverage at group rates for up to 36 months following a “qualified event” such as termination, reduction in hours, death and other events. Continued coverage must be offered regardless of any health conditions, including cancer (Calder, 1993).

In 1993, The Family and Medical leave Act was signed into law. This federal law requires employers having more than 50 employees within a 75-mile radius to provide up to 12 weeks of unpaid leave for employees after the birth or adoption of a child, to care for a seriously ill child, spouse, or parent; or in the case of employee’s own serious illness. To be eligible, the employee must have worked for the employer for more than one year and have worked at least 1,500 hours during the previous year. The employer must guarantee the employee the same or a comparable job upon the employee’s return. The Act also requires the employer to pay healthcare coverage for the employee during his or her leave of absence. Employers are allowed to exempt “key” employees that are

vital to the business and cannot be replaced with temporary workers (Noe, 1997; Zamuda, 2000). This legislation allows family members of those with cancer to perform primary caretaking responsibilities, which may be vital to cancer survivor's

Table 2

*Other Federal Disability Legislation*

Title and Public Law #	Year signed into Law	Description
Consolidated Omnibus Reconciliation Act  P.L. 99-272	1986	Requires public and private employers with more than 20 employees to extend health coverage equally amongst employees.
Family Medical Leave Act  P.L. 103-3	1993	Requires employers of 50 employees or more to provide 12 weeks of unpaid leave for employees due to family or employee illness.
Employee Retirement and Income Security Act  P.L. 93-406	1974	Prohibits employer from providing benefits unequally amongst employees.
Health Insurance Portability and Accountability Act  P.L. 104-191	1996	Prohibits denial, increased charges or limitations to health insurance

rehabilitation. This legislation also allows the cancer survivor to be absent from work, without pay, for up to 12 weeks during their recuperation. During this period, the cancer survivor is able to maintain health insurance in order to facilitate the cancer survivor's care and recovery.

The Employee Retirement and Income Security Act (ERISA) provides a remedy to an employee who has been denied full participation in an employee benefit plan because of a cancer history. ERISA prohibits an employer from discriminating against an employee for the purpose of preventing him or her from collecting benefits under an employee benefit plan. All employers who offer benefit packages to their employees are subject to ERISA (Hoffman, 1996). For instance, an employee with a history of cancer cannot be denied insurance coverage offered to other employees.

The Health Insurance Portability and Accountability Act (HIPAA) removes many of the barriers and improves access to health insurance for cancer survivors and others with histories of illness (Hoffman, 1996). HIPAA provides that cancer survivors cannot be singled out by health insurance plans in order to deny, limit, or charge more money for coverage. HIPAA protections differ by state and size of the employer's business.

Hoffman (1996) reported all states except Alabama and Mississippi have laws prohibiting discrimination against people with disabilities in private employment. All states have laws prohibiting discrimination against people with disabilities in public employment. Specifics of these laws vary widely. Many states have amended their laws to parallel the ADA's three part definition of a disability described earlier.

## Overview of History and Role of EEOC

The EEOC is an independent federal agency originally created by Congress in 1964 to enforce the Title VII of the Civil Rights Act of 1964. The Commission is composed of five Commissioners and a General Counsel appointed by the President and confirmed by the Senate. Commissioners are appointed for 5-year staggered terms; the General Counsel's term is four years. The President designates a Chair, who is the chief executive officer of the Commission, and a Vice-Chair. The Commission has authority to establish equal employment policy and approve litigation. The General Counsel is responsible for conducting litigation. The EEOC carries out its enforcement, education and technical assistance through 50 field offices serving every part of the nation. (EEOC, 2004.)

The EEOC enforces all federal laws prohibiting job discrimination. These federal laws include:

- Title VII of the Civil Rights Act of 1964 which prohibits employment discrimination based on race, color, religion, sex, or national origin;
- The Equal Pay Act of 1963 (EPA) which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
- The Age Discrimination in Employment Act of 1967 (ADEA), which protects individuals who are 40 years old or older;

- Title 1 and Title V of the Americans with Disabilities Act of 1990 (ADA), which prohibits employment discrimination against qualified individual with disabilities in the private sector, and in state and local governments;
- Sections 503 and 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified individuals with disabilities who work for the federal government; and
- The Civil Rights Act of 1991, which, among other things, provides monetary damages in cases of intentional employment discrimination.

The EEOC also provides oversight and coordination of all federal equal opportunity regulations, practices and polices.

### Employment Experiences of those with Cancer

Employees with cancer have return-to- work experiences that are very individual in nature but they may have some common readjustment experiences as they relate to reintegrating into the work world (Berry, 1992). This section discusses common experiences of employees with cancer found in the literature.

One of the earlier reports of discrimination against workers with cancer was conducted in 1973 by McKenna (1974), who collected and published case reports of alleged discrimination reported to the California Division of American Cancer Society. The reports created enough concern for the organization to sponsor a more in-depth study of discrimination issues. The subsequent study, which was conducted by Feldman (1978) found post-cancer work changes were more frequently reported among blue-collar

workers in comparison to white-collar workers, suggestive of occupational differences in discrimination experiences. Feldman's study was unique for in-depth descriptions of discrimination provided by candid employer responses regarding workplace policies and practices. Feldman found that cancer patients younger than 45 years old were more likely to report changes in work assignments than patients age 46 and older. Yet, older employees were more likely to report higher wages after the cancer diagnosis than their younger counterparts.

Trupin (1996) analyzed trends in labor force participation from 1983 through 1994 for men and women, age 18-64, with a variety of disabling conditions. The findings indicated that women ages 55-64 who were disabled due to cancer experienced a 129% increase in labor force participation during the study years. This rate was higher than that of any other group in the study. This may be in part because of early detection and advances in cancer treatment. With the resulting increase in positive treatment outcomes more of people with cancer were returning to work or continuing to work throughout treatment. Still, Trupin (1996) noted that the rate of employment of persons with disabilities followed general labor trends. Workers with disabilities, such as those with a history of cancer, were prone to a "last-hired, first-fired" phenomenon.

There have been several other studies on the employment experiences of people with cancer. Fobair and colleagues (1986) examined the work experiences and concerns of young adults who had a history of Hodgkins Disease. The researchers collected questionnaires from 403 respondents drawn from Stanford University Medical Center. It was found that 286 were employed, 117 were unemployed, 29 were managing households, and 21 were looking for work. They observed that 42% of the cancer

survivors studied noted work problems due to their cancer history. These problems included insurance denial (11%), not being offered a job (12%), termination of employment following treatment (6%), and conflicts with co-workers and supervisors (12%).

Ashing-Giwa and Ganz (1997) conducted in-depth, qualitative interviews with eight African-American breast cancer survivors (38-65 years old) and a focus group session with 23 African-Americans with breast cancer (38-74 years old). The majority of the interviewed participants were employed and from middle-income households. Only one of the eight interviewed participants reported an incident of employment discrimination. The focus group participants, however, represented lower to lower-middle-income households. Nearly twice the number of focus group participants reported employment discrimination.

Houts, Yask, Kahn, Schelzel, and Marconi (1986) found that post-cancer work changes may be affected by treatment-related factors. Houts et al. observed that the most common post-cancer work problem cited was related to job performance, with cancer patients reporting that they experienced difficulty doing their job. Cancer patients treated with chemotherapy were more likely to report at least one employment problem compared with cancer patients who did not receive chemotherapy. Houts et al. compared employment problems reported by employed persons with cancer to difficulties reported by their same-sex siblings who did not have cancer. The subjects consisted of those selected from the Pennsylvania Cancer Registry. Subjects were placed into the age groups of 20-39, 40-64, and age 64 and over. They interviewed 629 persons with cancer. The interview included five questions related to employment problems: (a) issues with

supervisors or co-workers, (b) problems performing the job, (c) the amount of money earned, (d) health insurance benefits, and (e) problems keeping the job. The staging of the cancer was analyzed to determine at what point work problems were likely to occur. The stage of the disease and the percentage of individuals reporting work problems were: (a) stage I—15% reported work problems; (b) stage II—36% reported work problems; (c) stage III—50% reported work problems; and, (d) stage IV—69% reported work problems. It is important to note that there is not universal agreement regarding cancer stages and what they imply in terms of functioning and disease aspects. For instance, a person with Stage I Hodgkins Lymphoma may not have the same treatment-related impairments as those with Stage I Colorectal Cancer. The age of the respondents and the reported work problems were: 20-39, 52%; 40-64, 39%; and, above 64, 21%. It was concluded that the more advanced the cancer stage, the greater the likelihood of work problems, and that individuals who were younger at time of diagnosis were more likely to report work problems.

