The Proactive Process: An Empirical Study of Disparities in Workplace Accommodations

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Recent legislation and caselaw have imposed an affirmative obligation on employers to provide employees with workplace accommodations. Whether someone receives an accommodation, however, often first depends on whether they ask. And asking for accommodations can be fraught. Employees may fear stigma or be uncertain about navigating employer-specific unwritten rules and procedures. Although scholars have begun to argue that these procedures are unreasonably onerous, we know little about the extent to which people ask for and are granted accommodations.

This Article addresses this empirical gap. I use newly released data from the Census Bureau, alongside additional data from the Department of Labor, to analyze demographic disparities in workplace accommodations. My original study is one of the first nationally representative studies to do so and the first-ever use of this data.

First, I find that only fifteen percent of employed Americans who identify as disabled request workplace accommodations. Second, older disabled respondents are less likely to make workplace requests than younger disabled respondents. Third, there are significant demographic differences in requests among non-disabled respondents: higher education and U.S. citizenship are associated with a higher likelihood of requesting a workplace accommodation overall, while Hispanic ethnicity is associated with a lower likelihood of requests. Fourth, female respondents make more family-related requests. Finally, I find that employers generally approve requests at similar rates, suggesting that if employers wait for employees to request accommodations, then only those who are relatively privileged or who have visible disabilities will receive them.

In asking employees to take the first step, existing accommodation law reifies existing workplace inequalities. Based on my results, I propose

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replacing the current interactive process with a new model inspired by principles of Universal Design. Under this proactive process, employers would initiate discussions with employees about accommodations, share examples of common requests during onboarding, and collect standardized data about requests, which could be used by agencies and researchers to test for disparities. The proactive process would rebalance the bargaining power between employers and employees and make accommodations truly equitable.

INTRODUCTION

Consider this letter submitted to the Washington Post's work advice column:

> I recently joined a nonprofit association that hosts a week-long conference each fall. . . . Although I haven't needed accommodations for my everyday work, I am worried that the conference will exacerbate some health challenges that I have. They may not be considered disabilities, but I could obtain a clinical note for them.
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> . . . I've read about ADA policies and the process of coming up with mutually beneficial solutions . . . . How do you recommend discussing these concerns with my supervisor? How much of my health situation would I have to disclose?[1]

Across private conversations and anonymous Internet forums,[2] in law reviews[3] and Congressional hearings,[4] similar debates abound regarding whether and how workers should request scheduling, protective equipment, or other changes in their workplace. These debates have resulted in legislation that require employers to increasingly accommodate employees.

In addition to the Americans with Disabilities Act ("ADA"),[5] which mandates reasonable accommodations for disabled employees,[6] the Family Medical and Leave Act ("FMLA") allows employees to take leave for their own serious health issues[7] or those of a family member,[8] the Pregnancy Discrimination Act ("PDA") extends the anti-discrimination provisions of Title VII to pregnancy-related conditions,[9] and the Fair Labor Standards Act

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1. *See* Karla L. Miller, *Work Advice: How Can I Help My Employer's Big Event While Guarding My Health?*, WASH. POST. (June 8, 2023, 7:00 AM), https://www.washingtonpost.com/business/2023/06/08/workadvice-health-accommodations/.

2. *See, e.g.*, *Reasonable Accommodation*, REDDIT, https://www.reddit.com/t/reasonable_accommodation/ (series of posts discussing reasonable accommodations and how to raise the subject with employers).

3. *See, e.g.*, Jasmine E. Harris, *Taking Disability Public*, 169 U. PA. L. REV. 1681, 1710–14 (2021); Elizabeth F. Emens, *Integrating Accommodation*, 156 U. PA. L. REV. 839, 903–08 (2008).

4. *See, e.g.*, *Hearing on Disability and Employment Before the S. Health, Educ., Lab., and Pensions Comm.*, 117th Cong. 8 (2022) (statement of Lisa Schur, Professor, School of Management and Labor Relations, Co-Director, Program for Disability Research, Rutgers University); *Hearing of the Health, Educ., Lab. and Pensions Comm. on Examining the Americans with Disabilities Act*, 110th Cong. (2007).

5. 42 U.S.C. §§ 12101–12213.

6. *See* 42 U.S.C. § 12112(b)(5)(A).

7. *See* 29 U.S.C. § 2612(a)(1)(d).

8. *See* 29 U.S.C. § 2612(a)(1)(c).

9. *See* 42 U.S.C. § 2000e(k).

("FLSA") recognizes accommodations for breastfeeding.[10] Earlier this year, the Pregnant Workers Fairness Act ("PWFA") closed a gap in the PDA by explicitly extending reasonable accommodations specifically to pregnant people,[11] alongside the new Providing Urgent Maternal Protections for Nursing Mothers Act ("PUMP Act")[12], which expanded eligibility[13] for and standardized[14] breastfeeding accommodations found in the FLSA.[15]

Even more recently, the Court's holding in *Groff v. DeJoy* this Term reiterated the responsibility of employers to accommodate employees in the religious context.[16] Proposed legislation such as the Schedules that Work Act would extend accommodations to the domain of schedule changes and shift guarantees.[17] And in many cases, federal laws are a lower bound: states go further in articulating rights to[18] and expanding eligibility for[19] accommodations in the workplace. Altogether, employers face an increasing array of affirmative obligations.

Yet, in many cases, access to accommodations is contingent on the employee making a request. The law only works *if* employees ask. To be sure, some employees do make requests. But there are many reasons why employees might choose not to do so. Asking for an accommodation requires an employee to reveal potentially stigmatizing information about

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10. *See* 29 U.S.C. § 218(d).

11. *See* 42 U.S.C. § 2000gg–1.

12. Providing Urgent Maternal Protections for Nursing Mothers Act, Pub. L. No. 117–328, 136 Stat. 6093 (codified at 29 U.S.C. § 218(d)).

13. *See* Alisha Haridasani Gupta & Catherine Pearson, *A New Breast Pumping Law Has Gone into Effect. Here's What It Means.*, N.Y. TIMES (May 3, 2023), https://www.nytimes.com/2023/05/03/well/family/pump-act-breastfeeding.html; Lauren Kaori Gurley & Rachel Siegel, *Congress Expands Protections for Pregnant and Nursing Workers*, WASH. POST (Dec. 30, 2022), https://www.washingtonpost.com/business/2022/12/30/omnibus-pregnant-breastfeeding-congress.

14. *See* Caroline Burnett et al., *ICYMI: New Federal Obligations for Employers To Provide Breaks for Nursing Mothers and Reasonable Accommodations for Pregnant Women*, EMP. REP. (Apr. 28, 2023), https://www.theemployerreport.com/2023/04/icymi-new-federal-obligations-for-employers-to-provide-breaks-for-nursing-mothers-and-reasonable-accommodations-for-pregnant-women/ [https://perma.cc/6BSS-9WHR].

15. *See* 29 U.S.C. § 218(d).

16. Groff v. DeJoy, 600 U.S. 447, 466–73 (2023).

17. *See* Schedules that Work Act, H.R. 6670, 117th Cong. (2022).

18. *See, e.g.*, 6 RCNY § 7–623(c); OR. REV. STAT. § 653.450 (2021); OR. REV. STAT. § 653.436 (2017); L.A., CAL., MUN. CODE Ch. XVIII Art. 5 § 185.06 (articulating scheduling rights for employees); 775 ILL. COMP. STAT. 5/2–102(J) (2021) (articulating reasonable accommodations for pregnant employees).

19. *See, e.g.*, CAL. LAB. CODE § 1030 (West 2020) (expanding liability for denial of breastfeeding accommodations to all employers in California); 775 ILL. COMP. STAT. 5/2–101 (B)(1) (2021) (expanding pregnancy discrimination liability to all employers in Illinois).

their disability, family, or medical condition; to otherwise be subject to speculation; to be vulnerable.

It also requires a specific kind of procedural knowledge. Who is the relevant contact person in a company? How does one ask for an accommodation "formally" and do so while minimizing backlash? Although disability law under the ADA envisions an interactive process, it is choreographed such that the employee must take the first step.[20] Subsequent steps of the choreography may not be apparent.

Accordingly, an accommodation model that relies on a worker's individual initiative exacerbates the differences in bargaining power between employer and employee, as scholars have begun to note.[21] But this model may also exacerbate inequalities between employees as well.

As negotiation experiments demonstrate, employers are more likely to penalize women and minority employees who make requests.[22] They may also stigmatize some disabilities more negatively than others.[23] Because of these differential responses, requesting an accommodation may involve different risks for different groups of employees, and they may shy away from making requests as a result.[24]

To fully understand whether accommodation legislation is fulfilling its promises, we need to understand who asks for accommodations and when.

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20. *See* Shirley Lin, *Bargaining for Integration*, 96 N.Y.U. L. REV. 1826, 1842 (2021) ("The ADA did not specify any procedure in connection with the mandate, but lawmakers understood that remediation would generally happen at the initiative of an employee who discloses the need for an accommodation to their employer."); *see also* PollyBeth Proctor, *Determining 'Reasonable Accommodation' Under the ADA: Understanding Employer and Employee Rights and Obligations During the Interactive Process*, 51 SW. U. L. REV. 51, 56–57 (2003).

21. *See* Lin, *supra* note 20, at 1834 ("The legal literature has largely sidestepped inquiry into the dynamics of a law dependent upon [employees] negotiating with employers over compliance . . . .").

22. *See, e.g.*, Emily T. Amanatullah & Michael W. Morris, *Negotiating Gender Roles: Gender Differences in Assertive Negotiating Are Mediated by Women's Fear of Backlash and Attenuated When Negotiating on Behalf of Others*, 98 J. PERSONALITY & SOC. PSYCH. 256, 263 (2010); Morela Hernandez et al., *Bargaining While Black: The Role of Race in Salary Negotiations*, 104 J. APPLIED PSYCH. 581, 587 (2019).

23. For instance, psychologists Michelle Hebl and Robert Kleck compared experimental responses to job applicants who had obesity or a visible physical disability. They found that the applicants were viewed similarly unless the applicant affirmatively discussed the condition; in that case, the applicant with obesity was viewed more negatively because obesity was seen as more controllable. *See* Michelle R. Hebl & Robert E. Kleck, *Acknowledging One's Stigma in the Interview Setting: Effective Strategy or Liability*?, 32 J. APPLIED SOC. PSYCH. 223, 244–46 (2002).

24. *See* Amanatullah & Morris, *supra* note 22; Thekla Morgenroth et al., *The Gendered Consequences of Risk-Taking at Work: Are Women Averse to Risk or to Poor Consequences*, 46 PSYCH. WOMEN Q. 257, 273–74 (2022).

But thus far, we do not have a clear picture: much of the existing empirical research on workplace accommodations looks to limited populations,[25] and empirical analyses investigating accommodations often focus on the impact of discrete events like the passage of the ADA[26] or the COVID-19 pandemic.[27]

This Article seeks to fill this void. The original study in this Article is among the first studies to examine accommodations disparities.[28] Using

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25. While these small-scale studies contribute significant theoretical understanding, these effects are not necessarily generalizable. For instance, social psychologists have noted that experimental participants are frequently drawn from homogenous populations. *See* Joseph Henrich et al., *The Weirdest People in the World?*, 33 BEHAV. & BRAIN SCI. 1, 1 (2010); Steven O. Roberts et al., *Racial Inequality in Psychological Research: Trends of the Past and Recommendations for the Future*, 15 PERSPECTIVES ON PSYCH. SCI. 1295, 1301–05 (2020).

26. *See, e.g.*, Sam Bagenstos, *Has the Americans with Disabilities Act Reduced Employment for People with Disabilities?*, 25 BERKELEY J. EMP. & LAB. L. 527, 539–43 (2004) (summarizing an economic debate about the effects of the ADA).

27. *See, e.g.*, Thomas Lyttelton & Emma Zang, *Occupations and Sickness-Related Absences During the COVID-19 Pandemic*, 63 J. HEALTH & SOC. BEHAV. 19, 26–28 (2021); Lisa A. Schur et al., *Telework After COVID: A "Silver Lining" for Workers with Disabilities?*, 30 J. OCCUPATIONAL REHAB. 521, 532 (2020).

28. To my knowledge, this is the first time this dataset, the 2021 Disability Supplement to the Current Population Survey, has been analyzed and the first time disparities in accommodations requests have been measured.

In their working paper, Brucker and colleagues pool 2002–2018 data from the Health and Retirement Survey to examine racial and ethnic disparities in who receives workplace accommodations. *See* Debra L. Brucker et al., *Investigating Racial and Ethnic Disparities in the Provision of Workplace Accommodations in the United States* 6–7 (Univ. Mich. Retirement & Disability Rsch. Ctr., Working Paper No. 2022-442, 2022), https://mrdrc.isr.umich.edu/publications/papers/pdf/wp442.pdf [https://perma.cc/2CLU-874W]. Their outcome consisted of whether employers did "anything special to help [employees] out so that [they] could stay at work," regardless of whether employees asked for these changes. *Id.* at 8. Their results yield non-significant differences in accommodations receipt along race and ethnicity when controlling for job characteristics, partially similar to the results in Section II.D, *infra*.

Analyses of previous waves of the Disability Supplement have looked at differences in accommodations among job type. *See* Sarah von Schrader et al., *Accommodation Requests: Who Is Asking for What?,* 2014 REHAB. RSCH., POL'Y & EDUC. 329, 332 (2014); Mason Ameri et al., Disability and the Unionized Workplace (Inst. Of Lab. Econ. Working Paper, Paper No. 12258, 2019), https://docs.iza.org/dp12258.pdf [https://perma.cc/D4L7-WK85]. However, this Article differs from von Schrader et al. and Ameri et al., which focus on differences by occupation/industry and disability type, by focusing on racial and gender disparities in requests. I instead find here that occupation/industry controls do not reduce disparities in gender, ethnicity, and education and I replicate von Schrader et al.'s findings that many accommodations are requested by people without self-reported disabilities.

Altogether, these research groups' results provide key groundwork for the claim that we ought to expand access to accommodations to all employees via standardized processes, as I contend in Part III, *infra*.

recently released and nationally representative data from the U.S. Census Bureau, I analyze the extent to which employed people in the United States ask for and are granted accommodations, and I explore disparities within these occurrences.

The relative depth and breadth of the dataset analyzed here[29] allows me to examine several interrelated empirical questions. First, I generate nationally representative estimates for how often American employees ask for accommodations at the workplace. I then examine whether these estimates differ along five sociodemographic factors—age, gender, race and ethnicity, education, and citizenship—that are often associated with disparities in workplace[30] and health settings.[31] Using a series of logistic regression models, I find that being a woman or U.S. citizen and having college experience are associated with a higher likelihood of requesting a workplace accommodation, but that Hispanic respondents are significantly less likely to request an accommodation generally. These results are robust to different specifications of controls and alternative measures of job characteristics.

Subsequent analyses consider the antecedents and consequences of these results. Parsing out accommodation requests by category (for instance, changes in schedules, requests for more safety gear, or new equipment), I find that respondents with college educations are almost always more likely to request accommodations across all categories. In contrast, female workers' increased likelihood of requests is explained by family-related requests, suggesting the presence of legislation tied to specific needs, such as the PDA or FMLA, may matter.

Importantly, the Supplement is de-identified and available on the Census website for public use, so it does not require IRB approval. *See, e.g.*, *Public Data Sets*, UNIV. OF VA., https://research.virginia.edu/irb-hsr/public-data-sets [https://perma.cc/4M4Z-MT9W]; NAT'L BUREAU OF ECON. RSCH., *Guidance: Data Sets Not Requiring IRB Review*, https://www.nber.org/programs-projects/projects-and-centers/human-subjects-protection-and-institutional-review-board-irb/guidance-data-sets-not-requiring-irb-review [https://perma.cc/6A3S-HAAW].

29. *See* GINA A. LIVERMORE & PEIYUN SHE, LIMITATIONS OF THE NATIONAL DISABILITY DATA SYSTEM 11–19 (2007) (discussing various limitations of available datasets on disability).

30. *See, e.g.*, Francine D. Blau & Lawrence M. Kahn, *Gender Differences in Pay*, 14 J. ECON. PERSPECTIVES 75, 81 (2000); David Autor et al., *Extending the Race Between Education and Technology*, 110 AM. ECON. ASS'N PAPERS & PROC. 347, 350 (2020). *See generally* David Neumark, *Experimental Research on Labor Market Discrimination*, 56 J. ECON. LITERATURE 799 (2018) (discussing differences in age, gender, race/ethnicity, and citizenship).

31. *See, e.g.*, Alan Nelson, *Unequal Treatment: Confronting Racial and Ethnic Disparities in Healthcare*, 94 J. NAT'L MED. ASS'N 666, 666–67 (2002); Neil M. Davies et al., *The Causal Effects of Education on Health Outcomes in the UK Biobank*, 2 NATURE HUM. BEHAV. 117, 118 (2018); Nicole Filion et al*., Immigration, Citizenship, and the Mental Health of Adolescents*, PLOS ONE, May 3, 2018, at 5 (2018).

Finally, I examine whether there are differences in the rates at which employers approve requests. The results suggest that simply asking for accommodations is the primary determinant of receiving accommodations, which suggests that shaping who asks—or how they ask—matters. That education level plays perhaps the most substantial role in requests suggests that the cultural knowledge of how to make a request or manage upward at work is a significant determinant of accommodations requests.

By considering workplace accommodation on a larger scale, the findings in this Article challenge our understanding of who receives and asks for accommodations and of the role of self-advocacy in the law. They add to a wave of research challenging the efficacy and fairness of the interactive process.[32] And they provide implications for how accommodations might be structured themselves to be accessible. My empirical results suggest that inequities are sustained if we rely on people to simply ask.

To align the goals of accommodations with empirical realities, I suggest that we should replace the ADA's interactive process with what I call a "proactive process," inspired by principles of Universal Design. Under the proactive process, employers would take the first step in offering accommodations to new employees, alongside enhanced data collection that continues to examine who receives accommodations. Such a process, if standardized, would reduce ambiguity about *how* to request accommodations, thus responding to knowledge barriers, and reduce stigma around disability as more people receive potential access to accommodations.

Accordingly, this Article proceeds in three parts. Part I lays the groundwork for how existing legislation shapes the operationalization and perception of accommodations processes, using the Americans with Disabilities Act and its "interactive process" as a starting point. It then draws together cutting-edge research in public health and the social sciences to show how stigma and knowledge barriers might cause employees to under-request accommodations. Part II introduces the data and the series of empirical analyses in this Article, presenting results showing that the most educated both ask for and are granted accommodations at a higher rate. Lastly, Part III considers the promise of the proactive process in policy implementation.

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32. *See, e.g.*, Lin, *supra* note 20, at 1878; Ruth Colker, *The ADA's Unreasonable Focus on the Individual*, 170 U. PA. L. REV. 1813, 1820 (2022); Elizabeth F. Emens, *Disability Admin: The Invisible Costs of Being Disabled*, 105 MINN. L. REV. 2329, 2344 (2021); Michael Ashley Stein et al., *Accommodating Every Body*, 81 U. CHI. L. REV. 689, 693 (2014); Katherine MacFarlane, *Accommodation Discrimination*, 72 AM. U. L. REV. (forthcoming 2023).

