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THE ADA AND SMALL BUSINESS: OPPORTUNITIES AND ACCOMMODATIONS

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ABSTRACT

The Americans with Disabilties Act (ADA) is 25 years old. The act requires employers to make reasonable accommodations for disabled employees. The requirement for reasonable accommodations has remained the same and the law has not been changed significantly over the years. However the interpretation of the law, specifically what constitutes reasonable accommodations, has evolved. The requirements for small business were initially confusing and difficult to implement. Despite, or maybe because of, many lawsuits and state and local requirements, the requirements remain more muddled than ever. In this paper we will examine the relationship between small business and the ADA. We take a position that taking a proactive stance can give a small business a competitive advantage in two ways. It can open up a new labor pool and it can create a new customer base. The paper ends with some recommendations for practitioners and researchers.

INTRODUCTION

The Americans with Disabilities Act (ADA) was passed in 1990, implemented in 1992, and revised (partially) in 2010. It requires employers to make reasonable accommodations for disabled employees. In the two and a half decades since it's' implementation it has been interpreted and reinterpreted in the courts, often with contradictory and frustrating results. The inconsistency in the courts is largely an evolution spurred on by changing societal attitudes, developing technology and changes in the workplace. The types of and standards for reasonable accommodations change accordingly. In this paper some of the changes in the workplace and associated accommodations in the small business context are examined.

This article begins with an explanation and exploration of the ADA. Some of the accommodations available, legal history and issues associated with the ADA are explained next. This is followed by an examination of the relationship between small business and the ADA. The ambiguous nature of the requirements of the law, and the changes in the expectations and standards for reasonable accommodations is described. This will be followed by the concerns of small businesses and what drives their decision to attempt to comply or risk legal action. Finally a case is made for small business to take a proactive perspective towards ADA compliance and reasonable compliance. The reasons being an increased customer base, decreased likelihood of legal action, decreased turnover, an expanded talent pool and increased productivity. The article concludes with implications for practitioners and further research suggestions for academic researchers.

THE AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act (ADA) of 1990 make it illegal to discriminate against people with disabilities. The ADA requires employers to make reasonable accommodations for disabled customers and employees. The ADA was not an entirely new idea. Some have traced it to the 'pro-public' attitudes early in the country's history. For example, the 'pro-public' attitude towards access to information led to the forming of the Library of Congress in 1830. A related example in the 20th century is that the library was tasked with the responsibility to serve the blind and print readers with disabilities by act of Congress in 1931 (NCD, 2005).

In the 1960's the idea was that all people regardless of cognitive or physical disabilities should have the same rights and civil liberties as everyone else was gaining in popularity. The concept was referred to as 'normalization', a philosophy that everyone should have the same access to everyday living conditions. This lead to the Architectural Barriers Act in 1968, the Rehabilitation Act in 1973 and amended in 1986, Individuals with Disabilities Education Act - IDEA -1975 formerly called the Education for all Handicapped Children Act of 1975 (Hollingsworth & Apel, 2008) and the Technology Related Assistance for Individuals with Disabilities Act in 1988 (Light, 2001).

The ADA was passed as a US law in 1990, was implemented in 1992 and expanded in 1994. Several other federal laws followed that covered similar areas such as Section 255 of the Telecommunications Act of 1996 which requires manufacturers and vendors of telecommunications equipment and services, and customer premises equipment, to make their products accessible to and usable by individuals with disabilities if it is readily achievable to do so (FCC, 1996). Individual states and localities also had laws that overlapped the federal laws.

The ADA covers several areas, including jobs, for most places of business that have at least 15 employees. There are 5 titles in the law:

- Title I Employment
- Title II Governmental Entities
- Title III Public Accommodations
- Title IV Transportation
- Title V Telecommunications.

Title I of the ADA is of interest to businesses. Title 1 prohibits employers from using disability as a factor in hiring instead of legitimate qualifications, skills and abilities (Zugelder & Champagne, 2003). The key strategy for compliance with the ADA is making 'reasonable accommodations. These are changes to a business establishment, job or worksite that make it possible for customers to shop and qualified persons with a disability to apply for a job, do a job, and have equal employment benefits.

