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**Article**

## Selection of Employees with Disabilities – Has the Burden on the Employer Become too Heavy?

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## SELECTION OF EMPLOYEES WITH DISABILITIES – HAS THE BURDEN ON THE EMPLOYER BECOME TOO HEAVY?

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### Abstract

Civil rights legislation regarding people with disabilities prohibits discrimination, and guarantees that people with disabilities – including learning disorders or Attention Deficit Hyperactivity Disorders (ADHD) – have the same opportunities as everyone else. The employer is required to perform accommodations for them at the workplace such as adjusting job application procedures.

It is our view that the legislation is important and necessary because it helps people with disabilities to become integrated and to contribute at work and in society. Nevertheless, to a degree, it ‘mistreats’ the employer by not requiring applicants to disclose the accommodations that helped them with their scholastic or selection tests achievements.

Thus, the employer is denied the ability to make well-informed, realistic selection decisions, and at the same time – it creates a high potential for job failure.

This paper includes suggestions how to create a fair and transparent selection culture that benefits all parties – disabled applicants as well as employers.

**Keywords:** selection; equal opportunities; disabilities; learning disorders; ADHD.

**JEL Classification:** J5, M1, M5

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### Introduction

Attention Deficit Hyperactivity Disorder (ADHD) and learning disorders have been at the heart of public discourse for quite a while, primarily regarding the optimal integration of children with these disorders in the education system.

DSM-5 (Diagnostic and Statistical Manual, 2013) defines ADHD as a disorder featuring inattention, hyperactivity, and impulsivity. It is important that there is clear evidence of interference with the subject’s quality of life in various areas, including occupational functioning. The disorder is largely hereditary (Stevenson et al., 2005), prevalent in about 5-10% of schoolchildren, and does not pass with adulthood.

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Learning disorders are specific patterns of cognitive strengths and weaknesses, which distinctly affect the development of specific achievement functions (Kavale, Kauffman, Bachmeier and Lefever, 2008). Among people with this disorder, a number of cognitive operations could be damaged, such as observation of details, analysis and synthesis, memory, and logical thinking; both in the visual and auditory input area and in the writing, speaking or drawing output areas. During various phases of life, by-products could be added to the basic disorder, manifested in emotional, social, and personality difficulties; various learning strategies and compensation techniques are acquired (Shani and Nevo, 2006). This disorder also has a hereditary component (Fisher and Smith, 2002), and continues in adulthood, with a prevalence of 10-15% of the population (Brown, Aylward and Keogh, 1996).

There is still no uniform standard method, accepted by all professionals in the field, to diagnose learning disorders (Smith et al., 1997). Among the key areas of learning disorders diagnosis, we find the following topics: causes of the disorder, types of learning disorders, definition of the disorder, aim of the diagnosis, and content of the diagnosis (Shani and Nevo, 2006).

Santuzzi, Waltz, Finkelstein and Rupp (2014) wrote an interesting article about workers with invisible disabilities (to the matter at hand, it includes ADHD and learning disorders). The authors "invite researchers and practitioners to consider adjustments to current legislation and workplace practices in order for employing organizations to account for the unique challenges facing workers with invisible disabilities and fully accommodate those workers". We tried to meet the challenge by writing this article.

## **1. Learning disorders, ADHD, and integration in the work world**

### **1.1. On the part of the employee**

People with learning disorders typically receive lower pay (Doren et al., 2007), experience higher unemployment rates than adults without a disorder (Doren et al., 2007; Vogel et al., 2003), and are at higher risk than the regular population to suffer from difficulty to adapt (Sellars, 2011). Adults with writing disorders might experience difficulty at a workplace that requires intensive transfer of information (Gerber et al., 2004).

Many jobs require the employee to perform routine repetitive actions. People with attention deficit often find it hard to maintain continuousness over time, get bored easily, and tend to seek new stimuli. An additional difficulty is a tendency to postpone assignments, rooted in organizational and emotional difficulties. This problem is frequently the key grounds for termination (Dahan and Tzadok, 2012). Certain disorders cause interpersonal difficulties, which lead to problems with colleagues and with teamwork (Gerber et al., 2004).