One note on terminology in this Article: I use the terms "people with self-reported disabilities," and "disabled people," sometimes interchangeably. I use "disabled people" for the most part, instead of "people with disabilities," following beliefs from disabled people that their disability is crucial to—though not their entire—identity[33] and that disability results from societal barriers, not necessarily from physical differences.[34] When I refer to "people with self-reported disabilities," I am referring specifically to a particular subset of respondents in the Census data I am analyzing. I am not casting doubt on the legitimacy of people's disabilities, but rather highlighting that the data reflects people's individual perspectives.

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33. This is an example of identity-first versus person-first language. *See* Erin E. Andrews et al., *The Evolution of Disability Language: Choosing Terms To Describe Disability*, DISABILITY & HEALTH J., Apr. 13, 2022, at 1, 4.

> Disability language has undergone significant evolution in response to cultural changes and advocacy, and the use of person-first or identity-first language can be contentious in the disability community. Person-first language was developed with the good intention of reducing stigma. Yet, as research demonstrates, it is unclear if person-first language works as intended, and its usage may have unintended consequences . . . . We recommend that other publishing and writing guidelines adopt a similar approach and allow authors to use either person-first or identity-first language in accord with their preferences and that of the groups they are writing about.

Id.; *see also* Mary Ann McColl, *Should I Say 'Disabled Person' or 'Person with a Disability'?*, THE CONVERSATION (Apr. 11, 2019), https://theconversation.com/should-i-say-disabled-person-or-person-with-a-disability-113618 [https://perma.cc/HVU9-EC3Q]; Jeremiah Rodriguez, *Why Many Advocates Prefer the Term 'Disabled People' Over 'People with Disabilities*,*'* CTV NEWS (Feb. 10, 2021), https://www.ctvnews.ca/canada/why-many-advocates-prefer-the-term-disabled-people-over-people-with-disabilities-1.5303797 [https://perma.cc/EY7L-TXT9]; *Inclusive Language: Words To Use and Avoid When Writing About Disability*, U.K. GOV'T (Mar. 15, 2021), https://www.gov.uk/government/publications/inclusive-communication/inclusive-language-words-to-use-and-avoid-when-writing-about-disability [https://perma.cc/D6F7-JQ9W]. *But see Disability-Inclusive Language Guidelines*, UNITED NATIONS, https://www.ungeneva.org/sites/default/files/2021-01/Disability-Inclusive-Language-Guidelines.pdf [https://perma.cc/7RNQ-R5BS]; ADA Knowledge Translation Ctr., *Guidelines for Writing About People with Disabilities*, ADA NAT'L NETWORK, https://adata.org/factsheet/ADANN-writing [https://perma.cc/7SM3-CMGU].

34. *See, e.g.*, *Social Model of Disability: Language*, DISABILITY RTS. U.K., https://www.disabilityrightsuk.org/social-model-disability-language [https://perma.cc/37QC-665T].

I. REQUESTING ACCOMMODATIONS

A. The Interactive Process

To understand the legal scaffolding underlying workplace accommodations, this Part begins with an overview of its operationalization through the "interactive process."

Although the concept of reasonable accommodations is often touted as the ADA's most distinctive feature, the first mention of the phrase actually stemmed from Equal Employment Opportunity Commission ("EEOC") guidance regarding religious accommodations.[35] By 1978, amendments to the Rehabilitation Act, a precursor of the ADA,[36] allowed for courts to "take into account the reasonableness of the cost of any necessary work place accommodation, and the availability of alternatives therefor or other appropriate relief in order to achieve an equitable and appropriate remedy."[37]

Whereas virtually all of the ADA's definitions of discrimination paralleled those in other civil rights statutes,[38] the ADA added another definition, where discriminatory behavior involved:

> (A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or
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> (B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant . . . .[39]

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35. *See* Dallan F. Flake, *Interactive Religious Accommodations*, 71 ALA. L. REV. 67, 83 (2019).

36. *See* Sue A. Krenek, *Beyond Reasonable Accommodation*, 72 TEX. L. REV. 1969, 1972 (1994).

37. 29 U.S.C § 794a(a)(1).

38. *See* Pamela S. Karlan & George Rutherglen, *Disabilities, Discrimination, and Reasonable Accommodation*, 46 DUKE L.J. 1, 5 (1996).

39. 42 U.S.C. §§ 12112(b)(5)(A)-(b)(5)(B).

While the ADA provided some examples of reasonable accommodations,[40] its text did not provide specific statutory guidance.[41] In its stead, the EEOC introduced the concept of the interactive process[42] to guide how requests for reasonable accommodation should be considered.[43]

The "interactive process" is meant to serve as an ongoing conversation that is informed by both the employer's and employee's perspectives.[44] But it has a choreography of its own: first, an employer must have notice of an employee's disability.[45] Then the employee typically suggests the form that

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40. *See* 42 U.S.C. § 12111(9).

> "[R]easonable accommodation" may include –
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> (A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
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> (B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

Id.

41. *See* Lin, *supra* note 20, at 1880 ("Congress conceived of disability accommodations as a form of social responsibility, but did not require the federal government to address the information deficit employers and employees encounter in the interactive process.").

42. Though this concept was publicly introduced by the EEOC, the term was first used in 1989 in a Senate committee report. *See* Flake, *supra* note 35, at 74.

43. *See* Taylor v. Phoenixville Sch. Dist., 184 F.3d 296, 315 (3d Cir. 1999); Hines v. Chrysler Corp., 231 F. Supp. 2d 1027, 1040, 1046 (D. Colo. 2002) (holding that employers are required to participate in the interactive process). *See generally* RICHARD L. WIENER & STEVEN WILLBORN, DISABILITY AND AGING DISCRIMINATION 237 (Richard L. Weiner & Steven L. Willborn eds., 2011); John R. Autry, *Reasonable Accommodation Under the ADA: Are Employers Required To Participate in the Interactive Process? The Courts Say "Yes" but the Law Says "No*,*"* 79 CHI.-KENT. L. REV. 665, 667 (2004).

44. *See* Jonathan E. O'Connell, *ADA's Interactive Process Is a Two-Way Street*, SOC'Y FOR HUM. RES. MGMT. (Mar. 20, 2019), https://www.shrm.org/topics-tools/employment-law-compliance/adas-interactive-process-two-way-street [https://perma.cc/JU2E-VPUZ]. In other words, the interactive process serves as a "guaranteed [] forum in which [employees] can inform their employers what accommodations they feel they require . . . . [while] employers have the opportunity to accede to these requests." Michael Ashley Stein, *Same Struggle, Different Difference: ADA Accommodations as Antidiscrimination*, 153 U. PA. L. REV. 579, 658 (2004).

45. *See* U.S. EQUAL EMP. OPPORTUNITY COMM'N, EEOC-CVG-1997-2, ENFORCEMENT GUIDANCE ON THE ADA AND PSYCHIATRIC DISABILITIES (Mar. 25, 1997), https://www.eeoc.gov/laws/guidance/enforcement-guidance-ada-and-psychiatric-disabilities [https://perma.cc/XN6S-3D8L]. Proxies may be allowed. *See id.* ("[A] family member, friend, health professional, or other representative may request a reasonable accommodation on behalf of an individual with a disability."). However, the ADA leaves ambiguity as to whether employees must disclose their disability to their employer to trigger the interactive process, i.e., a formal request. *See* Kelly Kagan, Comment, *To Trigger or Not To Trigger: The Catch-22 of*

a reasonable accommodation should take.[46] The employer then responds with whether "the accommodations requested would engender an undue hardship."[47] Should this back-and-forth reach an impasse, only then can the employee file an EEOC complaint.[48]

Though not all workplace accommodations require an interactive process per se,[49] case law[50] and subsequent anti-discrimination legislation has built upon the interactive process for guaranteeing employee rights.[51] For instance, the PWFA calls directly for the reasonable accommodation process in its text.[52] In sum, these laws follow the same general choreography as the ADA: the employee must typically find a way to begin a conversation about

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the Americans with Disabilities Act's Interactive Process, 57 SAN DIEGO L. REV. 501, 516–17 (2020).

46. *See* Katherine A. MacFarlane, *Disability Without Documentation*, 90 FORDHAM L. REV. 59, 66 (2021) (citing Arlene Mayerson, *Title I—Employment Provisions of the Americans with Disabilities Act*, 64 TEMP. L. REV. 499, 515 (1991)). Advice to job seekers hoping to reach accommodations often advises them to provide several accommodations for the job. *See, e.g.*, *Requesting a Reasonable Accommodation with Template Letter*, EQUIP FOR EQUALITY, https://www.equipforequality.org/request-accommodation/ [https://perma.cc/R3D4-47UX]; *How To Ask for Accommodations at Work (Steps and Tips)*, INDEED, https://www.indeed.com/career-advice/career-development/how-to-ask-for-accommodations-at-work.

47. Stein, *supra* note 44, at 658.

48. *See id.*

49. *See* Flake, *supra* note 35, at 83 ("In its Compliance Manual, the EEOC counsels that even though Title VII does not obligate an employer to confer with an employee before denying an accommodation request, 'as a practical matter it can be important to do so.'" (quoting EQUAL EMP. OPPORTUNITY COMM'N, EEOC-CVG-2021-3, COMPLIANCE MANUAL ON RELIGIOUS DISCRIMINATION, § 12-IV.A.2 (Jan. 15, 2021), https://www.eeoc.gov/policy/docs/religion.html#_ftnref122 [https://perma.cc/4R2W-4S99])).

50. *See, e.g.*, Bower v. Fed. Express Corp., 287 F. Supp. 2d 840, 846 (W.D. Tenn. 2003); Doe v. Triangle Doughnuts, LLC, 472 F. Supp. 3d 115, 133 (E.D. Penn. 2020) (addressing sick leave); Smith v. Lowes Cos., Inc., 2022 WL 16579812, at *3–4 (W.D.N.C. 2022) (addressing bathroom breaks).

51. For an example of state laws, see, e.g., 775 ILL. COMP. STAT. 5/2-102 (J) (2021) (under Illinois law, the employer is required to provide reasonable accommodation related to pregnancy or childbirth once an employee requests it); *see also* Joel Lewin & Eric F. Eisenberg, *Massachusetts Fair Employment Practices Act—Pregnant Workers Fairness Act*, in 57 MASS. PRAC., MASS. CONSTR. L. § 10:82, Westlaw (database updated Dec. 2023) ("[O]nce an employee makes a request for accommodation, the employer engages in good faith in an interactive process with the employee to determine whether a reasonable accommodation can be made.").

52. *See* 42 U.S.C. § 2000gg-1(2) (dictating that it is unlawful to "require a qualified employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process").

his or her condition[53] and then wait for the employer's response. However, not everyone will begin that conversation, as employees are generally likely to under-request accommodations.[54] In the next Section, I discuss two key factors for why and for whom that might be the case.

B. Barriers to Accommodations

1. Stigma and Retaliation

There is tremendous anxiety around asking for accommodations.[55] As researchers note, "[t]he decision whether to disclose, when to disclose, and to whom to disclose is deeply personal," and it is more difficult if one's condition is stigmatized.[56] Fear of stigmatization is a key reason why people might not ask for changes in their workplace,[57] because it might seem to require disclosure of their condition.

This fear is not unfounded for disabled people, who face workplace discrimination,[58] ranging from exclusion[59] to ableist stereotypes about their

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53. *See* 29 CFR § 825.302 (employees must provide thirty days' notice for FMLA leave); 42 U.S.C. § 2000gg-1(1) (stating that under the PWFA, employees must make their pregnancy-related limitations known to their employer to receive reasonable accommodations).

54. *See* Harris, *supra* note 3, at 1719.

55. *See, e.g.*, Alison Green, *Requesting Accommodations at Work: Share Your Experiences*, ASK A MANAGER (Oct. 10, 2019), https://www.askamanager.org/2019/10/requesting-accommodations-at-work-share-your-experiences.html [https://perma.cc/ZV4Z-32AR].

56. Silvia Bonaccio et al., *The Participation of People with Disabilities in the Workplace Across the Employment Cycle: Employer Concerns and Research Evidence*, 2020 J. BUS. & PSYCH. 135, 138 (2020); *see also* Jeanette Cleveland et al., *Accommodation in the Workplace*, 7 HUM. RES. MGMT. REV. 77, 95 (1997); Anna Theresa Florey, Decision To Make an Accommodation Request: Theory and Evidence from the Perspective of Employees with Disabilities (Dec. 1998) (Ph.D. dissertation, The University of Texas at Arlington) (ProQuest) (discussing disabled employees' hesitancy to disclose).

57. *See* Cleveland et al., *supra* note 56, at 95; Florey, *supra* note 56, at 46.

58. *See* David Pettinicchio et al., *The Sociology of Disability-Based Economic Inequality*, 51 CONTEMP. SOC. 249, 254–64 (2022); Jasmine E. Harris, *The Aesthetics of Disability*, 119 COLUM. L. REV. 895, 957–58 (2019) (citing ERVING GOFFMAN, STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY 128 (First Touchstone ed., Simon & Schuster 1986) (1963)); Elizabeth F. Emens, *Disabling Attitudes: U.S. Disability Law and the ADA Amendments Act*, 60 AM. J. COMP. L. 205, 208 (2012).

59. *See* Samuel R. Bagenstos, *Subordination, Stigma, and "Disability,"* 86 VA. L. REV. 397, 425 (2000).

inability to work[60] or advance in their career.[61] Indeed, disability stigma appears resistant to other social science interventions that have successfully reduced racial and gender discrimination: introducing positive and work-relevant information about a person with a disability, such as work performance or education, does not necessarily offset hiring bias.[62]

Employees who receive accommodations are often subject to judgments from coworkers about whether the accommodation is appropriate,[63] with harsher judgments for colleagues with invisible disabilities.[64] Colleagues may be resentful if they perceive that someone else is receiving "special" treatment,[65] assuming that more work will shift to them.[66]

Furthermore, these judgments may differ based on the employee's demographic identity. In one experimental study, a request for an identical length break was viewed more negatively when it was requested by a

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60. *See* Nicole Buonocore Porter, *Disclaiming Disability*, 55 U.C. DAVIS L. REV. 1829, 1861 (2022); *see also* Susan T. Fiske et al., *A Model of (Often Mixed) Stereotype Content: Competence and Warmth Respectively Follow from Perceived Status and Competition*, 82 J. PERSONALITY & SOC. PSYCH. 878, 881 (2002); Odile Rohmer & Eva Louvet, *Implicit Stereotyping Against People with Disability*, 21 GRP. PROCESSES & INTERGROUP RELS. 126, 136 (2016) (citing Eva Louvet, *Social Judgment Toward Job Applicants with Disabilities: Perception of Personal Qualities and Competences*, 52 REHAB. PSYCH. 297, 301–02 (2007)); Allen Cook, *Don't Call Me Brave or Heroic for Being Disabled*, BBC (Dec. 31, 2018), https://www.bbc.com/news/av/uk-england-stoke-staffordshire-46653842 [https://perma.cc/N6RP-BLRF] (personal narrative pointing out this attitude).

61. *See* Mason Ameri et al., *The Disability Employment Puzzle: A Field Experiment on Employer Hiring Behavior*, 71 ILR REV. 332, 356 (2018) (citing Adrienne Colella et al., *The Impact of Ratee's Disability on Performance Judgments and Choice as Partner: The Role of Disability-Job Fit Stereotypes and Interdependence of Rewards*, 83 J. APPLIED PSYCH. 102, 102–11 (1998)).

62. *See* Katharina Vornholt et al., *Disability and Employment—Overview and Highlights*, 27 EUR. J. WORK & ORG. PSYCH. 40, 40–55 (2018) (citing Jana Bauer & Mathilde Niehaus, *Hochqualifizierte Menschen mit Behinderung: Ergebnisse einer Regionalen Transitionsstudie von der Hochschule in die Erwerbstatigkeit*, UNIV. ZU KOLN (2013) (Ger.)); Colella et al., *supra* note 61, at 109–10.

63. *See* Adrienne Colella, *Coworker Distributive Fairness Judgements of the Workplace Accommodation of Employees with Disabilities*, 26 ACAD. MGMT. REV. 100, 104–05 (2001), https://www.jstor.org/stable/259397.

64. *See id.* at 104.

65. *See id.* at 100–01; *see also* Julia M. Kensbock et al., *Is There a Downside of Job Accommodations? An Employee Perspective on Individual Change Processes*, 8 FRONTIERS PSYCH. 1, 4 (2017); Nicole Buonocore Porter, *Special Treatment Stigma After the ADA Amendments Act*, 43 PEPP. L. REV. 213, 249 (2016).

66. *See* Vornholt et al., *supra* note 62, at 40–55 (citing Philip Burge et al., *Public Views on Employment of People with Intellectual Disabilities*, 26 J. VOCATIONAL REHAB. 29, 31–32 (2007); Charles A. Scherbaum, *Predicting Job-Related Expectancies and Affective Reactions to Employees with Disabilities from Previous Work Experience*, 35 J. APPLIED SOC. PSYCH. 889, 895 (2005); Katharina Vornholt et al., *Factors Affecting the Acceptance of People with Disabilities at Work: A Literature Review*, 23 J. OCCUPATIONAL REHAB. 463, 469 (2013)).

Muslim employee for prayer or a transgender employee for injections, versus a pregnant employee for nursing.[67] Although the cost of the accommodation was identical for the hypothetical employer, research participants appeared to consider the employee's identity as a proxy for whether the accommodation was reasonable.[68] These differential judgments may lead different groups to report—or obscure—their conditions at different rates.[69]

All these factors may lead employees to hesitate from making requests for changes in their workplace,[70] with negative effects. It may be psychologically stressful to not be fully open about a part of one's identity.[71] Employees who do not disclose their need for accommodations may not be able to match with employers that would gladly provide them, impeding their ability to excel at work.[72] At the aggregate level, non-disclosure also causes large-scale underestimation of disability prevalence,[73] such that employers might also underestimate the necessity of accommodations for employees.

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67. *See* Jill D. Weinberg et al., *The Deserving Worker: Decisions About Workplace Accommodation by Judges and Laypeople*, 41 L. & POL'Y 286, 288 (2019).

68. *See id.* Similarly, having longer tenure at a job increased the likelihood of disclosing one's disability, suggesting that status or reputation might offset employees' fears of stigmatization. *See* Fitore Hyseni et al., *Diversity and Inclusion in the Legal Profession: Disclosure of Cancer and Other Health Conditions by Lawyers with Disabilities and Lawyers Who Identify as LGBTQ+*, 16 J. CANCER SURVIVORSHIP 165, 168 (2022).