Examples of reasonable accommodations include:

- Installing ramps
- Widening doorways
- Installing electric doors
- Modifying equiptment
- Using specially designed tools, fixtures and devices
- Restructuring jobs

- Changing work schedules
- Facilitating remote working arrangements
- Reassigning staff to new or vacant positions
- Providing readers or interpreters
- Adjusting exams
- Modifying training programs and materials
- Policy changes

What constitiutes a 'disability'? The act covers 'actual' disabilities which 'impair one or more major life activities'. It also covers being treated as being disabled due to 'stereotypes, stigmas and social perceptions' (Zugelder & Champagne, 2003; Smith, 2002) resulting from a history of the particular impairment and being regarded as having the impairment. The ADA is admittedly vague, and is so by design (Christie & Kleiner, 2001). In fact, 28% of ADA filings are due to 'vagueness' in the law (Christie & Kleiner, 2001). This vagueness is accompanied by some guidelines, but the guidelines that exist that are not always considered fair or reasonable (Petesch, 1999). This is because over time the standards for reasonable accommodation change, while the ADA remains the same. What is reasonable depends on currently available technique, and techniques for accommodating continue to evolve (Griffin 2013). Exactly who and what is and is not covered by the ADA is not clear (Kilberg, 2002; Ashworth & Kleiner, 2000). It is decided on a case-by-case basis (Zugelder & Champagne, 2003). As new and unanticipated circumstances arise with the development of technology and public standards, reliance on court cases allows for necessary discussion (Christie & Kleiner, 2001).

The U.S. Equal Employment Opportunity Commission (EEOC) enforces cases that fall under the Americans with Disabilities Act of 1990, Titles I and V. The U.S. Department of Justice enforces cases that fall under Titles II, III & IV. However the story of the ADA cannot be found by tracing the legislation. The ADA's changes reflect the evolution of interpretations in the courtroom. Not only have the standards and methods for accommodation changed, but so has the concept of 'disabilities'. The current view is that 'disabilities' are socially constructed (Light, 2001), therefore society determines the parameters. As society changes, the definition of 'disability' changes (Zugelder & Champagne, 2003), and the standards for compliance are frequently amended. The Department of Justice published revised regulations for Titles II and III of the Act in the Federal Register on September 15, 2010. The 2010 Standards is 279 pages long and is meant to "set minimum requirements – both scoping and technical – for newly designed and constructed or altered State and local government facilities, public accommodations, and commercial facilities to be readily accessible to and usable by individuals with disabilities." (ADA, 2010)

ADA AND SMALL BUSINESS

The ADA was originally thought to have major positive impact on customers of small businesses (Barbe, Cheek & Lacho, 1993). The EEOC predicted the benefits of compliance to outweigh the costs. (Kohl & Zimmerman, 1995). They (EEOC) concluded that the cost of complying would be low for small businesses. They calculated that 80% of accommodations cost less than $500, with the average at $304. However some firms face significantly higher costs because of particular accommodations, and it is exceedingly difficult to anticipate future costs (Journal of Small Business Management, 1992). Although the small business must pay for the

accommodations they make, they can get up to $10,250 tax credit for costs of compliance (Gilbert, 1992), an amount later raised to $15,000 (Werth, 2003). Research partially supported the claims of the EEOC. Overall implementation of the ADA had positive effects for disabled consumers and employees already on the job. (Moore, Moore & Moore, 2007). However, the value of commercial property was anticipated to go down due to the cost of compliance. (Frolick, 1992). In addition, research found that there was a loss of small retail businesses where the ADA provisions were a new idea, the number of lawsuits, number of ADA related labor complaints and number of disabled people was high (Prieger, 2004). Many small businesses were required to make very expensive accommodations. This led to small business owners to urge Congress to ease ADA on small business (Adiga, 2000).