Nevertheless, people with ADHD and other learning disorders have invaluable qualities for a potential employer, for example creativity and entrepreneurship (Dahan and Tzadok, 2012). Hartmann (2000) sees "hunter" as the prototype occupation of these individuals – the ability to be on the move, to remain alert, in highly uncertain situations, and to achieve fast and clear-cut results. These qualities could be of great value in many occupations.

However, commonly, people with learning disorders reach adulthood with encumbering baggage of failures, a sense of unsuitability, and an internalized unsympathetic view of

them by others. With these facts, it is very difficult to set out and integrate in the work world (Dahan and Tzadok, 2012).

In addition, the occupational environment often emphasizes the weaknesses and difficulties rather than the numerous qualities of people with learning disorders. Even when the environment recognizes existing abilities, the fact that they are side by side with difficulties frequently creates mistrust in oneself and mistrust by coworkers (Dahan and Tzadok, 2012).

### **1.2. On the part of the employer**

A study that examined the attitudes of lawyers, architects, employers, education professionals, and social workers to various measures of integration in society policies of people with disabilities, found that the least positive attitudes were concerned with issues of employment. For example, employers were asked about the obligation to employ a certain quota of people with disabilities, to adjust the workplace construction to people with disabilities, and whether amended occupational preference for people with disabilities should be determined by law (Vilchinsky and Findler, 2004).

Due to their difficulties, people with disabilities are protected by law. The US legislated the Americans with Disabilities Act (ADA, 1990), advancing the rights of persons with disabilities in the United States. Title I of the Americans with Disabilities Act of 1990 prohibits employers from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment. Similar laws, in the same spirit, were passed in many other countries.

Following lawsuits by employees due to their failure to pass professional licensing tests (Pitoniak and Royer, 2001), it was determined that learning disorders are a disability that requires adjustments and accommodations similar to those provided at schools and universities (Harvard Law Review Association, 1998).

Despite equal opportunities laws for people with disabilities, a survey conducted by the Israeli Ministry of Industry and Commerce found that employers believe that people with disabilities are less competent, less suitable to working with the public, create negative effects on coworkers, and are “overprotected” from termination. As a rule, employers feel that the focus of employing people with disabilities is charity rather than economic considerations, and some believe that integrating people with disabilities in the employed population is not the free market’s role, but the government’s (Tal, 2013).

### **1.3. Learning disorders, ADHD, and employee selection**

It was found that people with learning disorders have difficulties to successfully pass selection processes for jobs, because testing could fail them either for speed or for other impairments such as reading, writing, text comprehension, memory, attention, or interpersonal communication. The emotional and academic difficulties that often accompany attention deficit could conceal the individual’s potential professional abilities during the selection process. This situation could result in turning the applicant away, or to assigning him or her an inappropriate job (Dahan and Tzadok, 2012).

The law requires an employer to provide an employee or job applicant with a disability reasonable accommodation, unless doing so would cause significant difficulty or expense for the employer. A reasonable accommodation is any change in the work environment (or in the way things are usually done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment (ADA; 1990).

At the accommodation stage (detection, evaluation, and implementation), the applicant that was deemed to be unfit becomes fit, and the workplace and job requirements, previously perceived as obvious, are doubted, and become conditional; i.e. historically-dependent and context-dependent (Mor, 2012).

This paper focuses only on accommodations concerned with the employee selection process. Most of the relevant literature highlights the challenges that the individual with learning disorders faces during selection procedures. We have undertaken the challenge to highlight the employer's difficulties.

## **2. Has the burden on the employer become too heavy?**

It is our opinion that the above-mentioned legislation is important and necessary because it helps people with disabilities to become integrated and to contribute at work and in society. However, its implementation often weighs heavily on the employer, rooted in the potential unfairness towards him or her. Following is the rationale of our argument.

First, the literature has shown that there is no consensus as to the definitions and diagnosis of people with learning disorders. It is possible that in the existing situation, namely that the reliability and validity of the diagnosis are not sufficient, various accommodations and adjustments can be received easily, which lowers the academic or work admission standards (Ballard and Elwork, 2003). Regarding selection, higher education institutions and workplaces are connected, since academic achievements should predict the quality of the applicants. This criterion is later assessed by means of job evaluations in organizations. Higher education institutions provide accommodations under law. Consequently, many students graduate with success despite their difficulties. Employers use applicants' resumes as a selection tool, inferring about knowledge, skills, abilities, or even personality. To the employer, information about the applicant's academic success is a measure of the latter's potential success at work. Some job interviews rely almost solely on academic transcripts.