69. For instance, one survey found that older age was correlated with one's belief that *others* would consider an accommodation as inappropriate. *See* David C. Baldridge & Michele L. Swift, *Age and Assessments of Disability Accommodation Request Normative Appropriateness*, 55 HUM. RES. MGMT. 357, 395–96 (2016). Although the results cannot explain whether age-linked cultural norms or fear of greater discrimination motivate these beliefs, *see, e.g.*, Charlene M. Kampfe et al., *Aging, Disability and Employment*, 31 WORK 337, 339 (2008), they are concerning because age is often associated with greater frequencies and numbers of disabilities. *See* Helen A. Schartz et al., *Workplace Accommodations: Empirical Study of Current Employees*, 75 MISS. L.J. 917, 931 (2006).

70. *See* Porter, *supra* note 60, at 1859 (2022) (citing Doron Dorfman, *Fear of the Disability Con: Perceptions of Fraud and Special Rights Discourse*, 53 L. & SOC'Y REV. 1051, 1077 (2019)); Pamela M. Robert & Sharon L. Harlan, *Mechanisms of Disability Discrimination in Large Bureaucratic Organizations: Ascriptive Inequalities in the Workplace*, 47 SOCIO. Q. 599, 599–630, 609 (2006).

71. *See* Maria Norstedt, *Work and Invisible Disabilities: Practices, Experiences and Understandings of (Non)Disclosure*, 21 J. DISABILITY 14, 15, 18–19 (2019) (citing generally GOFFMAN, *supra* note 58).

72. *See* J. H. Verkerke, *Is the ADA Efficient?*, 50 UCLA L. REV. 903, 910–15 (2003); Sally Lindsay et al., *A Systematic Review of the Benefits of Hiring People with Disabilities*, 28 J. OCCUPATIONAL REHAB. 643, 645–47 (2018).

73. *See* Bonaccio et al., *supra* note 56, at 135.

2. Knowledge and Cultural Capital

Even if someone were unaffected by stigma *and* actively seeking accommodation, they might not know about the procedures used to request and successfully advocate for a workplace change. While the "interactive process" appears to be a conversation between employer and employee, it can be difficult for employees to initiate. The interactive process may feel quasi-legal, with high stakes; on the other hand, it also might feel highly unstructured given its framing as a conversation. Although the interactive process is meant to center "the employee's expertise and knowledge,"[74] that centering results in real psychological and administrative burdens to employees, in having to advocate for themselves and educate their employers.[75]

Knowledge barriers are, of course, not limited to the accommodations setting. Similar questions reverberate across social policy. Indeed, a related literature in economics focuses on similar questions regarding disparities in the take-up of (i.e., participation in) social benefits; one major review of the literature suggests that eligible beneficiaries may not apply for benefits such as supplemental income programs or Medicaid not only because of potential stigma but also because of informational disparities specifically about *how* to apply.[76]

As with stigma, knowledge barriers may differ along key demographic axes. In particular, cultural capital may play a significant factor in whether people know how to access accommodations. A prominent sociological theory,[77] cultural capital represents "knowledge, skills, tastes, mannerisms, and interactional styles that can be parlayed into social advantage or power."[78] That is, among complex processes, cultural capital provides crucial information about how to navigate and communicate within a

74. *See* MacFarlane, *supra* note 46, at 66.

75. *See* Harris, *supra* note 3, at 1736.

76. *See* Janet Currie, *The Take-Up of Social Benefits*, *in* PUBLIC POLICY AND THE INCOME DISTRIBUTION 80, 109–11 (Alan J. Auerbach et al. eds., 2006). It is also worth noting that disabled people face additional access barriers to health care. *See, e.g.*, Lisa I. Iezzoni, *Eliminating Health and Health Care Disparities Among the Growing Population of People with Disparities*, 30 HEALTH AFF. 1947, 1950–51 (2011).

77. *See*, *e.g.*, Alice Sullivan, *Cultural Capital and Educational Attainment*, 35 SOCIOLOGY 893, 893–94 (2001); Scott Davies & Jessica Rizk, *The Three Generations of Cultural Capital Research: A Narrative Review*, 88 REV. EDUC. RSCH. 331, 331–33 (2018).

78. Kathryne M. Young & Katie R. Billings, *Legal Consciousness and Cultural Capital*, 54 L. & SOC'Y REV. 33, 37 (2020).

specific institutional context or "the system"—what sociologists label the "hidden curriculum."[79]

Formal education is one primary way people accrue cultural capital. Consider the following example: if someone is born into a family of professors, they will likely be more familiar with a university environment compared to someone who was not. They are also more likely to enroll in college[80]—and to become a professor themselves.[81]

Citizenship might also be another proxy. Whereas immigrants may need to navigate new workplace cultures and systems, independently of their wealth,[82] citizens have more experience with the norms in play, and their presence in the United States is not contingent on their employers' goodwill.[83]

Thus, cultural capital may not only make someone more familiar with logistical procedures, but also may provide them with increased self-advocacy in places where they might request accommodation, such as medical offices,[84] schools,[85] and police stations.[86] For instance, students with

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79. *See* Anthony Abraham Jack, *(No) Harm in Asking: Class, Acquired Cultural Capital, and Academic Engagement at an Elite University*, 89 SOCIO. EDUC. 1, 3 (2016) (citing Jean Anyon, *Social Class and the Hidden Curriculum of Work*, 162 J. EDUC. 67, 68–69 (1980)).

80. *See* Eric Grodsky & Catherine Riegle-Crumb, *Those Who Choose and Those Who Don't: Social Background and College Orientation*, 627 ANNALS AM. ACAD. POL. SOC. SCI. 14, 23–24 (2010) (noting that students whose parents went to college are more likely to have gone to college).

81. *See* Allison C. Morgan et al., *Socioeconomic Roots of Academic Faculty*, 6 NATURE HUM. BEHAV. 1625, 1626 (2022); Jan O. Jonsson et al., *It's a Decent Bet That Our Children Will Be Professors Too*, *in* THE INEQUALITY READER 499 (David B. Grusky & Szonja Szelenyi eds., 2d ed. 2011). Of course, class is also correlated with educational attainment. *See, e.g.*, Davies & Rizk, *supra* note 77, at 336. And personal networks may affect take-up: an individual who knows many people who receive employment benefits may perceive less stigma from enrolling in benefits *and* know more about how to effectively do so. *See* Currie, *supra* note 76, at 84–85.

82. *See*, *e.g.*, Elizabeth M. Lee & Grace Kao, *Less Bang for the Buck? Cultural Capital and Immigrant Status Effect on Kindergarten Academic Outcomes*, 37 POETICS 201, 201–02 (2009); Hiroki Igarashi & Hiro Saito, *Cosmopolitanism as Cultural Capital: Exploring the Intersection of Globalization, Education and Stratification*, 8 CULTURAL SOCIO. 222, 228 (2014) (discussing how U.S. and Western European degrees convey cultural capital).

83. *See, e.g.*, Jennifer J. Lee, *Redefining the Legality of Undocumented Work*, 106 CALIF. L. REV. 1617, 1625 (2018); Stan Malos, *Employment Discrimination Based on Immigration Status: Recent Cases Involving H-1B Visas*, 24 EMP. RESPS. & RTS. J. 23, 24 (2011).

84. *See* Janet K. Shim, *Cultural Health Capital: A Theoretical Approach to Understanding Health Care Interactions and the Dynamics of Unequal Treatment*, 51 J. HEALTH & SOC. BEHAV. 1, 8 (2010).

85. *See* Jessica McCrory Calarco, *"I Need Help!" Social Class and Children's Help-Seeking in Elementary School*, 76 AM. SOCIO. REV. 862, 863 (2011).

86. *See* Young & Billings, *supra* note 78, at 45. To be sure, the effects of self-advocacy may also vary by status. That is, self-advocacy may be interpreted differently. In other contexts, self-advocacy may lead to backlash for women compared to men. Higher status may be seen as

experience in boarding schools or with highly educated parents are more likely to utilize school resources like office hours, with positive implications for their long-term performance.[87] Patients are perceived more positively by doctors if their communication styles align, which might compound why more educated patients receive more treatment.[88] And as sociologists Kathryne Young and Katie Billings contend, those with highly educated parents may be more likely to attempt to vindicate their legal rights,[89] and to believe[90] they can do so successfully.[91]

It may also shape one's beliefs about whether they have a disability, and therefore, seek out accommodation. As David Green notes, differential cultural attitudes towards learning disabilities may mean that minority bar applicants are less likely to have documentation and in turn accommodations for the bar exam.[92]

Ultimately, those with the most cultural capital may be more likely to access and complete procedures like signing up for insurance, filing in small claims court, or asking for accommodations, whether disability or family related.[93] Within the accommodations context, they may have greater

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more credible. *See* Sara K. Holmes & Kyle R. Boerstler, *Is There a Gender Self-Advocacy Gap? An Empiric Investigation into the Gender Pain Gap*, 17 BIOETHICAL INQUIRY 383, 384 (2020). In fact, refusal to self-advocate may be rational. If someone knows that their employer is likely to grant requests from Group A but not Group B, and they belong to Group B, they may choose not to advocate for themselves because they may believe they will disclose their disability for naught. *See* David C. Baldridge & John F. Veiga, *Toward a Greater Understanding of the Willingness To Request an Accommodation: Can Requesters' Beliefs Disable the Americans with Disabilities Act?*, 26 ACAD. MGMT. REV. 85, 89 (2001).

87. *See* Jack, *supra* note 79, at 6.

88. *See* Shim, *supra* note 84, at 11 ("Those patients who have the sensitivity to 'read' their providers and understand what kind of interpersonal style he or she may favor, and who have the cultural agility to flexibly present themselves in varying ways, then have a greater likelihood of converting their cultural resources into care-related advantages.").

89. *See* Young & Billings, *supra* note 78, at 45.

90. *See id.*

91. If people with high cultural capital encounter setbacks in the process, such as initial rejections or filing delays, they may appeal, look for workarounds, or ask for assistance. *See, e.g.*, Wonsik Ko & Robert A. Moffitt, *Take-Up of Social Benefits* 12–13 (Nat'l Bureau of Econ. Rsch., Working Paper No. 30148, 2022); Young & Billings, *supra* note 78, at 50–51.

92. *See* David A. Green, *Shhh!!!! Can You Keep a Secret?: A Cultural Bias Against Disclosing a Mental Disability & Its Impact on Seeking Reasonable Accommodations for the Bar Exam*, 26 TEX. HISP. J.L. & POL'Y 1, 12 (2020) (citing Neha M. Sampat & Esme V. Grant, *The Aspiring Attorney with ADHD: Bar Accommodations or a Bar to Practice?*, 9 HASTINGS RACE & POVERTY L.J. 291, 296–97 (2012)); *see, e.g.*, Matthew C. Fadus et al., *Unconscious Bias and the Diagnosis of Disruptive Behavior Disorders and ADHD in African American and Hispanic Youth*, 44 ACAD. PSYCHIATRY 95, 98–99 (2020); MacFarlane, *supra* note 46, at 98–100. Disparities in diagnosis from both poor medical access and stereotyping compound this issue further.

93. *See* Ko & Moffitt, *supra* note 91, at 22–24.

familiarity with their workplace setting, including techniques for how to communicate persuasively.

C. Related Empirical Work on Accommodations Requests

But thus far, estimating the prevalence of disability-related workplace requests has been a difficult empirical question. This is due to a variety of empirical limitations, from inconsistent empirical definitions of disability[94] and sampling difficulties[95] to government restrictions on administrative data.[96] Accordingly, much of what we know stems from smaller-scale surveys and interviews that hinge on access to a specific population, like patients with a specific diagnosis[97] or employees with a particular affiliation.[98] Empirical work involving datasets have looked to survey datasets like the Health and Retirement Study, which studies workers over the age of fifty,[99] or smaller proprietary datasets testing a specific group.[100]

Evidence from these sources is mixed: gender, race, and age yield varying results.[101] While a 1994 survey found that men, older workers, and more

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94. *See* LIVERMORE & SHE, *supra* note 29, at 12–13.

95. *See id.* at 15–16.

96. *See id.* at 21–22.

97. *See*, *e.g.*, Phillip D. Rumrill, Jr. et al., *Perceived Strengths and Weaknesses in Employment Policies and Practices Among African Americans with Multiple Sclerosis*, 82 J. REHAB. 27, 32–34 (2016); Shengli Dong et al., *Barriers in Accommodation Process Among Individuals with Visual Impairments*, 83 J. REHAB. 27, 31 (2017).

98. *See, e.g.*, Schartz et al., *supra* note 69 (using respondents from the Job Accommodations Network).

99. *See* Elizabeth Lightfoot & Terry Lum, *An Analysis of Work Accommodation Rates for Older Adults Since the Implementation of the Americans with Disabilities Act*, SOC'Y FOR SOC. WORK & RSCH. (Jan. 14, 2006), https://sswr.confex.com/sswr/2006/techprogram/P4146.HTM [https://perma.cc/49Q6-X6XZ]; *see also* Matthew J. Hill et al., *Employer Accommodation and Labor Supply of Disabled Workers*, 41 LAB. ECON. 291, 291–303 (2016).

100. *See* Monique A. M. Gignac et al., *The Role of Sex, Gender, Health Factors, and Job Context in Workplace Accommodation Use Among Men and Women with Arthritis*, 62 ANNALS WORK EXPOSURES & HEALTH 490, 496 (2018).

101. *See* Lightfoot & Lum, *supra* note 99 (showing higher take-up by Black respondents); *see also* Shondra Loggins Clay & Reginald Alston, *Assistive Technology Use and Veterans: An Examination of Racial Differences Between Whites and Blacks Using the HAAT Model*, 45 J. VOCATIONAL REHAB. 159, 159–171 (2016). *But see* Erin Todd Bronchetti & Melissa P. McInerney, *What Determines Employer Accommodation of Injured Workers? The Influence of Workers' Compensation Costs, State Policies, and Case Characteristics*, 68 ILR REV. 558, 580 (2015) (demonstrating no differences by gender or race/ethnicity in a larger dataset); H. Stephen Kaye et al., *Disparities in Usage of Assistive Technology Among People with Disabilities*, 20 ASSISTIVE TECH. 194, 196–200 (2008) (demonstrating lower take-up of assistive technology among Black respondents).

Occupational segregation may also create compounding issues. Disabled workers may be more likely to take non-standard work, which may make them less eligible for certain legal

highly educated workers were more likely to request accommodations,[102] other studies find opposite or negligible effects for gender.[103]

Even less is known about the extent to which accommodations are granted. One survey of fifty federal employees found that a third of requests were denied.[104] Among queer lawyers, one survey found that white lawyers were more likely to be granted accommodations, and that female and minority lawyers were less likely to be granted accommodations if older.[105]

Perhaps the most comprehensive studies regarding accommodations take-up involve the use of the Health and Retirement Study. Hill and coauthors reported that only twenty-six percent of older employees received an accommodation,[106] which was correlated with their education, race, and self-reported assessments of whether they were "assertive."[107] More recently, Brucker and colleagues found that "32% of people with work accommodations received accommodations," but that differences in these rates by race and ethnicity were not statistically significant.[108]

Some limited research considers the role of cultural capital in accommodations seeking. In a small sample of people with rheumatic

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protections. *See* Lisa A. Schur, *Dead End Jobs or a Path to Economic Well Being? The Consequences of Non-Standard Work Among People with Disabilities*, 20 BEHAV. SCIS. & L. 601, 610 (2002); Nicholas Broten et al., *Disability Risk in Alternative Work Arrangements* 30–33 (Nat'l Bureau of Econ. Rsch., Working Paper No. NB18-08, 2018).

102. *See* Craig Zwerling et al., *Workplace Accommodations for People With Disabilities; National Health Interview Survey Disability Supplement, 1994-1995*, 45 J. OCCUPATIONAL & ENV'T MED. 517, 517–525 (2003); *see also* Hyseni et al., *supra* note 68, at 171.

103. In an analysis of Oregon's worker compensation system, being female was associated with an increase in accommodations. *See* Naoki Aizawa et al., *Exploring Worker and Firm Characteristics that Drive Use of Accommodation for Workers with Disabilities*, CTR. FOR FIN. SEC. 1, 16 tbl.3 (2022). *But see* Hill et al., *supra* note 99, at 291 (finding that gender was not associated with accommodations receipt within older workers). In another study, female employees were more likely to use a service that helped them request accommodations, but the authors did not observe any differences in the type of accommodations being sought or the frequency in which they were granted. *See* Helen P. Hartnett et al., *Employment Accommodations for People with Disabilities: Does Gender Really Matter?*, 34 DISABILITY STUD. Q. (2014), https://library.osu.edu/ojs/index.php/dsq/article/view/3825/3647 [https://perma.cc/8M8F-EMDZ]. In contrast, a study of arthritis patients found that female patients indicated need for more accommodations, but that fewer of them were met. *See* Gignac et al., *supra* note 100.

104. *See* Sharon L. Harlan & Pamela M. Robert, *The Social Construction of Disability in Organizations: Why Employers Resist Reasonable Accommodation*, 25 WORK & OCCUPATIONS 397, 417 (1998).

105. *See* Peter Blanck et al., *Diversity and Inclusion in the American Legal Profession: Workplace Accommodations for Lawyers with Disabilities and Lawyers Who Identify as LGBTQ+*, 30 J. OCCUPATIONAL REHAB. 537, 551 (2020).

106. *See* Hill et al., *supra* note 99, at 293.

107. *See id.*

108. *See* Brucker et al., *supra* note 28, at 23.

diseases, patients with high cultural capital via higher education appear to indicate higher needs for and use of accommodations,[109] acknowledging that "detailed knowledge . . . skill in requesting use, and [suggestions by a] health professional"[110] guided their requests. In another study, the researchers found that cultural capital was associated with not only knowledge about the ADA but also respondents' confidence in their ability to complete goals.[111]

II. WHO RECEIVES ACCOMMODATIONS?: AN EMPIRICAL STUDY

Altogether, existing empirical work on accommodations has provided important hypotheses, but the limitations of data sources have made it difficult to fully consider results in broader context. However, stigma and cultural capital provide additional theoretical foundations for the examination of potential effects and for why we might expect disparate impacts to occur. Using these theories as a starting point, I use new and nationally representative data from the Census Bureau to examine these questions with greater statistical power.[112]

This Part asks three different but interrelated questions. First, I look at rates of accommodations requests and examine whether different subgroups are associated with different rates, all else constant. I then examine whether these differences remain considering different statistical models (i.e., robustness checks). Second, I parse out the analysis to explore whether differences in specific types of accommodations might explain the disparities in question, particularly for women and more educated respondents in the Census data. Finally, I look at differences in the rate of accommodations approvals. My goal in these analyses is to leverage the

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109. *See* Monique A. M. Gignac et al., *Availability, Need for, and Use of Work Accommodations and Benefits: Are They Related to Employment Outcomes in People with Arthritis?*, 67 ARTHRITIS CARE & RSCH. 855, 855 (2015).

110. Saralynn H. Allaire et al., *Use of the Americans with Disabilities Act by Persons with Rheumatic Diseases and Factors Associated with Use*, 45 ARTHRITIS CARE & RSCH. 174, 174 (2001).