Guidelines exist for some issues covered by the ADA. For example, the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) outlines compliance requirements for small and large businesses, including: raising buttons on elevators, installing ramps, repositioning telephones, and installing water cup dispensers near water fountains. Adequately educating small businesses on the requirements of the ADA has been difficult due in part to issues being addressed by the courts, which send mixed messages due to inconsistent rulings. Furthermore, state and local laws regarding employment for the disabled are different than the ADA. (Journal of Small Business Management, 1992). The result was that despite extensive ADA technical assistance and training available from federal agencies, there was widespread failure to comply by small business owners. This was especially true for those small businesses located in small towns and rural areas. Upon investigation, small businesses revealed that many in their community did not understand the specific requirements of the ADA. Two additional problems that came out were that some mistakenly believed the ADA did not apply to them, while others believe the ADA has much higher compliance requirements than it actually does. (PR Newswire, 2007).

Ignorance and misconceptions regarding the ADA are not because of a lack of available training. There were and are many programs aimed at educating small businesses. A typical event was “Your Small Business and the ADA” sponsored by Albany-Colonie Regional Chamber of Commerce, Cornell University, the National Federation of Independent Business and the state Office of the Advocate for Persons with Disabilities. (Daybook, 1996). In this event, local, regional and federal coordinated with a university. Other training programs are and were developed and delivered by only one of these organizations or by independent companies. Unfortunately, instead of going to available and low to moderate priced training, high priced consultants were needlessly hired by small businesses to help them avoid the perceived high cost of compliance. (Gilbert, 1992).

The act has no reporting requirements (Journal of Small Business Management, 1992). The EEOC would take complaints of noncompliance and sue offending businesses. Small business executives did not consider compliance a being absolutely necessary even though it was the law (Jones, 1998). In 2005, it was found that only 2% of businesses in California complied with the state regulations. (Steinberg, 2005). According to the National Council on Disability, ADA remains unimplemented in many areas. They also report ignorance of the provisions and in some cases no interest in the ADA. (National Council on Disability, 2007).

Small businesses are included in the ADA. Specifically, an 'employer' is covered by the ADA if its workforce includes '15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year' (Fauver, 2003). The law

originally applied to businesses with 25 or more employees, and in July 1994 was extended to 15 or more employees (Frun, 1993), an increase of 500,000 businesses (Thottam, 1994). However even this seemingly simple parameter is problematic. In 2003, Justice Stevens found the ADA definition of an "employee" as "an individual employed by an employer" to be a "nominal definition" that is "completely circular and explains nothing" (Fauver, 2003). Companies have difficulties counting their employees. For example fleet operators often have many part-time workers or workers that have irregular schedules. They find it difficult to keep up with ADA regulations (Zall, 1999). Another example is a group medical practice where it is difficult to categorize the professional performing services as employees or not (Fauver 2003).

Specific cases brought before the courts are surprising and amusing, but point out how every business has its own set of circumstances. For example the mental illness provisions of the ADA are ambiguous and poorly understood by small business owners, resulting in many lawsuits (Shea, 2002; Reynes, 1997; Apte, 1998; Zall, 1999). Some other specific examples: An employer wanting credit for disabled telephone access (Investor Denied …, 2005), a ruling in Indiana required a small business to pay for an employee's weight loss surgery. (Smerd, 2009), and movie theaters were asked to accommodate miniature horses as service animals (Halstead, 2012).

