

**International Research Project on
Job Retention and Return to Work
Strategies for Disabled Workers
Study Report
USA**

Paul O'Leary

Bureau of Economic Research

Rutgers University

with

David Dean

Bureau of Disability and Economics

University of Richmond

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PREFACE

The *International Research Project on Job Retention and Return to Work Strategies for Disabled Workers* is an initiative of the International Labour Organisation (ILO) and the Global Applied Research and Information Network on Employment and Training (GLADNET). It reflects ILO and GLADNET joint aims of establishing a base for cross-national research and strengthening links between research analysis and policy reform in the field of employment of disabled people.

The Project is a response to a combination of developments which highlight the need for more effective policies and practices in support of workers whose prospects of remaining in employment are jeopardised by work injury, illness or disability. Persons with disabilities are increasingly claiming rights to stay in work as well as to access employment. Pressures on state budgets, the rising costs of compensation claims and disability benefits, and changes in the structure of the labour market are strengthening policies in favour of job retention and return to work. Enterprises are developing their own strategies to minimise the costs of disability and to retain valued employees. Overall, the balance of responsibility is shifting from the state to the enterprise.

Policies and practices to prevent disabled workers from leaving work unnecessarily, and to facilitate rapid return to employment if job loss cannot be prevented, are recent developments in many countries. The cross-national exchange of information on initiatives and their effects is limited. The first aim of this Project has been to gather information about what has been attempted, by whom, for what purposes, in which contexts and to what effects. The second, more ambitious, aim, is to examine the interaction between the various policies and practices, identify dysfunctions, and work towards more coherent and cost-effective strategies for job retention and return to work which might be applied in different national systems. The ultimate objective is to identify strategies which can be put into effect in the workplace.

The Project was constructed in two phases. In Phase One, eight exploratory desk-based studies were commissioned from researchers in Canada, France, Germany, the Netherlands, New Zealand, Sweden, the United Kingdom and the USA. The eight countries invited to participate represent a spectrum of policy approaches and enterprise practices which affect the retention and return to work of workers with disabilities. Australia joined the project at a later stage.

The studies formed the basis for a *Key Issues* Paper, published simultaneously with the eight country reports. This Paper aims to inform, stimulate debate and pave the way for constructive discussion of questions for further exploration through cross-national collaboration in Phase Two.

National government departments, agencies, a private sector organisation, and the ILO co-sponsored Phase One of the Project. Overall responsibility for the Project rests with the ILO (Vocational Rehabilitation Branch, Employment and Training Department). The design, implementation and analysis of the research in Phase One were the responsibility of the Research Co-ordination Unit established at the Social Policy Research Unit, University of York (UK) in April 1997. Research specialists in the main areas of enquiry, based in study countries, contributed at all stages of the research process and, with ILO representatives, met with the research co-ordinators as a Research Advisory Group.

The country studies

The Project recruited and supported national informants from research institutes in all eight countries. During the second half of 1997 they completed a Schedule of Questions developed by the Research Co-ordination Unit to describe policies and practices, document evidence of their effects and provide grounded commentary on how policies and practices interact. The principal sources were policy documents, survey data, research evaluations and critical reviews. Informants were encouraged to contact sources in government departments and agencies, disabled people's organisations, labour unions and employers' groups. Where documented information was lacking, informants interviewed experts in the field.

The eight country reports are important resources for the development of job retention policy and practice both within and across countries. Each report brings together within a single volume: descriptions of policies, practices and programmes which impact on job retention and return to work; evaluative material; and informed commentary. They cover five themes: employment and labour market policies; benefit and compensation programmes; employment support and rehabilitation services; adaptation of work and workplace; and measures developed and implemented by the enterprise. In line with the research aim of identifying coherent and co-ordinated strategies, the informants both comment on dysfunctions in national systems which obstruct job retention efforts and identify links between themes.

It should be noted that the situation described in the reports may have changed. This is especially true of the Netherlands where further reforms were expected in the first half of 1998 and the United Kingdom where the government changed in May 1997. Important developments in the USA were announced in March 1998.

The reports produced by the eight teams of national informants conformed to the format laid down by the Schedule of Questions. The original reports have been edited for publication by the Research Co-ordination Unit in co-operation with their authors. However, they remain essentially the raw data for analysis and should be read in that light. Each report follows the same sequence of headings which reflect the original open-ended questions. As the questionnaire prompted informants to respond flexibly to suggestions about possible areas to address under each question, the content varies from report to report. The reader should note that, at the end of a thematic section, commentary may be included on the links between that theme and those which precede it.

Terms used in the study

The study concerns paid competitive employment in the open labour market.

The term "disabled workers" is broadly defined. It covers individuals who become disabled, injured or ill whose prospects of continuing or advancing in employment are jeopardised when an acquired impairment, illness or deteriorating condition - physical or mental - presents difficulties in fulfilling the requirements of the job, reduces earning capacity or affects other rewards of working. They may or may not qualify under legal definitions of disabled persons. The term also covers workers with disabilities whose working capacity is not diminishing but whose continued employment is nevertheless threatened by prejudice or discrimination, or by the loss of supports which have maintained them in the job.

"Job retention" means staying with the same employer, with the same or different duties or conditions of employment, and includes return after a period of paid or unpaid absence. "Return to work" refers to the resumption of employment by a worker who has crossed the threshold from a continued employment relationship into non-employed status; the main interest of the study is in policies and practices which return the disabled individual to work at an early stage.

Acknowledgements

The publication of eight country reports of a very high quality in a short space of time would not have been possible without the expert attention of Andrew Nocon of the Social Policy Research Unit who edited the reports with remarkable care and efficiency. His task was made easier by the eight teams of informants who most willingly answered queries and approved the edited versions to tight deadlines.

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Patricia Thornton

Research Co-ordination Unit

Social Policy Research Unit, University of York, UK

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Copies of the 'Methodology Paper' and the 'Informant Briefing and Schedule of Questions' may be obtained from the Research Co-ordination Unit, Social Policy Research Unit, University of York, YO1 5DD, UK.

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Part III of this report was written by David Dean, Bureau of Disability and Economics, University of Richmond.

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I. EMPLOYMENT POLICIES

The purpose of this Part of the report is to describe policies which maintain those workers in employment whose continued employment is at risk because of disability. It provides evidence of the effects of those policies and identifies factors which influence their effectiveness. The emphasis in this part is on national (or state/provincial) policies formulated by government, and by bi-partite or tri-partite policy-making and advisory bodies.

Sections 1 to 5 are concerned with legislation, incentives and other persuasion policies which oblige and encourage enterprises to retain disabled employees. A distinction is made between employees who become disabled and those who are already disabled. Information is provided about employment policies which encourage disabled employees to retain or return to their jobs. Sections 6 to 8 focus on the factors which affects the success of policies. They also examine the labor market factors which contribute to the retention or loss of jobs among disabled people.

I.1 POLICIES WHICH AIM SPECIFICALLY TO INFLUENCE ENTERPRISES TO RETAIN NEWLY DISABLED EMPLOYEES

I.1.1 Legal obligations and binding agreements intended to prevent and restrict the dismissal of employees who become disabled

Legal obligations to prevent or restrict the dismissal of employees who become disabled fall into two groups. First are the civil rights protections that are afforded employees who become disabled. These would include the Title I provisions under the Americans with Disabilities Act (ADA), the regulations under Sections 503 and 504 of the Rehabilitation Act of 1973, and the various State statutes protecting the employment rights of disabled individuals.

The second type of protection is that afforded under the Family and Medical Leave Act of 1993 (FMLA) and prevents employers from terminating employees during temporary periods of disability.

The ADA

According to section 3, paragraph 2 of the ADA, the term disability means, with respect to an individual: (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (b) a record of such an impairment; or (c) being regarded as having such an impairment. The definition of disability does not include the categories of illegal drug use, homosexuality and bi-sexuality and a category of sexual behaviour disorders.

The ADA covers employers with a workforce of 15 or more people. The Title I provisions of the ADA set minimum levels of protection for disabled workers, so that state legislation that provides higher levels of protection supersedes the ADA. Most state statutes were modelled after the 1964 Civil Rights Act which gave anti-discrimination protection to women and minority religious, ethnic and racial groups. Like the Rehabilitation Act, state statutes in effect extended the protections of that Act to persons with disabilities and are thus fairly similar in employment protections provided. The Rehabilitation Act makes this extension for government workers and contractors, while state statutes generally extend such protection to private employers in the state. Since the ADA was largely modelled after Section 504 of the Rehabilitation Act, it is sufficient to speak of civil rights protections for persons with disabilities only in terms of the ADA.

Though the ADA provides other protections to disabled workers, the key job retention provision for disabled workers is that persons may not be discharged from their job on the basis of disability. Employees may be discharged if, as a result of their disability, they are unable to do the 'essential functions' of their former job with or without a reasonable accommodation (see I.1.2), but the disability alone is not cause for dismissal.

It should be noted that, under the ADA, employers are not able to directly enquire whether employees have a disability. This means that most firms do not know how many disabled people they employ (see V.10.1).

The FMLA

The FMLA refers to serious health condition rather than disability. Under the Act, serious health condition means an illness, injury, impairment, or physical or mental conditions that involves: (a) inpatient care in a hospital, hospice, or residential medical care facility; or (b) continuing treatment by a health care provider. Moreover: when leave is foreseeable, an employee must provide the employer with at least 30 days notice of the need for leave. If the leave is not foreseeable, then notice must be given as soon as practicable. An employer may require medical certification of a serious health condition from the employee, and may require periodic reports during the period of leave of the employee's status and intent to return to work, as well as fitness-for-duty certification upon return to work in appropriate situations.

Recognizing that many such conditions are temporary in nature and that their limitations may subside over time, under the FMLA employers (with 50 or more employees) are required to provide employees up to 12 weeks of leave from their job so that they may recover from a serious health condition. Employers are not required to provide compensation during the leave period unless the condition is work-related and falls under the provisions of the state's workers' compensation program. Many employers do provide such compensation for at least some portion of disability leaves. An employer must maintain any group health benefits during periods of FMLA leave that an employee was receiving at the time leave begins, at the same level and in the same manner as if the employee had continued to work. If employees are required to contribute to such benefits through payroll deductions at the time of leave, they may be required to pay their portion from alternative sources.

If the employee is able to return to work within 12 weeks, the employer is obligated to return the employee to their former position or to an equivalent job. An equivalent job is one with equivalent pay, benefits, and responsibilities to those of the former position. Combined with the ADA these two laws provide significant protection against dismissal due to a disability that is temporary in nature or can be accommodated.

Achievements

Although the ADA was instituted largely as a means of improving the employment prospects of unemployed individuals with disabilities, its primary impact has been on reducing the level of terminations that result from disability. From July 1992 through November of 1996, a total of 75,664 ADA charges (about 17,000 annually) had been filed with the Justice Department's Equal Employment Opportunity Commission (EEOC), the agency responsible for ADA compliance. Of these complaints, a full 52 per cent were for discharge violations, and another three per cent were for failure to rehire after temporary layoff. At the same time, less than ten per cent of all complaints were for hiring violations. The majority of these cases are resolved by mediation.

Extensive research conducted by the Family Leave Commission sheds a great deal of light on the achievements of the FMLA. Through public hearings, a review of enforcement reports by the Department of Labor and extensive employee and employer surveys sponsored by the Commission, a comprehensive view of the impact of the Act has been developed. From this data it is known that about 66 per cent of the US labor force is covered by the legislation. But while most covered employers are aware of the law, and two thirds have changed their leave policies in the wake of the FMLA, only 58 per cent of covered workers are aware of the protections to which they are entitled. As a result, early in 1997, the Labor Department began a public education campaign to improve employee awareness about the Act.

The Commission also found that although 17 per cent of workers take FMLA types of leave, less than two per cent took formal FMLA leave. This does not mean, however, that FMLA did not have an impact, since the requirements of the Act generally become intertwined with the internal leave programs of employers, so that employees may be unaware that the conditions of their leave have been dictated by the FMLA. Excluding women on maternity leave, 59 per cent of leave-takers do so for their own serious health problems.

The Wage and Hour Division of the Department of Labor (DOL), which is responsible for compliance under the FMLA, received a total of 3,833 complaints through September 1995. In 41 per cent of these complaints, either the employee was not covered or no violation was found. Of those remaining, most (61 per cent) resulted from an employer refusing to reinstate an employee to the same or equivalent job after taking time off. Ninety per cent of the valid complaints were successfully resolved with the employers' agreement to comply with the law, usually with a simple call. The combined effect of these two laws has probably led to significant improvements in job retention for some individuals who become disabled.

The impact of these laws on job retention, however, should not be overstated. The civil rights movement in the US dates back to the early '60s and the passage of the Civil Rights Act of 1964. Though persons with

disabilities were not specifically mentioned in this Act, it nonetheless has affected the way in which employers regard members of all minority classes. There is also much civil rights legislation at the state level that precedes the Americans with Disabilities Act. Although such laws tended to get less than aggressive enforcement, they have been part of the employment landscape for some time. Similarly, the Rehabilitation Act of 1975 applied only to state and federal governments and their contractors but, again, this legislation has affected the environment in which employers operate. Workers' compensation also had an influence by setting standards for the treatment of disabled workers, and focusing attention on potential benefits of job retention.

So although the ADA did not become law until the 1990, similar ideas had been around for some time. This background affected employers', unions', and employees' ideas and expectations, so that much of the retention and accommodation focus of the ADA with respect to current employees was already part of standard employment practice before enactment of the law. As more progressive employers found general retention policies to be useful in lowering costs, employees and unions began to expect such provisions. Other employers then found it necessary to provide such benefits in order to compete for the best workers. For employers with highly skilled and difficult to replace workers, it would appear that the ADA has largely provided a standardization of policies that were already in place. The ADA is thus more significant for employers of largely unskilled workers.

The same can be said for the FMLA. Evidence suggests that many of the provisions of the FMLA relating to workers' own disabilities were already in place prior to the passage of the Act. By 1993, 23 states had FMLA-type laws covering public and private employees, and 11 more states had provisions for state workers only.^b According to the Bureau of Labor Statistics (DOL) *Employee Benefits Survey*, 56 per cent of all public and private sector employees had access to paid sick leave in the years just prior to the passage of the FMLA. This data also shows that larger firms and more skilled employees were more likely to have such benefits. Eighty-five per cent of professional and technical employees at large firms had annual sick-day cover, while only 45 per cent of blue-collar and service employees had such coverage. For smaller establishments these figures are 74 per cent and 35 per cent respectively.

Further, a 1988 Small Business Administration random sample survey of 1,700 firms found that 40 per cent of employers with 1-15 employees who provide unpaid sick leave guarantee a job for the employee upon return. This percentage increases as the size of the firm increases so that, for firms with 50-99 employees, 69.7 per cent provide such job guarantees. Of small employers (1-15 employees) providing sick pay benefits in 1988, just under one-quarter provided job protection, while this protection increases to 59 per cent for firms with 50-99 employees. The DOL report on the impact of the FMLA also indicates that the number one change in existing leave policies for covered employers was to provide leave for fathers to take care of seriously ill of newborn children (69.3 per cent). This study found that 45.7 per cent of employers who are not covered under the Act provide up to 12 weeks of leave nonetheless, and that of these 86.8 employers guarantee jobs upon return from leave.

Much like with the ADA, the FMLA provided a standardization of policies that were already in place for many employers. This is particularly true for larger employers with highly skilled work forces. In fact, anecdotal evidence suggests that one unanticipated impact of the Family and Medical Leave Act has been to *reduce* leave in some cases to the standardized 12 week period.

I.1.2 Legal obligations and binding agreements intended to promote the retention of employees who become disabled

ADA

In addition to providing protection from unfair dismissal due to disability, the ADA also requires employers to make reasonable accommodations to effectively assist the employee in performing the essential functions

of the job. If the employee cannot be reasonably accommodated, the employer may discharge the employee based on their inability to do the job. Essential functions are intentionally defined in the law in a rather loose fashion so as not to provide employers with technical loopholes. Essential functions include those duties that either define the position, such as a truck driver, or are part of the regular routine of the position. Occasional responsibilities are generally outside the realm of essential job functions and therefore cannot be considered in determining whether the employee can do the job.

Reasonable accommodation is similarly defined in a loose fashion. The general rule is that a reasonable accommodation is one that can be accomplished without putting an "undue hardship" on the operation of the business. Undue hardship is determined on a case by case basis, and factors such as the financial resources and structure of the company are critically important. This recognizes that an accommodation that is reasonable in one company, may not be reasonable in other companies. Employees are also only entitled to the minimum necessary reasonable accommodation.

Accommodation may involve the shifting of job responsibilities, duties or schedules, altering the physical confines of a work area, or modifying equipment. If the employee cannot be reasonably accommodated in their former position and an alternative position is available within the company, a reasonable accommodation may be to place (and possibly retrain) the disabled employee in that new position. There is no requirement, however, that under such circumstances, the alternative position should have the same level of responsibility, benefits or pay.

The employment discrimination provisions of the ADA, which include the requirement to provide reasonable accommodation, apply to labor unions both as employers and as bargaining agents.

With respect to unions, the law is expected to be interpreted by the courts in the same manner as the Civil Rights Act of 1964. As such, unions may not interfere with an employer's attempts to provide a reasonable accommodation to an employee so long as it does not violate the collective bargaining agreement. And since under the National Labor Relations Act, employers must deal with the employee's union, rather than the employee directly, the union is required to bargain in good faith, providing fair representation in assisting an employee in obtaining a reasonable accommodation, or cooperating with an employer in attempting to determine a reasonable accommodation.

Further, unions and employers are prohibited from entering into collective bargaining agreements that discriminate against persons with disabilities. And since the ADA does not contain an exception for collectively bargained seniority systems, it would appear that an employer cannot automatically reject a requested accommodation simply because it conflicts with the terms of a union contract. Requests for a light duty job (without sufficient seniority) or some other job restructuring can only be rejected if the accommodation is unduly disruptive to other employees or to the functioning of the employer's business, and therefore an undue hardship under the ADA.

Achievements

While it is difficult to say how much impact the ADA has had on the provision of accommodations to disabled employees, and the resulting effect on retention, employer awareness of their accommodation responsibilities appears to be significant. Though there have been no studies specifically examining the effect of the ADA on work accommodations in the workplace, employer surveys do indicate that the ADA has led to an increase in accommodation for disabled workers.

The NOD/Harris compared surveys from 1986 to 1995 in which senior executives from a cross section of American companies were asked questions about the impact of the ADA. The report found that the percentage of employers who said they had made an accommodation for a disabled employee had increased from 51 per cent to 81 per cent. Another survey in that year examined the level of employer knowledge of the

ADA and whether it had led to changes in the company's workers' compensation practices, including return-to-work and accommodation. This study found that employers generally (and particularly larger employers) had good knowledge of the ADA and that changes in workers' compensation practices were correlated with higher levels of knowledge. Further, a 1995 national survey of employers with regard to telecommuting practices found that ten per cent of the 160 respondents initiated telecommuting to provide accommodation under the ADA.

Though not hard evidence on the extent of accommodations actually made, these studies do suggest that the ADA has had a positive impact on work accommodations for disabled employees. This evidence is further bolstered by the 1997 *Full Cost* study which examined disability costs and disability management practices at 20 US employers. These studies found a growing investment by employers in work accommodation and return-to-work practices, particularly for occupational disabilities, but increasingly for non-occupational disabilities as well.

Equal Employment Opportunity Commission data through 1996 indicate that ADA charges for failure to make work accommodations comprised more than 28 per cent of the total - although it is not known what proportions of this value relate to hiring or discharge. As with discharge violations, most valid complaints were resolved by mediation during the initial phases of EEOC involvement, and relatively few have gone to litigation.

Although the ADA may appear general and vague, this is typical of rights-based legislation in the US. This does not, however, reflect a lack of commitment. A potential problem with precise laws is that by spelling out exactly what is required, the law also provides a manual of sorts on how to get around the law. The employer can then adhere to the letter of the law while disregarding its spirit. The ADA, for its part, simply spells out general obligations that require employers to make a good faith effort to accommodate disabled employees. So long as the employer tries to accommodate the employee in a reasonable way, they will have complied with the law.

The downside of this type of approach is that it has the potential to lead to endless litigation. In reaction to this concern, employers were quite concerned during the early phases of implementation, and there was even a movement afoot in 1995 to repeal the Law. So far these fears have not been realized, largely because the EEOC has taken a common sense approach to settling disputes. The ADA Technical Assistance Manual that has been provided to assist employers in complying with the Law also takes this common sense approach. Rather than identify specific actions that must be undertaken to comply with the law, the document provides sets of examples to clarify the law's intention.

Overall, the vagueness of the ADA appears to have worked to its advantage. The concern initially created by the Act caused it to receive a great deal of attention, particularly among large employers. This led to a greater employer, and public, awareness of disability. This public attention with the ADA also emerged as interest in the concept of disability management at firms was beginning to take hold. As a result, the ADA was positioned to be integrated into many of the new programs that were being developed. Finally, since the initial fears with respect to groundless litigation have been shown to be unfounded, the net effect has been a widespread acceptance of the rights of disabled workers.

I.2 POLICIES TO OBLIGE AND ENCOURAGE ENTERPRISES TO RETAIN DISABLED WORKERS IN GENERAL

I.2.1 Obligations and binding agreements which promote retention of disabled workers in general

ADA

In addition to the specific retention and accommodation requirements of the ADA already discussed, Titles II

and III of the ADA provide for increased access to public places. Title II covers programs, activities, and services of public entities including State and local government offices and agencies, and public transportation (the Federal Government remains covered by the Rehabilitation Act of 1973). Title III covers virtually all privately operated facilities whose operations are open to the public. This includes places of lodging, restaurants, theatres, stadiums, convention centres, lecture halls, stores, shopping centres, public transportation facilities, museums, libraries, parks, private schools, social service centres, and recreation areas. As such, these two parts of the ADA imply two effects for work retention. First, since many places of work are also public places, work environments have become more disability friendly, even in the absence of specific disability accommodations for employees. Second, by making the general environment more disability friendly, persons with disabilities are better able to handle daily tasks such as shopping, visiting physicians and commuting, that make work a more viable option.

In addition, the Occupational Health and Safety Administration (OSHA) is charged with setting work safety standards, conducting workplace inspections to ensure employers are complying with the standards, and providing a safe and healthy workplace. Where OSHA has not promulgated a specific standard, employers are responsible for complying with the general duty clause of the Act [Section 5(a)(1)] which states that each employer shall furnish ... a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. States set their own job safety and health programs, but they must set standards that are at least as effective as the equivalent federal standard. Most states' plans adopt standards identical to the federal ones (two states, New York and Connecticut, have plans which cover only public sector employees). More recently, OSHA has also targeted ergonomics as a safety issue to prevent cumulative trauma disorders.

OSHA has historically had a somewhat contentious "regulator" relationship with employers. In recent years, however, OSHA has moved to a more cooperative relationship. Consultation assistance is available to employers who want help in establishing and maintaining a safe and healthy workplace at no cost to the employer. No penalties are proposed or citations issued for hazards identified by the consultant. Employers who receive a comprehensive consultation visit, correct all identified hazards, and demonstrate that an effective safety and health program is in operation may be exempted from OSHA general schedule enforcement inspections (not complaint or accident investigations) for a period of one year. Comprehensive consultation assistance includes an appraisal of all work practices and mechanical, physical, and environmental hazards in the workplace, and includes assistance in developing, implementing or improving all aspects of the employer's workplace safety and health program. This program is known as OSHA's "Safety and Health Achievement Recognition Program", or SHARP. The program is designed to provide incentives and support for small, high-hazard employers to develop, implement and continuously improve their workplace safety and health programs.

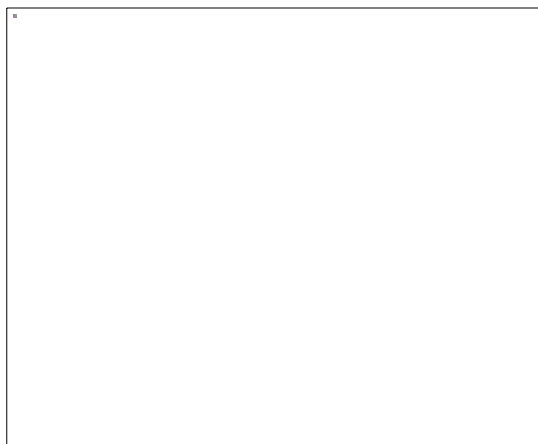
Achievements

To ensure that public accommodations, commercial facilities and State and local governments learn of the requirements of Titles II and III of the ADA and acquire the knowledge needed to comply with these requirements, the Act created the Americans With Disabilities Act Technical Assistance Program. Programs are funded through the Department of Justice (DOJ) and the Department of Transportation (DOT). DOT has provided technical assistance primarily through Project Action of the private non-profit National Easter Seal Society. DOJ has produced and distributed technical assistance materials to businesses and libraries. It has set up a toll-free ADA information line and has placed materials in grocery stores across the country. It has also funded a number of organizations for the provision of technical assistance to design professionals, inspectors, contractors and other groups involved in removing barriers.

For the employment portion of the ADA, programs are funded through the National Institute of Disability and Rehabilitation Research within the federal Department of Education. There are ten Regional Disability and Business Technical Assistance Centres funded through NIDRR and a number of related programs (see

Section IV). The centres provide ADA-related technical assistance, training and materials development and information dissemination to business, agencies and individuals in their regions. No analysis has been done examining the effectiveness of the Centres, but the information provided is expansive and can be accessed on-line and through toll-free telephone numbers.

Though there has been little formal external evaluation of OSHA, Bureau of Labor Statistics data suggest that the rate of occupational injuries and illnesses have declined over the last quarter century since OSHA was introduced (see figure). Overall illness and injury cases have fallen 26 per cent while cases with days away from work have fallen 22 per cent and those without lost time have dropped 41 per cent. Interestingly, when we combine lost workday and restricted duty cases, there is an increase over the period of 6 per cent. This suggests that while occupational injuries are declining overall, the use of restricted duty to maintain work is increasing. This provides hard evidence that return-to-work programs within enterprises are meeting with success in maintaining employment.



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1 The incidence rates represent the number of injuries and illnesses per 100 full-time workers and were calculated as: $(N/EH) \times 200,000$, where N = number of injuries and illnesses, EH = total hours worked by all employees during the calendar year, 200,000 = base for 100 equivalent full-time workers (working 40 hours per week, 50 weeks per year).

2 Data for 1973-1975 are based on the Standard Industrial Classification Manual, 1967 Edition; data for 1976-1987 are based on the Standard Industrial Classification Manual, 1972 Edition; and data for 1988-1995 are based on the Standard Industrial Classification Manual, 1987 Edition.

3 Total includes cases involving restricted work activity only in addition to days-away-from-work cases with or without restricted work activity.

4 Days-away-from-work cases include those which result in days away from work with or without restricted work activity.

5 To maintain historical comparability with the rest of the series, data for small non-farm employers in low-risk industries who were not surveyed were imputed and included in the survey estimates.

6 Data exclude fatal work-related injuries and illnesses.

Note: Because of rounding, components may not add to the totals. Data for 1976-1995 exclude farms with fewer than 11 employees.

Source: Bureau of Labor Statistics Data, U.S. Department of Labor. Obtained online from: URL: <http://stats.bls.gov/news.release/osh.toc.htm>

I.2.2 Voluntary policies to persuade and encourage enterprises to retain disabled workers in general

National voluntary policies which attempt to persuade and encourage enterprises to retain disabled workers in general are promulgated primarily through two independent federal agencies, the President's Committee on Employment of People with Disabilities and the National Council On Disability, and through the human resources development institute of the American Federation of Labor-Congress of Industrial Organization (AFL-CIO), the central voluntary federation of some 90 national and international labor organizations in the United States.

The President's Committee on Employment of People with Disabilities

The President's Committee on Employment of People with Disabilities' (PCEPD) mission is to facilitate the communication, coordination and promotion of public and private efforts to enhance the employment of people with disabilities. The Committee provides information, training, and technical assistance to America's business leaders, organized labor, rehabilitation and service providers, advocacy organizations, families and individuals with disabilities. The President's Committee reports to the President on the progress and problems of maximizing employment opportunities for people with disabilities.

According to the PCEPD, progress has been made in achieving greater work opportunities for people with disabilities citing that, according to data from the Survey of Income and Program Participation (SIPP) between 1991 and 1994, 800,000 more individuals with severe disabilities entered the workforce, providing a 27 per cent increase in employment. The extent to which the ADA affected this number, however, is unclear since the increase has taken place at the same time as significant expansion in the US economy. At the same time, there have also been significant increases in the number of disabled individuals, so that the rate of employment for persons with severe disabilities has increased from 23 to 26 per cent, while the rate for the general disabled population has remained at 52 per cent.

NCD

The National Council On Disability (NCD) has the more general goal of promoting policies, programs, practices, and procedures that guarantee equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability; and to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society. The NCD was a central force in the creation of the ADA, under which the NCD has been charged with gathering information on the implementation, effectiveness, and impact of the Act. It has pursued this responsibility through public forums, or town meetings, in which individuals are able to share their ADA-related experiences. In general, this process had suggested by the middle of 1995 that, although much work remains, the ADA is beginning to create positive and, at times, dramatic changes in the lives of people with disabilities.

This sentiment was echoed the following year; with respect to employment, however, the indications were seen as less favourable. A key complaint is that too much emphasis is placed on income support, still too little system support is available to assist persons with disabilities in attaining and maintaining work. Specifically, the Council found that public and private benefit programs tend to emphasize compensation or benefits, rather than return-to-work and independence.

HRDI

The Human Resources Development Institute (HRDI) was established by the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) in 1968 to serve as a mechanism for the labor movement to participate in the nation's employment and training system.

The central office, located in Washington, D.C., develops and oversees initiatives to assist job training and employment opportunities for dislocated, disadvantaged, disabled, and unemployed workers. Specifically, HRDI national staff have responsibility for providing administrative services and technical assistance to

advance labor's involvement in training; developing technical materials; serving as a national clearing house for information on labor's involvement in employment and training programs. To carry out program initiatives, HRDI operates five field offices nation-wide.

Specifically with respect to retention and return-to-work, HRDI assists those out on disability with early intervention services to help them return to their former jobs or other positions with the same employer. This is done by promoting awareness of available benefits and services, providing information about recovery and return-to-work opportunities, and referring workers to local service providers where appropriate. For disabled workers who cannot return to their former employer, HRDI helps in their job search in order to obtain alternative employment. As union representatives, HRDI also helps to resolve return-to-work conflicts with labor-management agreements. Services thus include counselling, job development, vocational evaluation, employability training, occupational skills training, case management, and provision of information on accommodation practices and resources.

Though somewhat dated now, according to Akabas *et al.* (1992), HRDI had helped some 300 employees to remain at work through early intervention services, while from October 1986 to March 1988 job development and placement services were provided to over 1,000 disabled people.

I.2.3 Financial incentives which encourage enterprises to retain disabled workers in general

Workers' compensation

Though workers' compensation laws in the various states generally do not forbid discharge following the onset of a work-related injury or illness, employers are responsible to pay medical and indemnity benefits to such individuals. Since such benefits are either company-insured (self-insurance) or experience-rated when insurance is purchased, the cost of benefits is related to the disability record of the employer. Employers thus have incentives to return employees to work as soon as possible following the onset of an occupational disability so as to reduce the cost of workers' compensation. Such re-employment may mean a return to the firm, possibly with work accommodation and/or a new position, or it may be to a new firm altogether.

Tax incentives

There are three tax incentives available to help employers cover the cost of accommodations for employees with disabilities and to make their places of business accessible for employees and/or customers with disabilities.

Under the Small Business Tax Credit (IRS Code Section 44, Disabled Access Credit), small businesses may take an annual tax credit for making their businesses accessible to persons with disabilities. A business is eligible for the credit if it earned a maximum of \$1 million in revenue in the previous year or had 30 or fewer full-time employees. The credit covers 50 per cent of expenditures over \$250, not to exceed \$10,250, for a maximum benefit of \$5,000. The credit amount is subtracted from the total tax liability after calculating taxes. The credit can be taken in more than one year, and covers items such as:

- sign language interpreters for employees or customers who have hearing impairments;
- readers for employees or customers who have visual impairments;
- the purchase of adaptive equipment or the modification of equipment;
- the production of print materials in alternate formats (e.g. Braille, audio tape, large print);
- the removal of architectural barriers in buildings or vehicles.

New construction, and modifications to buildings placed in service after 5 November 5 1990, are not covered.

Architectural/Transportation Tax Deduction (IRS Code Section 190, Barrier Removal) allows all businesses to take an annual deduction for expenses incurred to remove physical, structural, and transportation barriers for persons with disabilities at the workplace. Businesses may take a tax deduction of up to \$15,000 a year. Covered expenses include costs to adapt a facility or public transportation vehicle, whether owned or leased for use in the business, to provide accessible parking spaces, ramps, and curb cuts, to provide modified telephones, water fountains, restrooms and structural modifications such as making walkways at least 48 inches wide to accommodate wheelchairs. The deduction may not be used for expenses incurred for new construction, or for a complete renovation of a facility or public transportation vehicle, or for the normal replacement of depreciable property.

Work Opportunity Tax Credit (WOTC)

The Work Opportunity Tax Credit (WOTC) replaced the Targeted Jobs Tax Credit (TJTC) program and provides a tax credit for employers who hire certain targeted low-income groups, including disabled vocational rehabilitation (VR) referrals, qualified AFDC recipients, veterans, ex-felons, food stamp recipients, and summer youth employees. To be eligible under the VR clause, an individual must have a physical or mental disability resulting in a hindrance to employment, and be referred to an employer upon completion of or while receiving rehabilitative services, pursuant to the Vocational Rehabilitation Act. Beginning 1 October 1996 an employer may take a tax credit of up to 35 per cent of the first \$6,000, or up to \$2,100, in wages paid during the first 12 months for each new hire if the disabled employee works a minimum of 180 days or 400 hours. The current program expires 30 September 1997 and is subject to yearly Congressional renewal.

No data is currently available on the impact of these programs on employment of persons with disabilities. In the past, such programs have tended to be under-utilized as a result of poor publicity of the programs, and difficulty in successfully navigating the requirements necessary to attain the credit. Currently, the publicity being given these programs through the Technical Assistance Centres and the PCEPD suggests that the message may actually be better publicized for these programs. In addition, there is a new breed of entrepreneurs popping up that are specialists in attaining these types of credits for businesses. These new businesses contract with employers and then administer the credit process, including accumulating and completing the necessary required paperwork. In return, the administering company receives a portion of the gain the credit provides to the company. This is a very new field, and no data currently exists either describing the services available or the benefits attained. This will be a field worthy of further examination.

I.3 POLICIES AND PROGRAMS TO SUPPORT DISABLED EMPLOYEES AT RISK TO RETAIN THEIR EMPLOYMENT

I.3.1 Financial incentives directed at employees whose continued employment is at risk because of disability

There are no national level programs of financial incentives directed at employees beyond those cited in Part II in relation to benefits and compensation. There are various programs provided by private insurance providers, but these will be discussed under Part V (Enterprise Strategies).

I.3.2 Programs which support a move to another employer or to self-employment

The Handicapped Assistance Loans program to assist persons with disabilities to become self-employed, which was administered through the Small Business Administration, has been discontinued. Assistance is still available under more general Small Business Administration programs.

I.4 BENEFICIARIES

I.4.1 Impact of definitions of disability and eligibility criteria on access to and coverage of policies

There are only two ways in which the class of disabled workers differs with respect of access to return-to-work and retention policies. The first distinction is whether the disability is occupationally related or not, and the second in terms of the size of the employer with the disabled employee. As noted in I.1.1, the ADA itself applies to all disabled workers working for employers with more than 15 employees. However, there are workers' compensation provisions in states that apply only to those with occupational disabilities (see Section II). As a result, all services that are available to assist non-occupational disabilities are available to those with occupational disabilities, but the reverse is not true.

More importantly than these differences in programs, however, is that employer incentive structures are different between the two types of disabilities. Workers' compensation provides more uniform incentives to employers since the cost of insuring this liability consistently includes indemnity benefits and is experience-rated. Though non-occupational disability plans are experience-rated they are not mandatory, and differ in coverage. This means that the relationship between experience and the cost of coverage is weaker, and less consistent. Employers facing rising premiums due to poor experience under workers' compensation need to address the cause of the problem. Under non-occupational plans employers have other options. They can restructure or reduce coverage, shift some of the cost of coverage to employees, or eliminate the plan. While employee expectations and competition in the labor market may limit these benefit-cutting options, such options make the connection between experience and cost less strict. As a result, employers have traditionally paid less attention to experience under non-occupational programs than those under workers' compensation.

A second, and connected, way in which coverage differs is in the size of employers. Very small employers are not experience-rated. Rather, such firms have a nominal premium, or mutual rate, that reflects the general experience of all firms in the same line of business. While this nominal premium applies to 85 per cent of employers, it applies to only 15 per cent of workers. The remaining 15 per cent of employers (with the remaining 85 per cent of employees) are experience-rated. The degree of experience rating for small to medium firms varies according to the size of the firm. Rates for these firms are adjusted by a weighted average of their actual claim experience combined with the expected experience of their line of business. The larger the firm, the more weight is given to their actual experience. For very large firms all weight is given to actual experience and none to the industry average. These firms are thus perfectly experience-rated or self-rated. A similar stratification of experience rating occurs for non-occupational disability insurance, though with greater variability. This means that larger employers are likely to be more sensitive to return-to-work and retention than are smaller employers, and will tend to be more sensitive to occupational disabilities than those with non-occupational causes.

I.4.2 Disabled workers who benefit and those who miss out

Generally speaking, job retention policies in the USA affect larger employers to a much greater extent than smaller employers or individuals who are self-employed. Again the FMLA is instructive. The FMLA is applicable to any employer who is engaged in commerce or in any industry or activity affecting commerce, and who has 50 or more employees each working day during at least 20 calendar weeks or more in the current or preceding calendar year. All public agencies (state and local government) and local education agencies (schools) are covered, and these employers need not meet the 50 employee test. Employees must work for a covered employer and work at a worksite that is within 75 road miles of a location in which the employer employs at least 50 employees. The employee must also have worked at least 12 months (which do not have to be consecutive) for the employer; and, must have worked at least 1,250 hours during the 12 months immediately preceding the start of an FMLA leave.

What this implies is that part-time or self-employed workers, and those working in family or other small businesses, are not covered. Similarly, many individuals who telecommute, or otherwise work away from primary company facilities, such as sales persons, are excluded from coverage by the distance exclusion. So although 46 per cent of private sector workers are covered by the FMLA, they are concentrated in one tenth of the private sector worksites in the U.S., which are disproportionately in industrial areas, such as manufacturing. Similarly, the ADA covers all state and local government employers (the federal government and federal contractors are covered under the Rehabilitation Act), but only private sector employers employing more than 15 employees. According to Bureau of Census data, enterprises with less than 20 employees constituted 20 per cent of employment in 1994.

I.5 JOB RETENTION POLICIES IN CONTEXT

I.5.1 The salience of policies for job retention within the context of national policy to promote employment of disabled people

In terms of national emphasis, job retention policies receive less attention than those policies focused on job creation for persons with disabilities. Although national policies such as the ADA, FMLA, and those covered under OSHA have had a significant impact on the employment policies and programs of employers, national campaigns dealing with the employment of persons with disabilities tend to concentrate on those aspects of the policies and programs that deal with providing work for individuals who are already receiving disability benefits.

This is not to say that the retention aspects of national programs have been ineffectual - they have generally been the most successful aspect of the program - but, rather, in terms of national priorities, putting disabled persons to work who are currently on the disability rolls, receives greater attention than programs and policies that support employees who are at risk of becoming unemployed due to disability. For example, while a great deal of attention is given to accommodation under the ADA, the perspective is usually in the context of accommodating a new employee with a disability. At the same time, by far the vast majority of accommodations that end up being made are for existing employees to alleviate stresses that are heading toward disability or accommodating a current employee so that they may return to work.

I.5.2 Most prominent job retention policies

Certainly the most prominent retention policies are those under the ADA, the FMLA and OSHA. This is because each of these policies sets rather general retention requirements, such as the requirement to accommodate, to provide adequate leave, or to provide a safe environment, and then leaves it up to employers to determine how best to accomplish the requirements. And while the requirements are rather general, there is significant assistance provided to employers to help them in establishing proper policies. Probably the most important aspect of these policies is that they are perceived as adequately enforced, so that employers generally believe there will be real penalties for failing to abide by both the letter and spirit of these laws.

I.5.3 Policies affecting the retention of newly disabled workers

There is no real distinction in the U.S. between policies for newly disabled workers and policies for all workers. Even the FMLA, which is probably the most important policy affecting the retention of newly disabled workers, focused during the legislative debates, and continues to focus in terms of promotion, on the family caregiver aspects of the law. In terms of impact on employment policies, the most common change cited by 69 per cent of employers was to provide leave for fathers to care for seriously ill or newborn children.

I.6 IMPLEMENTATION OF JOB RETENTION POLICIES

I.6.1 The effectiveness of institutional arrangements for monitoring and enforcement

Enforcement would probably qualify as strict for all the national policies mentioned if judged according to the action taken following a complaint being filed. As this indicates, however, enforcement tends to be reactive rather than proactive.

The one exception in this regard is the Occupational Safety and Health Administration (OSHA) which routinely engages in random inspections of worksites - though these focus on health and safety issues rather than with job retention as such. Planned inspections are targeted to establishments in high-hazard industries or construction worksites identified on OSHA inspection lists which are based on the industries with the highest injury/illness rates according to the Bureau of Labor Statistics Annual Survey. OSHA found significant hazards at 47 per cent of the 39,961 high risk establishments targeted for inspection in 1996. Serious hazards are defined as those likely to kill, injure, or make workers ill, as well as willful and repeat violations. During programmed inspections in manufacturing establishments, significant hazards were identified in more than 60 per cent of firms visited. Firms in which these hazards are found are usually fined and given time to correct the problem.

In Fiscal Year 1996, the median time for the abatement of the hazards identified was 34 workdays, down from a median time of 37 workdays in Fiscal Year 1994. OSHA also responds to worker complaints of safety violations. In Fiscal Year 1996, OSHA's median time to respond to complaints was three workdays. The median time to respond to complaints decreased by two work days from Fiscal Year 1994 to Fiscal Year 1995 and by another two work days from Fiscal Year 1995 to Fiscal Year 1996.

Since enforcement of the other employment policies is dependent on worker complaints, the level of enforcement measured in terms of *violators penalized* is probably much lower than if measured in terms of *complaints resolved*, at least for the ADA and FMLA. This is largely because of a general lack of knowledge on the part of employees of their rights under the ADA and FMLA, but possibly also because of a reluctance on the part of employees to file complaints. Workers' compensation on the other hand is widely understood by workers. Enforcement under workers' compensation is so strong in fact that employers go out of their way to assist employees in filing claims. While this is done by employers to protect themselves from liability, it does provide a sense of the seriousness that employers attach to such claims. While enforcement of benefits provisions is universally strong, enforcement of return-to-work provisions varies from state to state.

I.6.2 Factors which affect the adoption of voluntary job retention measures and take-up of financial incentives by enterprises

Retention programs that provide financial incentives take the form of tax credits or retraining and accommodation assistance under workers' compensation programs. Though there is no data on the level of employer utilization of these programs, anecdotal evidence suggests two key factors affecting the use of such incentives by enterprises. The first is the apparently low level of awareness of such measures by employers. Second, qualifying for such incentives is often regarded as more trouble than the incentive is worth.

Most employers, particularly small employers, will only on a rare occasion deal with situations in which they qualify for participation in a retention incentive program. As a result, they are not likely to be aware of the program's existence. Even if they are aware of the program, qualification for incentives will probably require filing an application with the agency providing the incentive. Since this is an uncommon event, it will require the employer to learn what is required and then follow through on the application. The employer will thus calculate the estimated likelihood of the application being successfully completed and approved, which will depend on the complexity of the application process and the providing agency's reputation. For agencies with poor reputations, such as the Internal Revenue Service which would handle tax credits, the application process might even be seen as inviting disaster. If the work required to complete the application appears substantial, or the estimated likelihood of the application being accepted is low, the employers will probably

regard the process as not worthwhile.

Out of the tendency for employers to be either unaware or uninterested in incentive programs, some individuals appear to be finding opportunity. Though based only on anecdotal evidence, there appears to be a new breed of entrepreneurs popping up who specialise in assisting employers in collecting from various employment incentive programs. Since these businesses constantly work with particular programs, they develop an expertise in dealing with the administering agency. This reduces the cost of the application and increases the likelihood of successful completion. These businesses usually provide their services in return for a percentage of the proceeds gained for the employer, so that the risk to the employer is minimal.

I.7 INTERACTIONS BETWEEN EMPLOYMENT POLICIES AND PROGRAMS

I.7.1 Ways in which employment policies complement or contradict one another

Employment policies in the US are generally complementary. Laws such as those under workers' compensation and OSHA have in many ways affected employer, union and employee expectations and provided standards in establishing formal or informal disability management practices in firms. This is complementary to provisions under the ADA and FMLA that require employers to accommodate employees and hold jobs for them in their absence. For example, requirements under OSHA and workers' compensation claims have given employers incentives to develop safety departments with ergonomics specialists. These individuals have responsibility for modifying job sites to prevent injuries, keeping existing injuries from getting worse, and accommodating workers returning from absence due to occupational disabilities. It has been a natural transition for these same people, with their developed stores of knowledge, to be the ones employers turn to in accommodating employees under the ADA or FMLA. Furthermore, the ADA and FMLA are complementary to one another in that they both require reasonable accommodation of workers returning from disability. The FMLA's concern with return-to-work following leave centres on returning to a position that is commensurate with the pre-leave position, while accommodation requirements themselves are covered by the ADA.

Another complementary facet of these laws is that, since the ADA and FMLA extend workers' compensation-like protections to non-occupational disabilities, workers have less of an incentive to mislead employers in an attempt to get non-occupational disabilities covered by workers' compensation. This would be expected to reduce litigation over such cases allowing return-to-work to occur at an earlier stage.

The primary way in which these Acts contradict one another is in terms of hiring incentives. Both the ADA and FMLA make it more difficult and expensive to discharge an employee with a disability for poor performance. Before such a discharge takes place, employers are now required to make attempts at reasonable accommodation and must allow long periods of leave for possible recovery. While this assists in retention at that firm, it conflicts with return-to-work at a new firm. This is because it raises the risk from the employer's perspective of hiring an employee with a known history of lost-time disability if that disability is thought to have a significant probability of recurrence. An employee with a history of back problems will have a greater chance of remaining with their current employer due to the ADA and FMLA. If they are not retained, however, they are likely to be viewed as a risky new hire by other employers because the cost associated with a recurrence of the worker's back problems has increased due to the ADA and FMLA.

Although the ADA also provides protection for the disabled employee in search of a new job, these aspects of the law have proved to be its weakest aspect. It is suspected that this is what is driving the large number of complaints for dismissal and failure to accommodate, as compared to the small number of complaints for hiring practices. Because of the weak link in association between the employer and job candidate, it is very difficult to show discrimination in hiring practices and very easy to counter such allegations. The applicant must show that the employer knew of the disability and that the disability was the determining factor in rejecting the applicant. All the employer need show is that the candidate chosen over the disabled applicant

was judged to be a better choice with respect to the essential functions of the job after giving due consideration for the provision of reasonable accommodation for the disabled applicant. Since this is essentially a judgment call on the part of the employer, discrimination is very difficult to prove. Further, unlike cases of race and sex discrimination in hiring, the employer's history of hiring with respect to disabled individuals has no bearing on an ADA hiring discrimination case.

I.7.2 Impact of the distribution of responsibility for employment policy

The distribution of responsibility for employment policies across departments and agencies, and across national, regional and local levels does not appear to be an issue affecting the implementation of job retention policies. The Department of Labor also houses OSHA, while each state enforces its own workers' compensation program. Although the laws tend to complement one another, there is little need for coordination across the agencies for implementing the legislation.

The US Equal Employment Opportunity Commission (EEOC) is responsible for resolving ADA complaints. Those that cannot be resolved are litigated by the EEOC. The Employment Standards Administration in the U.S. Department of Labor is responsible for compliance under the FMLA. If a complaint cannot be resolved administratively the DOL may file suit to ensure compliance and recover damages. Under both the ADA and the FMLA, employees have the right of private litigation action without involvement of the DOL to correct violations and recover damages. Similarly, nothing in the FMLA or ADA supersedes state law provisions that are more beneficial to the employee, and employers must comply with the more beneficial provision.

I.8 LINKS TO LABOR MARKET FACTORS

I.8.1 Elements of labor market policies which influence the effects of job retention measures

We have already discussed the impact of occupational health and safety regulation above so we discuss only the impact of general terms and conditions of employment here.

The general terms and conditions of employment are largely unregulated in the US. Federal *minimum wage laws* and labor contracts do place lower bounds on the wages that employer can pay. The federal minimum wage is \$5.15 per hour and applies to all employers engaged in interstate commerce. Competitive pressures tend to cause this federal standard to be applied to other employers as well so as to make it largely universal. This does place restrictions on the wages that an employer can pay an employee working in a limited capacity during partial disability.

The extent to which minimum wage restrictions matter, however, is unknown. It is not unusual for workers with partial disability positions to be placed in "light duty" positions (see Part V for a further discussion of return-to-work programs at firms). Such jobs are often entry-level positions that pay low wages which are likely to be near the federal minimum. These jobs are likely to require less physical and mental stress and so can be done by the disabled worker. Entry-level jobs also require little in the way of training investments and so provide the lowest cost solution for a temporary job. What this implies is that the minimum wage at a firm is often the wage rate for the disabled employee and so does provide a lower bound on the jobs that an employer can assign to the disabled employee.

Labor agreements are also likely to place restrictions on the *placement* on workers according to seniority and this is likely to reinforce the use of entry-level positions for partially disabled workers. Although the ADA does require union agreements to be flexible, entry-level positions do not require the displacement of more senior individuals and thus simplify placement issues in union and non-union enterprises alike. This again means that the minimum wage at a firm will provide a lower bound on the jobs that an employer can assign to the disabled employee.

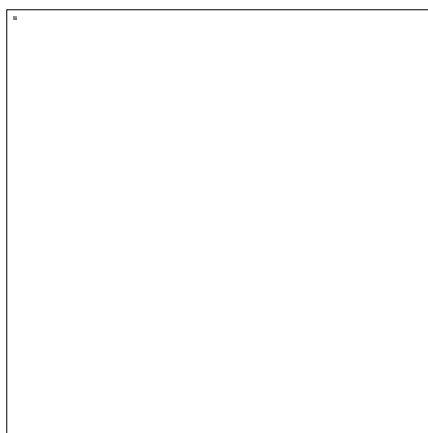
I.8.2 Changes in labor market demand and the structure of the labor market

There is little question that labor market conditions have a significant impact on the effectiveness of job retention policies. It is no accident that voluntary retention-related benefits are more often provided to highly skilled employees as compared to unskilled or service workers. This is a direct reflection of labor demand issues. The more difficult it is to replace an employee, the more expense an employer will be willing to incur to keep such an employee. We would also expect that voluntary retention efforts are more common across the board during tight labor markets as compared to periods of high unemployment. A typical effect of periods of corporate downsizing is the use of disability programs to facilitate early retirement.

Other factors in the labor market also have an effect on retention policies. The last thirty years has seen substantial changes in the structure of the workforce. These changes have included:

- an increase in the labor force participation of women^c
- growth of dual income households
- growth in the use of computers
- a decline in unionization
- an increase in service sector jobs
- staff outsourcing by employers.

At the same time, and as a result of these factors, the incidence of voluntary part-time work has increased substantially.



ATTENTION: Tables and graphics did not come out well, or not at all in this format. You may, however, download the original format of the document in Microsoft word. Thank you for your understanding.

Note: Part-time for non-economic reasons includes, for example, illness or other medical limitations, childcare problems or other family or personal obligations, school or training, retirement or Social Security limits on earnings, and being in a job where full-time work is less than 35 hours. It excludes persons who usually work full-time but worked only 1 to 34 hours during the reference week for reasons such as holidays, illness, and bad weather.

Source: Labor Force Statistics from the Current Population Survey, selective access, (<http://www.bls.gov>), Bureau of Labor Statistics, 1997

The net result of these various factors has been a significant increase in the overall flexibility of the US workforce. In general this appears to help in retention efforts because it increases the options to employers

and employees with limitations. Since part-time work, odd schedules, or work from home are already part of the way the firm does business, making such accommodations for employees with health restrictions is easier to accomplish.

There has also been tremendous growth in the recent past in the service sector in the US economy. Again, since service sector jobs generally require less in the way of physical tasks, such jobs tend to be more accommodating to workers with physical limitations. Here the impact of the computer revolution is likely to translate into improved opportunities for workers with disabilities. One recent study of individuals with spinal cord injuries found that those with computer skills at the time of injury have a faster return-to-work and greater earnings recovery.

II. BENEFIT AND COMPENSATION PROGRAMS

The purpose of this Part of the report is to examine how social benefit and compensation programs affect possibilities for disabled workers to retain or rapidly resume their employment. The main focus is on the application of benefit programs in employment; that is, opportunities to combine earnings with income from disability benefits, workers' compensation or other employment-related reparations. The obstacles presented by systems for out-of-work benefits are also examined. The theme covers cash benefits and payouts and, where significant, allowances against taxable income. Programs may be funded from tax revenues, or from earmarked or general insurance funds to which employers and/or employees contribute.

The first section presents information about workers' and other compensation programs. This is followed by a discussion of arrangements for combining benefits and earnings from work. Provision is then considered for income support out of work, and its effects on work resumption. The final section examines interactions between disability benefit programs and employment policies.

II.1 COMPENSATION PROGRAMS FOR WORK-RELATED INJURY OR ILLNESS

II.1.1 Principal compensation programs for work-related injury or illness

Workers' Compensation

There is no federal program targeted at occupational disability, except for those for federal employees.^d Workers' compensation is a state program and each state has its own legislation. In each case, covered employers are required to insure their liability for the payment of medical and indemnity benefits for illnesses and injuries that arise out of and in the course of employment. State workers' compensation laws differ in how they allow employers to insure their liability. Depending on the state, employers may have the option of insuring their workers' compensation liability with a private stock or mutual insurance carrier, through the exclusive state fund, or through self-insurance, if they qualify.

Workers are eligible for benefits at the onset of occupational illness or injury with no minimum period of employment required and the employee is not required to pay any contribution or tax. Coverage is restricted to employees of covered employers. Self-employed persons are not covered. Workers' compensation indemnity benefits for lost work are generally not paid for absences of less than some set number of days (usually 4-7). For workers' compensation absences that extend beyond this period, temporary disability indemnity benefits are available for the absence usually at a rate of $66\frac{2}{3}$ per cent of base pay up to a set weekly maximum (usually based on some percentage of the state's average weekly wage).

Often there is a retroactive-coverage clause in the benefits coverage. For workers' compensation absences that extend beyond some limit (generally 14 days), indemnity benefits are retroactively available for the previously uncovered first days of absence at the wage replacement ($66\frac{2}{3}$ per cent) rate. Often, when these

benefits are not retroactively recovered, the first three days of absence are covered by the appropriate sick-leave employer program, but this is optional. Employees receive temporary total disability benefits only during the time when they are unable to work. In certain states where permanent disability benefits are calculated according to impairment, employees may work and receive such benefits.

Under workers' compensation, medical benefits are provided in full to all employees who become injured or ill on the job. In some states, employers have the right of physician choice for work-related illnesses and injuries. Medical benefits are provided to cure and relieve the effects of the injury. States also have various provisions for medical and vocational rehabilitation.

Conflicts sometimes arise between workers' compensation and the ADA. The ADA requires employers to reasonably accommodate disabled workers. However, workers cannot be required to return from an injury or illness before they have had an opportunity to recover, and some companies may not want workers to return with limitations, in order to limit the firm's liability. How "recovery" is defined is thus not always clear. Workers who return to work with limitations may be at risk of further injury, so many companies require full recovery before allowing an employee to return. This can be interpreted as refusing to allow an accommodation under the ADA if a reasonable accommodation prior to full recovery is possible and the employee wants to return to work.

Social Security Disability Insurance Program (SSDI)

The Social Security Disability Insurance Program (SSDI) covers workers who become disabled regardless of cause. There is a 5-month waiting period after the onset of disability before benefits can begin. Beneficiaries must also meet the SSDI definition of disability in that they are unable to engage in any substantial gainful activity by reason of a medically determined physical or mental impairment that has lasted or is expected to last at least 12 months or to result in death. Substantial gainful activity is currently defined as being unable to earn more than \$500 per month.

Benefits are determined by a formula that relates benefit amounts to the worker's work history. The average monthly benefit for a disabled worker as of 1995 was \$682 per month. The replacement rate varies according to earnings levels. These range from a low of 29 per cent for a high wage worker (\$4,500 per month) to a high of 78 per cent for a low wage worker earning \$500 per month.