Employers are not made aware of the accommodations that the applicant received at school. Eventually, when the employee starts work, it soon becomes clear that his or her performance is not up to expectations. Moreover, the applicant with learning disorders may exhibit organization problems, a slow work pace, scattered attention to details, and other characteristics that the employer was not aware of, because the employee's academic accomplishments were successful. Higher education degrees lose their reliability, because they become inconsistent and unstable (depending on accommodations provided, medications taken, etc.), and invalid. In other words, scholastic accomplishments become a selection tool with a low capacity to predict future work performance. Similarly, an applicant that is sent for vocational assessment (i.e., aptitude tests) for a certain job can – if the appropriate documents are supplied – be given accommodations (usually extra time).

The recruiting employer orders the assessment and even pays for it, intending to receive a comprehensive evaluation of the applicant's competences, which would enable making an intelligent decision about the applicant's suitability for the job. The recruiting employer gets the results, without a written official report that the applicant was tested with accommodations. In fact, the information is occasionally provided verbally, and sometimes not at all. In the "real" work world, these applicants operate without accommodations, and therefore the validity of the selection tool could be compromised. We would like to emphasize that a reliable psychologist can interpret the results so that their validity is not compromised, even if he or she did not inform the employer directly about the accommodations. However, the lack of clear, consistent guidelines on this issue places the decision at the psychologist's doorstep, and creates a loophole that in many cases compromises the validity of selection tests.

Another issue that weighs heavily on the employer is breach of trust and damage to the psychological contract between the parties. Commonly, applicants do not reveal their disorder so as not to compromise their chances of being accepted to work. Since the issue is ADHD or a learning disorder, which are neurological-cognitive by nature, there is no outward characteristic that discloses the applicant's difficulties, unlike a heavy accent or a visible physical disability. Coming clean with the employer often occurs after the employee has been hired, and is perhaps subject to criticism or disapproval about his or her job performance. This is not bona fide behavior, because ADHD and learning disorders are significant in many jobs. It goes without saying that an employer requires a realistic job preview, and accordingly expects a reasonable presentation from the applicant about his or her skills and achievements.

The issue of trust is accompanied by a sense of injustice, which other applicants who suffer from real difficulties that do not entitle them to academic and/or testing accommodations might feel. Models of the perceived fairness of selection systems (Gilliland, 1993) suggest employing equal procedural rules, so that the applicant can function optimally, and consistent procedures are maintained for all. Special accommodations could invoke unfairness reactions in other applicants. For example, is not an applicant that stutters and participates in a job interview (as is common in most organizations) without accommodations discriminated against as opposed to people that receive accommodations in selection tests? Many applicants suffer from various afflictions (stage fright, poor language, introversion, irregular appearance, etc.). The attempt to provide all applicants with equality at the selection tests stage does not always succeed, because total equality can only occur in theory. The employer cannot know what is hidden from the eye and recognize each applicant's problems, if they were not diagnosed or not reported. The law compels protection of people with disabilities. However, could thus the employer or other applicants feel a sense of procedural injustice regarding other groups that are not protected by law?

We should keep in mind that the employers end goal is profit, the end result – cost versus expected benefit from one applicant as opposed to all the others. Compromising the employer's ability to make an informed selection decision based on full knowledge of the applicant's relevant achievements, would soon lead to the latter's failure to meet expectations, and to poor performance that results in termination. Consequently, both parties are damaged, and the law's benefits are overshadowed by its disadvantages.

### **3. What can be done to relieve the employer's burden?**

We suggest a number of ways to create a fair and transparent selection culture that benefits all parties – disabled applicants as well as employers.