CONCLUSIONS, RECOMMENDATIONS AND FURTHER RESEARCH

Despite being on the books for 25 years, the ADA is neither understood nor are its provisions accepted as a responsibility by small business owners. Part of this is due to the idiosyncratic and ever evolving state of 'reasonable accommodations'. However that is hardly a rationale for ignoring the regulations. We recommend taking a proactive approach and use accommodations to gain a competitive advantage. There are three distinct opportunities. The first is to use accommodations to attract disabled workers and expand your labor pool. A second opportunity is in helping others comply with the ADA. This involves an entrepreneurial spirit and starting a new business or refocusing an existing one. One example is a handyman in Maine who founded a business installing safety 'grab-bars'. He found sponsorship for his niche start-up through the Small Business Administration (SBA) and Senior Corp of Retired Executives (SCORE). (Cooper, 2006). A third area is to use ADA accommodations to attract new customers. An example is Puget Sound, where 'compliance entrepreneurs' are encouraged businesses to use the ADA as a springboard to embracing diversity and bring new customers into the area (Blankinship, 1993). We also encourage scholars to get involved with researching the results of the ADA. It is an under researched area, and research is needed to guide policy. A final suggestion is that schools, especially those with entrepreneurship programs or civil engagement requirements, get involved in the small business community helping them comply with the ADA and use it for their advantage.

RESPONDING TO OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) WHISTLE-BLOWER INVESTIGATIONS

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ABSTRACT

In fiscal year (FY) 2014, the United States (US) Occupational Safety and Health Administration (OSHA) accepted 3,060 whistleblower cases for investigation. This marked the first time in its history that the agency had surpassed 3,000 cases (Maurer, 2015). The OSHA Whistleblower Protection Program enforces 22 federal statutes protecting employees that report violations of a wide variety of federal laws. From workplace safety to securities laws, the depth and breadth of the programs reach takes in a wide swath of the American economic landscape. The purpose of this paper is to briefly examine the reach of OSHA's Whistleblower Protection Program, to examine where the agency's resources have been focused in recent years, and to identify policy and practice suggestions for employers to facilitate compliance.

INTRODUCTION

The OSHA Whistleblower Protection Program enforces 22 federal statutes protecting employees that report violations of a wide variety of federal laws. From workplace safety to securities laws, the depth and breadth of the programs reach takes in a wide swath of the American economic landscape. In fiscal year (FY) 2014, the United States (US) Occupational Safety and Health Administration (OSHA) accepted 3,060 cases for investigation (DOL, 2015). This marked the first time in its history that the agency had surpassed 3,000 cases (Maurer, 2015). The purpose of this paper is to briefly examine the reach of OSHA's Whistleblower Protection Program, to examine where the agency's resources have been focused in recent years, and to identify policy and practice suggestions for employers to facilitate compliance.

OSHA's WHISTLEBLOWER PROTECTION PROGRAM

The passage of the Occupational Safety and Health (OSH) Act in 1970 signaled the beginning of a new era in protection of worker rights to a safe and healthy work environment. Section 11(c) of the Act specifically prohibits employers from discriminating against employees who exercise a wide variety of rights under the OSH Act including the filing of complaints, participating in inspections, reporting an injury, raising a safety or health complaint with their employer, and reporting a violation of the statutes herein (DOL, 2015, A). Workers are also protected from retaliation or discrimination in the exercise of their rights under the act. Over time, the US Congress has expanded OSHA's whistleblower authority to protect workers from retaliation and discrimination under the twenty-two federal statutes enforced by the agency.

Procedures for filing complaints and investigation of complaints can vary by statute. For example, an allegation of discrimination or retaliation against an employee that has attempted to exercise a right as an employee under the OSH Act must be filed within 30 days of the alleged discriminatory employment action. In states where an OSHA approved state plan is available, the employee may file a complaint with both the State and Federal OSHA offices. Individuals may file online, using OSHA's Online Whistleblower Complaint Form, via mail to a local OSHA Regional or Area Office, or telephone United States Department of Labor, (DOL), 2015), B). There are 22 states or territories that have OSHA-approved State Plans that cover both private and public sector workers.

Filing a complaint under any other whistleblower statute enforced by OSHA must be filed within the appropriate time limits specified in the statute and must be filed directly with Federal OSHA (United States Department of Labor, (DOL), 2015), B).

