

Public Accommodations, Public Perceptions, and Workplace Law

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Doran Dorfman, [\[Un\]Usual Suspects: Deservingness, Scarcity, and Disability Rights](#), 10 **UC Irvine L. Rev.** 557 (2020).

In *[Un]Usual Suspects: Deservingness, Scarcity, and Disability Rights*, Professor Doron Dorfman performs a superb analysis of the issue of accommodations for individuals with disabilities and the perception and attitudes of the public with respect to these accommodations.

The Americans with Disabilities Act (ADA) requires, under federal law, that those individuals with disabilities be provided with reasonable accommodations that do not cause undue hardship. The accommodation provisions of the ADA are wide-ranging, and cover both public and workplace accommodations. Though Professor Dorfman's analysis in this paper is largely in the public accommodation context, the research is directly applicable, and important to, workplace issues and employment.

In this piece, Professor Dorfman looks at the many types of accommodations to which those with disabilities are entitled under federal law, and explores how nondisabled persons may perceive that these types of "special rights" are being abused. More specifically, he examines the perception by some that these accommodations are unnecessary or are being exploited, resulting in the (phrase coined by Professor Dorfman), "fear of the disability con." In this paper, Professor Dorfman examines how these types of concerns by nondisabled members of the community can begin to erode trust in the ADA, as well as subject individuals with disabilities to both harassment and questions about their protected status.

In performing this analysis, the paper draws from an online experiment performed by the author involving 3,200 Americans on the topic, as well as numerous qualitative interviews. The results of this study were fascinating. Indeed, Professor Dorfman found that the relative scarcity of the resource being provided (e.g. parking spaces) did not impact the extent to which those perceived that individuals with disabilities were engaged in "the disability con." Instead, Professor Dorfman's novel research found that the suspicions were largely motivated by a subjective perception of "deservingness" of the accommodation by those non-disabled members of the public. This is a somewhat surprising and important distinction—those who believe that individuals with disabilities are engaged in a "con" of the system through their membership in a protected class hold these beliefs not because of the limited availability of a particular accommodation/resource but instead because of the perception that these individuals are not deserving of the particular accommodation in question.

There is far too little empirical work of the type being done so expertly here by Professor Dorfman in the legal academy. Both the numerical results and qualitative data are illuminating, and provide an important look at the perceptions of the public on this type of disability rights legislation. Professor Dorfman takes the next step with his research in the paper, and explains the importance of his research for the ways civil rights laws are drafted and implemented. As he eloquently concludes, "With regard to fear of the disability con, it is essential for policy makers, law enforcement personnel, disability rights advocates, and academics to continue to raise awareness of the topic, expand the views of

deservingness with regard to disability rights, and take action to prevent the harassment of disabled individuals.”

As noted previously, this paper primarily explores these types of misplaced attitudes of the public in the context of public accommodations. The paper looks specifically at two examples of such accommodations, disabled parking and line-access at Disneyland, both of which provide fascinating examples for exploring this topic. Professor Dorfman uses these examples to examine the psychology of what he refers to as “the disability con.” The type of perceived “fakery” goes well-beyond the public accommodation context, however, and has direct implications for work law and employees across the country.

I selected this paper to review specifically because of the importance of Professor Dorfman’s work here outside of the public accommodation context. As others have addressed, there are similar misplaced concerns over these types of perceived “disability cons” taking place in the workplace setting. See, e.g., Nicole Porter, *Special Treatment Stigma After the ADA Amendment Act*, 43 **Pepp. L. Rev.** 213 (2016). Many non-disabled workers likely perceive that those receiving a requested accommodation as part of their employment are similarly “abusing” the system the same as those requesting public accommodations. Intuitively, it would seem that these misplaced perceptions are the result of scarce resources, i.e. employers providing limited resources to workers with disabilities instead of others. Professor Dorfman’s research suggests otherwise, and implies that these attitudes are instead the result of some workers’ belief that an employee with a disability is simply not “deserving” of a particular accommodation.

Of course, extrapolating Professor Dorfman’s research into the area of employment law must be done carefully, and further empirical analysis should be done in this area before drawing any firm conclusions. Nonetheless, it is an area worth exploring given the novel results of the research in this paper. Indeed, a better understanding of this area of workplace law will help legislators to craft future laws in this area, and assist employers in enacting these specific provisions. It is important to enhance trust in the workplace provisions of the ADA, as well as to help prevent individuals with disabilities from being harassed (as well as being subjected to other adverse treatment and unwarranted scrutiny) because of the misplaced perceptions of some over accommodations that are provided.

As a final note, Professor Dorfman follows up his work in this paper with another novel look at the perceived “disability con” in the context of service dogs and emotional support animals in his paper, *Suspicious Species*, 2021 **U. Ill. L. Rev.** 1364. That paper explores the perception of the public of this type of more specific accommodation.

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