One study (Bradley, Bednarek & Neumark, 2001) found breast cancer had a negative impact on the decision to work. However, among survivors who work, hours of work and, correspondingly, annual earnings were higher compared to women in the non-cancer control group they studied. These findings suggest that while breast cancer has a negative effect on women's employment, breast cancer may not be debilitating for those who remain in the workforce.

In another study, Sanchez (2001), who surveyed 250 colorectal cancer survivors from two registries in California, noted that single African-American females with the least education and lowest wages were more likely to experience work-related difficulties

after returning to work. The study revealed that the majority of survivors had been successful in their attempts to return to the workplace. Of the 200 survivors who were employed prior to cancer diagnosis, 89% returned to work after cancer diagnosis. Thirty-one percent of the employed survivors indicated that they experienced poor work adjustment. Post-cancer job characteristics such as physical demands of the job, control over work, health provider communication, work and non-work related support and presence of symptoms played an influential role in work re-entry and adjustment. Sanchez also found that survivors in service-related occupations were less likely to return to work than white-collar workers. Employed survivors who reported low co-worker support had more readjustment problems than survivors who reported high co-worker support. Survivors in poor physical health were more likely to experience poor work adjustment than those in good health. Sanchez found that the majority of the survivors who remained with their pre-cancer employer appeared to do so out of fear of lost health insurance, other benefits and fewer opportunities because of their cancer history.

Muzzin, Anderson, Figueredo, and Gudelis (1994) found that 25% of cancer survivors in their sample experienced work problems such as dismissal, demotion, denial of wages, ostracism, and oversolicitousness—“smothering” by co-workers. Ten percent encountered hostility such as mimicry, jokes, or snide remarks about physical appearance (Muzzin et al.). Discrimination in hiring decisions was documented when candidates with the same qualifications were compared. Chamblis (1996) surveyed 5000 cancer survivors who were employed at the time of their treatment, 100 supervisors and 100 coworkers. She found that managers who supervised an individual with cancer reported that in a third

of these situations the individual's responsibilities had been cut, that they had been passed over for a raise or promotion, or that they had been demoted or fired.

The available literature highlights some common themes of adverse employee experiences for those who have cancer. Studies have found employees with cancer experience difficulties with being considered for promotion and face demotion. Employees with cancer tend to experience a reassignment of duties, have difficulty with co-worker relationships and face possible termination. The literature also revealed younger workers tend to report problems more than older workers. Employees with cancer from lower to lower middle income groups in service-related occupations tend to experience increased barriers to functioning successfully in the work setting.

#### Discrimination Models

In order to better understand employment discrimination toward people with disabilities, it is helpful to understand the possible etiology of discriminatory behaviors. Models of discrimination reviewed in the next paragraphs show adverse employment experiences can emanate from the employer (bias), the employee (self-limiting behaviors) or limited opportunities for those with disabilities in the work/community (environment). Models of employment discrimination have been discussed in disability and sociological literature, for example, Mellette's model (1985), Barofsky's model (1989), Fobair (1986), and Kelly (2001). The following gives an overview of some these models and their implications.

Mellette (1985) described two domains of problems encountered by persons with cancer in the workplace: those in the environment and those in the individual with cancer.

Melette wrote that survivors feared the consequences of leaving their pre-cancer employer because they were apprehensive about their health insurance and their ability to be hired by another employer.

Barofsky (1989) described a general theory of employment discrimination. In Barofsky's model, employers discriminate because they dislike having contact with members of a particular group. Employers even risk loss of income and legal sanctions in their efforts to avoid an undesired group. In the case of a person with cancer, Barofsky hypothesized that employers practice discrimination to avoid the symbols of death and disability that they and other employees perceive as being associated with the cancer patient, and to avoid the uncomfortable topics of illness and death.

Fobair and colleagues (1986) described a self-imposed discrimination that comes from a negative self-evaluation. In a study of work patterns of Hodgkin's disease patients, 33% of respondents limited their own job options or career advancement. Factors contributing to self-imposed limitations of career options included passive coping skills, negative self-esteem, poor body image, decreased energy, depression, and having received counseling for emotional problems. Hays (1993) noted that the older survivors' (30-50 years old) perceptions of their overall work abilities may be lower than the self-rating of the control subjects in the same area, indicating a passive and nonassertive attitude in the workplace.

Kelly (2001) describes the difference between *technical and social division of labor* and how it impacts those with disabilities. *Social division of labor* is the particular ways the producers and consumers of different goods and services interrelate within

society. In general terms, people with disabilities found themselves relatively disadvantaged and marginalized in the social division of labor, historically and contemporarily. The *technical division of labor* refers to the specific productive configurations or arrangements in work organizations. Marx (1971) indicated that the structure of society's class system emerges directly from the relations arising in the technical division of labor. When an inequality exists between *social and technical divisions of labor*, conflict emerges. In this model, the person with the impairment, by virtue of limited life chances may not play a full role in the *technical divisions of labor*. This, in turn, leads to marginalization of those with disabilities in the *social division of labor*.

### Summary

The review of the literature regarding discrimination experiences of those with disabilities, and cancer in particular, indicate that discriminatory experiences persist, despite the passage of the ADA. Approximately 2% of the claims filed in the database analyzed in this study were claims filed by employees with cancer. Research has shown employees with cancer may share similar adverse employment experiences. Models of discrimination can facilitate understanding regarding discriminatory experiences of those with disabilities including cancer in the employment setting. As part of a nationwide research effort analyzing EEOC complaints filed under ADA Title I this study utilized data that has not been previously analyzed regarding discrimination experiences of those with cancer. Because of the paucity of research done in this area, this study served to illuminate work discrimination experiences of those with cancer. This study provides

insight into how rehabilitation counseling educators could best prepare rehabilitation counselor candidates to intervene with clients who have cancer.

## CHAPTER III: RESEARCH METHODOLOGY

This chapter describes the database, design, measurement techniques and analysis techniques used in this study. The variables examined are also described.

### Database

Data was obtained from the EEOC through an Interagency Personnel Agreement and a Confidentiality Agreement involving EEOC and the lead coordinator of this nationwide study, Dr. Brian McMahon, from Virginia Commonwealth University. Data was provided via a computer disk, allowing for access to the entire EEOC Integrated Mission System (IMS) which was used to store detailed information on over two million records of employment discrimination. This database consisted of 11.2 years (from July 27, 1992 through September 30, 2003) of investigated complaints. From the original data set, a subset of variables was extracted that directly addressed the research questions of the current study without compromising confidentiality of individuals or employers. The data subset used for this study on cancer was provided via computer disk.

The following were the parameters of the dataset:

- The unit of study is an allegation. A charging party could bring more than one allegation (e.g., complaints involving both wages and promotion), or could bring allegations more than one time (e.g., in 1993 and again in 1998). Only unique allegations that did not involve recording errors or duplications were included in the study.

- To maximize confidentiality, all identifying information regarding the charging parties was purged except for age at closure, race/ethnicity, gender, and disability status. Similarly, all information regarding the respondent was purged except for the Standard Industrial Classification Code (SIC), number of employees, and location/region.
- Study data were strictly limited to allegations brought under Title 1 of the ADA. Other federal employment statutes including the Civil Rights Act, Equal Pay Act (EPA), and Age Discrimination in Employment Act (ADEA) were not considered. To maintain consistency in definitions and procedures among the study variables, only allegations received, investigated, and closed by the EEOC were included. This resulted in *exclusions of data pertaining to allegations involving:*
  - Sections 501 and 503 of the Rehabilitation Act, or state FEPA laws
  - referral by EEOC to litigation in civil court, federal or state
  - retaliation, even under the ADA, because the basis does not pertain directly to the existence or consequence of disability
  - open cases still unresolved by the EEOC; this allows for investigation only of allegations that have been verified as having/not having merit, an important outcome variable
  - allegations not closed by the EEOC during the study period, defined as 7/26/92 (first effective date of ADA Title 1) through 9/30/03 (last Federal fiscal year available).