FOCUS OF OSHA ACTIVITY

From Table 1 it is quite obvious that the OSH Act is the focal point of complaints received by OSHA in recent years. The number of complaints received alleging violation of OSH since FY 2005 has steadily increased from 1194 in 05 to 1729 in FY 2014. A distant second is cases involving the Surface Transportation Assistance Act (STAA) of 1978 with 463 cases received in FY 2014. The Federal Railroad Safety Act (FRSA) of 1982 is a distant third with 351 cases filed in FY2014 and those numbers are slightly down from the high of 340 cases received in FY 2011. Complaints alleging violation of Sarbanes Oxley (SOX) were a distant fourth and involved only half as many cases as those received in FY 2005.

Table 1
WHISTLEBLOWER CASES RECEIVED FY 2005 – FY 2014

Statute	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
ACA	0	0	0	0	0	4	14	14	18	26
AHERA	2	0	1	1	6	6	3	4	3	3
AIR21	65	52	50	85	92	75	66	57	91	111
CFPA	0	0	0	0	0	0	6	14	28	47
CPSIA	0	0	0	2	4	6	2	5	4	6
EPA	56	60	61	51	46	46	42	54	67	52
ERA	52	53	23	41	48	50	50	50	64	39
FRSA	0	0	1	45	145	201	340	384	355	351
FSMA	0	0	0	0	0	0	17	22	54	51
ISCA	0	0	0	0	0	1	0	0	0	0
MAP21	0	0	0	0	0	0	0	0	1	10
NTSSA	0	0	0	18	15	14	17	14	17	14
OSHA	1194	1195	1301	1381	1267	1402	1667	1745	1710	1729
PSIA	3	7	1	3	3	2	6	2	7	6
SOX	291	234	231	235	228	201	148	169	177	145
SPA	0	0	0	0	0	0	5	9	5	7
STAA	271	241	297	357	306	306	314	346	368	463
Total	1934	1842	1966	2219	2160	2314	2698	2889	2969	3060

Source: United States Department of Labor, (DOL, 2015).

While the number of complaints received has reached an all-time high, cases dismissed or withdrawn by complainants also remained high. In 2014, OSHA completed determinations on 3,271 complaints, 51 percent (1652) were dismissed by the agency and another 22 percent were withdrawn by the complainant (Maurer, 2015). Table 2 contains FY 2005 – FY 2014 breakdown of complaint determinations. Over the last ten years, the number of complaints dismissed by OSHA has consistently declined from a high of 67 percent (1270) in 2005 to the 51 percent level of 2014. The number of complaints settled over the ten year period has consistently increased from a low of 16 percent in 2005 to 28 percent in 2011. The percentage of cases settled dipped in 2012 to 21 percent but rebounded to 26 percent in 2013 and then declined to 24 percent in 2014. Meritorious determinations averaged right at 2 percent over the ten year period.

Table 2
COMPLAINT DETERMINATIONS FY 2005 – FY 2014

Fiscal Year	Merit	Settled	Settled Other	Dismissed	Withdrawn	Total
2005	41	269	87	1270	235	1902
2006	23	284	117	1275	272	1971
2007	18	261	112	1217	253	1861
2008	21	328	95	1280	296	2020
2009	57	277	116	1221	272	1943
2010	45	312	138	1182	278	1955
2011	48	400	157	1110	278	2016
2012	48	406	187	1662	518	2869
2013	74	527	333	1596	669	3272
2014	64	441	305	1652	710	3271
Total	439	3505	1647	13465	3781	23080

Source: United States Department of Labor, (DOL, 2015).

RECENT OSHA CASES AND ISSUES

Among recent high profile cases involving OSHA whistleblower allegations include a recent determination by OSHA involving the presence of a "culture of retaliation" at Union Pacific Railroad. In the Union Pacific Railroad case involving the disciplining of a locomotive engineer for reporting a workplace injury, OSHA ordered the employer to pay $350,000 in punitive and compensatory damages and reasonable attorney fees. The company was also ordered to remove disciplinary information from the employee's personnel file and to provide information about whistleblower rights to all its employees. In announcing the determination, OSHA noted that the company had more than 200 whistleblower nationwide complaints since 2001 and that the repeated complaints were indicative of a culture that does not value the safety of its workers (OSHA Regional News Release, 2015).