111. *See* Dong et al., *supra* note 97, at 31. In Hill and colleagues' sample of older workers, several personality traits associated with self-advocacy were predictive of the likelihood of asking for accommodation. *See* Hill et al., *supra* note 99, at 297; *see also* Brucker et al., *supra* note 28, at 6.

112. As noted previously, one previous version of this dataset, the 2012 Disability Supplement, was analyzed by two different teams. *See generally* von Schrader et al., *supra* note 28; Ameri et al., *supra* note 28; discussion *supra* note 28. In their important studies, the authors examine accommodations rates by industry and disability type, as well as union status. In contrast, the present study focuses on sociodemographic differences after controlling for occupation and industry.

relative size and depth of this newly available data to gain a clearer picture on who asks for and receives workplace accommodations.

A. Data

This Article uses data from the 2021 wave of the Census Bureau's Disability Supplement of the Current Population Survey ("CPS"). Approximately 60,000 households are interviewed in conjunction with the CPS monthly, as the Census Bureau uses the CPS to generate labor force estimates in the United States.[113] The Disability Supplement was an additional module that households completed in July 2021.[114] It was previously administered only twice before, in 2012 and 2019.[115]

Although the CPS regularly asks about an individual's self-reported disability and other aspects of their work (such as number of hours worked or their job search),[116] the Disability Supplement went further and asked additional questions about the extent to which a respondent's disability impacts their work. Specifically, it asked whether the respondent has "ever requested any change in their current workplace to help [them] do their job better,"[117] which is the focus of the current study. Both disabled and non-disabled people were interviewed for the Supplement.

The universe of respondents in the following analyses includes those who completed the Disability Supplement and answered "yes" or "no" to the following question: "Have you ever requested any change in your current workplace to help you do your job better?"[118] (N = 38,213).

Table 1 shows the summary statistics and demographics of respondents. Analyses were weighted using census-provided replicate and sampling weights to generate a nationally representative sample. Notably, Table 1 shows that fifteen percent of respondents who self-identified as disabled

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113. *See Methodology*, U.S. CENSUS BUREAU, https://www.census.gov/programs-surveys/cps/technical-documentation/methodology.html [https://perma.cc/9YZ4-T5W6].

114. *See Supplemental Surveys*, U.S. CENSUS BUREAU, https://www.census.gov/programs-surveys/cps/about/supplemental-surveys.html [https://perma.cc/CX9G-GC8D].

115. *See id.*

116. Typically, the Census also collects basic information about disability from two other sources, the American Community Survey and the Annual Social and Economic Supplement ("CPS," "ASEC"). These data sources do not ask about accommodations. *See How Disability Data Are Collected from the American Community Survey*, U.S. CENSUS BUREAU, https://www.census.gov/topics/health/disability/guidance/data-collection-cps.html [https://perma.cc/YD78-8BHP].

117. *See* U.S. CENSUS BUREAU, CURRENT POPULATION SURVEY, JULY 2021 DISABILITY FILE: TECHNICAL DOCUMENTATION, https://www2.census.gov/programs-surveys/cps/techdocs/cpsjul21.pdf [https://perma.cc/A2XX-4JEB].

118. *See id.*

requested accommodations, while seven percent of non-disabled respondents made requests. The next Section examines demographic differences within these requests.

B. Who Asks for Accommodations?

1. Measures and Model

First, I analyzed whether there were differences in requests for accommodation. Variables of interest included demographic and sociodemographic factors that, as theorized earlier, might impact a respondent's propensity to make requests in their workplace, including age, gender, race, education, and citizenship status. As described in Section I.C, similar empirical work has often focused on disparities in these characteristics, not just in accommodations specifically, but other contexts

Table 1. Summary Statistics of Disability Supplement Respondents

	All Respondents	Disabled Respondents
Age (mean)	41.72 (10.41)	48.21 (12.31)
Female	46.70%	46.44%
Race		
White	77.57%	80.08%
Black	11.90%	11.97%
Asian	6.70%	2.68%
Other	3.83%	5.27%
Hispanic ethnicity	18.11%	13.82 %
Education level		
High school or below	32.33%	37.25%
Some college	26.91%	32.10%
Bachelor's degree or Above	40.76%	30.65%
Citizenship status	82.64%	91.39%
Number of children (mean)	0.57 (0.71)	0.30 (0.55)
Disability status	3.95%	
Income		
Below $40,000	14.51%	25.72%
$40,000-74,999	25.60%	28.69%
$75,000-99,999	15.48%	14.72%
$100,000-149,999	18.86%	12.82%
Over $150,000	21.55%	12.46%
Requested accommodations	7.13%	15.07%
Granted accommodations		
No	14.55%	16.83%
Partially	14.51%	9.33%
Yes	70.95%	73.84%
N	38,213	1,654

All statistics are weighted, except for N. Except for age and number of children, which have been standardized, all predictors are indicator variables where yes = 1. Age and number of children include standard deviation in parentheses. Additional controls included in analysis but not displayed here include industry/occupational controls, census division, and rurality.

such as health disparities[119] and social programs.[120] These identities might impact a respondent's propensity to make requests at their workplace, whether through impacting their feelings of security or potential at their workplace,[121] knowledge of specific accommodation processes,[122] or cultural capital.[123]

To understand who asks for accommodations, I used a logistic regression to model the process. Logistic regressions are frequently used to estimate the relative rates at which variables (i.e., respondent characteristics) are associated with binary outcomes (i.e., whether someone requests an accommodation or not).[124] Like other generalized linear models, this analysis allowed me to isolate and compare the relative effects of different factors that might affect whether someone makes a workplace request by holding other characteristics constant.[125] The regression I estimated took the following form:

$$\text{logit}\,(E(\text{Request})) = \alpha + \beta\text{Age} + \beta\text{Female} + \beta\text{Race} + \beta\text{Hispanic} + \beta\text{Education} + \beta\text{Controls} + \epsilon$$

Outcome. The outcome (i.e., dependent variable) was whether a respondent reports ever having requested an accommodation at his or her current workplace (i.e., an affirmative answer to the question, "Have you ever requested any change in your current workplace to help you do your job better?").

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119. *See, e.g.*, Thomas C. Buchmueller et al., *Effect of the Affordable Care Act on Racial and Ethnic Disparities in Health Insurance Coverage*, 106 AM. J. PUB. HEALTH 1416, 1416 (2016); Elizabeth Brondolo et al., *Race, Racism and Health: Disparities, Mechanisms, and Interventions*, 32 J. BEHAV. MED. 1, 2 (2009).

120. *See, e.g.*, Currie, *supra* note 76, at 84–85 (noting take-up of social programs differs by race and ethnicity).

121. *See* Hill et al., *supra* note 99, at 293.

122. *See* Rumrill et al., *supra* note 97, at 32–34; *see also* Gignac et al., *supra* note 100, at 499–500.

123. *See* Young & Billings, *supra* note 78, at 45.

124. *See, e.g.*, COSMA SHALIZI, *Logistic Regression*, *in* UNDERGRADUATE ADVANCED DATA ANALYSIS 223, 223–28 (2012), https://www.stat.cmu.edu/~cshalizi/uADA/12/lectures/ch12.pdf [https://perma.cc/K4TF-8N9U].

125. *See, e.g.*, *Beyond Logistic Regression: Generalized Linear Models (GLM)*, PENN STATE: ANALYSIS OF DISCRETE DATA, https://online.stat.psu.edu/stat504/lesson/beyond-logistic-regression-generalized-linear-models-glm [https://perma.cc/MWU7-H9KJ].

Controls. I controlled for demographic characteristics for the number of children that the respondent has, their self-reported disability status,[126] their income,[127] industry/occupational controls,[128] census division, and rurality.

Predictors of interest. The sociodemographic characteristics investigated include age, binary gender (i.e., female or male), race (i.e., White, Black, Asian, or other), ethnicity (Hispanic), education (i.e., whether the respondent has enrolled in some college or completed a bachelor's degree), and citizenship status (i.e., citizenship by birth). All but age were indicator variables (i.e., marked 1 = yes and 0 = no), and age was standardized.

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126. Disability status is 1 in the dataset if the respondent answers "yes" and 0 if they answer "no" to the following prompt:

> Does this person have any of these disability conditions:
>
> Is [Name] deaf or does [Name] have serious difficulty hearing?
>
> Is [Name] blind or does [Name] have serious difficulty seeing even when wearing glasses?
>
> Because of a physical, mental, or emotional condition, does [Name] have serious difficulty concentrating, remembering, or making decisions?
>
> Does [Name] have serious difficulty walking or climbing stairs?
>
> Does [Name] have difficulty dressing or bathing?
>
> Because of a physical, mental, or emotional condition, does [Name] have difficulty doing errands alone such as visiting a doctor's office or shopping?

See U.S. CENSUS BUREAU, *supra* note 117. As a robustness check, I revised the model to include disability type or severity instead of this indicator variable; these alternative specifications yielded largely similar results, with one difference noted *infra* note 139.

127. I categorize income into five categories: $0 to $39,999; $40,000 to $74,999; $75,000 to $99,999; $100,000 to $149,999; and over $150,000. *See* Lyttelton & Zang, *supra* note 27, at 25. As a robustness check, I revised the model to incorporate two alternative specifications of income (entering all sixteen income categories as indicators, and whether household income was above U.S. median). These alternative specifications yielded similar results in the following analyses.

128. The industry controls include indicator variables for agriculture, forestry, fishing, and hunting; mining; construction; manufacturing; wholesale and retail trade; transportation and utilities; information; financial activities; professional and business services; educational and health services; leisure and hospitality; other services; public administration; and the armed forces. The occupational controls included management, business, and financial; professional and related; service; sales and related; office and administrative support; farming, fishing, and forestry; construction and extraction; installation, maintenance, and repair; production; transportation and material moving; and the armed forces. *See* U.S. CENSUS BUREAU, *supra* note 117.

2. Results and Discussion

Table 2 presents these initial results in column 1. All analyses were weighted to be demographically representative, using the weights provided by the Census Bureau. The results in Table 2 are displayed in odds ratios ("OR"), which signify the relative odds that one group compared to another

Table 2. Effects of Employee Characteristics on Workplace Requests

	(1) All Applicants	(2) No Disability	(3) Disability
Age (scaled for 10 years)	0.94*	0.96	0.77**
Female	1.17**	1.16*	1.37
Race			
Black	0.93	0.95	0.74
Asian	0.88	0.87	1.47
Other	1.15	1.09	2.02
Hispanic ethnicity	0.67***	0.64***	1.16
Education level			
Some college	1.55***	1.60***	1.17
Bachelor's degree or above	1.73***	1.76***	1.39
Citizenship status	1.40**	1.41**	1.36
Number of children	1.07**	1.08**	1.05
Disability status	2.63***		
Income			
$40,000-74,999	1.01	1.01	0.91
$75,000-99,999	0.96	0.99	0.56
$100,000-149,999	0.94	0.94	0.95
Over $150,000	0.85	0.86	0.70
N	38,213	36,559	1,638
χ^2	800.49	625.04	101.56

Notes: p = .05, ** p = .01, p < .001. All statistics are weighted, except for N. Except for age and number of children, which have been standardized, all predictors are indicator variables where yes = 1 and the reference group is none of the characteristics in the table (e.g., reference race = White). Additional controls included in analysis but not displayed here include industry/occupational controls, census division, and rurality. Note that 16 observations were not included in model 3, due to one occupation and industry categorization yielding perfect prediction in the model.

asks for accommodations. An odds ratio over one indicates that the coefficient was associated with an increased likelihood of the outcome (here, a request) compared to a baseline group; conversely, ratios under one means that a person with that characteristic was less likely to request a workplace change.[129] For instance, White respondents do not appear as a separate row within Table 2 because they are the baseline in the statistical model; the coefficients in the table compare how minority status affects accommodation rates.

All else constant, women were more likely to request an accommodation,[130] whereas Hispanic respondents were less likely to do so.[131] Specifically, all else constant, a male respondent had a 6.6% probability of asking for an accommodation whereas a female respondent had a 7.8% probability of doing so,[132] and the probability that a non-Hispanic respondent requested an accommodation was 7.5%, compared to 5.2% for a Hispanic respondent.

Although these probabilities might seem small, they reflect the fact that the rate of accommodation requests is already quite low and hovering at seven percent.[133] No other differences between racial groups were observed, controlling for other factors.[134]

Education had the largest effect: respondents with a college degree had nearly twice the odds of requesting a workplace change, compared with respondents who had not completed high school.[135] However, income level as a control was not correlated with whether someone requested an accommodation,[136] suggesting that education had a distinct role independent of resources or income. This seems to provide support for the premise that

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129. The p-value associated with the odds ratio and other statistics generally represents whether the hypothesized result has resulted from chance, with smaller values indicating rejection of the "null hypothesis." Many disciplines use a threshold of $p = 0.05$ to determine whether the result is statistically significant, with p-values closer to zero suggesting that the observed effect is less likely to be a false positive. *See, e.g.*, P.B. STARK, MAKING SENSE OF P-VALUES (2015), https://www.stat.berkeley.edu/~stark/Preprints/pValues.pdf [https://perma.cc/UK6Y-R3KD]. Although, this practice has objectors. *See, e.g.*, Blakeley B. McShane et al., *Abandon Statistical Significance*, 73 AM. STATISTICIAN 235, 235 (2019).

130. *See supra* Table 2 (OR = 1.17, $p = 0.03$).

131. *See supra* Table 2 (OR = 0.67, $p < .001$).

132. The ratio of these two numbers, 1.17, is referred to as the relative risk ratio. *See infra* Section II.D.

133. *See supra* Table 1.

134. *See infra* Part III (considering some explanations for these results).

135. *See supra* Table 2 (OR = 1.73, $p < .001$). That is, respondents with a bachelor's degree had a 9.3% chance of requesting an accommodation; respondents without a bachelor's degree had only a 5.6% chance of doing so.

136. *See supra* Table 2.

education contributes something other than resources, such as cultural capital (i.e., knowledge about the accommodations process or self-advocacy).

3. Stratification

Thus far, the initial results suggest that there are demographic differences in who requests accommodations, particularly with regard to education. However, I also found that some portion of people who did not identify as disabled in the census data also requested workplace changes.[137]

We might expect the reasoning for requesting accommodations, and thus the underlying populations requesting them, to be different. Accordingly, to examine whether the above patterns hold for both respondents with and without disabilities, columns 2 and 3 in Table 2 respectively show analyses from the two groups (i.e., stratification).

I find that the effects in the previous subsection are replicated in the group without disabilities. That is, female and more highly educated employees remained more likely to request accommodations,[138] whereas Hispanic employees were less likely to do so compared to White employees.[139]

In contrast, the only statistically significant difference in whether a respondent with a disability requests an accommodation relates to age: older employees were slightly less likely to request accommodations.[140] Aside from age, other demographic characteristics do not seem to affect whether a disabled person seeks out workplace accommodation. This result might occur if people with more visible or severe disabilities are more likely to identify as disabled;[141] in those cases, employers may be more likely to be

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137. As Table 1 notes, seven percent of respondents without a disability requested accommodations, compared to fifteen percent of participants with a disability. *See supra* Table 1. Given that the population of respondents without self-identified disabilities is significantly larger than those with disabilities, this result suggests that the majority of requests come from people who do not self-identify with the census's definition. *See* Von Schrader et al., *supra* note 28, at 337. Part III addresses the implications of this result.

138. Female (OR = 1.16, p = 0.01); some college education (OR = 1.60, p < .001); college degree and above (OR = 1.76, p < .001). *See supra* Table 2.

139. *See supra* Table 2 (OR = 0.64, p < .001).

140. *See supra* Table 2 (OR = 0.77, p = 0.007). However, note that in a robustness check that considered disability type instead of disability status overall, age was not correlated with likelihood of requests among disabled respondents. This might be explained by the relationship between age and the types of disabilities as defined by the Census. *See, e.g.,* Cynthia Brown and Kellie Flod, *Mobility Limitation in the Older Patient*, 310 J. AM. MED. ASS'N 1168 (2013).

141. *See* Kathleen R. Bogart et al., *Who Self-Identifies as Disabled? An Examination of Impairment and Contextual Predictors*, 62 REHAB. PSYCH. 553, 555 (2017).

on notice for accommodations such that employees do not have to actively request them, or employees view them as imperative.

4. Robustness Check: Additional Occupational Controls

One question that might be raised regarding the models above is whether the occupational and industry controls included in the model are robust enough to account for a variety of job-specific factors. It might be that the existing occupation and industry controls do not fully "capture" certain aspects of a job: there may be wide variability within an industry regarding the types of tasks an employee has, and those unobserved factors may capture whether an accommodation is requested.

Occupational segregation, for instance, can determine access to common accommodations ex-ante because some types of physical work are simply "part of the job."[142] Sociologists Thomas Lyttelton and Emma Zang observed racial disparities in workplace COVID-19 exposure because Black and White employees differed systematically in the types of jobs they had.[143] Whether someone works in an office or other setting may affect the extent to which they request remote work;[144] finer-grained data may capture these distinctions.

Additionally, people may feel more empowered to request accommodations if there are people like them in their workplace. For instance, some studies have shown that employees may feel more comfortable speaking up in contexts where they are in the demographic majority.[145] If this is the case, then the share of other workers in the occupation or industry who were of the same gender or ethnicity as the

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142. *See* Megan Henly et al., *Worker Functional Abilities, Occupational Requirements, and Job Accommodations: A Close Look at Three Occupations* (Univ. of Mich. Ret. & Disability Rsch. Ctr., Working Paper No. 430, 2021) (comparing accommodations for sedentary workers, like receptionists, to physical workers like nurses). Of course, different types of jobs are associated with different types of injuries and, in turn, accommodations. *See* Bronchetti & McInerney, *supra* note 101, at 567 (citing John W. Ruser & William J. Wiatrowski, *Restricted Work Due to Workplace Injuries: A Historical Perspective*, MONTHLY LAB. REV., Mar. 2013, at 31, 36).

143. *See* Lyttelton & Zang, *supra* note 27, at 26–28. Similarly, Jennifer Shinall examined pre-pandemic data to suggest that disabled workers would have been less likely to have received accommodations during the pandemic due to the types of jobs they held. *See* Jennifer Bennett Shinall, *Without Accommodation*, 97 IND. L.J. 1147, 1151–52 (2022).

144. *See* Schur et al., *supra* note 27.

145. *See, e.g.*, Anshuman Prasad, *Understanding Workplace Empowerment as Inclusion*, 37 J. APPLIED BEHAV. SCI. 51, 62 (2001); Susan Banducci et al., *Minority Representation, Empowerment & Participation*, 66 J. POL. 534, 538–39 (2004).

respondent (i.e., how gendered the occupation or industry is) may serve as a proxy for representation.