In compiling the original dataset of 328,738, it was found that missing data occurred only in a few fields (age, sex, race/ethnic, SIC code, number of employees), but in no instance did it exceed 3%. For the SIC codes, 2.5% of the data were missing. The employer size variable had 1% of the data missing. Disability, issue, gender, and age fields had no data missing.

The resulting study dataset included 328,738 allegations of employment discrimination under ADA Title I that were received, investigated, and closed in a consistent manner by the EEOC during the study period (11.2 years). These were divided into a variety of comparison groups on the basis of disability status, discussed hereunder. This study utilized two subgroups in the dataset; the general disability dataset and the cancer dataset.

*Cancer.* 6,812 allegations, representing almost 2% of the database, involving complainants with a known history of cancer.

*General disability.* 174,610 allegations, representing approximately 53% of the database, involving *known* physical, sensory or neurological impairments including allergies, asthma, back impairment, chemical sensitivity, HIV, other blood disorders, diabetes, disfigurement, dwarfism, missing digits or limbs, non-paralytic orthopedic impairment, gastrointestinal impairment, hearing impairment, cardiovascular impairment, kidney impairment retardation, autism, Alzheimer's, traumatic brain injury , cerebral palsy, cumulative trauma disorder, epilepsy, learning disability, multiple sclerosis, paralysis, other neurological impairment, cystic fibrosis, tuberculosis, other respiratory impairment, speech impairment, or vision impairment.

*Other physical, sensory or neurological disability.* 61,126 allegations (specific impairment unspecified), representing approximately 19% of the database.

*Chemical dependence.* 6,110 allegations involving ADA, representing less than 2% of the database.

*Psychiatric impairment.* 45,799 allegations, representing almost 14% of the database, involving anxiety disorder, depression, bipolar illness, schizophrenia, or other psychiatric impairment.

*Record of disability or regarded as having a disability.* 38,442 allegations (specific impairment unspecified), representing approximately 12% of the database. These allegations were isolated because they did not pertain to actual disability status in the present time; that is, they related to second and third prongs of the ADA definition of disability.

*Relationship or Association with an Individual with a Disabilities.:* 2,651 allegations (specific impairment unspecified), representing less than 1% of the database. These allegations were isolated because they did not pertain to individuals who themselves had disabilities.

## Design

This study was a pooled cross-sectional archival study which utilized a subset of a dataset of 328,738. The subset that was used in this study represented 174,610 individuals from the general disability population. This dataset of the general disability population contained allegations of employment discrimination under ADA Title 1 during an 11.2

year study period (from 7/27/92 through 9/30/2003). Of the complaints filed, 6,812 (2%) came from employees who had identified themselves as having a history of cancer. Frequencies studied in this research were converted to within-group odds ratios (Bland & Altman, 2000). Frequently utilized in epidemiological research, this calculation represents a ratio of the probability of occurrence for a particular act of discrimination (e.g., unlawful discharge) relative to the probability of the non-occurrence within the same targeted group (e.g., persons from a particular disability group). This approach has been used successfully to study hate-related crimes and disability in America (McMahon, West, Lewis, & Armstrong, 2003). The evidence of the soundness of the design rests in the measurable and objective nature of the variables, the large sample size, and the fact that the data set represents population statistics, not samples.

#### Measurement

The data was coded using the EEOC Integrated Mission System (IMS). The codes used in this system were the codes used by EEOC office personnel for data entry regarding the complaints filed and their status. The IMS codes used in this study were the following:

- Basis codes represent the group classification that the complainants believe to be the reason for the discriminatory act. Cancer is coded U1.
- Benefits codes show the types of benefits obtained on behalf of the charging party. They are reported in connection with certain closure codes and litigation action codes. For example, compensatory damages is coded 108.

- Charging party codes are used to describe certain characteristics of the charging party such as sex, race, and age.
- Issue codes are used to identify employment policies and practices which are subject to examination in connection with discrimination charges. For example, D2 represents discharge; an involuntary termination of employment status on a permanent basis.
- Standard Industrial Classification Codes (SIC) are numbered codes associated with a particular industry. For instance, the Manufacturing Industry is coded 260. Pulp mills in the manufacturing industry is coded 266.
- Employer size was coded A through D, with A representing 15-100 workers and D representing 501+ workers.
- Employer geographic region was coded in this study by the researchers. Codes represent North (N) , Midwest (M), South (S), West (W), East (E), and US Territories (T).
- Closure codes represent complaint resolution or outcomes. Merit resolutions favor the claimant or charging party. For instance, M2 is associated with a complaint settled with benefits in favor of the charging party. A resolution without merit favors the responding party of employer. For instance, the code Y2 is associated with complaints withdrawn without benefits. (See Appendix A)

## Variables

The dependent variables in this study are the merit/non-merit resolutions or outcomes (closure codes) and adverse employment actions or pattern of employment practice (issue codes). Both issue codes and closure codes are categorical variables. More specifically, the closure codes are dichotomous (merit/non-merit). The issue codes are nominal (demotion, reasonable accommodation, etc).

Closure codes include 14 categories, for example, ADCLBANK (administrative closure due to responding employer bankruptcy), MCONFAIL (conciliation failure), and MSUXCON (successful conciliation). (See Appendix A).

Issue codes, or adverse employment actions/allegations, include 41 categories. For example, ADVERTIS (expressing preference or restrictions as to disability when soliciting for job applicants), DISCHARG (involuntary termination of employment status on a permanent basis), and PROMOTN (employee prevented from advancement to higher level of work or pay). (See Appendix B).

The independent variable is the type of disability which is a dichotomous variable (cancer or general disability). The definitions of cancer and general disability are given in Chapter I. The covariates include both employer and charging party characteristics. Charging parties are individuals with cancer or individuals with general disability. Characteristics of the charging party include disability codes as well as information for age, gender, and race/ethnicity. All are nominal measures except for age, which is a ratio measure. The underlying unit of measure was the frequency of allegations, a ratio level of measurement. Race was measured in 9 categories, including Caucasian, African

American, Hispanic/Mexican, Asian, Native American, Mixed Race, Arabic, Unknown, and Other.

Characteristics of the responding party (employer) included the industry (SIC) code (nominal), number of employees (interval), and region of the United States (nominal). Industry codes included 12 categories. The SIC codes cover Agricultural Production (010-099), Mining (100-149), Construction (150-199), Manufacturing (200-399), Transportation and Public Utilities (400), Wholesale Trade (500-519), Retail Trade (520-599), Finance, Insurance, and Real Estate (600-659), Services (660-909), Public Administration (910-989), and No Established Classification (990-999).

### Analysis

A series of analyses were performed using the Statistical Package for the Social Sciences (SPSS) to test the hypotheses. First, *descriptive analysis* was used to observe the distribution for all the variables and examine the correlation relationship between them. In the second section of the analyses,  $\chi^2$  analysis was used to test four hypotheses because it examines the relationship between two categorical variables (cancer and general disability codes) when frequency data were present.  $\chi^2$  test is a non-parametric test in which frequency data, instead of original numbers, is used. In this study,  $\chi^2$  test was used to test the statistical significance of the difference of proportion between cancer and the general disability population across all the issues of gender, age, and ethnicity. Different  $\chi^2$  tests were used to test the four hypotheses in this study depending on the number of categories for each variable, for instance, a 2X2  $\chi^2$  analysis was used to test Research Question 1: Are EEOC charges filed by complainants with cancer under ADA

Title I found to have merit significantly more than EEOC complaints filed by the general disability population under ADA Title I? A 2X4  $\chi^2$  analysis was used to test relationship between disability and employer industry in Research Question 4: Do adverse employment actions differ for complainants with cancer as a function of the employer's industry, size, and region of operation? If the proportion of two groups (cancer and general disability) was less than 5% in any cell of the cross-tabulation table, the Fisher's Exact Test was used. Because of the large sample size of this study, this analysis was sensitive to small changes in groups. In addition, hypotheses 3 and 4 required multiple analyses of the same data. The type I error rate could be increased, therefore, incorrectly rejecting the null hypotheses. To control this, the significance( $\alpha$ ) level of the  $\chi^2$  test was set at 0.01 or lower level (0.001) to reduce possible Type I errors.