In addition to investigating a record number of complaints associated with whistleblowing, OSHA has also been active in initiating changes in its processes and policies designed to provide even more protection for whistleblowers.

In 2013, OSHA launched its Temporary Worker Initiative (DOL News Release, 2013). This initiative was designed to enhance safety and health requirements for temporary workers employed under a joint employment relationship involving a temporary staffing agency and a host employer (Maurer, 2015, A).

In April of 2014, David Michaels, Assistant Secretary for Occupational Safety and Health for the U.S. Department of Labor, testified before Congress "that a longer statute of limitations was needed for OSH Act whistle-blower claims" (Smith, 2014). In his testimony, Michaels endorsed the idea that the statute of limitations should be amended to match newer whistle-blower statutes that typically have a 180 day statute of limitations (Smith, 2014). On May 21, 2014, Associate General Counsel of the National Labor Relations Board (NLRB) Anne Purcell issued Memorandum OM 14-60 informing all Regional Directors, Officers-in-Charge, and Resident Officers of the NLRB that the NLRB had entered into a program with OSHA regarding the OSHA case intake process regarding whistleblower claims (Purcell, 2014). Under the program, OSHA complaints that would normally be dismissed because the complainant had failed to file a timely complaint will now be referred to the NLRB to assess the possibility of the complainant filing an unfair labor practice charge against the employer.

POLICY AND PRACTICE RECOMMENDATIONS

There are a number of often cited policy and practice recommendations to lower the risk of whistleblower complaints. At the top of the list, is the development and maintenance of an organizational culture "where employees are comfortable reporting wrongdoing internally and by protecting them after they do so" (Meinart, p. 64, 2014). Developing and maintain this type of culture is no easy task. Building and maintaining employee trust and confidence in how the organization and its mangers will respond to these types of allegations is fragile. Providing employees with the internal mechanisms to create the "speak-up culture" required encourage employees to come forward with allegations of organizational wrong-doing requires much more than the proverbial open door (Smith, 2015). It requires, according to many in the legal community, the "development of a fair and consistent process for employees to make reports and for how reports will be investigated" (Meinart, p. 64, 2014). Figure 1 contains common recommendations from the legal profession.

Create an integrated system for taking reports of misconduct, and make sure employees know what methods to use.
Develop a plan for handling reports when they come in. Who will investigate? Who will notify the employee about the outcome?
Ensure that company policy prohibits retaliation against employees who report wrongdoing, and enforce it.
Train managers to take all complaints seriously and to avoid retaliation.
Avoid language in severance agreements that could appear to muzzle employees from assisting with future investigations.

Source: (Meinert, p. 64, 2014)

Figure 1: Recommendations from the Legal Profession

SUMMARY AND CONCLUSIONS

Another consistent theme in the literature is the importance of quality first line supervision. In the 2013 National Business Ethics Survey cited by Meinert, 92 percent of employees who reported misconduct initially did so "to someone inside their organization, usually their direct supervisor" – "just 9 percent reported problems to a government agency" (Meinert, p. 62, 2014). Training and reinforcement of that training for first line supervisors is

critical. Just like the tenuous nature of most open door policies, any system that provides negative reinforcement at the most likely first contact for an employee, is doomed to failure.

Whether it is one of the 22 statutes enforced by OSHA or the other multitude of federal and state laws that provide protection to employees regarding retaliation, organizations must impress upon all members of management to treat employee allegations of wrong doing seriously. Dori Meinert's HRMagazine June 2014 article should be required reading for all managers – from the very top to the very bottom of any organization's hierarchy.