To qualify for benefits the worker must have worked in covered employment for about one-fourth of the time after age 21 and up to the year of disability and, in addition, must have recent covered work (equivalent to five of the preceding ten years, or alternatively if under age 31, half of the time since age 21).

After a period of two years on the benefit rolls, beneficiaries can receive medical benefits under the federal Medicare Program.

Annual Expenditure: \$40.9 billion.

Supplemental Security Income (SSI)

The Supplemental Security Income (SSI) program provides monthly cash assistance benefits to persons 65 and older and to blind and disabled persons of any age who have limited income and resources. Our concentration in this section will be on blind and disabled persons only. Forty-three States and the District of Columbia supplement the federal SSI benefits from state funds.

To receive benefits, the person must meet SSDI definitions of disability, and have need. The purpose of the program is provide a minimum level of income, below which no elderly or disabled person should have to live. To qualify, 'a person must have countable income of less than \$458 per month (1995) and countable

resources of less than \$2,000 (1995). In addition, SSI recipients are eligible for health insurance benefits under the federal/state Medicaid Program. The average monthly benefit amount is \$390. Total payments to SSI beneficiaries in 1995 were \$23 billion.

Private Sickness and Short-term Disability Benefit Program

There are no federally funded sickness or short-term disability programs, except those for federal employees. Short-term benefits are a combination of union negotiated and employer provided benefits.

Sick-leave is the most common type of disability protection. It is usually payable from the first day of sickness, and replaces 100 per cent of the worker's normal wage. Sick-leave typically lasts from five days to several weeks. For short-term disability (STD), employers may purchase from commercial insurers or they may self-insure benefits. A minimum period of employment is usually required before eligibility begins and pre-existing conditions are usually excluded from coverage. STD insurance often has a waiting period of five to 21 days before benefits are payable. Benefits typically last for up to 26 weeks. Short-term disability benefits may also be used for paid maternity leave. Short-term disability benefits typically replace about 50 per cent of the worker's prior earnings, though some plans may provide up to 70 per cent.

Eligibility requirements

Most firms require a minimum period of employment and a waiting period before employees become eligible for short-term disability benefits. Some employers may require medical evidence of inability to work. Employees generally retain any medical coverage they had prior to becoming disabled.

Typically benefits are received only if the employee is unable to work, but programs are increasingly providing for partial benefits if employees can return to work with a limited capacity.

The annual expenditure for private sickness and short-term disability benefits in 1993 was \$15,389 million. Seventy per cent of employees at private employers are covered by some sort of sickness/STD plan. About 26 per cent have sickness only, 20 per cent have STD only, and 24 per cent have both sick-leave and STD.

Temporary Disability Insurance

Temporary Disability Insurance (TDI) programs are mandatory in five states: California, Hawaii, New Jersey, New York, and Rhode Island. Employees receive benefits when they are disabled. Disability is defined as 'the inability to perform regular or customary work because of a physical or mental condition'.

There is generally a seven day waiting before the TDI benefits begin. Benefits are typically provided at 50 per cent of prior wages, and are subject to minimums and maximums. Maximum duration of benefits ranges from 26 weeks in Hawaii, New York and New Jersey, to 30 weeks in Rhode Island and 52 weeks in California. Employers are not required to provide medical benefits during the period of disability.

Programs are financed by employee contributions in all five states with employers required to contribute in New Jersey, New York and Hawaii.

The method of administering these programs varies. In California and New Jersey, most of the coverage is provided through a state operated fund, although employers are allowed to contract out by purchasing group insurance with commercial providers, by self-insuring or by negotiating an agreement with a union or employee association. The contracted plan must meet all of the requirements of the state plan. In Hawaii and New York, benefits are typically provided through private insurance plans. In Rhode Island, coverage is exclusively through a state operated fund. Spending for TDI was \$3,105 million in 1993.

Private Long-term Disability (LTD) Programs

There are no federally funded long-term disability programs, except those for federal employees. Long-term benefits, like sickness and STD, are a combination of union negotiated and employer provided benefits. Disability benefits are usually paid after a waiting period of three to six months after the onset of disability or after temporary (STD/TDI) benefits are exhausted. The most common replacement rate is 60 per cent although replacement rates of 50 to 66 per cent are also common. Almost all private LTD programs are co-ordinated with SSDI so that private benefits are offset dollar for dollar by social security benefits.

Again, a minimum period of employment is usually required before eligibility begins, during which pre-existing conditions are excluded from coverage. Employees must meet a definition of disability which is usually less strict than found in the Social Security Disability Insurance program. Many LTD programs use an "own occupation" definition of disability during the first two years of benefits. Under this definition, a person is disabled if they are unable to perform the material duties of their regular pre-disability occupation. After two years, many programs shift to a stricter any occupation definition under which disability is defined as being unable to perform the material duties of any gainful occupation for which the individual is reasonably suited by training, education or experience.

Many plans have partial disability benefit provision which allows a portion of benefits to continue during periods of employment at less than full capacity. Usually, partial disability benefits will continue to cover any shortfall in earnings due to partial disability at the disability replacement rate. This would imply that if disability earnings were one half of pre-disability earnings and the LTD replacement rate is 60 per cent, then benefits would continue to replace 60 per cent of the 50 per cent shortfall.

As an added incentive to return individuals to work during the critical initial periods of disability, newer more progressive plans may also provide a return-to-work benefit during the first year of disability. Under such programs, full disability benefits are provided regardless of partial disability earnings so long as earnings plus disability benefits do not exceed the pre-disability level of earnings. Under the previous scenario, then, this would imply that the disabled individual would receive 100 per cent of their pre-disability earnings for the period of work during the first year of disability. This is because the disability benefits plus earnings are 110 per cent of the pre-disability level of earnings, and so are capped at 100 per cent. Many programs may also provide for trial work periods. Generally such provisions provide that if a disability "ceases" for a period of less than some period (usually 30 days), and then relapses, the disability is considered a continuation of the previous condition and a new elimination period is not required.

About 25 per cent of private sector employees have some sort of long-term disability coverage financed at least in part by employer contributions. LTD protection is more common among upper status "white collar" workers (47 per cent), than among clerical and sales workers (28 per cent) or blue collar workers (13 per cent). LTD coverage is more common in medium and large establishments than in small establishments.

Expenditure for LTD benefits in 1993 was \$2.9 billion.

II.1.2 Features of the compensation process which affect job retention and return to work

Focusing on work-related injury or illness implies looking at workers' compensation programs. Enterprise management of work-related injuries is discussed in Part V, so we focus more on the system-wide procedural elements of the process here.

When a worker becomes ill or injured on the job, the first step in the workers' compensation process is the immediate and appropriate treatment of the injury or illness. There are a number of components in place that are intended to minimize the effects of injuries and illnesses when they occur, and thus reduce the chances that the incident will lead to a prolonged disability. First aid is generally administered at the worksite, after which the employee may be taken to an onsite health clinic or a hospital when necessary. In industrial settings Occupational Safety and Health Administration (OSHA) rules will require plans to handle such emergencies.

Many such firms will have trained emergency response teams from among the rank and file who provide first aid help and determine the need for, and facilitate, further treatment. Onsite health facilities are also common in such settings, though current trends are toward establishing arrangements with nearby clinics rather than providing such services in-house.

Once the emergency is past, OSHA incident and workers' compensation forms must be filed detailing the circumstances surrounding the claim. This is done to determine the need for new safety policies that may prevent similar incidents from occurring in the future, and to initiate the workers' compensation claim process. Although the system in all states is "no fault", so that the employer is responsible for providing benefits regardless of fault, the incident must arise out of and in the course of employment. This implies that documentation of the relationship between the incident and work is important, particularly for injuries that are not traumatic and so may have occurred as a result of non-occupational activities.

Employees whose disabilities are not serious may return to work, possibly with modification consistent with the ADA, and the incident is recorded without lost time. If there is a reduction in functional capacity, these employees are regarded as having a "temporary partial disability". For lost time injuries, employees enter a period of "temporary total disability" (TDD). After a waiting period of one to seven days, they become eligible for indemnity benefits which are generally provided at the rate of two-thirds of salary, and are non-taxable. If employees are covered under company sick-leave programs (usually 100 per cent of wages for up to five days per year), they usually can use those benefits that have not been previously utilized. In most cases, once the employee reaches the 'retro date', they may receive workers' compensation indemnity benefits retroactively to the first day of absence. If sick leave was previously used to cover these initial days of absence, most companies will require that the sickness benefits be repaid when retro workers' compensation benefits are provided, but this is not legally required.

The employee and physician update the company and the workers' compensation insurance provider, if different, regarding the employee's progress during the TDD period. If the disability improves sufficiently during this period, the employee may return to work, possibly after completing medical and/or vocational rehabilitation. Once maximum medical improvement (MMI) is reached, a determination is made as to whether the employee has a 'permanent total disability' (PTD) or a 'permanent partial disability' (PPD). A PPD determination will either be in terms of body parts or systems involved (see below), or as a percentage in relation to total disability. A monetary award will then be provided based on the PPD or PTD determination, and will either be paid in periodic (e.g. monthly) installments, or as a lump sum award. It is during the permanent disability determination process that disputes and litigation are most likely to arise, and this tends to draw the process out, sometimes for several years. Once settlement is reached, the terms of that settlement are unaffected by whether the employee eventually returns to work.

II.1.3 Influences of key actors involved in the process

All state workers' compensation programs operate under an insurance design. State workers' compensation laws differ in how they allow employers to insure their liability. In some states, employers may have the option of insuring through an exclusive state fund, or self-insuring their workers' compensation liability with a private stock or mutual insurance carrier, or through self-insurance if they qualify. In other states there are exclusive state funds to which all employers must contribute.

The administrative bodies that control workers' compensation in each state are known by a variety of names, such as 'industrial insurance boards or commissions', or 'accident commissions'. In addition to managing the system, these bodies also play a role in dispute resolution. These dispute resolution functions are also known by a variety of names, such as 'settlement conferences' or 'award hearings', and are staffed by various forms of administrative law judges, also known by a number of pseudonyms. Proceedings are usually decidedly informally and representation by attorneys is often discouraged, but allowed. The goal of these bodies is to attain a reasonable settlement without further litigation.

Since insurance is experience rated or self-insured for large employers, such employers play a central role in the workers' compensation process. Small employers generally do not play a significant role, but the insurance companies with whom they purchase protection clearly do.

Finally, lawyers and medical practitioners play key roles in the process of determining the final disability disposition and terms of the settlement.

II.1.4 The effects of compensation on job retention, return to work and exit from employment.

If the incident is not serious, the worker may stay at work or return immediately after receiving first aid. In such cases the employer is still responsible for all medical care costs arising out of the incident, but there is no lost time.

There may be functional limitations as a result of the incident and the employer must then act in accordance with the ADA. If the worker's functional illness or injury requires absence from work, the employee enters a period of 'temporary total disability'. As mentioned above, during this period the employee receives all necessary medical treatment at the employer's expense, and income replacement at the level prescribed by the state workers' compensation law (usually two-thirds the level of pre-disability earnings). In all states these indemnity benefits are paid after a waiting period ranging from one to seven days. If the disability continues beyond a retroactive date (often 14 days), benefits are then provided for the previously uncovered days. This is intended to reduce the incentive for employees to initiate a workers' compensation absence unnecessarily in the first place.

Once such an absence occurs, however, these requirements tend to provide an incentive for employees to increase the duration of the absence, first to the date at which benefits are available, and then to the date at which retro benefits are available. In addition, while most companies appear to have provisions for employees to repay sickness benefits if the retro date is reached, such requirements are often not enforced. This provides a further incentive for employees to make it to the retro date, since the workers' compensation benefits then become a cash award over and above earnings replacement for the days involved.

Indemnity benefits continue through a period of recovery until the employee reaches 'maximum medical improvement', at which point the employee is considered to be fully recovered, permanently partially disabled, or permanently totally disabled.

Although the system is one of 'no fault', significant disagreement occurs in two areas: whether the disability arose out of and in the course of the employee's job, and the extent to which the employee is permanently disabled. In an attempt to reduce litigation surrounding these two issues, states established industrial commissions or accident boards to settle such disagreements. Though these bodies were designed to provide an informal means to settle disputes, they have generally not succeeded in reducing litigation, and 'in most states, it remains advisable for those seeking workers' compensation to employ the services of a lawyer'. Some states, such as Minnesota, have succeeded in settling cases informally but, in the vast majority of states, lawyers play a key role even when settlements are reached before the stage of formal hearing.

In many cases the question of the employer's liability is a simple one. If the disability results from a traumatic industrial accident, there is usually no question that the employer is responsible under workers' compensation. For issues of cumulative trauma, illness or disease, however, employer liability is often less clear. Even if liability is clear, the degree of occupational impairment and the associated compensation necessary usually are not. Both of these issues complicate the workers' compensation system and make it more contentious. This also leads to a greater reliance on medical and legal professionals which tends to draw out the duration of claims and reduce the likelihood of return-to-work.

In the past, workers' compensation systems have attempted to estimate earnings losses due to the illness or

injury. This, however, made settlements even more complicated since not only the extent of injury must be determined, but the impact on earnings as well. In an attempt to simplify the process, most states have developed systems that provide cash damages for permanent occupational disabilities, rather than income replacement for lost earnings. There are two advantages to this type of system. First, it avoids the difficult task of estimating the effect of the impairment on labor market participation and wages. Second, because benefits are provided as damages, there is usually no disincentive effect on employment once a settlement is reached, since benefits are then paid irrespective of current work.

In other states, (e.g. California and Minnesota) a loss is related to total disability in percentage terms based on the determination of a physician.

Since disability rarely falls neatly into the schedule of injuries, there is often still a great deal of imprecision in determining compensation. Such determinations are even more complex for injuries to the spine or organs that affect larger areas of the body. Illnesses present similar difficulties. This has placed medical practitioners in a central role in compensation determination.

Generally this process estimates damages based on schedules of impairment according to the loss of function involved. In some states (e.g. Kansas and Hawaii), compensation values are set for specific injuries. In Kansas, for example, the following schedule of compensation holds:

<i>SCHEDULED INJURIES</i>	<i>Weeks*</i>
Shoulder	225
Arm	210
Forearm	200
Hand	150
Leg	200
Lower Leg	190
Foot	125
Eye	120
Hearing, both ears	110
Hearing, one ear	30
Thumb	60
1st (index) finger	37
2nd (middle) finger	30

3rd (ring) finger	20
4th (little) finger	15
Great toe	30
Great toe, end joint	15
Each other toe	10
Each other toe, end joint only	5

* Damages are paid in terms of equivalent weeks of earnings

Source: *Workers' Compensation Information*, #K-WC 127. Kansas Department of Human Resources, Division of Workers' Compensation. 1996.

Recognizing the potential incentive to overstate the seriousness of injuries or illnesses, some states have given the employer the right to choose the initial medical provider for the employee. This is not true in all states, and the employee is generally able to get a second opinion from an independent provider, even when the employer is able to choose the medical provider.

Medical providers that are affiliated with employers tend to be more aggressive in returning employees to work. This is primarily because they have more experience with occupational issues in general than will a general practitioner, and will have established lines of communication with the employer. As a result, such relationships lead to better understanding of the employment issues involved, and this tends to lead to earlier accommodation and return-to-work so long as the employee has confidence in the medical practitioner's judgment.

At the same time, employer-chosen medical practitioners also tend to be viewed by employees as owing allegiance to the employer rather than the employee, and this may lead to distrust by the employee. In such cases, the employee may become uncooperative if they feel that the medical provider is unduly pushing for return-to-work, and this may lead to longer periods of absence and a lack of success in returning employees to work.

As is discussed in Part III, workers who become seriously ill or injured are eligible for vocational rehabilitation services under all workers' compensation programs. In most jurisdictions, participation in vocational rehabilitation is voluntary, though in it is mandatory in 15 jurisdictions. State vocational rehabilitation services have been targeted to the severely disabled in the last decade so that less severely injured workers are often ineligible for services. In addition to state vocational rehabilitation services, however, many private insurance providers and employers have also begun to provide or purchase private medical and vocational services. This is being done to as part of private disability management programs (discussed in Part V) to lower costs and retain valuable employees. These programs usually target employees with less severe disabilities (who are often ineligible for state vocational rehabilitation services) who have greater return-to-work potential.

The key problem in this process is that resolution often ends up being drawn out and complicated. During the period before settlement is reached, employees have incentives to focus on the seriousness of their disability rather than on rehabilitating their residual capacity and returning to work. As a result, employees will often reject early intervention with vocational and medical rehabilitation when it is most effective, if the employee

believes that doing so will lead to a larger permanent partial disability award. Once a settlement is finally reached, however, the window of opportunity in which rehabilitation is most effective has passed, and likelihood of successful return-to-work becomes small.

II.1.5 Characteristics of disabled workers who do or do not retain their employment or return to work following successful or unsuccessful claims

No data is available on the characteristics of disabled workers who do, and who do not, retain their employment or return to work following successful or unsuccessful claims.

II.1.6 Effects on job retention and return to work resulting from the interaction between compensation programs and out-of-work benefit programs

We have already discussed the impact of sick-leave programs. Employees who are out of work under workers' compensation may also be eligible to receive other out-of-work benefits such as STD, LTD and SSDI. In all cases, however, benefits from these other sources are generally reduced by the workers' compensation benefits amount. This usually means that the total benefit is the higher of the workers' compensation or other out-of-work benefit amount.

Since workers' compensation is generally paid at the rate of two-thirds former salary and STD is usually paid at a 60-70 per cent rate, the effect of STD on incentives is marginal (except under the few unusually rich STD plans that pay in excess of 70 per cent). Since LTD generally pays at the 60 per cent rate, there is generally no impact of such plans on workers' compensation benefits prior to permanent settlement of a claim. Once permanent settlement is reached, LTD benefits may reduce incentives to return to work if the workers' compensation disability is less than total but still sufficient for the worker to qualify for LTD total disability benefits. If, for example, an individual received a 50 per cent disability rating, but was able to qualify as fully disabled under the terms of the LTD policy, it may be more advantageous for the worker to take the LTD benefit with the workers' compensation offset (netting a 60 per cent benefit) and not work, rather than supplementing the workers' compensation settlement with earnings from work. Data is not available indicating the extent to which individuals receive both workers' compensation and LTD benefits and the potential disincentive problem.

Social Security Disability Insurance (SSDI) is paid according to a more complicated formula than a simple percentage of previous wages (see above under SSDI). To the extent that there is overlap with workers' compensation, the state workers' compensation program is the primary insurer (since 1981), and the SSDI benefits may be reduced so that the total Social Security benefits plus the workers' compensation will be at most 80 per cent of average pre-disability earnings, but at least the family's total Social Security benefit before the reduction. Again, the ability to combine workers' compensation and SSDI benefits could raise the total benefits available for some individuals to as high as 80 per cent of pre-disability earnings, and this could lead to a disincentive to return to work similar to that discussed under LTD. Data indicating the extent of dual workers' compensation/SSDI benefit receipt is not available.

II.2 OPPORTUNITIES TO COMBINE WORK AND BENEFIT

II.2.1 Provision for combining income from work and from disability-related social security benefits

Work incentives

Social Security Disability Insurance Work Incentives

The various Social Security Disability Insurance (SSDI) work incentives are intended to provide support over a period of years to allow a disability beneficiary to test their ability to work and gradually become

self-supporting and independent. In general, a person has at least four years to test their ability to work, including full cash payments during the first 12 months and a period in which cash benefits can be started again without a new application. The person continues to have Medicare coverage during this time.

The SSDI work incentives are:

- Impairment-Related Work Expenses;
- Trial Work Period;
- Extended Period of Eligibility;
- Continuation of Medicare Coverage;
- Medicare for People With Disabilities Who Work; and
- Continued Payment Under a Vocational Rehabilitation Program.

Supplemental Security Income

Generally, Supplemental Security Income (SSI) work incentives offer individuals with disabilities and limited means ways to continue receiving their SSI checks and/or Medicaid coverage while they work. Some of the incentives can increase their net income to help cover special expenses they may have in order to work, to train for a job or to set up their own business.

Once a person begins to receive SSI, work activity will not cause SSI to stop as long as the person is still disabled. Even if the person cannot receive SSI checks because of the amount of earnings, eligibility for Medicaid may continue indefinitely. In many cases, if a person loses their job or is unable to continue working, they can begin receiving checks again without filing a new application. The SSI work incentives are:

- Impairment-Related Work Expenses;
- Earned Income Exclusion;
- Student Earned Income Exclusion;
- Blind Work Expenses;
- Plan for Achieving Self-Support (PASS);
- Property Essential to Self-Support;
- Section 1619 Work Incentives; and
- Continued Payment Under a Vocational Rehabilitation Program.

Each provision is discussed in detail below. These incentives offer persons who receive SSI because of disability an opportunity to overcome some of the barriers that may have kept them from working.

Work incentives that apply to both SSDI AND SSI

Impairment-related work expenses

The costs of impairment-related items and services that a person needs to work may be deducted from gross earnings in figuring substantial gainful activity, even if these items and services are also needed for non-work activities. The item or service must be paid by the person with the disability, and not subject to reimbursement. In such cases, the amount a person pays towards the cost of the items and services is deducted from gross earnings in determining substantial gainful activity, and if impairment-related work expenses reduce earnings below the substantial gainful activity level, benefits eligibility may be continued.

Impairment-related work expenses are also excluded from earned income in figuring an SSI beneficiary's monthly payment amount. For SSI recipients, these expenses are deducted from earnings before the exclusion for one half of earned income under the earned income exclusion (see below).

To qualify, the expense must enable the person to work. There has to be a need for the item as a result of the person's severe physical or mental impairment in order to work, and the expense must be 'reasonable'. Allowable items include:

- Attendant care services performed in the work setting, in the process of preparing for work, or in reaching or sustaining work.
- Transportation costs including necessary vehicle modifications that allow the person to reach work and any special transportation and assistance cost not generally required for persons without disabilities.
- The cost of medical devices that facilitate work, including prosthesis, wheelchairs, respirators, and braces.
- Work-related equipment, modifications, devices and assistance that facilitate work, such as page-turning devices, special hardware, special work tools, Braille devices, and readers and interpreters for speech and hearing impaired persons.
- Residential modifications that permit access to the street or transportation for individuals working outside of the home, and interior home modifications that create a work space for those who work at home.
- Routine drugs, supplies, medical services and diagnostic procedures necessary to treat, evaluate and control a disabling condition
- Non-medical appliances and devices necessary to treat, and control a disabling condition, either at home or in the work setting.

Work subsidy exemptions

Any subsidy received on the job which results in pay in excess of the actual value of the services the person performs is deducted when determining substantial gainful activity. Subsidies do not, however, reduce countable income for SSI. Thus, only earnings that represent the real value of the work performed are used to determine if work is at the substantial gainful activity level.

Continued payment under a vocational rehabilitation program

Persons receiving SSDI or SSI benefits who sufficiently improve medically and are no longer considered disabled by the Social Security, may continue SSDI and SSI benefits if they are in a qualified vocational rehabilitation program. To qualify, they must be actively participating in an approved state or non-state public or private vocational rehabilitation program at the time their disability ceases, and the completion or continuation of the program must be expected to enable the person to work permanently.

Cash payments and health insurance continue until the rehabilitation services are completed or until the person ceases to participate in the program.

Work incentives that apply only to SSDI

Trial Work Period

The trial work period allows disabled persons on SSDI to test their ability to work or run a business for nine months without affecting their disability benefits. Full benefits are continued during the trial work period regardless of the level of earnings. Beneficiaries are entitled to a trial work period beginning with the first month in which the worker becomes entitled to disability benefits, or the month in which the application is filed, whichever is later.

Each month in which earnings are more than \$200 is counted as a month of the trial work period. If the individual is self-employed, each month in which net earnings exceed \$200 or the hours of work exceed 40 is counted. When the beneficiary has accumulated nine such months within a 60-month rolling period, the trial work period is completed. Trial work months need not be consecutive. A new trial work period is available each time an individual becomes re-entitled to a new period of SSDI disability benefits based on a new application.

At the end of a completed trial work period, cash benefits continue for an additional three-month 'grace period' before they stop. The individual is still protected from relapse, however, under an 'extended period of eligibility'.

Extended period of eligibility

The extended period of eligibility begins the month following the end of the trial work period and continues for 36 consecutive months. During this period, cash benefits are reinstated for any month the person does not work at the substantial gainful activity level. Benefit checks can be started again without a new application, disability determination or waiting period. If the individual is at substantial gainful activity at the end of the 36 month period, eligibility for extended benefits stops. If the individual is not at substantial gainful activity, benefits continue until the first month in which the individual does engage in substantial gainful activity.

Continuation of Medicare coverage

SSDI beneficiaries are eligible to receive at least 39 months of hospital and medical insurance after the trial work period. This provision allows health insurance to continue when a person goes to work and is engaging in substantial gainful activity.

Waiting period waiver

Individuals who successfully return to work and leave SSDI, and then subsequently have their earnings fall below the substantial gainful activity level have a five year exemption from the standard waiting periods for SSDI and Medicare benefits. Such individuals are thus not subject to the normal 5-month waiting period for SSDI and 24-month waiting period for Medicare if their relapse occurs within five years of leaving SSDI.

Medicare for people with disabilities who work

At the end of the 39 month extension of health care coverage, those who return to work and remain medically disabled can elect to continue under Medicare by purchasing the benefit. They are able to purchase both Premium Hospital Insurance (HI Part A), and Premium Supplemental Medical Insurance (SMI Part B) at the same monthly rate that uninsured eligible retired beneficiaries pay. If they prefer, such individuals can purchase only Hospital Insurance without Supplemental Medical Insurance, but Supplemental Medical

Insurance can only be purchased if Hospital Insurance is also purchased.

Work incentives that apply only to SSI

Earned income exclusion

The first \$20 in income is not considered as countable income under the general income exclusion. The earned income exclusion then allows decreasing levels of partial benefits to be provided as earnings increase. Under this provision, most earned income, including pay received in a sheltered workshop or work activities center, is excluded when figuring the SSI payment amount. The Social Security Administration excludes the first \$65 of earnings in a month plus one-half of the earnings in excess of \$65 in calculating benefit payments. This means that less than one-half of a person's earnings are counted when figuring SSI payments.

Student earned income exclusion

All beneficiaries who are under age 22 and regularly attending school may exclude up to \$400 of earned income per month, with a maximum annual exclusion of \$1,620. Any part of income from grants, scholarships or fellowships that is used to pay educational tuition is also excluded as countable income.

If schooling is in college or university classes, students must attend at least 8 hours a week to be eligible for the exclusion. For regular classes in grades 7 through 12 or training courses that prepare for employment, at least 12 hours per week is required. If the training course involves 'shop practice', school attendance must be at least 15 hours per week.

Blind work expenses

In addition to the general disability impairment-related work expenses, SSI beneficiaries who are blind may deduct any expense attributed to working from earnings under the countable income. Unlike the general exclusion, however, these expenses need not be impairment related. As such, they may include general expenses such as union dues, payroll and income taxes, and transportation costs. In addition, unlike the general impairment-related work expenses, blind work expenses are deducted after the earned income exclusion has been applied.

Plan for achieving self-support

A plan for achieving self-support (PASS) allows a person with a disability to set aside earned or unearned income and/or resources for a specified period in pursuit of a work goal. PASS funds that are set aside are excluded under the SSI income and resources tests. Such money could be set aside for education, vocational training, purchasing work-related tools or equipment, or starting a business.

Such goals must be specifically designed for the person involved, they must be in writing and must set out a specific work goal which the person is capable of performing, the resources that will be used, and a time frame for reaching the goal. Individuals such as vocational counsellors, social workers or employers may help the person with the plan, but all PASS plans must be approved by the Social Security Administration, and reviewed periodically to assure compliance. A PASS does not affect the substantial gainful activity determination for initial eligibility decisions.

Property essential to self-support

The value of tools, equipment or other property which is used in a trade or business, or used by a person for work as an employee, is excluded under the SSI income and resources tests. In addition, up to \$6,000 of equity value of non-business property which is used to produce goods or services essential to daily activities is also excluded. Also, up to \$6,000 of equity value of non-business income-producing property is excluded

provided that the property yields an annual rate of return of at least six per cent. This \$6,000/6 per cent rule also applies to property used in a trade or business for periods prior to 1 May 1990.

Section 1619 work incentives

Special SSI payments for people who work are available under Section 1619(a) of the Social Security Act. These payments allow SSI beneficiaries to receive SSI cash payments even when their earned income from wages or net self-employment earnings exceeds the substantial gainful activity. They can continue to receive such payments as long as they are still disabled and meet all other eligibility requirements. To qualify, the person must be eligible for an SSI payment for at least one month before work begins at the substantial gainful activity level. The person's payment amount is calculated in the same way as for someone who is not working at the substantial gainful activity level. In addition, individuals remain eligible for Medicaid. Together with the general and earned income exclusions, this program allows individuals to gradually reduce dependence on SSI benefits. For persons eligible to receive the 1996 benefit of \$470, cash benefits would be reduced to zero when earnings reach \$1,025.

Continued Medicaid eligibility (Section 1619(b))

Under Section 1619(b) of the Social Security Act, as individuals' earnings rise and they phase out of cash benefits, they are able to retain Medicaid coverage until their earnings are sufficient to compensate for the value of SSI, any state supplements, Medicaid, and any public-financed personal assistance services. Since this level of income depends on the value of various state services provided, the threshold value for losing Medicaid coverage under section 1619(b) varies significantly by state. For 1995, the minimum threshold was \$12,000 for Arizona, and the maximum was just under \$33,000 for Alaska. The average value across the 50 states was just under \$20,000.

II.2.2 Effects on numbers retaining and on numbers returning to work

There is no data on the number of individuals retaining their jobs as compared to those who return to work at new jobs.

II.2.3 Impact of definitions of disability or capacity for work on access to and coverage of benefit programs

The key distinction is whether disability is defined as arising out of and in the course of employment and so is covered under workers' compensation. As discussed in Part V, employers tend to have more comprehensive return-to-work policies and programs for workers' compensation than for non-occupational disabilities. Although employers are beginning to extend workers' compensation type return-to-work policies to other types of disability, this is not now the standard.

II.2.4 Effects of claiming and assessment procedures on take-up of in-work benefits

The key distinction is again between workers' compensation disability, and disability that is non-occupational in nature. Most workers' compensation programs (about 80 per cent) provide partial disability benefits for individuals who return to work at a reduced capacity. So long as the workers' compensation claim is not in dispute, the utilization of partial disability programs for occupational disabilities appears to be good. Workers' compensation claims that are disputed are not likely to utilize such programs since the employee has an incentive to emphasize their disability rather than their residual capacity.

In recent years, non-occupational disability that is covered by STD or LTD is also likely to provide for partial disability benefits. Unfortunately, employers have only recently been utilizing these programs. This is largely associated with the trend toward integration of disability management practices regardless of disability cause. As discussed in Part V, larger employers with more sophisticated human resource departments tend to be

leading the way in this trend.

Take-up of federal in-work benefit policies continues to be fairly poor. The Targeted Jobs Tax Credit program, which was enacted in 1978, was discontinued at the end of 1994 due largely to the lack of participation by employers. Generally, the lack of support for the program by employers is thought to have resulted from a low level of awareness, and a perception by those employers who knew about the program, that the criteria for participation were overly cumbersome. The Work Opportunity Tax Credit (WOTC), replaced the Targeted Jobs Tax Credit (TJTC) program as of 1 October 1996. Whether it will gain better acceptance than its predecessor is still unknown.

II.2.5 Interactions between in-work benefits and other in-work income support programs

Virtually all income benefits programs in the US have provisions that reduce benefits to the extent that other benefits or income are received. What this means is that receipt of benefits under multiple programs is unlikely to have any effect on job retention.

II.2.6 Disabled workers who benefit and those who miss out

Workers with occupational claims under the workers' compensation program are most likely to receive access to return-to-work and retention programs, particularly if they work in a medium to large size company. Workers most likely to miss out on such services are those in small firms, particularly those not covered by workers' compensation. This results for two reasons. First the employer's insurance costs are not likely to be affected by a claim and so the employer has a reduced incentive to develop management programs to assist in return-to-work. Secondly, small employers are also less likely to have the job flexibility necessary to provide employee accommodations that will allow for effective return-to-work.

II.2.7 Other significant factors which influence the success of in-work benefits to support job retention

Probably the most significant factor affecting the success of in-work benefits to support job retention is whether there is competent disability management early on and throughout the process. This means management by someone who understands the disability and the relevant employment circumstances. Attempts to focus on the employee's residual ability must therefore begin early on so as to maintain the 'habit of work' for the employee. In-work benefits are meant to provide a period of transition. It is therefore important that the employee knows that return to a job that is as close as possible to their former responsibilities is the goal of the transitional period. To reinforce this, it appears to help if limits are placed on the transitional period from the outset so that both employee and disability manager are working to meet rehabilitation objectives within set parameters. Once in-work benefits begin, it is important that progress be monitored and that responsibilities increase as limitations recede. This 'work hardening' may be in the form of increasing the amount of work, or it may be in adding duties that had not previously been possible. It is also important that these work hardening efforts be monitored so as not to cause a relapse in the employee's condition. Finally, to support the return-to-work effort, there must be an efficient flow of information between the parties concerned (employee, disability managers, supervisor, and medical professionals).

II.3 TRANSITION BETWEEN BENEFITS AND WORK

II.3.1 The effects of the disability benefit system on return to work

In general, the disability benefits system in the US is structured to provide incentives to workers to return to work rather than to remain on benefits. This is because all programs generally:

- have cost structures that are sensitive to employer experience with claims;
- provide moderate compensation benefits that generally make work a preferable option if

possible;

- adjust to multiple benefit payments so that the maximum benefit received is the maximum of any one of the benefit plans;
- allow for partial in-work benefits; and
- allow for trial work periods without having to re-qualify for benefits.

This is not to say that all programs have these characteristics. Private programs differ from one company to the next, and workers' compensation programs differ between states. Overall, however, programs with these characteristics appear to be the most common.

Workers' compensation is the one program that does appear to have incentive problems with respect to return-to-work. This is because of its tendency to lead to litigation, which causes the worker to emphasize the disability rather than residual capacity, and draws out the process before settlement, making early intervention unlikely.

II.3.2 Provisions for financial support to disabled workers for transition between benefits and work

Again, although there is no standardization among private or state workers' compensation disability benefits programs, policies that allow for trial work periods without jeopardizing benefits eligibility appear to be fairly common, and seem to be gaining in popularity. Typically, this means that if an individual has qualified for benefits and returns to work, and then has their disability recur within a specified period of time,^e they are able to immediately return to the benefits status they held just prior to returning to work.

II.3.3 Effect of entitlement to benefits in kind on return to work

Access to health care benefits has long been thought to present a work disincentive for persons with disabilities. The topic has been debated, but the extent of the disincentive effect remains unclear. The contention that the disincentive effects are significant is based on anecdotal evidence, but there has been no formal research to address the question.

Access to health care benefits would appear to be much less of a factor for workers who become disabled than for persons with disabilities in general. This is because those who become disabled while working are likely to retain their health care benefits. All workers' compensation programs provide for all necessary medical care related to the workers' compensation disability. In addition, according to a recent Department of Labor study, 82 per cent of all employers also provide continuation of regular health care benefits during medical leaves lasting up to 12 weeks.

Even if health care benefits are not provided to employees after the onset of disability, they are able to continue health care benefits at their own expense for up to 29 months.^f It should be noted that under normal circumstances, the cost of health care benefits is generally divided between the employer and employee. Some portion of the benefit (usually at least 50 per cent) is usually paid by the employer as part of the general benefits package, and the remainder is paid by the employee, usually through a payroll deduction. Under the Consolidated Omnibus Reconciliation Act of 1985 (COBRA), the employee will usually be required to pay the entire cost of the benefit. As a result, continuation of health care benefits, even at group rates, tends to be expensive. Given that income benefits generally provide only about a two-thirds rate of wage replacement, it is not unreasonable to surmise that health care benefits may be prohibitively expensive for many disabled workers. As a result, coverage lapses for disabled workers appear to be a serious problem despite the continuation option.

New legislation passed in 1996, and effective from July of 1997, provides some relief in that it improves access to health care for those changing jobs. It does so by limiting the exclusion period for new workers with pre-existing conditions.^g What this means is that disabled workers who change jobs can be denied access to their new employer's health insurance coverage due to the existence of their pre-existing condition (disability), but for no more than one year.

But since most employers do provide continuation of health care, at least during the short term, it does not appear that access to health care benefits presents a significant return-to-work disincentive.

II.3.4 Describe the co-ordination between agencies in the assessment and classification of the disabled worker for benefits eligibility.

There appears to be little in the way of coordination between agencies in the assessment and classification of disabled workers for benefits eligibility.

III. EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

This Part examines the integration of personal support and rehabilitation services within the workplace. It deals with the external support services available to individual workers and their employers where continued employment is at risk because of disability. (Internal services, initiated and managed by enterprises, will be covered in Part V.) The discussion also includes services for early return to work once employment has been lost.

The main focus is on service interventions which support job retention by employees who become injured, ill or disabled and also their return to employment during the process of recovery. It concerns active rehabilitation services that help disabled people to recover capacities and skills, as well as services that support their re-adjustment to work. (Services involving adaptations to the work environment and to working arrangements will be discussed in Part IV.)

More specifically, sections III.1 to III.5 will cover policy about employment-related personal support and rehabilitation services, provide details of services and their providers, and describe the service beneficiaries. The remaining sections will examine the factors influencing the effectiveness of support services for job retention and early return to work. They include a discussion of relationships between the various employment support and rehabilitation services, their relationship to the employment sector, and their interaction with employment policies and compensation and benefit programs.

III.1 POLICY AND RESPONSIBILITY FOR POLICY AND PROVISION

III.1.1 The main bodies responsible for employment support and rehabilitation policy, and links to other agencies with employment or benefits/compensation responsibilities

In the United States oversight of national employment support and rehabilitation policy is distributed across several federal agencies. The primary agency responsible for vocational rehabilitation is the Rehabilitation Services Administration (RSA). This agency is housed in the Office of Special Education and Rehabilitation Services (OSERS) within the cabinet-level Department of Education. The RSA is responsible for administering the federal-state vocational rehabilitation (VR) system and monitoring ongoing and discretionary grant programs funded under the Rehabilitation Act of 1973. This Act gave priority to serving persons with severe disabilities, many of whom have little or no work experience. Eligibility for services is 'means-tested', i.e. the person cannot be eligible for free service provision if their income exceeds a certain threshold. VR is seen as the provider 'of last resort' in that most service recipients are not sponsored by some

third party payer. The VR agencies provide in-house counselling, guidance and job placement while purchasing remedial services from private sector vendors.

Funding for the basic federal-state VR program is financed via a roughly 80 per cent federal and 20 per cent state contribution. The federal share of expenditure totalled some \$2 billion for FY 1994. The VR program provided services to some 1.3 million persons in 1995, with roughly 200,000 being considered successfully rehabilitated in that they held employment for at least 60 days.

The second largest federal agency which oversees a VR program is the Department of Veterans' Affairs. This cabinet-level agency has a Veterans Benefits Administration which oversees a VR program for eligible veterans having a compensatable disability rating of at least 20 per cent. This program provided VR services and financial assistance to some 50,000 veterans in 1995, at a cost of some \$300 million. The emphasis has been on re-training rather than job placement, with roughly 90 per cent of participating veterans receiving tuition assistance for college or graduate school. Some 6,200 veterans were classified as rehabilitated in this period.

A third cabinet-level federal agency with responsibility for rehabilitation policy is the Social Security Administration (SSA). More than three million persons with the requisite period of work history, with a medically-diagnosed impairment lasting at least five months, and who are out of the labor market are currently receiving federal disability pensions. Some of these Disability Insurance (DI) beneficiaries are candidates for VR. The SSA reimburses providers, who used to be exclusively state VR agencies, for any VR service provision for a DI beneficiary who subsequently has monthly earnings exceeding substantial gainful activity (SGA), or \$550 a month, for nine of 12 months. Only about 3,000 persons annually are removed from the rolls because of this VR intervention. Reimbursements of state agencies by SSA totalled some \$65 million in 1993.

The Department of Labor oversees several employment and training programs for persons with employment needs. The largest programs are those authorized by the 1983 Job Training Partnership Act (JTPA) which provides training and other work-related assistance to individuals who are economically disadvantaged. Persons with disabilities are one such targeted group needing these training services. Roughly one in ten adults and one in five youths terminated from JTPA Title II in 1993 had disabilities. JTPA reported terminating some 80,000 persons with disabilities in 1989, and almost 70,000 in 1991. Unfortunately, with the advent of the ADA the definition of disability used by JTPA changed in 1992 (from 'substantial handicap to employment' to 'limits one of more of such person's life activities') and any inter-year comparisons are rendered problematic.

The JTPA Title II program provides services under the auspices of a Private Industry Council, which is an affiliation of various federal, state, and local agencies and private sector organizations. Specific service provision includes remedial classroom education, on-the-job training (OJT), work experience, and job search assistance. The proportion of persons with disabilities receiving classroom training was less than the non-disabled. Conversely, persons with disabilities were more likely to receive 'other' services. Barnow has suggested that it is possible that persons with severe disabilities are screened out by program administrators and that 'creaming' of persons with mild disabilities has taken place.

The vocational education program provides specific post-secondary schooling similar to the JTPA, making it a form of a training program. These are educational programs which provide the student with specific preparation for paid employment in fields requiring certification other than that provided by a purely academic degree. Barnow notes that roughly one in eight of the six million enrollees in 1992 had a physical or learning disability.

Finally, the U.S. Employment Service, which is designed to serve all persons in need of vocational assistance, has special provisions for persons with disabilities. The Employment Service is structured as a joint

federal-state initiative, similar to the VR program. There is federal oversight, with funding through an unemployment insurance tax levied on employers, with the states actually running the employment service branches at various localities within a given state. Each field office is required to designate at least one person with oversight of service provision to persons with disabilities. These services include vocational assessment and testing, job counselling and development, employment referral and job placement. As Barnow reports, there were more than half a million persons with disabilities who applied for services in the financial year 1993. However, the disabled represent only about one in 40 of all applicants during this period.

There is no federal-level agency with oversight for rehabilitation of workers injured or made ill on the job. Rather, such responsibility is ceded to the individual state. As such, there is little information on the scope and magnitude of VR for work-related injuries or illnesses. Indeed, in seven states there is no mention of VR in the workers' compensation (WC) statutes. Further, in half of the states VR return-to-work services for injured workers are financed by private sector insurance carriers or self-insured employers; there is no state-level involvement. There are 18 states with some form of VR program administered by a state workers' compensation or public VR agency. Unfortunately, there is virtually no uniformly-reported data on the costs and number of persons served and rehabilitated across these state agencies or private-sector providers.

It must also be noted that there is no federal program overseeing the rehabilitation of persons who become disabled through a non-work related illness or injury. Such people will typically receive a private disability pension or long-term disability (LTD) payment. The rehabilitation of these persons with disabilities is financed and provided through the private sector.

III.1.2 The relative priority accorded to support for retention, return to work, and first time entry to employment

The relative priority given to support for job retention, return-to-work, and first time entry to employment (i.e. habilitative services) differs across these disparate agencies. Moreover, the missions of several of these agencies have been altered dramatically in the recent past. First, the federal-state VR program changed its emphasis in 1974 from serving those persons most likely to benefit from services to those persons with severe disabilities. As a result, states with limited funding are often forced to invoke an 'order of selection' which stipulates that persons with less severe disabling conditions be put onto a waiting list. For instance, the state of Virginia stopped serving a cohort referred as the 'Three H's' (hernias, hysterectomies, and haemorrhoids) requiring 'medical services only'. These mildly impaired individuals typically have an employment history and only need job placement or services for retention of an existing job. Clearly, there is almost no emphasis on job retention in the public sector VR program of the 1990s.

In the past two decades there has been a dramatic re-orientation to providing services to those with little or no work experience. By 1993, almost three-fourths of state VR programs' clientele were classified as having a severe disability. While pre-program work experience is not a variable collected by the VR agencies, there can be little doubt from the scope of service provision that the agency is providing much more of a 'habilitation' rather than 'rehabilitation' function. Consequently, the orientation is to first time entry to employment.

The Veterans' Affairs VR program also has had a relatively recent change in its orientation. From its onset after World War II, this program has provided training to veterans with service-connected disabilities. This orientation led to a relatively low share of veterans (less than ten per cent) being placed in jobs. In 1980 the mission of the program was changed from just providing training to helping them 'find and maintain suitable employment' (GAO, 1996, page 3). However, despite this legislation, studies by the General Accounting Office of the program (GAO, 1984, 1992) found that its emphasis remained on training rather than finding suitable employment. The GAO found that more than 90 per cent of veterans in training received some form of university schooling. Moreover, the job development phase of the VA's VR program is virtually independent of the training aspect and is not taken up until training is nearly completed. While the mandate

has officially changed to job development and support, it is clear that the VA's VR program is viewed as training to obtain first time employment (beyond military experience).

A more recent development in the VA's VR program has been the decline in the share of veterans with serious disability-related impediments to employment. The GAO (1996) study found that in the first half of the 1990s the share of veterans with disabilities rated at 50 per cent or higher declined from one in four to one in six. Concomitantly, the share of program participants with disability ratings of only ten or 20 per cent increased from one in three to three in seven. It is not clear how or whether this change has impacted on the VA's objective of finding and maintaining suitable employment.

The state workers' compensation vocational rehabilitation initiatives are at the other end of the spectrum from the VA's VR program, at least in terms of the priority accorded support for retention versus first time employment. In most states there is a specific statutory goal for VR that usually includes 'return to suitable, gainful employment' customarily with the pre-injury (or illness) employer. There is also a prescribed hierarchy for return-to-work objectives: same job, modified as necessarily, with the same employer, different job with the same employer, same job different employer, and, finally, different job different employer. Thus, formal training (or re-training) is the **last** alternative.

III.1.3 The weight given to employment support and rehabilitation policies for disabled people in the national system

The level of expenditure on persons with disabilities for the half-dozen federal rehabilitation and training initiatives described above totalled some \$3 billion in 1995.^h This figure does not include the unknown expenditure by state workers' compensation agencies or private sector VR return-to-work service provision for work-injured and otherwise-disabled persons.

In contrast, there was almost \$80 billion expended on the cash benefit transfer payments to DI beneficiaries, Supplemental Security Income (SSI) recipients who were blind or permanently or totally disabled, and veterans with disabilities. To maintain consistency the cash indemnity payments for work injuries through workers' compensation along with the LTD and disability cash payments are not included in this figure.ⁱ

The expenditure on 'active' VR Return-to-work thus comprises less than four per cent of the amount spent on 'passive' cash benefit payments made to people, who, for the most part, are not working. In other words, for every \$1 of federal-level expenditure annually on rehabilitation measures another \$25 is spent on cash payments to persons with disabilities who are not working.

III.2 SUPPORT SERVICES FOR JOB RETENTION

III.2.1 The main funders and providers of services to support job retention

In the United States the responsibility for funding and providing job retention services falls almost entirely on the private sector. The principal funding agent would be a property and casualty insurance carrier purchasing job retention services for work-injured employees of companies for whom it is providing mandatory workers' compensation coverage. Alternatively, life insurance carriers would purchase or provide these services to eligible employees of companies that have purchased a group short-term disability (STD) or long-term disability (LTD) policy. Finally, larger companies that self-insure against such occurrences for its employees would either purchase such job retention services or provide them in-house.

There are five states (New York, New Jersey, California, Hawaii and Massachusetts) which provide short-term or temporary disability insurance (TDI) to covered workers. Such plans kick in when a worker's employer-provided sick pay runs out. These state agencies will also purchase requisite job retention services on an as-needed basis.

The providers of job retention services can be provided by either the private or public sector. In the private 'for-profit' arena, providers can be affiliates or a separate unit of the insurance carrier, or a free-standing private sector 'rehab' provider. For the large self-insuring corporations an in-house unit might exist to provide the necessary job retention services. In the public sector state worker compensation agencies or VR agencies may have their own rehabilitation units that provide job retention services.

There is a National Association of Rehabilitation Providers in the Private Sector (NARRPS) which is the major trade association for service providers.

III.2.2 Relationships between the providers of services and bodies with policy responsibilities

As noted above, the various VR and workers' compensation agencies may provide their own job retention services. More often, they contract these services out to a private sector provider. In such instances the agency may serve as an accrediting body which authorizes which private sector vendors are certified for service provision. In more 'activist' states the agency may set a fee schedule putting a capitation level on the various services being purchased. In other states the workings of the competitive market determine prices and serve to regulate the quality of the service provision.

III.2.3 The range and types of services provided

These services would tend to run the gamut depending on the needs of the individual. However, the cost of these job retention/return-to-work services is much lower than for retraining or formal education. The insurance carriers and private employers are searching for the least cost option which is invariably to maintain the employee at the existing job. A study by Gardner of the scope of services in the Florida worker compensation system showed that rehabilitation assessment, physical rehabilitation coordination, counselling, and placement are each provided to more than half of all persons rehabilitated. Physical evaluation, job analysis, vocational evaluation, labor market surveys, and coordinating with federal, state, and local agencies were provided to between 20 and 40 per cent of all rehabilitants. Job modification, on-job-training, and vocational schooling were less prevalent, being provided to between seven and 14 per cent of all rehabilitants.

Other job retention services in addition to those mentioned above serve to adapt the work to the abilities of the injured or ill worker. These might include modifying the work site through ergonomic redesign or job site accommodation as well as arranging light or modified work duty.

III.2.4 Characteristics of enterprises using external support services for job retention

The salient characteristics would depend on the size of the company. Small companies would tend not to provide the comprehensive fringe benefits that would cover such job retention services. The largest firms with high utilization patterns may have found it cost-effective to have their own in-house staff and disability management practices. The mid-size and larger companies with little utilization would sub-contract for the necessary physical and occupational therapists, industrial nurses, vocational rehabilitation case managers, etc. to provide the necessary services.

III.2.5 The prevalence of externally provided support services

In the early 1980s there was tremendous growth in the private sector rehabilitation industry concomitant with legislation in the US mandating vocational rehabilitation for workers' compensation claimants. Roughly one-third of the states have such mandates. Mandatory rehabilitation policies in states follow no geographic pattern; they are dispersed around the country. However, after costs of workers' compensation claims skyrocketed with the ensuing VR costs added in to settlements, several states (e.g. California, Florida) re-instated voluntary VR. The drop in demand caused a shake-out in the private sector rehabilitation industry, with consolidation occurring in many states.

III.2.6 The extent to which services support job retention

There is anecdotal evidence and little else in the way of replicable and/or scientific evidence of the efficacy of such job retention services. Availability of data is hindered by the proprietary nature of the for-profit service-delivery vendors.

III.3 USERS OF SUPPORT SERVICES FOR JOB RETENTION

III.3.1 Eligibility criteria for identifying users (disabled workers and their employers)

Eligibility criteria vary from employer to employer and across insurance carriers. A typical insurance carrier will employ the services of a physical therapist or work hardening center to undertake a functional capacity evaluation or transferable skills analysis for the worker with a disabling condition. The case manager for the insurance carrier will also try to assess the motivation of the worker who has been off the job for what could be an extended period of time. The case manager will then typically use a set of screening criteria that will dictate whether a service intervention will be forthcoming. These criteria vary, but will almost always place significant weight on the person's age, education and work history.

Carriers recognize the importance of early intervention in these claims. They are also extremely conscious of the 'bottom-line' - the implications of service provision relative to their 'exposure' on the claim. If an insurance carrier determines that a case has little prospect for a successful outcome and the cost savings (the amount reserved for the claim that the carrier is responsible to pay out under the terms of the policy) are not significant, then services will not be provided.

The eligibility criteria will differ depending on whether the case is an STD/LTD or workers' compensation claim. In the latter case the disabling condition must arise in the course of employment. Thus, psychiatric conditions (referred to as mental/nervous claims in the life insurance realm) are eligible for STD/LTD payments and therefore are candidates for job retention services. In contrast, such cases are not, except in rare circumstances, work-related and therefore the worker compensation carrier will not fund any such vocationally-related service provision.

III.3.2 Disabled workers who benefit and those who miss out

The work-injured person is more likely to receive support services than those injured away from work or who become ill from a non-work related disease. There is little coordination between the STD/LTD claims and the workers' compensation claim within the same company. Thus, it is entirely conceivable that two workers with the exact same impairment, but with a differing cause, will get vastly different job retention services.

As noted above, persons with psychiatric impairments are less likely to receive services, since such illnesses are usually not work-related (except in the case of the difficult-to-prove area of 'work-related stress'). Similarly, persons with repetitive stress injuries (carpal tunnel syndrome), which are difficult to tie to a particular employer, are less likely to receive services.

There is little doubt that companies assess the worker's attitude and productivity in determining eligibility for job retention services. Workers who are judged to have positive attitudes, who are seen as 'workers' and not 'persons with disabilities', are more likely to be determined to be feasible candidates for job retention services. Conversely, an unproductive worker is more likely to be 'let go' by the firm and subsequently ends up drawing disability benefits and draining the reserves of the STD/LTD or workers' compensation carrier.

Generally such factors as minority status, gender, and job tenure cannot be used in determining who gets job retention services, due to anti-discrimination laws. However, age is used as a screening device in determining eligibility for job retention services. Once again, the insurance carrier makes a calculation that younger

workers have a longer time frame to receive disability benefits. It follows that job retention services have a greater payback.

III.4 SUPPORT SERVICES FOR RETURN TO WORK

III.4.1 The main services for return to work

The primary return-to-work services provided in the public sector federal-state VR program commence with a diagnosis, followed by counselling and vocational guidance which results in the development of an Individualized Written Rehabilitation Program (IWRP). The IWRP then will call for either physical or mental restoration (if necessary), followed by training and/or education, and then job placement. The training could consist of work adjustment training, business or vocational training, or on-the-job training. According to a recent GAO report, these services were received by 19 per cent, 12 per cent and eight per cent respectively of cases terminated in 1988. College education and business education were each provided to one in eight VR clients terminated in the same year. Finally, job training was received by slightly more than one in five closures.

The work-adjustment training is intended to provide new entrants to the labor force with instructions about how to participate in the world of work. Such aspects as punching a time clock and taking instruction from supervisors are emphasized. These services are in keeping with the mission of public VR which is to provide services to the most severely disabled. There is little in the way of job retention provided by this program.

The public sector VR program also provides supported employment to persons with severe physical as well as mental impairments, particularly persons with developmental disabilities. These services, that usually include job coaching and work crew supervision, are provided to maintain employment for new entrants to the labor force.

The Department of Labor's programs, primarily JTPA Title II, provide different aspects of job training. As Barnow reports (from a 1993 US Department of Labor report), JTPA provided classroom training to 39 per cent of persons with disabilities, job search assistance to 15 per cent, on-the-job training to nine per cent, and work experience to seven per cent. Clearly, the orientation of these services is geared to new entrants to the labor force. There is little emphasis on job retention.

III.4.2 Integrating return to work services into work environments

Most of the public sector programs involving return-to-work do not report on-site work introduction or re-training. If this is being undertaken in the proprietary private sector, it would not be reported. Moreover, given the nature of the private sector initiatives, the disabled person would already be employed and would be receiving job retention and not return-to-work services.

III.5 USERS OF SUPPORT SERVICES FOR RETURN TO WORK

III.5.1 Mechanisms for identifying and accepting users who have left their employment

The only Federal program which might be capable of identifying candidates who have left their employment is the Disabled Veteran's Outreach Program. This program, which funds some 2,000 specialists in local employment service offices, provides outreach, job development and placement services to eligible veterans with disabilities.

The public sector VR and JTPA operate on a referral basis. Neither program reports mechanisms for identifying either newly unemployed or out-of-work (i.e. not looking for work) persons with disabilities. There are numerous referral sources to either program, with self-referral being the most prevalent in public sector VR, at about one in every four cases. Other important referral sources are through educational

institutions (15 per cent), physicians (nine per cent), community mental health centres (five per cent) and general hospitals (four per cent).

The acceptance process for public sector VR return-to-work services requires that: 1) an individual has a medically certified physical, mental, or emotional impairment; 2) the impairment leads to a vocational impairment; that 3) can be remediated through the provision of VR services. After reviewing the report from a medical evaluation, a VR counsellor determines whether the impairment is serious enough to present a vocational handicap and yet not serious enough to preclude the individual from benefiting from the VR service provision. Typically, this process has been extremely time-consuming and has resulted in a large proportion (roughly 50 per cent) of applicants being declared ineligible. The average interval from application to acceptance for service provision takes several months. It is well recognized that this delay has limited the efficacy of the VR program in facilitating early return-to-work.

Recent legislation (the 1992 Amendments to the Rehabilitation Act) placed the burden of proof on the VR counsellor to determine that the person with a disability cannot, in fact, benefit from a VR service regimen. It is expected this change will result in an increase in the acceptance rate.