### Summary

This study is a pooled, cross-sectional archival study of EEOC data representing investigated complaints filed under ADA Title I by those from the cancer and general disability population. A descriptive analysis was used to observe the distribution for all variables and examine the correlational relationship between them. A  $\chi^2$  analysis was used to test four hypotheses regarding merit vs. non merit resolutions, type of alleged discriminatory acts, the gender, race, age of the complainants, and finally, the region, size, and type of industry of the employer.

## CHAPTER IV: RESULTS

This chapter presents the results of the descriptive analysis and hypothesis testing. The findings for each research question are addressed.

### Descriptive Analysis

Age, race, gender, and median age of those who filed claims under ADA Title I for employees with cancer and employees from the general disability population are described in Table 3. The merit resolution for claimants with cancer and claimants with general disability are provided.

As outlined in Table 3, the median age of the charging parties with cancer is 49. The median age of the charging parties from the general disability population is five years younger—44. Caucasians who file charges of discrimination under ADA Title 1 are significantly higher than other races in both the cancer and general disability population. African Americans rank second for filing charges for both categories under ADA Title 1.

Of the cancer population, 72.93 % of charges filed were found not to have merit compared to 78.2% of the general population. Sixty-two percent of complainants with cancer filing charges were females and 38% male. Within the general disability population, 45% of the charging parties were female and 55% were male.

The allegations are ordered based on their frequencies. The top ten allegations are listed in Table 3. The top four allegations for both cancer and general disability groups are the same. They are: discharge, reasonable accommodation, terms/conditions of

Table 3

*Descriptive Analysis*

Demographic Characteristic	Cancer Population (N=6812)		General Disability Population (N=174,610)	
Median Age of Charging Parties	49 years of age		44 years of age	
Race of Charging Parties by ranked by frequency	Caucasian	4,537 66.6%	Caucasian	104,326 62.2%
	African American	1,009 14.8%	African American	34,330 20.5%
	Other	652 9.6%	Hispanic/Mexican	12,167 7.3%
	Hispanic/Mexican	379 5.6%	Other	11,675 6.9%
	Unknown	106 1.6%	Asian	1,994 1.2%
	Asian	83 1.2%	Unknown	1,941 1.2%
	Native American/Alaskan	40 0.59%	Native American/Alaskan	1,155 0.7%
	Mixed Race	4 0.05%	Mixed Race	127 0.07%
	Arabic	2 0.02%	Arabic	83 0.05%
	Total	6,812 100%	Total	167,798 100%
Charges found with merit	72.93%	Non-merit	78.21%	Non-merit
	27.07%	Merit	21.79%	Merit
Gender of Charging Parties	62%	Female	45%	Female
	38%	Male	55%	Male
Median Age by Gender	Male:	52 years of age	Male:	44 years of age
	Female:	48 years of age	Female:	44 years of age
Allegation by Rank	1.	Discharge	1.	Discharge
	2.	Reasonable Accommodation	2.	Reasonable Accommodation
	3.	Terms/Conditions of Employment	3.	Terms/Conditions of Employment
	4.	Harassment	4.	Harassment
	5.	Disciplinary Action	5.	Hiring
	6.	Layoff	6.	Disciplinary Action
	7.	Hiring	7.	Layoff
	8.	Demotion	8.	Promotion
	9.	Wages	9.	Constructive Discharge
	10.	Constructive Discharge	10.	Wages

employment, and harassment. The order of the rest of the allegations was different across these two groups.

### *Results for Research Question 1*

Are EEOC charges filed by complainants with cancer under ADA Title I found to merit significantly more than EEOC complaints filed by the general disability population under ADA Title I?

Table 4 shows the results of the  $\chi^2$  analysis indicating that there was a difference between complainants with cancer and complainants with a general disability in terms of resolved claims with merit. The  $\chi^2$  value is 105.71 with 3 degrees of freedom and the  $p$  value is less than 0.0001. In the four categorized settlements, only “settled with benefits to the charging party” was statistically significant across cancer and general disability employees while all the other three were not. Similarly, the difference of the number of resolved complaints without merit was statistically significant. The  $\chi^2$  value for this test was 106.18 with a degree of freedom of 3. The  $p$  value for this  $\chi^2$  test was less than 0.0001. Although the overall settlement without merit between two groups was different, one settlement, “administrative closure without benefits due to inability to process charge,” was not significant while the other three were found to be significant.

Based on these results, Hypothesis 1—that there is no difference in regard to how many complaints are found to be with merit vs. non-merit between complaints filed by complainants with cancer and those filed complaints by the general disability population—was rejected, with a conclusion that there is a difference in the number of

Table 4

*Differences in Proportion for Merit and Non-Merit Resolutions*

Outcome	Prop. Cancer	Cancer Cases	Prop. Gendis	Gendis Cases	Diff. in Prop.	$\chi^2$ Value	Alpha Level	Favors Whom?
Resolved with Merit								
M2-settled with benefits to the charging party	.4049	755	.3787	13,848	.0307	17.49	.0009***	Employee
M1-charges withdrawn with informal agreement or benefits	.2663	491	.2799	10,235	-.0136	.30	.5816	Employee
M5-Conciliation failure	.2164	399	.2272	8,308	.0108	.2855	.5932	Employee
M4-Conciliation	.1081	199	.1143	4,179	-.0064	.207	.7952	Employee
Total with Merit	.0480	1,844	.9520	36,570	-.904	105.71	<.0001***	
Resolved without Merit								
M3-EEOC investigation failed to support alleged violation/s	.8309	4,128	.8480	111,275	-.0171	40.29	<.0001***	Employer
Y1-administrative closure because EEOC lacks jurisdiction (example: responding party has <15 employees)	.0833	414	.0787	10,332	.046	4.19	.0407*	Employer
X-administrative closure without benefits due to inability to process charge (example: responding party or filed for bankruptcy )	.0562	279	.0527	6,920	.0035	2.70	.1003	Employer
Y2-charging party withdraws charges for reasons unknown	.0296	147	.0206	2,701	.009	9.3	.0022**	Employer
Total without Merit	.0365	4,968	.9635	131,228	-.927	106.18	<.0001***	

*Note.* No Significant Differences were found with respect to any other form of administrative closure, each of which represents less than 1% of non-merit closures.

\*significant at 0.05 level; \*\* significant at 0.01 level; \*\*\* significant at 0.001 level

complaints to be with merit between charges filed by complainants with cancer and those filed by the general disability population.

Fisher's Exact Test was used to test the aggregate percentage of settlements across cancer and general disability populations because more than one cell of the contingency table had an expected value less than 5. Analysis showed that 27.07% of all charges filed by cancer complainants were determined to have merit, while 21.79% of charges filed by those from the general disability population were determined to have merit. The  $p$  value for Fisher Exact Test was less than 0.0001 and indicates that complainants with cancer have more charges resolved with merit than the general disability population studied.

#### *Results for Research Question 2*

Does the nature of the adverse employment action claims filed with EEOC by individuals with cancer differ from those with other disabilities?