To address both issues, I conduct robustness checks by adding two additional sets of controls to the original analysis above: task-based controls and representational controls. To control for differences in tasks (i.e., finer-grained job data), I use data from the Department of Labor's O*NET database.[146] Frequently used in economics[147] research, O*NET classifies virtually all of the jobs represented in the U.S. government's labor data by skill, task, and contexts.[148] Specifically, O*NET provides detailed information about job characteristics along numerous scales, such as the extent to which the job "require[s] bending or twisting [one's] body"[149] or "require[s exposure to] . . . contaminants (such as pollutants, gases, dust or odors)."[150] I include results from these and similar scales to capture broader aspects of a respondent's job and to control for the varying physical risks associated with jobs. A full list of the task-based controls used appears in the appendix.[151]

To control for differences in the demographics of a job, I use additional census data on the share of women and Hispanic employees within an occupation and industry. I include these two specific controls given that the previous analysis in Section II.B suggests that female and Hispanic respondents differ in their likelihood of requesting an accommodation when compared to male and non-Hispanic respondents, respectively. I also include interaction terms that multiply these proportions against whether the respondent is female or Hispanic (i.e., whether respondent is female multiplied by the share of female employees in her occupation). The interaction thus represents the extent to which the respondent is, for example, a woman in a female-majority industry or underrepresented in that industry. For both sets of controls, I match occupational data to each

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146. *See* O*NET ONLINE, https://www.onetonline.org/ [https://perma.cc/2N6A-BEBY].

147. See Lyttelton & Zang, *supra* note 27, at 23–24, for an example of sociological research using O*NET. *See, e.g.*, David H. Autor & Michael J. Handel, *Putting Tasks to the Test: Human Capital, Job Tasks and Wages*, 31 J. LAB. ECON. (PRINCETON DATA IMPROVEMENT INITIATIVE) S59, S62 (2013); Daron Acemoglu & David Autor, *Skills, Tasks, and Technologies: Implications for Employment and Earning*s, *in* 4 HANDBOOK OF LABOR ECONOMICS 1073, 1078–79 (David Card & Orley Ashenfelter eds., 2011) (discussing some of O*NET's limitations).

148. *See About O*NET*, O*NET RES. CTR., https://www.onetcenter.org/overview.html [https://perma.cc/HPC3-RXE6]. Ninety-five percent of the 923 job categories used in census data (N = 873) have profiles on O*NET.

149. *See Work Context—Spend Time Bending or Twisting the Body*, O*NET ONLINE, https://www.onetonline.org/find/descriptor/result/4.C.2.d.1.h [https://perma.cc/KLD7-8XH9].

150. *See Work Context—Exposed to Contaminants*, O*NET ONLINE, https://www.onetonline.org/find/descriptor/result/4.C.2.b.1.d [https://perma.cc/KZX3-ZE97].

151. *See infra* Table A1.

respondent using the six-digit Standard Occupational Classification code used by the Department of Labor to standardize job categories.

Appendix Table A2 shows summary statistics for the respondents included in these robustness checks;[152] Appendix Table A3 displays the results. I test two configurations: one with task-related checks only and another that includes task and representational controls. The results in Appendix Table A3 are largely similar to our original regression analyses in Table 2: using these measures in addition to the basic occupation and industry controls does not appear to change the results. Gender, ethnicity, education, and citizenship remain statistically significant predictors of whether someone requests a workplace accommodation.[153]

Altogether, the original results appear largely robust to occupational differences, such that the disparities remain despite job-related differences and occupational segregation. Further, the results of this robustness check also seem to rule out the role of gender representation in the propensity of asking for accommodations given that the results remain similar with the addition of representational controls.[154]

C. Unpacking Accommodations by Type

Thus far, the results in Section II.B still hold: the likelihood of requesting an accommodation is positively correlated with female gender, citizenship, and higher education, but negatively correlated with Hispanic ethnicity. Why might this be the case? Although the dataset does not give a sense of an individual's qualitative responses, or whether self-advocacy might play a role, the analyses thus far suggest that the type or nature of jobs play less of a role than many scholars have expected. To address this question, I explore whether these variables are associated with specific types of accommodation.[155] Specifically, the Disability Supplement asks whether a

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152. Note that not all respondents in the Disability Supplement have jobs associated with O*NET data and therefore there are fewer observations. However, the two samples look similar to one another. *See supra* Table 1; *infra* Table 3.

153. *See supra* Table 1; *infra* Table 3.

154. However, it may be more likely that a request for accommodations, given its relevancy to disability specifically, might be associated with disability representation specifically. *See* Baldridge & Swift, *supra* note 69 (noting sample of older people suggested they would disclose disability if they knew of colleagues with disabilities).

155. Census respondents were also asked about religious accommodations, but I do not include them here as only 31 of the more than 37,000 respondents in this survey indicated they had requested a religious accommodation. The resulting empirical analysis would be significantly less precise.

respondent has requested one of the following types of workplace changes:[156]

- New or modified equipment[157]
- Physical changes to the workplace[158]
- Policy changes to the workplace[159]
- Changes in work tasks, job structure, or schedule[160]
- Changes in communication or information sharing[161]
- Accommodations for family or personal obligations[162]

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156. While the Census interview protocol does not provide descriptions of these types in full detail, the below examples in the footnotes draw from a survey of employers in which they were asked about similar categories. Of course, within each of these categories, there may be tremendous heterogeneity: new equipment could imply a desk chair or a forklift; policy changes could involve advanced notice for work shifts or demands for higher wages. *See infra* notes 157–162.

157. In a 2011 version of the survey, respondents indicated that equipment purchased might include "a trackball, a standing workstation, a larger stove, a new screen reading program, text enlargement software, an office phone, and a van." *See* BRANDON KOPP, CPS DISABILITY SUPPLEMENT QUESTIONS: SUMMARY OF FINDINGS FROM COGNITIVE INTERVIEWS 15 (2011), https://wwwn.cdc.gov/qbank/report/Kopp_BLS_2011_CPSDisability1.pdf (presenting summary of interview findings to test the Disability Supplement's survey design, as prepared for the Census Bureau). The 2021 version of the survey appears to follow the suggestions by Kopp, suggesting the report is an accurate basis for the Bureau's reasoning. *See id.* at 15–16.

158. Physical changes might involve "desk height, bathroom adaptations, change of floor waxes, increased lighting, parking accommodation, and [a] ramp to [the] door." *See* Tatiana I. Solovieva et al., *Employer Benefits from Making Workplace Accommodations*, 4 DISABILITY & HEALTH J. 39, 42 (2011).

159. Policy changes could include "allowing the employee to not climb a ladder, adding an ergonomics policy, allowing [a] space heater, modifying emergency exit procedures, modifying a salary to supplement disability income, and having a 'buddy' on the work floor." *Id.* at 43.

160. Changes in work tasks might include "lowered lifting requirements, providing community rehabilitation support, different teaching load, and limiting work that required use of the wrist." *Id.* at 42.

161. Communications requests might involve providing interpreters or "info[rmation] in alternative format" such as "larger print . . . [or] increased written material." *Id.* at 43.

162. Family or personal accommodations could involve rooms for pumping, *see Fact Sheet #73: FLSA Protections for Employees To Pump Breast Milk at Work*, U.S. DEP'T OF LAB., WAGE & HOUR DIV. (Jan. 2023), https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers [https://perma.cc/729L-99CZ], or leave to take care of a sick family member, *see* David M. Lester, *The Reasonable Accommodation Dilemma for Associational Discrimination*, AALRR: LAB. & EMP. L. BLOG (May 26, 2021), https://www.aalrr.com/Labor-Employment-Law-Blog/the-reasonable-accommodation-dilemma-for-associational-discrimination [https://perma.cc/54ZW-5G8D].

- Training[163]
- Other

In disaggregating the primary outcomes into these separate categories, we might have a better sense of why the rate of requests might vary. For instance, it might be the case that more ambiguous types of requests ("other," "policy changes") are harder to articulate generally, suggesting that those with cultural capital might feel better positioned to advocate for those changes. Or it may be the case that certain conditions are more prevalent—or perceived to be more prevalent—among certain groups. We might theorize, for instance, that female employees may ask for more family leave, given stereotypes associated with family roles. Analyzing the data with more specific outcomes sheds light on these issues.

1. Measures and Model

To understand whether differences in accommodations vary by type, I again used a logistic regression to examine the relationship between sociodemographic variables and whether a specific type of accommodation is requested. To be sure, the accommodations categories above do not always or solely implicate the ADA. For instance, a family-related request might be covered under the Family and Medical Leave Act ("FMLA"),[164] whereas equipment requests could fall under the scope of the Occupational Safety and Health Administration ("OSHA").[165] But my focus in this study is whether respondents are likely to assert their rights, as each of these requests are likely applicable under previously described antidiscrimination legislation. Again, the regression model here is identical to that in Section II.B:

$$\text{logit}\,(E(\text{Request})) = \alpha + \beta\text{Age} + \beta\text{Female} + \beta\text{Race} + \beta\text{Hispanic} + \beta\text{Education} + \beta\text{Controls} + \epsilon$$

Outcome. I examined eight outcomes of interest, i.e. whether the respondent answered yes to asking for a workplace change in one of the above categories. Accordingly, the results (in Table 3) respectively display

163. Training could include programming for oneself, *see* KOPP, *supra* note 157, at 16, or for others (e.g., "evacuation procedures training" or "informal advising of nearby coworkers"), Solovieva et al., *supra* note 158, at 42.

164. *See* 29 U.S.C. § 2612(a)(1)(C).

165. *See, e.g.*, 29 C.F.R. § 1910.132 (2016) (outlining OSHA's general equipment requirements).

the eight dependent variables across eight columns. Aside from the varying outcomes, the regressions were identical to one another.

Controls. As in Section II.B, I controlled for demographic characteristics (number of children, disability status, income) and job characteristics (industry/occupational controls and census region).

Predictors of interest. Although predictors remain identical to Sections II.B and II.C, I focused primarily on gender, ethnicity, education, and citizenship here because this is a follow-up analysis exploring why disparities in these categories occur.

2. Results and Discussion

Table 3 displays the models, one column per category. Again, all coefficients are displayed as odds ratios, where a coefficient over one indicates a higher likelihood of requesting an accommodation in that particular category.

Based on Table 3, the higher probability of requests from female respondents in Section II.B appears to stem from task- and family-related requests. As other research suggests, task-related requests encompass a variety of suggestions, from scheduling changes to preventing heavy lifting;[166] the combination of these and family-related requests might suggest that the relatively higher rate of requests among women is due to parental responsibilities. For instance, legislation like the Pregnancy Discrimination Act ("PDA") may have made relevant populations aware of potential rights like parental leave.[167] Another interpretation, however, might be that women are more likely to be stereotyped as the relevant population for these changes, and in turn, female employees may request family-related changes because they believe the requests are more likely to be granted given these preexisting stereotypes.[168]

The previously identified association between citizenship and requests appears to be primarily situated with regard to training: the odds of requesting training are nearly five times higher among citizens compared to

166. *See* Solovieva et al., *supra* note 158, at 42.

167. *See* Catherine Albiston & Shelley Correll, *Law's Normative Influence on Gender Schemas: An Experimental Study on Counteracting Workplace Bias Against Mothers and Caregivers*, 49 L. & SOC. INQUIRY (forthcoming 2024). A possible, though perhaps less likely, argument is that salient court cases provide examples of what pregnant people might see as accommodations to ask for. *See* Young v. United Parcel Service, Inc., 575 U.S. 206 (2015). *But see* Brad Areheart, *Accommodating Pregnancy*, 67 ALA. L. REV. 1125, 1158 (2016) (arguing that specific legislation targeting pregnant workers is "potentially problematic [through singling] out pregnancy as a condition uniquely in need of accommodation").

168. *See* Morgenroth et al., *supra* note 24.

noncitizens,[169] although it is unclear whether the training is related to professional development, tasks, or compliance. And for Hispanic respondents, the lower likelihood of accommodations was clustered around requests regarding equipment, policy, family, and tasks.[170]

Given these results, further research should explore why we might observe a difference in terms of ethnicity and citizenship, particularly compared to race.[171] Some qualitative research suggests that certain occupations with a large number of Hispanic employees affirmatively provide accommodations as recruitment and retention mechanisms.[172] Alternatively, employers or supervisors may treat different ethnic groups differently based on status or stereotypes.[173] It may also be the case that cultural expectations and stereotypes may generate different communication styles and expectations in what to ask at the workplace,[174] as cultural capital might suggest.[175]

Finally, respondents with at least a college degree have nearly twice the odds of requesting accommodations across all categories.[176] That is, the education effect we observed in our original analysis in Section II.B persists across all types of accommodations.

Altogether, these results suggest that within demographic variables, education plays the strongest factor in whether an accommodation is requested. Again, income does not appear to be correlated with whether

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169. *See infra* Table 3 (OR = 4.50, p = 0.004).

170. *See infra* Table 3.

171. It is worth noting that an analysis conducted on an earlier wave of the Disability Survey finds mixed results regarding race; in that 2019 dataset, black respondents overall were less likely to request workplace changes overall (OR = .80, p = .01). Data on file with author. However, Brucker, Henly, and Houtenville found that neither race nor ethnicity moderated differences in accommodations receipts. *See* Brucker et al., *supra* note 28, at 23.

172. *See* Karen D. Johnson-Webb, *Employer Recruitment and Hispanic Labor Migration: North Carolina Urban Areas at the End of the Millennium*, 54 PRO. GEOGRAPHER 406, 415–16 (2002).

173. *See* Arnold B. de Castro et al., *How Immigrant Workers Experience Workplace Problems: A Qualitative Study*, 61 ARCHIVES ENV'T & OCCUPATIONAL HEALTH 249, 255 (2006).

174. *See* Liming Dong et al., *Racial and Ethnic Differences in Disability Transitions Among Older Adults in the United States*, 74 J. GERONTOLOGY: MED. SCIS. 406, 410 (2019) ("[G]iven the cultural construct of race/ethnicity, differences in social or cultural norms may influence the acceptability and preference of assistive devices versus personal assistance . . . ."); Negin R. Toosi et al., *Who Can Lean In? The Intersecting Role of Race and Gender in Negotiations*, 43 PSYCH. WOMEN Q. 7, 16 (2019) (discussing the complexities of intersectional identities in self-advocacy at work).

175. *See* Young & Billings, *supra* note 78.

176. *See infra* Table 3.

Table 3. Effects of Employee Characteristics on Accommodation Types

Category	(1) Equipment	(2) Phys. changes	(3) Policy	(4) Tasks	(5) Comms.	(6) Family	(7) Training	(8) Other
Age (scaled for 10 years)	0.95	1.10	0.97	0.93	0.96	1.00	0.83**	0.92
Female	0.88	1.10	0.92	1.22*	1.04	1.36*	0.89	1.24
Race								
Black	0.88	0.62	0.68	0.81	0.55*	1.32	0.79	0.71
Asian	0.97	0.67	0.68	1.33	1.13	1.05	1.68	0.26**
Other	1.10	0.92	1.34	1.08	1.45	1.61	1.45	1.62*
Hispanic ethnicity	0.64**	0.91	0.28***	0.67*	0.67	0.49*	0.37	0.47**
Education								
Some college	1.43**	1.90**	1.42*	1.66***	1.79**	1.65**	1.79*	1.64**
BA or above	1.82***	2.43***	1.64**	1.69**	1.79**	1.97**	1.68*	1.68**
Citizenship status	1.52	1.42	1.47	1.73**	1.99*	1.26	4.50**	0.82
Disability status	2.12***	2.34***	1.40	2.68***	2.01**	2.08*	2.19**	2.94***
Number of children	1.03	0.98	0.98	1.12**	0.95	1.43***	1.06	0.94
Income								
$40,000–74,999	1.15	0.96	1.02	1.06	1.35	1.52	0.78	0.88
$75,000–99,999	1.17	1.06	1.31	0.84	1.26	1.35	0.78	0.68
$100,000–149,999	1.09	1.05	0.86	0.87	0.98	1.20	0.58	0.95
Over $150,000	1.04	1.04	0.97	0.78	1.19	1.22	0.52*	0.71
N	38,183	37,966	38,183	38,183	37,966	38,183	38,183	38,183
χ^2	325.14	65.47	416.55	492.48	204.16	322.90	242.69	296.35

Notes: p = .05, ** p = .01, p < .001. All statistics are weighted, except for N. Except for age and number of children, which have been standardized, all predictors are indicator variables where yes = 1 and the reference group is none of the characteristics in the table (e.g., reference race = White). Additional controls included in analysis but not displayed here include industry/occupational controls, census division, and rurality

someone requests accommodation,[177] suggesting that education more likely acts as a proxy for cultural capital rather than access to resources generally. Hispanic respondents are less likely to request accommodations across multiple domains, controlling for job type and other factors, and female respondents' requests appear to be clustered among family- and task-based requests.

D. Who Is Granted Accommodations?

1. Measures and Model

Lastly, I examined whether the disparities observed translate to differences in accommodations approvals. This is important because employers act as gatekeepers that can dampen or compound the disparities observed in the analyses above.

In measuring approval, I used the respondent's answer to "were the changes [you requested] granted?" in the Census Disability Supplement. The respondent could respond with "yes," "no," or "partially." Because the dependent variable took on one of three categorical values, a logistic regression would not be appropriate for this analysis. Instead, I estimated a multinomial logistic regression, which is typically used when there are multiple responses:[178]

$$\text{logit E(Approval)} = \alpha + \beta\text{Types} + \beta\text{Age} + \beta\text{Female} + \beta\text{Race} + \beta\text{Hispanic} + \beta\text{Education} + \beta\text{Controls} + \epsilon$$

Outcome. For this analysis, the dependent variable of interest is the extent to which a respondent's request was granted, as described above.

Controls. Controls remain the same as in previous analyses.[179]

Predictors of interest. As described in the previous analyses, age, race, gender, education, and citizenship are predictors of interest. However, the model also includes indicator variables for the eight types of

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177. *See supra* Table 3.

178. *See, e.g.*, *Multinomial Logistic Regression Models*, PENN STATE: ANALYSIS OF DISCRETE DATA, https://online.stat.psu.edu/stat504/lesson/8 [https://perma.cc/XTQ4-SUFM].

179. Note that I did not add the additional controls from the robustness check in this question to avoid overfitting the model, i.e., specifying too many predictors for a relatively small number of observations. *See, e.g.*, Eric Vittinghoff & Charles E. McCulloch, *Relaxing the Rule of Ten Events per Variable in Logistic and Cox Regression*, 165 AM. J. EPIDEMIOLOGY 710, 717 (2007) (acknowledging that the standard rule is one control per every event (here, approval) but that one must "proceed with caution").

accommodations analyzed in Section II.C, as certain types of accommodations are approved more frequently than others (Table 4).[180]

Table 4. Approval by Accommodation Type

		Was the request approved?		
Category	**N**	**Not approved**	**Partially**	**Yes**
Equipment	1,086	11.65%	17.17%	71.23%
Physical	402	10.39%	33.38%	56.23%
Policy	557	9.86%	37.75%	52.39%
Tasks	1,154	13.99%	39.07%	46.94%
Comms.	443	13.91%	39.19%	46.90%
Family	392	10.71%	40.29%	49.00%
Training	264	13.31%	41.99%	44.70%
Other	435	0.82%	47.24%	51.94%

Note: All statistics are weighted, except for N.