III.5.2 Arrangements for user choice and user control of service packages

The 1992 Amendments to the Rehabilitation Act also stipulated a greater degree of control for the *consumer* over the service package being offered to the individual. Indeed, there is a change in emphasis from a passive client of a VR agency receiving services to that of an activist consumer much more involved in the service selection process. The IWRP must be signed by the consumer. Moreover, there is a formal procedure which provides a grievance procedure for persons dissatisfied with the IWRP being offered.

The Social Security Administration is currently in the process of implementing a voucher-like program for its DI beneficiaries attempting to return to the labor market. Under the current system the state VR agency is the sole service provider for a DI beneficiary. (Note: although the private sector providers have been authorized as providers, the enabling regulations have not been implemented.) The state VR agency is reimbursed retrospectively, after the person has earned more than substantial gainful activity (SGA, see III.1.1) (\$500 per month) in nine of 12 months designated as a trial work period. The number of people rehabilitated through this program is extremely low. Although published figures are unavailable, only some 3,000 people were removed from the DI rolls in 1993. This amounts to only about 0.5 per cent of newly awarded DI beneficiaries (roughly 600,000) during the same period.

The general idea of the reform is that a DI beneficiary deemed to have some potential for returning to the labor force is issued a 'ticket'. This ticket is given by the DI beneficiary to the provider that the beneficiary feels will offer the best return-to-work package (including vocational rehabilitation, employment and other support services). Two payment options will be available: in the first, the Social Security Administration will pay up to 40 per cent of the average disability benefit each month that the recipient does not receive a benefit payment due to work activity, up to 60 months. Under the second option, payment is a combination of fees for the recipient reaching one or more milestones directed toward achieving permanent employment, and outcome payments for each month that the recipient does not receive a benefit payment due to work activity, up to 60 months. The combined benefit under option two must be less than that provided under option one. The current status of this reform awaits Congressional approval of either a full-scale implementation on a nationwide basis or on a more limited 'demonstration' basis.

III.5.3 Disabled workers who benefit and those who miss out

The JTPA Title IIA program serves persons with relatively mild impairments. They are predominantly white (70 per cent), male (58 per cent) and young (42 per cent under age 19) when compared to non-disabled economically disadvantaged JTPA participants.

In contrast, the public sector VR program serves a much more severely disabled clientele. Almost 70 per cent of the rehabilitated clients terminated in 1991 were classified as severely disabled, and 42 per cent had a secondary disabling condition. The composition of the VR population is 55 per cent male and 80 per cent white. Almost half of the clients served are aged 25-44.

As noted earlier, the mandate to serve the severely disabled has led to scarce resources being allocated towards this group. A ramification is that there is a prioritization procedure (called an Order of Selection) according to severity of impairment, which determines who gets services. The disability composition of the VR population reflects this mandate. In 1988, roughly three in seven accepted VR applicants had mental and/or emotional conditions, one in seven had sensory impairments, and one in four had an orthopedic/amputee condition.

III.6 DESIGN AND DELIVERY OF EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

III.6.1 The effects of the distribution of responsibility for provision of services

The distribution of responsibility of VR return-to-work and job retention service provision divides into three segments: public sector for VR, public/private partnerships for return-to-work, and private sector for job retention. This dichotomy determines the degree of market competition and subsequent decentralization.

The public sector VR program is federally funded and administered by the Rehabilitation Services Administration. The RSA has a central and ten regional offices which provide technical assistance and oversight to some 84 state VR agencies. Some states have two separate agencies - one serving only those persons with visual impairments and the second serving persons with all other general disabling conditions. The regional administrators provide oversight of the federal directives. However, the operational authority resides with the state administrations, whose commissioners are affiliated to the Council of State Administrators of Vocational Rehabilitation (CSAVR), a private organization which establishes policies and best practices for its members. Each state agency monopolizes the federal funding available for service provision. The state agency employs VR counsellors who provide counselling, guidance and broker services. These services may be provided at 'no cost' through an in-house evaluation and/or job placement unit. Alternatively, the VR counsellor may purchase such services from private sector vendors. In many states the VR counsellor is provided with a case service budget and has substantial control over how these funds are expended.

The other federal training initiative, JTPA, is very much a private/public partnership. The program is financed via federal funds which are disbursed across some 600 service delivery areas (SDAs). These SDAs are overseen by a private industry council (PIC), which is formed from representatives of the private business sector, constituting a majority of the council members, state and local labor and education officials, and non-profit organizations and community representatives. Each PIC is autonomous; return-to-work service provision is highly decentralized.

The provision of job retention services is largely the province of the private sector. Such firms compete extensively with each other at primarily the local level. There has been significant consolidation of the many private sector providers and some have a statewide and even regional presence.

The upshot of this disparate service provision is a highly decentralized hodgepodge of programs. There is no unifying body overseeing retraining initiatives. Consequently, there are vastly differing definitions of disability, different eligibility criteria, incompatible data systems, and an inability to determine the relative efficacy of the various programs.

III.6.2 The effect of relationships between services on their effectiveness

In general, there is still a reliance on the medical model of rehabilitation, whereby the physician asserts primacy over the case. Unfortunately, the physician is oftentimes 'out of the loop' when vocational rehabilitation is discussed. While subsequent return-to-work service provision may be seamless and well-coordinated, it is this first stage where the rehabilitation process often gets derailed. This delay in commencing a return-to-work program can spell the difference between employment and receiving a disability pension.

Appropriate disability management can alleviate this problem. Oftentimes there is no communication between the employer, employee with a disability, and the treating physician. This vital linkage oftentimes simply needs to be facilitated by a case manager contacting these three parties and informing them of the VR option.

A specific program where there is an apparent lack of synchronization is in the VA program. The mission of the program is to place veterans in jobs. Yet, the orientation of services is towards training and higher education. The staff is not trained or equipped to provide the necessary job placement services required to employ the veteran with a disabling condition.

III.6.3 The results of vocational training and rehabilitation

There have been numerous studies of public sector VR efficacy. The most recent of these, the 1993 GAO report, found mixed results for VR. In general, the study found that any increases in employment rates and levels of earnings diminished after two years. However, when compared to program dropouts, there were statistically significant gains in employment and earnings levels, even after controlling for measured pre-program differences between the treatment and dropout cohorts. For instance, rehabilitated persons with developmental disabilities (mental retardation) were 20 per cent more likely to be working five years after termination; earnings were also \$1,000 greater for this cohort during this period.

Unfortunately, such studies have been criticized because of an inability to adequately control for the well-known problem of selection bias in such 'comparison group' research. Specifically, such research has not done an adequate job of disentangling the effects of the VR treatment from unmeasured attributes such as motivation which may also affect subsequent labor market performance. As a result, virtually all of the studies of VR program impacts have been rendered suspect; VR program impacts are largely unknown.

To address this deficiency in our knowledge of program effects the Social Security Administration has recently completed a five year 'controlled experiment' of the efficacy of case management services for its DI and SSI recipients. Four different case management models were implemented, with each established in two separate sites around the country. A total of some 8,000 DI beneficiaries, SSI recipients, and SSI applicants were randomly assigned to a treatment or control group. The treatment consisted of case managed services provided by either: 1) an SSA field officer; 2) a case manager at a private sector VR firm; 3) a state VR counsellor; and 4) an SSA referral to an outside provider. The results of this first-ever controlled experiment of return-to-work for persons with disabilities will be available in March of 1998.

The JTPA program has also recently undergone an extensive evaluation of its own - also using a controlled experiment to obtain scientifically defensible results. The upshot of this multi-year evaluation is that adults experience positive but slight increases in their annual earnings while there is no impact for youths. The earnings impacts were estimated for adult men and women, female youths, and male youths who were either arrestees or non-arrestees. Unfortunately, the small size of the disability subgroup precluded more detailed analyses for this targeted group.

There is virtually no scientifically defensible research on the impacts of private sector return-to-work or job retention. Data is closely guarded by the proprietary providers and not uniformly collected. There is little in the way of long-term outcome measurement. The most unfortunate shortcoming is there are virtually no

efforts at establishing a comparison or control group counterfactual to establish what would have happened to such persons in the absence of the intervention.

III.6.4 Arrangements for outcome-related funding and financial incentives to staff

Historically, the federal-state VR system has measured counsellor performance in terms of the number of successful rehabilitants 'closed' during a given year. This measure of vocational success required that a client be employed for at least 60 days (recent legislation increased the period to 90 days). VR counsellors received no credit for clients who completed their IWRP and were not successfully rehabilitated. This emphasis on successful rehabilitation led to 'creaming' on the part of counsellors - only serving those with the greatest prospects for return-to-work. Efforts made to adjust cases for the difficulty of successfully rehabilitating a more severely disabled client - 'weighted' case closure - were judged to be too cumbersome. To overcome the creaming phenomenon, administrators established performance standards and guidelines pertaining to the percentage of severely disabled persons rehabilitated on a counsellor's caseload.

The JTPA uses a sophisticated regression analysis to adjust performance standards according to the severity of the case served. The outcome measures of post-intervention employment rates and earnings levels during the 13th week after termination are adjusted for differences in the local economy and the characteristics of the persons served. In addition to disabling condition, the outcome standards are adjusted for gender, race, welfare status, and education. While the magnitude of the adjustment for disability is greater than for these other control variables, the overall adjustment is too small to provide much inducement to serve persons with disabilities. Another problem with the adjustment is that there is no distinction according to severity of disability. As a result there are incentives to 'cream' by the SDA to serve those persons with only mild degrees of impairment.

III.6.5 Most significant factors in facilitating or impeding overall success

There are significant impediments to successful job retention and return-to-work facing all of the participants in this complex process. The person with the disabling condition encounters significant disincentives to return to the labor force once having qualified for disability-related income replacement benefits. These include the loss of medical insurance as well as the cash benefits.

The service provision in public-sector VR is monopolized by the state VR agencies. There is no competition for the person with the disabling condition to turn to if they are dissatisfied with what is being offered. The state VR agencies suffer all the problems attendant with being an entrenched monopoly: non-responsiveness to customer demands, indifferent quality of service provision, and a lack of innovation.

The intermediate actors also often obstruct the efficient provision of job retention and return-to-work services. Physicians are primarily concerned with the medical rehabilitation of the patient, often at the expense of an early intervention which would facilitate return-to-work. Finally, in the work injury arenas, lawyers will often delay provision of job retention and return-to-work services until after the claim is settled. Indeed, lawyers will try to build in the cost of any rehabilitation into the cash settlement so as to increase the size of their (contingency-based) fee. This legal manoeuvring serves to impede the early intervention almost universally hailed as an essential component to successful return-to-work.

III.7 LINKS WITH EMPLOYMENT POLICIES

III.7.1 The effects of employment policy obligations and agreements on opportunities for vocational rehabilitation

The only such policy obligations in force in the United States would pertain to unionized labor. Union strength has diminished significantly in the past quarter-century. Currently, about one in every eight workers

belongs to a union. The collective bargaining agreements between employers and unions will often stipulate the rules under which persons with disabilities can return to work. There are very strict guidelines as to who can be offered restricted, light, or otherwise modified work duty. However, given the seniority basis for most such modified work assignments, it is very difficult, in practice, to implement such practices on the work floor.

III.7.2 The effects of financial incentives to employers on opportunities for vocational rehabilitation in the workplace

From 1978 through 1994 there was a Department of Labor policy called the Targeted Job Tax Credit (TJTC), which was implemented to give firms incentives to hire persons with certain characteristics. One such feature was the presence of a disabling condition. Eligible candidates would present vouchers, provided by the local Employment Service office, to an employer. The employer could then claim a tax deduction up to 40% of the first \$6,000 in wages, or \$2,400. In 1991 it was estimated that some 50,000 persons with disabilities were provided with such vouchers.

The JTPA also made use of financial incentives in the form of on-the-job training subsidies to induce employers to hire workers with disabilities. The JTPA would pay employers up to half of the workers' wages for as long as six months. Unfortunately, the agency does not break out the cost of this subsidy by client characteristics so it is difficult to determine the number of persons with disabilities who benefited from this program.

III.7.3 The relative priorities given to disabled people and other client groups

The public sector VR program has a distinct priority for persons with severe disabilities. First, clients classified as severely disabled, versus not severely disabled, get priority in receipt of scarce service dollars. Should there be limited funding below anticipated demand an agency will invoke an 'order of selection'. This procedure explicitly identifies which types of disabling conditions are first in the queue for return-to-work service provision.

The JTPA places restrictions on the eligibility for its training initiatives. One such stipulation added in the 1992 Amendments is that 65 per cent of participants fall into the category designated as 'hard to serve'. Persons with disabilities meet this criterion.

The JTPA also makes special provisions to serve persons with disabilities. For instance, only the person's personal income, rather than family income, is considered when determining eligibility for Title IIA benefits.

The Employment Services TJTC was available to nine different 'economically disadvantaged groups'. Persons with disabilities would typically qualify by either having been referred for VR services or by being an SSI recipient. Other targeted groups included economically disadvantaged youths, Vietnam-era veterans, welfare recipients, and ex-convicts.

III.7.4 Effects of changes in labor market structure and demand on opportunities for rehabilitation in the workplace

There has been a distinct trend in the United States in the past decade to hire consultants, part-time workers, and contract workers, as well as to outsource work (sometimes overseas) that was customarily done at a manufacturing plant. There is little doubt that one of the reasons for this trend is for firms to contain the costs of fringe benefits associated with employing full-time workers. To the extent that such workers are not eligible for STD or LTD benefits, there will be less rehabilitation paid for by third parties such as insurance companies. While an important trend, there has been little research quantifying the impacts on rehabilitation in the workplace.

III.7.5 Other significant links

There are various contract 'set-asides' of products and services purchased by federal and state government agencies that are designated for sheltered workshops that serve persons with severe physical or mental disabilities. These workshops bid for contracts, along with the 'Prison Industries', that are noted on a 'procurement list'. There are two designated agencies which help these workshops bid for items on this list: 1) the National Industries for the Blind (NIB); and 2) the National Industries for the Severely Handicapped (NISH). The NIB has historically been allocated a greater share of such contracts than the NISH.

III.8 LINKS WITH BENEFIT AND COMPENSATION PROGRAMS

III.8.1 The relationship between funding of benefit and compensation programs and vocational rehabilitation policies and services

There are four primary cash benefit/compensation programs available to eligible persons with disabilities that also provide vocational rehabilitation: 1) Service-Connected Compensation for disabled veterans; 2) SSI for blind and/or permanently and totally disabled persons who are also poor; 3) SSDI for disabled persons with sufficient work history; and 4) workers' compensation benefits for injured workers. Each has a distinctly different relationship with VR.

Funding of all programs of the Department of Veterans Affairs is financed from general revenues provided by taxpayers through an income tax. This includes all cash indemnity and VR expenditures. The VR program provides for all rehabilitation expenditures in addition to any service-connected compensation payments the individual may be entitled to.

Reimbursement of VR for SSA cash benefit recipients comes from the Disability Insurance Trust Fund. This trust fund is a part of the OASDHI (Old Age, Survivors, Disability and Health Insurance) federal social insurance system financed by a 7.65 per cent payroll tax paid by both employers and employees. (The DI portion of the payroll tax is one per cent.) Any disbursements from the Trust Fund for rehabilitation purposes are viewed as an investment which should result in cost savings in terms of reduced future disability pension payments.

Payments to SSI recipients, while administered by SSA, are financed out of general revenue paid by taxpayers through an income tax. This program is not an insurance program, but rather a welfare program. Rehabilitation expenditures are also financed out of general revenues.

VR return-to-work services in workers' compensation are financed by several different mechanisms depending on the state. These methods include taxpayer or employer-funded rehabilitation programs, insurance carriers, or through self-insured employers. More than one-third of states have a special VR fund financed through assessment on workers' compensation premiums paid by employers. Covered employers and/or the insurance carrier will pay for any VR services that might be needed to return a worker to the labor force.

III.8.2 The effects of benefit or compensation regulations on opportunities for vocational rehabilitation

In the VA VR program eligible veterans receive a subsistence allowance for the period of time (four years of full-time training plus 18 months of counselling and job placement) the individual is enrolled in the VR program. Subsequent employment upon completion of the rehabilitation program does not impact on the total disability rating until the person has worked for 12 months in a row.

An SSDI beneficiary who earns more than SGA (\$500 per month) in nine months during the 12 month trial work period after completing a VR initiative will no longer be eligible for DI benefits. For SSI recipients the

earned income exclusion is the first \$65 of earned income plus one-half of the remainder. The impact of this income ceiling creates a 'notch' effect. Workers who are approaching the threshold will stop working rather than lose their DI or SSI disability pension payments. Thus, only workers who will be earning significantly more than the ceiling shall attempt to return to work and lose their 'hard-earned' disability pension payments.

VR regulations are much different in the worker compensation arena. Indeed, VR is mandatory in roughly one-third of states. In these states persons with work injuries must agree to receive VR services or they risk loss of their cash indemnity payments. In other states, a portion of the worker's indemnity payments is withheld if the prescribed service regimen is not followed.

III.8.3 The co-ordination of assessment of eligibility for disability benefits and vocational rehabilitation services

Once again, this process differs across the various disability payment programs. In general, the assessment of eligibility for benefits is independent of the evaluation for suitability for VR services. Part of this is due to the different sequencing of receipt of disability benefits and receipt of VR. Perhaps more important are the differing uses of the assessments. The disability claims examiner is looking for an inability to perform work suitable for the person's schooling, training and experience. In contrast a VR evaluator is attempting to gauge residual functioning capacity and transferable skills that will enable the person to return to some form of suitable employment.

III.8.4 Arrangements to combine receipt of benefits with rehabilitation in the workplace

Under certain conditions (i.e. the person has shown medical improvement and is no longer considered disabled), both SSDI and SSI recipients can participate in any approved VR program (not just the state VR program) and still receive disability benefits. Normally, they would be removed from the rolls once there is evidence of medical improvement.

The SSA Project NetWork demonstration waived the Trial Work Period earnings test temporarily, for a period of one year, for both members of the treatment and control groups. Both cohorts were able to keep all earnings for a period of one year without losing any of their trial work period eligibility. Consequently, the treatment group could receive both DI or SSI payments and return-to-work services for a period of up to one year.

III.9 LINKS WITH BENEFITS AND EMPLOYMENT POLICIES

III.9.1 The relationship between policies for vocational rehabilitation, benefits and employment

The overriding concern for benefits, vocational rehabilitation, and subsequent employment is the lack of incentive to return to work once a person gets acclimatised to receiving disability benefit payments. There are significant medical and legal obstacles to an early VR intervention. Since the disability payments precede any rehabilitation efforts it becomes difficult to break out of the disability culture. The lack of adequate medical insurance and limited transportation further diminishes the likelihood of a successful return to work.

IV. ADAPTATION OF WORK AND WORKPLACE

Part IV is concerned with practical solutions to adapting the work-station, workplace and job procedures to the needs of workers who become disabled. It focuses on external services available to enterprises to assist them in making adjustments, whether those services are accessed directly in the marketplace or via agencies. External services may provide advice or practical help both in adjusting the demands of the job and in adapting the work environment, temporarily or permanently. They may operate as private consultancies, voluntary bodies, quasi-governmental agencies, or as part of employment services.

The initial sections of this Part consider policy responsibilities, details of providers, funders and users, technical advisory services, sources of technical equipment and advice about accommodating work routines. Later sections focus on the factors which affect the success of adaptation services in promoting job retention and return to work.

IV.1 RESPONSIBILITY FOR POLICY AND PROVISION

IV.1.1 The main bodies responsible for work environment policies and their role in promoting adaptations for job retention and return to work

Essentially there are four basic national governmental bodies responsible for, or associated with, work environment policies. The first is the Occupational Safety and Health Administration (OSHA) within the Department of Labor, and the second is the Equal Employment Opportunities Commission. Third is the National Institute on Disability and Rehabilitation Research (NIDRR) within the Department of Education's Office of Special Education and Rehabilitation Services. Finally, there is the Technology Related Assistance (TRA) program within the Department of Education that was created by the Technology Related Assistance for Individuals with Disabilities Act of 1988 (Tech Act). While OSHA is associated with general labor policy, both the EEOC and NIDRR are associated with ADA implementation. TRA predates the ADA but is associated with the National Council on Disability which helped to develop the ADA.

NIDRR and the Rehabilitation Services Administration (RSA) are two of the three organizations comprising the Office of Special Education and Rehabilitative Services within the Department of Education (the third being the Office of Special Education Programs). RSA is the agency responsible for the implementation of the Rehabilitation Act of 1973 and the administration of the federal-state Vocational Rehabilitation Program.

Though not focused on employment, the Assistive Technology Funding and Systems Change Project (ATFSCP) influences national policy on the availability of assistive technology, particularly in relation to financing issues. ATFSCP was established under the authority of Title I of the Tech Act amendments of 1994. It is funded by a NIDRR grant and operated by United Cerebral Palsy, a private non-profit organization. The project provides nationwide training, technical assistance, and information on assistive technology funding and systems change issues. The goal of the project is to provide advocates with the knowledge and skills necessary to improve access to assistive technology devices and services for individuals with disabilities. In particular the program publishes materials on funding assistive technology through Social Security income under the Social Security Work Incentives, Social Security Disability Insurance, and PASS programs.

IV.1.2 Comparison of the attention given to policies which promote job retention and those which promote access to work

Though there is not a clear distinction between these two policy perspectives in the US, both the EEOC and NIDRR funded projects have developed from the perspective of promoting access to work rather than job retention. This is largely because these programs are tied to ADA which was initiated as a law designed to promote access and opportunity. In terms of practices, however, there appears to be little distinction. Policies developed under the ADA to promote access to work (such as operationalizing reasonable accommodations and defining essential functions of jobs) have the same implications for return-to-work.

It should be noted that the ADA is intended to make the world more 'disability friendly' and is not limited to accommodations for individuals. Subsequent legislation follows the same principle and is aimed at the general improvement of access for disabled people and the removal of barriers. Section 11611 of the Omnibus Budget Reconciliation Act of 1990 provides for Disabled Access Credit for small businesses in order to remove architectural, communication, physical or transportation barriers which prevent a business being accessible to, or usable by, individuals with disabilities. A 1986 amendment to section 190 of the

Internal Revenue Code, relating to the Architectural and Transportation Barrier Removal Deduction, allows tax deductions for the removal of barriers in transportation facilities and vehicles, in order to make these more accessible to people with disabilities.

IV.1.3 The main providers of technical and advisory services

In addition to those entities identified above, another main provider of technical and advisory services is the Job Accommodation Network (JAN), operating out of West Virginia University. JAN provides a toll-free consulting service that provides information about job accommodations and the employability of people with disabilities in North America (US and Canada). In the United States, JAN is funded through the President's Committee on Employment of People with Disabilities which a federal advocacy agency for persons with disabilities (see I.2.2). While JAN has no formal ties to the other providers of technical services, its parent organization, the West Virginia Rehabilitation Research and Training Center, is also supported by a grant from NIDRR and works closely with the Rehabilitation Services Administration (a sister organization with NIDRR under the Department of Education) and the various vocational rehabilitation agencies.

In addition to these main providers of technical and advisory services, the ADA technical assistance manual cites more than 80 non-governmental organizations that provide employment-related services for people with disabilities.

NIDRR also funds ABLEDATA, a computerized national database of information on assistive technology and rehabilitation *equipment* available from domestic and international sources. The data contains information about more than 20,500 assistive technology products and approximately 2,600 manufacturers. The data can be accessed free of charge over the Internet (<http://www.abledata.com/index.htm>), or through a national toll-free number. Manufacturers and inventors are also provided a means of listing new products.

IV.1.4 The relationship between providers of technical and advisory services and providers of employment support and rehabilitation services

There are currently 56 states and territories with federally mandated technical assistance centres. They are usually located in State VR agencies because that is where persons with physical and sensory impairments most often go for services and these are the target disability groups which can benefit the most from assistive devices.

The Virginia Assistive Technology System (VATS), located within the Virginia Department of Rehabilitative Services, provides a good example. It serves all age groups, with a priority to serve children. It does not have employment as a priority, there is no line-item in the budget for job-site accommodation, and it does not have a rehabilitation engineer or physical therapist on staff. Moreover, it does not provide any direct services, only referral services. Thus, when a person calls up requesting a job accommodation (enhanced or re-employment) the VATS staff send the person to the appropriate agency (usually JAN, see below). Their function then is solely to provide information and referral which allows their constituents to have increased access to disability technology in general.

IV.2 TECHNICAL AND ADVISORY SERVICES FOR MODIFICATIONS TO WORK-STATION AND WORKPLACE

IV.2.1 Technical and advisory services available to enterprises in respect of modifications

OSHA

Occupational Safety and Health Administration provisions cover all employers and their employees in the US except self-employed persons, those on family farms, and those in governmental agencies covered under

other federal statutes. Though OSHA is the primary agency responsible for work environment policies in the US, the focus of the agency is prevention of illness and injury rather than accommodation to disabilities that arise.^j As a result, OSHA is concerned with setting and enforcing work environment safety standards rather than providing accommodation advice. There is some crossover, however, in that accommodations that are provided must meet OSHA safety standards and modifications to prevent injury often function equally as accommodations for workers with disabilities.^k

EEOC

The EEOC funds technical assistance grants and contracts and provides direct assistance as well to help employers understand and comply with the provisions of the ADA. Technical assistance is a broad term that includes education, training, materials development and dissemination, and referral services. A key source of direct assistance is the Commission's *Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act* which it developed and distributes. The manual is designed to provide help on the practical implementation of the Act by employers primarily through the use of examples. Since the development of the Manual in 1992, and as the ADA case law has developed, the EEOC has provided new or expanded interpretation and guidance through *Enforcement Guidance Notices*.

For example, one recent enforcement guidance notice deals with employer responsibilities with respect to psychological disabilities.^l This was an area of the law that had provided considerable problems for employers resulting in a large number of employment discrimination charges (about 13 per cent of all charges filed). In response to these problems, an enforcement guidance notice was issued. These notices provide a sense of the way in which the EEOC establishes employment policy. Like the Technical Assistance Manual, they provide an overview of the ADA in the context of specific disabilities, explain how to determine if the disability in question qualifies for protection under the ADA. They then provide examples of relevant employment situations and possible solutions.

In addition to providing assistance through the Technical Manual and Guidance Notices, the EEOC also delivers speeches, holds regular seminars around the country, and provides referrals and access to material through a toll-free number.

NIDRR

The National Institute of Rehabilitation Research funds a number of national projects to assist employers and other covered entities in complying with the ADA. The most significant of these projects are the ten Regional Disability and Business Technical Assistance Centres which provide information, make referrals, carry out needs assessments, develop and distribute curricula and training materials, conduct surveys, and organize conferences and training seminars.

NIDRR also funds three additional materials development projects and six national training projects. Two of the materials development projects focus on employment, and the third focuses on public accommodation and accessibility. Each develop and test the technical assistance materials used by the centres, and training projects. Materials address job structuring, advertising, job recruitment, interviewing, testing, drug testing, medical examinations, and many other topics.

The national training projects have an independent living focus, rather than employment. Five of these programs provide ADA education and awareness to persons with disabilities and their families, independent living center staff, individuals in Hispanic communities, school districts, state and local governments. The *Standards for Accessible Design* is the sixth national training project. This NIDRR funded program is run out of the Center for Universal Design at North Carolina State University.

The *Standards for Accessible Design* is part of a NIDRR-funded Rehabilitation Research Center on Accessible and Universal Design in Housing. It also has more of an independent living focus. The project utilizes research, information, training and design assistance to improve building environments for all users. It also works to improve awareness of universal design and increase its use by the building industry and product manufacturers. The Center also collaborates with business and industry on the development and evaluation of design solutions and marketing strategies. The Center develops publications and instructional materials, and provides information, referrals, and technical assistance to individuals with disabilities, their families, and professionals in business and government. It also analyzes user needs, conducts expert workshops, prepares policy papers, develops design criteria, and participates in national design-related forums.

Technology Related Assistance

The Technology Related Assistance program was created through the Technology Related Assistance for Individuals with Disabilities Act of 1988 (Tech Act). Again the program has more of an independent living perspective in that it attempts to expand access to assistive technology as a means of improving the independence of those with disabilities, regardless of work. But it does include improved access to assistive technology in the workplace among its goals. The program is broadly intended to increase awareness of, and access to, advances in disability technology among individuals, employers, government representatives and the community at large. Specific aims are to raise public and governmental awareness of the need for assistive technology and increase its availability. The program also educates individuals and their families, employers and disability service professionals about potential advantages of assistive technology.

The program provides grants to states to establish statewide programs of technology-related training, access and assistance. It also provides awards to private agencies delivering assistive technology training and services at the local level.

JAN

The Job Accommodation Network provides individualized workplace accommodation information and consulting services to employers, rehabilitation and social service professionals, and persons with disabilities who are seeking employment. JAN services are provided free of charge and accessed in the US through a national toll-free number. Consultants focus on the specific needs posed by the individual's functional limitation as it relates to a specific job task. Users of the service are asked to contribute information about accommodations they have made.

IV.2.2 Services specifically directed towards job retention

There are no services specifically directed towards job retention. Moreover, with the exception of JAN, services have an independent living focus. This means that they are focused on reducing the impact of disability on daily life, and the impact on work is generally incidental.

IV.2.3 The availability of technical and advisory services and their use by enterprises

In addition to the national technical assistance programs described above, there are numerous state, local non-profit and for-profit programs across the US (see IV.1.3). Through NIDRR the Tech Act currently funds 41 state programs. Beginning in 1990, it also funded ten local demonstration and innovation grants with private agencies. All were continued in 1993. As with the Tech Act in general, these programs are focused toward independent living rather than employment so that the target audience is persons with disabilities, their families and those providing services. Employers are thus not generally targeted, though they may utilize available services.

For example, the *Statewide Technology Access and Response System for Alabamians with Disabilities* is the

funded program for the state of Alabama. The program provides information and referral services about assistive technology products, services, resources, suppliers, and funding. The program serves people of all ages and disabilities and responds to requests from people with disabilities, family members of people with disabilities, professionals, educators, employers and other interested persons.

The main function of the program is as an information clearing-house for assistive technology products, services and resources (including ABLEDATA). The program also provides training, workshops and seminars to provide education regarding assistive technology devices and services. Participants are introduced to the various categories of assistive technology and resources, and are provided with product demonstrations. One training program focuses on how seniors with sensory or physical limitations can benefit from low-tech, low-cost assistive devices. Another provides sensitivity training targeted to schools or businesses.

Though the local demonstration and innovation grants are generally not focused toward employment, one such project developed video-based training materials to train rehabilitation counsellors in the provision of assistive technology.

There are numerous technical and advisory services available through private consultants and other providers. This was an area that saw substantial growth following the introduction of the ADA. While there is no single national database of these providers, there are human resource organizations, such as the Society for Human Resource Management, which provide a link between businesses and private consultants.

Finally, there are numerous institutes providing direct assistance to employers. One example is the Program on Employment and Disability out of Cornell University. It provides training and technical assistance on issues related to persons with disabilities and the workplace. It also provides seminars on a variety of ADA-related topics including workplace accommodations for persons with specific disabilities.

There has been no systematic study of the utilization of technical assistance by employers. A 1994 GAO study found that only about ten per cent of business people who were familiar with the ADA had learned about the law through federal programs. But this is a different issue from whether those who are looking for information on accommodating an employee are able to find what they need.

Business satisfaction with the services provided by JAN appears to be high. In 1995, JAN submitted a report to Congress in which it provided a breakdown on services provided since July of 1990 (see tables below). Between July of 1994 and June of 1995, JAN received a total of 79,860 calls. This was a 23 per cent increase over the 1994 figure and represented a continuation of the steady increase in call frequency since the passage of the ADA. Since 1991 (the year before the ADA first took effect), call activity had increased a full 550 per cent.

Two other figures are particularly interesting in the current context. The vast majority of callers were from private employers (61 per cent), and a full 81 per cent of calls were regarding accommodations for current employees. This is true for both public and private employers. Only for non-employers (individuals calling on their own behalf) are the figures substantial for applicants. This is consistent with the ADA complaint data reviewed in Part I which suggested that the overwhelming impact of the ADA was on job retention rather than on hiring previously disabled workers.^m

In terms of the actual information requested, less than one-half of the calls to employers are for information on adapting the physical characteristics of the job (work activities, work site/station, or an accommodation product). We see that 40 per cent of calls from private employers deal with physical accommodation. The figure is 36 per cent for public employers. Most of the remaining calls deal with legal and financial issues. Not surprisingly, the calls are most commonly for workers and applicants with motor impairments.

In addition to this caller data, JAN also collects data on how the information is used. Each caller is sent a potential accommodation packet prepared to meet their specific needs by a JAN consultant at the end of the session. In addition, the Network also sends survey questionnaires to a sample of public and private employers who have requested accommodation information. Those receiving surveys are asked to report on their accommodation activities following receipt of their accommodation packet. This allows JAN to evaluate the accommodation outcomes of callers in addition to tracking caller characteristics.

According to JAN, the findings of this study show that within two to three months of communication with this service, 38 per cent of those employers who contacted the service have implemented an accommodation based on the information provided to them. Another 30 per cent report that the accommodation decision is still in progress.

Of those employers who report having made an accommodation, 82 per cent say that the accommodation made was either extremely or very effective. The cost of accommodations ranges from no cost (17 per cent) to a small number reported to be more than \$20,000. Based on this data, about one-half of the accommodations made by these employers cost less than \$500 to implement (52 per cent). Another ten per cent cost between \$501 and \$1,000. The typical accommodation cost was about \$200.

In addition, employers are asked about the benefits they realized from having made these accommodations. Just over one-half (53 per cent) reported that making an accommodation allowed them to hire or retain a qualified employee and that the accommodation resulted in a significant increase in the worker's productivity. Savings in worker's compensation and/or other insurance costs were reported by 38 per cent, while 29 per cent said that they had saved their company the costs associated with having to train a new employee.

When asked to attach a dollar value to these benefits, five per cent reported no such value. Thirty-four per cent reported net savings of between \$1 and \$5,000 for their company. The remaining respondents were distributed evenly among the three groups providing answers between \$5,001 and \$50,000. The most common estimated value of benefits realized employers was \$10,000. While this cost data is incomplete, and there are potential bias problems in this type of survey, the data do suggest a fifty-to-one return on accommodation investments.

Table IV.1: Total number of calls received by year

<i>Year</i>	<i>Number of calls received</i>
1991	12,210
1992	43,311
1993	63,524
1994	64,665
1995	79,860
Figures are for the period from July of the preceding year to June of the current year.	

Table IV.2: Percentage of calls by caller type 7/94 through 6/95

<i>Caller type</i>	<i>Percentage of calls</i>
Private	61
Public	18

Individual	21
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Table IV.3: Percentage of cases by caller type and employment situation

<i>Employment Situation</i>	<i>Caller Type</i>		
	Private	Public	Individual
Current Employee	81	82	42
Job Applicant	12	11	32
Training Program	5	3	7
Other	2	4	19

Table IV.4: Percentage of cases by caller type and information requested

<i>Information Requested</i>	<i>Caller Type</i>		
	Private	Public	Individual
Work Activities	11	11	4
Work Site/Station	7	6	3
Product Information	22	19	10
Placement Activities	1	0	5
Referral to Services	5	6	9
Information on ADA	25	25	27
Information on Other Legislation	2	6	6
Funding/Tax Credits	20	21	27
Public Accommodation	1	1	1
Other	6	5	8

Table IV.5: Percentage of cases by caller type and functional limitation

<i>Functional Limitation</i>	<i>Caller Type</i>		
	Private	Public	Individuals
Sensory Limitation	13	16	10
Motor Impairment	48	44	33
Behavioural	11	11	17
Neurological Functioning	17	16	29
Other	11	13	11

Table IV.6: Estimated dollar value on the benefits realized by accommodating an employee

<i>Dollar range</i>	<i>Per cent in range</i>
no value	5
\$1-\$5,000	34
\$5,001-\$10,000	17
\$10,001-\$20,000	19
\$20,001-\$50,000	18

IV.2.4 Factors which encourage or discourage the use of technical and advisory services

The most significant factors affecting the use of technical and advisory services are the level of service awareness, particularly among smaller employers, the level of complexity in service organization and terminology, and a lack of coordination of services. Though not particularly difficult to find, many employers are unaware of the assistance that is available. And this is true despite tremendous efforts to publicize service activities. This is probably due more to the nature of the ADA than ineffectual publicity efforts.

The requirements of the ADA are generally regarded as reactive rather than proactive. For the most part, this viewpoint is true. There is little an employer must do until confronted with an applicant or employee with a disability. For large employers, exposure to disability is a fairly likely event. This tends to lead to proactive thinking and information gathering among larger employers. For small employers the need to know much about the ADA it is far less likely, and tends to lead to vague, and often misguided, notions of the law. Such employers are less likely to deal with the problems of a progressive disability until it becomes serious and then, because of an unfamiliarity with the system, are less likely to do be efficient in reaching the services they need.

According to the 1993 *Study On The Financing Of Assistive Technology Devices And Services For Individuals With Disabilities*:

Information on assistive technology devices and services is difficult to find and often inconsistent from source to source. Information dissemination is fragmented and uncoordinated. The barrier of awareness precedes questions of technology funding and thus denies individuals with disabilities an effective means to improved independence, productivity, and integration

The passage of the Tech Act and the funding of 42 states under the Act has resulted in improved awareness of, and access to, information. However, information management, especially in awareness and dissemination activities, remains fragmented and uncoordinated.

There are a number of electronic databases that are publicly and privately funded (such as Apple Link and Hyper-ABLEDATA). Many of the Tech Act states have established toll-free lines to respond to information requests and to make information on electronic databases more accessible to potential technology users. However, there are no minimum performance measures to evaluate and guide information dissemination efforts in the 42 states funded under the Act.

There are more than a dozen federal programs that authorize funding for assistive technology devices and services at the discretion of the state administering agency. There is a critical need to provide information and training to individuals with disabilities and their families on how to successfully influence resource allocation decisions by public programs. There is a similarly critical need to provide information and training on how to

successfully influence the reimbursement or prior approval of decisions by private health insurers to increase access to assistive technology.

Currently, once an employer begins searching for accommodation information, they are likely to be overwhelmed with too much information rather than too little. Some of this is simply terminology. Looking for information through directory assistance, the phone book or the Internet can be challenging. Using common terms like 'disability assistance', 'accommodation', 'adaptation', 'work adaptation', or 'ergonomics', an employer will find information and organizations dealing with an expansive array of issues, including personal adaptive equipment, workplace safety modifications, home and vehicle modifications, and the legal requirements of the ADA for both employment and public accommodation for businesses. Somewhere within all of this information the employer will also find JAN and other organizations that can provide answers to the questions being asked. If searching over the phone, contacting any of these various organizations will quickly lead to one of the technical assistance centres and to JAN, but multiple calls may be required. If searching over the Internet, the employer will likely get caught in a circular maze of disability organizations, and will do much better to take down one of the phone numbers provided and talk to a person who can give direction. So, although the system of accommodation information is still somewhat fractured and haphazard, it is working and appears to have improved significantly in the last few years.

IV.3 TECHNICAL EQUIPMENT

IV.3.1 The provision and funding of equipment to meet individual needs

The funding sources for assistance in providing adapted equipment in the workplace are as follows:

	<i>Employer Resources</i>		
	Program description	Restrictions	
Disabled Access Credit (Section 44 of the IRS Code) ^I	Encourages small businesses to comply with the Americans with Disabilities Act by providing a tax credit of up to \$5,000 a year	Can only deduct 50 per cent of 'eligible access expenditures' between \$250 and \$10,250	Local Int Service (
Architectural and Transportation Barrier Removal Tax Deduction (Section 190 of the IRS Code) ^I	Provides a tax deduction up to \$15,000 for making facilities and public transportation vehicles accessible to employees and customers	Alterations must meet Department of Treasury standards	Internal]
State Workers' Compensation jobsite modification assistance ^H	Varies by state. Arizona, Massachusetts,*	Varies by state.	State Fu Rehabili or Work

	Mississippi,* New Hampshire, North Carolina, Ohio, Rhode Island,* Washington.	Compen:
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^I Source: Presidents Committee on Employment of Persons with Disabilities (<http://www.pcepd.gov>)

* Accommodation subsidized by insurer. Workers' compensation may be a self-insured or with a carrier so the Asubsidy@ only pertains if the employer is not self-insured.

^H Source: Center for the Study of Human Resources, University of Texas at Austin, State VR/RTW Canvass (1993). Conducted for the Texas Workers' Compensation Research Center.

There do not appear to be any trends toward expanding assistance for employers in providing accommodations. The only possible exception to this is the development of requirements under workers' compensation that insurers must subsidize worker accommodation as necessary. These programs are fairly new and exist in only three states. There is, however, no data to indicate whether a larger trend is in the making.

IV.3.2 Comparison of the availability and use of provision to support job retention and provision to support access to work

No distinction is made between support for job retention and access to work in the national tax rebate programs, but the publicity associated with these provisions is biased toward the provision of accommodations for new workers. The state provision is associated with the workers' compensation system and is therefore biased toward retention; however, it is generally available to new employers of a workers' compensation beneficiary as well.

IV.3.3 The balance between provision to the disabled person and to the enterprise

In terms of national policy, provisions are geared toward employers until the point that the worker becomes part to the long-term unemployed disabled population. At that point individuals become eligible for subsidies (such as the impairment-related work expenses discussed in Part II). Most private agencies also have programs to assist individuals; however, these are not generally focused on employment accommodation, but rather on independent living accommodations. Certainly, these accommodations may make work possible, but workplace accommodations would generally be expected to be provided by the employer.

IV.3.4 The adequacy of provision

Provisions are probably adequate, at least on the employer side. As mentioned above, most accommodations recommended by JAN are relatively inexpensive. For employers with well developed disability management programs (see Part V), the cost of accommodation rarely appears to be a serious obstacle. If the employee wants to return, and the employer wants them back, a reasonable solution, possibly utilizing external funding resources, will likely be reached. Cost is more likely an issue in the hiring process since there is no vested interest in the new employee to set against the potential accommodation costs. It is not known whether additional funding would make a difference.

IV.3.5 Factors which encourage or discourage take-up by employees and by enterprises

As with these programs in general, awareness is a key issue. As discussed above, this is more a problem with smaller businesses since they will have less need to spend the time investigating resources. Since there are

few national accommodation assistance programs, access to information is not much of a problem. Beyond awareness, the key problem is probably the perceived complication with the application procedure and the fact that it requires dealing with the Internal Revenue Service (IRS). The IRS is the federal tax collection agency in the US, and it enjoys a particularly despicable reputation. As a result, the fear of audit is likely a significant factor in the extent to which the tax provisions are utilized. This is particularly true among small businesses, who are less likely to be very sophisticated about tax laws and would rather not do anything that would be expected to draw the unnecessary attention of the IRS.

IV.3.6 Disabled people who benefit and those who miss out

Since most of what happens in this area is largely market-driven and subject to the level of sophistication of the human resource individual or department, employees who are in larger companies and more highly skilled occupations are likely to get the greater share of accommodation benefits. Those in small businesses or low tech companies are more likely to be obtain fewer benefits. Similarly, since return-to-work is often more well developed for workers' compensation, workers who become disabled on the job will receive greater access to benefits (see Part V).

IV.4 ACCOMMODATING WORK ROUTINES TO THE DISABLED WORKER

IV.4.1 External advice services which assist in the adjustment of work routines to individual needs

The main external advice services are provided by JAN (see IV.2.1 above).

IV.4.2 Comparison of the availability and use of provision to support job retention with provision to support access to work

There is no distinction in terms of the availability or provision of accommodations to support job retention as opposed to other accommodations. The only possible exception to this would be the handful of workers' compensation jobsite modification assistance programs. These programs are more likely to affect job retention than work access.

IV.5 DESIGN AND IMPLEMENTATION

IV.5.1 The effects of inter-agency collaboration in the design and development of adaptive technologies

The collaborative work between government, research establishments, manufacturers, educational institutes and disability organizations is significant. The collaborative efforts between the government and these other institutions is largely through NIDRR, though many other organizations are involved in collaborative efforts as well. These would include the National Institute for Occupational Safety and Health (NIOSH, a cousin to NIDRR operating in much the same manner out to the Department of Labor), the National Institutes of Health, and even the National Air and Space Administration. While some research is done in house, most to the research activities of these organizations is provided by grant to states, research/educational institutions, private companies, and disability organizations.

Other non-governmental organizations such as the Rehabilitation Engineering and Assistive Technology Society of North America (RESNA) provide interdisciplinary collaboration among individuals and organizations for the advancement of rehabilitation and assistive technologies. RESNA works to link the capabilities of service delivery professionals, research and training centres, and rehabilitation engineering research organizations with disabled consumers.

They provide on-site and telephone technical assistance consultations. RESNA provides an educational role by conducting seminars, meetings and workgroups on assistive technology as well as presenting a national public relations/awareness campaign. A RESNA credentialing program sets training and competency

standards for information technology specialists in a variety of fields. Information clearing-house functions include gathering and disseminating consumers' experiences with assistive technology and national summaries of results of projects funded under the Tech Act.

The resources cited by RESNA, gives a sense of the scope of assistive technology groups and organizations that exist:

- ABLEDATA - A national database of information on products for people with disabilities.
- Apple's Disability Solutions - Information on computer access solutions for individuals with disabilities.
- Assistive Technology Funding And Systems Change Project (ATFSCP) - Assistive technology funding and systems change information.
- AZtech, Inc. - Information on transforming inventions into products for individuals with disabilities.
- Breaking New Ground Resource Center - Provides information and resources on assistive technology for agricultural workers.
- Center for Information Technology Accommodation (CITA) B Provides information on legislation and policies affecting information systems accessibility including the Technology-Related Assistance for Individuals with Disabilities Act Amendments of 1994.
- Closing the Gap - Provides information on microcomputer materials and practices that can enrich the lives of persons with special needs. (CTG Web Site Address: <http://www.closingthegap.com>)
- Consumer Assistive Technology Transfer Network (CATN) - The Consumer Assistive Technology Transfer Network (CATN) assists consumers with assistive technology (AT)-related problems, products, applications and inventions. The CATN can provide links to assistive technology transfer resources with AT programs, rehabilitation engineering research centres and federal laboratories. There is an online request form for defining an AT problem; solutions or inventions to address the problem; contexts of use/functions of the application; available resources or products comparable to the application; potential for collaboration with a lab resource.
- EASI (Equal Access to Software and Information) - An Affiliate of the American Association for Higher Education, EASI provides a resource to the education community by providing information and guidance in the area of access-to-information technologies by individuals with disabilities.
- Evan Kemp Associates, Inc. - Disability Page - A "Disability Mall" of products and services for individuals with disabilities.
- IBM Special Needs Solutions - Information on IBM computer access solutions for persons with disabilities.
- National Center to Improve Practice (NCIP) - NCIPnet focuses on special education and technology, assistive technology, augmentative & alternate communication National Clearing House of Rehabilitation Training Materials (NCHRTM) Download AT-related documents from this site. Sample titles include: Assistive Technology: Practical Intervention Strategies;

ADA: Train the Trainer Program; and Reasonable Accommodations in the Work place.

- New World Solutions - Distributes new, high quality PC-based technology at discount prices. Also sells computer systems and laptops to children, adults, businesses and people with disabilities world-wide.

- Rehabilitation Engineering and Research Centres (RERCs) - RERCs conduct engineering and technology research to develop and test new technology for persons with disabilities. Each center specializes in a unique area. Center for Rehabilitation Technology Services within the South Carolina Vocational Rehabilitation Department specializes in rehabilitation practices as they relate to technology in vocational rehabilitation programs innovative models for vocational rehabilitation service delivery.

- Tetra Society of North America - A non-profit society that recruits skilled volunteer engineers and technicians to create assistive devices for people with disabilities. TETRA has 25 affiliated chapters throughout North America.

- West Virginia Rehabilitation Research and Training Center (WVRRTC) - Information resources on vocational rehabilitation, including links to the Job Accommodation Network and Project Enable.

Again, as is the case with most of these resources, they tend to have an independent living rather than employment perspective. Even so, much of the information provided by these organizations and their cross-agency co-ordination can be utilized in the employment context.

IV.5.2 Factors in control, funding, management or staffing which impede or facilitate adaptation services

Aside from JAN (discussed above), few data exist on the effect of control, funding, management or staffing of these services on results. The August 1996 RESNA technical assistance bulletin notes consumer dissatisfaction with the current acquisition process as reported during Congressional testimony on the reauthorization of the Tech Act. Consumers complained that it could take as long as several years to obtain needed technical assistance in the current system. Barriers that were identified included:

- confusion on payer responsibility
- the linear nature of the process in which each funding source must refuse to pay before application to the next
- confusing eligibility requirements
- cumbersome and bureaucratic pre-authorization and ordering procedures
- a lack of coordination in providing the component parts of a technical assistance order, and
- poor access in rural locations.

In response to these problems, a number of Tech Act projects have created equipment loan programs to provide quicker access to assistive devices, and replacements during periods of repair. The Nebraska Assistive Technology Project has introduced a universal referral form to replace the various state and service organization forms that previously existed for funding approval. The system also established tracking mechanisms to ensure timely processing and identify bottlenecks. In New Jersey, the Tech Act Project was instrumental in shifting the state's Vocational Rehabilitation program from a single vendor for assistive

technology assessment to a competitive system with multiple vendors. This shift resulted in reduced waiting time for evaluations and a 50 per cent reduction in assessment costs.

These changes reflect the more general changes affecting the service delivery system for persons with disabilities. Buoyed by increasingly effective activism by disability groups, the service delivery system is shifting from unresponsive, bureaucratic, single provider structures to consumer-oriented and competitive market-driven fee-for-service providers.

IV.6 LINKS WITH EMPLOYMENT POLICIES

IV.6.1 The effect of employment policies on the use of adaptation services

As has been mentioned above, incentive programs appear to have had little effect on the use of services to adapt work and the workplace. Certainly the ADA has had a significant effect by increasing employer requirements for workplace accommodation. More importantly, however, the ADA has had a greater impact by forcing employers to educate themselves about disability and accommodation and this has led to increasing demands for services to assist employers in adapting the workplace. Statistics such as those cited above for JAN support this notion.

IV.6.2 Effect of labor market structure and demand on use of adaptation services

A number of labor market factors have had significant affects on the demand for services to adapt work and workplace. First has been the tremendous growth in the US economy and the resulting tightening of the US labor market. This has made existing employees more valuable, and has caused employers to be more flexible in the demands placed on new and existing employees. In addition, the tremendous expansion of technology, particularly in the area of computers and the Internet, has fuelled demand for adaptation services. Finally, there has been a significant shift in the US economy toward greater flexibility in work in general. This has resulted largely from the influx of women into the labor force, and the shift toward the service sector in the economy. All of these factors are interrelated and have led to increases in telecommuting and other forms of work from home, and greater flexibility in work structure and hours in general. These factors have also worked to change employer perceptions about the structure of work and have made disability accommodation more acceptable, and even desirable, from the employer perspective.

IV.7 LINKS WITH BENEFIT AND COMPENSATION PROGRAMS

IV.7.1 Opportunities to receive rehabilitation benefits in adjusted working arrangements

Generally, rehabilitation services end with the advent of a job. Although on-the-job training is provided as part of Vocational Rehabilitation services, only about ten per cent of disabled clients receive such services. There does appear to be a trend toward more post-employment involvement in rehabilitation services, but the extent that this is related to adjusted working arrangements is unknown.

IV.8 LINKS WITH EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

IV.8.1 Co-ordination between employment support, rehabilitation and workplace adaptation services

As mentioned above, historically the co-ordination between employment support, rehabilitation and workplace adaptation services has been lacking. This appears to be changing as the service delivery system for persons with disabilities has shifted to more a consumer-oriented and competitive market-driven fee-for-service style. The example provided by the New Jersey Vocational Rehabilitation program above suggests that these changes will improve job retention and return-to-work. This program shifted from a single vendor for assistive technology assessment to a competitive system with multiple vendors and resulted in reduced waiting-time for evaluations and a 50 per cent reduction in assessment costs. While it is not known

whether these improvements in service delivery led to improved outcomes in return-to-work, such improvements would be expected

IV.9 THE MOST RELEVANT FACTORS AFFECTING THE POTENTIAL OF JOB ADAPTATION MEASURES TO PROMOTE JOB RETENTION AND RETURN TO WORK

In summary, the most relevant factors affecting the potential of job adaptation measures to promote job retention and return to work are:

- the economic realities of the labor market;
- the increasing acceptance of disability in the workplace;
- the legal obligations posed by the ADA and the FMLA;
- the growing expertise in accommodation that has developed out of safety programs initiated by OSHA requirements; and
- the development of technical assistance programs to help employers and individuals in their accommodation needs.

Although there are a number of means by which the costs of work adaptations may be offset, the reality in the US is that most of these costs will be borne by the employer and employee directly. The implication of this is that the overriding factor in the success of job adaptation measures is the labor market environment. When the economy is booming and the labor market is tight, as it has been over the last several years in the US, workers are less easily replaced and the willingness of employers to accept accommodation costs increases. Similarly, the rewards to individuals who invest in accommodation increase as well through higher pay and the expectation of a longer employment tenure. In short, when labor markets are tight, accommodation investments make better economic sense.

At the same time we cannot ignore the significant effect that the disability movement has had on employer perceptions and on the legal obligations of employers. Disabled employees have become a visible component of the US landscape and a more common feature in the workplace. This reflects, and led to, a greater acceptance of accommodation at work. Much of this acceptance has been spurred by the legal and political debate surrounding the passage of the ADA and FMLA. The process and resulting legislation has caused employers to take notice of disability and to become educated regarding their responsibilities and opportunities with respect to disabled workers and this has led to increased utilization of accommodation options.

Success in dealing with accommodation opportunities and obligations has been fueled by the ability of company ergonomists and other safety professionals to redirect their expertise toward solving accommodation problems. Thus, as employers have found the need to deal with accommodation as a result of new economic, legal and social pressures, they have found problem-solvers from within their existing ranks to meet those challenges. This has no doubt contributed to the success of accommodation within larger firms. For smaller firms, the improving availability of technical assistance from a wide variety of sources has provided them with adequate external sources of accommodation expertise. The one continuing flaw at this level may be the existence of too much uncoordinated information rather than too little, though this system appears to be improving. The fact remains that, for employers who want to accommodate an employee, there are sufficient technical resources available to accomplish the task.

One final note deserves mention. Disability accommodation in the US must be initiated by the employee. Under the ADA, employers are restricted from inquiring about disability and generally need only deal with accommodation once it has been requested. Unfortunately, while legislation about the ADA has led to increased awareness of accommodation issues among employers, it has not had the same effect on workers in general. Medium to large employers have educated themselves largely out of fear that ignorance could lead to expensive litigation and fines. The same sort of incentive does not exist among individual workers. Such

individuals, and to a substantial degree small employers as well, only begin to educate themselves about disabilities once they are personally affected. This means that employees with medical problems who are at risk of becoming disabled are often unaware of the programs and services available to assist them. Disabilities that might have been avoided by accommodation intervention are not prevented. Once they occur, it may be some time before the individual becomes knowledgeable enough about their options to request an accommodation. As discussed in Part V, more progressive firms are attempting to intervene early in the process to prevent disabilities and accommodate them quickly once they occur but, in far too many cases, the critical window of opportunity passes before appropriate accommodation is attempted.

V. ENTERPRISE STRATEGIES

This final Part provides information about effective enterprise policies, management systems and programs to retain workers whose continued employment is at risk because of disability. The focus is on activities which are introduced and managed by enterprises as an integral part of human resource and workplace relations management. It includes both integrated policies for the management of disability and specific practical initiatives in the workplace to promote job retention.

V.1 CORPORATE POLICIES AND PLANS

V.1.1 The development and prevalence of corporate employment policies and plans for the retention of disabled employees

Disability Management

Disability management is the broad term used in the US to encompass a variety of activities and programs intended to prevent disabilities from occurring, and/or to minimize their impact on employers and employees. It should be noted that formal disability management generally is a function of the size of the organization. For most small employers, disability management is simply a reflection of the personality of the company boss or owner. Therefore, in the following, the programs and policies described will largely reflect those of larger employers in the USA.

Currently 'disability management' in the US is at various stages of development. In its most complete form, it will address disabilities incurred either on or off the job, include headquarters staff as well as field supervisors and employees, and mental (including substance abuse) as well as physical disabilities. It also includes programs that focus on prevention. The general programs covered under the mantra of disability management include:

- Safety Programs For Employees
- Employee Health Departments and/or Clinics
- Wellness Programs,
- Employee Assistance Programs / Plans,
- Claims Coordination, Management and Return-to-Work
- Modified Return-To-Work Programs

Also included are ancillary activities that support disability management, such as the maintenance of an appropriate data system and the training and education of supervisors and other personnel in the area of disability prevention and management.