Twenty-two issues are displayed in Table 5 since they happen more often than others. These issues include: Discharge, Reasonable Accommodation, Terms/Conditions of Employment, Layoff, and Intimidation. Appendix B provides a list of additional issues as well as the definition of each of these Issues. The top four issues are identical for both cancer and general disability employees. Multiple  $\chi^2$  tests are used to examine the proportions of employees and allegation issues. If an expected value in the contingency table is less than 5, Fisher's Exact Test was employed to examine these proportions. Based on the results, out of 22 issues, 11 were statistically significant across cancer

Table 5

*Difference in Proportion among Allegation Issues*

Issues >1%	Prop. Cancer	Rank Cancer	Prop. Gendis	Rank Gendis	Diff. in Prop	$\chi^2$ Value	P-value
Discharge	.3545	1	.3026	1	.0519	83.13***	<.0001
Reasonable accommodation	.1387	2	.2358	2	-.0971	178.57***	<.0001
Terms/Conditions	.0916	3	.0823	3	.0093	7.39**	.0065
Harassment	.0719	4	.0747	4	-.0028	0.71	.3970
Discipline	.0360	5	.0357	6	.0003	0.0144	.9045
Layoff	.0327	6	.0257	7	.007	12.70***	.0004
Hiring	.0314	7	.0544	5	-.023	66.61***	<.0001
Demotion	.0308	8	.0163	11	.0145	81.25***	<.0001
Wages	.0272	9	.0219	10	.0053	8.52**	.0035
Constructive discharge	.0247	10	.0233	9	.0014	0.53	.4661
Benefits	.0230	11	.0131	15	.0099	47.40***	<.0001
Promotion	.0214	12	.0236	8	-.0022	1.31	.2525
Benefits/Insurance	.0167	13	.0065	17	.0102	93.32***	<.0001
Reinstatement	.0134	14	.0153	12	-.0019	1.6867	.1940
Assignment	.0125	15	.0143	13	-.0018	1.62	.2034
Intimidation	.0119	16	.0130	16	-.0011	0.58	.4479
Suspension	.0094	17	.0136	14	-.0042	0.814**	.0037
Training	.0044	19	.0059	20	-.001	2.38	.1232
Involuntary retirement	.0043	20	.0031	23	.0012	2.97	.0846
Recall	.0037	21	.0063	18	-.0026	7.37**	.0066
Benefits Pension	.0025	22	.0019	24	.0006	0.99	.3187

*Note.* There are 18 issues excluded from their table because their proportions were less than 0.1%.

Early Retirement, Prohibited Medical Inquiry/Exam, Referral, Tenure, Union Representation, Advertising, Apprenticeship, Exclusion, Job Classification, Maternity, Negative Referrals, Posting Notice, Qualifications, Segregated Facilities, Seniority, Severance Pay, Testing, Segregated Local, Waiver of ADEA Suit Rights

\*significant at 0.05 level; \*\* significant at 0.01 level; \*\*\* significant at 0.001 level

and the general disability population. Those 11 issues included Discharge, Accommodation, and Terms/Conditions of Employment, Lay-off, Hiring, Demotion, Wages, Benefits, Benefit Insurance, Suspension and Recall. The Fisher Exact Test was used to evaluate the relationship between issue and employee disability. Because the  $p$  value was less than 0.0001, results of analysis indicate that allegation issues were significantly different between cancer and general disability employees. Based on the data in this study, Hypotheses #2—that there is no difference in patterns of employment discrimination among EEOC complainants with cancer as opposed to claimants with other disabilities—was rejected. There exist differences in patterns of employment discrimination among EEOC complainants with cancer as opposed to those from the general disability population.

### *Results for Research Question 3*

Does adverse employment actions filed as complaints with EEOC differ as a function of age, ethnicity, and gender for those complainants with cancer versus those from the general disability population?

As indicated in Table 6, the study results show that  $\chi^2$  values for gender, age, and ethnicity are 794.14, 130.58, and 16.12, respectively. All these  $\chi^2$  are significant at the .001 or above. For example, the proportion of males was .38 among those with cancer, which was different from the proportion of males in the general disability population, which was .55.

Data shows that a larger proportion of Caucasians with cancer filed charges than the general disability population. Results showed a smaller proportion of African-

Table 6

*Patterns of Employment Discrimination across Charging Party Characteristics*

	Prop. Cancer	Prop. Gendis	Diff. Prop.	$\chi^2$ Value	P-Value
Gender Higher					
Female	.6200	.4466	.1734	794.14***	<.0001
Age Higher					
=> 50 Years	.4952	.3026	.1926	130.58***	<.0001
Ethnicity Higher					
White	.6766	.6290	.0476	16.12***	<.0001
African American	.1505	.2070	.0565	31.49***	<.0001
Ethnicity Lower					
Latino Hispanic	.0565	.0734	.0169	11.75***	<.0006
Native American/ Alaskan Native	.0060	.0070	.0010	.36	.5464

*Note.* \*significant at 0.05 level; \*\* significant at 0.01 level; \*\*\* significant at 0.001 level

Americans filed charges in the cancer population than the general disability population.

Based on this analysis, Hypothesis 3—that there is no difference in patterns of employment discrimination complaints among complaints filed with EEOC with respect to age, sex, and ethnicity between complainants with cancer and those with other disabilities—was rejected and it is concluded that there are differences in patterns of employment discrimination among EEOC complainants with respect to age, sex, and ethnicity between complainants with cancer and those with other disabilities.

*Results for Research Question 4*

Do adverse employment actions differ for complainants with cancer as a function of the employer's industry, size, and region of operation?

The  $\chi^2$  test indicates that there was a difference in patterns of employment discrimination of those with cancer with respect to industry and employer size. There was a mixed finding for the different regions in the U.S. For North and West, there was no significant difference detected among the two populations. For the Midwest, the difference of proportion was found to be significant across the general disability and cancer population. In the manufacturing industry, charging parties within the general disability population filed more charges than those with cancer.

Based on the analytical results shown in Table 7, that there is no difference in patterns of employment discrimination between those with cancer and those from the general disability population with respect to the industry, size, or location of employer—Hypothesis #4—the null hypothesis is partially rejected. There appeared to be a difference in patterns of employment discrimination of those with cancer in the service industry and in smaller companies, but regional differences on employment discrimination was not clear, despite evidence that employees with cancer had statistically significant lower employment discrimination in the Midwest.

Table 7

*Patterns of Employment Discrimination across Employer Characteristics*

Employer Characteristics	Prop. Cancer	Prop. Gendis	Diff. in Prop.	$\chi^2$ Value	P-Value
Employer Industry Higher					
Service	.3440	.2896	.0544	118.17***	<.0001
Manufacturing	.1574	.1931	.0357	21.19***	<.0001
Employer Industry Lower					
Retail	.0936	.1074	.0038	3.47	.0624
Transportation	.0732	.0935	.0203	19.89***	<.0001
Employer Size Higher					
501+ workers	.3680	.4161	.044	32.00***	<.0001
15-100 workers	.3604	.3203	.0401	21.31***	<.0001
Employer Size Lower					
101-200 workers	.1340	.1180	.0160	14.00***	.0002
201-500 workers	.0981	.1064	.0083	6.73**	.0095
Employer Region Higher					
South	.4243	.4026	.0217	2.43	.1191
Employer Region Lower					
Midwest	.2554	.2998	.0444	69.53***	<.0001
West	.1834	.1880	.0046	3.83	.0503

*Note.* \*significant at 0.05 level; \*\* significant at 0.01 level; \*\*\* significant at 0.001 level

## Summary

Findings show significant differences between cancer and the general disability population as they relate to the frequency of claims found to be meritorious, the alleged discriminatory actions, and the age, gender and sex of the charging party. Significant differences were also found between the responding party's industry type and size when comparing complaints filed by those with cancer versus those from the general disability

population. In the population from the Midwest, those with general disability were more likely to file claims than those with cancer. There were no significant differences found across all other regions of the United States.

## CHAPTER V: DISCUSSION

This chapter summarizes the major findings of this study, including the results of hypothesis testing, discussion of findings, implications of the findings for rehabilitation counselor education. Recommendations for future research are also addressed.

The central aim of this study was to provide insights into the nature and scope of employment discrimination against Americans with cancer. Research questions focused on: (a) Whether charges filed by those with cancer were found with merit more often than those from the general disability population? (b) Whether there was a difference in adverse employment actions against claimants with cancer compared with those from the general disability population? (c) Whether adverse employment actions differed as a function of age, sex, and gender between those with cancer and the general disability population? And, finally, (d) Whether charging parties with cancer differed in patterns of employment discrimination with respect to industry, size, and region of operation?

### Results of Hypothesis Testing

Four hypotheses were tested in this study. The first hypothesis tested the resolution patterns of complainants with cancer compared with those from the general disability population. The other three hypotheses were about patterns of employment discrimination filed by employees with cancer as opposed to those with other disabilities. A summary of hypothesis testing is presented in Table 8. The first three null hypotheses were rejected while Hypothesis 4 was partially rejected.