2. Results and Discussion

Table 5 displays the results of the multinomial model in two columns: the left column looks at what predictors are associated with a partial approval; the right column analyzes accommodations being granted in whole.

The coefficients displayed are relative risk ratios. Though these are distinct from odds ratios—a relative risk ratio directly compares the percentages of accommodations approvals between groups[181]—the broader interpretation is similar. A relative risk ratio over one indicates that the predictor is associated with a higher likelihood of approval; a ratio under one indicates a negative correlation between the predictor and approval.[182]

Among our demographic variables of interest, no predictors were statistically significant. That is, conditional on asking for an accommodation, employers granted requests similarly across groups. Combined with Table 4, which shows that most accommodations are granted in some part, the results suggest that those who are more likely to ask for accommodations are thus more likely to receive them.

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180. *See infra* Table 4.

181. *See* Chittaranjan Andrade, *Understanding Relative Risk, Odds Ratio, and Related Terms: As Simple as It Can Get*, 76 J. CLINICAL PSYCH. e857, e858–60 (2015).

182. *See id.* at e859.

Table 5. Predictors of Accommodations Approval

Category	Partially approved	Fully approved
Accommodation type		
Equipment	1.19	1.14
Physical	1.21	1.27
Policy	1.25	0.49
Tasks	1.36	1.06
Communications	2.11**	0.71
Family	0.89	1.35
Training	3.17**	1.07
Other	0.63	0.49**
Age (scaled for 10 years)	0.95	1.06
Female	0.81	1.05
Race		
Black	1.84	0.97
Asian	0.70	1.20
Other	1.08	0.52
Hispanic ethnicity	0.56	0.86
Education level		
Some college	0.73	1.07
Bachelor's degree and above	1.03	1.43
Citizenship status	0.74	0.63
Disability status	0.70	1.26
Number of children	1.04	1.06
Income		
$40,000–74,999	1.32	1.27
$75,000–99,999	1.51	1.19
$100,000–149,999	1.99	1.50
Over $150,000	1.79	2.03*
N	2,790	
χ^2	1334.52	

Notes: p = .05, ** p = .01, p < .001. All statistics are weighted, except for N. Except for age and number of children, which have been standardized, all predictors are indicator variables where yes = 1 and the reference group is none of the characteristics in the table (e.g., reference race = White). Additional controls included but not displayed here include industry/occupational controls, census division, and rurality.

Indeed, the results of this analysis pertaining to accommodation categories underscore this implication. Table 4 shows that virtually all requests in the "other" category were partially or fully granted in the aggregate data, but Table 5 shows that, controlling for demographic

variables, accommodations in the "other" category were significantly less likely to be granted.[183] As "other" likely encompasses more idiosyncratic requests that are difficult to resolve or identify, the juxtaposition of these two findings suggest that approvals of "other" accommodations may be driven by a higher likelihood of requests from highly educated and disabled respondents.

Similarly, requests for training appear to be significantly associated with partial, though not outright, approvals.[184] Recall that citizenship status was associated with training requests, which would suggest that citizenship is associated with greater partial grants *through* training requests, providing some support for a theory of cultural capital.

As such, instead of changing how employers *grant* accommodations, enabling employees to access accommodations processes more easily may be more likely to increase the number of accommodations received.

III. IMPLICATIONS: BEYOND THE INTERACTIVE PROCESS

Leveraging a nationally representative dataset from the Census Bureau that has not yet been analyzed before, I show that there are disparities in who asks for and who is granted changes in their workplace. I find that people with higher rates of education ask for changes in their workplace more often. Additionally, female employees are also more likely to ask for family-related accommodations and changes to their work tasks. However, Hispanic employees are less likely to ask for changes in their workplace. Because employers tend to grant most requests, these differences carry over into disparities in who receives accommodations as well.

These results provide several implications to consider. First, employee characteristics may play just as much of a role as employer hesitancy in terms of whether someone asks for and receives an accommodation.[185] These nationally representative results call us to reexamine complex narratives about demography and accommodation and they challenge beliefs about how race or income may monolithically affect self-advocacy.

Importantly, the fact that the personal characteristics associated with requests differed between disabled and non-disabled respondents suggests that intersectional characteristics remain key to how we should interpret these results.[186] As the summary statistics in Table 1 show, disabled

183. *See supra* Table 5 (OR = 0.49, $p < 0.001$).

184. *See supra* Table 5 (OR = 3.17, $p = 0.001$).

185. *See* Hill et al., *supra* note 99, at 294.

186. As other literature has documented, disability structurally intersects other personal characteristics from poverty to race. *See* Debra L. Brucker et al., *More Likely To Be Poor*

respondents were already more likely to have lower income and education levels at baseline.[187]

Second, the norming effect of law may play a role in requests. In this dataset, female applicants were more likely to ask for family- and task-related accommodations. This result may be in turn driven by specific legislation directed at particular groups, such as the PDA or FMLA, which are often associated with working mothers.[188] This type of legislation may itself generate awareness of rights and shift social norms,[189] even if knowledge of those rights is not necessarily specific.[190]

Finally, education is a sustained and key factor in who seeks out accommodations, more so than other variables theorized by the literature. It appears to act independently outside income, the type of job, or the coworkers that people have. That education level plays perhaps the most substantial role here suggests that cultural capital—how to make a request or manage upward at work—plays a role in accommodations requests. Further research can clarify whether education provides knowledge

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Whatever the Measure: Working-Age Persons with Disabilities in the United States, 96 SOC. SCI. Q. 273, 284–88 (2015); Michelle A. Travis, *Gendering Disability To Enable Disability Rights Law*, 105 CALIF. L. REV. 837, 869–75 (2017) (discussing how personal characteristics, such as gender, impact requests made under the ADA); *see also* Karen M. Tani, *Disability Benefits as Poverty Law: Revisiting the "Disabled State,"* 170 U. PA. L. REV. 1687, 1689–92 (2022) (showing that the definition of disability was expanded to provide Social Security to poor children).

187. *See supra* Table 1.

188. I specify mothers here to emphasize the gender stereotypes commonly associated with parental leave. *See* Family and Medical Leave Act of 1993, 29 U.S.C. § 2601(a)(5) ("[D]ue to the nature of the roles of men and women in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than it affects the working lives of men."); *see also* Laurie A. Rudman & Kris Mescher, *Penalizing Men Who Request a Family Leave: Is Flexibility Stigma a Femininity Stigma?*, 69 J. SOC. ISSUES 322, 336 (2013); David Fontana & Naomi Schoenbaum, *Unsexing Pregnancy*, 119 COLUM. L. REV. 309, 336–40 (2019).

189. Indeed, one empirical study found that the presence of state workers' compensation laws that mandate accommodation made it more likely that workers who were disabled outside of the job would be able to get accommodations at their job. *See* Richard V. Burkhauser et al., *The Importance of Anti-Discrimination and Workers' Compensation Laws on the Provision of Workplace Accommodations Following the Onset of a Disability*, 65 INDUS. & LAB. RELS. REV. 161, 177 (2012). As noted earlier, in addition to reducing discrimination, the ADA is also meant to "inform the public about people with disabilities" generally, i.e., create visibility. *See* Stein, *supra* note 44, at 667–68.

190. *See infra* Section III.D (discussing Young v. United Parcel Service, Inc., 575 U.S. 206 (2015)).

regarding self-advocacy in the workplace,[191] whether it provides information about or experience with navigating complex logistical processes,[192] or both.

Ultimately, while accommodations legislation theoretically expands employee rights, my results suggest that continuing to rely on processes that disparately impact employees may further entrench existing workplace inequalities.[193] To avoid these unintended consequences, this Part proposes that the interactive process ought to be transformed into what I call a "proactive process" in which employers, instead of employees, take the first step.

In this Part, I offer some concrete practices that might comprise such a process. Specifically, I suggest that employers offer employees the opportunity to request accommodations at designated time points and collect data on who asks for accommodations. Shifting these responsibilities to employers could create substantive—not just procedural—equity in access to workplace accommodations.

A. Universal Design as a Guiding Philosophy

The underlying intuition for the proactive process stems from the Universal Design methodology, which disability scholars and activists have frequently invoked in recent years.[194] Under Universal Design, environments like classrooms, offices, parks, and hospitals should be built to be "usable by all people to the greatest extent possible,"[195] based on architecture, technologies, and design thinking. Whereas many places are designed to

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191. *See* Allison Renee Walker, Effects of a Self-Advocacy Intervention on African-American College Students' Ability To Request Academic Accommodations 71–74 (2007) (Ph.D. dissertation, University of North Carolina at Charlotte) (ProQuest).

192. *See* Young & Billings, *supra* note 78, at 50–51.

193. As Reva Siegel has documented, antidiscrimination reforms may ultimately preserve status hierarchies in an example of "preservation-through-transformation." Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111, 1113 (1997); Reva B. Siegel, *"The Rule of Love": Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2178–79 (1996).

194. *See, e.g.*, Harris, *supra* note 58, at 970; Jay Dolmage, *Universal Design: Places to Start*, DISABILITY STUD. Q. (May 19, 2015), https://dsq-sds.org/index.php/dsq/article/view/4632/3946 [https://perma.cc/4A33-8Q75].

195. *See* Stein, *supra* note 44, at 640 (citing Ronald L. Mace et al., *Accessible Environments: Toward Universal Design*, *in* DESIGN INTERVENTION: TOWARD A MORE HUMANE ARCHITECTURE 155, 156 (Wolfgang F.E. Preiser et al. eds., 1st ed. 1991)); *see also* Elizabeth F. Emens, *Accommodation*, *in* KEYWORDS FOR DISABILITY STUDIES 18, 20 (Rachel Adams et al. eds., 2015) (explaining that universal design "tries to create an environment that is always ready for the widest variety of possible users").

function primarily for non-disabled people,[196] the Universal Design movement argues that those places can and should incorporate the needs of disabled people from the very beginning. That is, many common accommodations, from ramps and elevators to ergonomic equipment,[197] should be proactively accounted for to minimize the need for disabled employees to request accommodations.[198] In this way, Universal Design is aligned with the ADA's goal of addressing the "effects of architectural, transportation, and communication barriers."[199]

In their advocacy, scholars often note that Universal Design provides benefits to non-disabled people. First, non-disabled people may benefit from using pre-existing accommodations. Ergonomic and adjustable setups may mitigate existing injuries and prevent new ones. Multi-sensory safety alarms with noise and flashing lights are not only more likely to alert deaf or blind people but also cue non-disabled people that there is an emergency.[200] Second, employers might be more incentivized to design more efficient workplaces if they had a duty to make the workplace more accessible. For example, workplaces that were already using Zoom for meetings had an advantage in transitioning to remote work during the pandemic.[201]

The visibility of accommodations-linked design features may allow for disabled and non-disabled colleagues to interact more substantively, thus reducing prejudice.[202] Interacting with disabled colleagues might also cause

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196. *See* Stein, *supra* note 44, at 644.

197. *See Universal Design in the Workplace*, NW. ADA CTR., https://nwadacenter.org/factsheet/universal-design-workplace# [https://perma.cc/2BPH-TH6W]. As it relates to accommodations specifically, the technologies that are typically used overlap significantly with common accommodations requests. *See* Stein, *supra* note 44, at 643–45.

198. *See* Stein, *supra* note 44, at 643–45.

199. 42 U.S.C. § 12101(a)(8); *see* Stein, *supra* note 44, at 638 ("Congress, moreover, identified the source of this exclusion as an artificial one, sustained by the 'continuing existence of unfair and unnecessary discrimination and prejudice.'"). Indeed, this concept neatly overlaps with how requests in the census data are defined, as structures that can be changed to enhance working and living conditions. *See* U.S. CENSUS BUREAU, *supra* note 117.

200. *See* Emens, *supra* note 3, at 846–47; *see also* Susan Sturm, *Designing the Architecture for Integrating Accommodation: An Institutionalist Commentary*, 157 U. PA. L. REV. PENNUMBRA 11, 13 (2008).

201. *See* Michelle A. Travis, *Lashing Back at the ADA Backlash: How the Americans with Disabilities Act Benefits Americans Without Disabilities*, 76 TENN. L. REV. 1, 39–40 (2009).

202. *See* Emens, *supra* note 3, at 846–47; Harris, *supra* note 3, at 1726; Jasmine E. Harris, *Processing Disability*, 64 AM. U. L. REV. 457, 492 (2015). To be clear, I am not saying that disabled employees should engage in the process of educating non-disabled employees about their disability through their example. *See, e.g.*, Lily Zheng, *It's Not Your Coworkers' Job To Teach You About Social Issues*, HARV. BUS. REV. (July 2, 2019), https://hbr.org/2019/07/its-not-your-coworkers-job-to-teach-you-about-social-issues [https://perma.cc/JC6S-8YVX].

employees to realize they do have a disability and seek out accommodations accordingly: in a survey of disabled lawyers, respondents noted that they would be more likely to reveal their disability if they had other co-workers with disabilities,[203] suggesting that disability representation may be important.[204]

B. A Structured Conversation Led by Employers

Although Universal Design often focuses on built environments, design thinking can also be applied to procedures.[205] My results suggest that only a subset of workers seek out accommodations—and that some groups of individuals are more likely to ask than others. How might we both maximize and equalize opportunities for employees to ask for accommodations?

In one empirical study, Nicole Maestas, Kathleen Mullen, and Stephanie Rennane compared three different U.S. government surveys used to measure disability and found differences in self-reported disability rates. They observed that

> asking respondents whether their health "limits" their ability to work *before* asking whether respondents are accommodated for a health problem may subtly encourage respondents to report accommodations only of very serious health problems. . . . [R]estricting one's attention to the set of individuals who report that their health "limits" their ability to work may exclude some accommodated workers who—precisely because of their accommodation—no longer feel that their health limits their ability to work.[206]

These findings strongly suggest that the way that people ask about and define disability leads to substantial differences in empirical results,[207] such

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203. *See* Hyseni et al., *supra* note 68, at 176 tbl.1.

204. My results found that whether census respondents had same-gender or same-ethnicity colleagues did not impact whether they were likely to ask for accommodations. But it seems possible that were data collected about disability representation, it would impact respondents' likelihood of asking for accommodations. *See* Baldridge & Swift, *supra* note 69.

205. *See, e.g.*, Lois R. Lupica et al., *The Apps for Justice Project: Employing Design Thinking To Narrow the Access to Justice Gap*, 44 FORDHAM URB. L.J. 1363, 1376 (2017); Susan Sturm, *Lawyers and the Practice of Workplace Equity*, 2002 WIS. L. REV. 277, 281–82; Harris, *supra* note 202, at 495.

206. *See* Nicole Maestas et al., *Unmet Need for Workplace Accommodation*, 38 J. POL'Y ANALYSIS & MGMT. 1004, 1006 (2019).

207. Of course, legal scholars have thoroughly documented different legal conceptions of disability as well. *See, e.g.*, Bagenstos, *supra* note 59, at 433–35; *see also* Jasmine E. Harris & Karen Tani, *Forward: The Disability Frame*, 170 U. PA. L. REV. 1663, 1679–80 (2022) (explaining how disability-related terminology impacts people's perceptions).

that respondents are likely underreporting their disability status.[208] For instance, while the letter writer at the beginning of this Article does not self-identify as disabled, her health condition aligns with the ADA's definition of disability as "a physical or mental impairment that substantially limits one or more major life activities" through its impact on her work.[209]

But the findings also offer an optimistic strategy: accommodations *could* be reframed to connect with employees who would benefit from accommodations but do not ask. As the authors conclude, "a better approach is to instead ask individuals who do not receive an accommodation for their health . . . whether a special accommodation for their health would make it easier for them to work."[210]

Put simply, employers could start with the assumption that an individual employee might need an accommodation, as with Universal Design.[211] In contrast to an interactive process, employers could take the first step in asking an employee whether she needs an accommodation shortly after hiring, rather than the employee herself initiating the interactive process.

For example, an employer might offer a checklist of common accommodations at the point of hiring. The employee could review this document and mark which accommodations they might need. Such a procedure might lower both the barriers of stigma and knowledge: in terms of stigma, an employee could indicate her need for an accommodation without the pressure of having to explain its necessity.

In terms of knowledge barriers, an employer proactively offering accommodations reduces reliance on a disabled employee's knowledge of her legal rights or available options for accommodations. And with regard to cultural capital, a process in which everyone is offered the opportunity to request workplace changes directly addresses the results we saw, in which educated respondents were significantly more likely to initiate a conversation about changes in the workplace.

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208. Sam Bagenstos notes that post-ADA employment trends differ according to whether disability is defined by having a significant "work limitation," compared to whether disability is defined by reporting a "functional activity limitation," a broader limitation. *See* Bagenstos, *supra* note 26, at 542–43.

209. 42 U.S.C. § 12102(1)(A).

210. Maestas et al., *supra* note 206, at 1006–07. The census deliberately sampled all workers, not just workers with some disabilities, with the understanding that some respondents might have limitations on their work despite not reporting it. *See* Katie R. Eyer, *Claiming Disability*, 101 B.U. L. REV. 547, 565–77 (2023) (discussing why people are less likely to identify as disabled).

211. *See* Susan Sturm, *The Architecture of Inclusion*, 29 HARV. J.L. & GENDER 247, 251 (2006) (contending that institutional action is necessary to create cultural change).

If left to employees' discretion, then only a subset—likely the most educated or privileged—would make the request for an accommodation.[212] A structured way of approaching the conversation would increase transparency and clarity for both employers and employees.[213] Procedurally, the fact that accommodations are being offered to all employees may reduce stigma, and a "menu" of options makes it easier for employees to think of something they might need.[214] This might also ease the path to reassessing accommodations if an employee's prognosis changes over time[215] by providing a template for subsequent conversations. The conversation could additionally be coupled with lowered documentation requirements, as other scholars have advocated.[216] Coworkers might also react more positively because they too would have potential access to the accommodation.[217] Finally, access to accommodations might reduce employee turnover.[218]

Consider the following example: one survey found that older employees "who ascribed their disability to aging were less likely to have their needs

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212. *See* Currie, *supra* note 76, at 84–85. Importantly, with regard to workplace policies, research suggests that employees do not typically take full advantage of the benefits that they have. For instance, workers with unlimited vacation days typically underuse it. Jo Constanz, *Why Unlimited Time Off Is Often Better for Employers than Employees*, FIN. POST (Jan. 13, 2023), https://financialpost.com/fp-work/unlimited-time-off-better-employers-than-employees [https://perma.cc/9QPR-83GF]. New fathers similarly underuse paternity leave, potentially in anticipation of backlash from peers. *See* Rachel N. Pettigrew & Karen A. Duncan, *Fathers' Use of Parental Leave in a Canadian Law Enforcement Organization*, 42 J. FAM. ISSUES 2211, 2234 (2021); Richard J. Petts et al., *Paid Paternity Leave-Taking in the United States*, 23 CMTY. WORK & FAM. 162, 162 (2020). Thus, mandatory and structured processes are key to equalizing participation in these policies. *See* Ashley V. Whillans et al., *Extension Request Avoidance Predicts Greater Time Stress Among Women*, 118 PROC. NAT'L ACAD. SCIS. 1, 6–8 (2021) (showing that a clear policy reduced gender disparities in time to complete an assignment).