In successful disability management programs, the responsibility for disability management rests with the entire organization rather than being confined to the human resources department or any other unit of the organization. The details of administration will generally be the responsibility of designated departments but all employees, supervisors and, most importantly, top management must support the disability management philosophy for it to be successful. As a result, the success or failure of a disability management program is closely related to the 'corporate culture' that exists. If the corporate culture is open, adaptive and inclusive, virtually any set of disability management programs will succeed but, alternatively, if the corporate culture is entrenched and hostile, even the best practices have little chance of success.

Increasingly, disabilities are less the result of traumatic incidents and more the product of conditions that develop over time. As a result, prevention activities which involve constant attention to employee health, working conditions and ergonomics, have grown significantly in importance in the last ten years. Such intervention must be initiated long before a person suffers a disability that requires absence from work. Be it through wellness programs, safety or health departments, or ergonomic innovation at the work site, measures to reduce or prevent repetitive stress disorders are being incorporated into disability management practices with greater regularity in the US.

To obtain a clearer picture of what these programs may entail, a brief description of each of these components of disability management in the US is provided. While no general survey of current practices currently exists, experience gained through the Full Cost of Disability Studiesⁿ provides an indication of the extent to which these programs are actually implemented.

Safety Programs For Employees

Safety and accident prevention programs are generally those that have grown out of the Occupational Safety and Health Administration (OSHA) regulations. Typically, these practices will be administered by a safety department within the organization. In addition to regulatory compliance and reporting function (such as accident and injury reporting through OSHA logs), the responsibility of the safety department will generally include safety training for staff and employees. Safety training is usually comprised of orientation training for new employees and topical training recurring (usually at least annually) in selected areas of need. Depending on the activities of the enterprise, such training will likely include a general safety orientation on plant or office rules and how to identify, report and rectify unsafe conditions, proper use of plant/office equipment, proper use and disposal of chemicals and hazardous waste, proper body mechanics and ergonomics, and the use of required safety equipment.

The safety department will also be responsible for determining the need for protective equipment and then following through on its provision to employees and monitoring of its proper use. Such equipment may include items ranging from back belts, safety shoes and protective gloves in an industrial operation to wrist pads for keyboards, ergonomically correct chairs, and glare shields in an office environment.

Safety departments will also likely be responsible for conducting safety evaluations at regular intervals, and establishing and operating safety committees comprised of management and line employees to maintain safety awareness and collect and disseminate information throughout the organization.

Because of their roots in OSHA regulations, safety departments (or some synonym) will be found in virtually all industrial and manufacturing organizations as well as other enterprises in which workers are exposed to hazardous environments (such as warehousing), chemicals or waste (such as hospitals). In these organizations the safety departments are likely to be well developed and comprehensive, including all of the responsibilities outlined above. Large office environments are also likely to have relatively sophisticated safety departments, concentrating more on ergonomics, slip and fall hazards, and fire and electrical hazards. Even relatively small industrial organizations are likely to have fairly extensive safety 'departments', usually in the form of a safety

manager, or a manager with a safety role, since they will likely still attract OSHA's attention.^o Smaller office and service-oriented businesses are not likely to have an established safety program.

Employee health departments and/or clinics

On-site employee health departments/clinics are likely to be associated with fairly large-scale industrial and manufacturing enterprises. Depending on the size of the business, these medical departments may be on-site facilities staffed by a physician (usually part time) and one or more occupational health nurses (OHNs). They may provide services ranging from pre-employment physicals and testing to determine fitness for duty (within ADA guidelines) and ergonomic testing, to providing first aid, administering the wellness program, and providing emergency response training. A primary duty of the OHNs is dealing with work injuries and illnesses and helping to determine whether more than first aid is needed. They may also be the point of contact for employees in need of general counselling for both general medical problems which might be referred to the employee's physician, and emotional/psychiatric problems that might lead to a referral to the employee assistance program (EAP, see below).

Often, the occupational health nurses are also a key player in disability assessment for claims management, rehabilitation, and return-to-work functions, providing a liaison with the employee's physician. They may be called upon to validate the leave durations and obtain further information from employee physicians when necessary. They will often be responsible for verifying the health of employees who have obtained return-to-work releases, and establishing duty modifications (if there is not an ergonomist in the safety department or elsewhere) that are consistent with physical limitations, if any, imposed by the physician.

Larger dispersed organizations may have employee health departments at each facility, or at one central facility. For smaller organizations, the enterprise may contract with a local medical provider, who functions as the medical clinic for many different organizations. Even if they are fairly large, organizations that are not in industrial or manufacturing areas are far less likely to have an employee health department, unless the department functions as part of the enterprise's wellness program (see below). In such cases, even in 'relatively safe' office environments, an employee health department may serve to evaluate employee illness and provide routine tests such as eye exams and physicals so that employees do not need to miss work to visit a doctor. They may also provide annual flu shots, weight loss programs, stress relief training, and other forms of wellness training to improve employee health and reduce absenteeism. Though never a widespread practice among employers, this wellness function for employee health departments appears to be fading in popularity in recent years as it has generally become regarded as being too expensive for the return it provides.

Wellness Programs

Wellness programs are designed to promote wellness and healthy lifestyles among employees and their families. While on-site employee health departments serving wellness functions have become less common, wellness as a part of disability management has continued to grow in popularity. Rather than providing services on-site, however, wellness departments (or specialists within the benefits department) develop the services and informational materials that reflect the needs of employees, and then contract with service providers to fulfill these needs.

Programs often include the sponsorship of health fairs which will provide information, health tests, counselling and screening services on an annual or periodic basis. Other common programs include smoking cessation, seat-belt and child car-seat safety, flu vaccinations, drug and alcohol abuse programs, fitness and exercise programs, stress management, cancer and AIDS awareness, weight management, and healthy eating/diet programs. Many of these services are provided free of charge to company employees, or are provided at reduced rates through company negotiated contracts. So while on-site fitness facilities are becoming less common, many employers continue to provide reduced fee memberships to local health clubs, and sponsor fitness outings and events such as 'walk-a-thons'.

Again, wellness programs are fairly universal among large employers. This is true for both industrial and service-oriented organizations. The style of programs does, however, change according to employee populations. High-tech companies are more likely to include stress management and fitness programs and events, while manufacturing enterprises are more likely to emphasize health education topics and disease screening. Among small to medium sized employers wellness programs appear to be less universal. Since services are available on a contract basis, the size of the organization is not necessarily a critical cost factor in providing such services. Rather, smaller organizations are less likely to have a formal human resource or benefits department, with individuals who are aware of the breadth of disability management programs available. As a result, the existence of wellness style programs will be dependent on the background and interest of the owner or management leadership. If the management leadership has a keen interest in wellness issues, then even a small enterprise may have a well conceived and comprehensive wellness program. More likely, however, wellness related programs will be haphazard or non-existent within smaller organizations.

Employee Assistance Programs

Employee Assistance Programs or Plans (EAPs) are designed to provide counselling and referral services to assist employees, and often their families, in dealing with a variety of personal problems whether they affect job performance or not.

Confidential counselling is usually provided by independent firms, but in some cases may be provided on-site or off-campus by the employee health services department of the enterprise. Because confidentiality issues are of such importance to the success of EAPs, on-site services will often have a chilling effect on employee use of services, so off-campus facilities may also be available even if an on-site program exists. Usually, in addition to counselling facilities, a toll-free number is provided for after hours needs, and for field employees who are unable to access the local services.

EAPs will generally employ experienced professional mental health therapists or other professionals who are trained to help employees with a range of problems. Such problems might include marital and family relationships, mourning and depression, anxiety and substance abuse. The programs are invariably confidential and voluntary, but managers and supervisors may be encouraged to assist employees in accessing the program whenever personal problems become apparent and begin affecting job performance.

Typically, telephone "hot-line" services and a limited number of office counselling sessions are provided free of charge to employees and their families. When referrals are needed, employees may be able to receive pre-negotiated reduced fee services, or be directed to service providers that accept the company's health insurance.

Among large employers, employee assistance programs again appear to be fairly universal. There also appears to be little variation in the range of services provided. Even among smaller employers, EAP services seem to be fairly common.

Claims Coordination, Management and Return-to-Work

If a disability occurs and a claim for benefits is made, then an effective disability management program must respond quickly. Such a response involves a good bit more than the clerical processing of the claim. The disability claim must be validated and the employee must be assured that the claim will be handled efficiently. In addition, the disabled employee needs to know that, following a proper period of recovery, return-to-work is expected, and that the organization will do all that is necessary to return persons to work at their former job if possible, or to an alternative job for which they are suited. If accommodations are necessary, these must be arranged and the workforce prepared for the employee's return.

The degree to which claims management varies among employers is tremendous. As was described under

benefits programs (Part II), there are generally five types of income protection for employees who become disabled. For occupational injuries and illnesses there is workers' compensation coverage which, though different in each state, will typically cover disability from the 14th day forward, and provide benefits at two-thirds the level of pre-disability wages. For non-occupational disability, there is sick-leave which covers day-to-day illnesses and injuries at 100 per cent of pre-disability wages for anywhere from three days to several months, but more typically for 7-14 days. For longer term disabilities, including maternity, the next level of coverage is short-term disability (STD) insurance, which typically begins near the expected termination of sick-leave, and continues for 3-6 months, at 60-70 per cent of pre-disability wages.

At the point at which STD ends, long-term disability income protection will generally begin and provide coverage at about 60 per cent of pre-disability wages, up to a specified monthly maximum, for the duration of the disability. Since long-term disability benefits have conservative replacement rates, and are capped, employers with significant numbers of employees in high salary ranges may also offer optional extra protection that increases the replacement rate to 70 per cent, or raises or removes the LTD cap. Such protection if offered is invariably, at least partially, employee financed.

With the exception of workers' compensation, these programs are usually voluntary on the part of employers. Five states do require STD coverage (called temporary disability insurance, or TDI), but generally employers are not required to provide such protection. As a result, the coverage for non-occupational disabilities is not universal. Some employers provide no income protection, some provide only one form of protection, while many others provide the full spectrum of benefits. While sick-leave is almost invariably employer-financed when it is provided, STD and LTD may require employee contributions, or may be entirely employee-financed. Similarly, though sick-leave if it is provided is invariably self-insured by the enterprise, other plans may be self-insured or the protection may be purchased through private insurers.

The level of protection provided generally reflects on the degree to which disability claims are managed. Since workers' compensation is nearly universal, requiring some degree of administration, claims management for workers' compensation will also likely exist, at least in some primitive form, in nearly all enterprises. The same cannot be said for non-occupational disabilities. In what follows, a comprehensive claims management system will be described, and then the next section will discuss the degree to which such a comprehensive system is instituted across employers.

For non-emergency cases, employees who become injured or ill on the job will generally be required to report to their supervisor for evaluation. If an on-site occupational health clinic is present such an employee would then be sent to the nurse at that location. At this point an incident report would be completed, and if necessary the employee would be referred to a physician for further evaluation. Workers' compensation laws in some states allow employers to specify the initial health care provider for a workers' compensation claim. Generally the employee can request a second opinion from a physician of their choice, but allowing employer first choice provides a significant level of control over the initial stages of a disability incident that are so critical to effective disability management practice. At this point a medical information release is obtained so that the employer may obtain the information necessary to manage the claim.

For disabilities that are not work-related, claims management will generally become involved in one of three cases:

- if an absence becomes prolonged without a definite date of expected return (such as an illness that continues for a week or more without definitive signs of improvement);
- if the disability is expected from the outset to be of a prolonged nature (such as recovery from a car accident); or
- if the disability is anticipated (such as leave for scheduled surgery).

In such cases, there is a reasonable expectation that the disability may will extend beyond the sick-leave period and become a short-term disability claim. At this point, the employee would be required to begin some form of STD process. While the *administrative* process and requirements differ between occupational and non-occupational disabilities, once a disability becomes a lost time claim, the *management* process should be essentially the same regardless of whether the disability is work-related. Though different across employers, a comprehensive claims management process would be expected to have some form of the following practices:

- A medical information release is obtained from the employee.
- A medical assessment and expected absence duration (expected return-to-work date) are obtained from the employee's physician.
- The medical assessment is reviewed by trained company medical personnel, usually a company nurse, and the proposed leave is evaluated using standardized classification codes (such as IDC 9 and ITCP surgical codes) set against established duration guidelines.
- Consultation with a company retained physician may be initiated in complicated or unusual cases.
- Further information in the form of test results and medical opinion may be requested from the employee's physician, particularly if medical prognoses are vague or fall outside reasonable limits.
- Early in the process, the employee should be involved, discussing their progress and maintaining contact and connection with the work environment. It is during this dialog, or case management, that the value of the employee and the expectation of return-to-work is emphasized, and the possibility of accommodations discussed.
- Supervisors (and union representatives) should also be brought into the dialog. Based on the disability, a job evaluation may be needed to inform the physician of the essential functions of the job and assist them in making a return-to-work determination.
- Ideally, the supervisor will retain 'ownership' of the employee by having the costs of the disability reflected in their performance evaluation.^P In this way the supervisor has a vested interest in returning the employee to work, and will tend to be more open minded, creative and flexible in determining work accommodation.
- As the end of approved absence approaches, the return should be confirmed with participants, the employee (or union representative), supervisor, and the physician if necessary. If the absence duration is extended, supporting documentation should be obtained from the employee's physician, and the revision communicated to the supervisor/union representative. If the employee's disability extends into the long-term disability benefit period, the same claims management procedures should be continued, and the benefits transfer handled in an efficient manner.
- If the disabled employee is expected to have significant work limitations upon their return, an ergonomist, as well and other accommodation resources (such as JAN), may be consulted to assist in determining proper accommodation for the returning employee.
- Once an employee is released for return-to-work, the fit between the accommodations and limitations of the returning employee should be validated so that the disability is not aggravated. Co-workers should also be prepared for the employee's return to provide a

supportive environment.

- Employees who are released to return-to-work (are no longer disabled according to benefit plan definitions) and who cannot be reasonably accommodated, either in their former job, or in a commensurate job within the enterprise according to ADA requirements, may enter a period of assisted employment search within the company and beyond. If a new position is not found within the enterprise, typically, the employee's employment is then terminated. If the disability is occupational, and the individual has reached 'maximum medical improvement' (MMI), the extent of 'permanent partial disability' (PPD) is determined by the state workers' compensation system, and financial compensation is awarded.

While this outlines the design of a typical comprehensive claims management process, such comprehensive programs are still fairly unusual. More common are fairly well developed programs for workers' compensation claims, but with little carry-over to non-occupational disabilities. As a result, such disabilities often receive little or no claims management and return-to-work attention.

Again, there is a correlation between the level and financing of benefits provided, and the extent of disability management. Employers tend to see the pecuniary cost of disability only in terms of the cost of benefits. Disability is thus seen as a minor cost whenever voluntary benefits (sick-leave, STD and LTD) are not provided, are employee-financed, or are not sensitive to the employer's disability experience. Where workers' compensation is required, employer-financed, and experience rated, workers' compensation claims tend to receive at least some level of claims management. But unless there is a strong corporate culture that values return-to-work in its own right within the organization, claims management of non-occupational programs generally will not occur unless there are recognized pecuniary employer costs.⁹

Modified or Transitional Return-To-Work Programs

Employees who are able to continue working or return-to-work following a disability, but who cannot return to their regular job due to activity restrictions, may enter a light or modified return-to-work (MRTW) program. In most cases the employee will simply return to their former department in a reduced or limited capacity. Such light duty programs often have problems, however, since the employees are often resented by their supervisors and co-workers since they end up doing busy-work, or the easiest parts of the department's work, leaving the most difficult aspect of the department's work concentrated on the remaining full capacity workers. Particularly in unionized facilities, this often presents difficult problems since the jobs with the lightest duty are often the 'plum jobs', those requiring the most seniority.

In some companies the MRTW program will work quite differently. Rather than requiring that the employee's former department develop a light duty position, the disability manager will first attempt to return the individual to light duty in their former position. If the supervisor is unwilling or unable to accommodate the disabled employee, the disability manager will offer the 'use' of the employee to other areas and departments, usually as some reduced cost to that department. For example, the disability management department, or human resources (HR), may agree to pay all or part of the employee's wages out of the HR budget. Since the MRTW employee will provide productivity in excess of their cost to the accepting department, there is often a waiting list for the use of such workers, particularly in clerical and general administrative areas where training investments are small.

The most successful of these programs are those that not only offer incentives to those departments who provide MRTW jobs, but also provide incentives to the originating departments to retain the employee. This is generally done by charging some portion of the employee's cost to the originating department if the employee ends up accommodated in an alternative department. Such incentives tend to unleash creative problem-solving in the originating department so that the frequency of accommodation failures drops dramatically.

The program may have a pool of light-duty temporary positions, often in the company's office or clerical entry-level positions that may be appropriate for workers with limitations. A manager will review the employee's restrictions and determines whether one of the MRTW positions is appropriate. Each MRTW job will often have had a full work-site evaluation by either an ergonomist or occupational therapist so that the essential functions are well documented. In other circumstances, such positions may be more ad hoc, so that an evaluation must be done when the job is selected. A copy of the selected job's evaluation is sent to the employee's physician for approval. If the physician notes additional restrictions based on the specific position identified, additional accommodations may be made.

Generally, the employee will either receive their normal rate of pay while working in the MRTW position, or they may receive the standard pay for the MRTW job, if lower, and receive benefits at the appropriate benefit replacement rate for the remaining earnings shortfall as compared to their previous earnings.

Typically, there is a maximum duration for participation in the MRTW program. This may be set by policy, or by consultation between the employee, their physician, and the program manager. The program manager will monitor the progress of the employee's restrictions and, as the employee's condition improves, work with the employee, the employee's manager and their physician to return the employee to their regular position, possibly with restrictions, at the earliest feasible time. If necessary, an ergonomist may be consulted to conduct a job analysis and settle restriction issues when return to the employee's regular job becomes feasible.

Once employees return to their former position they may go through a process of work hardening in which their daily hours of work or duties at that position are gradually increased over time. Through this process an ergonomist or other occupational health professional may be consulted to determine if the employee is progressing satisfactorily, and eventually will determine whether the employee can return to the former job full time.

While modified/transitional return-to-work programs appear to be increasingly utilized by large employers, they are still not common practice. The practice tends to be tied primarily to occupational disability programs, but is being extended to non-occupational disabilities as part of the trend toward integrating the disability management practices for the two types of disability. Among smaller employers, such programs would appear to be fairly rare.

V.1.2 Prominent influences in the development of policies and plans for the retention of disabled employees

Disability management has grown out of, and continues to react to, the occupational injury and illness programs, workers' compensation and Occupational Safety and Health. Though much of the initial development of disability management was in the form of compliance with these laws, employers soon realized that well conceived policies could also reduce costs and make the firm more competitive, while at the same time bolstering employee morale. It is as a result of these two complementary returns, cost efficiency and good corporate citizenship, that disability management practices have developed to cover non-occupational illnesses and injuries as well. As employers have realized that their experiences in the area of occupational injuries and illnesses have relevance for all areas of disability, programs and policies initially developed for occupational disability prevention and management are being extended to non-occupational disability management.

While cost containment is the most important factor driving the development of disability management in the US, other factors have had significant influences as well. Certainly, the ADA, and FMLA have placed additional requirements on employers that have led them to develop disability management policies and practices. Possibly more importantly, these laws have served to focus attention on retention and return-to-work issues, and that attention has often led to the realization that such practices make good

economic sense beyond the compliance aspects of the laws. For many employers, however, disability management precedes passage of the ADA and FMLA, and many employers continue to go well beyond the requirements of those laws.

Changes in the demography of the workforce have also had some impact on the development of disability management as the workforce has aged and disability has become a more and more significant cost to employers. Similarly, while the incidence of disability has increased due to demographic factors, the medical cost of treating disability has outpaced inflation in the US, thus providing increased incentives to control cost by reducing the incidence and duration of disability.

Though not well documented in the disability management literature, union policies that set protections for injured workers have also likely had a larger impact on non-union employers by setting standards that affect all employers as they compete for workers in the labor market. Here it is not necessary that the union standards that are set be specific to retention and return-to-work. Since increased benefit protections raise the cost of disability, such changes increase the incentive to control such costs through improved disability management practices. One example of this process is the 'Stop the Pain' programs currently being sponsored by the AFL-CIO. The program targets cumulative trauma disorders (CTDs, also known as repetitive stress injuries (RSIs), among other similar names) and calls on workers to become involved in calling attention to work environments and practices that lead to such disabilities. It provides practical guidance to employees in determining the scope of the problem and methods to solicit employer cooperation in making corrections. These methods follow those used in successful campaigns for unionized establishments, but can be utilized in non-union facilities as well. Though the impact that this program has had on non-union enterprises is unknown, it does exemplify one way in which unions can exert pressures on employers beyond the scope of their union contract.

V.2 CO-ORDINATED RESPONSES TO DISABILITY

V.2.1 The integration of occupational and non-occupational disability management systems

The different types of disability management systems have been described in the context of corporate employment policies in V.1.1.

When employers finance non-occupational disability benefits programs, claims management and return-to-work programs are more likely to exist; however, they are not likely to be as comprehensive as programs for managing occupational disabilities and, often, will not be coordinated well with such occupational programs. This is generally rooted in the differing administrative requirements of the two types of coverage and the regulatory history in occupational disability that has long required a more formalized approach.

While employers have recognized that the disability management techniques used to control costs in workers' compensation could be extended to other areas of disability, they have generally placed the responsibility for managing such non-occupational programs in the benefits department, rather than the safety, risk management or employee health departments where workers' compensation responsibilities are generally housed. The result has been that non-occupational disability programs have developed within a benefits culture that is geared more toward the efficient provision of benefits rather than effective return-to-work programs, and many of the lessons learned within the occupational disability area of management are not utilized in the non-occupational arena.

It should be noted as well that claims may be handled in-house, or may be 'out-sourced' to a third party administrator (TPA). If benefits are purchased, the insurer will generally perform much of the claims management functions, with the enterprise's involvement limited to providing the necessary paperwork. While there is still a significant claims management role for employers when programs are administered by

TPAs or insurance providers, this role is often neglected. And since occupational and non-occupational insured plans will often be with different providers, the consistency of management programs and the coordination of efforts may be even more difficult to accomplish.

The positive note in this area is that the lack of logic in this two track system is beginning to be realized by enterprises. As a result, while the number of employers with well integrated systems remains relatively small, their numbers do appear to be growing fairly rapidly.

As mentioned above, modified/transitional return-to-work programs tend to be associated with occupational disability programs. It appears that they are being extended to non-occupational disabilities as a part of the more general disability management trend towards integration.

V.2.2 The characteristic features of integrated disability management systems

The characteristics of an integrated disability management process vary widely. Partly this is because the processes have generally developed separately and those established for workers' compensation claims tend to be older, more well developed and more restricted in their ability to change since they are governmentally regulated. As a result, the most common tendency is to change non-occupational programs to fit occupational disability management practices.

A key start to the integration process is that the managers develop better lines of communication. Since the management for the two systems has traditionally been housed in separate parts of the organization, this basic step is often difficult to accomplish. Some firms have found that the only way to effectively get these departments to cooperate and eventually synthesize is to place the managers in a common physical space. This removes much of the bureaucratic barrier to integration simply because managers can talk with one another.

Since the administrative rules generally differ for occupational and non-occupational disabilities, forms for the processing of claims generally differ as well. Some firms have tried to develop unified forms, and this has helped to increase the level of integration. But full integration is not possible, since reporting requirements differ, as do the legal courses of action.

V.2.3 Prominent actors and influences in the initiation and development of integrated disability management systems

In addition to the union activities mentioned above, central actors in influencing the development of improved disability management practices have been the array of non-profit health policy business and human resource organizations such as the Washington Business Group on Health. Private human resource consulting business and commercial insurance providers have also played a role in developing and promoting integrated strategies as a means of establishing a competitive advantage in improved service at lower costs to employers.

V.3 PRACTICAL PROGRAMS AND INTERVENTIONS IN THE WORKPLACE

V.3.1 Enterprise programs targeted at employees potentially absent from work because of disability

Employee Health Departments or Clinics, Wellness Programs and Employee Assistance Programs have been described in V.1.1.

V.3.2 Enterprise-initiated personal support programs

In well-developed return-to-work programs, counselling is generally a part of the process, and retraining will often be part of the accommodation process. For large companies in which retraining is not likely to present

an undue hardship, such programs are more likely to be implemented regardless of whether the enterprise's return-to-work program is particularly comprehensive or not.

Although employers may provide other kinds of personal support to employees, these do not usually form part of systematic programs.

V.3.3 Enterprise-initiated programs to adjust the workplace and work-station

As discussed under Employment Policies (Part I), the ADA requires employers to provide reasonable accommodations that allow the employee to do the essential functions of their former job. If the employee can be reasonably accommodated in such an alternative position but not in their initial job, and the employee has been away from work for less than 12 weeks, under the FMLA the employer is required to place the employee in that other position with commensurate responsibilities, benefits and pay.

Both in response to these laws and from more general cost cutting and competitive pressures, as well as the general development of the field of ergonomics, many large employers have found it prudent to hire, train or consult with ergonomists and occupational health nurses/specialists. Much of this is the result of the explosion in back problems and cumulative trauma disorders that have proved very costly to companies. So while these positions and programs were usually created through the safety department under a need for job analysis and accommodation with the goal of prevention, they have generally expanded their role into providing job analysis and accommodation services under ADA accommodation and return-to-work programs.

Employees, supervisors, and union representatives when appropriate, will generally work with such specialists in providing job evaluations, outlining the essential functions of the job and developing accommodations that will allow the employee to return-to-work successfully.

As mentioned above, these programs are more likely to be found in larger companies, but many ergonomic consulting specialists exist so that even smaller employers can contract to receive such services on an as-needed basis. The use of ergonomic specialists does appear to be on the rise among medium and large employers.

V.3.4 Enterprise initiatives aimed at co-workers

Disability awareness and diversity programs exist and are more likely to be found in larger companies, but the popularity of such programs is unknown. What is known from company studies and anecdotal evidence is that, following the passage of the ADA, most large and medium sized companies have held training seminars and sessions that deal with the legalities of the Act, and many have provided sensitivity training on disability issues as well. Generally, these programs are geared toward managers and supervisors, but some have provided such sensitivity and diversity training to the general employee population.

Sensitivity and diversity training is much more likely in two circumstances. First, if an employee with a particularly serious or stigmatizing disability is returning to work, it is more likely that some sort of sensitivity training will be provided to at least those employees who will have immediate contact with the disabled employee. Alternatively, such training is more likely to occur when an accommodation provided is particularly disruptive, or may lead to the perception of employees with disabilities receiving unfair advantages. If, for example, the accommodation provided to a disabled employee means that work is redistributed to co-workers, such sensitivity training may be provided to co-workers to maintain employee morale and reduce the level of misinformation spread by rumor. Unfortunately, this second type of training tends to be more reactive than proactive.

V.3.5 Evidence of the outcomes of practical programs and interventions in the workplace

No systematic evidence currently exists on the effectiveness of practical programs and interventions in the workplace. Anecdotal evidence suggests that such programs are effective, and are more effective if they are proactive rather than reactive.

V.4 WORK ACCOMMODATIONS

V.4.1 Schemes initiated by enterprises to adapt working hours and work demands

Disability leave to allow an employee ample time to recover from an injury or illness is the most common form of enterprise scheme provided to accommodate a newly disabled employee. As discussed above, the FMLA makes a minimum of 12 weeks of leave mandatory for medical and family needs, but such practices for medical necessity were widespread, particularly among large and medium-sized employers, since long before the passage of the FMLA.

With respect to job-sharing, tele-commuting and more flexible working arrangements, a combination of increases in the participation of women in the US workforce, technological innovation, economic pressures and activism by disability rights groups have all led to the development of such changes in the work environment in the US. As these alternative work practices have developed, and greater emphasis has been placed on retaining disabled employees, this general level of flexibility has been utilised to provide accommodations for persons with disabilities. In general, however, these practices have been modified and utilised to accommodate persons with disabilities, rather than developed for that purpose.

While routine overstaffing (supernumerary positions) has been common as a means of dealing with unexpected illness for some time, there is no evidence to suggest that this is a common means of providing accommodation to persons with disabilities. Generally speaking, a person with a disability will be retained in a position only if they are able to do the essential functions of the job. This may lead to a redistribution of work, where the person with the disability takes on a greater concentration of core duties that can be done despite the disability, while co-workers receive a greater share of auxiliary duties. Unless the overall level of productivity across workers remains about the same, however, the accommodation is likely to be considered unreasonable.

V.4.2 Evidence of outcomes

According to data collected for the report on family and medical leave policies, most employees are guaranteed jobs following a disability leave. Among FMLA covered worksites, 95 per cent of employees are guaranteed jobs upon return from a leave for disability, while for non-FMLA sites 87 per cent are covered (the overall coverage is 88 per cent). It is also interesting that, while fewer employees are provided pay benefits during periods of leave, such benefits are still provided to most employees in the US, even though such benefits are not required under the law. While 85 per cent of employees at FMLA worksites continue to receive some portion of their pay during their leave, only 54 per cent do so at non-covered worksites. Overall income benefits are provided for 58 per cent of workers out on leave.

What this implies is that, while the FMLA has probably had some effect on employers providing leave benefits for disabled employees, the effect should not be over-emphasized. Employers covered by the law tend to be larger employers that we know provided such coverage before the law was enacted. For these employers, the law has had little effect for employees who become disabled. In addition, the data show that many employers who are not required to provide such coverage, do so, and this suggests that other pressures, such as economic efficiency, may be the primary reason employers allow disability leaves and provide income protection.

While no data has been collected on the effectiveness of work flexibility in retaining disabled employees, anecdotal evidence suggests that such policies have been effective and are growing in use. One recent study

has surveyed public, private, and non-profit employers regarding their experience with tele-commuting. Both large and small employers were included. The study found that employers started tele-commuting for a variety of reasons. Tele-commuting was initiated to retain employees who needed a more flexible work schedule, lower recruitment and training costs, fill positions with high rates of turnover, and comply with commuter reduction air quality regulations. About ten per cent of employers indicated that they started tele-commuting to comply with the ADA. While many employers did not track whether their commuter employees did so due to disability, about 22 per cent of respondents stated that they employ tele-commuters with disabilities. And while the survey did not identify employee satisfaction with tele-commuting, employers indicated that very few disabled tele-commuters opt to return to a regular work environment.

V.5 'RETURN-TO-WORK' PROGRAMS

V.5.1 Enterprise-led 'return-to-work' programs targeted at employees absent from work because of disability

As discussed above, in addition to the more general effects of unions, the ADA and FMLA, there is a correlation between the level and financing of disability income benefits and the development of return-to-work and other disability management programs. So, as employers' perceived cost of disability benefits increases, the level of effort put into return-to-work programs tends to increase as well. Employer-financed workers' compensation is generally required and most companies will tend to have return-to-work programs for such claims. Return-to-work for non-occupational disabilities is less common but growing.

The development of return-to-work programs has thus been largely financially motivated. Since workers' compensation has been seen for some time as an area with potential cost savings, it has received most of the effort in return-to-work programs. Acts such as the ADA and FMLA have certainly worked to reinforce this effort and have served an educational role as well by prompting employers to consider the extension of workers' compensation return-to-work programs to non-occupational disabilities. Unions have no doubt played a significant role as well, as has the innovation of insurance providers and disability management consultants, but the development of return-to-work has largely been the result of employer realization that return-to-work is generally more cost efficient than employee replacement.

V.5.2 The components of enterprise-led return to work programs

Enterprise-led return-to-work programs form part of the larger claims management process, as described in V.1.1.

Employees who are unable return to their regular job due to activity restrictions may enter a modified return-to-work (MRTW) program in which they are given a light duty temporary position (see V.1.1).

Employees who are not expected to be able to return to their regular job due to activity restrictions may enter be retrained and provided with an alternative position in the company in accordance with the ADA (i.e. if retraining and an alternate position constitute a reasonable accommodation).

V.5.3 Enterprise measures to help disabled workers to find suitable employment elsewhere or in self-employment

If return to the employee's former position is not possible, and an alternative position is not reasonably viable, the employee may receive vocational counseling, and some companies will pay for limited vocational training, usually purchased from a private service provider. Out-placement services appear to be fairly common among medium to large employers who have significant human resource departments. They may assist employees with information on areas of job growth, job search techniques, developing a resume, and

they provide mock interviews and interview pointers. Vocational training services appear to be far less common. The most common type of vocational training provided is in basic business computer software usage.

V.6 MOST PROMINENT STRATEGIES

Employee assistance programs appear to be by far the most prominent strategies, with the vast majority of employers using them in some form. Safety and prevention programs are also nearly universal at least among industrial and manufacturing companies. Wellness programs have also become very popular, particularly among white collar and high technology and information industries. Moderately comprehensive return-to-work programs for employees with occupational disabilities are by far the most common. Virtually all such programs will include a disability manager who coordinates the medically justified accommodation needs with the employee's supervisor, and many have come to include the services of ergonomists or other employee health specialists. When light or modified duty is needed, MRTW will usually simply require that their former department take the employee back in a limited capacity, or subsidise the employment of the restricted duty employee in their former or some other department. When the employee is subsidised, the human resource or other disability management cost center usually absorbs the subsidy, with the employee's originating department usually not incurring any of that cost.

V.7 EXAMPLES OF DISABILITY MANAGEMENT IN PRACTICE

As was stated above, while there is a good deal of variation in how enterprises manage disability, some generalizations can be made. To give a sense of the extent and variety of programs in place to deal with disability and return-to-work, we now examine three examples of disability management at private firms. These examples focus on larger firms that have formalized disability management programs.

Small companies, and even large companies that engage in white-collar work, are much less likely to have disability management policies, or to have only informal policies if they do exist. For example, the *Full Cost of Disabilities* studies examined a large US-based international company that provides document copying and processing equipment and service, and employs some 54,000 workers across the US. Although this company engages in a range of activities that would qualify as disability management, including health, fitness and wellness programs, and safety and medical services at manufacturing plants, these activities are not centrally managed or coordinated and vary from region to region. Management of STD, LTD and workers' compensation are contracted out to third party administrators that provide little more than claims processing. There is little or no claims management within the company, and where return-to-work programs are in place, they are poorly devised and not supported by supervisors and other workers.

Another large organization, a medium sized university with more than 1,200 employees, shows how many white collar organizations tend to neglect disability management. In this organization, only a fairly comprehensive safety program for housekeeping, building services and dining departments is in place. Other basic components of disability management were either non-existent or largely ignored.

The examples that are described below thus represent three cases where fairly well developed programs are in place, in order to shed some light on the differences and similarities that currently exist. Where possible, time references are provided to indicate how new many of these programs are, and the degree to which these programs are changing.

The first case can be characterized as a paternalistic manufacturing company with a disability management philosophy that is decidedly focused on occupational injuries. The second company has a mix of manufacturing and white-collar work, and represents a fairly progressive company with a strong emphasis on health and prevention, and with *emerging* claims management and return-to-work practices. The final case study is a hospital and provides a look at an organization that one would not usually view as having problems

with disability. Though it has a largely white-collar work force, there is a good deal of stress and manual work (lifting), as well as exposure to hazardous products and substances. This case, though still developing its health and wellness programs, has instituted a comprehensive claims management and return-to-work program that illuminates the best practices in such programs. In each case we review the organization's programs in the areas of safety, health and wellness, employee assistance for psychological and emotional problems, claims management and return-to-work.

V.7.1 Case 1

The first company is a large sports and casual apparel manufacturing company located in Alabama with 17,500 employees in the US. Disability management is focused in essentially four areas; safety, claims management, wellness, and employee health. In each case, the underlying emphasis on the program is on occupational health, but the company also plays a paternalistic role in the larger community as well. The programs are the responsibility the General Manager of Human Resource Services.

Occupational disability has only been under centralized management for this company for a relatively short period of time (since about 1992). Since that time, the company has invested significant resources in developing the safety department and workers' compensation claims management. In support of these programs this company employs a company-wide system of occupational health nurses at the various facilities. Medical practitioners are available for consultations as are qualified safety personnel and industrial hygienists. The emphasis in the safety, occupational health, claims management and return-to-work programs is on occupational disabilities with a comparative neglect of non-occupational disabilities. This concern of management with occupational disabilities is not surprising given the manufacturing and distribution nature of the company, and is consistent with what is found in other manufacturing firms.

The third area of focus in disability management at this company is in the promotion of wellness and healthy lifestyles among employees. This is accomplished through company sponsorship of annual health fairs and a variety of wellness programs. The company also produces and distributes posters and pamphlets as part of an informational campaign to heighten awareness regarding health and wellness issues in daily living. The company enjoys an important place in the community since it is the major employer in the local economy in which it operates. As such, the company is concerned with local health and welfare issues since these affect the health and welfare of employees. Consistent with this concern, this company has been involved in local environmental and educational programs, both of which have spill-over impacts on community health. As a major employer and provider of health insurance, the company also has a significant influence in the local medical community. It periodically sponsors seminars with local physicians to discuss health and disability issues as well as related treatment and disability-leave protocols. This allows the company to voice concerns regarding medical practices, and to learn new ways of preventing or ameliorating disabling illnesses and injuries.

Safety and Health

The Safety and Health Department has two industrial engineers, four industrial hygiene technicians, one industrial hygienist who has a masters degree in public health and is a certified industrial hygienist, and two clerical persons. These two clerks register and enter new chemicals into the computer, oversee inventories, and handle governmental reporting requirements. The technicians spend most of their time on routine employee testing for such conditions as hearing loss and pulmonary deficits. They also are responsible for air sampling and dealing with general work-environment problems such as sick building syndrome.

In conjunction with the Safety and Health Department and its responsibilities over the work environment, an Environmental Engineering Department exists at the company as well. Generally, environmental engineering will deal with the environmental impacts of the manufacturing process outside the plant. Safety, alternatively, is responsible for environmental issues that reside within the workplace. Environmental engineering employs

a Ph.D. and two assistants who help with air and water sampling. They collect water samples where the effluent from the plants are discharged and do smokestack emission testing. Although the Safety and Health and the Environmental Engineering departments are separate, in recent years the functions of the two have begun to merge as the differences between environmental issues inside and outside the plant become less obvious.

Safety is involved with the ergonomics issues and this involvement is particularly active among jobs involving repetitive motions such as those of the sewing machine operators. Safety personnel actively design jobs to fit the individuals who will operate each position.

Safety personnel also interact with the Workers' Compensation Department to investigate serious accidents and to measure the magnitude of problems such as cumulative trauma disorders (CTD). Largely as a result of this cooperation and the resulting steps taken, the number of CTD cases has peaked and is now on the decline.

Ergonomic chairs are used throughout the company which is a designated 'beta site' for Herman Miller, the cutting-edge manufacturer of ergonomic workplace furniture. Emphasis is placed on teaching appropriate work habits, and job performance techniques are continually monitored in 'walk-around inspections'. Personal safety equipment has long been encouraged by the company but not provided at a company expense. In 1994, however, a personal protective equipment (PPE) program was instituted by company 1 for 'at risk' occupations in which employee purchases of personal safety equipment such as safety shoes were supplemented by company funds.

The Employee Relations Manager in the plant is the link between the safety department and the safety committees at the various plants. All plants are required to conduct safety committee meetings on a monthly basis. Apparel plants are also required to have monthly ergonomics committee meetings as well. Composition of the safety and ergonomics committees is the same. Each committee is comprised of a plant manager, a representative from maintenance, the plant's occupational health nurse, and hourly employee representatives from each of the plant's operational process areas. Depending on the operational complexity of the plant, each committee will have between six and 12 hourly-paid employee representatives.

All supervisors and managers receive performance appraisals which affect their compensation. In the past, up to forty per cent of manufacturing supervisors' salaries were based on the 'medical frequency rate': the rate of injury to employees under their supervision. This former policy, however, ignored overall workers' compensation costs. A key effect of this practice was to reduce the reporting of all minor accidents and work illnesses and injuries. In 1991 it was recognized that this policy was in direct conflict with the announced goal of proactively managing work disability by responding to problems before they become severe. As a result, a new 'report card' method of measuring performance in safety and workers' compensation recently replaced the former system. The new method examines five safety areas which together comprise 25 per cent of the supervisor/manager appraisal. These are:

- plant safety/loss prevention programs in place, and employee participation, awareness and documentation of the programs;
- physical compliance of plant with safety and maintenance codes and requirements;
- housekeeping and tidiness of work and non-work areas;
- injury and illness frequency rates, as compared to the averages of plants with similar operations; and
- plant workers' compensation cost per employee, as compared to the averages of plants with similar operations.

As a result of these changes in practice, injury reporting has increased, as workers' compensation costs have fallen.

As part of their general commitment to a safe and healthy workplace, the company was the first textile company in the country to become a member of the OSHA 'Voluntary Protection Program' (VPP). To become part of the program, a plant must have less than the average level of incidents for its industry for three consecutive years. The plant is subjected to a thorough OSHA audit before being admitted to the program, after which it is exempt from random inspections for three years. Thereafter, supplemental audits are conducted at three-year intervals for as long as the plant remains in the program. The audit process is comprehensive and examines not only the physical conditions at the plant, but the safety programs in place and the plant's system of record keeping on health and safety matters. Employees are also interviewed to determine their safety awareness and the depth of the company's commitment to a healthy workplace. Although admitted plants receive a three year exemption from random OSHA inspections, they are still subject to incident inspections at the request of employees.

In addition to the inspection exemption, participation in VPP replaces the generally contentious relationship between employers and OSHA, with one of good-will. This has allowed the company to draw upon OSHA for consultation on safety matters, and has given the company's management an avenue for input into proposed policies. From the perspective of employees, the program has boosted the company's image as being genuinely concerned about health and safety issues, and that has carried over into other areas of employee relations. Once admitted, a plant is given a VPP flag that is raised at the plant's induction ceremony. Both management and the employees of participating plants alike are quite proud of being participants in the program, and are anxious to call attention to the flying of 'their' VPP flag at the plant.

The company entered the program in 1986 with five eligible plants. The company had nine plants in the program in 1994 and comprised 10 per cent of all the plants in the entire VP program. The company currently has ten plants in the program, which is five per cent of the program's total.

The company's system of disability management also relies heavily on occupational nurses (OHNs) stationed at the plants. The larger plants may have their own nurse, but a single nurse may cover two or more of the smaller facilities. The OHNs also operate the system of occupational health clinics located at each of the company's plants. The plants are all similarly equipped regardless of plant size. Nurses who cover more than one plant, and thus more than one clinic, are scheduled to be in each clinic on given days to cover routine activities, but are on call for each of their clinics to cover emergencies. In addition to their duties relating to work injuries and illnesses (see V.1.1), the nurses are also the facility's liaison with insurance administrators and rehabilitation providers.

To assist the OHNs in their duties, the company also retains an occupational physician, whose office is offsite, but nearby. He performs various functions. These include the writing of protocols for treatments ranging from cumulative trauma disorder to respiratory illnesses. He works directly with the OHNs and provides continuing training of nurses who, in turn, train employees on medical and treatment issues. The doctor also reviews workers' compensation treatments on request and is available for consultations on all medically relevant issues. He also performs work-site inspections to evaluate duty restrictions and accommodations. As is the case with the occupational health nurses, although he is involved in prevention and safety matters, the majority of his time is spent on workers' compensation matters.

Wellness and Health Promotion

The company is the major employer in the local economy, where it employs about one-half of the local residents, and thus plays a central role in the community. As such, company management's concern with local health and welfare issues is prudent in that community issues are largely synonymous with the health and welfare issues of the company work force. As a result, wellness programs take on a broader scope for the

company, in that both internal company policies and the company sponsored community programs have direct impact on the employee population.

Internal wellness programs are designed to promote wellness and healthy lifestyles among employees and their families. Programs in 1994 included the sponsorship of health fairs, a seat belt program run at no-cost to the company by Alabama state troopers, a flu vaccination program, and a federally mandated 'Drug Free' program which the company is required to provide as a government contractor. The American Cancer Society has also assisted the company in providing a smoking cessation program, and has provided speakers and materials from their Smoke-Enders program free of charge. The company also provides up to \$300 per employee per year for physicals under the wellness program.

Handle With Care

The company is particularly proud of its *Handle With Care* program for expectant mothers. The program grew out of an unfortunate incident at the company in which an employee gave birth to a severely ill child that later died. During the child's short life, however, tremendous personal and financial costs were incurred. Most unfortunate, was the determination that the whole ordeal may have been prevented with proper prenatal care. Out of this tragedy, the *Handle With Care* program was created.

Under the program, expectant mothers are asked to call a toll-free number and speak to an obstetrical nurse as soon as they know they are pregnant. Through a series of questions, the nurse determines whether the pregnancy is low, moderate, or high risk. All women who participate are then sent an educational packet that includes a copy of the book *What to Expect When You Are Expecting* that addresses the typical questions and concerns associated with pregnancy. For women in the moderate and high risk groups, the nurse also coordinates with the treating obstetrician/gynaecologist to assure proper treatment is provided. To encourage participation in the program, expecting mothers who take part are also given a gift (stroller, car seat, etc.) valued at \$80. Since the program began, there have been 119 women with moderate and high risk pregnancies, all of whom have delivered healthy babies.

Communication

As part of more general wellness policies, the company's Communications Committee prints, acquires and distributes posters and pamphlets as part of an informational campaign to heighten awareness regarding healthy life styles. Internally produced materials include topics such as: proper emergency room usage, walking as part of a healthy lifestyle, the ten commandments of good health, common questions about high blood pressure, flexibility and exercise, and stress awareness. Externally produced materials distributed through the company include those produced by the American Cancer Society and the national wellness magazine, *Vitality*.

Employee Assistance Program

The employee assistance program (EAP) at the company is generally provided at no cost to the employee. Areas that have a high concentration of facilities, such as those in Alabama, North Carolina, or in the Florida Panhandle, are provided with EAP services directly by the company through a system of in-house professional counsellors. For outlying facilities, the company attempts to provide employees with service parity through extended health care benefits. For these employees and their families, the first five outpatient visits to any psychiatrist and psychologist are covered 100 per cent by the health plan for up to \$100 per visit.

The EAP provides free diagnostic, counseling and referral services. Members of employees' immediate families are covered under the plan, with no set limits on the number of visits per year. The EAP is designed to assist employees and their families with personal problems before they have adverse affects on job performance. Assistance is provided for the full range of personal, family, marital and legal problems.

Participation is generally voluntary, but employees experiencing performance problems may be required to participate in the program at the direction of their supervisor. Regardless of the circumstances of participation, the personal information obtained through the program remains completely confidential.

Claims Management and Return-to-Work

Non-occupational disability

Non-occupational disability at this company is largely administered rather than managed. Formally, all leaves of more than three days require a physician's note, and all absences that are not cleared as a formal leave, medical or otherwise, are reviewed under the absence disciplinary policy. While this policy is not always followed in the case of salaried employees, it does appear to be followed rigorously for hourly employees. For non-work disability, the disciplinary guidelines under absence policies are the only disability management policies followed at the formal level. At an informal level, workers' compensation claims management is housed in close physical proximity to the STD/LTD administrator; this has led to greater claims coordination, nearly eliminating double payments, but this cooperation has not led to enhanced return-to-work policies for non-occupational disabilities.

All individuals whose leave is expected to last more than 14 days are sent an STD claim form that includes the physician release. STD claims are divided into two groups depending on whether the absence is expected to last more than two months. All persons with leaves that fall into this latter group are automatically sent an LTD claim form after two months, without any further communication or verification. There are no physician consultations, or guidelines used to verify severity or confirm estimated leaves for claims. Possibly as a result of this general lack of management, since switching an outside insurance carrier for LTD, the denial rate on LTD claims increased dramatically.

For all non-occupational disability, policy is that employees must be 100 per cent recovered prior to their return, and alternate duty (see below) is not available. Personal (medical) leaves are granted for up to one year, during which the employee can return to their former (or similar) position, and retain their seniority. Standard pregnancy leave is six weeks before and after delivery, with up to eight weeks provided following a cesarean section.

Although there is little formal disability management of individual claims for non-work disabilities, the company's central role in the local economy does provide it with significant influence in affecting acceptable leave and treatment policies and guidelines for physicians. This is particularly true for doctors on the companies' Preferred Provider Organization (PPO) panels, but there is also a spill-over effect to the medical community at large. Physicians tend to be responsive to company requests given the significance of the company employees in the local medical community.

Pregnancy tends to be an area that is generally handled more aggressively, and gives an example of how the company is able to affect the behavior of physicians. Due to the preponderance of women of child bearing age in the company's work force, pregnancy is a significant disability cost. In response to the sense by management that leaves had become excessive, the company began meeting with PPO physicians. At these meetings, physicians were requested to be more conservative in their pregnancy leave durations, and to provide such leaves only for medically relevant purposes. Physicians that failed to comply with these new guidelines were told they would be at risk of being dropped from the PPO panel. Given the preponderance of the company employees in the population, losing PPO status would have a significant impact on a physician's practice. Thus, the company's position in the local market enabled them to affect disability and return-to-work without concentrating on individual claims. It is unknown whether changes in these practices had any adverse affects on the health of employees, but job retention and return-to-work were believed to have been improved.

Workers' Compensation Disability Management

In contrast to non-occupational disabilities, the system of disability management for occupational injuries and illness is quite sophisticated. All work injuries are to be reported immediately after the occurrence to the employee's supervisor, who is authorized to provide first aid. For minor injuries, only a first aid form must be completed by the supervisor. If the injury is more complicated, or the course of treatment questionable, the employee is referred to the Occupational Health Clinic or transported to the local emergency room (ER), when appropriate. For injuries sent to the ER, the employee must visit the company Clinic on the following day for an in-house evaluation. In either case the supervisor is responsible for ensuring that the employee brings an injury form to the Clinic which asks for details surrounding the incident. It is at this point that the paperwork for a workers' compensation claim is initiated by the occupational health nurse (OHN). The employee's supervisor must also conduct a formal accident investigation and forward the results to the Area Industrial Relations Manager, the Plant Employee Relations Manager, and the Corporate Safety Director within twenty-four hours of the incident.

Under Alabama law, the company has the right to choose the initial treating physician following a work related accident or illness. If the employee is unhappy with the doctor chosen for them, they can choose another physician from the company's panel of physicians. The members of this panel are determined by the company's workers' compensation management team, so that a degree of control over the selection of workers' compensation health care providers is maintained throughout the duration of the claim. For cases that go to litigation, however, the workers' compensation board may select an independent medical examination (IME) to settle disputes.

Once the injury or illness has occurred, the system of disability management relies heavily on occupational nurses stationed at the plants who work closely with the employee relations managers. The nurses communicate with employees and their doctors and supervisors and help to coordinate the care provided to the employee. They participate extensively in decisions regarding rehabilitation. The company panel physicians also tour plants to familiarize themselves with the physical demands of jobs, and the company video tapes jobs and shows them to physicians to help in their assessment.

The Alternate Duty Program

Individuals with occupational disabilities are eligible for the Alternate Duty Program which has been in existence since the beginning of 1992. Before that time, people who were injured on the job were often put on 'light duty'. Once there, such individuals tended to remain in this status indefinitely. Company management is proud of the fact that, before the new program began, there were 80 persons on light duty and that, once the program got underway, that number was immediately cut in half.

Under the Alternate Duty Program a person who is deemed capable of returning to work but not able to carry on the duties of their regular job is put on some alternate duty. The OHN, in consultation with the attending physician, conducts a medical assessment to determine appropriate work restrictions. The nurse then works with the supervisor and employee relations manager to determine if an appropriate alternate duty position is available. The individual, once in the program, receives regular pay for the first 10 days. After ten days, however, wages are reduced to the minimum rate at the company (\$5.50 an hour), where they remain until the employee returns to their former duties, quits or terminates employment. In addition to this minimum salary, however, these employees continue to receive $66\frac{2}{3}$ of the difference between \$5.50 and their pre-injury average rate through workers' compensation benefits.

How alternate duty positions are defined is not consistently interpreted by management. Assessments by managers ranged from defining positions as legitimate productive work to simple 'make-work' duties. Regardless of the productivity implications, the program is as much a disincentive mechanism to motivate rehabilitation, as it is a way to get persons back to work for therapeutic reasons. Employees on alternate duty

are reviewed every two months by the medical department to determine whether continued alternate duty is appropriate.

The incentives of supervisors and managers to assist employees in returning to work are somewhat mixed. While workers' compensation costs are charged back to the employee's plant where the injury or illness occurred, the alternate duty salaries are charged to the plant in which the employee finds employment. Thus, if the employee finds employment under the alternate duty program outside of the original plant, those salary costs are not charged to the originating plant. The workers' compensation department distributes a detailed listing of alternate duty activity by plant and cost center for management review and accounting purposes. There does not, however, appear to be a strong concept of a cost center in association with disability, so that supervisor incentives to get employees back to their former duties are not strong. The net effect is that return-to-work incentives rest primarily with employees, and those incentives have a strong negative (if not punitive) character.

Whether they participate in the Alternate Duty Program or not, once claimants reach maximum medical improvement (MMI), they are evaluated for return-to-work at the company. Under this policy, the appropriate plant manager and employee supervisor evaluate the limitations of the employee, if any, and determine if a reasonable accommodation in accordance with the Americans with Disability Act is possible. If accommodation is not feasible, the individual is placed on a 90 day 'job placement leave' during which they may attempt to secure other employment at the company. After 90 days, however, if alternative company employment has not been found, they are terminated. Although in some permanent disability cases termination does not end the company's workers' compensation administration and payment responsibilities, it does end the management of the case by the company.

V.7.2 Case 2

The second case study is a high technology company located in Colorado. It employed about 7,300 employees, about 4,000 in the Denver area with the remaining employees in field offices throughout the country. The company develops, manufactures, sells and services a variety of tape and disk storage products.

In general, general disability management at this company is not a well developed concept. Rather, the focus is on prevention, and on general health and safety. So though disability management does exist, it is not part of a comprehensive and cohesive program. Many of the policies and practices are informal and *ad hoc* while other policies, though formally designed, are not well integrated into related programs.

Safety and Health

Safety, Ergonomics and Environmental Affairs (SEEA) is part of the Risk Management Department which is staffed by eleven individuals with a variety of backgrounds and responsibilities. The members of the staff include an ergonomist, two work-site evaluation administrators, an industrial hygienist, a hazardous materials manager, a construction safety manager, a pollution control and environmental standards specialist, and a chemical safety specialist. There is also a manager responsible for the training of the 50 company Emergency Medical Technicians (EMTs), Corporate Emergency Response Teams (CERTs) and Advanced CERTs. These individuals attend ongoing training of one hour each month.

Prior to 1996, the Department also included a safety engineer, but those duties were placed under the responsibility of the ergonomist. In addition to being the liaison with the Occupational Health and Safety Administration (OSHA), responsible for general employee protection and maintaining the OSHA logs, the ergonomist is also responsible for 'process safety' which involves designing and redesigning work duties and processes to be safe and ergonomically proper. In this capacity the ergonomist coordinates work among outside work-site evaluation contractors, occupational therapists, the industrial hygienist and the chemical and environmental control specialists in designing and modifying the production process.

The ergonomist is also critically involved in evaluating work accidents and redesigning duties to allow returning employees to cope with physical limitations and restrictions. In this capacity, the ergonomist receives copies of the treating physician's work restrictions for returning employees, and then works with managers to develop appropriate modifications to the employee's job. The demands of the modified job are then detailed and provided to the treating physician for approval.

SEEA also supports a program designed to reduce employee fatigue and repetitive stress injuries. Employees are taught stretching, relaxation and exercise techniques that can be implemented at their desk or workstation, and they are then encouraged to participate twice each day in the program for ten minutes each time. In addition to providing direct effects in terms of relieving physical and mental stress, the program is credited with raising employee awareness regarding ergonomics and body mechanics.

In addition to general plant safety equipment, the company provides manufacturing employees with personal protective equipment under the safety program. Such items would include safety shoes and glasses, hard hats, respirators, rubber gloves for chemical exposure, and thermal gloves for heat exposure.

The safety department is also responsible for safety training for all employees for such things as Video Display Terminal (VDT) safety. All manufacturing employees also receive 2¹/₂ hours training each year in 'hazard communication', as well as a course in safe body mechanics and back injury prevention.

Wellness and Health Promotion

A commitment to wellness at this company reflects a combination of the local Colorado culture, the cultural values of technology industries in general and basic strategic business goals. The Denver area, in general, tends to attract and support a variety of sports enthusiasts and individuals drawn to the great outdoors. The climate and environs provide almost constant sunshine combined with mild temperatures and access to the finest recreational facilities and resorts and to some of the most scenic country found anywhere in the world. The workforce at the company is thus made up of individuals who are active and place a great emphasis on health and physical activity.

Similarly, the computer industry tends to draw baby-boomer and post-baby-boomer 'technologists' who place great emphasis on laid-back non-traditional work environments. Add to this the highly competitive nature of the computer and computer-support industries, where employers must compete for the best and brightest of these non-traditional professionals, and the work environment becomes one that is more akin to a university campus than a corporate center.