Table 8

*Results of Hypothesis Testing*

Hypotheses	Actual Results
$H_01$ : In term of merit settlement, % of cancer complainant = % of general disability complainant	In terms of merit settlement, % of cancer complainant > % of general disability complainant
$H_02$ : In term of patterns of employment discrimination, % of cancer complainant = % of general disability complainant	In term of patterns of employment discrimination, % of cancer complainant ≠ % of general disability complainant
$H_03$ : In term of patterns of employment discrimination, Age effect=0 across cancer & Gendis Sex effect=0 across cancer & Gendis Ethnicity effect=0 across cancer & Gendis	In term of patterns of employment discrimination, Age effect≠0 across cancer & Gendis Sex effect≠0 across cancer & Gendis Ethnicity effect≠0 across cancer & Gendis
$H_04$ : In term of patterns of employment discrimination, Industry effect=0 across cancer & Gendis size effect=0 across cancer & Gendis Location effect=0 across cancer & Gendis	In term of patterns of employment discrimination, Industry effect≠0 across cancer & Gendis size effect≠0 across cancer & Gendis Location effect≠0 across cancer & Gendis

*Note.* “Gendis” represents general disability.

## Discussion of Findings

*Are EEOC charges brought by complainants with cancer under ADA Title I found to have merit significantly more often than those from the general disability population?*

Results of this study showed that 72.93% of employees with cancer who filed charges under ADA Title I were found to be without merit compared to 78.21% of the

general disability population. As outlined earlier in Table 4, the analysis showed that 27.07% of all complaints filed by cancer employees were determined to have had merit while 21.79% of complaints filed by those from the general disability population were determined to have had merit. In other words, more merit resolutions were assigned to claims filed by those with cancer vs. general disability.

This finding was important because even though cancer was not specifically mentioned as a disability in the ADA, it is noted as a disability in the EEOC Technical Assistance Manual for implementation of the ADA Title I (Hoffman, 2000). Some courts who have adjudicated complaints which have been referred out of EEOC for resolution have ruled that some plaintiffs with cancer do not qualify for protection under ADA. The basis of these rulings was that these individuals did not meet the standards for protection under Title 1, which is, having an impairment that substantially limited a major life activity. These rulings have led to some confusion. Moreover, other courts which have adjudicated cases of employment discrimination against plaintiffs with cancer have ruled that those who are too ill to work do not qualify under ADA Title I because the employees could not perform the essential functions of their jobs (Gibson, 1998; Hoffman, 2000; Korn, 2001; Marr, 2003; NCCS, 1997). The findings of this study highlight that individuals with cancer are found to have more meritorious claims than the general disability population, serving to reinforce that employees with cancer meet the protection standards required under ADA Title I.

*Does the nature of the adverse employment action claims filed by individuals with cancer differ from those with other disabilities?*

Results of this study showed individuals with cancer were more likely to experience employment actions that involved being discharged, change in terms and conditions of their employment, being laid-off, demoted, having reduced wages, reduced benefits and less insurance benefits than the general disability population. Persons with cancer were less likely to encounter discrimination involving hiring or promotion than the general disability population, but were more likely to face demotion than the general disability population.

Ranking of the most prevalent adverse employment actions experienced by those with cancer (see Table 3) coincide with previous studies done. Muzzin et al. (1994) found survivors to have experienced dismissal, demotion, denial of wages, and ostracism. Chamblis (1996) reported employees with cancer had had their responsibilities cut, raises deferred, were fired or laid-off. Fobair and colleagues (1986) reported employees with cancer experienced discriminatory experiences including insurance denial, not being offered a job, and being fired after treatment.

Trupin (1996) indicated employees with disabilities, such as cancer, were prone to the “last hired, first fired” phenomenon. This supports the finding of discharge being the top adverse employment experience by those with cancer in this study.

It is of note that the findings do not indicate an increased frequency of reports of employment discrimination during the hiring process. This may be because employees with cancer do not seek alternative employment and tend to remain in their current employment due to the fear of losing benefits (Mellette, 1985). Other studies have found

discrimination in the hiring process (Fobair, Hoppe, Bloom, Cox, Varghese, & Spiegel, 1986; Muzzin, Anderson, Figueredo, & Gudelis, 1994).

This study's finding that reasonable accommodation ranks second among employees with cancer as an adverse employment action is further supported by Houts, Yasko, Kahn, Schelzel, & Marconi (1986). Houts et al. observed the most common post-cancer work problem cited was related to job performance (the ability to do the jobs assigned). Further, Sanchez (2001) indicated that the physical demands of job, control over work and work-related support impacted the successful work adjustment of employees with cancer. Perhaps some of the aforementioned reported work adjustment barriers could be mediated successfully with reasonable accommodations.

*Does adverse employment actions filed as complaints with EEOC differ as a function of gender, age, or ethnicity for complainants with cancer versus those from the general disability population?*

Complainants from the general disability population contained more males than females (55.3 % in the general population, compared to 38% in the cancer population). Clearly, females with cancer have had more adverse employment experiences than males. This may be influenced by larger numbers of females in service occupations, where employees have less control over their work hours and may be prone to having more work adjustment difficulties after their diagnosis with cancer (Ashing-Giwa, & Ganz, 1997; Sanchez; 2001).

The findings in this study regarding the age of individuals with cancer who have filed charges under ADA Title 1 supports qualitative research done by Ashing-Giwa and Ganz (1997) which found that breast cancer survivors between 38-74 years old reported

employment discrimination. However, the data in this study shows the median age of employees with cancer who filed complaints under ADA Title I as 49. This, contrasts with studies done by Feldman (1978) who found cancer patients under 45 were more likely to report job discrimination. In addition Houts et al. (1986) found that individuals with cancer between the ages of 29-39 were considered more likely to report work problems than those 40-64 years of age.

The ethnicity of claimants with cancer in this study tended to be predominantly Caucasian followed by African-American. A larger proportion of Caucasians with cancer filed complaints under ADA Title I than those from the general disability population. Latinos and Native Americans were less likely to report adverse employment experiences in both the cancer and general disability population. Latinos from the general disability population were more likely to file claims under ADA Title I than those from the cancer population. These results of these findings may be in part precipitated by cultural mistrust. Cultural mistrust (Terrell & Terrell, 1981) refers to suspicion developed by those from a minority populations in response to racism and mistreatment by the larger American society. This mistrust may translate into a reticence by minorities with cancer to file a claim with the EEOC under ADA Title I because they may not view the EEOC investigation process as unbiased. The results of these findings may also indicate that minorities with cancer do not have access to information regarding their rights under ADA Title I to the extent that Caucasian employees do; alternatively, it may be that minority employees tend to be found more frequently in those industries where available employer information regarding employee rights under the law are not as accessible.

Outreach and education about rights under ADA Title I and EEOC resources should be increased for minority workers and their families.

*Do adverse employer actions differ as they relate to industry, size, and region of operations for those with cancer versus those from the general disability population?*

A larger proportion of employees from the service industry with cancer filed complaints under ADA compared with those from the general disability population. If an assumption could be made that those with cancer in service occupations were found to be from the lower to lower-middle income brackets, these findings would be supported by Ashing-Giwa and Ganz (1997) who found that employees with cancer from lower income brackets tended to report discrimination more frequently than those from the middle-income brackets. These findings are also supported by Sanchez (2001) who found that employees from service-related occupations were less likely to return to work. This may indicate barriers to successful work-reentry and readjustment for individuals with cancer is present in the service industry.

Those employees working in service industries may have less control over their work hours and more physical job demands. Research has shown that employees with cancer who have less control over their work hours and job demands, such as those in the manufacturing and service industries, tend to experience more difficulties in adjusting to work after their diagnosis with cancer (Sanchez, 2001).

Employers with 15-100 workers were more likely to have complaints under ADA Title I filed against them by those with cancer than by the general disability population. This may mean that employers with less personnel resources may have difficulty accessing education about ADA Title I as it relates to hiring and employing individuals

with cancer. Employers with only 15-100 employees may not perceive that they have the needed resources available to support an employee with cancer. Outreach and education to these employers could be beneficial.

There were no significant differences across regions of the United States between the cancer and general disability groups regarding the frequency of complaints filed with EEOC under ADA Title I except for the Midwest. In the Midwest, those from the general disability population were more likely to file complaints than those with cancer.