213. Notably, Brucker et al. find that employer size appears to be the primary driver of accommodations receipt. *See* Brucker et al., supra note 28, at 24. Not only may larger firms be subject to federal law, they may also have the capacity and resources to create processes for employees to access accommodations. *Id.*

214. These features are also consistent with principles in behavioral design. In designing behavioral interventions, academics and policymakers have suggested that successful processes should be easy, accessible, straightforward, and timely. *See, e.g.*, OWAIN SERVICE ET AL., *EAST: FOUR SIMPLE WAYS TO APPLY BEHAVIOURAL INSIGHTS* 3–5 (2014), https://www.bi.team/wp-content/uploads/2015/07/BIT-Publication-EAST_FA_WEB.pdf [https://perma.cc/44MB-MLYB].

215. *See* Carla Y. Tillman, Are Disabled Employees Being Reassessed After Their Initial Assessment so that Their Accommodations Continue To Provide the Greatest Impact? 85 (Aug. 2012) (Ph.D. dissertation, Capella University) (ProQuest).

216. *See* MacFarlane, *supra* note 46, at 70; Flake, *supra* note 35, at 74.

217. *See* Lisa Schur et al., *Accommodating Employees with and Without Disabilities*, 53 HUM. RES. MGMT. 593, 614–15 (2014).

218. See Verkerke, *supra* note 72, at 916.

met"[219] because they presumed it was not "truly" a disability.[220] In contrast, a structured conversation offered by the employer might cause these employees to ask for accommodations even if they did not believe they had a disability.

C. Data Collection

The second part of the proactive process involves richer data collection on accommodations by employers. As detailed in the previous Part, datasets on disability often capture nonrepresentative, small-scale populations. A larger effort to capture larger populations and more demographic information may give us more analytical power to understand with even more precision when and *why* disparities in accommodations occur.

Currently, the Census Disability Supplement is likely the most detailed dataset available to researchers. But it could potentially be expanded to ask about the type of disability someone has (e.g., glaucoma specifically versus vision limitations),[221] as well as the accommodation they received (e.g., "no lifting heavy items" versus the census's current categorization of "changed tasks"[222]). This information might help us to understand whether the accommodation fits employees' needs.[223]

As Shirley Lin argues, given the census' existing scale and coordination abilities, it can take on the task of collecting this information.[224] Indeed, such data collection would have been helpful in addressing the methodological limitations of this Article, by providing richer information about the types of accommodations different groups request.[225]

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219. JACK SMALLIGAN & CHANTEL BOYENS, POLICIES FOR AN AGING LABOR FORCE: KEEPING OLDER WORKERS WITH HEALTH CONDITIONS EMPLOYED 7 (2020) (quoting Julie A. McMullin & Kim M. Shuey, *Ageing, Disability and Workplace Accommodations*, 26 AGEING & SOC. 831, 831 (2006)), https://www.urban.org/sites/default/files/publication/103083/policies-for-an-aging-labor-force.pdf [https://perma.cc/5Z7L-YALX].

220. Julie A. McMullin & Kim M. Shuey, *Ageing, Disability and Workplace Accommodations*, 26 AGEING & SOC. 831, 843 (2006).

221. *See* von Schrader et al., *supra* note 28, at 341; *see also* Lin, *supra* note 20, at 1883.

222. U.S. CENSUS BUREAU, *supra* note 117.

223. *See* von Schrader et al., *supra* note 28, at 341.

224. For instance, knowing what sort of training respondents asked for would help to clarify the disparity between citizen and non-citizen employees in Section II.D. Lin also calls for additional data collection regarding "job title, employer, location, and sectoral industry." Lin, *supra* note 20, at 1883. However, the analyses in Part II of this Article do incorporate these controls to some extent.

225. For instance, parental education—rather than a respondent's education—is typically used as a primary measure of cultural capital. *See, e.g.*, Sullivan, *supra* note 77, at 896. But even

But this data could also be collected at the employer level.[226] In fact, a majority of employers likely keep this data on record already: a survey of 865 human resources representatives and 403 federal agencies found that eighty-six percent of these entities already kept data on employee accommodations.[227]

An expanded and standardized data collection procedure centered around employers could be used to test for disability compliance over time, including any disparate impacts in accommodation grants.[228] It could also resolve inconsistencies within employers *and* between courts regarding what constitutes a reasonable accommodation by showing how easily or frequently various accommodations are granted within an industry.[229] If employers can better anticipate the type and frequency of accommodations needed by the general population, it presents opportunities for economies of scale.[230] Indeed, the proactive process above could be one way to leverage data collection: analysis from that data collection could be used to generate a list of "common accommodations" that could easily be fed back into the proactive process as options for employees.

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if data expansion were to occur, the existing analyses do have limitations—they are primarily correlational, not causal.

226. It is worth noting that others have called for a database of "reasonable accommodations" that the EEOC could provide to employers. *See* Jessica Leigh Rosenthal, *The Interactive Process Disabled: Improving the ADA and Strengthening the EEOC Through the Adoption of the Interactive Process*, 57 EMORY L.J. 247, 276–77 (2007).

227. *See* Susanne M. Bruyère et al., *HR's Role in Managing Disability in the Workplace*, 2000 EMP. RELS. TODAY 47, 48–49.

228. *See* Lin, *supra* note 20, at 1887.

229. *See* Stacy A. Hickox & Keenan Case, *Risking Stigmatization To Gain Accommodation*, 22 U. PA. J. BUS. L. 533, 569–70 (2020); Stein, *supra* note 44, at 772; *see also* Colker, *supra* note 32, at 1814–15 (illustrating how the ADA's statutory language increases barriers to accessing reasonable accommodations). Note also that there are several circuit splits regarding whether a request immediately triggers a requirement for an employer to participate in the interactive process. Rosenthal, *supra* note 226, at 250. Indeed, this shift towards employers has already been proposed in the evidentiary domain; J.H. Verkerke suggests that courts could presume that certain types of accommodations are typically low-cost, causing the employer—not the employee—to prove otherwise. *See* Verkerke, *supra* note 72, at 950; *see also* Matthew Light-Oglander, Shifting the Burden: A Proposal for Practical Application of the Interactive Process Duty in Disability Accommodations 3 (Jan. 1, 2007) (unpublished manuscript) (on file with the Institute for Law and the Workplace), https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1025&context=louis_jackson.

230. *See* Stein, *supra* note 44, at 648; *Universal Design vs. Accommodation*, U. WASH.: DO-IT, https://www.washington.edu/doit/universal-design-vs-accommodation [https://perma.cc/X6B7-3WQG].

With regard to enforcement, some states already include universal design requirements in their requests for proposals for educational testing;[231] these requirements could be extended to federal contractors in a parallel fashion to affirmative action requirements.[232] Similarly, the collection of disability data could be linked with other disclosure requirements, such as diversity disclosures required by the Department of Labor[233] or board diversity disclosures required by NASDAQ.[234] Continued EEOC guidance could also help to reinforce these norms and set the ground for potential regulation.[235]

D. Towards Specificity: Structural Reforms

Thus far, I have proposed two simple procedures that might increase access to accommodations equitably. Several conceptual approaches at the court or legislative level could help to strengthen this pair of practices.

First, the law of reasonable accommodation could shift towards rules and away from standards. Currently, courts differ widely on the cost threshold for what constitutes an "undue hardship."[236] These differences may make it difficult for employees to ascertain what is reasonable; under that uncertainty, employees may be hesitant to ask for an accommodation in case it is rejected. As I have proposed, a combination of structured conversation

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231. *See* Martha L. Thurlow, *Accommodation for Challenge, Diversity and Variance in Human Characteristics*, 83 J. NEGRO EDUC. 442, 450 (2014) (citing NAT'L CTR. ON EDUC. OUTCOMES, 2007 SURVEY OF STATES: ACTIVITIES, CHANGES, AND CHALLENGES FOR SPECIAL EDUCATION 16 (2008)); *see also* Rosenthal, *supra* note 226, at 250 (advocating for "flexible regulations that encourage learning through monitoring and information sharing").

232. *See* Proclamation No. 11246, 30 Fed. Reg. 12319 (Sept. 28, 1965) (outlining the Equal Employment Opportunity order, which gives the Civil Service Commission authority to issue reasonably necessary requirements for federal contractors).

233. *See* 42 U.S.C. § 2000e-8(c); 29 C.F.R. § 1602.7 (1991). The EEO-1 form records the race/ethnicity and sex composition of an employer's workforce. *See EEO Data Collections*, U.S. EEOC, https://www.eeoc.gov/data/eeo-1-data-collection [https://perma.cc/XNL6-MRCH]. EEO-1 form records are often used in research. *See, e.g.*, Fidan Ana Kurtulus & Donald Tomaskovic-Devey, *Do Female Top Managers Help Women To Advance? A Panel Study Using EEO-1 Records*, 639 ANNALS AM. ACAD. POL. & SOC. SCI. 173, 174 (2012); James P. Smith & Finis Welch, *Affirmative Action and Labor Markets*, 2 J. LAB. ECON. 269, 275 (1984).

234. *See* NASDAQ, BOARD DIVERSITY MATRIX DISCLOSURE REQUIREMENTS AND EXAMPLES, https://listingcenter.nasdaq.com/assets/Board%20Matrix%20Examples_Website.pdf [https://perma.cc/8DXX-8S2G].

235. *See* Alexandra Kalev et al., *Best Practices or Best Guesses? Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies*, 71 AM. SOCIO. REV. 589, 600 (2006). *See generally* Lauren Edelman et al., *The Endogeneity of Legal Regulation: Grievance Procedures as Rational Myth*, 105 AM. J. SOC. 406, 406 (1999) (outlining common EEOC procedures).

236. *See generally* Porter, *supra* note 60, at 1838–40 (illustrating the debate among courts as to how to interpret certain ADA Amendments Act terminology).

and data collection would provide examples of reasonable accommodations, so that employees do not have to search for whether an accommodation is reasonable in a particular jurisdiction. However, in the absence of such reforms, rules can be helpful by removing aspects of employer discretion.

Consider, for instance, state variations of the PWFA. In contrast to the federal legislation, several states go further and identify specific accommodations that pregnant employees are entitled to, such as modified dress codes,[237] access to food or drink,[238] more frequent restroom breaks,[239] or restrictions on lifting over twenty pounds.[240] With richer data on accommodations categories, future research could look at whether states with articulated rights are correlated with request rates. To be sure, there may also be cases in which someone requests an accommodation that is perceived as uncommon or non-obvious.[241] In those cases, standards could provide some flexibility for employees; what I am suggesting here is that rules can serve as a floor.

Second, legislation designated for specific groups could help encourage requests for accommodations generally by raising awareness of one's specific rights. This is supported by the results in Part II: female employees' relatively higher likelihood of accommodation requests appears to be driven by the intersection of pregnancy-related concerns and designated legislation.[242]

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237. *See* N.C. Exec. Order No. 82, 33 N.C. Reg. 1482 (Jan. 15, 2019).

238. *See, e.g.*, MINN. STAT. § 181.939(2)(a) (2023); 775 ILL. COMP. STAT. 5/2-102(J) (2021).

239. *See, e.g.*, COLO. REV. STAT. § 24-34-402.3(4)(b) (2023); VA. CODE ANN. § 2.2-3909 (2021).

240. *See, e.g.*, MINN. STAT. § 181.939(2)(a) (2023); MASS. GEN. LAWS ch. 151B, § 4(1E) (2023).

241. For example, in one study of employees with bipolar disorder, respondents stated their most desired accommodation was allowing water at their workstation. *See* Carol Tremblay, *Workplace Accommodations and Job Success for Persons with Bipolar Disorder*, 40 WORK 479, 480 (2011). While the connection between bipolar disorder and water may not be immediately apparent, a common medication for bipolar disorder causes frequent dehydration. *See id.* at 486. Of course, what constitutes a reasonable accommodation is also an important normative question.

242. Indeed, to test this theory, one could analyze future waves of the Disability Supplement and look to the effects of the PWFA and PUMP Act on accommodations requests given that their titles clearly explain their respective purposes: to provide breastfeeding accommodations and to equip pregnant workers with access to reasonable accommodations. *See* Providing Urgent Maternal Protections for Nursing Mothers Act, H.R. Res. 5798, 117th Cong. (2021) (enacted); Pregnant Workers Fairness Act, H.R. 2617, 117th Cong. (2021) (enacted).

In fact, one high-profile case, *Young v. UPS*,[243] was a catalyst for the PWFA's passage.[244] Peggy Young sued UPS, her employer, for denying her request to lift no more than twenty pounds given her high-risk pregnancy.[245] UPS argued that other employees who had received "light-lift" accommodations had been eligible through their disability status, injury on the job, or involvement in other situations like a failed medical exam or lost driver's license.[246] Young's argument, however, was that given that there were multiple other channels through which employers received near-automatic accommodations, her denial was representative of discrimination against pregnant women specifically.[247] *Young* demonstrates the precarious status of pregnant women at the nexus of the ADA and PDA, but it also underscores how some groups access identical accommodations more easily than others through facially neutral processes.

That population-specific legislation may encourage requests might initially be perceived as evidence against the introduction of a proactive process. That is, why would a structured conversation be necessary in this case? However, my argument in this Article is that a proactive process allows us to realize the full benefits of accommodations legislation. Employment law is more effective when it provides clarity regarding what accommodations are possible—and for whom.

As Brad Areheart suggests, a system of universal accommodations would "allow us to target the root problem—workplaces that are structured to exclude non-ideal workers—rather than just symptoms of the problem (e.g., that an employer does not accommodate a pregnant employee's schedule)."[248] Although not every employer will agree with the push towards a proactive process, a broad vision is necessary for advancement.[249] These

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243. Young v. United Parcel Service, Inc., 575 U.S. 206 (2015).

244. *See* Chabeli Carrazana, *Your Boss Now Has To Accommodate Pregnant Workers, From Morning Sickness to Abortion Care*, THE 19TH (June 27, 2023), https://19thnews.org/2023/06/pregnant-workers-fairness-act-employer-accommodations/ [https://perma.cc/EQ3S-FYVS].

245. *See Young*, 575 U.S. at 211. Under the dataset in this Article, this would have been considered a task-related accommodation. *See also* Deborah A. Calloway, *Accommodating Pregnancy in the Workplace*, 25 STETSON L. REV. 1, 4 (1995) (citing Council on Sci. Affs., *Effects of Pregnancy on Work Preference*, 251 J. AM. MED. ASS'N 2995, 2996 (1984)) (suggesting that a restriction on lifting heavy items is a request commonly associated with pregnancy).

246. *See Young*, 575 U.S. at 215.

247. *See id.* at 231.

248. *See* Areheart, *supra* note 167, at 1169–70.

249. *See* Colker, *supra* note 32, at 1834 ("If we want to achieve disability justice, then we need to change social policies on as broad a basis as possible."). Similarly, unions may play a role in redistributing bargaining power, from the formation of collective bargaining agreements

proposed practices point towards increasing accountability and transparency in the workplace. Together, their combination as the proactive process creates a structural solution to a structural problem.[250]

E. Potential Objections

This Section addresses some of the primary concerns of a shift towards a proactive process.

1. Cost

If more people utilize more accommodations, who will pay for them? Indeed, much legal and non-legal research on accommodations has focused on employers' concerns about cost as a key barrier to workplace equality.[251]

Concerns about cost have existed since the ADA's passage. One prominent paper by Daron Acemoglu and Josh Angrist, for instance, theorizes that post-ADA declines in the employment of disabled people[252]

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to serving as employee representatives or points of information. *See, e.g.*, Ameri et al., *supra* note 28, at 1 ("Exploratory data reveal that both union coverage and disability status increase the likelihood of requesting accommodations . . . . Overall the results indicate that while unions appear to help workers with disabilities in the U.S., unionized positions are becoming less available to workers with disabilities.").

250. *See* Colker, *supra* note 32, at 1829; *see also* Susan Sturm & Howard Gadlin, *Conflict Resolution and Systemic Change*, 2007 J. DISP. RESOL. 1, 57–58 (2007) ("[R]easonable accommodation invites—indeed, requires—the participants to deliberate about the meaning of disability in context and to try to address the consequences in the design of the workplace . . . . This kind of legal standard combines the imperative of formal law with the dynamism of collaborative problem solving."). My argument in this Article is that the law's invitation to employees to engage in problem-solving does not necessarily overcome stigma and knowledge barriers; rather, an employer's invitation to do so may be more effective.

251. As Sam Bagenstos notes, the perceived costs by employers of hiring a disabled applicant are two-fold: the cost of accommodations and the cost of litigation otherwise. *See* Bagenstos, *supra* note 59, at 536; *see also* Christine Jolls, *Accommodation Mandates*, 53 STAN. L. REV. 223, 229 (2000); Colella, *supra* note 63, at 100 (citing David Braddock & Lynn Bachelder, *The Glass Ceiling and Persons with Disabilities*, 56 PUB. POL'Y MONOGRAPH SERIES 1 (1994); Barbara A. Lee & Karen A. Newman, *Reasonable Accommodation of Persons with Disabilities in the New Jersey Workplace*, N.J. BUREAU OF ECON. RSCH. (1992)); Paul B. Gold et al., *Negotiating Reasonable Workplace Accommodations: Perspectives of Employers, Employees with Disabilities, and Rehabilitation Service Providers*, 37 J. VOCATIONAL REHAB. 25, 33 (2012); Philip Armour et al., *Disability Saliency & Discrimination in Hiring*, 108 AM. ECON. ASS'N PAPERS & PROC. 262, 262–63 (2018).

252. *See* Daron Acemoglu & Joshua D. Angrist, *Consequences of Employment Protection? The Case of the Americans with Disabilities Act*, 109 J. POL. ECON. 915, 941 (2001); *see also* Soojin Kim & Serena Rhee, *Measuring the Effects of Employment Protection Policies: Theory and Evidence from the Americans with Disabilities Act*, 2018 LAB. ECON. 116, 127 (2018). *But*

may be because employers perceive disabled employers as more costly to employ *and* fire.[253]

In response, two proposals to address accommodations-related costs have gained scholarly traction. The first suggests that providing employers with accurate information about costs might prevent their overestimation and reduce their anxiety,[254] i.e., if employers realized accommodations were relatively low-cost, then they would be more inclined to implement them.

Yet this reasoning is highly contingent on empirics: it suggests that whether a disabled employee deserves accommodation should be based on cost. From a normative standpoint, a business case for accommodations shifts the discussion from the remedial goals of the ADA to the minutiae of costs.[255] And while the ADA has created an accommodations exception for "undue hardship,"[256] as the Court has underscored in *Groff* this Term, businesses bear more than a de minimis responsibility for accommodating their employees.[257]

More promisingly, other scholars have suggested that state and federal governments could subsidize accommodations through various funding sources.[258] These subsidies could be designated for workplace environments

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see Christine Jolls & J.J. Prescott, *Disaggregating Employment Protection: The Case of Disability Discrimination* 6 (Nat'l Bureau of Econ. Rsch., Working Paper No. 10740, 2004) (suggesting declines were not linked to ADA passage).