Wellness and the health promotion services, thus, are not so much a concept that must be 'sold' to the company workforce but are, rather, services provided to satisfy well-established demands from the employee population. In this environment, the company provides an extensive array of classes, services and facilities to meet the needs of its employees. Classes cover topics that include parenting of teens, divorce, menopause, defensive driving and seat belt safety, AIDS awareness, depression, CPR, nutrition, and diet. There is a well-baby program for expectant mothers as well. Most of the classes are free.

The company also offers assistance with stress management and sponsors annual health fairs (including flu shots, body fat composition screening, breast, prostate, cholesterol and blood pressure screening, health history, vision, hearing checks) as well as rotating free screenings for blood pressure, 'body composition', cholesterol, and mammography. Standard massage is available at the wellness center, and on-site 'chair massage' is available to employees for \$12. The wellness center also provides state-of-the-art fitness and recreation facilities that include weights, an Olympic length swimming pool, and basketball and racquetball courts. Swimming lessons, weight training, general fitness training, aerobics and aquatics are all available, as is participation in corporate sponsored team competition for a variety of sports. The company also sponsors a five-kilometre race with prizes based on predicted finish times rather than speed, to promote consistency in

exercise programs. The wellness center publishes a guidebook to wellness center activities to keep employees informed of the myriad of services available.

Employee Assistance Program

The company provides employees at the main facilities with both on-site and off-campus counselling and referral services to assist them with personal problems. A toll-free number is provided for field employees to access similar counselling and referral services. The Health Services department employs four experienced professional adult mental health therapists who are trained to help employees with range of problems including marital and family relationships, mourning and depression, anxiety, and substance abuse. The program is confidential and voluntary, but managers and supervisors are encouraged to assist employees in accessing the program whenever personal problems become apparent and begin affecting job performance. Initial counselling sessions and referrals, if necessary, are provided free of charge to employees and their families. Managers are expected to alter an employee's work schedule to accommodate up to four one-hour counselling sessions over the first month of treatment. If an outside referral is indicated, the EAP staff attempt to direct employees to providers that accept the company's health insurance.

Claims Management and Return-to-Work Programs

Though occupational and non-occupation programs and procedures are different, the claims management process is fairly integrated, though passive in nature.

Employees with workers' compensation claims must file the appropriate state form within four days of an injury or the onset of a occupational illness with Health Services. Due to the nature of the work at the company most of workers' compensation claims are for repetitive stress disorders, rather than acute injuries caused by accidents. As a result, most claims do not involve lost time but do require duty restrictions, often for prolonged periods of time.

Since the company has the right of physician choice under Colorado workers' compensation laws, all claimants are initially evaluated by the Health Services department. When medically indicated, one of the company staff physicians may refer such workers to an appropriate company approved specialist.

Due to the high incidence of cumulative trauma disorders, a protocol has been developed for treating such problems. Employees first receive physical therapy along with an ergonomic evaluation of their work-site and duty restrictions as necessary. If the problem persists, a 'nerve connection study' is ordered, followed by an X-ray study. If the problem continues, the employee is referred to a company approved specialist. It is only at this point that employees who fail to improve are considered for a permanent partial disability award.

Management of workers' compensation claims is handled by a company physician who functions as the case management review officer. All employees out on a workers' compensation leave are seen by the company doctor every four to eight weeks. The doctor also reviews each employee's claim file at least once a month.

All employees with non-occupational disabilities are required to submit two forms to the medical leave administrator. These are a 'Request for Family/Medical Leave' form, completed by the employee, and a 'Physician's Statement' form completed by the employee's doctor. The physician's statement includes a request for the release of records, the diagnosis of the problem, the treatment planned, and the estimated duration of leave required. It also requests the physician to provide written authorization when the employee is able to return-to-work. The medical leave administrator is responsible for monitoring such leaves in terms of duration, and may consult with the company physician in cases that are more complicated, unusual, or that appear to be highly questionable. When the return-to-work date arrives, the physician must provide a release, either with or without restrictions, or an extension of leave if indicated.

For all employees that are able to return-to-work following a disability, the doctor is responsible for working with the manager, and outside physician (when applicable), in determining the duty restrictions for the employee. The manager is required to submit a form detailing the duties and activities involved in the employee's position. As part of the evaluation process, the company doctor may call in the company's ergonomic specialist for a work-site evaluation, or may use outside consultants when appropriate. Once the proper restrictions are determined, the manager, employee, and outside physician are notified and the manager and physician are asked to sign off on the appropriateness and duration of the restrictions. The employee's progress continues to be monitored until the restrictions are lifted.

Although all worker's compensation claims are under regular review, the style of the review is more from the perspective of monitoring durations, than complete disability management. As such, even though clear procedural guidelines are in place for gathering information and reviewing leaves, and treatment protocols exist for common problems such as cumulative trauma disorders, the course and appropriateness of treatment and the restrictions imposed by outside physicians are not questioned by the review team. The monitoring of treatments is left to the third party administrators of the company's health care plans, and the activity restrictions indicated by physicians are taken as given. Once these restrictions are identified, the proper duty restrictions are generally designed without further consultation.

The Transitional Duty Department

Employees who are able to continue working or return-to-work following a disability, but who cannot return to their regular job due to activity restrictions are referred to the Transitional Duty Department (TDD) in the Risk Management department. The program is run by the department's Transitional Duty Specialist. This individual reviews the employee's restrictions and determines whether one of the 15 temporary positions in the TDD pool is appropriate. These positions are light duty jobs in the company's benefits department, traffic department, and other office jobs. Each job has had a full work-site evaluation by either an ergonomist or occupational therapist. When entering TDD, a copy of the selected job is faxed to the employee's physician along with a letter describing the objectives of the program. If the physician notes additional restrictions based on the specific position identified, additional accommodations may be made. The employee is sent a packet of materials outlining the program and position chosen.

Once the employee's physician signs off on the TDD job, the employee is required to report for the job or be terminated. The employee receives their normal rate of pay while working in the TDD position, and may be assigned a new job every 30 days as the needs of the company dictate, subject to the new position meeting the employee's restrictions. The cost of the employee's salary while on a transitional duty is posted to the Transitional Duty Department rather than the employee's original cost center. The Transitional Duty Specialist is also responsible for reviewing the employee's performance, and can terminate the employee if they fail to meet the company's minimum standards for attendance, attitude or performance.

In addition, the Transitional Duty Specialist also monitors the progress of the employee's restrictions every two weeks. As the employee's condition improves, this individual works with the employee, the employee's manager and their physician to return the employee to their regular position, possibly with restrictions, at the earliest feasible time. If the manager or physician balks at receiving a rehabilitated employee, the company ergonomist will be consulted to conduct a job analysis and settle restriction issues. The employee can generally participate in the TDD for a maximum of six months. Though some extensions may be granted, if employees are still unable to return to their former positions at the end of six months, they are terminated. In the case of occupational injuries, the termination may also include a negotiated settlement under workers' compensation.

Employees that do return to their former position generally go through a process of work hardening in which their daily hours of work at that position are gradually increased over time. They work in their old position for two hours per day the first week, four hours per day the second week and six hours per day in the third

week. The remaining time each day not spent in the former job is spent in the TDD job. Through this process the ergonomist is consulted to determine if the employee is progressing, and at the end of the third week a determination is made whether the employee can return to the former job full time. Most of the individuals in the TDD are on workers' compensation, but about 25 per cent are on STD. All TDD participants are treated alike, regardless of whether their disability is occupational or not.

V.7.3 Case 3

The third case study is a non-profit organization made up of two Ohio hospitals employing a staff of 2,700. The hospitals are part of a network of over 20 acute care and long-term facilities sponsored by a parent organization in five states. Management of the two Ohio hospitals, however, is largely autonomous.

Disability management at the hospitals is in the hands of a Disability Management Coordinator. This individual designed the current disability management program, who was hired on a consulting basis for a period of two years to implement and manage the program. The program was 'sold' to the hospitals under the expectation that the program will save the hospitals a considerable amount of money. Since the permanency of the Coordinator's tenure is dependent on the achievement of agreed-upon savings, he has the proper incentives to accomplish the tasks.

Safety and Health

The Safety Department within the hospital system administers a centralized program that oversees policy at both hospitals. Given the level of patient lifting required in so many of the hospital functions, the department provides general safety and injury prevention training for new and existing employees that focuses on body mechanics and proper lifting techniques. New employees in positions with lifting or other physically demanding tasks identified in their job descriptions, also receive a 'Lift Task' evaluation. Based on age and gender norms, this evaluation provides non-mandatory recommendations to the Employee Health Nurse, who in turn may recommend further training for the employee. As part of the safety department's commitment to a safer workplace, the safety program also provides Video Display Terminal (VDT) safety classes for selected employees and the evaluation of employee work site ergonomics, providing modifications where necessary.

The Safety Department also coordinates a Safety Committee with 20 members from each hospital, and an Employee Safety Sub-Committee with a total of 11 members from both hospitals. Membership of these two committees is divided among management, supervisory and hourly employee ranks. The groups monitor and evaluate work-related health and safety conditions and provide an informational link between the management of the two hospitals and between the Safety Department and the general employee population. This linkage is enhanced by the fact that a number of members serve on more than one committee. As a result, 36 individuals fill these 51 committee positions. Each of the groups meets monthly to discuss safety issues and to share new safety information which is then related back to the rest of the workforce.

Since mid-1993, an injury prevention program has also been available. The program grew out of the more general safe body mechanics orientation training given to all employees. Under the program, 'at risk' individuals are identified by the Employee Health Nurse following the 'Lift Task' evaluation, as described above, or by their supervisor through the safety committees. Candidates include employees who have injured the same body part more than once, have a history of back injury, work in a job that is prone to injury, or workers who appear to have poor flexibility, body mechanics or safety habits. Once identified, such at-risk employees are scheduled for evaluation and training in the Injury Prevention Clinic and are given a pre-training questionnaire to determine their awareness of safety/injury issues.

The Injury Prevention Clinic is held monthly and consists of a two to three hour session designed to provide hands-on, in-depth training with close supervision, to groups of six or fewer employees. This intimate format allows the trainers to deal with problems specific to each individual, their specific job and the hazards of their

work environment. In addition to identifying potential problems and teaching biomechanical techniques, the Clinic also provides participants with personalized stretching, flexibility and exercise tips to reduce the potential for future injury. Human Resources pays for the cost of the program, while the salary costs for participating employees are charged back to their departments.

Wellness and Health Promotion

The programs in place at the hospitals are not typical of what is generally seen under employee wellness and health promotion. Rather, the hospitals operate an array of health and rehabilitation programs for the general public in which employees are able to participate, usually at a discounted or no-cost rate to the employee. But in general, the programs are not targeted specifically at the hospital work force. For example, the hospital operates a personal fitness program, a prenatal/postnatal/arthritis aquatic (pool exercise) program, and a stop smoking program. The cost per session to the general public for these programs is \$125, \$56, and \$120 respectively. While they receive no discount for the aquatics program and a \$25 discount for the fitness program, employees can participate in the stop smoking program without charge. Participation is completely voluntary and, for 1994, there was virtually no company sponsored effort to include employees in these public programs.

In 1995, a new position, Coordinator of Corporate Injury Prevention and Wellness, was created to address the corporate and employee perspective of safety and wellness more directly. The goal is to develop a healthy lifestyle awareness program for employees that focuses on education and individual responsibility, and falls in line with a more traditional wellness format. Although the target population remains outside companies and their employees, the new program has heightened interest in developing programs specifically for the employees of the hospitals as well.

Employee Assistance Program

As was the case with the wellness programs described above, the Employee Assistance Program (EAP) is a program which was designed and marketed for the local community but one in which hospital system employees may also participate. The program utilizes the in-house services of the Talbot Center EAP and is meant to provide 'a practical, positive and constructive method of assisting employees with personal problems...' that result from financial, family or substance abuse problems which affect the employee or their job performance. The program is available to all full and part-time employee and their dependents. The hospital pays for the initial EAP assessment and referral only. Employees and their insurance (if covered) are responsible for any additional costs.

The format of the program poses potential problems for its effectiveness. EAP programs are generally not on-site, and usually provide for employee anonymity from the employer perspective. The employee is usually able to contact the EAP service directly without employer notification, and the identity of a participating employee is generally not provided by the EAP to the employer at any point in the process. The hospital system program differs from this more general model in that, while it is 'strictly confidential', it may not be anonymous. Employees interested in using the EAP typically contact their supervisor or the Human Resources Department to find out how to attain services. Once contact with the EAP is established, services are provided through one of the hospital's care centers. Given the limited services provided, and the potential lack of anonymity in the process, it is not surprising that participation in the program is limited. The program is, however, recognized by management to be under-utilized. Facilities have recently been moved off-site, and there are plans to increase investment.

Claims Management and Return-to-work

The Disability Management Coordinator chairs the Transitional Work task force. This group considers disability cases on an individual basis. The task force is comprised of a core group consisting of the

Coordinator, the Rehabilitation Case Manager, and the Employee Health Nurse. It meets on alternating weeks with the respective Benefits Specialists and key human resource managers of each hospital. At these sessions, every open disability case is discussed, and a plan of action initiated or updated. The task force operates under a true team philosophy, where the responsibilities under the action plan are assigned and coordinated so as to effectively attain the desired results, with deference to the expertise and workload constraints of the various team members.

All disabilities, whether work-related or not, are processed by the Benefits Specialist in the Human Resource Department. For non-occupational disabilities, the employees are required to provide a leave of absence (LOA) form for all absences of seven or more days. The LOA form includes initial date of absence and the doctor's certification of disability and expected absence duration. In addition to the LOA form, persons who become ill or injured on the job are also required to complete an incident report within 24 hours of the event, outlining the circumstances of the incident. This report also requires a supervisor's statement on days missed by the employee, and suggested preventative measures for the future. Also required is a statement by the employee's treating physician or the Employee Health Nurse, noting the prescribed treatment, expected return-to-work date or anticipated time off work, and information on scheduled follow-up appointments.

Work-related illnesses and injuries also require additional administration due to safety and health implications and legal requirements under the workers' compensation law. Since the hospital system is self-insured and utilizes an outside ('third party') insurance administrator (TPA), the Benefits Specialists work as liaisons with the TPA in getting the necessary paperwork completed. They obtain incident reports, maintain the Occupational Safety and Health Administration (OSHA) incident logs, and provide the necessary claim forms to employees. While the hospital assists the TPA in getting the proper forms completed, the TPA is responsible for working with employee and physician to obtain the necessary claims-processing information. The Benefits Specialists also serve on the Safety Sub-committee and are responsible for providing current hospital-wide information on work-related disabilities to the Sub-committee for review.

The function of the TPA is largely administrative and this has become a point of contention under the new aggressive style of management at the hospitals. Part of the problem stems from a lack of local control over the TPA, whose contract is negotiated and managed by the hospitals' central parent organization. But it is also believed that the incentives built into the contract may be flawed. Under the current arrangement which has existed since the early 1960s, a portion of the TPA's fee is based on the level of workers' compensation reserves. This is thought to work as a disincentive in eliminating individuals from the long-term benefit rolls. The Disability Management Coordinator in the hospital system would like to see this changed to a flat fee per claimant arrangement. It is believed that this would then provide the TPA with an incentive to become more aggressive in determining maximum medical improvement (MMI) and in moving claimants out of temporary total disability status and either back to work or into case settlement, which is seen as a lower cost alternative.

Beyond these claims processing functions, all disabled individuals who are not expected to return immediately, are sent a disability information packet that includes:

- an insurance short-term disability claim form and explanatory letter;
- a letter from Disability Coordinator introducing the Transitional Work Program (TWP), and notifying the employee that they will be contacted by a member of the TWP management team to discuss return-to-work options and the need for management access to medical records;
- a medical records release form;
- a Transitional Work Program brochure; and

- the Disability Coordinator's business card.

The Transitional Work Program

The Transitional Work Program (TWP) was developed by the Disability Coordinator and has been in place only since July of 1994. The program works to accommodate temporarily and permanently disabled employees to enable them to return-to-work at their fullest capacity and at the earliest point in time. Priority is given to returning employees to their former positions and schedules, but a full range of alternative jobs and schedules are considered as well. These alternative jobs and schedules may be temporary for the purpose of work hardening and rehabilitation, or they may be adopted permanently when return to the original position is not feasible. If accommodation is not feasible within the hospital system, the program will also assist the employees in finding work outside the hospital. The stated goal of the program is to 'return the employee to his/her own position or a similar alternative permanent position within 12 weeks of return-to-work'.

The current Disability Management system is sensitive to the incentive issues facing the injured or ill employee and their supervisors. If employees are unable to return to the former jobs in light of their condition and suitable, possibly lower paying, positions are available, they would be placed in these alternative jobs. Under the terms of the contract with the STD/LTD insurer the 50 per cent (or optional 60 per cent) STD/LTD benefit rate is paid on the basis of the wage loss suffered by the employee (the difference between the new wage and the wage of the old job) as a partial disability benefit.

Thus, the losses involved in moving to a lower paying job is cushioned by the modified STD or LTD payment, but the employee still retains an incentive to return to the former position at the hospital. This policy is intended to provide productive employment for restricted employees, but is also meant to retain the habit of work as an instrumental component in speeding the recovery of employees.

In addition to this carrot, there is also a stick. An employee who is found to be capable of returning to the alternative job and refuses to do so, may be severed from the payroll, losing not only the job, but eligibility for the disability benefits as well.

Recent changes also enhanced the incentives faced by supervisors. Under a previous system in place until 1994, after an absence of ninety days the salary of employees was transferred to the Human Relations cost center. Thus, after this three month period, the employee was no longer an expense to the original cost center and the supervisor had no great incentive to take the person back.

These systems changed in 1995. The essence of the change is that the employees out on disability benefits remain in the cost center of the old department unless transferred out permanently. An employee transferred to a lower paying job will receive their old salary for a period of six weeks and then the salary for their new job thereafter. As noted above, the employee may also receive partial benefits under the STD and LTD insured plans. The system has only been in effect for a short period of time but seems to be saving the hospital money; the projected savings, as envisioned in the contract between the Coordinator and the hospital, appear to be on target. The supervisors interviewed appear to know about the system and how it works in the case of their employees and the implications for their budgets.

One charge nurse illustrated the differences vividly. She stated that she was always firmly of the opinion that there could be no such thing as 'light work' for a nurse under her supervision. All nurses were required to lift patients and, if a nurse was not capable of such lifting tasks, there was no alternative work in her department. She was confronted with an actual case of a nurse with a back injury who the Transitional Work Team found to be capable of returning to work with a work limitation. The charge nurse said there was no work in the department and the nurse was slated for assignment as a unit clerk in another department. When the charge nurse was informed that her departmental cost center would bear the cost of the salary being paid to the nurse,

she changed her mind. To pay for the services of a unit clerk in another department made no sense to her and she found comparable work in her department and things worked out well. The moral is that economic incentives, if properly structured, can bring enlightenment and unleash creativity.

Obviously the way employees are utilized will differ from department to department and from supervisor to supervisor. One of the advantages of the way the system is administered at the hospitals is that there are no rigid rules laid down that all departments must abide by. This fluid system, however, requires a solid foundation through the development and execution of the action plans of the Transitional Work Team. The supervisors appear to have confidence that the cases have been investigated and that, if an employee is deemed ready to return-to-work with certain limitations, that information can be relied upon.

It is not always a matter of transferring a person to a different job. In the Emergency Department, for example, a nurse off for four months was brought back and placed in the triage unit where the other nurses were required to assist him in heavy lifting tasks. Such an assignment brings problems that are not easily solved. The triage unit is a desirable position and allocating it to a nurse simply because that person has a physical limitation can cause morale problems. Admittedly, that is a problem that defies simple solutions but is certainly minimized if the co-workers have confidence that the employee is genuinely limited and not malingering. Such assurance can never be given with certainty but the system is one where experienced hands, from the disability benefits persons to the members of the Transitional Work Team, have earned the confidence of employees at large that they have done their best to investigate and check cases.

Each open disability case is discussed on a bi-weekly basis in TWP task force meetings. The purpose of the task force is to bring together all of the specialized skills needed to access the full spectrum of rehabilitation and return-to-work options for a disabled employee. The team includes the core group; the Disability Management Coordinator, the Benefits Director, the Rehabilitation Case Manager, and the Employee Health Nurse. The task force also includes members specific to each hospital; recruitment directors, human resource directors, and employment specialists. These people are brought together with the benefits administrators who maintain the case files. The team is thus able to discuss a full range of return-to-work issues including clinical diagnosis, physical rehabilitation, occupational rehabilitation, job requirements and modifications, and job transfer alternatives. An action plan is devised and responsibilities under the plan are assigned. The core group convenes each week and includes the members from each hospital on an alternating basis.

Subject to individual circumstances, telephone contact is usually made with the employee shortly after the disability begins. This is done both to voice concern and affirm the hospital's support, as well as to exchange information on the disability and return-to-work options. Often, a member of the team (usually the Employee Health Nurse) will also visit the employee to further emphasize the hospital's concern for the employee's well-being and its interest in getting the employee back to work as soon as is prudent. The employee's physician is usually contacted as well to develop a dialogue on the employee's medical needs and restrictions. If deemed necessary, a meeting between a member of the core group (usually the Rehabilitation Case Manager) and the employee together with their physician may be scheduled as well. Such meetings have proven useful in attaining a fuller understanding by all parties concerned of the range of potential return-to-work options. While members of the team tend to take on those aspects of the disability management that are most consistent with their individual strengths and backgrounds, the process remains fluid so that work assignments also reflect workloads and a need to deal with the management of disability plans in a timely fashion.

As employees approach the 45th day of a period of disability that is not work-related (and thus not covered under workers' compensation), the Benefits Specialist coordinates the filing of STD claim forms with the STD insurance provider. When the STD filing process is complete, a copy of the STD claim is provided to the Disability Management Coordinator. Although the claim has been turned over to the STD insurance provider, the employee continues to be reviewed in the regular TWP meetings and transition to STD has little effect on this process. Since the STD insurance provider insures LTD as well, Benefits Specialists serve only

a monitoring and assistance function as claims reach the five-month mark and begin the transition to LTD. At this time, the insurance provider will also assist the employee initiating the Social Security Disability Insurance (SSDI) application process. Again, although there may be additional return-to-work activity initiated by the insurer, all employees continue to be evaluated and managed through the TWP task force regardless of the length of their disability.

The logical next step to complete the incentive structure would be to charge the costs of direct benefits to the department involved. That is not now being done but it is being contemplated as a desirable change for the next fiscal year.

V.8 DEFINITION AND ASSESSMENT OF DISABILITY

V.8.1 The effect of perceptions of ‘disability’ on enterprise job retention programs

Certainly non-visible disabilities present problems. There is far less patience in the system and by co-workers for such disabilities, since they are often perceived as being associated with misrepresentation. Psychiatric disabilities, especially those involving stress and depression, and those associated with pain, such as back pain and cumulative trauma disorders, are the most prevalent of those which suggest that the individual is being less than forthright. Unfortunately, because such problems are difficult to definitively diagnose and substantiate with objective findings, such disabilities are also too often misused by abusers of the system. Public exposés of persons out on back disabilities working ‘under the table’ at other jobs or caught jet-skiing at the weekend, all while receiving disability benefits, only serve to reinforce such employer and co-worker attitudes. Many employers and insurance companies now routinely hire private detective companies to observe the activities of the purportedly disabled, and the success that they have encountered in uncovering fraud is chilling.

At the same time, disabilities associated with a flaw in one’s character or moral fortitude, such as obesity, drug and alcohol dependence, and to a lesser degree, illnesses brought on by smoking, also tend to receive less cooperative assistance in the disability management processes.

V.8.2 The effect of procedures for identifying disability at work on access to enterprise job retention and ‘return-to-work’ programs

Occupational disabilities almost universally require substantiation from a ‘qualified medical professional’. Generally this means that the employee must be certified as limited due to a medically identifiable condition by a medical doctor. Since some states have the right to determine the medical provider, determining who is qualified to determine who is disabled is less of a problem. In states where the employee may choose their provider there may or may not be specific guidelines on who is considered a valid medical provider and, in such cases, problems may develop if the determination of disability is made by a provider with less than obvious credentials, or by individuals with dubious reputations. In such cases, employers are generally allowed to require an independent medical examination to verify the findings of the employee’s medical provider.

V.9 INTERNAL RELATIONSHIPS

V.9.1 Effects of the relationship between actors within the enterprise on strategies to promote job retention

Whether enterprise strategies are effective appears to depend crucially the corporate culture. If the culture values return-to-work, and is open and adaptive, frictions that do develop will generally be corrected. On the other hand, for organisations that have contentious relationships between departments, or between management and rank and file workers, whether unionised or not, disability management is likely to be

ineffective.

V.9.2 Effects of hiring and remuneration practices on job retention

Health-care and disability coverage for new employees generally has a pre-existing condition clause in which individuals who have not been 'treatment free' for some specified period (generally three months) may be excluded from benefits eligibility for some period of time. Certainly for employees who become disabled and are unable to remain with their former employer, the existing disability may mean that they will not be eligible for benefits with the new employer. Since the commencement of employment with the new employer will usually mean the severance of benefit under the previous employer, returning to work may mean a loss of benefits.

For health benefits, employees have a right under COBRA continuation legislation to continue coverage at their own expense when coverage with their employer terminates. If they begin work with a new employer, such employees may continue to pay for and receive benefits under their previous insurance and thus maintain coverage during the pre-existing condition period of exclusion in their new job.¹ Under the new legislation, the maximum period of time that an insurer may exclude an individual for a pre-existing condition is set at 12 months (18 if the person did not enrol when first eligible), and exclusion periods must be reduced one-for-one, for creditable coverage under another group health plan. In addition, insurers cannot deny coverage once individuals have exhausted all other insurance coverage, including all COBRA coverage.⁵ The aim of the new legislation is thus to reduce the number of people without health insurance coverage by mandating portability and coverage availability rules, and changing, clarifying and amending other COBRA rules. Nevertheless, the legislation does not apply to disability insurance, so individuals who take on new jobs may still be at risk if there is a relapse in their condition. In recognition of this disincentive, some insurance providers are allowing a degree of portability with disability benefits as well.

V.9.3 Financial opportunities for and obstacles to internal job retention measures

For retention and return-to-work programs to function properly, incentives must be in place among the various actors involved. Benefits that do not reward return-to-work make employee cooperation difficult. At the same time the employee's former department must have incentives to work creatively to make effective accommodations. Co-workers must not feel that they are being unduly burdened to accommodate the disabled worker.

Pay and cost incentive structures are not always properly balanced. The most common problem is that the costs for an employee out on disability are shifted out of the employee's home department. In this case the disability tends to become 'someone else's problem', providing too little incentive for the supervisor to work creatively to assist in returning the employee to work.

Other problems include benefit structures that either penalise, or fail to reward, employees for returning to work. Programs that provide high rates of wage replacement provide too little incentive for employees to return-to-work early in the process, when return-to-work is often most effective. Some programs, for example, provide 'salary continuation benefits' at 100 per cent of pre-disability wage. In some cases benefits are taxed differently so that the replacement rate is much higher than it appears. Short term disability programs often have waiting periods of up to 30 days before benefits begin. Usually, accumulated sick-time will provide benefits through this period. If there is no clause for trial work periods, however, employees who attempt to return-to-work and fail must go through the waiting period again before regaining access to benefits, and this time without the benefit of their, now exhausted, sick-leave benefits. Programs that pay full wages to employees in limited duty positions may fail to provide sufficient incentives to employees to return to full capacity as soon as possible, which also tends to create ill will with co-workers.

V.10 LINKS WITH EMPLOYMENT POLICY OBLIGATIONS, RECOMMENDATIONS AND

INCENTIVES

V.10.1 Enterprise compliance with disability employment obligations and agreements

The key employment policy obligations and agreement that are relevant in terms of compliance would be the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), workers' compensation and statutes under the Occupational Safety and Health Administration (OSHA). One point that must be made with respect to all of these policies is that a key role for each piece of legislation is one of providing information and establishing standards that assist employers in implementing programs that make good business sense. The overall notion that these policies are *driving* retention policies is not particularly accurate. In most cases, employers attempt to return disabled workers to their former positions and develop policies and practices to assist them in doing so because this makes the firm more competitive.

This is not to say that such programs have not had an impact or that all employers would have such policies and practices in the absence of such laws. Rather, a key function that these laws have played has been to set standards and educate employers about the advantages of retaining disabled workers and the costs involved in discarding them. At the same time these policies have also worked to change expectations by employees. Employees now expect their workplace to be safe, and they expect employers to provide medical and income replacement benefits in the event they become disabled. Increasingly, employees also expect to be able to return to work following the onset of disability.

Given these expectations, employers who compete in the labor market for quality employees must provide disability insurance as part of benefits packages in order to be competitive with other employers. Once such benefits are provided, it is in the interest of employers to minimise the costs associated with those benefits, and employers are learning that disability management can assist in lowering these costs.

This perspective is evidenced by the fact that so many employers provided disabled employees with medical leaves long before it was required by law, and some still provide leave that is more generous than required under the Family and Medical Leave Act. At the same time, some employers whose leave coverage was in excess of the 12 weeks required under the FMLA, have actually reduced coverage to the 12 week standard. Most employers provide both occupational (workers' compensation) and non-occupational (sick-leave, STD and LTD) disability insurance even though only the occupational coverage is required by law. Similarly, many accommodation and return-to-work programs preceded passage of the Americans with Disabilities Act simply because employers found it to their competitive advantage to retain valuable employees, while minimising their disability insurance costs.

Certainly, some employers would discontinue the coverage required under these Acts if they were no longer required to do so, but most probably would not. And the competitive pressures to provide these programs would also tend to decline during an economic downturn with higher levels of unemployment. That said, there are ways in which companies appear to resist these laws.

Americans with Disabilities Act

Under the ADA, employers are not required to meet any sort of numeric standard in hiring or retaining persons with disabilities. In addition, disability employment complaints are reviewed 'case by case'. This means that the employer's history or experience with other individuals with disabilities has no impact on individual complaints. There is thus no incentive for employers to develop a record as an employer of persons with disabilities under the ADA. As a result, from the legal perspective, there is no incentive to 'cream' persons with disabilities or stretch disability definitions in order to inflate disability employment figures. The fact that, under the ADA, employers are not able to directly enquire about whether employees have disabilities means that most firms do not know how many persons with disabilities are in their employ.

In general, most large employers have taken at least the basic steps required under the employment provisions of the Americans with Disabilities Act. This means that they have taken steps such as becoming familiar with accommodation requirements, posting notices, removing questions about disabilities from employment applications and instructing supervisors not to retain medical information in employee files. Most companies do not appear to have implemented retention policies in direct response to the ADA. The ADA does not require employers to (actively) retain disabled employees, but it does require them to (reactively) reasonably accommodate employees that want to return to work following disability. Therefore, there is little that employers must do until they are confronted with a disabled employee who wishes to return to work.

For employers with return-to-work programs, this has generally led to an integration of the ADA into their policies. In some cases employers have even used the ADA as a means of enforcing their return-to-work program by terminating employees who refuse to return to work after reasonable accommodations have been offered (see, for example, case 3 above). For employers without return-to-work programs, employees who want to return to work are handled on a case-by-case basis. Small to medium sized employers are less likely to be aware of their responsibilities under the ADA. Given their size, they are also less likely to be able to accommodate a disabled employee since there are generally fewer options for adjusting duties and fewer resources for adapting the work-site. Although there is no direct evidence, this appears to be what is driving the high rate of settlement of ADA complaints through mediation. Once employers understand their obligation under that law and employees understand the limits of required accommodation, further litigation is usually unnecessary.

Family and Medical Leave Act

Compliance under the Family and Medical Leave Act is less clear. Technical compliance, as discussed in Part I, is high. According to *employer* survey data, 92.6 per cent of covered worksites provide up to 12 weeks of leave for own disability, of which 94.7 per cent guarantee the employees a job upon return. What this means is that leave for up to 12 weeks is generally granted when it is requested.

Compliance in terms of support for necessary leave is less consistent, and tends to correspond to the type of disability in question and the perceived need for leave, as well as the size, type and corporate culture of the enterprise in question. The way in which leaves are covered is up to the discretion of the employer. Larger enterprises with workers with a generic range of skills can accommodate leaves more easily than small firms or those employing individuals with highly specialised skills. As the difficulty or expense of the leave increases, so does the likelihood that employers will pressure employees away from lengthy leaves. If the corporate culture is positive and the leave appears justified, it is less likely that problems will arise. If the corporate culture is negative or contentious, much of the costs of the leave will fall on supervisors and co-workers in the form of excess responsibilities so that there is a great deal of guilt associated with leave taking. According to *employee* survey data, there were 1.8 million individuals with an own health need for leave, who did not take leave. Their reasons for not taking leave are shown in Table 1.

<i>Reason</i>	<i>Per cent</i> *
Might lose job	37.5
Might hurt advancement	22.7
Might lose seniority	15.3

Not eligible	13.6
Employer denied request	10.8
Could not afford leave	64.8
Wanted to save leave time	15.9
Work too important	43.8
<p>N' 1,797,814</p> <p>* Respondents could choose more than one category so percentages do not sum to 100 per cent.</p> <p>Source: Aguirre International Tabulation of data from the Institute For Social Research, Survey Research Center, University Of Michigan, Survey Of Employees, 1995. As shown in <i>A Workable Balance: Report to Congress on Family and Medical Leave Policies</i>, Tables 5G and 5H, 1996.</p>	

Beyond not taking leave for financial reasons, the most cited reason for not taking leave was that their work was too important, suggesting that their leave would have placed too great a strain on their employer or fellow employees. This is buttressed by the fact that the key way in which leave is covered is with other employees (69.4 per cent).

Workers' Compensation

Compliance with the letter of workers' compensation laws is very high. So long as it is clear that the injury or illness is work related and the extent of injury is clear, employees receive access to the full benefits to which they are entitled. As discussed in Part II above, however, when these circumstances are less than clear, the process tends to end up in litigation.

Occupational Safety and Health Administration

As was discussed in Part I, compliance with OSHA appears to be in a period of transition. OSHA has historically had a somewhat contentious 'regulator' relationship with employers. Until recently, OSHA was often regarded by firms as an adversary out to catch them on compliance technicalities that had little to do with valid safety issues. Occupational Safety and Health Administration inspectors were seen as mindless bureaucrats checking off entries on compliance forms, but with little regard for global safety issues.

The Voluntary Protection Program (VPP) discussed in Case Study 1 above is one example of how OSHA is working to have a greater impact on safety by becoming a partner with employers and employees in promoting a safe and healthy work place. Others are the pilot projects in the states of Maine and Wisconsin, titled the Local Area Emphasis Program (LAEP) and more commonly referred to as the OSHA 200 program. Like the VPP, the general goals of this program are to transform OSHA from a hazards policing organization to an organizational resource to assist employers in developing and administering their own in-house employee safety and health programs. OSHA provides an organizational structure for developing a comprehensive safety and health program and then allows participating firms to devise their own programs. Guidance and feedback on evaluation criteria are provided by OSHA as they monitor program development, but firms retain substantial creative freedom in determining how best to provide a safe and healthy workplace.

Once acceptable programs are in place at companies, OSHA's primary role is intended to become one of monitoring the health and safety record of firms and providing expertise and technical assistance in an effort to further improve the work environment.

More generally, OSHA is attempting to make a transition from its role as regulator to one of consultant. Assistance for employers is available at the OSHA website on the internet (<http://www.osha.gov>). Onsite consultation assistance is available to employers who want help in establishing and maintaining a safe and healthful workplace at no cost to the employer. No penalties are imposed or citations issued for hazards identified by the OSHA consultant. Employers who receive a comprehensive consultation visit, correct all identified hazards, and demonstrate that an effective safety and health program is in operation, may be exempted from OSHA general schedule enforcement inspections (not complaint or accident investigations) for a period of one year.

Comprehensive consultation assistance includes an appraisal of all work practices, and of mechanical, physical, and environmental hazards in the workplace. It also includes assistance in developing, implementing or improving all aspects of the employer's workplace safety and health program. This program is known as OSHA's 'Safety and Health Achievement Recognition Program', or SHARP. The program is designed to provide incentives and support for small, high-hazard employers to develop, implement and continuously improve their workplace safety and health programs.

OSHA monitors safety compliance through planned random program inspections, and through consultation inspections where OSHA is invited into the firm. Planned inspections are to establishments in high-hazard industries or construction worksites identified on OSHA inspection targeting lists. For safety inspections, OSHA lists are based on the industries with the highest injury/illness rates according to the Bureau of Labor Statistics Annual Survey. For health inspections, these lists are based on industries with the highest number of serious health violations per inspection. Construction inspection lists provide randomly selected active worksites.

OSHA found significant hazards in 1996 at 47 per cent of the 39,961 high risk establishments targeted for inspection. Serious hazards are defined as those likely to kill, injure, or make workers ill, as well as willful and repeat violations. Though this indicates a decline from previous years, it does indicate significant compliance problems. For programed inspections in manufacturing establishments, significant hazards were identified in more than 60 per cent of firms visited.

While the rate of OSHA violation seems to indicate a willful lack of compliance, when we look at hazards identified through consultation visits the issue becomes less clear. Most employers who requested consultative assistance in 1996 had significant hazards. A full 74.6 per cent of the 21,316 OSHA consultation visits resulted in the identification of significant hazards. Since consultation visits are voluntary and provide no relief from requirements to rectify any hazards found during such inspections, it would appear that violations stem more from ignorance than from willful neglect. It would also appear that OSHA's new role as consultant rather than regulator may be providing benefits in terms of enhanced worker safety.

V.10.2 Congruence between enterprise strategies and external practice recommendations and standards

There are no formal best practice standards that have been established at the official governmental level. Good practice standards are continually evolving in the private sector through groups of employers, insurers and labor unions. Current best practices, as they have evolved through this process, are consistent with that described in V.1.1. These practice standards appear to be of significant relevance to enterprise human resource managers, particularly those in larger firms. These standards are primarily communicated in three ways. First, there are a number of human resource newsletters in circulation that keep managers informed of emerging trends and practices. There are also employment health conferences held each year by organizations

such as the Washington Business Group on Health and the National Managed Workers' Compensation Institute, to discuss and teach managers about new ways of effectively resolving disability employment issues. Finally, there are an abundant number of consulting practices available to assist human resource managers in adopting current best disability management practices.

V.10.3 Ways in which employment and labor market policies impede or facilitate enterprise-led work adaptation programs

Since labor market policies in the US do not require employers to retain employees who are unable to perform the essential functions of their jobs, it would not appear that they pose impediments to work accommodation measures of firms. Both the ADA and the FMLA, however, provide direct incentives for such measures. Similarly, the structure of OSHA provides incentives to employers to adapt work environments for disabled employees so as not to aggravate previous injuries and to prevent such injuries for other workers. In the case of workers' compensation, the experience rating of premiums provides incentives for employers to return employees to work as soon as is feasible, with appropriate work adaptations if necessary.

V.11 ENTERPRISE STRATEGIES AND BENEFIT/COMPENSATION PROGRAMS

V.11.1 Effects of the availability and level of out-of-work benefits on enterprise recruitment and dismissal policies

Such benefits do not appear to have an effect on recruitment policies. Disabled employees who cannot be accommodated in their former position and have not found other work within the company, may be placed in a special hiring pool. Managers are expected (or possibly required) to look first to individuals in this pool before looking to other sources for new employees. This tends to be related more to issues of efficiency, in reducing company benefit costs for disabled employees or in retaining employees with accumulated experience with the firm, rather than the availability and level of out-of-work benefits.

The availability of disability benefits through workers' compensation or other non-occupational programs does appear to have an impact on dismissal policies at some firms. This is usually at the level of practice rather than policy, however. The formal policy across firms is, with few exceptions, that all employees capable of returning to work will be encouraged to do so, regardless of their access to disability benefits. The practice of managers and supervisors may, however, be influenced by such circumstances. A fairly common problem in this respect is the use of disability programs by supervisors as a 'dumping ground' for undesirable employees. Rather than deal with accommodation issues, supervisors may encourage problem employees who become disabled or are at risk of disability to file for disability benefits when they are available. This provides the supervisor with a non-confrontational means of getting rid of the employee that the employee may similarly regard as a superior alternative to being fired. In a similar vein, popular employees who become disabled and are close to retirement may not be pushed to return to work if it is known that they are eligible for a comfortable level of benefits and have no real desire to return.

V.11.2 Enterprise response to in-work social security benefits

The impact of in-work social security benefits on employers is unknown. These programs are targeted toward beneficiaries rather than employers and there is no employer incentive to participate in such programs. Programs by private insurers that provide partial benefits to employees with disabilities who work are available. Such programs generally provide benefits for the earnings shortfall due to the disability so that employees can return to work at reduced wages or a reduced capacity. Since these programs, if successful, reduce insurance costs, employers have an incentive to support the program. Such programs do appear to be effective in getting disabled persons back to work.

V.11.3 Opportunities for disabled employees to join, self-fund or top-up workplace health benefits and pension plans

Employees generally retain health and retirement benefits during periods of short-term disability, including the temporary period of workers' compensation coverage. Employers generally discontinue benefits coverage for disabled employees who transition to long-term disability. Such individuals must be given the opportunity to continue health care coverage at their own expense, and may be given the opportunity to continue contributions to pension plans.

V.12 LINKS WITH EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

V.12.1 Enterprise responses to externally funded support and advisory services

The employer's response to rehabilitation services varies across state programs. While most states have return-to-work employer's incentive in their workers' compensation program, no data is collected regarding employer uptake of these programs. Most states include partial disability benefits that pay a portion of the disabled worker's wage if they return to work at reduced earnings. While this is more an *employee* incentive to return-to-work, such programs do make it easier for the employer to pay a reduced wage.

Employer specific incentives are of two forms. First, employers have incentives to retain workers disabled on the job because this lowers their insurance costs. In some cases this incentive is underscored with additional incentives such as insurance rebates for workers who return to their former employer (California, North Dakota, Washington), or insurance penalties for workers who are not rehired by their former employer when suitable employment is available (Arkansas, Minnesota, Wisconsin). A second form of employer incentives are programs that pay for job accommodations or on-the-job training for returning workers.

If outcomes data is collected, it will usually involve the percentage of claimants participating in the program and, in some cases, the percentage returning to work and their pay relative to pre-injury wages. When this data is collected, it generally shows that the return-to-work incentives have a significant and positive effect. It can be inferred, then, that employers are participating in the programs. But whether these programs can be considered successful is less clear.

Because employers are required to participate in workers' compensation, they are likely to be aware of the incentive provisions of their state's law. Whether they effectively incorporate these incentives into their disability management program will depend on whether the workers' compensation case is being disputed and the length of time before rehabilitation services begin. As mentioned in Part II, many workers' compensation claims end up in litigation. If there is a dispute in the workers' compensation case, the employee is less likely to participate in a return-to-work program. Even when a case is not in dispute, many workers' compensation programs do not refer the claimant for rehabilitation until after the individual has reached maximum medical improvement, after a specified number of days have been lost, or based on the nature of the injury. As discussed in Part III, the services provided under rehabilitation vary across states and individual circumstances. Services may range from referral for evaluation to actually providing training services, placement in a job and work-site accommodations. Given employers' potentially strong incentives to rehabilitate employees rather than wait for a state rehabilitation referral for the services the state deems necessary, many employers opt to provide private rehabilitation services. This allows the employer more complete control, since they can begin rehabilitation early on and tailor those services to the needs of the employee and their own employment needs.

V.12.2 Opportunities and barriers to the effective co-ordination of external support services and enterprise programs

The key opportunities for effective coordination of external support services and employer disability

management programs are:

- the structure of insurance rating for employers;
- provision of partial disability benefits to employees under most workers' compensation programs;
- measures to reduce litigation;
- measures to assist employers in retraining and accommodation costs; and
- programs with exclusive state funds (since the workers' compensation agency operates as an insurance carrier and thus presumably has the same cost incentives as a private insurer or self-insured employer).

These characteristics line up the incentives between employers and workers' compensation program administrators.

There are two probably two key barriers to effective coordination of external support services and employer disability management programs. These are the litigious nature of the workers' compensation system, and the state agency-as-administrator model of workers' compensation programs that is commonly found.

These characteristics tend to set the incentives between employers, employees and workers' compensation program administrators in opposition to one another.

The litigious nature of workers' compensation often means that: 1) disability rather than ability tends to be emphasized by the claimant, and 2) services do not get provided until after settlement of the case. Once the case is settled, relations between employer and employee are often so damaged that effective disability management is not feasible or that the early intervention window of opportunity is long past.

The agency-as-administrator model for workers' compensation in many states means that the agency does not have the same cost/incentive structure as the employer. From the employer's perspective, services should be provided up to the point where the cost of effectively returning the employee to a long-term employment solution is greater than the savings in premiums and provision of income benefits. They should also be provided efficiently so as to minimize their cost. State workers' compensation administrative programs may have different incentives. These may be set by the political agenda (such as emphasizing services for a specific disability group - such as the severely disabled), or they may simply attempt to provide a consistent service to all claimants without regard to the costs or potential benefits.

V.12.3 Opportunities for and barriers to disabled workers' co-ordination of their workplace support

There do not appear to be any significant barriers to disabled workers' coordination of their workplace support. Employers tend to be very supportive of any accommodation so long as it does not disrupt other workers and does not pose significant costs on the employer. One example of this is the substantial willingness of employers of support flexible schedules, employees working at home and tele-commuting.

V.13 LINKS WITH SERVICES FOR ADAPTATION OF WORK AND WORKPLACE

V.13.1 Enterprise response to external services to undertake adaptations

Again, employers tend to be very supportive of any accommodation so long as it does not disrupt other workers and does not pose significant costs on themselves. One might judge that the most significant impact of the Americans with Disabilities Act has been its effect on the willingness of employers to be supportive of

disabled employees who need workplace accommodation. Employers not only seem to be aware of their responsibility to assist employees in providing accommodation: they also seem to be aware of the technical resources available to assist them. This is particularly true in larger firms with more skilled workers in more hazardous industries, and less true for small companies or those in traditionally safe (white-collar, office-type) environments.

The main impact of the ADA has thus been in raising the level of awareness about disability among employers. The ADA poses little in the way of requirements on an employer unless they are confronted with an applicant or worker with a disability, and is rather vague in instructing employers in their responsibilities when they are faced with a disabled worker. This has meant that the law has not generally led to significant structural changes within companies. Rather, the publicity surrounding the law has caused anxiety among employers and has captured their attention. The net impact seems to have been that it has caused employers to think about disability and learn about their options.

In many cases this heightened awareness has meant a broadening of the concept of disability within the firm to include non-occupational disabilities as well those caused by occupational injuries and illnesses. This has led to an extension of workers' compensation disability management practices to other types of disability. For larger blue-collar employers, the expertise to deal with disability is generally already in place within the company's safety department. So the change has been largely in terms of responsibilities within the safety department from strictly evaluating work to prevent injury or illness to evaluating work to accommodate injury or illness. Generally speaking, the skills necessary to accomplish these functions are the same, so that company ergonomists, or outside consultants, that were already in place providing safety accommodation now provide both safety and return-to-work accommodation. Since these ergonomists and other safety professionals are already tied into outside technical work adaptation resources, they naturally tend to be the point of contact for all external services to adapt the work-station, workplace and job procedures to the needs of workers who become disabled.

From another perspective, what this means is that companies without formal safety departments and safety professionals are much less likely to be tied into the accommodation information system. Consequently, integration of external accommodation resources is much more haphazard in such companies. These tend to be smaller companies or those with traditionally safe working environments.

V.13.2 Arrangements to assist enterprises with purchase of external services

As mentioned above, workers' compensation programs in a few states (seven in 1993) offer employers' assistance in purchasing accommodations for disabled workers. Programs such as the Small Business Tax Credit and the Architectural/Transportation Tax Deduction are also available. The extent of employer awareness of these provisions and the extent to which they have had an impact on retention is unknown.

V.13.3 The match between available services and user requirements

Because of the wealth of information on assistive technology, any mis-match between available services and user requirements is not likely to be driven by a lack of available information. Despite this availability, mis-matches do occur because employers and employees are unaware of the assistance available (see Part IV). When information is not an obstacle, other mis-matches occur as a result of cost considerations. For example, more individuals in wheelchairs could work if they had personal attendants and modified vehicles, but the cost of providing these accommodations may be prohibitive given available resources. Beyond absolute cost issues, 'mis-matches' occur because of differences in opinion about the extent of accommodation that is necessary.

A factory worker with a cumulative trauma disability may believe that an appropriate accommodation is extensive re-training in order to take a desk job with earnings commensurate with the pre-disability wage.

The employer may believe that the appropriate accommodation is for the employee to continue at the previous position at the same wage but on shorter shifts, and hence reduced earnings. The question is whether an appropriate accommodation is the lowest cost accommodation that returns the employee to a job commensurate with former duties and responsibilities, or one that returns the employee to a job commensurate with former earnings.

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Retention and Return to Work

Strategies for Disabled Workers

Study Report

United Kingdom

Stephen Duckworth and Peter McGeer

Disability Matters Inc.

Daniel Kearns and Patricia Thornton

Social Policy Research Unit, University of York

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PREFACE

The *International Research Project on Job Retention and Return to Work Strategies for Disabled Workers* is an initiative of the International Labour Organisation (ILO) and the Global Applied Research and Information Network on Employment and Training (GLADNET). It reflects ILO and GLADNET joint aims of establishing a base for cross-national research and strengthening links between research analysis and policy reform in the field of employment of disabled people.

The Project is a response to a combination of developments which highlight the need for more effective policies and practices in support of workers whose prospects of remaining in employment are jeopardised by work injury, illness or disability. Persons with

disabilities are increasingly claiming rights to stay in work as well as to access employment. Pressures on state budgets, the rising costs of compensation claims and disability benefits, and changes in the structure of the labour market are strengthening policies in favour of job retention and return to work. Enterprises are developing their own strategies to minimise the costs of disability and to retain valued employees. Overall, the balance of responsibility is shifting from the state to the enterprise.

Policies and practices to prevent disabled workers from leaving work unnecessarily, and to facilitate rapid return to employment if job loss cannot be prevented, are recent developments in many countries. The cross-national exchange of information on initiatives and their effects is limited. The first aim of this Project has been to gather information about what has been attempted, by whom, for what purposes, in which contexts and to what effects. The second, more ambitious, aim, is to examine the interaction between the various policies and practices, identify dysfunctions, and work towards more coherent and cost-effective strategies for job retention and return to work which might be applied in different national systems. The ultimate objective is to identify strategies which can be put into effect in the workplace.

The Project was constructed in two phases. In Phase One, eight exploratory desk-based studies were commissioned from researchers in Canada, France, Germany, the Netherlands, New Zealand, Sweden, the United Kingdom and the USA. The eight countries invited to participate represent a spectrum of policy approaches and enterprise practices which affect the retention and return to work of workers with disabilities. Australia joined the project at a later stage.

The studies formed the basis for a *Key Issues* Paper, published simultaneously with the eight country questions for further exploration through cross-national collaboration in Phase Two.

National government departments, agencies, a private sector organisation, and the ILO co-sponsored Phase One of the Project. Overall responsibility for the Project rests with the ILO (Vocational Rehabilitation Branch, Employment and Training Department). The design, implementation and analysis of the research in Phase One were the responsibility of the Research Co-ordination Unit established at the Social Policy Research Unit, University of York (UK) in April 1997. Research specialists in the main areas of enquiry, based in study countries, contributed at all stages of the research process and, with ILO representatives, met with the research co-ordinators as a Research Advisory Group.

The country studies

The Project recruited and supported national informants from research institutes in all eight countries. During the second half of 1997 they completed a Schedule of Questions developed by the Research Co-ordination Unit to describe policies and practices, document evidence of their effects and provide grounded commentary on how policies and practices interact. The principal sources were policy documents, survey data, research evaluations and critical reviews. Informants were encouraged to contact sources in government departments and agencies, disabled people's organisations, labour unions and employers' groups. Where documented information was lacking, informants interviewed experts in the field.

The eight country reports are important resources for the development of job retention policy and practice both within and across countries. Each report brings together within a single volume: descriptions of policies, practices and programmes which impact on job retention and return to work; evaluative material; and informed commentary. They cover five themes: employment and labour market policies; benefit and compensation programmes; employment support and rehabilitation services; adaptation of work and workplace; and measures developed and implemented by the enterprise. In line with the research aim of identifying coherent and co-ordinated strategies, the informants both comment on dysfunctions in national systems which obstruct job retention efforts and identify links between themes.

It should be noted that the situation described in the reports may have changed. This is especially true of the Netherlands where further reforms were expected in the first half of 1998 and the United Kingdom where the government changed in May 1997. Important developments in the USA were announced in March 1998.

The reports produced by the eight teams of national informants conformed to the format laid down by the Schedule of Questions. The original reports have been edited for publication by the Research Co-ordination Unit in co-operation with their authors. However, they remain essentially the 'raw data' for analysis and should be read in that light. Each report follows the same sequence of headings which reflect the original open-ended questions. As the questionnaire prompted informants to respond flexibly to suggestions about possible areas to address under each question, the content varies from report to report. The reader should note that, at the end of a thematic section, commentary may be included on the links between that theme and those which precede it.

Terms used in the study

The study concerns paid competitive employment in the open labour market.

The term 'disabled workers' is broadly defined. It covers individuals who become disabled, injured or ill whose prospects of

continuing or advancing in employment are jeopardised when an acquired impairment, illness or deteriorating condition - physical or mental - presents difficulties in fulfilling the requirements of the job, reduces earning capacity or affects other rewards of working. They may or may not qualify under legal definitions of disabled persons. The term also covers workers with disabilities whose working capacity is not diminishing but whose continued employment is nevertheless threatened by prejudice or discrimination, or by the loss of supports which have maintained them in the job.

'Job retention' means staying with the same employer, with the same or different duties or conditions of employment, and includes return after a period of paid or unpaid absence. 'Return to work' refers to the resumption of employment by a worker who has crossed the threshold from a continued employment relationship into non-employed status; the main interest of the study is in policies and practices which return the disabled individual to work at an early stage.

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Patricia Thornton

Research Co-ordination Unit

Social Policy Research Unit, University of York, UK

April 1998

Copies of the 'Methodology Paper' and the 'Informant Briefing and Schedule of Questions' may be obtained from the Research Co-ordination Unit, Social Policy Research Unit, University of York, YO1 5DD, UK.

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John Ballard, Editor, *Occupational Health Review*

Frances Bartley, Royal Bank of Scotland

John Clark, Consultant

David Cross, Consultant, Towers-Perrin

Sue Edwards, Birmingham City Council

Richard Exell, TUC

Julie Fischer, Midland Bank

Mike Floyd, Rehabilitation Resource Centre, City University

Yvette Galton, Consultant

Kay Hounsham, Disability Advice Centre, The Post Office

Phil James, Middlesex University

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Mike Moran, ADtranz

Dave Muller, Suffolk College, Ipswich, Editor, *Disability and Rehabilitation*

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Gillian Paschkes Bell, RNIB

Jim Picksley, VSEL Shipbuilders, Barrow-in-Furness

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I. EMPLOYMENT POLICIES

The purpose of this Part of the report is to describe policies, which maintain those workers in employment whose continued employment is at risk because of disability. It provides evidence of the effects of those policies and identifies factors, which influence their effectiveness. The emphasis in this part is on national (or state/provincial) policies formulated by government, and by bi-partite or tri-partite policy-making and advisory bodies.

Sections 1 to 5 are concerned with legislation, incentives and other 'persuasion' policies which oblige and encourage enterprises to retain disabled employees. A distinction is made between employees who become disabled and those who are already disabled. Information is provided about employment policies, which encourage disabled employees to retain or return to their jobs. Sections 6 to 8 focus on the factors, which

affects the success of policies. They also examine the labour market factors, which contribute to the retention or loss of jobs among disabled people.

I.1 POLICIES WHICH AIM SPECIFICALLY TO INFLUENCE ENTERPRISES TO RETAIN NEWLY DISABLED EMPLOYEES

I.1.1 Legal obligations and binding agreements intended to prevent and restrict the dismissal of employees who become disabled

Disability Discrimination Act 1995

The only current legal obligations on employers which are specifically intended to prevent or restrict dismissal of employees who become disabled are contained within the Disability Discrimination Act 1995 (DDA). The employment provisions of the DDA (which came into effect in December 1996) make it unlawful to discriminate against disabled people or people who have had a disability, unless that discrimination can be legally justified. The Act states that an employer will have discriminated against a disabled person if, for a reason which relates to a person's disability, they treat the disabled person less favourably than they treat, or would treat, others who do not have a disability. Less favourable treatment will only be justified if the disabled person becomes unsuitable for employment and the nature of the disabled person's disability significantly impedes, or would significantly impede, the performance of any of their duties.

It is unlawful to discriminate:

- in arrangements for the selection and recruitment of staff
- in the terms on which employment is offered
- by refusing to offer, or deliberately not offering, employment
- in opportunities (or lack of opportunities) for promotion, transfer, training or any other benefit
- *by dismissal*, or by subjection to any other detrimental treatment.