1. Disclosure – finding ways to provide reliable and valid information about applicants' abilities and achievements. Parallel to the academic diploma and/or the diagnosis results, the conditions under which the student/applicant had been tested and had received the reported scores (extra time, reading, multiple breaks, etc.) should be noted. We would like to emphasize that the disorder itself should not be mentioned (privileged medical information), only the type of accommodation involved. Since these are hereditary neurological disorders, it is unfair not to provide accommodations, just as we would not think to deny diabetics insulin. Moreover, just as the diabetic's medical records are transferred to other doctors due to secondary health issues, it is reasonable that the type of accommodation provided due to a cognitive disorder is transferred to the employer. We believe that one cannot realize one's due rights (accommodations at school and in selection tests) without assuming the duty of fairness towards the potential employer. The employer can assess an applicant with high achievements even if tested with accommodations, and make a well-informed and realistic employment decision. If the job under discussion does not require academic skills that relate to the applicant's disorder, or if the applicant has found techniques to overcome the difficulty (for instance, scanning written material and listening to it instead of reading it), and certainly if the applicant is especially qualified for the job, revealing the accommodations would not be detrimental. Furthermore, applicants with slight disorders that use the accommodations to improve their competitiveness might decide to avoid accommodations all together. This would also prevent inflation of diagnoses (see item 4). In any case, it is best for the employer to know the truth about the applicant. It helps to establish trust in their future work relationship.

2. Job analysis – giving a place of honor to job analysis that is independent of context or individual. Job analysis is the process of identifying the content of a job in terms of activities involved and attributes needed to perform the work (knowledge, skills, abilities, and personality). Accordingly, the goal is to develop selection tools that make unnecessary academic diagnoses redundant. Cumming (2012) notes, "Available research indicated firstly that current accommodation practices for students with impairment with respect to time allowances are not evidence-based, but highly likely to be inadequate" (p. 84). It follows that extra time allowed in selection tests for applicants with disorders is not necessarily the optimal solution. It is important to develop additional selection tools that examine general learning ability, which is highly required in our dynamic world. Gamification tools (game thinking and game mechanics in non-game contexts to engage users in solving problems) could be used as task-related applications for employee selection. Naturally, cost-benefit considerations must be taken into account, corresponding to the complexity and importance of the job. Additionally, a limited (but sufficient) behavior sample should be used so as not to weary the applicant.

We believe that wider use of reasonable trial periods should be considered. The huge amount of material to be learned when starting a new job could be very difficult for people with ADHD or learning disorders, and longer trial periods would provide sufficient time to adapt.

3. Occupational counseling – helping people with learning disorders find an occupation that maximizes their many advantages. Without proper counseling and without awareness of the difficulties that are typical of their impairment, people with learning disorders experience

constant frustration at work. On the other hand, employers suffer from a great number of job applications from applicants with learning disorders who are not optimally suited to certain jobs. Indeed, every occupation today requires basic academic skills (reading, writing, arithmetic), but in quite a few occupations these are not at the core of the job. For instance, character traits such as creativity and vitality that are common among individuals with ADHD might be a strong point in various occupations, to mention a few – the military, entrepreneurship, sports, etc. Respectively, guidance counselors should be trained to help people with ADHD and learning disorders; some counselors are still unaware of the depth of the issue, and it reflects on the quality of their assistance (Debettencourt, Bonaro, and Sabornie, 1995).

4. Improving the reliability and validity of learning disorders diagnosis, and meticulous supervision of their standardization, could prevent or curtail the inflation of diagnoses and maintain higher standards in education and at work.

5. Raising awareness of learning disorders and ADHD among undiagnosed adults would help them take care of themselves. For example, employees that are parents could be made aware by a child neurologist who is treating their children, because there is a high probability that at least one of the parents of a diagnosed child has a learning disorder too.

### Conclusions

This paper has attempted to present employers' point of view regarding the difficulties they encounter during selection processes of people with ADHD or learning disorders. Whereas the literature abounds with representations of the difficulties experienced by people with disabilities in the work world, we feel that the employer's voice is not heard sufficiently.

The law, to a degree, 'mistreats' the employer by not obligating applicants to fully disclose the accommodations that helped them with their scholastic or selection tests achievements. Consequently, the employer is denied the ability to make rational, well-informed selection decisions, and in contrast – it creates a high potential for job failure.

In order to assure that people with learning disorders succeed in their jobs to their employer's satisfaction, we must make sure that fairness and transparency are preserved throughout the selection process, for the benefit of all those involved.

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