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COMPLYING WITH THE SPIRIT OF FERPA: A GUIDE FOR BUSINESS EDUCATORS

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ABSTRACT

The Family Educational Rights and Privacy Act of 1974 ("FERPA"), also known as the Buckley Amendment, is a statute enacted by Congress and intended to provide students with the right to access and amend their educational records, and to protect their privacy rights by preventing the disclosure of educational records without their written consent (FERPA, 2001). The statute, as originally intended by Senator Buckley, protects two broad rights: (1) the right for students to access their educational records, and (2) the right for students to prohibit the disclosure of their educational records to third parties without the student's consent. Students depend on the accuracy and integrity of universities in the maintenance of their educational records, and, as a result, it is paramount that universities and educators comply with this statute. Unfortunately, the language and application of FERPA has often proven complicated and ambiguous for universities, educators, and the courts. For decades, courts have struggled to define the scope, application, and enforcement of FERPA, which has led to many inconsistent court rulings. The Supreme Court's ruling in Gonzaga v. Doe (2002), for example, dramatically watered down the enforcement of FERPA (Bott, 2003) and deviated substantially from its original intent (Stuart 2006; Mitchell 2003).

This article is designed to clarify business educators' duties under FERPA and to provide recommendations for how to improve compliance in order to achieve greater protection for students, educators, and universities. In particular, we trace the history of the enactment of FERPA and court challenges, and illustrate these issues by describing situations related to the business classroom. FERPA requires that universities allow students to inspect and amend their educational records, consent to disclosures of their educational records, and file complaints with the Department of Education if their FERPA rights have been violated. Because one of the most important mediums universities use to notify their students to the terms of FERPA is through the university website, we evaluated the websites of top-ranked national and regional universities for their FERPA reporting information. Of the findings, a shocking 40% of universities failed to define "educational record" despite the centrality of the phrase to the scope of FERPA. A third section of this paper focuses on adapting FERPA to changes in higher education. In particular, we emphasize issues related to online courses, so-called massive open online courses or MOOCs, and executive education as pertains to business schools.

THE PROBLEM OF LIMITED SCOPE AUDITS

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ABSTRACT

In May 2015, the Department of Labor (DOL) released a report of its findings and recommendations from a statistically sampling 400 audits from the more than 7,000 CPA firms that audit the 81,162 filings of Form 5500 Annual Return/Reporting (Form 5500) for pension funds. The study, the fourth such one undertaken since enactment of the Employee Retirement Income Securities Act of 1974 (ERISA), was conducted as part of the DOL's periodic monitoring of the quality of the reports. The DOL report included many recommendations. With an alarming 39 percent of the audited reports containing one or more significant violations of Generally Accepted Auditing Standards there is cause for concern and need for change. The violations of these auditing standards could lead to rejection of Form 5500 for the fund, and as written in the report such mistakes risked the assets of 22.5 million plan participants and beneficiaries for the $653 billion of assets.

While briefly addressing other aspects of the DOL report, and providing a historical perspective of the studies to put the problem into prospective, this presentation, focuses on a feature unique to pension plan audits, the limited scope audit. In 2011, the year of the study, 80 percent of all pension fund audits were conducted under scope limitation permitted for pension fund report by choice of the fund administrator. Closely tied to the choice for limited scope audit is the argument of cost to benefit for full and limited scope audits of pension plans for Form 5500. This consideration will be part of discussion of the problem of limited scope audits.

HEALTH CARE DIRECTIVES: COMMUNICATING AND CARRYING OUT END OF LIFE MEDICAL TREATMENT WISHES

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ABSTRACT

Court decisions have established an individual's Constitutional right of privacy to choose or decline end-stage medical treatment. Further, courts have acknowledged that surrogates may make such decisions for an individual who has become incompetent provided the surrogates, appointed by the individual patients, can establish the intent of such individuals by subjective oral evidence. All states have legislatively established criteria for written Health Care Directives (HCDs) to evidence an individual's desires regarding end-stage medical treatment, which can be legally enforced. Since there has been some confusion by health care providers in interpreting the HCDs, this paper evaluates the ambiguity of the special language of HCDs and suggests provisions and examples to clarify the intent of individual patients and provide health care professionals nationwide access to HCDs.