The Act defines disability as 'a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities'. Because of the definition of long-term effects (which must have lasted at least 12 months, or be likely to last at least 12 months, or for the rest of the life of the person affected, and include effects which are likely to recur) coverage in relation to dismissal is limited. However, also covered by the Act are progressive conditions (such as cancer, HIV infection, multiple sclerosis or muscular dystrophy) where effects are likely to become substantial; the Act covers people with these conditions from the moment when there is a noticeable effect on normal day-to-day activity, however slight.

The Act thus extends coverage to certain individuals who become disabled, in comparison with the Disabled Persons (Employment) Act 1944, which protected only already registered disabled people against dismissal.

Situation before the DDA

Under the Disabled Persons (Employment) Act 1944, it was a criminal offence for employers to dismiss a registered disabled employee without reasonable cause, if this would result in the number of registered disabled workers falling below the quota (see I.2.1), unless the dismissal brought the size of the workforce below 20. However, disabled workers were unable to establish rights to employment protection through the

courts under the terms of that Act.

In 1992, judicial review proceedings were brought by a disabled individual against the Department of Employment, challenging the Government's apparent policy of not enforcing the 1944 legislation. The plaintiff, a registered disabled person with multiple sclerosis, was concerned that the Department had failed to prosecute her former employer following her dismissal as a secretary 'without reasonable cause', contrary to section 9 of the Act. The Department's defence was that it had no such policy of non-enforcement, but it attempted to resolve cases of statutory breach by negotiation and advice before consideration would be given to prosecution. ... The case was withdrawn before the matter came to a hearing.

It would have been consistent for employers who took steps to adhere to the 1944 Act to operate policies designed to avoid the dismissal of registered disabled workers. A Cabinet Office document contained the statement:

In view of the Government's commitment to comply with the Disabled Persons (Employment) Act 1944, make every effort to avoid making disabled people compulsory redundant: particularly when this would mean that the proportion of registered disabled people employed would fall below three per cent.

However, policies that promoted adherence to the quota system could not prevent disabled workers leaving employment on a voluntary basis:

Currently the Company employs 1,101 registered people with disabilities or 0.6 per cent of the total workforce. The number has been declining disproportionately as various voluntary redundancy schemes are advertised. In 1989/90, one per cent of the workforce were registered disabled. There is little doubt that people with disabilities have on occasion been pressurised into taking medical retirement, or have felt the company offered them no viable future.

Other than in respect of the provisions described above, before the DDA disabled workers had the same employment rights as non-disabled workers: entitlement to a claim for unfair dismissal applied only after two years' continuous service with the same employer.

DDA enforcement procedures and remedies

A complaint of unlawful discrimination under the employment provisions of the Act may be presented to an industrial tribunal within three months of the action about which a complaint has been made. When a complaint is made to a tribunal, the conciliation service of the Advisory Conciliation and Arbitration Service (ACAS), or in Northern Ireland the Labour Relations Agency (LA), will attempt a settlement in the first instance. ACAS and LA can act to attempt a settlement without a formal application being made to a tribunal. No other civil or criminal proceedings (except judicial review) may be brought. The usual remedy in a successful complaint will be compensation, including damages for injury to feelings. There is no power to make binding orders or injunctions to provide positive remedies for the disabled applicant or to require employers to adopt non-discriminatory policies or practices.

The Act was heavily criticised on two counts relating to its effectiveness in preventing dismissal:

it does not provide for an independent Commission to enforce the DDA and provide guidance and education to employers, trade unions and disabled people; and the State does not currently provide any financial support (Legal Aid) for people wishing to take their case to an industrial tribunal.

The Act is to be strengthened by the new Labour administration which was elected in May 1997. The Labour Party made an election manifesto commitment to create a Disability Rights Commission in place of the

National Disability Council set up under the Disability Discrimination Act; the Government has now confirmed its intention. If this Commission were to be modelled on the Commission for Racial Equality or the Equal Opportunities Commission, it would have the power of independent investigation into cases of alleged disability discrimination and be able to impose sanctions on organisations deemed to have unlawfully discriminated against disabled people. It would also have a broad educational role. A taskforce has been set up to review the DDA.

Effects of DDA on dismissal

It is too early to comment on the effectiveness of DDA procedures in preventing dismissal. However, the numbers of cases brought to industrial tribunals since the relevant sections of the Act were implemented in December 1996 show that most cases relate to dismissal. Of 756 applications brought (up to the end of August 1997), 456 came under the heading 'dismissal', 100 'any other detriment', 80 'recruitment' and 120 'adjustments'. (Figures total more than 756 because some applications were made under more than one heading).

I.1.2 Legal obligations and binding agreements intended to promote the retention of employees who become disabled

The DDA introduces a duty on the employer to make reasonable adjustments in cases where working arrangements or the physical features of premises place a disabled employee (or prospective employee) at substantial disadvantage compared to someone who is not disabled. Where a disabled person is placed at such a disadvantage the employer must take such steps as are reasonable in the circumstances in order to prevent the arrangements or feature having that effect.

Factors that will be taken into account to determine how reasonable an adjustment is include:

the cost of the adjustment; the effectiveness of the adjustment; the disruption the adjustment might cause to other employees; the size and resources of the employer.

The following are examples of adjustments that may be required:

- adjusting premises
- allocating duties to another employee
- transferring the employee to fill an existing vacancy
- altering working hours
- assigning them to a different place of work
- allowing absence during working hours for rehabilitation, assessment or treatment
- giving additional training
- acquiring or modifying equipment
- modifying instructions or reference manuals
- modifying procedures for testing or assessment
- providing a reader or interpreter

- providing supervision.

The new duty requiring an employer to make reasonable adjustments will undoubtedly influence the job retention of newly disabled workers although, as the employment provisions of the DDA have only been in force since 2 December 1996, there is a lack of information on enterprises' policies and procedures at a practical level.

The possible costs to business were a major concern to the Conservative government, which introduced the Act. There is some evidence that many large UK employers do not regard the DDA as intrusive or costly although, prior to the enactment of the legislation, the Confederation of British Industry (CBI) and the Institute of Directors were consistent in objecting to the introduction of anti-discrimination legislation in the area of disability and employment. The Employers' Forum on Disability (EFD) (see I.1.3) is supportive of the new legislation, believing it to 'represent new opportunities and challenges for British Employers'.

I.1.3 Voluntary policies and programmes which encourage enterprises to retain newly disabled employees

Persuasion, rather than regulation, has underpinned government policy for the last 20 years. A number of voluntary initiatives have been developed to encourage enterprises to recruit and retain disabled employees, including newly disabled employees.

The Disability Symbol

The Disability Symbol was introduced by the Government in 1990. It is a logo and a statement 'positive about disabled people' which employers can use to encourage job applications from disabled people and to demonstrate an organisational commitment to good employment opportunities for disabled people. The employing organisations using the Symbol, now in excess of 2,500, have made a commitment to:

- interview all disabled applicants who meet the criteria for a vacancy and consider them on their abilities;
- ask disabled employees, at least once a year, how the organisation can enable them to develop and use their abilities at work;
- take action to ensure that key employees develop the awareness of disability needed to make commitments work;
- make every effort when employees become disabled to make sure that they stay in employment;
- each year review these commitments and what has been achieved, plan ways to improve them and inform all employees about progress and future plans.

Statistics are collated by region rather than by industry or sector. The actual job retention practices of enterprises, which have endorsed this programme are unclear. It is a good public relations exercise for many enterprises to adopt this programme but the outcomes for employees are not evident. A government-commissioned survey found that Symbol users were more likely to have a written policy specifically addressing the employment of disabled people and more likely to actively try to attract applications from disabled people. However, Symbol users were no more likely to have disabled people working in their organisation. It is possible that registration as a Symbol user attracted those employers, who already had good practices in place.

Programme for action to achieve equality of opportunity in the civil service for disabled people

The stated aim of this programme is to provide a framework to help government departments and agencies to recruit, retain and promote people on merit, regardless of whether they have a disability. The specific retention-related actions under this programme are to:

- try to retain staff who become affected by disability;
- consider offering rehabilitation leave;
- consult the individual to restructure the post, acquire appropriate equipment or adapt premises;
- restructure the job if difficulties cannot be resolved;
- consider the possibility of remote working, part-time working or other opportunities for flexible working;
- if no suitable post can be found within their own department, look at transfer to another department or agency;
- if medical retirement appears to be inevitable, consider the Supported Employment Programme (see I.2.3).

The EFD ten point agenda for action

The Employers' Forum on Disability (EFD) is a large voluntary membership organisation with 246 members in Autumn 1997. These are mainly large private and public sector employers, whose collective aim is to 'improve the job prospects of disabled people by making it easier for employers to recruit, retain and develop disabled employees'. Together with the Northern Ireland Employers' Forum on Disability and Local Employer Networks, the EFD is welcomed and encouraged by government but is not formally part of government policy. Many of the members are 'Disability Symbol' users.

The EFD's 'Ten Point Agenda for Action' on disability is designed to promote employment opportunities and improve customer service. Point 6 of this Agenda is concerned with Retention, Retraining and Redeployment, and those signing up to the Agenda make a commitment to support any employee who becomes disabled within the course of their employment. They will be given 'the fullest support' to maintain or return to a role appropriate to their experience and abilities within the organisation.

The Executive Director points to the role of EFD members in leading other employers by example. The EFD has a prohibitive membership fee structure for smaller employers and acknowledges this. It hopes, however, that the larger companies within the EFD can educate and persuade smaller contractors, suppliers and customers to adopt the philosophy of the Ten Point Agenda for Action. For example, British Telecom (BT) expects the Manpower recruitment agency to provide it with a percentage of recruits who are disabled. However, it is less easy to influence retention policies in this way.

The adherence to the Ten Point Agenda for Action was researched in a postal survey in early 1995 of 130 EFD members' experiences in implementing the Agenda and their perceptions of disability. The results, with a 69 per cent response rate, found that most organisations reported that they implemented between four and ten of the action points, with a mean of 7.37 and median of 8. The survey found that employers found it easier to adopt policy and procedure statements than to achieve the input of disabled people or opportunities for career development. The point relating to retention, retraining and redeployment was not found especially difficult to implement, although a respondent to one of the five pilot interviews commented that it was problematic because the firm had very few disabled employees.

Disability leave

Disability leave arose out of research conducted by the Royal National Institute for the Blind (RNIB), which had identified the problem that employees who lose their sight discover after they leave their jobs that, with special equipment and training, they could have continued working. This was believed to apply to employees who became disabled in other ways.

The initiative involves a work break for employees who become disabled. It advocates an assessment of the difficulties that a newly disabled person faces in work, poses solutions and a time for reflection before any long-term decisions are made, and enables a newly disabled person to be off work whilst adjustments are considered and implemented. It supposes that disability leave should be part of an overall employee retention policy. It does not imply that employers should guarantee jobs for people who can no longer do them. If the employee needs to be away from work to adjust to the disability while adaptations are being made, time should be offered, not as sick leave but as disability leave

The disability leave pilot project was launched in March 1993 with a number of those employers present at the launch who had signed up to a pilot scheme, including ACAS, Barclays Bank, the head office of what was then the Department of Employment, the Lord Chancellor's Department, McDonalds, Midland Bank, and RNIB. An evaluation of the two year pilot project was based on the experiences and views of 18 employers. Ten of these had adopted, or were already running, an employee retention policy. The report includes an internal study carried out by one of the piloting employers into the cost and savings of implementing disability leave.

The study made the following recommendations, based on the experiences of 18 participants:

For Government:

- The principles, which underpin employee retention policies should be included in any relevant publication offering advice in relation to the Disability Discrimination Act.
- The Employment Service should co-operate with other agencies, which offer employment assessments in order to establish nationally recognised standards of service.
- Government finance should be available to ensure that employers are not inhibited by cost from operating a retention policy.
- Disability benefits should be available to employees on disability leave who are not paid a salary.
- Disability benefits should be available to employees who receive a partial salary while undertaking a phased return to work.

For employers:

- Employers should adopt a formal policy underlined by the principles of employee retention which include: assessments, adjustments and leave where required.
- Employers should establish a corporate budget for expenses incurred under a retention policy.
- Line managers should work with a nominated representative from the personnel department.

For insurance companies:

- Insurance companies should offer reduced permanent health insurance premiums to employers who have an employee retention policy.
- Insurance companies should adjudicate claims in support of employee retention by offering financial support for disabled employees who need a period of absence.

For working in partnership:

- Various professionals should form an association of assessors to develop, monitor and safeguard standards for disability leave.

There are no available data on the take-up of disability leave policies and practices among UK employing organisations. The co-ordinators of the disability leave pilot are developing instruments to support the process of vocational guidance for newly disabled employees.

I.2 POLICIES TO OBLIGE AND ENCOURAGE ENTERPRISES TO RETAIN DISABLED WORKERS IN GENERAL

I.2.1 Obligations and binding agreements to promote the retention of disabled workers in general

Former quota scheme

Prior to 1995, the 1944 Disabled Persons (Employment) Act was the only legal instrument requiring UK employers to employ and retain disabled people. The aims of the Act were: 'to make further and better provision for enabling persons handicapped by disablement to secure employment, or work on their own account...'. The means by which this was to be achieved was through the establishment of a register of disabled people in or seeking employment and by enforcing an obligation on employers to recruit disabled people from such a register. The quota established under the Act was set at three per cent and was applicable to employers with a workforce of 20 or more full-time employees. Failure to fulfill the quota did not in itself involve any penalty. However, if employees were below their quota they would, under the provisions of the statute, have committed a criminal offence if they gave or offered employment to anyone who was not registered as disabled under the Act. The Act, however, allowed the issue of exemption permits.

The approach of successive UK governments, however, was to promote a voluntary code of practice rather than compliance with the 1944 Act, which was unenforced and effectively fell into disuse.

Anti-discrimination legislation

The deficiencies of the 1944 Act and the activities of the growing disability rights movement, together with considerable parliamentary and extra-parliamentary pressure, resulted in the introduction of the DDA in 1995. This Act reversed the unenforced quota scheme, replacing it with a legal right not to be discriminated against in employment (see I.1.1). The DDA does not oblige employers to retain disabled workers. Nevertheless, the Act is likely to have the effect of encouraging the retention of disabled workers, because of a greater awareness of the possibility of discriminating on grounds of disability.

The Companies Act 1985

The Companies Act 1985 places a duty on all UK registered companies employing more than 250 people to include in their annual Directors' Report a statement of the policy applied during the previous year on the recruitment, retention, training, promotion and career development of disabled people. The statutory requirement refers to all disabled people, not merely those protected by law. It was introduced after pressure

from an organisation of disabled people (the Association of Disabled Professionals). Although the requirement is referred to in government guidance and the voluntary Code of Good Practice (see I.2.2), it has a very low profile within the range of measures to promote the employment of disabled people and awareness is almost certainly very low. To our knowledge, companies' adherence has never been monitored or its effectiveness researched. As the requirement is not policed or enforced it is more akin to the voluntary good practice measures described below.

I.2.2 Voluntary policies to persuade and encourage enterprises to retain disabled workers

Section I.1.3 outlined a number of voluntary initiatives to encourage enterprises to recruit and retain disabled employees.

Under the Conservative administrations of the 1980s and 1990s there were a number of national campaigns aimed at convincing employers, and the general public, of the abilities of disabled people. These campaigns to change attitudes were a central plank of government policy. They were directed at both recruitment and retention, arguing, for example, that disabled people are more reliable employees, who stay with employers longer, and in whom investment is worthwhile. Simultaneously, 'the business case' for employing disabled people was promoted, and backed by the social partners and some disability organisations. This argues, *inter alia*, that diversity in the workforce is a strength in attracting and retaining custom from the full range of customers.

Before the introduction of the DDA, governments promoted the adoption of voluntary codes of good practice, as an implicit alternative to meeting statutory obligations under the Disabled Persons (Employment) Act 1944. As early as 1977 a 'Positive Policies' campaign was launched to develop enlightened internal company policies. *The Code of Good Practice on the Employment of Disabled People* first appeared in 1984 with a foreword co-signed by the Chairman of the government agency of the time, the Director General of the Confederation of British Industry and the General Secretary of the Trades Union Congress. A section devoted to 'Assisting Employees who become Disabled' outlines the types of action which might be taken for continuing in the same job, a return to alternative work, part-time work and facilitating a delayed return to work. (Later booklets refer to suggestions such as these as 'practical hints'.) The document aims to help companies draw up a policy rather than to set out targets or measures of achievement.

Governments have invested in considerable research to assess the impact the impact of codes of practice and to investigate and monitor enterprises' voluntary policies and practices in both recruitment and retention. Government-commissioned research in the late 1980s estimated that the Code of Good Practice was received by less than one fifth of all employers. Although the Code of Good Practice was fundamentally voluntary, the Manufacturing Science and Finance Union (MSF) successfully argued in an industrial tribunal that whether the Code of Good Practice had been followed was relevant to determining if a dismissal was 'fair'.

With the introduction of the DDA, there has been further interest in assessing the adoption of formal policies. The Multi-Purpose Survey of Employers (MPSE) is an omnibus survey of establishments with ten or more employees in Great Britain. The findings below are from the first-wave interviews which were carried out in the spring and summer of 1996, before the implementation of the DDA, covering 1,100 establishments. The survey found that:

- 45 per cent of companies covered by the DDA had a formal policy on the employment of disabled people. The likelihood of having a policy increased with company size from 30 per cent of those companies with 20 to 49 employees to 68 per cent for those with 2,000 or more employees. Ninety per cent of these policies were written policies. Seventeen per cent of companies used the Disability Symbol.
- About half of the companies covered by the DDA currently employ disabled people.

- Forty-three per cent of companies covered by the DDA who currently employ disabled people had made changes to the physical environment. Thirty per cent had made changes to working practices to accommodate disabled employees. The most common changes were redeployment or transfer to other duties of those who had become disabled. Twenty-nine per cent had made changes to working time. Nearly half of these had introduced flexible working hours to suit the disabled employee. Eighteen per cent of companies provided support and assistance which commonly involved the provision of a support worker, interpreter or sign-language interpreter.
- The majority of employers did not incur any costs in making adaptations: 61 per cent reported that the cost was nil and 19 per cent spent less than £100 per disabled employee during that last year.
- Ninety-four per cent of employers knew about the Disability Discrimination Act. However, 68 per cent of those covered by the Act did not know when the employment provisions were to come into effect.

I.2.3 Financial incentives which encourage enterprises to retain disabled workers in general

Financial incentives to enterprises have never been a significant part of UK policy for either the recruitment or retention of disabled workers, although recruitment incentives are increasingly used to induce employers to take on long-term unemployed people and are built into recent 'New Deal' plans to encourage the employment of young and long-term unemployed people. There is some recent evidence of Training and Enterprise Councils (TECs - see I.3.3) offering private employers subsidies for taking on disabled Training for Work trainees in the form of a contribution to the trainee's allowance or wage; one TEC is reported to have given trainees a voucher worth £1,000 and the employers taking on the trainee received the money over a 20 week period. These practices seem to be confined to promoting (re-)entry to work and are likely to apply to small numbers of disabled people only.

Access to Work

Access to Work (ATW) is open to people who are disabled within the meaning of the DDA and need extra help because of their disability. The ATW programme is administered by the Employment Service and provides one-off payments or continuous support for disabled people in full and part-time employment, and self-employed people, in the following areas:

- alterations to premises or the working environment if needed for a specific disabled employee
- special equipment or adaptations to existing equipment to suit particular needs
- deaf awareness training for co-workers
- a support worker if practical help is needed either at work or in getting to work
- transport to work if public transport cannot be used because of a disability
- communication for deaf people at interview
- a reader at work for someone who is blind or has a visual impairment
- other practical needs.

ATW replaced several separate 'special schemes' (such as Special Aids to Employment, Adaptations to Premises and Equipment, Personal Reader Service and Assistance with Fares to Work) for which resources were limited and where waits for assistance were commonplace.

When introduced in June 1994 it had three main aims:

- i) to provide support to overcome obstacles to employment caused by disability;
- ii) to enable disabled people to compete for employment on an equal basis with their non-disabled colleagues; and
- iii) to encourage employers to recruit and retain disabled people by offering practical help.

ATW is thus an incentive to both the employer and the employee. Originally, employers had nothing to pay unless the help provided brought general business benefits. (The original intention to impose charges from the outset was strongly resisted by lobbying voluntary organisations.) However, the element of incentive to employers was reduced by the introduction of employer charges after a review following a first pilot year without charges. Following changes introduced in 1996, ATW now pays up to 80 per cent of approved costs between £300 and £10,000 for disabled people already in employment, and 100 per cent of the approved costs above £10,000. It treats unemployed people more generously than those already in employment: it will pay 100 per cent of approved costs for disabled people previously unemployed (or in a job for less than six weeks) or for those changing employer. The new Labour Government announced in June 1997 that the charge above the £300 threshold would not apply beyond the first year of introduction of a provision. Under these rules, the most that an employer has to pay for any employee over a three-year period is £2,240. The national ATW budget is in the order of £19 million.

Under the 1996 revisions, a grant is now given to the employer or to the employee to purchase the equipment/services that the employee needs. Previously, ATW was designed around the needs of the disabled individual, who could have up to £21,000 spent on his or her behalf over a five-year period on approved measures. Under the current arrangements, employers are normally expected to purchase the support measure as agreed with the Disability Employment Adviser (DEA) and the disabled employee; the employer claims the state contribution towards the cost once the measure has been procured.

The original aim of ATW was to increase the number of disabled people in work: the intention was that 50 per cent of entrants to ATW should be unemployed. A survey commissioned by the government from Social and Community Planning Research (SCPR) in 1995, one year after its introduction, found that 92 per cent were already in work when they applied. In December 1995 support was refocused on the main priority of helping unemployed people into work rather than retaining people who became disabled; the proportion was set at 42 per cent for unemployed beneficiaries, 52 per cent for employed people and six per cent for the self employed. In the quarter ending September 1996, ATW supported 4,233 people in work with continuous help, helped a further 456 new users in work, and helped 334 people to obtain work.

The SCPR study (Beinart *et al.*, 1996) reports that 18 per cent of employers took ATW recipients after an offer of help from ATW. Other studies suggest that there were difficulties in accessing information and low awareness of ATW, as well as confusion over the rules and delays in obtaining support. ATW is being evaluated once again in the second half of 1997 in research commissioned by the government from the Institute for Employment Studies (IES). The evaluation includes the effects of the 'cost-sharing' changes applying to people already in employment and their employers.

Access to Work is discussed further in Parts III and IV.

Supported Employment Programme

The Employment Service's Supported Employment Programme (SEP) is designed primarily for people seeking entry to work who are otherwise unable to obtain or retain employment because of the severity of their disability. There are three elements: special workshops, the Supported Placement Scheme, and Remploy (a private company limited by guarantee, which receives government grants) which provides both workshops and supported employment. Leaving Remploy aside, over 200 providers contract with ES to provide workshops and supported placements.

Within SEP, the Supported Placements Scheme (SPS) provides funds to enable employers to take on people who are no longer 100 per cent productive. In essence, the payment for the under-productive element of the disabled employee is transferred to a sponsor organisation, which administers the scheme. The individual disabled person is placed with a host employer and the productivity of that employee is assessed. If they are assessed to be 60 per cent productive, as compared to non-disabled people carrying out the same job, then the employer would pay 60 per cent of the employment costs and the sponsor organisation would fund the remaining salary costs with external support from the Government.

It has been reported that the SPS has been used for people who become disabled in the course of their existing employment, although the extent of usage is not known.

The SPS, and its associated funding, is used to sustain severely disabled people in employment as well as to find them jobs in the first place. Funding may be used flexibly and not necessarily on wage subsidies. Many SPS providers believe that employers most value the promise of timely support in a crisis and some providers invest in support on the job, including workmate and buddy schemes, with or without wage subsidies. A report on six government-commissioned focus groups run in September 1996, involving 40 representatives of voluntary bodies and local authorities providing either SPS, workshops or both, says that SPS providers felt that in the future provision of good support service to employers would give better 'leverage' than direct wage subsidies, which, in any case, many better employers were reluctant to accept because of the effect on their other workers and a feeling that it stigmatised disabled workers. The stigmatisation of disabled workers has been a long-standing objection to wage subsidies on the part of disability campaigning groups in the UK.

Job Introduction Scheme

The Job Introduction Scheme (JIS) has been run by the Employment Service (ES) for twenty years. It is not a specific job retention measure but is designed to encourage employers to maintain the employment of new entrants. It enables a private sector employer who takes on a disabled worker, considered suitable for the job by ES personnel, to be paid a sum of ,45 per week (the amount of the grant has not kept in line with inflation) towards wages during a 'trial period', usually six weeks but exceptionally extended to a total of 13 weeks. The job must be expected to last for at least six months after the trial period has ended. The latest available figures suggested that numbers using the scheme have dropped significantly; in 1988/89 it provided help to just over 2,000 people. An evaluation report found that 30 per cent of participants were aged under 25. The operation of JIS is being evaluated in the second half of 1997, in part to examine whether there is still a need for it in the light of more recently introduced mainstream ES Work Trial and Work Placement schemes and the Access to Work scheme.

I.3 POLICIES AND PROGRAMMES TO SUPPORT DISABLED EMPLOYEES AT RISK TO RETAIN THEIR EMPLOYMENT

I.3.1 Mechanisms to support the rights of employees whose continued employment is at risk because of disability

Industrial tribunals

A disability advocacy organisation, the Representation Advisory Project (DDA-RAP), was established in the autumn of 1997 to represent disabled people in industrial tribunals. It is likely that an individual taking a case of disability discrimination to a tribunal will have already been dismissed, and this organisation is unlikely to represent disabled people in an effort to assist them in retaining their job. This project takes referrals from the Disability Law Service or the Royal Association on Disability and Rehabilitation (RADAR). It provides legal advice through a network of employment lawyers who give their services free of charge.

There is some early evidence that people represented by trade unions have won cases of alleged disability discrimination at an industrial tribunal:

In one case, the Transport and General Workers Union represented a woman who was dismissed by her employers after consultants recommended that a special chair be bought for her. The tribunal unanimously agreed that her employer had unfairly dismissed her by not modifying equipment so that she could sit and comfortably carry out her work. The tribunal awarded the individual £1,200 in compensation and the employer was ordered to reinstate her.

The MSF trade union represented a member in a case involving Myalgic Encephalomyelitis (ME). The individual was dismissed from her job as a health visitor with an NHS Trust after a 10 month sickness absence. She was in the middle of talks about a gradual return to work when she was dismissed just three days after the DDA came into effect. When she took her case to a tribunal the employer decided to settle out of court, paying ,16,000 in compensation.

The DDA places a duty on the Advisory Conciliation and Arbitration Service (ACAS) to provide conciliation where complaints of discrimination are made to an industrial tribunal. It may be that some employers, as a consequence of the intervention of ACAS or others providing representation or conciliation, may be willing re-instate workers previously engaged but having left their employment as a direct or indirect result of disability. To date there are no data available on the operation of conciliation services under the DDA.

Disabled workers in the UK have no legal rights to representation in the workplace other than those established through voluntary agreement.

Works Councils

With the new government's support of the European Union (EU) Social Chapter and the mandatory provisions for Works Councils within multinational corporations operating in Europe, it is expected that employee representation will develop over the next few years in Britain. Works Councils will, in theory, be able to delay dismissal, seek expert advice, pool resources across industry, and be better informed on enterprise policy. The Works Councils have the potential to formalise and improve the claims to job retention by disabled workers.

I.3.2 Financial incentives directed at employees whose continued employment is at risk because of disability

The UK has been unusual in its emphasis on incentives to potential employees rather than to employers. The notions of reducing benefit dependency and increasing incentives to work have underpinned policy for the last twenty or so years. (A special in-work disability benefit, Disability Working Allowance, designed primarily as an incentive to take up work, but operating as a supplement to low wages for disabled people already in work, is described in Part II.)

Funds available under the Access to Work (ATW) scheme have been outlined in I.2.3. They can now be paid either to the employee or to the employer. As noted in I.2.3, the original intention was to promote (re-entry into employment). The scheme treats disabled people in employment less generously than those taking up

work or changing employer. Disabled people who are self-employed and in receipt of ATW payments pay £100 towards the costs in the first year.

Disabled people with reduced productivity, who are unable to obtain or retain employment because of the severity of their disability, are eligible for the Supported Employment Programme (formerly referred to as sheltered employment) outlined in I.2.3. Within it, the Supported Placement Scheme (SPS) can, in principle, provide for disabled people to be retained in mainstream employment but it is much more often used for entry and re-entry to employment (see I.2.3). This scheme can, in principle, enable people with progressive impairments to be retained in employment as their productivity decreases. The contribution from the employer can be tapered on a sliding scale according to their productivity. However, there is no evidence of it being much used for this purpose.

Earnings through the Supported Employment Programmes are very low. The Supported Employment Earnings Survey, which is carried out every three years, found in 1995 that:

- about 70 per cent of the clients in Supported Employment earn less than the lowest paid ten per cent of all earners in open employment and only about 1.5 per cent earned above the median of all earners in open employment. Supported Employment is still dominated by manual workers (77 per cent);
- in Supported Placement Schemes there was one female for every two males and in workshops there was one female for every 3.7 males. Women's earnings are improving but are, on average, still £9 per week less than those for men;
- compared to the 1992 survey, the difference between the average wage for supported placement schemes and for workshop employees has narrowed from ,13.80 per week to ,6.41 in 1995.

I.3.3 Programmes which support a move to another employer or to self-employment

There are no specific programmes, which aim to support a direct move to another employer or to self-employment. An assessment by the Placement Assessment Counselling Team (PACT) (a disability-specific service under the auspices of Employment Services) may make recommendations for such a transition. Disability Employment Advisers (attached to PACTs and based in Job Centres) can advise disabled people seeking employment with another company or who wish to consider setting up in self-employment. Job Centres can provide mainstream support. But, in essence, the move to another employer or participation in self-employment is available to disabled people in the same way as it is to others. High Street recruitment agencies can also provide advice to disabled people who are seeking to transfer to another employer.

Help for self-employment can be derived from a number of *mainstream* sources. Some *Training and Enterprise Councils (TECs)* have provided supplementary allowances to disabled people using their generic Enterprise Allowance schemes to support self-employment. A study in 1995 found a low usage of TEC support for self-employment by disabled workers: it quoted ES estimates that about five per cent of those on Enterprise Allowance in 1995 had disabilities or long-term health problems; furthermore, the TECs did not consider the disabled population when promoting self-employment options. The study noted the inaccessibility of training venues for physically disabled people and the lack of information to disabled workers, for example about the fact that adaptive equipment is available to disabled people while training for self-employment. Local Enterprise Agencies, Chambers of Commerce and mainstream bank advisers are other potential sources of information. *The Prince's Youth Business Trust* is a charity which was specifically set up to help young disadvantaged people become self-employed. It helps disabled people aged between 16 and 30 to set up their own business by providing them with a £1,500 bursary or a £5,000 interest-free loan.

Specialist sources include the *Blind Business Association*, an organisation that operates as a network to help blind people seeking to set up their own business to obtain advice from other blind people already in self-employment.

I.4 BENEFICIARIES

I.4.1 Impact of definitions of disability and eligibility criteria on access to and coverage of policies

The definitions of disability and a disabled person under the Disability Discrimination Act are now used for access to specialist services for disabled people provided by the Employment Services. A different definition is used for eligibility for the in-work incentive benefit Disability Working Allowance (see Part II).

DDA definitions of disability

The Disability Discrimination Act defines disability as ‘a physical or mental impairment which has a substantial and long-term adverse effect on a person’s ability to carry out normal day-to-day activities’. Also covered by the Act are severe disfigurements, progressive conditions which are likely to become substantial, and people who have had a disability covered by the Act in the past and have recovered.

The publicly stated intention behind this definition was to exclude trivial or frivolous claims for protection. This is understandable, as the identification of disabled people within the labour market will inevitably be problematic. As Doyle (1993) has pointed out, a definition of disability must be both inclusive and exclusive: including individuals outside the popular perception of disability, yet exempting idiosyncrasies, human traits and transient illness.

The Act relates to the retention of people who are already disabled, people who become disabled and people who have been disabled in the past.

The term *impairment* is not defined but is likely to call for a medical assessment, especially as the term ‘mental impairment’ is stated as including an impairment resulting from or consisting of a mental illness only if it is clinically well recognised. This will call for expert medical opinion or evidence in litigation.

‘*Normal day-to-day activities*’ are considered to be normal activities carried out by most people on a regular basis, usually involving one of the following broad categories:

- mobility
- manual dexterity
- continence
- the ability to lift, carry or move ordinary objects
- speech, hearing or eyesight
- memory, or ability to concentrate, learn or understand
- being able to recognise physical danger.

It may be difficult for persons with well-recognised mental illnesses to show that these have an adverse effect on normal day-to-day activities, especially as work is not listed.

Excluded conditions: There are some specified excluding conditions which include: hayfever; voyeurism,

exhibitionism and sexual or physical abuse of others; alcohol or nicotine addiction; pyromania; and kleptomania.

It might have been expected that some people with recognised disabling conditions would have difficulty in making a case for coming under the definition in adversarial industrial tribunal proceedings. These might include those with stress related impairments, repetitive strain injury (or upper limb disorder), those with certain types of mental illness or learning disability, and those who experience back pain. An industrial tribunal case illustrates this last condition.

Rowley v Walkers Nonsuch Ltd

As a result of a back injury suffered at work, Mrs Rowley went on sick leave. She had been off work for six months, when her employer dismissed her after 22 years service, on grounds that it could not reasonably wait any longer for her to return. It stated the reason to be incapability due to ill health. Dismissing her claim under the DDA, an industrial tribunal found that her condition could not be said, on the evidence, to fall within the definition of disability under the Act. 'We do not find it possible to say that she had a physical impairment which had, at that time, a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities. The employers in late 1996 could not predict the future, but at that time we would not say that the condition of which we have heard came within that definition'.

(23 April 1997; Case No: 2900173/97 - heard in Shrewsbury).

Nevertheless, unofficial information indicates that the largest group of cases coming before tribunals relates to stress or depression, and the second largest to ill-defined chronic conditions.

Employer size

The employment provisions of the Act exempt employers who employ fewer than twenty employees. There is provision under the statute to adjust this threshold in a downward direction only, but not to remove it completely, following a review. The change must come into force within a year of the review starting. The present Government has indicated its intention to reduce this figure within their first term of office. On 3 December 1997, the Government announced a review.

Just over one-third of the workforce is employed in firms of under 20 employees. According to the Equal Opportunities Minister, 'around one million private sector employers (95 per cent of private sector employers) and almost a quarter of all disabled workers are currently excluded from the employment provisions of the Act'.

Excluded occupations

The Act does not cover people in active service in the armed services, police force, fire brigade and prison service. Nor does it cover people working on board ships, aircraft or hovercraft. Disabled people and their organisations who adhere to the 'social model' of disability object to the implication attached to the notion of 'excluded occupations' that disabled people as a group are incapable of such occupations. Consideration of excluded occupations is in the brief of the government-appointed Task Force set up in late 1997.

The social definition of disability

The 'social definition' of disability is not recognised by official definitions of disability. The British Council of Disabled People (BCODP) believes that disability should be characterised as 'the loss or limitation of opportunities to take part in the mainstream of life in the community on an equal level with others, due to physical or social barriers'. Disabled workers who feel that social barriers are affecting their work prospects

may have difficulty is gaining protection or understanding.

I.4.2 Disabled workers who benefit and those who miss out

It has already been stated that some disabled workers, and it is thought to be a significant number, will miss out on job retention policies inspired by the DDA and only applying to those people who come under the new legal definition of disability. The legal definition also may not cover some individuals who regard themselves as disabled, or who are treated by others as if they are disabled.

There is, however, an early indication that large UK employers, particularly those with a history of addressing employment discrimination, are not constructing their disability and employment policies solely around the rights of employees or potential employees who come within the new definition of a disabled person. All of the twelve employers approached for the purposes of this report (as detailed in Part V) were in the process of revising, or had revised, their policies on disability and employment; all reported their intention to apply at least the principles of the DDA to all disabled people and not just those covered by the new definition. The adoption of voluntary policies is, of course, discretionary and employers are free to choose who will benefit. Policies such as Disability Leave are likely to benefit select individuals most valued by their employers.

It is difficult at this stage to assess which disabled people will benefit from job retention policies inspired by the DDA and those that will not. At this stage, we can only speculate on some of the characteristics, which, in our view, may influence outcomes.

Those more likely to benefit

- Disabled people who possess educational, and particularly vocational, qualifications.
- Disabled people working or applying for work in enterprises with a history of accommodating disabled employees and where there has been rapid technological advance and a growth in flexible working practices, e.g. generally within the service sector of the economy.
- Younger workers.
- Those less likely to experience the added disadvantages associated with race, gender, social class and age.

Those more likely to miss out

- Disabled workers employed in enterprises where there is limited scope for alternative employment.
- Disabled workers employed in jobs and industries involving manual work e.g. engineering, mining and construction.
- Older workers.
- Disabled workers employed by or applying for jobs in enterprises that have little or no history of addressing the needs of disabled employees.
- People with mental illness.
- People with short-term impairments, which last for less than 12 months and are not expected to recur.

- People with asymptomatic conditions like HIV infection (or, for example, somebody who is found to be zero positive for rheumatoid factor on blood screening but does not yet have the symptoms of rheumatoid arthritis but could be expected to do so).

Workers not yet defined as 'disabled'

Workers whose existing condition deteriorates can miss out because the adaptations required to accommodate the lower productivity and/or sickness absences are generally not instituted early enough. There is no mechanism for early intervention by public support agencies. Many workers who suffer constant back pain, occupational stress, or diffused repetitive strain injury (RSI) may find it difficult to persuade state agencies, GPs (General Practitioners / family doctors) and employers of their need for special support. They may be forced to exaggerate their claims or wait until their condition deteriorates before attention is drawn to their concerns about job retention. The dilemma for workers who have developed an injury, illness or condition during the course of employment is that they must present themselves as disabled if they are to enjoy the protection of the DDA.

1.5 JOB RETENTION POLICIES IN CONTEXT

1.5.1 The salience of policies for job retention in the overall context of national policy to promote the employment of disabled people

In the UK there is a general lack of policy designed specifically for the retention of disabled employees. Disability Employment Advisors (DEAs) and Placing Assessment and Counselling Teams (PACTs) provided by the Employment Service (see Part III) can provide support to individual disabled workers who are in danger of losing employment through disability. However, the main emphasis of the Employment Service is directed at unemployed disabled people. Among the non-governmental disability pressure groups and service-providing organisations only RNIB has paid particular attention to job retention (see the Disability Leave initiative outlined in I.1.3).

The main policy emphasis has rested on reducing the escalating numbers of people claiming long-term social security incapacity benefits by tightening eligibility criteria and lowering the level of benefit. Reducing entry to the Incapacity Benefit through intervention before the employment relationship is lost has not been part of government strategy. Nor has active intervention to promote the early return to work of disabled people featured prominently in UK policy.

Since the Labour Government came to power in May 1997, job retention has emerged as a policy issue. Ways of assisting disabled people to retain employment (and so avoid dependency on long-term disability benefits) are being explored as part of the 'New Deal' for young and long-term unemployed people. Among the hundreds of non-governmental projects at a local level (many of which are supported by European Commission and/or charitable funding), a handful are now focusing on providing support to employed people who become ill or disabled and to their employers. As these projects operate in isolation from one another, applying lessons from practice is difficult.

Among pressure groups of and for disabled people there is some reluctance to support policies which promote the job retention of those who become disabled, if this might divert attention from the needs of people who are already disabled, particularly those disabled from birth or childhood, and those who have never worked. It should be noted that employment support for people with congenital physical impairments and people with learning difficulties is a comparatively recent development.

1.5.2 Most prominent job retention policies

Job retention for all employees has been somewhat undermined during the 1980s and 1990s. There have been

significant erosions of employee rights, and unions have had a decreasing influence on employment policy. There is much greater movement of labour within the employment market and increasing use of short-term contracts. It is predicted that someone joining the labour market will make significant job changes seven or eight times during their employment career. These trends in national policy have a significant impact on the employability of disabled people. They have made it easier for employers to avoid any social, moral or legal obligations they have to members of staff who are or who become disabled. The introduction of the DDA is expected to have a significant impact on the retention of disabled employees, with the acknowledgement of disabled people's rights in employment and the heightened awareness resulting from the introduction of new legislation.

I.5.3 Policies affecting the retention of newly disabled workers

Disability Discrimination Act

The DDA imposes a duty on employers to retain people who become disabled by making a reasonable adjustment. The requirements of this new legislation which affect employers employing 20 or more people will encourage employers to develop policies and procedures to address these significant issues. It is as yet too early to tell how many employers have developed practical policies in this area. It would seem that, at this moment in time, only the larger companies have responded to these new demands, with the effect trickling down through medium-sized businesses to small to medium-sized enterprises. A similar trickle-down response was experienced with the introduction of Health & Safety at Work legislation.

It is the opinion of the informants that the duty of reasonable adjustment imposed by the DDA has potential for job retention in the following areas:

The built environment and the provision of aids and adaptations: employers are under a duty to consider changes to the built environment or to obtain equipment to alleviate the work-related effects of disability.

Dismissal on the basis of poor performance: managers operating these procedures must now consider the provision of a reasonable adjustment to the physical environment or working arrangements applying to a disabled employee (as defined by the Act) before any action is taken to initiate disciplinary procedures or other detrimental action.

Sickness policy and sickness absence policy: the Act says that less favourable treatment of a disabled person will be justified only if the reason for it is both material to the circumstances of the particular case and substantial. The DDA Employment Code of Practice provides an example of how this principle may be applied to sickness absence:

A factory worker with a mental illness is sometimes away from work due to his disability. Because of that he is dismissed. However, the amount of time off is very little more than the employer accepts as sick leave for other employees and so is very unlikely to be a substantial reason.

Redundancy terms: under the Act, if a criterion for redundancy would apply to a disabled person for a reason relating to the disability, that criterion would have to be 'material' and 'substantial' and the company would have to consider whether a reasonable adjustment would prevent the criterion applying to the disabled person at all.

Training: the provision of training to a disabled person in order for the individual to be retained in employment, or arranging for him/her to be given training, is listed in the Act and Employment Code of Practice as an example of a step an employer may have to take in order to comply with the duty to make reasonable adjustments.

Dismissal on the grounds of disability or ill-health: medical examinations, inquiries, questions or screening will constitute ‘arrangements’ made for the purpose of determining who should be offered employment within the Act. If the effect of such arrangements was to amount to less favourable treatment of a disabled person for a reason related to disability, the employer will have to show that the treatment was justifiable. Even if all applicants and employees were medically examined, the effect might be to discriminate indirectly against disabled persons if the employer uses the evidence gleaned from the examinations without further individualised inquiry as to the ability to do the job or another job within the establishment.

Health and safety: the DDA prohibits blanket exclusion of people with specific disabilities on the grounds of health and safety. Any determination of a direct threat to health or safety must now be based on an individualised assessment of objective and specific evidence about a particular individual’s present ability to perform job functions, not on general assumptions or speculations about a disability. For example, an employer who excludes all persons who have epilepsy from jobs that require use of dangerous machinery will be required to look at the life experience and work history of an individual who has epilepsy. The individual evaluation should take into account the type of job, the degree of seizure control, the type(s) of seizures (if any), whether the person has an ‘aura’ (warning of seizure), the person’s reliability in taking prescribed anti-convulsant medication, and any side-effects of such medication. Individuals who have no seizures because they regularly take prescribed medication, or who have sufficient advance warning of a seizure so that they can stop hazardous activity, would not pose a ‘direct threat’ to safety.

Disability Leave policy

Disability Leave policy has the potential to contribute to the retention of newly disabled workers. It operates in a similar way to maternity leave but currently lacks the same legal status. In essence, it allows a newly disabled person a period of time to progress through rehabilitation, retraining and, if necessary, relocation to another position within the same organisation. As this is an entirely discretionary policy, however, employers are free to choose which disabled employees it appears most economically sensible to retain.

I.6 IMPLEMENTATION OF JOB RETENTION POLICIES

I.6.1 The effectiveness of institutional arrangements for monitoring and enforcement

Any disabled person whose job is being threatened by their employer is entitled to take their case to an industrial tribunal. Once a complaint has been lodged with an industrial tribunal the information is recorded by the Central Office of Industrial Tribunals in England or Scotland. These offices publish monthly data on the total number of industrial tribunal cases under the Disability Discrimination Act and a breakdown relating to dismissal, detriment, recruitment and reasonable adjustment. In addition, once the outcomes of specific industrial tribunal cases have been determined, the findings are made available for a fee from the Central Office of Industrial Tribunals. These reports on individual cases of discrimination can run to 30 or 40 pages. If the disabled person disagrees with the findings of the industrial tribunal, then they can appeal to the Employment Appeals Tribunal or Higher Courts if necessary.

As already noted, a specific problem with the enforcement procedure is that it is the sole responsibility of the disabled person to take court action. There has been no body established under the Disability Discrimination Act to support test cases, as currently exists under the Race Relations Act and the Sex Discrimination Act with the Commission for Racial Equality and the Equal Opportunities Commission. However, the current government considers the Act to be flawed and is committed to enforceable and comprehensive civil rights for disabled people.

The number of cases falls far short of the initial government estimate of 3,000 cases per annum. Between 2 December 1996 when the DDA came into operation and the middle of July 1997, 483 applications were made to industrial tribunals under the employment provisions of the Act. According to a House of Commons

written answer from the Employment Minister, '13 of these applications have been settled through ACAS, 10 applications were withdrawn and a further six settled privately without a hearing. Twelve applications have been heard by an industrial tribunal, of which one was successful.' By 10 October 1997 there had been 56 decisions from the industrial tribunals; 16 of these were adjournments where further evidence was needed. In six cases the applicant (i.e. the disabled person) was successful. The reasons for failure are of some interest:

- ten cases failed because basic procedural criteria were not met: the employer employed less than 20 people (6 cases); the act of discrimination occurred before 2 December 1996 when the provisions came into force (2 cases); or the applicants were beyond the three months time-limit for submitting applications (2 cases)
- six applications failed because it was decided that the employer was not aware of, or could not reasonably have been expected to be aware of the disability
- in two cases the tribunal found the person to have dismissed not because of their disability but because of their capability or redundancy
- in six cases the tribunal agreed that the employer was justified in not making a reasonable adjustment
- five claims failed because the applicant could not show that their impairment adversely affected their normal day-to-day activities.

The Government monitors employers' awareness and activities through the Multi-Purpose Survey of Employers (see I.2.2)

I.6.2 Factors which affect the adoption of voluntary job retention measures and take-up of financial incentives by enterprises

Historically, the employment and retention of disabled people have been seen as a problem. Employers have tended to focus on the cost of retention of someone who becomes disabled and have assumed that the limits imposed by an individual's impairment will have a significant impact on their ability to work.

Recent campaigns by government, the Confederation of British Industry, the Trades Union Council (TUC), the Employers' Forum on Disability', some disability organisations and some disabled business people (*inter alia*) for the 'business case' have argued the advantages of having people in the workforce who are already disabled. One strand of the argument for employing already disabled people has been to emphasise the loyalty, willingness and good attendance record of disabled people; this has been criticised as patronising and for pressuring disabled employees to do more than their non-disabled peers. Another argument is that disabled people are more likely to have valued skills of time management, diplomacy and problem-solving.

The 'business case' arguments, both for recruiting disabled people and for retaining employees who become disabled, revolve around the effect on staff morale, increased staff loyalty, reputation as a good employer and as a responsible member of the community, and increasing access for customers if adjustments are made for employees. Companies are now encouraged to think that they are better placed to devise and develop products and services that suit their customers' needs if their employees' profile reflects the profile of their customers.

The argument gaining most ground is that it is in employers' interests if the workforce reflects the diversity of their clientele and of the communities in which they operate. This diversity goes beyond disabled people to include older workers, younger workers, women, people from Black and minority ethnic communities. There has been a general trend in large organisations away from viewing equal opportunities as adversely affecting

the business, towards understanding how valuing a diverse workforce is good for the company.

With respect to the retention of people who become disabled, the main argument is cost-based. The following is a typical argument:

If an employee has become disabled 15 years into their employment with a company then the company will have invested a great deal of resources in their training and salary costs over that period of time. This investment, which is quite considerable, would be wasted if the individual was retired on ill health grounds if they became disabled. In addition, if employers are to retire disabled people on ill health grounds, then there are further costs to consider. These include the pension and other ill health retirement benefits. The Post Office has recently calculated that the average cost of retiring a member of staff on ill health grounds is between £60,000 and £80,000 per person. When this is considered in light of the average cost of a reasonable adjustment (£300 per disabled person) then there is little justification on cost grounds for the dismissal of newly disabled employees.

(Stephen Duckworth, Disability Matters Limited)

Another reason, which supports the business case for the retention of employees who become disabled is the requirement to avoid litigation. Compensation payments under the Race Relations Act and Sex Discrimination Act have been escalating substantially over the last two years. It is not unusual now to hear of figures of over £100,000 compensation. When this figure is added to the staff costs and legal fees incurred in fighting a case at an industrial tribunal, it is not difficult to realise that there is an economic imperative to avoid litigation. In addition to the costs of litigation, it can also lead to a great deal of adverse publicity for the employer. However, industrial tribunal awards under the DDA to date have not reached anything like such large sums.

The 'business case' is a relatively new phenomenon and, in many organisations, there is little awareness or dissemination of information about the potential benefits of employing disabled people. The Employers' Forum on Disability (see I.1.3) encourages its members to think in this way. The majority of companies involved in the Employers' Forum are large businesses, so the number of employees, turnover and profitability of the business are bound to have an impact on the adoption of voluntary job retention measures. In addition to this, it is likely that the seniority of the employee will have an impact on whether they are retained or not. For example, a senior manager within a business who becomes disabled is more likely to be retained than a shop-floor worker; thus, there are equity problems with the business case argument.

There are also 'business culture' issues to take into consideration. The 1980s became notorious for the downsizing, outsourcing and de-layering of companies. It is inevitable that this would have an adverse effect on the retention of disabled employees. As we progress through the second half of the 1990s, companies are much more focused on creating a culture within their businesses that values their employees as their greatest asset. Programmes initiated by the government, such as Investors in People (IiP), which encourage companies to reach certain standards as regards their employees, may help businesses retain disabled people.

Among the most significant factors that will affect the voluntary retention of disabled people are institutional values and methods of working. While large organisations, in both the public and private sectors, are developing seemingly excellent policies for the retention of disabled people on paper, the real issue is how will these policies work in practice. For example, it is unlikely that a Personnel Manager who has been responsible for drafting a company's approach to the Disability Discrimination Act will appear at an industrial tribunal. It is far more likely that a line manager who may be ill-informed about the employability of disabled people may, without any malice or ill intention, discriminate against disabled employees. The question is how to ensure that everybody working within organisations understands and implements their new duties under the Disability Discrimination Act.

Insurance

A further factor which affects the voluntary retention of disabled people is the investment by businesses in Permanent Health Insurance (PHI) Policies (see also Part II). These enable the employer, through their insurer, to provide a lump sum payment to a member of staff who becomes disabled. This helps the employer to make disabled employees redundant or to retire them on the grounds of ill health, as the insurance policy creates a buffer against the costs of medical retirement. It also helps to excuse the employer from any social or moral obligation they feel they have towards the disabled employee, because the individual is receiving a substantial lump sum payment. Insurers are not much motivated to influence job retention strategies on the part of employers. The British system of public health care and social security benefit support absorbs much of the liability of insurer and/or employer for ill health at work.

I.6.3 The role of disabled people's organisations

Disabled people and their organisations are becoming politicised. They have illustrated their dissatisfaction with the significant disadvantage experienced by disabled people in everyday society, through demonstrations and direct action. The press is very interested in the work of disability activists and, with reports in newspapers and on local and national television, it is likely that employers will become increasingly aware of disability as a human rights issue.

Other disabled people, training organisations and consultancies are providing a wide range of advice to employers and service providers to promote an awareness of the employment potential of disabled people. The DDA has been a catalyst for increased activity. These organisations will have some impact on the dissemination of information about the Disability Discrimination Act and on voluntary measures to retain disabled people and those employees who become ill or disabled.

I.7 INTERACTIONS BETWEEN EMPLOYMENT POLICIES AND PROGRAMMES

I.7.1 Ways in which employment policies complement or contradict one another

Research published in 1997 in the Equal Opportunities Review revealed that, since the introduction of the Disability Discrimination Act, an increasing number of organisations had developed policies on the employment and retention of disabled employees, demonstrating that the Act has had a significant impact on the introduction of revised or new policies. The arguments for the business case for retaining disabled people and the Disability Discrimination Act appear to interact. Nevertheless, despite the considerable attention given to monitoring the existence of policies, there is as yet little evidence of how they are put into effect.

Policies that may contradict the retention of disabled people include the provision of Permanent Health Insurance (see I.6.2). These policies give the employer an easy excuse to retire disabled people on ill health grounds, in a way that the employer considers causes little concern or harm for the disabled person. There is anecdotal evidence that some disabled employees are tempted to retire on health grounds because of the perceived impossibility of bringing a successful case against employers known to have a successful record in winning cases brought on grounds of sex and race discrimination. In the early days of the DDA employees may also lack information about their rights and support in bringing a case.

I.7.2 Impact of the distribution of responsibility for employment policy

National responsibilities

The United Kingdom is made up of England, Wales, Scotland and Northern Ireland. The first three countries constitute Great Britain. There is currently a single Parliament for the whole of the UK.

Separate Secretaries of State for Wales, Scotland and Northern Ireland are responsible for some, but not all,

aspects of policy in their countries and for certain functions administered by the Welsh Office, the Scottish Office and the Northern Ireland Office.

Policy documents, such as White Papers, and subsequent legislation, are often promoted jointly by the Secretary of State for the relevant government department in England and by the three Secretaries of State for Scotland, Wales and Northern Ireland. Legislation is often constructed separately for Northern Ireland. However, this formal situation is often ignored by commentators who tend to refer only to policy actors in England. Agencies of government departments tend to cover the whole of Great Britain, with a separate agency in Northern Ireland.

Although the situation sounds complex, there seems to be no real problem arising from the national distribution of responsibility for policy.

Departmental responsibilities

Since the merger of the Employment Department with the Department of Education in 1995, responsibility for most elements of employment policy rests with the Department for Education and Employment (DfEE) in England and Wales. A similar merger took place within the Scottish Office.

In England, ultimate responsibility for the employment of disabled people lies with the Secretary of State for Education and Employment. The Parliamentary Under-Secretary of State for Employment and Equal Opportunities has more direct responsibility for policies relating to the retention of disabled employees. Both Ministers work within DfEE, with specific tasks in respect of discrimination and disability being administered by the Disability Policy Unit (DPU). The DPU and ministerial responsibilities were transferred to DfEE from the Department of Social Security (DSS) by the incoming Labour government in May 1997. Previously, only the employment provisions of the DDA were overseen by the DfEE, which has the National Council for the Employment of People with Disabilities (established under the 1944 Act). Now, the DPU is responsible for activities within DfEE and also co-ordinates all disability-related policies such as those within DSS, which is responsible for Incapacity Benefit and other disability benefits. The DfEE also contains the Secretariat for the Disability Council (set up under the DDA). This structure creates one administrative body with responsibility for disability issues at a senior level within Government Departments, but imposes a considerable burden on the DPU to cover such broad subject areas.

Agency functions

The Employment Services (ES) agency within DfEE operates Access to Work, oversees PACTs and the Supported Employment Programme, and offers support to unemployed disabled people within its mainstream services, covering all of Great Britain. In Northern Ireland, a Training and Employment Agency relates to the Department of Economic Development. The main concern of ES is with (re-) entry to employment.

The DSS is responsible for social security benefits policy. The ES has joint responsibility with the Benefits Agency (BA, controlled by DSS; in Northern Ireland the Social Security Agency relates to the Northern Ireland Department of Health and Social Security) for administering employment-related benefits. The Benefits Agency administers social security benefits, including Disability Working Allowance (the only in-work disability-related benefit).

Policy responsibilities for training for unemployed people, vocational training for young people, employer-based training and support for enterprises in Great Britain rests with local employer-led private companies (Training and Enterprise Councils, or TECs - Local Enterprise Companies (LECs) in Scotland). They are responsible for about two-fifths of the ES budget. They contract training services to a range of public, private and voluntary sector providers. TECs and LECs have discretion to fund programmes which may vary quite considerably from one TEC or LEC to another. TECs and LECs are focused mainly on

unemployed people, although they can provide support to sustain self-employment.

There has been criticism of the split in functions between the ES and BA in relation to the lack of co-ordination between agencies which might assist disabled people in entry or return to work. Job retention as yet is not a high profile issue for these two agencies. It is likely that the historical lack of a joint approach (and in some areas antipathy) between the agencies will be problematic in relation to the retention of employees who become disabled. However, changes may occur under as yet undisclosed plans for the New Deal.