#### Implications for Counselor Education

Rehabilitation counseling students would benefit from training to increase student awareness of the discriminatory experiences that those with cancer may encounter when entering, re-entering, or attempting to maintain employment. Strategies for employer and employee interventions and education are important skills for rehabilitation counselors to perform in order to facilitate successful rehabilitation. Additionally, it is important for counselors to understand the influence of advocacy on policy development and disability rights legislation. The results of this study which addresses EEOC complaints filed under ADA Title I could aid students in understanding how legislation (such as ADA Title I) impacts the enforcement of disability rights through EEOC. The results of this study could in turn influence advocacy efforts (such as from the American Cancer Society) as well as future policy development and legislation which would impact individuals with cancer.

There are several recommendations for rehabilitation counselor educators that could be implemented within existing academic and training programs. Several of these recommendations are discussed below.

In order to aid with an understanding of the psychosocial aspects of disability, rehabilitation counseling curricula should include instructions regarding the trends in discriminatory behaviors experienced by people with cancer in the workplace. Class instruction and discussion should take place which focuses on possible supports which could be provided to the employee with cancer in order to prevent work adjustment barriers and facilitate a successful work experience for those with cancer.

EEOC disseminates training materials about ADA Title I and the claims process to employees and individuals with disabilities. Rehabilitation counseling courses should incorporate the awareness regarding the nature of these materials as well as how to access them. In addition, rehabilitation counselors should be trained about how to provide education and consultation to employers about ADA Title I and EEOC resources.

This study provides important information regarding specific work-related issues encountered by individuals with cancer in the service industry. In general, women with cancer in the service industry may experience more difficulty in work adjustment because of the nature of the jobs, the demands of the work setting, and/or the lack of employee control over the work situation. Specific findings such as this should be used by rehabilitation counselor educators to emphasize the importance of attending to work environment demands and how job analysis could assist rehabilitation counselors in determining the extent to which there is a satisfactory match for the employee.

The training of rehabilitation counselors should include curriculum and practicums which would increase understanding of the interface of disability with gender, age, and ethnic status. It is particularly important for counselors to know that individuals from ethnic minority backgrounds tend to file fewer complaints than do Caucasian Americans.

There are a number of potential explanations for this, and rehabilitation counselor educators are encouraged to have students explore the extent to which this pattern represents fear of employer retaliation, heightened job discrimination, and/or lack of access to appropriate employee information and materials. Moreover, the fact that female employees with cancer file more complaints than do those from the general population may be indicative of less personal control over their work environments and/or less opportunity to negotiate with supervisors regarding ways to increase their adjustment to work. In all of these instances, rehabilitation counselors could benefit from understanding the impact of discriminatory behaviors on the career development and vocational participation of women and ethnic minorities with cancer. Rehabilitation counseling trainees could learn to provide specific interventions to aid their clients. For instance, rehabilitation counselors could counsel their clients on assertiveness skills as they relate to negotiating with their supervisors regarding needed work adjustments. Rehabilitation counselors could educate their clients about how to file an EEOC complaint and the subsequent complaint process. Rehabilitation counselors may provide a job analysis for the employer or employee that could serve to match the employee with the most appropriate job given their impairments. While performing the job analysis, the rehabilitation counselor should pay particular attention to some of the possible high risk industries or most frequently filed complaints revealed in this study.

With knowledge regarding the specific discrimination experiences of employees with cancer, rehabilitation counselors could work to help empower their clients by helping them recognize discrimination, to be aware of their civil rights in the workplace, and to respond in appropriate ways which could help to insure successful employment

experiences for individuals with cancer. These are the types of supports and interventions provided by rehabilitation counselors whether they are working in the public or private sectors.

#### Recommendations for Future Research

Because the dataset used in this study did not include allegations which involved retaliation, record of disability, regarded as disability, or associated with person with disabilities, future research should focus on these areas. As mentioned in Chapter III, retaliation was excluded because the basis of the complaint did not pertain directly to the existence or consequence of having a disability but addressed concerns about employer retaliation against the charging party who had filed a complaint under the Americans with Disabilities Act. An individual who had filed an EEOC complaint alleging to have a “record of a disability” or to be “regarded as having a disability” by the employer was excluded from this study because this data did not pertain to actual disability status in the present time, that is, they related to second and third prongs of the ADA definition of disability. This study focused on data representing only those who filed under the first prong of definition; those who had “a physical or mental impairment that substantially limits one or more of the life activities of such individuals” (EEOC, 1992, Page II-2) ). Those filing a complaint with EEOC under ADA Title I because they have a relationship or association with someone with a disability were excluded from this study because they did not pertain to individuals who themselves had a disability. With future research, the aforementioned issues could provide further insight into discriminatory employment practices reported by those with cancer.

The dataset used in this study did not include claims with merit determined by other agencies other than EEOC, such as the Office of Federal Contract Compliance, civil courts or state fair employment practice agencies. A future analysis of these data would provide additional information about adverse employment experiences of those with cancer.

The development of models for training employers and individuals with cancer about discriminatory behaviors experienced by workers with cancer would be helpful in complementing EEOC training materials and training resources. These training materials would also be useful for cancer advocacy groups, such as the American Cancer Society. The effectiveness of the training materials should be studied by examining the extent to which training affects the number and types of claims filed.

Findings in this study showed that those in the service industry were more likely to file claims with EEOC under ADA Title I. The service industry is a very broad category (Codes 800-899). This includes hospitals, schools, legal services, child daycare, job training services, automotive repair shops, motion picture production, bowling and billiard establishments, labor organizations, architectural services, and private households. More specific research comparing discriminatory experiences within the service industry category could be helpful in identifying occupations which could be more problematic for employers of individuals with cancer .

Further research could include focus groups of females and individuals from other minorities with cancer who work in the service industry. This research could serve to enhance an understanding of how rehabilitation counselors could best serve these populations.

Another research recommendation is the exploration of why certain adverse employment actions are more prevalent in the cancer population, such as discharge and layoff, as compared to the general disability population. It would also be useful to compare the results of this study to those of other researchers analyzing the same EEOC database to determine the extent to which other impairments (such as psychiatric disorders) are comparable to other specific disability conditions.

Research in the development of specific models of educating rehabilitation counselor trainees about adverse employment experiences of those with cancer and other disabilities as they relate to ADA Title 1 should be studied for their effectiveness.

### Conclusion

This study illuminates issues of discriminatory behaviors experienced by Americans with cancer in the workplace. Meaningful strategies for preparing rehabilitation counselors to serve clients with cancer and assist employers of those with cancer can emanate from the data analysis gleaned from this study. The specific findings in this study could further enhance EEOC training materials with a new level of specificity about individuals with cancer. This is helpful information for specific industries and cancer advocacy groups. The continual pursuit of an increased understanding of workplace discrimination and prevention could serve to enhance the quality of work life for Americans with cancer.

## APPENDIX A

TABLE OF MERIT/NON MERIT RESOLUTION CLOSURE CODES

Name & EEOC Code	ALPHA CODE	DEFINITION	MERIT RESO.
Withdrawn w/ Benefits by CP M1	MWITHBEN	Withdrawn w/ benefits (e.g., after independent settlement, resolved through grievance procedure, or after Respondent unilaterally granted desired benefit to CP w/o formal "agreement").	YES
Settled w/ Benefits to CP M2	MSETLBEN	Settled w/ benefits, where EEOC was party to settlement.	YES
Successful Conciliation – M4	MSUXCON	Successful Conciliation.	YES
Conciliation Failure – M5	MCONFAIL	Conciliation Failure	YES
No Cause Finding-M3	NOCAUSE	Full EEOC investigation failed to support alleged violation(s).	NO
Admin Closure- Process X2	ADCLPROC	Administrative closure due to processing problems; e.g., Respondent out of business or cannot be located, file lost or cannot be reconstructed.	NO
Admin Closure- Bankruptcy-X3	ADCLBANK	Administrative closure due to Respondent bankruptcy	NO
Admin Closure X4	ADCLLOCA	Administrative closure because CP cannot be located	NO
Admin Closure X5	ADCLNRES	Administrative closure because CP non-responsive	NO
Admin Closure X6	ADCLCOOP	Administrative closure because CP uncooperative	NO
Admin Closure X7	ADCLLITIG	Administrative closure due to outcome of related litigation	NO
Admin Closure X8	ADCLRELF	Administrative Closure because CP failed to accept full relief	NO
Admin Closure Y1	ADCLJURS	Administrative Closure because EEOC lacks jurisdiction; includes inability of CP to meet definitions, Respondent <15 workers, etc.	NO
Admin Closure Y2	ADCLCPWD	Administrative Closure because CP withdraws w/o settlement or benefits. Reason unknown	NO