253. *See* Acemoglu & Angrist, *supra* note 252, at 940.

254. *See* Peter David Blanck, *Transcending Title I of the Americans With Disabilities Act: A Case Report on Sears, Roebuck and Co.*, 20 MENTAL & PHYSICAL DISABILITY L. REP. 278, 279 (1996); Acemoglu & Angrist, *supra* note 252, at 919; Jennifer Bennett Shinall, *Anticipating Accommodation*, 105 IOWA L. REV. 621, 626–27 (2020).

255. *See* Colker*, supra* note 32, at 1830–31.

> While I do not dispute the available evidence that reasonable accommodations are typically inexpensive, ... [a] close examination of the low-cost evidence suggests that it reflects the ineffective and class-biased limitations of the reasonable accommodation framework. It shows how the framework has been an ineffective mechanism to achieve structural disability justice.

Id.

256. *See* Peter David Blanck, *The Economics of the Employment Provisions of the Americans with Disabilities Act: Part I—Workplace Accommodations*, 46 DEPAUL L. REV. 877, 895–96 (1997); Nicole Buonocore Porter, *A New Look at the ADA's Undue Hardship Defense*, 84 MO. L. REV. 121, 121 (2019).

257. *See* Groff v. DeJoy, 600 U.S. 447, 468–69 (2023). To be sure, the Court in *Groff* declined to adopt the ADA's standard for undue hardship. *See id.* at 471.

258. *See* Scott A. Moss & Daniel A. Malin, *Public Funding for Disability Accommodations: A Rational Solution to Rational Discrimination and the Disabilities of the ADA*, 33 HARV. C.R.-C.L.L. REV. 197, 220 (1998); *see also* Shinall, *supra* note 143, at 680; Verkerke, *supra* note 72, at 947 (2003); Stein, *supra* note 44, at 650 (citing RICHARD A. EPSTEIN, FORBIDDEN GROUNDS:

that utilize Universal Design, including the proactive offering of accommodations. Although some scholars suggest that subsidies may reiterate stereotypes of disabled workers as "more costly" or less productive,[259] as empirical work has shown, the interactive process is correlated with positive labor outcomes for employees[260] and lower turnover rates,[261] suggesting that workers succeed with access to accommodations. Subsidies could be time-designated so that employers can successfully transition to a proactive process; in the longer term, employers could be required to bear the burden of antidiscrimination legislation, rather than simply be incentivized to do so.[262]

Finally, as mentioned previously, the combination of a structured conversation and data collection can lead to economies of scale.[263] Indeed, a focus on costs to the employer is underinclusive: it neglects the aggregated psychological, time, and administrative burdens that disabled people bear in seeking accommodations.[264] As more people receive accommodations, it becomes more likely that an employer has encountered a similar request before. The marginal cost of an additional employee needing an accommodation might decrease. In many cases, universal accommodations like pumping rooms or accessible doors are a one-time fixed cost.

THE CASE AGAINST EMPLOYMENT DISCRIMINATION LAWS 480–94 (1st ed. 1992)); Stewart J. Schwab & Steven L. Willborn, *Reasonable Accommodation of Workplace Disabilities*, 44 WM. & MARY L. REV. 1197, 1278–79 (2003).

259. *See* Stein, *supra* note 44, at 596.

260. Wages for disabled employees appear to increase after the passage of the ADA with long-term income effects. *See* John J. Donohue III et al., *Assessing Post-ADA Employment: Some Econometric Evidence and Policy Considerations*, 8 J. EMPIRICAL L. STUD. 477, 501 (2011); Allison V. Thompkins, *The Earnings Consequences of the Americans with Disabilities Act on People with Disabilities* 4–10 (Mathematica Pol'y Rsch. Working Paper, Paper No. 26, 2011); SAMUEL R. BAGENSTOS, LAW AND THE CONTRADICTIONS OF THE DISABILITY RIGHTS MOVEMENT 122 (2009). Accommodations can also translate to faster access to benefits, *see* Richard V. Burkhauser et al., *The Importance of Accommodation on the Timing of Disability Insurance Applications*, 34 J. HUM. RES. 589, 607 (1999), and longer work tenure, *see* Stein et al., *supra* note 32, at 754 (citing Richard V. Burkhauser et al., *The Importance of State Anti-Discrimination Laws on Employer Accommodation and the Movement of Their Employees onto Social Security Disability Insurance* 5–6 (Mich. Ret. Rsch. Ctr. Working Paper, Paper No. 2011-251, 2011), http://ssrn.com/abstract=1961705 [https://perma.cc/AW33-SZNR].

261. *See* Michael Stein, *The Law and Economics of Disability Accommodations*, 53 DUKE L.J. 79, 104 (2003) (citing PETER DAVID BLANCK, COMMUNICATING THE AMERICANS WITH DISABILITIES ACT (1996)).

262. *See* Stein, *supra* note 44, at 661.

263. *See* discussion *infra* Section III.E.

264. As detailed earlier in Part I, these psychological costs include frustration and significant time investments by employees. *See* Stein et al., *supra* note 32, at 755; *see also* Emens, *supra* note 32, at 2342; Harris, *supra* note 3, at 1736.

2. The Limits of Information

Others might suggest that the proactive process is too intensive. That is, one initially appealing interpretation of the results above might be that educating people—formally or informally—about their rights and how to obtain them might resolve disparities in cultural capital and in turn accommodation requests.

However, this is an insufficient solution given existing empirical evidence. Despite a clear demand for information about accommodations processes, existing resources already receive low take-up.[265] Indeed, social science research suggests that policy interventions that rely on the dissemination of information are often less effective than anticipated.[266]

For example, we might expect lawyers to know their rights and to advocate for themselves compared to other populations. But a survey of disabled lawyers—who we might expect to be especially knowledgeable given their professional and personal experiences—showed low rates in accommodations requests, suggesting that even with cultural capital,[267] stigma still must be accounted for.[268]

Furthermore, emphasizing how to ask for accommodations "the right way" puts pressure on applicants to succeed rather than on employers to accommodate in good faith. That is, the sole use of informational interventions shifts the question to how to *successfully* appeal to gatekeepers. But while self-advocacy training can be helpful,[269] it does not

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265. The Job Accommodations Network ("JAN") is not only a prominent source of accommodations data in the literature, *see, e.g.*, KARA CONTREARY & IRMA PEREZ-JOHNSON, BEHAVIORAL INTERVENTIONS TO PROMOTE JOB RETENTION AFTER INJURY OR ILLNESS 12 n.6 (2016), but it also provides templates for sample accommodations request letters. *See* Jose Gonzales Lopez, *Sample Language for Accommodation Request Letters*, JOB ACCOMMODATION NETWORK, https://askjan.org/articles/Sample-Language-for-Accommodation-Request-Letters.cfm [https://perma.cc/X3W4-W6PA]. However, as Shirley Lin notes, JAN is often underfunded and used by a limited population. *See* Lin, *supra* note 20, at 1886 ("Nonprofits and vocational agencies provide a vital but inherently limited stopgap. . . . The Job Accommodation Network (JAN) currently serves as a national one-stop resource on effective accommodations for all major disabilities, but as a project of the U.S. Department of Labor remains undersupported as a $13 million nonprofit employing only thirty individuals. When JAN is consulted—approximately 55,000 times a year—it is usually by sophisticated employers and legal counsel rather than employees.").

266. *See, e.g.*, Saurabh Bhargava & George Loewenstein, *Behavioral Economics and Public Policy 102: Beyond Nudging*, 105 AM. ECON. REV. 396, 398–99 (2015) (discussing financial and privacy disclosures).

267. *See* Hyseni et al., *supra* note 68, at 171–72.

268. *See id.* at 175.

269. In one study, Black students received self-advocacy training, including how to clearly communicate accommodations requests and complete documentation. The author found that

necessarily provide cultural capital *per se*. As discussed earlier, employers may make judgments about the employee's appearance, competence, and attitude in responding to a request. In contrast, a proactive approach that assumes the need for accommodations ex ante may be more effective and reduce retaliation.

3. Cutting Red Tape, Not the Line

Finally, employers, coworkers, and the public may be suspicious that proactively providing the option to request accommodations may cause nondisabled employees to "game the system" to receive benefits they do not "deserve." [270] This belief may initially seem to be supported by the finding in this article that disabled and non-disabled people request workplace accommodations at a similar rate.[271]

On the other hand, disability advocates might worry that a proactive process may dilute protections against disabled people in the long run. A potential objection might be that if accommodations are offered to everyone, relatively rare accommodations related to a severe disability might be less likely to be granted, because an employer might argue that a proactive process makes the employer sufficiently accessible.[272]

But both of these concerns neglect *why* employees currently under-request accommodations. Preventing a proactive process in fear that non-disabled people would take advantage neglects the fact that the current process is already onerous for individuals who have a disability, whether they identify as disabled or not.[273] The results here show that people without self-identified disabilities request workplace changes, and that those with higher levels of education are much likelier to do so. Without a proactive process, the status quo already yields the disparities observed in the results:

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instructors provided higher likelihoods of receiving accommodations when watching videos of students who had received this training than without. *See* Walker, *supra* note 191, at 71–84.

270. *See* Dorfman, *supra* note 70, at 1055; Colella, *supra* note 65, at 100. As Doron Dorfman notes, the belief that people with disabilities are "faking" their conditions is common and longstanding among Americans. Dorfman, *supra* note 70, at 1052–55.

271. As Sarah von Shrader and colleagues find, and as I replicate, the majority of requests are from respondents without self-reported disabilities because disabled people make up a smaller share of the population, even though disabled people are more likely to request accommodations compared to non-disabled people. *See* Von Schrader et al., *supra* note 28, at 337.

272. *See supra* text accompanying note 193.

273. In fact, the passage of the ADAAA in 2008 expanded the definition to include "many people lacking any current functional impairment—in work, in social interactions, or at home." *See* Eyer, *supra* note 210, at 574.

employers may instead rely on employees' cultural capital to assess and grant accommodations.

IV. CONCLUSION

The passage of the ADA more than thirty years ago set the stage for legal recognition of accommodations. Since then, state and federal legislation has expanded and further articulated the scope of workplace accommodations. But claiming this right remains difficult for many.

This is a ripe time for a new vision of workplace accessibility. During the COVID-19 pandemic, workers confronted conditions that could place them at greater risk,[274] as well as infrastructure that could support remote work.[275] Today, reversion to pre-pandemic policies requiring employees to work in the office is being challenged by immunocompromised and non-immunocompromised employees alike,[276] dovetailing with increasing advocacy in both disability rights[277] and worker movements worldwide.[278] In demonstrating who asks and receives accommodations, this Article both contributes to a long line of research in disparities while enhancing our understanding of when rights are exercised.

In this dataset analyzed in this Article, Census interviews asked workers whether they had ever asked for something to help them "do their job better." Like the Census interviews, I argue that employers ought to ask as well. A proactive process would advance workplace equality by mitigating the structural exclusions antidiscrimination law seeks to address.

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274. *See* Lyttelton & Zang, *supra* note 27, at 19–21.

275. *See* Schur et al., *supra* note 28, at 523.

276. *See, e.g.*, Rebecca Knight, *Swipe Your Badge or Get Fired? Employers and Workers Face a Reckoning over Returning to the Office*, BUS. INSIDER (June 8, 2023), https://www.businessinsider.com/fight-return-to-office-mandates-remote-work-amazon-apple-2023-3; Joanna York, *The Immunocompromised Workers Being Left Behind*, BBC (June 15, 2022), https://www.bbc.com/worklife/article/20220614-the-immunocompromised-workers-being-left-behind [https://perma.cc/YUR5-82TU]; *see also* Arlene S. Kanter, *Remote Work and the Future of Disability Accommodations*, 107 CORNELL L. REV. 1927, 1994 (2022) (arguing that the EEOC should explicitly define remote work as a reasonable accommodation).

277. *See, e.g.*, RONALD J. BERGER & LOREN E. WILBERS, INTRODUCING DISABILITY STUDIES 2–3 (2021).

278. *See, e.g.*, Diana Reddy, *After the Law of Apolitical Economy: Reclaiming the Normative Stakes of Labor Unions*, 132 YALE L.J. 1213, 1432 (2023).

Table A1. List of *NET Controls Used in Robustness Check

Category and Description
Communication [1]
How often do you have to have face-to-face discussions with individuals or teams in this job?
How much does this job require the worker to be in contact with others (face-to-face, by telephone, or otherwise) in order to perform it?
Body positioning [2]
How much does this job require…
Bending or twisting your body?
Climbing ladders, scaffolds, or poles?
Keeping or regaining your balance?
Kneeling, crouching, stooping or crawling?
Making repetitive motions?
Standing?
Using your hands to handle, control, or feel objects, tools or controls?
Walking and running?
Environmental conditions [3]
How much does this job require…
Working in extremely bright or inadequate lighting conditions?
Working exposed to sounds and noise levels that are distracting or uncomfortable?
Working in very hot (above 90 F degrees) or very cold (below 32 F degrees) temperatures?
Working in cramped work spaces that requires getting into awkward positions?
Working exposed to contaminants (such as pollutants, gases, dust or odors)?

Table A1. List of O*NET Controls Used in Robustness Check (continued)

Hazards [4]

How often does this job require…

Exposure to hazardous conditions?

Exposure to hazardous equipment?

Exposure to disease/infections?

Exposure to high places?

Exposure to minor burns, cuts, bites, or stings?

Exposure to radiation?

Wearing common protective or safety equipment such as safety shoes, glasses, gloves, hard hats or life jackets?

Wearing specialized protective or safety equipment such as breathing apparatus, safety harness, full protection suits, or radiation protection?

Work environment

Job requires developing one's own ways of doing things, guiding oneself with little or no supervision, and depending on oneself to get things done.

How regular are the work schedules for this job?

To what extent does this job require the worker to perform job tasks in close physical proximity to other people?

How often does this job require…

Working outdoors, under cover (e.g., structure with roof but no walls)?

Working outdoors, exposed to all weather conditions?

Working indoors in environmentally controlled conditions?

Working indoors in non-controlled environmental conditions (e.g., warehouse without heat)?

Notes: All prompts are from O*Net.

[1] Items in this category were averaged to create a "communications" scale.

[2] Items in this category were averaged to create a "body positioning" scale.

[3] Items in this category were averaged to create an "environmental conditions" scale.

[4] Items in this category were averaged to create a "hazards" scale.

Appendix

Table A2. Summary Statistics of Respondents Linked to O*NET/DOL Industry Data

	O*NET Only		O*Net and Industry	
	All respondents	**Disabled respondents**	**All respondents**	**Disabled respondents**
Age (mean)	41.73 (10.43)	48.66 (12.42)	41.72 (10.43)	48.64 (12.43)
Female	48.89%	47.17%	48.94%	47.16%
Race				
White	78.17%	82.29%	78.17%	82.25%
Black	11.72%	9.78%	11.73%	9.83%
Asian	6.20%	2.44%	6.20%	2.45%
Other	3.91%	5.46%	3.90%	5.48%
Hispanic ethnicity	18.02%	14.15%	18.02%	14.19%
Education level				
High school or below	32.37%	33.81%	32.39%	33.89%
Some college	28.58%	33.81%	28.59%	30.00%
Bachelor's degree or above	39.05%	28.18%	39.02%	27.95%
Citizenship status	83.21%	91.40%	83.22%	91.38%
Number of children (mean)	0.56 (0.71)	0.30 (0.55)	0.56 (0.71)	0.30 (0.55)
Disability status	3.88%		3.88%	
Income				
Below $40,000	14.49%	23.87%	14.49%	23.94%
$40,000-74,999	25.37%	28.88%	25.37%	28.96%
$75,000-99,999	15.67%	14.60%	15.66%	14.50%
$100,000-149,999	18.67%	13.58%	18.67%	13.61%
Over $150,000	21.71%	13.15%	21.71%	13.07%
Requested acc.	7.07%	13.66%	7.06%	13.44%
Granted acc.				
No	14.91%	21.25%	14.93%	21.66%
Partially	13.13%	8.09%	13.11%	8.25%
Yes	71.96%	70.66%	71.96%	70.10%
N	26,037	1,111	25,996	1,108

Notes: p=.05, ** p = .01, p < .001. All statistics are weighted, except for N. Except for age and number of children, which have been standardized, all predictors are indicator variables where yes = 1 and the reference group is none of the characteristics in the table (e.g., reference race = White). Additional controls included in analysis but not displayed here include industry/occupational controls, Census division, and rurality.

Table A3. Effects of Employee Characteristics and Additional Controls on Requests

	(1) All applicants	(2) No disability	(3) Disability	(4) All applicants	(5) No disability	(6) Disability
Age (scaled for 10 years)	0.93*	0.95	0.69**	0.92**	0.94	0.68**
Female	1.32***	1.34***	1.11	1.38***	1.40***	1.03
Race						
Black	0.88	0.89	0.84	0.88	0.90	0.88
Asian	0.88	0.88	1.01	0.87	0.86	1.28
Other	1.12	1.09	1.92	1.12	1.09	2.20
Hispanic ethnicity	0.66**	0.61***	1.79	0.67**	0.62***	2.03
Education level						
Some college	1.68***	1.74***	1.09	1.66***	1.72***	1.07
Bachelor's degree or above	1.78***	1.83***	1.17	1.74***	1.80***	1.12
Citizenship status	1.34*	1.34*	1.44	1.32*	1.32*	1.57
Disability status	2.38***			2.34***		
Number of children	1.08**	1.08**	0.97	1.08**	1.08**	0.93
Income						
$40,000-74,999	1.02	1.05	0.90	1.01	1.03	0.85
$75,000-99,999	0.97	1.01	0.69	0.95	0.99	0.59
$100,000-149,999	0.90	0.92	0.72	0.89	0.91	0.68
Over $150,000	0.87	0.87	1.13	0.84	0.85	0.99
N	26,037	24,920	1,111	25,996	24,882	1,108
χ^2	682.87	624.29	86.06	729.57	665.54	102.69
Task-based controls	Yes	Yes	Yes	Yes	Yes	Yes
Representation controls	No	No	No	Yes	Yes	Yes

Notes: p=.05, ** p = .01, p < .001. Logistic regression where outcome is whether respondent requested an accommodation. All statistics are weighted, except for N. Except for age and number of children, which have been standardized, all predictors are indicator variables where yes = 1 and the reference group is none of the characteristics in the table (e.g., reference race = White). Additional controls included in analysis but not displayed here include industry/occupational controls, Census division, and rurality. Task-based controls include O*NET job characteristics (see Table A1). Representation controls include the share of women and Hispanic individuals in industry/occupation, and two interaction terms for whether respondent was also female or Hispanic.