## APPENDIX B

## ADVERSE ACTION/ALLEGATION ISSUE CODES

ISSUE – ALLEGATION	ALPHA CODE	DEFINITION
D2 – DISCHARGE	DISCHARG	Involuntary termination of employment status on a permanent basis.
R6 – REASONABLE ACCOMMODATION	REASACCM	Respondent failed to provide reasonable accommodation to the known physical or mental limitations of a qualified individual with a disability.
T2 - TERMS/CONDITIONS	TERMCOND	Denial or inequitable application of rules relating to general working conditions or the job environment and employment privileges which cannot be reduced to monetary value. If a privilege or benefit can be reduced to monetary value, it is coded as “Wages.” Examples include: (1) assignment to unpleasant work stations or failure to provide adequate tools or supplies; (2) inequities in shift assignments or vacation preferences; or (3) restriction as to mode of dress or appearance.
H1 – HARASSMENT	HARASSMT	Same as Intimidation except that this issue would be used to describe antagonism directed at an individual because of disability in non-employment situations or settings.
H2 – HIRING	HIRING	Failure or refusal by an employer to engage a person as an employee.
D3 – DISCIPLINE	DISCIPLN	The assessment of disciplinary action by an employer against an employee.
C1 – CONSTRUCTIVE DISCHARGE	CONDSCHG	Employee is forced to quit or resign because of the employer’s discriminatory restrictions, constraints, or intolerable working conditions.

L1 – LAYOFF	LAYOFF	Temporary involuntary separation from the respondent work force due to a lack of work. Facts must clearly indicate that the involuntary separation is temporary in nature.
O – OTHER	OTHER	Issues alleged which do not fit under any other defined code.
P3 – PROMOTION	PROMOTN	Advancement to a higher level or work usually involving higher pay, potential for higher pay or more prestigious work environment.
W1 – WAGES	WAGES	Inequities in monetary compensations paid for work performed. Wages include the hourly, weekly or monthly salary and tips, gratuities, commission on sales, amounts paid for completion of specific items or work, granting and general use of incentive rates or bonuses.
D1 – DEMOTION	DEMOTION	Involuntary downgrading to a lower paid or less desirable job or classification with reduced benefits or lesser opportunities for advancement.
R4 – REINSTATEMENT	REINSTAT	Failure or refusal of an employer to reinstate a person as an employee.
S5 – SUSPENSION	SUSPENSN	Suspension of employment status because of disability.
I1 – INTIMIDATION	INTIMIDA	Bothering, tormenting, troubling, ridiculing or coercing a person because of disability. For example: (1) making, allowing or condoning the use of jokes, epithets or graffiti; (2) application of different or harsher standards of performance of constant or excessive supervisions; (3) the assignment to more difficult, unpleasant, menial or hazardous jobs; (4) threats or verbal abuse; or (5) application of stricter disciplinary measures such as verbal warning, written reprimands, impositions or fines or temporary suspensions.

B1 – BENEFITS	BENEFITS	Inequities based on race, color, religion, sex, national origin, disability or age in providing non-wage compensation items, such as: providing free or reduced rate parking, gifts or bonuses at holidays, employee discounts, etc. As a general rule benefits which can be reduced to monetary value, and do not fall into any of the following specific benefit categories, should be identified using this code. Benefits which cannot be reduced to monetary value are to be identified using Code “Terms and Conditions”.
A3 - ASSIGNMENT	ASSIGNMT	Designation of an employee to less desirable duty, shift, or work location.
B3 – BENEFITS/INSURANCE	BENINSUR	Discrimination with respect to the provision of insurance benefits.
P4 – PROHIBITED MEDICAL INQUIRY	PROHIBMD	Respondent unlawfully required an individual to take a medical examination (e.g., during pre-job-offer stage) or to respond to prohibited medical inquiries (e.g., on a job application from or during a pre-employment interview).
R1 – RECALL	RECALL	The calling back to regular employment status of persons who have been in a layoff status (see Layoff above) or in general the system used to determine the order or sequence of persons called back from layoff status.
T4 – TRAINING	TRAINING	Failure or refusal to admit a person into a training program or job which will serve as a learning experience sometimes involving a contractual arrangement between the employer, labor organization and the trainee.

U1 – UNION REPRESENTATION	UNIONREP	Failure or refusal by a labor organization empowered to do so to process or diligently pursue a grievance or dispute, or failure or refusal to adequately represent the interest of a particular group of person because the interest of a particular group of persons because of their race, color, religion, sex, national origin, disability or age.
R5 – INVOLUNTARY RETIREMENT	INVOLRET	Compelling an employee to retire.
R2 – REFERENCES UNFAVORABLE	NEGREFS	Providing or causing to be provided to potential employers references which are designed to place an individual in an unfavorable light because of disability.
J1 – JOB CLASSIFICATION	JOBCLASS	Restriction of employees with a disability to a certain type of job or class of jobs.
B2 – BENEFITS/PENSION	BENPENS	Discrimination with respect to the awarding of pension/retirement benefits.
Q1 – QUALIFICATIONS (inapp criteria)	QUALIFIC	Discrimination with respect to the factors or criteria used in determined a person's fitness for employment, referral, and promotion, admission to membership in a labor organization, training or assignment to a job or class of jobs.
S3 – SENIORITY	SENIORTY	The length of service in employment or membership. Usually the issue will occur in conjunction with the use made of seniority; for example in referral, promotion, layoff, demotion or transfer; charging parties allege that they are not allowed to use their seniority in the same manner as others.

R3 – REFERRAL	REFERRAL	Failure or refusal by a labor organization or employment agency to nominate an applicant for hire, training or apprenticeship or nomination of an applicant for jobs or training other than those requested by the applicant based on the applicant's disability.
T3 – TESTING	TESTING	Use of written or oral tests in determining a person fitness for employment, referral, promotion, admission to membership in a labor organization, training or assignment to a job or class of jobs.
E1 – EXCLUSION/SEGREGATED UNION	EXUNION	Failure or refusal of a labor organization to admit individual to membership. Use this code only when respondent is a labor organization or join an apprenticeship council; or the maintenance of two or more separate labor organizations or subdivisions of a labor organization which represents the same or similar class of employees in the same geographic area in which the separate labor organizations' membership consists solely or primarily of persons with disability.
B5 – SEVERANCE PAY	SEVERPAY	Denial of severance pay upon leaving employment.
M1 – MATERNITY	MATERNTY	Treating a woman differently from others who are similar in their ability or inability to work for any employment related purpose based upon her pregnancy, childbirth or related medical conditions, or her child care/health care responsibilities.
T1 – TENURE	TENURE	The granting of the status of holding a position on a permanent basis upon fulfillment of certain requirements; for educational institutions only.

B4 – WAIVER OF ADEA SUIT RIGHTS	WAIVADEA	Respondent made provision of benefits contingent upon employee’s agreement to waive the right to seek redress under the Aging Discrimination in Employment Act of 1967 (ADEA). .
B6 – EARLY RETIREMENT INCENTIVE	ERLRETIR	Represent allegations that a Respondent offered early retirement to induce older workers to leave the workforce.
P5/P6 – POSTING NOTICES	POSTGNOT	Failing to post a required notice.
S1 - SEGREGATED FACILITIES	SEGFACIL	Maintenance by instruction or common usage and custom of separate facilities such as separate locker rooms, restrooms dining areas, entrances, exits, pay lines, first aid stations, water fountains, coat racks, rest or smoking areas, interview rooms, recreational facilities, sports teams, picnics and outings, sponsored trips or transportation on the basis of disability.
A2 - APPRENTICESHIP	APPRENTC	Failure or refusal to admit a person into a program or job which will serve as a learning experience, usually involving a contractual arrangement between the employer, labor organization and the apprentice.
A1 – ADVERTISING	ADVERTIS	Expression of a preference or restriction as to disability/health status when soliciting applicants for employment, training, apprenticeship, or union membership by announcements in print or radio or television by an employer, union, or employment agency.
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