I.8 LINKS TO LABOUR MARKET FACTORS

I.8.1 Elements of labour market policies which influence the effects of job retention measures

There is much public policy, which indirectly affects job retention strategies for disabled workers. This commentary focuses on workplace health and safety legislation, employment law, law which regulates access to medical records, and state regulation with regard to occupational and statutory pensions.

Health and safety legislation

The focus of the many statutes in this area is on preventative risk management, employer education and the safe regulation of work activities. There is a negligible focus by the Health and Safety Executive (HSE) on the outcomes of work accidents, illness and disease: the aftermath is handed over to the Department of Social Security.

The activities of the HSE revolve around the mass of legislation regulating work routines. Legislation requires explicit instructions and rules and thus focuses on physical activities and environments, and on visible injuries and diseases. The HSE finds it extremely difficult to apply this framework to disability at work, which is not visible and/or does not pertain to physical activities or the physical work environment. Therefore the HSE's ability or commitment is extremely limited in preventing more qualitative health risks such as work intensification, work stress, back pain and diffused RSI. There is some concern now, however, from legal advisors that links between job activities and 'mental injuries' can lead to prosecutions under s.2(2)(a) of the 1974 Health and Safety Act under the requirements to provide a 'safe system' of work for the employee. The outcome of this argument is that the HSE is well equipped to deal with the health and safety concerns of the traditional manufacturing, utility, and agricultural industries but is less able to deal with health issues in the dominant services sector in which nearly 80 per cent of British workers are now employed.

The *Health & Safety (Consultation with Employees) Act 1996* was introduced in reaction to a European Court of Human Justice decision. The HSE argues that this legislation will lead to a further 33 per cent drop in accident rates.

The HSE provided a *Guidance Note on Job Placement and Rehabilitation* for employers on the health aspects of job placement and rehabilitation; it is currently under review following the introduction of the DDA. The guidance differentiates between a disabled worker and a worker suffering ill-health; it also draws employers' attention to the Health and Safety at Work Act 1974, which aims to protect the health and safety of employees and others who may be affected by the enterprise. Employers are obliged to be aware of the health status of their employees so that the employee, other employees, or customers are not put at risk.

The impact of the guidance can be interpreted in two ways in relation to job retention. First, employers need to ensure that the worker is sufficiently fit or dexterous to carry out the job required and that no person should be put at risk by unfit or ill workers. Therefore, employers should not retain workers if their condition is aggravated by work, or if it affects other workers or customers. On the other hand, the guidance encourages

employers to adapt work where possible, adopt early return to work strategies and work proactively to sustain a healthy workforce.

Statutes can be relied upon in dismissing disabled employees on the grounds that continued work would aggravate the injury or illness.

Employment law

Whistleblowing: Continuing a process of 18 years of amendments, the *Employment Rights Act 1996* has added new features to Health and Safety law; for example, it now protects workers who 'blow the whistle' on health and safety issues at the workplace, or those who carry out legitimate health and safety activities or take certain action in circumstances of danger. Taking actions to protect one's own health may legitimise disabled workers taking more frequent breaks or adapting their work routines so as to work more comfortably or safely.

Statutory Sick Pay (SSP): The *Employment Rights Act* Section 1(4) (d) (ii) requires that employers provide employees with a statutory statement which includes their rights when ill or injured and the provision of sick pay. All employees have the right to statutory sick pay for the first 28 weeks of absence but do not have automatic rights to occupational sick pay. SSP is not straightforward and requires agreement on a number of issues between employee and employer. The employee must fulfil the conditions concerning the calculation of the period of incapacity for work, a period of entitlement and qualifying days.

Dismissal law: This refers to unfair dismissal, wrongful dismissal and constructive dismissal. Unfair dismissal will be heard in an industrial tribunal, whereas claims for wrongful and constructive dismissal will be directed to county courts. Disabled workers should be aware of these remedies relevant to them, although they are very reactive strategies in that dismissal claims are lodged after employment has ceased. Even when reinstatement is provided as a remedy, it is likely that a constructive employee-employer relationship will have been significantly damaged during the course of court or tribunal proceedings. On this latter point it should be noted that the tribunal will seek conciliation, whereas the courts will provide compensation.

Constructive dismissal: It is conceivable that many disabled workers leave their employment voluntarily because of the combination of disability and a hostile work environment. If the employer has acted in a way, which breaches the contract of service then, even though the employer has not terminated the contract, constructive dismissal may be claimed. Thus, disabled workers who are not given support, are given menial or abnormal work, or, in cases where it becomes clear that the employer wants the disabled workers to retire or otherwise leave the enterprise, may feel that, although it was the worker's decision to resign, the employer made work life onerous to the extent that they were constructively dismissed.

Workers in the UK are under increasing surveillance at work as technology and managerial prerogative are directed towards the control of drug taking and malingering at work. The same surveillance can be directed at disabled workers. For example, an employee of a UK-based bank claimed in an industrial tribunal that she was victimised by her managers after taking seven weeks sick leave for work-related stress; all her lavatory visits and other absences from her desk were monitored and documented.

Access to health records

Disabled workers may feel vulnerable when their illness or disability is documented and records are held in the employer's data system. They may be uncomfortable sharing their confidential medical or psychological reports with their employer, even though such information can be useful in evaluating the merits of a job retention programme or alleviating the employer's concern about the future productivity of the worker. Equally, employers may be hesitant to introduce a job retention strategy without a very good knowledge of the disabled worker's health situation.

The Social Security Department's Guidance on Statutory Sick Pay allows the employer to challenge the statement of doctors and ask for other medical information on the condition of a worker who is absent on sick leave. The protection under the *Access to Health Records Act 1990* may not be fully relied upon in this case. The exact meaning of 'confidentiality' of a worker's health is unclear, especially when medical records during employment are kept by the employer or their representative. Occupational health professionals are concerned that the Access to Medical Records Act does not cover internal communications between enterprise-based medical staff and management.

Labour market policy

Policies in place before 1 May 1997 demonstrated a continued commitment to a 'flexible' labour market free from restrictive working practices, regulation and wage determination. Removing burdens on businesses was a prime concern of the former Conservative government. A series of reforms led to almost the total deregulation of minimum wages and a reduction of the role of collective bargaining in wage determination. With the deregulation of wage agreements, there has been a shift towards company or plant-level agreements, with more pay determination based on individual performance. A trend in the UK that is not evident elsewhere in Europe is an increase in low-paid jobs and wide disparities in incomes.

The promotion of individual responsibility and incentives to work were central themes of successive Conservative governments from 1979, alongside reducing the costs of the welfare state. A stated priority for action was 'an improved benefits system, which offers both strong encouragement to unemployed people to make efforts to find work and improved incentives to work'. Programmes for the unemployed, including long-term disabled people, focused on reducing the value of benefits, restricting eligibility, tightening their administration and introducing new programmes to assist access to work. Links between benefit payment and active job search were strengthened.

The low wages available in 'entry-level' jobs taken by unemployed people mean that some individuals can be little or no better off in work than out of work and claiming benefits. In-work earnings supplements seek to avoid this 'unemployment trap' for families with dependent children. They were first introduced in 1971. A similar in-work benefit was introduced for disabled people in 1992. The policy is based on the assumption that increased income is the main incentive to work. In 1996 and 1997 pilot programmes were introduced for groups for whom the 'unemployment trap' is a less significant difficulty.

Financial incentives to employers and subsidised community work play a central part in the Labour Government's New Deal plans, notably for young unemployed people. Whether wage subsidies and recruitment incentives will play a part in the 'Welfare to Work' proposals for disabled people is not yet known.

1.8.2 Changes in labour market demand and the structure of the labour market

The overall labour market participation rate (76 per cent in 1996) is well above the EU average and varied only slightly over the previous ten years; the activity rate for women has remained constant at around 67 per cent since 1990. Unemployment in the UK is now at a seven year low and this trend seems set to continue. This means that companies will soon start to experience significant skill shortages, similar to those experienced in the early eighties. (It was during this time that companies first began to develop positive policies towards attracting a diverse workforce, in order to address the skill shortage.)

The UK labour market is considered distinctive because of the growth of 'atypical' forms of employment. Part-time work grew most rapidly in the 1960s, however, and in the last ten years growth has been slower. In 1996, 25 per cent of workers were employed part-time, with 45 per cent of women employees in part-time jobs; in the EU member states only the Netherlands has a much higher rate of part-time working and the rate in Sweden is on a par with the UK. The distribution of hours worked is very wide. One in ten employees

work fewer than ten hours in their main job. Part-time work is less well paid: on average, part-time employees earn two-thirds of the hourly earnings of full-time employees. Equal employment protection was extended to part-time workers in 1995, following a ruling that part-time women workers were unfairly discriminated against. However, there is a two year qualifying period for access to employment protection rights.

Self-employment rose sharply in the 1980s but in the 1990s the share of self-employment has remained static at around 13 per cent (17 per cent of male employment). The share of temporary work, although growing, is relatively low. New forms of flexible working include nil-hours contracts, flexi-time (12 per cent of employees work flexi-time) and home-based working, including tele-working.

Implications for disabled people

A research-based commentary on the implications of the changing labour market for disabled people notes that part-time working may offer greater employment opportunities for those disabled people who do not feel able to carry out a full-time job because of a lack of stamina or fluctuating conditions, or who need to devote more time to everyday living tasks. Flexible working hours and self-managed employment patterns are potentially of benefit for the retention of disabled workers; for example, for people with progressive arthritis who find it difficult to get going in the morning, to start their working day later, or for people on dialysis who are required to go to a hospital on two days a week, who could work longer on the remaining days to compensate for their absence. However, the acceptability of such adjustments under the DDA remains untested.

Disabled people in self-employment constitute 14 per cent of the disabled workforce, but older people are over-represented. Home-based self-employment may have particular attractions: as many as 19 per cent of self-employed disabled people say they have to work at home because of their condition. While self-employment can be welcomed for offering flexible working patterns and the ability to work around disability or illness, other research found that disabled self-employed people work longer hours than non-disabled people, although a much higher proportion of disabled people reported they could not work full hours.

Tele-working or home-working may also present better opportunities for disabled people in employment, but the resulting social isolation may mean that it is a limited option for others.

Factors that have an adverse affect on job retention for disabled people include downsizing, de-layering, outsourcing, reduction in union powers through the erosion of employee rights, early retirement and redundancy policy, and the growth in atypical working.

I.9 OTHER ASPECTS OF EMPLOYMENT POLICY AND PRACTICE WHICH HAVE AN IMPACT ON JOB RETENTION

Self-determination

One significant factor that should be considered with respect to the retention of disabled employees, is the impact of the onset of disability on the individual. People who suddenly become disabled or who develop a progressive impairment will view themselves in a different way from before the onset of that disability. It is likely that they will devalue themselves, just as they are devalued by other people in society. This may result in a negative self-image, leading them to take less responsibility for their own retention, training and career development. If they are offered opportunities for ill-health retirement on the back of a Permanent Health Insurance Policy, then they may be more susceptible to this approach than they might be if they felt more positively about themselves. In order to resolve this very difficult issue, employers need to invest in personal development programmes for newly disabled people or disabled people who are being considered for early

retirement or redundancy. This form of training will help disabled people to become more positive about themselves. Research on this approach is currently being carried out by one of the world's largest Permanent Health Insurance companies. The findings from this research are likely to become available early in 1998. Further information on it is currently commercially confidential.

Occupational stress

The spectre of 'work stress' and its potential for generating huge compensation claims from disgruntled, ill or distressed employees has gained prominence in recent times, with estimates that occupational stress is costing ,100 million a year to British employers. Of key interest to job retention and return to work measures is the fact that workplace demands, work design and early intervention can have considerable impacts on stress levels and therefore proactive disability management is appropriate. There is some uncertainty about the term 'occupational stress' and it is conceptualised in a number of ways. The HSE have tried in vain to dismiss it as a real Health & Safety issue and to refer instead to 'stress-related ill-health'. Now, at last, the HSE is sponsoring a three-year study into occupational stress involving 17,000 people. The objectives are to reach an accurate working definition of the term 'occupational stress'; look at the causes of stress at work; determine the extent of occupational stress and its severity; and assess the effects of stress on people's health.

II. BENEFIT AND COMPENSATION PROGRAMMES

The purpose of this Part of the report is to examine how social benefit and compensation programmes affect possibilities for disabled workers to retain or rapidly resume their employment. The main focus is on the application of benefit programmes in employment; that is, opportunities to combine earnings with income from disability benefits, workers' compensation or other employment-related reparations. The obstacles presented by systems for out-of-work benefits are also examined. The theme covers cash benefits and payouts and, where significant, allowances against taxable income. Programmes may be funded from tax revenues, or from earmarked or general insurance funds to which employers and/or employees contribute.

The first section presents information about workers' and other compensation programmes. This is followed by a discussion of arrangements for combining benefits and earnings from work. Provision is then considered for income support out of work, and its effects on work resumption. The final section examines interactions between disability benefit programmes and employment policies.

Aspects of the disability benefits programme are under review and changes are expected to be announced in the Spring of 1998.

II.1 COMPENSATION PROGRAMMES FOR WORK-RELATED INJURY OR ILLNESS

II.1.1 Principal compensation programmes for work-related injury or illness

The only state compensation programme specifically for work-related injury or disease is Industrial Injuries Disablement Benefit. It provides financial compensation only. Employers' liability insurance is compulsory and employees who suffer a work-related injury or disease may take civil action against the employer. Both schemes have been restricted over the past 15 years. Neither of these schemes imposes any requirements on employers such as to provide rehabilitation for the injured employee.

Social security benefits, notably Incapacity Benefit, provide income compensation regardless of cause of incapacity for people deemed incapable of work. Reforms introduced in 1995 aimed to reduce escalating growth in the number of recipients of Incapacity Benefit.

Attention is focusing on the potential of private insurance taken out by employees themselves, although such schemes benefit only those with the financial capacity to contribute to them. Benefits packages provided to

employees by employers are also significant in inhibiting job retention in the event of illness or disability occurring in the course of employment.

We first describe programmes specific to work-related injury and illness, move on to look at relevant state income maintenance schemes for being who are sick or disabled, and conclude by describing private schemes.

Industrial Injuries Disablement Benefit (IIDB)

Industrial Injuries Disablement Benefit is a tax-free benefit payable to people who are disabled because of an accident at work or because they have a disease caused by their work. A person does not need to have paid National Insurance contributions to be able to get Industrial Disablement Benefit. Self-employed people are not included in the scheme.

Industrial Disablement Benefit for an Accident or Injury

There are two main conditions which have to be satisfied: the person must be employed by someone else and be paid wages or salary; and the injury must be the result of an accident at work which happened after July 1948 (and the accident happened in the UK or in a country with a reciprocal agreement covering industrial injuries, or anywhere abroad if Class 1 or 'special' Class 2 national insurance contributions are payable).

There must be some loss of physical or mental faculty as a result of the accident. The degree of loss of faculty will be assessed by a Medical Board. Benefit is not payable until 15 weeks after the date of the accident causing the disability.

Industrial Disablement Benefit - Prescribed Diseases If someone has an industrial disease, or a condition resulting from one, and it has occurred because of work after July 1948, they may be able to get help under the industrial injuries scheme.

There are three main rules:

- the disease must have been incurred in the type of work listed for the particular disease
- the worker must have one of the diseases listed
- the disease must be because of work in a job listed for the disease.

Payments

Benefit will be paid, as a weekly pension, if the degree of disability is assessed at 14 per cent or more. Assessments between 14 per cent and 19 per cent will be paid at the rate for 20 per cent. If less than 14 per cent disabled the worker cannot normally get Disablement Benefit unless the disease is pneumoconiosis, byssinosis, or diffuse mesothelioma. There are different rules if the job has made the worker deaf.

Table II.1: Percentages and amounts, 1997-1998

<i>Disability</i>	<i>Payment</i>	<i>Disability</i>	<i>Payment</i>
100%	£101.11	50%	£50.55
90%	£90.99	40%	£40.44

80%	£80.88	30%	£30.33
70%	£70.77	20%	£20.22
60%	£60.66		

Source: Disability Alliance ERA (1997) *Disability Rights Handbook, 22nd Edition, April 1997-April 1998*, London: Disability Alliance ERA.

Total payments for disease and injury compensation are around £600 million per year. About 2,500 successful disablement benefit claims are made for the first time each year. Spending on the scheme is controlled. The value of the benefits has been progressively reduced since its introduction in its present form after World War II (the original Workers Compensation Act which introduced 'no-fault' compensation dates back to 1897). The range of available benefits has been reduced over the past 15 years, most significantly by the removal of reduced earnings allowance, which is now available only to those with health problems predating 1990. In real terms, spending on the scheme has declined as a proportion of the social security budget.

Employer liability civil compensation scheme

If an employee becomes disabled because of a work-related injury or disease then the individual may be able to obtain compensation by taking the employer to court as result of their failure to take due care within their responsibilities under the Health and Safety at Work Act. Levels of compensation will be determined by the court and are subject to the impact of the disability on the individual and the effect that it will have on their future earning capacity. The amount of compensation awarded each year is similar to that in the IIDB scheme but the number of new claims is very much higher, standing at 70,000 new claims in 1995. Over 90 per cent of claims are settled out of court (that is, negotiated by solicitors for the two sides). Compensation payments can sometimes be very substantial indeed.

Statutory Sick Pay

Any employee who becomes ill or disabled whilst in employment is entitled to Statutory Sick Pay (SSP). The maximum amount of SSP that an employee can receive is 28 weeks pay (at a rate of £54.55 a week in 1996/97) in any sickness period, whether that period is continuous or linked. Many employing organisations have a policy to pay more than Statutory Sick Pay. This can vary from just a few days for new recruits to a full year for established employees. In some organisations employees can be paid at full salary level for up to six months with any further payments at a lower level.

If overall limits are reached and an employee needs to take further time off, employers have a range of options: transferring the payment of sick pay to the permanent health insurance scheme, if applicable; paying extended sick pay on a discretionary basis; allowing the employee to take unpaid leave, or allowing the employee to use accrued annual leave entitlement.

State income maintenance benefits for disabled people

Employees who become disabled during their time in employment, and who no longer have an employment relationship, have access to a range of state-funded benefits.

Incapacity Benefit

In 1971, a contributory benefit to replace lost earnings arising from total incapacity for work was added to the range of national insurance benefits established in 1944, as a response to a growth in long-term sickness claims. In 1995, this Invalidity Benefit was amalgamated with Sickness Benefit to become Incapacity Benefit (IB). It is paid to insured people who are deemed unable to work following a medical assessment. The benefit is not means-tested but is taxable. It is paid at two short-term rates in the first year and thereafter at a higher long-term rate. An age addition is paid for those whose incapacity began before the age of 45, depending on the age when it began. There are around 1.56 million recipients under pension age (at May 1997).

Severe Disablement Allowance

In 1984 a severe disablement allowance (SDA), funded from tax revenues, was introduced for severely disabled people of working age who have never worked or who have insufficient national insurance contributions. SDA replaced two separate benefits. The amount of this allowance is lower than the insurance-based benefit but is tax-free. Anyone who became disabled for work under the age of 20 qualifies. Others must prove that they have been 80 per cent disabled for at least 28 weeks. At May 1997, there were 367,000 recipients. Around 80 per cent of SDA recipients are of working age (there is no upper age-limit for receiving the allowance once it has been awarded). More women than men of working age receive SDA. Rather less than half have learning difficulties.

Income Support

Disabled people who are ineligible for the insurance benefit (IB) or for SDA may apply for Income Support (IS). This is a means-tested general social assistance benefit available for those not working 16 hours or more a week and is designed to bring income up to a minimum level. IS may be the only income source or a top-up to other benefits. IS premiums are paid to groups not required to be available for work: pensioners, lone parents and disabled people under the age of 60. The disability premium is awarded if certain other 'qualifying' disability benefits are being received. In 1995 around one in eight (739,000) recipients were disabled; of those, 231,000 also received SDA.

Jobseekers' Allowance

Disabled people not receiving IB, SDA or IS who are unemployed for more than six months may receive the income-based Jobseekers' Allowance. There is no test of disability for this benefit and numbers of disabled recipients are not available.

Other state benefits

There are also benefits, which are not dependent on an employment history; they are underpinned by the assumption that having a disability can involve extra costs:

- Disability Living Allowance is a tax-free benefit for people who need help with personal care or with getting around, or both. It is made up of two components, a care component and a mobility component. Both components are for people who have become disabled before the age of 65.
- Value Added Tax relief is available on goods purchased by disabled people which are bought for a reason which specifically relates to their disability.
- A range of other state-funded compensation programmes that may support disabled people include the Independent Living Fund, Housing Benefit, Council Tax Relief and Housing Grants.
- Additional financial help for people who are registered as blind. These benefits include

special Income Tax Allowance, Television License at reduced cost, travel concessions and a higher weekly payment of Income Support.

Individuals who become disabled due to war-time injuries are entitled to claim a War Disablement Pension.

Private schemes

Employers can also offer medical insurance, pension schemes and life insurance policies to disabled people. Early retirement on health grounds may result in the employer withholding payments for medical insurance and life assurance; however the individual may receive a contribution from the pension scheme.

As there are no statutory obligations for employers to provide these benefits, they are delivered in a variety of ways according to employers' and employees' needs. For example, Hospital Cash Plans are a cheap form of occupational health protection and such schemes will cover a period of 'recuperation' for policy holders.

Permanent health insurance

Many employers provide benefits packages to attract and recruit highly qualified and well motivated members of staff. One of these measures is Permanent Health Insurance (PHI), sometimes referred to as long-term disability insurance. This is a scheme whereby the employer takes out a private insurance scheme to safeguard the future financial requirements of employees who become disabled and are no longer able to work. The benefit to the individual would be approximately 50% of their salary for a period of 10 years after they are retired on ill-health grounds, although this is quite variable. PHI packages often include both long-term occupational sick pay and critical health cover. While these packages can be valued by disabled workers, access to workplaces which have such coverage is often limited. These schemes tend to be marketed to professional, full-time employees and those in the public sector, and existing health conditions can exclude a person from membership, or at least limit their benefits. PHI policies are also bought by the individual as well as by the employer as part of a group scheme.

Occupational health schemes

Such schemes offer packages of differing value to disabled workers. Decisions to remain in employment or take the 'golden parachute' to retirement depend on each scheme's qualifying conditions, definitions of incapacity and benefit levels. Occupational sick pay schemes vary in their rules for eligibility, coverage, exclusion for sporting injuries, entitlement, waiting days, notification, and long-term sickness.

Private health insurance

A survey carried out in 1994 showed that over 3 million people subscribed to private health schemes, over half of them with group schemes; 36 per cent of households with an annual gross income of ,26,000 had private health insurance but only three per cent of households with annual gross income of less than ,8,000 cover. The older contributors are protected with specific tax relief for people aged 60 or older so that cover can be maintained despite reductions in income.

A series of questions included in the 1995 General Household Survey (GHS) looked at private health insurance in the UK and findings supported the perceived selectivity of such schemes (which are similar in coverage to the occupational pensions cited above). Since 1987 there has been only a slight increase in the number of people with private medical insurance (PMI) (from five per cent to six per cent). The most common type of private medical insurance is the company scheme for which the employer pays the whole contribution (40 per cent). Noticeably, coverage was predominately provided to professionals (40 per cent) and employer or manager groups (44 per cent). Men were twice as likely to be policy holders as women (nine per cent to four per cent) and people who reported a long-standing illness were less likely to have PMI cover (five per cent) than those who reported a non-limiting or no long-standing illness (11 per cent).

Effects on disabled workers

It is the more severely disabled employees and self-employed people who are the most vulnerable under the new approach to both pension provision and individual health coverage. A 1995 study found that disabled people are less likely to be covered by occupational pension schemes and disabled workers are even more likely to be vulnerable if they have had a disrupted work history, are female, and/or perform manual work. See the table below.

Table II.2: Characteristics of likely membership of an occupational pension scheme		
<i>Characteristic</i>	<i>Most likely to be members of an occupational pension scheme</i>	<i>Least likely to be members of an occupational pension scheme</i>
Pay	well-paid job	poorly paid, earning under ,5,000 pe annum with poor savings
Gender	male	female
Job	white collar, public sector or large private sector, full-time	manual, cleaners, workers in cafes, restaurants and public houses; casual smaller firms
Age	middle-aged	young
Disability	non-disabled	disabled

Source: compiled from Howard and Thompson, 1995:26.

Occupational pension schemes and occupational health insurance differ in their impact on workers between jobs. It is important for workers to accrue benefits to the former schemes over time, while in occupational health schemes the rights to full benefits are available once the qualifying period is over. Employees with poor occupational pension coverage would be encouraged to seek occupational health coverage for their disability rather than rely ultimately on an occupational pension fund.

II.1.2 Features of the compensation process which affect job retention and return to work

Assessing eligibility for incapacity benefits

A new approach to assessing eligibility was a central element of reforms to disability benefits in the first half of the 1990s. The introduction of self-assessment marked a departure from medical examination towards recognition of the practical effects of disability. Self-reporting procedures may be involved in applying for any of the disability benefits (except for Industrial Injuries Disablement Benefit for which the extent of disability is assessed in percentage terms, based on a medical assessment).

Eligibility tests for income replacement disability benefits are now based initially on self-assessment of functional capacity. The 'own occupation' test applies for the first 28 weeks of a claim of incapacity to work and assesses the person's ability to do their usual work, supported by a medical certificate issued by their own doctor. After 28 weeks, those who continue to claim are subject to the 'all work' test (those with no usual occupation are subject to the all work test immediately). Claimants complete a questionnaire and statements

are supplied by medical practitioners and specialists. Claimants may be asked to undergo a medical examination if required by the decision-makers (the Benefits Agency Medical Service). The all work test contains no reference to labour market conditions.

The all work test assesses capacity to do any work determined by 'functional ability' to carry out activities such as walking, rising from sitting, carrying, seeing, continence and so on. Limits on ability are scored; a total of 15 points qualifies. The mental health assessment covers ability to complete tasks, cope with daily living, deal with other people and cope with pressure. The test does not take account of the claimant's possible work situation and of adaptations which could be made to accommodate functional limitations.

Although most claimants have found the self-assessment test easy to complete, concern has been expressed about the difficulty of capturing fluctuating conditions, as the yes/no nature of the questions does not allow for contextualised answers. Research indicates that the new rules exclude from incapacity benefit some disabled people with partial capacity for work, notably those who are unable to work a full day or week because of disability, those who need extra rests during a full working day and those likely to need substantial amounts of time off work for treatment and sick leave.

A proposed innovation from the Health and Safety Executive (HSE) is a distance learning package, accredited by the medical profession, which seeks to educate doctors who frequently are called on to give sickness certificates. The package encourages GPs to consider the type of work, work adaptations, work flexibility in relation to the daily work activities of the patient before certifying them as unfit for work. There are obvious concerns about confidentiality but a positive relationship between doctor, disabled worker, and employer may result from training packages which improve a GP's understanding of the work environment, strategies and adaptations available, and the long-term consequences of sickness absence versus job retention programmes.

IIDB and civil damages

There are major differences in coverage between IIDB and the civil damages provision under employers liability insurance. The former covers 67 prescribed diseases, almost identical to the list in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR). Even this, however, only covers a small proportion of diseases on the European Recommended List. As Pickvance (1997) points out:

Yet only a third of the diseases on the European Recommended List are covered in full in the UK list. Half the diseases on the prescribed industrial diseases list generate, on average, only one successful claim each year. Ninety per cent of successful claims are for just ten of the diseases, and some of the most common work-related health problems identified from the Labour Force Survey, in particular musculoskeletal conditions, are not included in the list at all.

Civil damages awarded from employers' liability insurance cover any disease which can be related to a worker's occupation, provided that liability and negligence can be demonstrated. A proportion of claims for relatively common conditions are settled on the basis of no-fault schemes agreed between insurers and some major personal injury solicitors, notably for occupational deafness but recently extended to cover hard-arm vibration syndrome and repetitive strain injuries.

Prevention

Neither system has much affect on prevention. As noted, the prescribed diseases in the state system are closely linked to RIDDOR's and reports through RIDDOR should prompt investigation by the HSE. However, they bear little resemblance to the true picture of occupational injury and disease. In sum:

Prevention is hindered rather than enhanced by linkage to a system which is artificially limited by cash constraints on state compensation and the strict criteria laid down for prescription. ... [The] system of state regulation ... compensates a tiny number of people for a few long-recognised diseases and has no detectable effect on national prevention policy'.

Employers' liability insurance does not translate into pressure to improve conditions in the workplace. Employers' typical response to serious injury is thought to be no more than the replacement of guards on machinery. Workplace visits by insurers' assessors when the level of insurance is under review do not appear to be effective in changing practices to encourage prevention. There is some anecdotal evidence that advice by insurance assessors works against the retention of already disabled people who can be considered to be a liability in some work situations.

Job retention/return to work

Neither system is designed to foster job retention or return to work. In the state compensation system (paid through national insurance premiums) there is no opportunity for rebates or discounts to employers based on past claims or for insurance premiums tied to requirements which improve the future level of claims.

The liable employer is not required to pay the costs of rehabilitation for the injured employee and costs, whether borne by the employer or the state, are not covered by liability insurance. (In the opinion of the informants, the Government's instructions that the National Health Service claim back from insurers the costs of motor vehicle accidents presage changes.)

Changes to legal aid

Access to the civil damages system has been restricted by changes in the legal aid system; only those with disposable incomes equivalent to the Income Support level now have access to free legal aid. Planned changes to take effect from April 1998 mean that free legal aid will no longer be made available to poorer workers who are seeking monetary damages through civil action. It is expected that the move to no-win, no-fee agreements with lawyers will allow many middle and upper income groups to seek agreements with lawyers to handle their cases. It is expected that lawyers will 'cherry-pick' the simpler and easier cases, and avoid the more complex cases. The consequence for disabled workers is that there is an opportunity available to pursue civil compensation, and lawyers may attract disabled workers to this path at the expense of conciliatory job retention strategies. Noticeably, successful personal injury claims have risen threefold over the last decade. The winners will be the more articulate disabled workers with straightforward cases and the losers will be those disabled workers who in the past would have received free legal aid, and/or disabled workers with more complex cases such as stress, RSI, and other illness with a perceived work-relatedness factor where the risk of losing a case may be difficult to estimate. The poorer workers would also not be able to pay the insurance fee (to cover the costs if the case fails) and the initial medical reports needed to launch an action.

On the other hand, one might speculate that the prospects of increases in civil litigation cases and larger compensation levels may prompt employers to take proactive measures to manage issues that in the past were handed on to workers' compensation and other insurers.

II.1.3 Influences of key actors involved in the process

Trades Union representatives are the largest source of information about IIDB and the main source of advice. Trades Unions play a major role in successful claims under the civil damages scheme. Trades Union membership gives access to low-cost legal representation. In 1994, almost two-thirds of injury and disease compensation was won for trades union members; at that time a little over one-third of the workforce was in a trades union.

Trades unions, some *disabled people's organisations* and *employers' organisations*, like the Employers' Forum on Disability and local employer networks, are now seeking to influence the current compensation process which does not favour action to promote retention. They are in favour of promoting an approach which understands the business benefits of retaining people who become disabled. In addition, disabled people's organisations are seeking to promote a much more positive image of disability and an awareness of the value and potential of disabled people in employment. Unions are also in a key position to promote the value of disabled people in employment; however, this does contradict their role as advocates for employees who become disabled with a work-related injury who are undergoing the process of taking a compensation claim to court.

The net effect on disabled individuals seems to be that they are more likely to consider returning to work if their employer has created a culture which values diversity and values disabled people in particular. They are more likely to decide to return to work if there are a substantial number of other disabled people working within that organisation who will act as positive role models by demonstrating that disabled people are welcome.

Insurers in the UK will cover the employer's liability insurance associated with injuries/diseases and set premiums based on: claims experience of the enterprise over a set period; industry/occupation type; a measure of the time over which employees are exposed to risk.

In the UK, these insurers are passive toward job retention and tend to focus on selling products to large employers in terms of liability, private health insurance and sickness insurance without becoming interested in developing partnerships with employers or offering flexible packages.

II.1.4 The effects of compensation on job retention, return to work and exit from employment

IIDB

Data on IIDB claimants is available from a 1995 DSS-commissioned stratified survey of recent successful and unsuccessful claimants on the basis of accident at work and prescribed disease. In the latter category, compensation was not an important factor in determining exit from employment as claimants were, on average, aged over 60 and a large proportion were retired at the time of the claim. There is little evidence to suggest that the award levels *per se* encouraged claimants to leave employment. IIDB may be combined with Invalidity Benefit, however, and around half of successful accident claimants obtained both. Combined incomes are very low, however, and although over half of successful accident claimants receiving benefits in addition to IIDB never returned to work they mostly regarded themselves as permanently disabled.

According to the survey, nearly half of successful accident claimants never returned to their place of work, compared with under a quarter of unsuccessful accident claimants. Among those accident victims working for a different employer, the majority had left their previous employment because their disability meant they could no longer do the job or because working conditions were unsuitable. Twelve to 13 per cent of accident claimants wanted work but had not found suitable employment.

Civil compensation scheme

It is likely that, the greater the illness or injury that can be demonstrated by the employee's lawyer, the larger the compensation claim will be. Any return to work will jeopardise a compensation claim. There is little

doubt that this scheme generates the potential for preventing newly disabled people from returning to work.

In the case of occupational stress, the present unwillingness to tackle such stress pro-actively pushes many disabled workers into pursuing civil cases for compensation after the stress has forced their resignation rather than ask for support for job retention measures while still in employment. A number of legal precedents have encouraged the civil law approach.

The self-image of the disabled person is a factor. If they feel very negative about their new experience of being a disabled person then they may be less likely to remain in employment and more likely to adopt the compensation route.

Social security benefits

The UK has an 'all or nothing' system of income maintenance for disabled people judged incapable of work. The prospects of return to work once the employment relationship is broken are limited by disincentives in the benefits system. The bewildering array of state benefits available to disabled people can create a great deal of confusion amongst disabled people. A lack of knowledge of the options, and a reluctance to risk leaving out-of-work benefit combinations, appear to interfere with return to work.

Retirement on grounds of ill health

A great deal will depend on the individual. If they have become highly demotivated as a result of the onset of their impairment then they are more likely to take the unemployment route rather than decide on a pathway which helps them return to work. The employer can be very influential in this area. An employer who is relatively resistant towards retaining disabled people may inform the newly disabled employee of the benefits of retirement on the grounds of ill health in a way that encourages them to take this option. If, however, the employer has a very positive policy towards retention of disabled people then they are more likely to advise the newly disabled employee of the benefits of remaining in work.

II.1.5 Characteristics of disabled workers who do or do not retain their employment or return to work following successful or unsuccessful claims

Published statistics on Industrial Injuries Disablement Benefit do not show the numbers of recipients in work. The stratified sample survey of successful and unsuccessful claimants that was referred to above found that one third of successful and over a half of unsuccessful accident claimants were in paid employment or about to start a job they had already found, around two thirds working for the same employer. Only one in ten of those who suffered from a prescribed disease were in work; according to the survey, a high proportion of claims for prescribed diseases are made retrospectively post-retirement, well over half being three or more years after onset - attributable in part to changes in the law recognising chronic bronchitis.

The nature of IIDB means that a large proportion of claims are confined to certain industries. Managerial, professional and sales occupations account for very few claims.

II.1.6 Effects on job retention and return to work resulting from the interaction between compensation programmes and out-of-work benefit programmes

Incapacity Benefit is not means-tested and may be claimed in addition to other income sources such as occupational pension. An estimated 40 per cent of IB recipients (55 per cent of those aged 55 and over) receive occupational pensions.

Because of the means-tested rules in other benefits and offsets for receipt of benefits, many unemployed workers with compensation payouts and IIDB find themselves stuck in a low level of combined benefits. A particular problem is 'clawback' by the DSS Compensation Recovery Unit of damages awarded to litigants for civil compensation, sometimes leaving the claimant with little or nothing to show for a protracted legal battle. A survey of Invalidity Benefit (IVB) claimants about a year after receiving IVB for the first time found that 15 per cent had made a claim for compensation for their IVB condition.

The Government has announced a strategic view into benefits and taxation systems which is currently being conducted. This general review will affect all benefit and taxation systems, not just those relating to newly disabled people. However, the Government and its advisers are consulting widely with disability organisations to develop a new and sustainable approach.

Retirement pension schemes

State early retirement strategies of recent decades are now being reversed, with efforts being made to keep older workers in employment. The pressure for older workers to jump into an attractive early retirement scheme has been replaced by strategies to maintain their employment, utilising flexible human resource strategies and gradual pension and retirement plans. The lessons currently being learnt in accommodating older workers can be used in the job retention of disabled workers. In a recent survey of employer attitudes to the employment and retention of older workers in the UK, the argument was raised for partial pensions and part-time employment.

State pensions

Pension levels can affect older disabled workers' decisions about remaining in work or leaving (mainly full-time) employment. The present state scheme, under review, provides a pension of less than a third of the average male weekly wage. Its replacement should provide a higher pension for those who are totally dependent upon it while, at the same time, encouraging those in occupational and private schemes to invest more in second-tier pensions while working, so as to raise the level of income they enjoy on reaching retirement.

The basic state pension may be supplemented by:

- i) an additional pension from the state, known as the State Earnings-Related Pension Scheme (SERPS);
- ii) a company or occupational pension scheme;
- iii) a personal pension plan (PPP);
- iv) a retirement annuity contract;
- v) Additional Voluntary Contributions to an occupational pension scheme;
- vi) unapproved pension schemes; or
- vii) any other sources of income.

Occupational pensions

For British workers, the occupational pension market is confusing and risky, with the recent memory of Robert Maxwell's theft of ,400 million from occupational schemes and the mis-selling of schemes adding to distrust by employees. Government has countered concern and sought to simplify the occupational pensions system with the introduction of major reforms under the new Pensions Act 1995 (now in force) and OPRA - the new Occupational Pensions Regulatory Authority - which became fully operational in April 1997. An independent report on the industry found that with 200,000 occupational pension schemes in the UK, together responsible for assets worth over ,500 billion, as measured by premium income, the UK pensions market was valued at ,21bn at current prices in 1995, an increase of 20 per cent over its 1991 value. Research indicates that 31 per cent of UK adults will receive some form of retirement income from a company scheme and 14 per cent from a private pension plan; but many are contributing at a level far too low to provide a reasonable retirement income.

Statistics from the General Household Survey (GHS) show that, in 1995, 80 per cent of men in full-time work were members of either an occupational pension scheme or a personal pension scheme, compared with 77 per cent of women working full-time and 35 per cent of women working part-time. Interestingly, approximately a quarter of both sexes worked for an employer who did not provide an occupational pension scheme. Men working full-time were more likely to belong to an occupational pension scheme (58 per cent compared to 55 per cent for women); nine per cent of men and 24 per cent of women working part-time belonged. Membership by part-time women workers has doubled since 1988. However, occupational pension schemes continue to discriminate against women. Periods of broken service interrupted by family duties lower the contribution rate and ultimately affect the pay-out levels. Ethnic minorities are also under-represented in pension scheme memberships, especially Pakistani/Bangladeshi females.

Currently, there is an increase in early retirement on the grounds of ill health, which may be a consequence of the current effort to keep older workers in employment. Formerly, disabled workers would have simply taken the early retirement option, whereas now they can, with private or employer support, take early retirement on the grounds of ill health.

The Pensions Act is expected to increase the popularity of defined contribution (money purchase) occupational schemes and move smaller companies towards group personal pensions (GPPs). Another opportunity exists in managed pensions, which are attractive for those with funds over ,100,000 who are prepared to take a reduced pension, whilst allowing the fund to grow at a slower rate while waiting for more favourable annuity rates.

II.2 OPPORTUNITIES TO COMBINE WORK AND BENEFIT

II.2.1 Provision for combining income from work and from disability-related social security benefits

Given the 'all or nothing' system in the UK, opportunities to combine work and receipt of social security benefits have been minimal. There are limited opportunities for recipients of IB, SDA and IS (disability premium) to combine their benefit with income from work. The only benefit specifically designed for this purpose is the Disability Working Allowance, introduced in 1992 in an attempt to bridge the too stark choice between relying on benefits and relying on earnings.

Combining IB and SDA with work

Recipients of IB and SDA may undertake 'exempt work' on the advice of a medical doctor if it 'helps to improve, or prevent deterioration in, the disease or bodily or mental impairment' which causes incapacity for work. This provision, in so far as it is used, serves rehabilitative functions and is not directed at job retention. The rules allow the claimant to do some work without being considered as capable of work, thus avoiding

disqualification from Incapacity Benefit. Exempt work is limited to 16 hours per week. It is also subject to an earnings limit of ,46 per week. Earnings above that limit are taken as evidence of fitness for work and mean the complete loss of Incapacity Benefit. (Claimants may also undertake up to 16 hours a week of voluntary work which pays reasonable expenses only.) No data are routinely collected on take-up. According to research, this therapeutic earnings exemption was used by only around two per cent of eligible recipients and less than a fifth knew about it. Some disability income pressure groups have suggested that 'therapeutic work' is seen by disabled people as patronising and consequently deters participation; others propose building on the concept to enable work experience as a route back to work.

Combining Income Support with work

Recipients of Income Support disability premium can work up to 16 hours a week if they declare their earnings. They may earn up to ,15 per week before their benefit is affected. There is a little known special exemption to work up to 24 hours if the person's earnings are less than three-quarters of those of someone without a disability. The effect of these provisions on sustaining disabled people in work are not known.

Disability Working Allowance (DWA)

DWA was introduced in April 1992. The benefit is intended primarily to encourage disabled people off benefits and into work, by topping up low wages or self-employed earnings and so making work more financially rewarding. As we will show, however, its main effects have been to maintain claimants in work and to support job retention.

DWA was introduced as part of a government policy that the benefit structure should provide incentives for disabled people to achieve independence through employment. DWA is aimed particularly at people on long-term incapacity benefits, to help them get back to work. The benefit is designed to encourage disabled people to give work a try, without risk of loss of entitlement to IB if return to work is unsuccessful within two years (as long as the person is still incapable of work).

DWA was also designed in response to the identified absence of help for disabled people who can do some work but are not fully able to support themselves. As *partial capacity* provision, DWA has two main aims:

- short-term rehabilitation - to enable disabled people returning to work to progress towards full-time work, through, for example, providing an opportunity to develop stamina or to build up skills or experience in a lower-paid job; and
- long-term support for disabled people who cannot work full-time because of a disability or who can work full-time but at reduced capacity.

DWA is strictly an in-work benefit. It was modelled on Family Credit, a means-tested benefit for families with children, where the wage-earner(s) worked for 24 or more hours a week. Like Family Credit, DWA only supplements low wages, or earnings from self-employment, and is not a general wage subsidy. Claimants of DWA must be in a paid job, of an average of 16 hours a week or more, which is expected to last at least five weeks. Claimants must also be receiving Disability Living Allowance (or a similar benefit payable under war pensions or Industrial Injuries Disablement Benefit), or have received IB, SDA or the disability premium with IS, Housing Benefit or Council Tax Benefit in the eight weeks prior to starting work. Qualification thus depends on current or past receipt of contributory, non-contributory or means-tested disability benefits.

For Disability Working Allowance the disabled person is required to be on a relatively low income on admission to the scheme. DWA is means-tested according to capital assets (a minimum of ,3,000 and a maximum of ,16,000) and the family's net earnings after tax and national insurance contributions (but disregarding some benefits). The weekly payment depends on whether claimants are single or couples and

whether they have children; credits are payable for children. An earnings taper applies: for every £1 earned above the threshold, £0.70 is deducted. Once awarded, DWA is normally paid for the next 26 weeks regardless of any changes in income and most other circumstances. There is a supplement to the highest rate payable for people working at least 30 hours a week (introduced in 1995 at £10 and since up-rated).

II.2.2 Effects on numbers retaining and numbers returning to work

Disability Working Allowance

Compared with initial Government expectations, the results to date have been disappointing. It was estimated that about 50,000 people would benefit at any one time. By July 1997 in Great Britain, there were 13,550 recipients.

As noted above, DWA was mainly aimed at getting long-term recipients of Invalidity and Incapacity Benefit back to work, but records show that in only one fifth of new awards was Invalidity or Incapacity Benefit the main qualifying benefit. The data indicate that, when SDA is also taken into account, at least 5,000 people left benefit and entered or re-entered work and were awarded DWA in the four-year period. According to a sample survey conducted as part of the major DWA evaluation commissioned by DSS in the period from spring 1992 to autumn 1995, only two per cent of the 1.5 million working-age recipients of one of the three main incapacity benefits moved off these benefits and into full-time work, almost all without the help of DWA. It had been assumed that 70 per cent of the estimated 50,000 claimants would be people who had taken jobs in response to the benefit; the rest were expected to be already in work. The evaluation found that in October 1993 only 200 of the 3,500 DWA claimants had been encouraged into work by the benefit and that most recipients were already in work when they heard of it.

The evidence from the evaluation suggests that DWA's main role has been to sustain claimants in work for extended periods through subsidising their low earnings. It found that around two fifths of all those still in work two and a half years after they first claimed said that they would not now be in a job without DWA. In the four years to October 1996, 60 per cent of awards were renewals, suggesting that the benefit does have an effect as a long-term wage supplement.

Industrial Injuries Disablement Benefit

Industrial Injuries Disablement Benefit may be combined with earnings from employment without restriction but published statistics do not show numbers of recipients in work. A stratified sample survey of successful and unsuccessful claimants found that one third of successful claimants who had had industrial accidents were in employment, but the figure was only one in ten for those who had an occupational disease.

II.2.3 Impact of definitions of disability or capacity for work on access to and coverage of benefit programmes

Disability Working Allowance

The broad target group for DWA is: people whose disability puts them at a disadvantage in getting a job. Initial claims should be supported by a self-declaration that the claimant has a physical or mental disability which has that effect, guided by a list of functional disabilities. For subsequent claims, a self-assessment test may be required. This 'disability test' lists 20 areas (in mobility, dexterity and so on) where claimants may have a difficulty, and if any one applies the claimant is eligible. Renewal forms ask for the claimant to specify the disability which places them at a disadvantage and to name a professional who will confirm the assessment. Those getting DLA at the higher rate (or previously SDA) are assumed to satisfy the disability test. The type of job held by the applicant, or the applicant's capacity to do that job, are not relevant.

In theory, the fairly liberal definition of disability and the system of self-declaration should not be deterrents to take-up of the benefit. The main obstacles appear to lie with the claiming conditions. A further argument from the DWA evaluation is that there is an in-built contradiction in the system whereby having recently received an incapacity benefit, which demonstrates *inability to work*, is a qualifying condition for an *in-work* benefit.

II.2.4 Effects of claiming and assessment procedures on take-up of in-work benefits

Initial obstacles to the effectiveness of DWA were the low number of claims and the high proportion of rejected claims (77 per cent) in the first 18 months. At that time, nearly four out of five claims were rejected because the applicant had not started work or because they did not receive a qualifying benefit. The proportion of successful claims has since risen. Those two obstacles to successful claims dominate the overall figures on reasons for disallowances between November 1992 and October 1996; in one third of disallowances the qualifying benefit test was not satisfied and in a quarter of cases the claimant was not in paid work.

In explaining the initial limited take-up of DWA, commentators focused on the qualifying requirements, the family-based means-test, the complex overlap with other benefits and the possibility that some claimants may be no better off on DWA, and the strict rules for the guaranteed return to IB within two years. These features of the benefit continue to attract criticism. There is evidence that awareness of the benefit has been low. A further identified obstacle to take-up is the requirement that claimants should be in work within eight weeks of leaving the qualifying benefits IB and SDA. The possibility of finding suitable work within eight weeks is limited, particularly for people who have spent some time out of the labour market.

II.2.5 Interactions between in-work benefits and other in-work income support programmes

DWA may be combined with wage supplements under the Supported Placements Scheme (see I.2.3).

Particular difficulties confront disabled people living in supported accommodation (with care) which is paid for by the state, who may lose their entitlement to that support if their earnings rise beyond a given threshold. Disabled people (notably people with learning difficulties) who want a 'real job' can be found working long hours for minimal wages to avoid jeopardising their living situation.

II.2.6 Disabled workers who benefit and those who miss out

Disability Working Allowance

No specific data are available on the characteristics of those DWA recipients who claim DWA in order to retain employment. The *DWA Statistics Quarterly Enquiries* show the characteristics of all DWA recipients. Around three fifths were male, one third of the total were aged between 30 and 39, two-fifths were aged 50 and over, and two-fifths had children. About 60 per cent were single people. Over a third of all awards between November 1992 and October 1996 were to people in self-employment.

Information on types of disability is available only for renewed and repeat awards. Bearing in mind that claimants may declare more than one type of disability, it is nevertheless interesting to note that 'exhaustion and pain' accounts for over 40 per cent of all types of disability declared and confirmed in renewal awards made in the four years to October 1996.

In January 1996, the average number of hours worked was 27 per week, nearly half worked for between 16 and 24 hours and just under three in ten worked for 36 or more hours. At that time, around two-fifths (3,400) received the premium for working 30 hours or more. It has been argued that a reason for the failure of the benefit is the false premise that disabled men on the margin of work want short working weeks. A further

criticism is that the 16 hours per week threshold limits opportunities in the labour market for disabled people seeking part-time work. Many employers seeking part-time workers offer jobs of less than 16 hours to avoid payment of national insurance contributions which apply only to jobs of over 16 hours.

Classifications of industrial injury and disease

A key determinant in compensation for injury and illness at work is the classification of work-related injury and disease. Workers whose condition is covered under DSS medical classifications of industrial disease, for example asbestos-related lung disease, are supported better than workers whose condition is not accepted under the guidelines, for example chronic stress, back pain and diffused RSI.

Claims for industrial injury disablement benefit require higher than 14% incapacity to receive any financial benefit.

Reporting of industrial accidents

Workers cannot seek compensation unless their injury or ill health is reported in the first instance. The HSE attached a supplement of detailed questions on workplace injury and ill health to the 1995/96 Labour Force Survey (LFS) to compare the levels of injury reporting under the standard Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) classifications. The results were alarming, as the following table shows, and suggest that a large percentage of workers are suffering from work-related injury and ill health and are not being treated, compensated or otherwise accommodated by support services or compensation bodies.

Table III.3: Comparison of LFS and RIDDOR reporting rates	
	<i>numbers reported</i>
annual number of reportable injuries to employees from the LFS	380
annual number of injuries reported to enforcing authorities	150
(a reporting level of 40%)	
annual number of reportable injuries to the self employed from the LFS	44
annual number of injuries reported to enforcing authorities	3
(a reporting level of less than 10%)	

Source: Health and Safety Commission (1996) *Health and Safety Statistics 1995/96*

Workers moving from short-term to long-term sickness coverage

Disabled workers who wish to take advantage of their occupational health plans can find themselves

vulnerable when moving from the insurer's short-term sickness coverage to long-term sickness coverage. This was highlighted in a recent court case where the employer stopped paying insurance premiums for the worker who was absent from work in accordance with the short-term sickness provisions. The worker was made redundant and was eligible also for the long term sickness insurance. The employer had not been making the contributions during the employee's spell of absence and the employee had to sue for breach of contract of employment.

II.3 TRANSITION BETWEEN BENEFITS AND WORK

II.3.1 The effects of the disability benefit system on return to work

The disability benefit system is biased towards restricting the return to work of newly disabled people. The definitions of disability used under the Disability Discrimination Act and those which are used to determine eligibility for incapacity benefits are very different. The very name 'Incapacity Benefit' assumes that a person is incapable of work. (This is far from the true picture as there are many disabled people currently working in a range of occupations within a number of different employment sectors who would be defined as incapable for work under the Incapacity Benefit regulations.) The system, which assesses incapacity rather than capacity, promotes a self-image of being incapable of work, compounding the negative image many disabled people may feel at the onset of their disability. The failure of the Incapacity Benefit system to recognise that it is not just the individual's impairment that affects their employability, and to consider factors such as adjustments to the working environment that would enable more significantly disabled people to work, means that the benefit system creates a trap preventing disabled people from returning to employment.

The other significant problem in relation to Incapacity Benefit is that if an individual leaves the benefit for a job but subsequently loses it, he or she will be required to undergo a further assessment for Incapacity Benefit. This will take a considerable period of time, resulting in the disabled person remaining on unemployment benefits, which are at a lower level than Incapacity Benefit.

The belief that out-of-work benefits are a disincentive to work has heavily influenced the social security system and the level of benefits, relative to earnings, has been reduced. Equally it is assumed that people need financial incentives to take up work. Reforms in 1995 to the system of long-term incapacity benefits reflect those two beliefs. The new functional capacity tests for incapacity benefits, for instance, were designed to tighten up eligibility and encourage newly ineligible recipients to look for work. Restrictions on eligibility and reviews of existing beneficiaries' entitlement were intended to focus income replacement benefits on those 'genuinely' incapable of work and to redirect those with partial capacity for work to unemployment benefits (Jobseekers' Allowance - JSA). Concern has been expressed about the outcomes for disabled people no longer entitled to IB who, nevertheless, are not well-placed to find and take up work. It had been anticipated that 200,000 ex-recipients of IB would claim unemployment benefit (now Jobseekers' Allowance) in 1995-96; 40,000 did so. It was estimated that a third of those found capable of work under the all work test and not entitled to unemployment benefit would be newly entitled to income support.

Moreover, DWA has so far had limited success as a route into work for people with partial capacity for work. (Re-)entry to work from benefit may be adversely affected by the rule that requires DWA to be claimed in work and within eight weeks of leaving long-term incapacity benefit.

II.3.2 Provisions for financial support to disabled workers for transition between benefits and work

There are no specific social security benefits to support disabled people in the rehabilitation period. Employment Service employment rehabilitation programmes can be undertaken by claiming a Rehabilitation Allowance but in most cases should be accompanied by a claim for Income Support.

DWA recipients who previously received IB may return to that benefit at the previous level of award within

two years if employment is unsuccessful (providing they apply within eight days of leaving work). However, as few DWA claimants previously held IB and have subsequently left work, this provision has been little used. It was designed to reduce uncertainty in returning to work but critics say that the conditions are little known and in any case too restrictive.

There is no temporary income support in the benefits system for trial periods, other than the very restrictive use of 'exempt earnings' (described in II.2.1). There is one small scheme, the Job Introduction Scheme (JIS) run by Employment Services (see I.2.3), which subsidises employers' wage costs, usually for six weeks, on condition that the job is likely last at least six months. However, this supplement does not translate into higher wages for the employee than otherwise might have been offered. An evaluation of JIS, commissioned by the DfEE, is underway, with the aim of questioning whether there is still a need for the scheme.

There are no social security benefits specifically for disabled people in the period between leaving incapacity benefits and taking up employment.

Disabled people can join mainstream Training for Work (see Part III) without the usual required period of six months' unemployment, proving that they are endorsed as disabled by Employment Services. Disabled people undertaking Training for Work can receive the Training Allowance, which is equivalent to any benefit they are entitled to, plus a ,10 addition. Eligibility for IB is retained for two years (as is the case when taking up DWA). People can train part-time if they have a disability or have domestic responsibilities that prevent them from training full-time. Under the outcome-based funding arrangements, there are financial incentives to providers to take on disabled people but the screening out of people with the greatest needs is a problem.

II.3.3 Effect of entitlement to benefits in kind on return to work

Disabled people who take up work and claim DWA retain eligibility for some free National Health Service (NHS) provision (for example, dentistry, eye-tests and prescriptions). This provision, added to the benefit in 1995, is intended as an incentive. An evaluation commissioned by DSS on the effects of the 1995 changes found no discernible incentive effect.

Recipients of out-of-work disability benefits receive similar concessions (entitlement to claim for free NHS prescriptions, dental treatment, sight tests, wigs and fabric supports, vouchers towards the cost of glasses or contact lenses, and the repayment of reasonable travel costs to hospital and back for NHS treatment). There is no evidence that the risk of loss of those concessions inhibits recipients from returning to work.

II.3.4 Co-ordination between agencies in assessment for benefits eligibility

The 1995 reforms have highlighted the problems of division of responsibility for assessment of eligibility for benefits. The new Labour Government is currently considering 'welfare to work' options which should lead to improved co-ordination between agencies which assess eligibility for social security benefits and provide support for return to work. A number of proposals for new types of co-ordinator have been floated by interested bodies.

An interesting aspect of the proposed training package for GPs (see II.1.2) is the potential role of the GP to case manage the job retention or return to work programme of the patient. The package encourages the GP to support agencies and the employer, and to employ a range of resources to support the employment of the patient. This begs the question of who is to pay for the GP's effort in pursuing this role as case manager of such a co-ordinated care programme. In the opinion of one informant, the strength in this approach is that the GP, in his/her confidential role, may be well placed to provide impartial service - a point on which many co-ordinated care programmes flounder. GPs have demonstrated a willingness to collaborate with the HSE in the SWORD and EPIDREM programmes where the doctors provide a high quality database on case typologies of patients suffering from work-related lung disease and skin diseases respectively.

III. EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

This Part examines the integration of personal support and rehabilitation services within the workplace. It deals with the external support services available to individual workers and their employers where continued employment is at risk because of disability. (Internal services, initiated and managed by enterprises, will be covered in Part V.) The discussion also includes services for early return to work once employment has been lost.

The main focus is on service interventions which support job retention by employees who become injured, ill or disabled and also their return to employment during the process of recovery. It concerns active rehabilitation services that help disabled people to recover capacities and skills, as well as services that support their re-adjustment to work. (Services involving adaptations to the work environment and to working arrangements will be discussed in Part IV.)

More specifically, sections III.1 to III.5 will cover policy about employment-related personal support and rehabilitation services, provide details of services and their providers, and describe the service beneficiaries. The remaining sections will examine the factors influencing the effectiveness of support services for job retention and early return to work. They include a discussion of relationships between the various employment support and rehabilitation services, their relationship to the employment sector, and their interaction with employment policies and compensation and benefit programmes.

Note

There are no state services designated solely for job retention. A small number of voluntary providers emphasise job retention within their range of provision. Commercial services working directly with employers are beginning to emerge, prompted by the Disability Discrimination Act 1995. Insurers' involvement in actively supporting job retention is almost non-existent.

In the comments which follow, we have attempted to distinguish provision for job retention within services which typically serve people seeking first time entry to work and return to work. However, this does not reflect a real distinction in policy or practice terms.

III.1 POLICY AND RESPONSIBILITY FOR POLICY AND PROVISION

III.1.1 The main bodies responsible for employment support and rehabilitation policy, and links to other agencies with employment or benefits/compensation responsibilities

The Employment Service

The most significant body in relation to job retention and return to work is the Employment Service (ES), an agency within the Department for Education and Employment (DfEE) which is responsible for employment support services and for vocational rehabilitation. It controls a network of 1,100 local employment offices (Jobcentres), which provide services to help people find work, pay benefits to eligible unemployed people, and offer a vacancy-filling service to employers. ES was created in 1987 and became an independent Executive Agency in April 1990. At a local level ES operation is divided into regions: regional centres are responsible for the operation of local Jobcentres.

It is possible to discern two main roles of the ES: an 'enabling' role in advising and helping the unemployed and other groups disadvantaged in the labour market; and a 'policing' role related to its functions of paying benefits or allowances, essentially discouraging clients from pursuing new claims and checking on eligibility. The ES has been under continuing pressure from central government to reduce its operating costs and obtain better 'value for money'. In 1995 it reduced a whole management tier and associated costs. Market testing,

contracting out and cost reviews have been introduced to help secure efficiency savings, for which annual targets are set. New value for money initiatives are a business review process and a performance indicator programme.

ES gives prominence to offering disabled people particular help. Apart from 'the longer-term unemployed', no other group is specifically mentioned in ES statements of objectives. It should be noted that ES services are directed at unemployed people; only in the case of disabled people is mention made of help and advice in relation to retaining work.

ES Disability Services

Disability Services (DS) are part of the ES. The DS aim to: help into open, supported or self-employment those disabled people who face particular difficulties in the labour market; promote the value of disabled people and the range of Employment Service to employers; and provide advice and assistance to enable disabled people to remain in employment.

The nine regional DS provide a range of services including specialist assessment, contract management and development, and improvement of services within the regions. The new Labour government has cancelled the previous Conservative government's plans for 'market testing' of DS in one region, a proposed move which was widely considered to be the first step towards privatisation.

DS also run the Major Organisations Development Unit (MODU), which works with large companies, advising on the development and implementation of effective policies to recruit, retain and offer good career opportunities to disabled people.

PACT services

DS currently provide a range of services to disabled people and to employers through a network of around 60 Placement Assessment and Counselling Teams (PACTs) located within the regions. PACTs provide services to disabled people referred to them who require additional help because of the severity or complexity of employment barriers associated with their impairment. PACTs were introduced in the early 1990s. PACT services are provided through Disability Employment Advisers (DEAs) (based in Jobcentres) who work with occupational psychologists, technical consultants and other specialists, as well as an administrative team.

Other bodies

Medical rehabilitation policy is principally the responsibility of the Department of Health; such rehabilitation focuses on improving functioning and skills in daily living but does not normally extend to employment rehabilitation. A third party at national level is the Department of Social Security (DSS), responsible via the Benefits Agency (BA) for providing disability-related benefits, but with no direct responsibilities for rehabilitation. Policy links between the DfEE and DSS at national level are stronger than those between their agencies (ES and BA).

Non-statutory agencies, mainly in the voluntary sector, are significant influences on the shape of employment support and rehabilitation in terms of both policy and provision.

Co-ordination concerns

The Inter-Departmental Group on Disability established a sub-group, chaired by the Department of Health, to look at concerns about the co-ordination of rehabilitation services for disabled people in England. Its brief was to 'consider ways of improving communication and co-ordination of service planning and delivery between national and local statutory and non-statutory agencies concerned with the rehabilitation, education and training (including employment) for people with disabilities and to report'. The sub-group was

particularly concerned with the progression *towards* possible employment; its brief did not address job retention specifically. It did not consider the role of the Benefits Agency.

Although there is a regional structure for the ES, the Benefits Agency and the NHS, the regions are rarely co-terminous.

There appears to be reasonable continuity between the National Health Service rehabilitation programmes and the social security benefits system. There is less continuity between the provision of employment support and the benefits system but the position is set to improve with the new Labour government's Welfare to Work programme. However, a considerable disparity exists between employment support mechanisms and the delivery of medical rehabilitation services.

III.1.2 The relative priority accorded to support for retention, return to work and first time entry to employment

There is no apparent formal priority accorded to retention, return to work or first time entry to employment. It appears that the importance given to these particular issues is dependent upon the demands placed on these services by the individual disabled person. In other words, a disabled person who is very proactive in demanding an effective and efficient service is more likely to receive it, whilst a disabled person who does not feel so positive or determined about their future is less likely to be provided with effective support.

The original stated aims of the PACTs were to get 'unemployed clients who are capable of work into jobs', to help 'those not capable of work onto appropriate benefits' and to assist 'people at risk of losing their jobs to retain them'. Nevertheless, it is clear from the wording of the aims and methods of working of DEAs and of the objectives of Employment Rehabilitation Programmes (see III.2.1) that support to individuals to help them to retain their job when they become (more) disabled is a lesser concern than return to work or first-time entry.

The new Labour government, elected in May 1997, has drawn a distinction in public statements between measures to help disabled people into work and measures to help them stay in work. The Welfare to Work programme for disabled people is likely to focus ES attention on people at risk of losing their employment.

III.1.3 The weight given to employment support and rehabilitation policies for disabled people in the national system

There has been limited investment in active vocational rehabilitation programmes. The majority of resources for rehabilitation has been made available through the NHS. This has resulted in the development of a very medicalised rehabilitation service. As a result, the connection between rehabilitation services and employment services is weaker than it might be. Many more resources have been pumped into providing benefit systems which maintain disabled people as passive recipients of care and inactive citizens.

III.2 SUPPORT SERVICES FOR JOB RETENTION

III.2.1 The main funders and providers of services to support job retention

Mainstream services

ES frontline staff provide a placing service for those disabled people who do not need help from specialist services, covering those who are thought to be 'job ready', well adjusted to their disability and able to apply for and obtain work in open employment without any significant ES assistance. ES help for disabled people is delivered mainly through the range of mainstream employment and training programmes and services, to which disabled people have priority access.

Training and Enterprise Councils and Local Enterprise Companies (see I.7.2), funded from the ES budget, arrange mainstream vocational training for disabled people.

DEAs, with specialist and administrative support, provide advice, employment assessment and support, including:

- advice and guidance on how best to find the most suitable jobs, occupation or training
- work preparation or employment rehabilitation, including job trials with an employer
- the Job Introduction Scheme, which offers a chance to try out a job for an introductory period
- the chance to try out equipment and special aids
- equipment, special aids or on the job support using Access to Work
- access to training to update and gain new skills
- assessment for eligibility for jobs in the Employment Service Supported Employment Programme with Remploy, local authorities and voluntary bodies including opportunities in placements with host firms under Supported Placement Schemes (SPS) and Remploy's Interwork Scheme
- advice to employers on implementing the disability symbol commitments and on good practice in employing disabled people.

DEAs provide advice, guidance and counselling to disabled people in order to identify individual employment needs and prepare an action plan. DEAs use a goal-based approach to identify and confirm employment objectives and plan steps to achieve them. These objectives could relate to a new job, or to retaining an existing one. DEAs use counselling when appropriate to build confidence, facilitate decision making and increase motivation.

Local Occupational Psychology Services (LOPS) provide employment assessment and counselling. These services may be required for those ES DS clients who face greater difficulties in the labour market. This might include those with severe visual or hearing impairment, congenital disability, progressive disorders, psychiatric and behavioural problems, dyslexia, severe or multiple disabilities, and those who have experienced recent trauma or injury. Occupational psychologists' assessment services may cover analysis and diagnosis, including ergonomic assessment and solution planning.

Additional assessment measures may be used as part of the employment assessment process where needed, including occupational interest inventories, work sampling (e.g. Valpar work samples), psychological testing and ergonomic assessment. Some additional assessments may be contracted out, for example dyslexia assessment or visual impairment assessment. These are funded from the Employment Rehabilitation budget (see below). In addition, ES DS contracts out occupational health assessments.

Concerns have been expressed about the relatively low status of ES employees in PACTs. In the past, working with disabled people was not viewed as a high status occupation. Many PACT staff is trained on the job and do not have access to education in related disciplines. They are not required to get any particular qualification and there is no association to monitor good practice. The recently established voluntary National Vocational Rehabilitation Association is consulting with members on accreditation for those working in vocational rehabilitation and allied fields.

Employment Rehabilitation Programme

The principal funding which might support retention comes from the Employment Service. Under the terms of its remit, the ES may only fund rehabilitation for disabled people which has an employment focus and where the individual is almost ready to (re-)enter the labour market. PACTs accordingly have budgets with which to purchase rehabilitation for their clients. In 1995/96 the ES spent ,8.1 million on the Employment Rehabilitation Programme. This programme provides advice, guidance and practical help to enable job seekers to:

- understand the effects of disability on work-related activities through: providing periods of appropriate and closely monitored work experience to enable disabled people to adapt to a new work environment; fostering positive attitudes and 'objection handling' techniques; identifying barriers connected with the effect of disability in work; working with job seekers to develop effective coping strategies; and identifying needs for appropriate additional support.

- build confidence to pursue work opportunities effectively through: identifying reasons for lack of confidence; providing opportunities for recognising their existing strengths and potential; devising strategies for confidently tackling change; and projecting positively their abilities to others.

- make an informed occupational choice by: identifying and appreciating the value of their existing skills and potential and matching these with the physical and intellectual requirements of locally available jobs; sampling various occupations and deciding on the occupation they wish to pursue; exploring ways in which their capability might be enhanced by considering new job options, sampling new skills or the provision of additional support; and identifying and assessing their ability to undertake further training or education where appropriate.

- enhance interpersonal skills at work by: assessing and undertaking their current behaviour; identifying areas for improvement; and utilising strategies for making their dealing with others as effective as possible.

- develop the physical ability to cope with work: recognising their current physical capacity and potential; and building up their physical stamina to undertake work.

Employment Rehabilitation agents are expected to tailor each programme to achieve the specific employment-related objectives agreed between the client and the DEA to meet the client's needs. The duration of the client's programme will depend on the range and nature of needs identified or the objectives agreed. Some programmes will last a matter of hours, others days or weeks. Recent Employment Rehabilitation development work undertaken on a regional basis within ES DS has focused on increasing work placements as a way of enabling the client to get experience in a variety of real work environments. In addition to this, personal development programmes have been developed using a groupwork approach to develop interpersonal skills and foster client involvement.

Ability Development Centres

Until the early 1990s, the Employment Rehabilitation Service was provided through a national network of 27 Employment Rehabilitation Centres (ERCs), several of which were residential, alongside a small number of the more limited Assessment Centres. In 1991, about one-fifth of the service was contracted out, usually to voluntary organisations such as the Royal National Institute for the Blind (RNIB) or the Royal National Institute for Deaf People (RNID) to provide specialist rehabilitation placements for people with specific impairments. ERCs were criticised for focusing on rehabilitation to manual or lower-skilled work which perpetuated the occupational pattern of disabled people. Increasingly the centres came to serve high

proportions of clients who had been out of work for long periods, including non-disabled people.

In April 1991 the Government announced that, over the following five years, employment rehabilitation would progressively be removed from ERCs and contracted out to external agencies. By the end of 1992, all ERCs had been closed. The ES kept control of nine 'centres of excellence', now known as Ability Development Centres, which directly provide extended practical assessment and work preparation programmes for disabled people in their catchment areas, as well as providing solutions to equipment needs. They also research and develop new or alternative techniques in providing employment advice, assessment and practical help, design and deliver training programmes for agency rehabilitation staff and provide training for PACTs.

Local authorities

Local authorities are major sources of funding for organisations providing supported employment, usually for people with learning disabilities. Some local authorities have staff with responsibilities for economic development, training and employment. Local authorities may also play a part at local level in determining employment support and rehabilitation for disabled people through their community care policies. Local authority Social Services Departments work with the NHS and other agencies to arrange community care for disabled people with the aim of enabling them to live as independently as possible, preferably in their own homes, and taking into account their own needs and wishes; however, employment support is not necessarily an ingredient of assessment or a component of the ensuing 'care package'. Local authorities and the local NHS employ occupational therapists, but they rarely specialise in vocational services. Local authorities are responsible for people whose disability is so severe that they are unable to take part in 'real work'; they have powers to provide therapeutic activities in day centres and 'training' centres.

NHS services

Local NHS services include community mental health teams, rehabilitation consultants, wheelchair and equipment centres and specialist help for people with sensory impairments. Some specialist NHS services, such as those for spinal injuries, are provided at regional or national level.

The non-statutory sector

The strengthening of the independent sector was a central plank of Conservative government policy. In the 1990s, the reduction of direct provision by ES and the increase in contractual arrangements between the ES and independent providers have increased the number and range of non-statutory services, primarily in the fields of work preparation, training, placement and post-placement support. Independent private or voluntary agencies may provide services under contract to ES, TECs, the NHS or local authorities.

Voluntary organisations

There is a long history of voluntary provision of specialised, impairment-specific services, some of which can trace their history back to the eighteenth century. There is now a large number of not-for-profit voluntary sector organisations which deliver rehabilitation-based services. Most tend to be impairment-specific. Organisations which specialise only in support for retention are very rare indeed. The Royal National Institute for Blind People (RNIB) stands out as a voluntary organisation with a long-standing interest in services to support job retention and return to work. Some organisations representing the interests of and providing services for people with mental health problems are now turning their attention to job retention and return to work services. Many of the other large and influential voluntary organisations provide services for people who are already disabled when entering the labour market (notably, people with learning disabilities, those with cerebral palsy and people who are Deaf) and thus are concerned more with access. That said, there is increasing provision to maintain in employment those for whom access has been achieved. There are also

some non-impairment specific disability organisations beginning to explore ways of providing services for job retention.

In addition to the funding provided through contracts with central Government, some not-for-profit organisations may have secured grants for job retention initiatives through European Social Fund programmes like the HORIZON initiative. This programme provides funding, to match local resources, for the delivery of training and other employment rehabilitation programmes for disabled people. In the 1995-97 tranche of HORIZON projects, almost none focused on retention, while in the programme starting in January 1998 a rather greater interest in retention is likely to be found.

Private sector

In addition to the afore-mentioned agencies there are a number of commercial organisations operating in the field of employment rehabilitation and training for people who are currently seeking to enter or return to the employment market. Again, as far as we can tell, no commercial organisation specialises only in support for retention.

A number of small companies which employ and are managed predominantly by disabled people now provide disability equality training to other employers. These small entrepreneurs are in a good position to diversify into job retention services.

Most insurance funds have been developed to provide disabled people with income rather than rehabilitation.

III.2.2 Relationships between the providers of services and bodies with policy responsibilities

The relationship between providers of services and bodies with policy responsibilities is usually subject to a service contract. The range of service providers is so broad that these service contracts can be very varied.

The shift to contractual private agency provision of services away from direct state involvement in the provision of rehabilitation services has been noted above. The ensuing complexity and range of service standards and contracts can be disruptive to the rehabilitation of individual workers and become inequitable across sectors and regions. The theory of the market is that, when coupled with firm performance standards, the emerging agencies can provide competition for contracts and quality improvements in resultant service delivery. However, the types of outcomes specified in service contracts are unsophisticated and not necessarily well-tailored to ensure that they reflect the needs and preferences of disabled users.

In response to the Labour government's 'New Deal' there is likely to be increasing competition amongst service providers, professional associations and service provider training institutions to take ownership of job retention strategies for disabled workers. In the UK, the human resources profession and occupational health profession are generating some competition in this area. Considerable gains are to be achieved for demonstrating leadership in the delivery of the more enterprise-based rehabilitation programmes which have, in the past, been dominated by the medical/health disciplines and which now require a multi-disciplinary approach.

Accreditation of service providers for job retention programmes involves competition among accrediting educational institutions and professional associations. As service practitioners come to appreciate the inter-relationship between the worker's health, working capacity, workplace adjustments, work routines and motivation, it is expected that new training courses will develop and compete in Britain over the coming few years.

III.2.3 The range and types of services provided

As noted, there are very few services designed specifically for job retention. Among those provided through

the Employment Services, Access to Work is by far the most significant programme in terms of the proportion of assistance given to people already in work. There appears to be substantially more central Government funding for adjustments to the workplace rather than a provision of assistance from specialists in social, medical and vocational rehabilitation. Users of assessment and counselling by PACT members and of agency-provided rehabilitation are predominantly unemployed disabled people and disabled people who have never had paid employment. We have not found any examples of independent agencies contracted to ES specifically to support employees who become disabled.

The background to the Access to Work (ATW) scheme is set out in I.2.3. The great majority of recipients of ATW measures were already in work when they applied for help. The table shows the types of support provided to ATW recipients when the scheme was evaluated after one year. Personal support services (personal reader service and support worker) together made up ten per cent of measures, although it should be noted that this type of support is likely to be on-going rather than one-off. Special aids and equipment made up over four-fifths of measures. (More details of these measures are given in Part IV.)

<i>Type of support</i>	<i>Percentage</i>
Assisted fares to work (AFW)	17%
Adapted vehicle (AV)	1%
Adapted premises/equipment (APE)	7%
Special aids and equipment (SAE)	82%
Personal reader service (PRS)	4%
Support worker (SW)	6%
Communicator support at interview (CSI)	3%
Other types of support	2%

Source: Beinart, S., Smith, P. and Sproston, K. (1996).

The table shows that ATW is overwhelmingly directed towards services which adapt the work environment to the needs of individuals. We have no detailed information about rehabilitation services (helping disabled individuals to recover capacities and skills) and services supporting re-adjustment to work.

III.2.4 Characteristics of enterprises using external support services for job retention

Employers seeking help for an employee who becomes disabled are encouraged to approach DEAs by the PACT publicity material and the extensive guidance produced by independent organisations. Awareness of DEAs and their functions is limited. In the case of ATW, most approaches are made by disabled people themselves.

There are no criteria applying to enterprises for entry to ATW, other than the cost-sharing requirements.

III.2.5 The prevalence of externally provided support services

As noted, there are few services apart from ATW that actually provide support to disabled people and employers for job retention. The range of externally provided support services which could be used for job retention is enormous, if measured by the very large number of providing organisations, large and small. (However, their services sometimes seem to differ from one another only in that they are directed to separate disability groups.) While employers report a demand for advice and assistance for job retention, the profile of external organisations with differing or overlapping remits and different funding regimes makes access problematic. Coverage is uneven both across regions and across disability. These organisations compete for limited funding and philanthropic support without a great deal of cooperative effort. Some of these associations tend to espouse the 'charity' case, others argue the 'business' case, while increasingly provider organisations led by disabled people promote the social model of disability.

The situation has been described by commentators who work within the Employers Forum on Disability as a minefield, creating confusion and avoidance by employers. What employers really want is an effective one-stop shop which recognises their needs as customers, so that they might deliver effective policies and procedures to retain or re-employ disabled people.

While some independent organisations may well wish to be responsive to an emerging 'market' for job retention support, they are dependent on existing funding structures where PACTs, TECs and the European Social Fund determine the services needed.

A further obstacle is the resistance in some parts of the voluntary sector to redirecting resources to those who are already privileged in having a job, to the possible detriment of those who have never worked.

III.2.6 Arrangements for external providers to organise support in the workplace

There are few data in this area. Anecdotal evidence suggests that arrangements tend to be piecemeal and generally ineffective.

Historically, the effectiveness of DEAs and their predecessors (Disablement Resettlement Officers - DROs) was limited by their double-edged role of at one and the same time policing the quota scheme and persuading employers to take on disabled people. The abolition of the quota is likely to increase the acceptability to employers of agents of Employment Services. There is anecdotal evidence that latterly the focus of PACT attention has shifted towards interventions to prevent job loss or to support retention. The introduction of the Disability Discrimination Act and the cumulative effects of decades of encouragement to employers to develop and implement retention policies, as noted in Part I, appear to have increased employers' receptiveness to the idea of external help.

In theory, as DEAs visit employers' premises to place unemployed disabled people, they are in a good position to provide advice and support relating to job retention. The potential of this role may be over-stated, however, as it is clear that visits to the workplace for follow-up support are unusual in some PACTs. One perspective on employers' reactions to external agents is their wariness of publicly funded rehabilitation providers whom they perceive as self-serving; it has been suggested that employers are annoyed at dealing with non-disabled intermediaries who seem to be reliant on the existence of passive disabled workers for their own employment.

According to the Employers' Forum on Disability (EFD), most of the publicly funded service providers have little understanding of the human resource perspective. The training of vocational rehabilitation providers should include an understanding of the work environment and measures of productivity. The EFD has

progressed in this area and in autumn 1997 is campaigning to provide every GP (family doctor) in the UK with an information pack on disabled workers and employment/employer issues.

There is increased awareness of the need to adequately train PACT staff and other service providers in the area of Disability Management and rehabilitation counselling. City University began a postgraduate Diploma/MSc in Disability Management in Work and Rehabilitation with the aid of EU funding in 1992 (and now complements this with short courses and in-house training). This is the first initiative in postgraduate studies of this type in the UK.

III.2.7 The extent to which services support job retention

Helping people who become disabled to retain their job, and supporting their employers to do so, is one of the formal aims of the PACTs, but there is only limited publicly available evidence on the extent to which they do so. Although support for retention of people who become disabled is consistently publicised as a function of PACT members, retention is not used in any analyses of their activities. Historically, PACT members, and their predecessors, have focused on assisting disabled people who are out of work.

An autumn 1996 survey of PACT clients and services, commissioned by ES from Social and Community Planning Research (SCPR) asked 700 clients about services offered to them by a PACT since initial assessment six months previously, and about their subsequent labour market experiences. The data in Table III.2 show that the emphasis was on training, rehabilitation and (re-)entry. Only a minority of clients may have used PACT to support job retention: at the time of the PACT assessment, 13 per cent were in full-time work and five per cent in part-time work. However, it is not clear what this group wanted or got from assessment.

Access to Work

Access to Work (ATW) mainly helps people already in jobs, although it was originally introduced to promote entry and return to employment for unemployed people. The bulk of ATW help falls into the category of adaptations to work and workplace. ATW seems to be little used specifically to help the disabled person to re-adjust to the job.

A report on some experiences of the first year of ATW by a monitoring group of disability organisations suggested that not enough was being done to raise awareness among employers and employees themselves of the support it could provide if someone develops a disability while in a job.

The average cost of supporting a disabled person in work with ATW is ,1,800 per year.

	%
attended or attending work preparation/rehabilitation programme	14
attended or attending training course	16
attended or attending sheltered workshop/supported employment	1
started some new paid work since March 1996	24

received 'ATW-type' help	25*
referred to non-specialist staff	6
no post-assessment work/training experience	26
<p>N: 700</p> <p>* 15 per cent had received PACT-funded ATW help such as AFW, PRS, SW, CSI, APE, AV or SAE; a further three per cent has received this 'ATW type' help but funded from other sources, eg employers; seven per cent had received such help but were unsure how it had been funded.</p> <p>Source: Beinart, 1997</p>	

III.3 USERS OF SUPPORT SERVICES FOR JOB RETENTION

III.3.1 Eligibility criteria and procedures for identifying users (disabled workers and their employers)

There do not appear to be any well-established national eligibility criteria for the users of support services, which cover job retention. However, there is the opportunity for self-referral. All the relevant systems are compounded by administrative delays.

Access to Work

Published evaluations of ATW relate to the first year or so of its operation; publication of the results of the second ES commissioned survey is due in 1998. Evidence from the first year indicates the popularity of the scheme with numbers seeking support increasing significantly in its first year of operation. It was welcomed for the greater flexibility in provision of support which ensures that support is more effectively targeted at the needs of the individual; for example a visually impaired person is not restricted to the previous personal reader scheme but can get help for a support worker to assist with a wider range of tasks. Reported problems included unavailability of comprehensive published information about the types of help available and how to obtain it; lack of information about the appeals procedure and other rules of the scheme; and limited information in accessible media. Disparities in interpretation of the rules between PACTs have caused concern to users. ATW involves a high level of bureaucracy, which has been identified as a major contributory factor to delays; problems reported in the first year included inappropriate support assessments resulting in a repeat process of assessment and reordering, faulty equipment, and office inflexibility and under-staffing.

The desire to keep a disability confidential and not disclose its nature to the employer can be an obstacle to taking up ATW help, which requires co-funding from an employer. This problem already existed, notably for people with mental health problems, even when there was no charge to the employer. The SCPR evaluation of ATW one year after introduction, commissioned by ES, found that only a small minority of employees were concerned about disclosure.

III.3.2 Disabled workers who benefit and those who miss out

PACT users

The PACT Clients' Survey (Beinart, 1997) indicates that the distribution of types of disability on DEAs' caseload is as follows:

- over half the sample have musculoskeletal conditions and 24% have back problems
- 15 per cent have mental health problems
- nine per cent report learning difficulties
- eight per cent are visually impaired
- eight per cent hearing impaired
- 29 per cent of clients have two or more conditions.

The proportions of clients reporting various types of disability are in line with previous data.

The proportion of newly disabled clients is low: ten per cent of clients have become newly disabled within the past two years.

Over half reported job loss because of ill health or disability: 54 per cent of respondents had left their last job for reasons related to health or disability.

Patterns of unemployment for caseload clients are as follows:

- half (48 per cent) had done no paid work in the two years before their assessment
- 31 per cent were unemployed for more than a year of that period
- ten per cent had not worked since 1988
- six per cent had never worked.

These figures show that PACTs work mainly with unemployed people as opposed to those already in a job. The exception is for clients who receive help for ATW who are overwhelmingly already in work.

In addition, 93 per cent of clients were white and 69 per cent were male. Three-quarters of this population were spread evenly across the age-group 25-54, with 16 per cent being under the age of 25 and eight per cent being 55 years of age or older.

PACT members receive limited disability training. Concern has been expressed that they rely too much on the medical model of disability when assessing individuals' needs.

Access to Work

When compared with the previous arrangement of Special Employment Schemes, ATW reaches a much wider group of people, extending employment support to people with mental health difficulties and people with learning difficulties (the latter being more likely to use the scheme for access to employment). However, this requires good practice guidance for PACT members with no experience of working with these client groups.

It has been difficult for self-employed people to get support under ATW. PACTs have to assess business plans but there has been concern over whether they have the appropriate expertise.

There has been concern that people working in small companies will miss out through the introduction of employer charges in 1996.

ATW helped 10,000 people in its first year. RNIB/RADAR (1995) estimated that an additional 3,000 disabled people could benefit, given an increase in the budget. The scheme is cash-limited and, if prioritisation is required, priority will be given to the unemployed before those who become disabled in work or whose disability becomes more severe: those whose job circumstances change or who seek a move to a new employer will have lowest priority.

More information about users of ATW is given in Part IV.

Users of disability-related provider organisations

Support varies greatly across disability and region. Moreover, some disabled workers are able to receive support from multiple sources while other disabled workers receive little support.

Coverage depends on the visibility of the disability and historically certain disabilities have received greater support than others from the UK establishment through royal patronage etc. For example, the needs of disabled workers with Asperger's Syndrome receive scant support from charities compared to other disabilities.

III.4 SUPPORT SERVICES FOR RETURN TO WORK

III.4.1 The main services for return to work

The main services, which provide for return to work and job retention are described in III.2. Vocational training is described below.

Vocational training

Responsibility for the vocational training of disabled people in England lies with the Department for Education and Employment (DfEE) Training Enterprise and Education Directorate; Scottish and Welsh provision is the responsibility of the Scottish Office and Welsh Office respectively. There are no longer any government-owned training centres and all training is delivered through private or non-government training providers.

Mainstream provision

The DfEE contracts with around 75 Training and Enterprise Councils (TECs) in England. These are private companies, which arrange for the provision of training in their geographical areas through local training providers. TECs (and LECs, or Local Enterprise Companies, in Scotland) arrange Training for Work (TfW) and Youth Training (YT), the government's main training programmes which are open to disabled people who can benefit from integrated provision. Disabled people do not have to satisfy the requirement to be unemployed for six months before joining TfW. The normal referral route for adults is through Jobcentres. In 1996-97 disabled people made up six per cent of participants in YT and 19 per cent of those in TfW; the latter proportion has grown from 11 per cent in 1993-94. No data are published on the employment history of participants in these schemes other than unemployment duration before entry. It is not possible to say how far they have served people who have become disabled while in work or in other circumstances. It is highly likely that YT participants are long-term disabled people.

Specialist training

People who are severely disabled may receive training which is funded centrally by DfEE and provided

through either a small number of private residential training colleges or special local provision arranged by the TEC with extra funding from DfEE.

Residential training has long been available through central funding for people who would have difficulties participating in mainstream TFW. Colleges have constantly available support and medical care. They enable participants to gain occupational skills and vocational qualifications. The number of centrally funded colleges is declining (now around 13) with places for less than 1,000 trainees. Courses are mainly in traditional trades and crafts with the addition of commercial skills and computing. The majority of colleges are for people who are blind or deaf, and around a third provide training for people with all types of impairment.

Special local training was introduced in 1993 to cater for people who cannot consider residential training because of mobility or domestic reasons. As with residential training, this is based on a vocational programme offering a National Vocational Qualification (NVQ).

Applications for both forms of training are taken by PACT staff and passed to the local TEC for a decision on whether residential or special local training is most appropriate.

III.4.2 Integrating return to work services into work environments

Section III.2.6 discussed DEAs' links with employers.

Training may be provided on the job. We have no comprehensive information about how far this option is used in Training for Work. Agency providers make their own arrangements with employers. Some TECs offer financial incentives to employers to give work experience to or to employ trainees.

III.4.3 The types of enterprise providing return to work opportunities in co-operation with employment support and vocational rehabilitation services

The survey of outcomes of PACT clients six months after assessment found that the main employers were small and medium enterprises: 40 per cent of former clients had found some employment in enterprises with less than 25 employees and 23 per cent were working in establishments with less than ten employees.

Table III.3: Size of establishment in post-assessment job

<i>N</i> 164 PACT clients	<i>started some new paid work as employee since assessment %</i>
fewer than 10 employees in establishment	23
10-19 employees	11
20-24 employees	3
can't say, but fewer than 25 employees	3
Can't say, but 25 or more employees	5
25-99	23

100-499	24
500-999	3
1,000 or more	1
can't say	4
Source: Beinart, 1997	

III.5 USERS OF SUPPORT SERVICES FOR RETURN TO WORK

III.5.1 Mechanisms for identifying and accepting users who have left their employment

Users of PACT support services for return to work generally refer themselves, sometimes on the advice of frontline ES staff. Half had done no paid work in the previous two years.

III.5.2 Arrangements for user choice and user control of service packages

Employment services for disabled people have been criticised for the lack of accountability to their users, both individually and collectively, in service planning and delivery. The concept of user involvement, now commonly applied in the planning and provision of health and social services at local level, has not yet touched state-controlled employment services. Despite the growth of contractual arrangements with independent agencies, contracting has not been used by Employment Services as a means to ensure that users' voices are heard in either the design or the evaluation of services. The National Disability Development Initiative (see III.6.1) is expected to have some influence in this area as there is a priority to increase choice and user control.

III.5.3 Disabled workers who benefit and those who miss out

The latest information about DEA caseloads provided in III.3.2 shows that people who have recently left employment are under-represented.

III.6 DESIGN AND DELIVERY OF EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

III.6.1 The effects of the distribution of responsibility for provision of services

The piecemeal and unco-ordinated nature of employment support and rehabilitation services, as described in III.1.1, makes it difficult for any one organisation to take overall responsibility. Clearly, some barriers to collaboration are caused by organisational separation between agencies responsible to different Government departments. Despite widespread agreement on overall aims and objectives, these are often translated into more narrow operational objectives; financial and procedural requirements can lead to boundary disputes. It was noted in III.1.1 that NHS rehabilitation does not normally extend to employment rehabilitation, while ES rehabilitation services only fund help for individuals almost ready to (re-)enter the labour market; clearly, there is a major gap in provision.

At local level, strategic collaboration between social services authorities and the NHS in the implementation

of community care does not normally extend across to employment, training and further education, with collaboration operating between agencies on an *ad hoc* basis only. The Sub-group on the Co-ordination of Rehabilitation Services for People with Disabilities recommends that all relevant agencies including those in the fields of employment and training should be included in arrangements for joint planning, commissioning and purchasing of services.

Decentralisation of state services

The establishment of PACTs and TECs in the early 1990s was part of the then government's strategy of decreasing rigid central control over agency functions. Consequently, TECs and PACTs have considerable flexibility in the implementation of services. Flexibility can promote innovation and imagination in meeting needs but can also lead to confusion among users about the type and standard of service to expect. In the case of PACTs, there have been calls for a code of practice, which sets out the standard of support which users can expect.

Proliferation of providers

There are a large number of service-providing charities and non-profit associations which tend to be sited near policy-makers and sponsors in the South-East of England and in regional centres in Wales, Scotland and Northern Ireland. Historically, each charity has sought to establish its own clientele, and a multitude of independent impairment-specific service-providing bodies continue to promote the cause of their constituents with little co-ordination of effort; many, for example, have published and distributed nearly identical information to disabled people and employers on the provisions of the DDA.

The introduction of the market into employment-related services has increased the number of small, localised and specialist providers receiving funding from a wide range of statutory agencies. According to the report of the Sub-group on the Co-ordination of Rehabilitation Services for People with Disabilities their perspective can be summarised as 'a shifting kaleidoscope of relationships and a constant opportunistic search for funding and long-term support' and a lack of long-term 'core' funding can mean funding-led service development with problems in building pilot initiatives into long-term programmes. The Sub-group notes that services with a wider national or regional catchment area secure funding from a wide range of agencies for programmes for individuals, some working with up to 50 different agencies.

National Disability Development Initiative

The National Disability Development Initiative (NDDI) has been introduced to support a co-ordinated and national approach to service and product development for the clients of the ES DS at the national, regional and local levels. The NDDI pilot programme will be used to support developmental activities to enhance and/or extend services and products to disabled people and employers. Once successful pilots have been identified at a regional level they can be developed nationally.

The priority areas for development within the NDDI are: identification of client need in relation to the labour market; DS employment assessment and related counselling for new and retained jobs; and employment rehabilitation, now called work preparation.

The key aim of the NDDI is to foster partnerships between ES regional disability services and other stakeholders to improve services to disabled people and employers and to increase employment and retention opportunities for disabled people. NDDI arose from a recent review within the ES DS, which recommended a more co-ordinated national approach to service and product development. Previously, development projects had been insufficiently focused on effective roll-out and eventual dissemination and adoption. This national approach is aimed to promote the most efficient and effective use of resources and the active adoption of good practice.

The NDDI aims to provide models for significant changes to ES DS nationally which will improve effectiveness, relevance and value for money within available resources. It will sponsor individual projects which:

- are innovative
- focus on priority development areas
- improve the quality of services to disabled people and employers
- improve value for money within available resources
- increase the involvement and empowerment of disabled people
- provide models with potential for national replication
- involve partnerships between ES and external organisations
- foster better links between ES DS and key stakeholders: for example, service providers, employers and disabled people.

An announcement on the projects selected for funding following a competitive bidding process was expected in February 1998.

III.6.2 The effect of relationships between services on their effectiveness

We have already commented on inadequate links between medical rehabilitation within the National Health Service and Disability Services. The concentration of employment support and vocational rehabilitation within Disability Services enables case management by DEAs but DS clients are mainly those who require no further medical rehabilitation. (See also III.6.1.)

The charity *Employment Opportunities for People with Disabilities* is currently developing a database of past clients in order to provide a set of profiles of services offered, employment sector and type, and continuing employment needs of successful and unsuccessful employment placements over the past three years. This database is being funded in part by the *Select Appointments* employment agency and demonstrates a small but useful relationship developing between agencies in developing case-mix scenarios for future consultation. For example, the profile of new clients can be matched to a case profile in which different support services are relevant and different employment or job retention strategies are pursued.

III.6.3 The results of vocational training and rehabilitation

Research commissioned by government has tended to concentrate on specific employment services and programmes, such as Access to Work, Supported Employment or Training and Enterprise Councils, rather than on the overall picture. Consequently, research offers a series of snap-shots of provision at single points in the process of (re-)gaining employment.

Independent research has been generally critical of the effectiveness of state-provided employment services, both mainstream and specialist. Criticisms drawn from users' experiences include undervaluing of users' employment potential and lack of responsiveness to user preferences.

Effectiveness of mainstream Employment Services

Users' views of specific programmes are regularly sought by government commissioned programme

evaluations but research which examines their overall experience of state employment support services is uncommon. Qualitative research commissioned by ES in mid-1997 is seeking the views and preferences of disabled jobseekers (as defined by the DDA) about ES provision. Independent research into the satisfaction of disabled people with mainstream and specialist ES services was carried out in 1993 in one English county (local authority); it found levels of dissatisfaction of 47 per cent and 41 per cent respectively among 244 respondents with experience of 'mainstream' and 'specialist' placing and advice services.

Effectiveness of PACT assistance

Research into the outcomes for PACT clients six months after assessment showed that the proportion in paid work had increased from 18 per cent at assessment to 26 per cent, and that 18 per cent were attending either a training course or a rehabilitation programme. However, nearly two fifths were not in work or training and were looking for work, and a further fifth who were not in work or training were not looking for work, mainly for health-related reasons.

Effectiveness of the Employment Rehabilitation Programme

Government-commissioned research conducted in the early stages of the new arrangements for provision of rehabilitation through local agencies involved interviews with staff from five PACTs, interviews with 14 clients (three per client) and case studies of ten agencies. A number of changes have been implemented since then and new guidance issued. The research report from the Policy Studies Institute drew attention, *inter alia*, to a lack of local agency provision, lack of suitable specialist equipment with delays in lending systems organised by PACTs or TECs, funding on a 'cost for head' basis, which did not provide the resources for agencies to invest in improved environment, facilities and services, and the threats to the viability of smaller specialist agencies when sufficient referrals were not forthcoming. The authors were concerned about guidance recommending that placement outcomes for clients should form the main measure of agents' effectiveness. At the time, most action plans failed to specify client needs and the long-term goals of rehabilitation or its more specific objectives. Clients were subject to long waiting times throughout the rehabilitation process and most clients were not supported by their DEAs in the three months after finishing rehabilitation.

Effectiveness of mainstream training provision

TEC boards have a contractual obligation to ensure equality of opportunity in respect of all TEC activities. The TEC operating agreement requires each TEC to set out and implement an equal opportunities strategy, including a statement, a plan and evaluating arrangements. TECs are obliged to make clear in their corporate and business plans how they intend to meet the requirements of all people in their area, including those with special training needs. 'Special needs' are defined as 'needs which arise from any personal disadvantage which significantly impairs the individual's ability to participate successfully in Training for Work' (TfW). Special needs groups are categorised in national statistics as 'people with disabilities', people with 'literacy/numeracy needs', and speakers of languages other than English, Welsh or Gaelic.

Published outcome data show proportions of disabled people (and other categories) having completed the Training for Work programme, gaining qualifications and in a job. There is a clear performance gap, using these measures, in outcomes for disabled people and mainstream trainees. Concern has been expressed about the deleterious impact on provision for disabled people of the shift in funding towards an emphasis on job outcomes and away from qualification outcomes (see below). There is a danger of TfW becoming a job-placement programme rather than a training programme *per se*.

Research conducted by the Institute of Employment Studies (IES) in early autumn 1995 identified several problems in assisting people with special training needs through the mainstream TEC provisions described above. The account here concentrates on findings relating to TfW as it is of most relevance to return to work.

General problems with TfW which adversely affect disabled people include major falls in training starts between 1994/95 and 1995/96. Reduced levels of contracting and recruitment to the programme were due to delays and confusion associated with the new 'starts and outcomes' funding regime (rather than the previous focus on training weeks and outcomes). Providers were both more cautious about recruitment *per se*, and more selective about the recruits they would take'. In addition, new procedures relating to referrals from and 'endorsements' of trainees by the ES greatly slowed down the process of eligibility approval and reduced the number of referrals. The 'creaming' effect, whereby providers reject potential trainees seen as having a high likelihood of dropping out, was said to be 'clearly at the expense of some of the most disadvantaged and lowest achieving groups in the TfW-eligible population'. There are major variations between TEC areas in the proportions of trainees in disadvantaged groups: these variations do not reflect underlying population differences and imply either considerable variation in underlying provision for these groups or significant variations in endorsement procedures. It seems that many people with disabilities were, at the time of the 1995 study reported here, classified as 'mainstream' trainees or were not entering the TfW programme at all.

However, TECs do have discretion to vary the terms of their TfW contracts with providers. The 1995 IES research found that just under half the TECs surveyed did so, typically in order to provide some degree of protection of provision for disadvantaged groups through higher start prices, higher prices per outcome point (and/or recognition of different outcomes) and lower rates of outcome-related funding. A 1996 report, commissioned by DfEE, on the effectiveness of TECs in achieving jobs and qualifications for disadvantaged groups noted one TEC which rewarded training providers for job outcomes for disadvantaged YT clients but not for mainstream YT participants.

The 1995 IES survey also found significant changes in the balance between training providers for TfW contracted to TECs, with a major concentration of provision on fewer providers in 1995/96 as compared with 1994/95. This reflected a tightening of TECs' performance standards, with providers failing the more intensive outcome targets associated with tighter funding, and reductions in volume and action by some TECs to achieve economies of scale by reducing the number of suppliers or to reduce administrative burdens by subcontracting. However, TECs pursued quite different strategies within the reduced provider base: some were supporting specialist special training needs providers, while others had decided to integrate specialist provision into the mainstream. Rolfe *et al.* (1996), reporting on the DfEE commissioned study, caution that people with special needs may miss out in the move towards integrated provision in the face of increasing selectivity by providers and the lack of resources for special aids and expertise. This study also identified examples of good practice to close the gap in performance between disadvantaged and mainstream trainees. TECs have considerable flexibility to experiment with new approaches. In addition, the study identified sub-groups of disabled people who experience the most serious difficulties, notably the large group of people with learning difficulties. This group includes people with low levels of literacy and numeracy and sometimes with emotional and behavioural difficulties. Pre-vocational training was regarded by TECs as essential to the successful vocational training of disadvantaged groups, although this was a major casualty of funding cutbacks.

III.6.4 Arrangements for outcome-related funding and financial incentives to service staff

TEC funding arrangements with the government for TfW are based on the achievement of starts and outcomes, with 25 per cent of the funding for starts and 75 per cent for outcomes. Outcomes attracting funding are the achievement of jobs and qualifications, depending on the level achieved.

As III.6.3 makes clear, the arrangements between TECs and providers for outcome-related funding have had a significant effect on access to TfW for disabled people with special training needs, principally because of the 'creaming' effect on providers' acceptance practices, although TECs can introduce variations to protect disadvantaged groups. The study by Rolfe *et al.* (1996) found that the additional funding given to providers for achievements by disadvantaged trainees, intended to cover additional costs and to recognise the additional effort required, were not sufficient to counter increasingly widespread selectivity. A major negative influence

on provision for special needs groups emphasised in both the 1995 IES study and Rolfe *et al.* (1996) was the shifting balance of outcome targets (especially in Tfw) from qualifications to employment outcomes; these were seen as an unfair indicator of scheme performance for these groups and as a major pressure for 'creaming'.

As far as we know there are no performance-related incentives for individual staff members.

III.6.5 Most significant factors in facilitating or impeding overall success

Job retention and return to work schemes are impeded by the piecemeal approach, with an almost total absence of a co-ordinated vocational rehabilitation approach.

In relation to return to work, the lack of awareness of employment support and rehabilitation services is a major impediment, which particularly affects those who have left the labour market. A survey of Invalidation Benefit recipients, commissioned by the Department of Social Security in 1993, found that there was low awareness and experience of government assistance amongst people who were interviewed in the months after receiving benefits (see Table III.4).

Table III.4: Invalidation Benefit recipients' awareness and experience of government schemes and assistance (in 1993)		
<i>N</i> 1530	<i>Heard of</i> %	<i>Experience of</i> %
<i>Scheme</i>		
Assistance with Fares to Work (FTW)	13	-
Personal Reader Service (PRS)	16	-
Special Aids for Employment (SAE)	10	-
Adaptations to Premises or Equipment (APE)	12	1
Working at home with technology	11	-
Job Introduction Scheme (JIS)	16	-
Enterprise Support (ES)	40	2
Business on own account	5	-
Employment Rehabilitation Scheme	35	3
Disablement Resettlement Officer (DRO)	22	4

None of these	36	90
Note: columns may add up to more than 100 per cent as more than one response is permitted.		
Source: Erens and Ghate, 1993.		

III.7 LINKS WITH EMPLOYMENT POLICIES

III.7.1 The effects of employment policy obligations and agreements on opportunities for vocational rehabilitation

The DDA creates an opportunity for the development of an effective rehabilitation programme. It may be that the Government announcement, in June 1997, that programmes to help disabled people obtain employment will receive ,195 million over the next five years will have such an effect. However, it appears that these will be initially focused more on those disabled people seeking employment rather than those looking for support for retention, although preventing people who become disabled from leaving employment has been identified as an objective of the programme.

The DDA, however, applies to employers of 20 or more (although this is now under review). Insofar as they exist, voluntary actions to support rehabilitation in the workplace, arising out of 'equal opportunities' or 'diversity' policies, apply in large firms.

III.7.2 The effects of financial incentives to employers on opportunities for vocational rehabilitation in the workplace

There are few financial incentives to employers relating to employment of disabled people other than the Access to Work programme and the little-used Job Introduction Scheme. The few incentives that exist via TECs do not appear to be directed towards job retention.

III.7.3 The relative priorities given to disabled people and other client groups

The current first priority for the Government with respect to employment support services resides with young or long-term unemployed people (more than two years). They will be the principal beneficiaries of the Welfare to Work programme. In addition to this, programmes supporting single parents and disabled people will receive around ,200 million each over the next five years. It is noteworthy, however, that disabled people have been identified as a major recipient group within Welfare to Work.

III.7.4 Effects of changes in labour market structure and demand on opportunities for rehabilitation in the workplace

Services do not appear to be geared to meeting the needs of part-time workers or those in casual jobs. Given the streamlining of many businesses, notably in the service sector, employers are more likely to favour services which support 'valued' employees whom they hope to retain.

III.7.5 Other links between employment policies and opportunities for vocational rehabilitation

During the years of Conservative government, job creation was never a priority. The new Labour government's scope to increase demand for labour is limited by its commitment to restrict public expenditure. Without the creation of jobs, improvements in rehabilitation are unlikely to lead to increased employment opportunities.

III.8 LINKS WITH BENEFIT AND COMPENSATION PROGRAMMES

III.8.1 The relationship between funding of benefit and compensation programmes and vocational rehabilitation policies and services

The Benefits Agency and the Employment Service are funded separately, from different departmental budgets. However, recently there has been some co-ordination between the two in respect of funding of extra staff resources in ES and the BA Medical Agency to deal with the presumed outflow from Invalidity Benefit to job-seeker status.

The close relationship between medically-based rehabilitation services and the benefits system, and the lack of relationship between medical rehabilitation and the employment services, means that there is often a one-way passage for newly disabled people to become dependent on benefits. Once supported in the benefits system, because of the nature of the support provided to disabled people, a trap is created from which it is very difficult for disabled people to escape.

III.8.2 The effects of benefit or compensation regulations on opportunities for vocational rehabilitation

Historically, disabled people on incapacity benefits (IB) had limited opportunity to participate in retraining programmes. The benefits system has been identified as an obstacle to participation in Training for Work. People who are claiming IB and SDA are eligible. (A training allowance at ,10 higher than usual benefit is payable.) As participation in the scheme can be taken as proof of capability to work, the chief problem is that ability to reclaim IB or SDA may be affected by the successful completion of a training course.

Those attending an employment rehabilitation course may choose to receive an allowance or to remain on existing incapacity benefits (IB or SDA). Those opting for an allowance can return to their former incapacity benefit at the end of the course, providing the claim is made within eight weeks. Attending the course should not be regarded as proof of capacity for work.

There is little incentive for the PACTs to work with people receiving incapacity benefits. It is difficult for these people seeking work experience to take advantage of Access to Work.

III.8.3 The co-ordination of the assessment of eligibility for disability benefits and vocational rehabilitation services

There is a concern that, as many disabled people receiving disability benefits are clients of the Benefits Agency, not the Employment Service, they are less likely to be referred to TfW. Although there is a linked computer system between Employment Service Jobcentres and the Benefits Agency, this seems to be used for claim management purposes only.

In addition, it is clear that former recipients of Invalidity Benefit (IB) are not using Employment Service provision at the expected level. Extra resources were allocated to the Employment Service to help ex-recipients of invalidity and incapacity benefits into work following the reforms of 1995. Around two-fifths of ex-recipients were expected to make use of mainstream job finding programmes (Jobplan, Jobclub and Job Introduction Guarantee) but in 1995-96 less than 500 started on each of the three main programmes. Of the 40,000 expected to receive PACT support, under a quarter underwent PACT assessment. Numbers recorded as entering work were low; in 1995-96, rather over 1,000 started work with mainstream ES help and a rather larger number with PACT help.

Ex-recipients are likely to be out of touch with the current labour market and may find it hard to identify what they might want from employment finding services. Co-ordination between benefit agency and employment staff in benefit eligibility decisions has been advocated, as has early in-depth exploration of ex-IB Jobseekers'

employment goals and job search needs. Ex-IB jobseekers require support in identifying their work competencies rather than their incapacity for work. DEAs and other counsellors require an understanding of the work environment in order to be able to advise and place ex-IB jobseekers and the Work Targeted Interview is seen as a useful tool.

It has been argued that investment by itself will not help much without tackling the problem of co-ordination between agencies at the point of benefit eligibility decision.

III.8.4 Arrangements to combine the receipt of benefits with rehabilitation in the workplace

As noted in Part II, a subsidiary aim of the Disability Working Allowance (DWA) is to achieve rehabilitative objectives, in the sense that the DWA supplements income for those who are only able to work less than full-time. In theory, recipients may increase their hours of work with a supplement from DWA, and so gradually adjust to working with a disability. As DWA is a social security benefit, claimed independently by the individual from the Benefits Agency, there is little likelihood of either the employer or the Employment Service Disability Service intervening to co-operate with the individual to plan other components to rehabilitation at work.

Private occupational health plans have their own arrangements.

III.9 LINKS WITH BENEFITS AND EMPLOYMENT POLICIES

III.9.1 The relationship between policies for vocational rehabilitation, benefits and employment

The relationship between rehabilitation, employment and benefit systems seems to direct people who become more disabled towards becoming dependent upon benefits, because of the lack of relationship between vocational rehabilitation services and employment opportunities.

III.10 The most relevant factors influencing the integration of personal support and rehabilitation services into the workplace

The most relevant factor influencing personal support and rehabilitation services is the general ignorance amongst employers and disabled people alike about what is currently available. This is compounded by the complexity of current arrangements.

IV. ADAPTATION OF WORK AND WORKPLACE

Part IV is concerned with practical solutions to adapting the work-station, workplace and job procedures to the needs of workers who become disabled. It focuses on external services available to enterprises to assist them in making adjustments, whether those services are accessed directly in the marketplace or via agencies. External services may provide advice or practical help both in adjusting the demands of the job and in adapting the work environment, temporarily or permanently. They may operate as private consultancies, voluntary bodies, quasi-governmental agencies, or as part of employment services.

The initial sections of this Part consider policy responsibilities, details of providers, funders and users, technical advisory services, sources of technical equipment and advice about accommodating work routines. Later sections focus on the factors, which affect the success of adaptation services in promoting job retention and return to work.

IV.1 RESPONSIBILITY FOR POLICY AND PROVISION

IV.1.1 The main bodies responsible for work environment policies and their role in promoting adaptations for job retention and return to work

The main body responsible for work environment policies for disabled people is the Employment Service (ES) Disability Service. As described in Part III, Disability Services provide a range of services to disabled people and employers including specialist assessment, contract management, development and improvement of services within the region. Placement Assessment and Counselling Teams (PACTs) are located within the nine Regional Disability Services.

The main state supported programme which promotes adaptations for job retention and return to work is the Access to Work scheme.

There is no close relationship, in any practical sense, between the Employment Service Disability Services and benefits or compensation programmes.

IV.1.2 Comparison of the attention given to policies which promote job retention and those which promote access to work

The DDA imposes a duty on employers to make reasonable adjustments to accommodate the needs of disabled people, as elaborated in the Employment Code of Practice. With respect to a newly disabled employee, this would require the employer to consider transferring them to fill an existing vacancy; altering their working hours; assigning them to a different place of work; allowing them to be absent during working hours for rehabilitation, assessment or treatment; giving them additional training if required; providing a reader or interpreter; and providing supervision. These factors are in addition to the duty to make adjustments to premises or modify equipment. The DDA may well have the effect of favouring adjustments to work and workplace for job retention but, to date, there is insufficient evidence. There is considerable policy interest in employers' practices in accommodating work and workplace, as evidenced by a series of surveys on recruitment and retention of disabled people which have asked, inter alia, about attitudes to and practice in making adjustments.

By far the most significant state programme for adaptation of work and workplace is Access to Work (ATW - see I.2.3). ATW assistance is given on demand, subject to applicants meeting the definition of a disabled person (as in the DDA) and subject to the overall budget, currently ,19m. The original aim of ATW was to increase the number of disabled people in work: 50 per cent of entrants to ATW were intended to be unemployed people. However, a survey commissioned by government from Social and Community Planning Research (SCPR) in 1995, one year after introduction, found 92 per cent already in work when they applied but the survey did not ask how long they had been in work. In December 1995, a further emphasis was placed on helping unemployed people into work rather than retaining people who became disabled: the proportion was set at 42 per cent for unemployed beneficiaries, 52 per cent for employed people and six per cent for the self-employed.

IV.1.3 The main providers of technical and advisory services

The main providers of technical and advisory services are:

- Disability Employment Advisers (see III.2.1)
- PACTs (III.2.1)
- Local Occupational Psychology Services (III.2.1)
- Large single impairment charities like The Royal National Institute for Deaf People and The Royal National Institute for the Blind

- Multiple impairment charities like The Computability Centre or Foundation of Communication Aids for Disabled People
- Commercial agencies providing technical support and advisory services
- Ability Development Centres.

PACTs and DEAs can support the costs of equipment using the Access to Work scheme. They can also provide access to training to update and gain new skills. In addition they advise employers on implementing the Disability Symbol commitments (I.1.3), one of which is to retain people who become disabled. Through contacts with employers in order to place disabled people in jobs, DEAs will generally encourage employers to consider adaptations of work and workplace for both new and existing disabled workers.

For disabled people who face greater difficulties in the labour market the services of Local Occupational Psychology Services (LOPS) may be used to deliver employment assessment and counselling. Occupational Psychologist Assessment Services may cover analysis and diagnosis including ergonomic assessment and solution planning.

If the advisory service is not delivered by Disability Employment Advisers or PACTs then it is contracted out to other providers. In the SCPR Access to Work survey, which was carried out one year after the introduction of ATW, 93 per cent of DEAs had used an ES Technical Consultant in at least one of the ATW applications they had dealt with and 86 per cent had used one in half or more of the cases. Although a majority of DEAs (80 per cent) had used external consultants, about six in ten had used them in less than a quarter of their ATW cases. There is, however, a trend to contracting out and encouragement to do so within the ethos of Employment Services. The survey found that over half the DEAs reported problems using consultants, less so with external consultants. The problems were mainly with making contact and delays in receiving reports.

The nine regional Ability Development Centres (ADCs) within Disability Service regions (see III.2.1) are intended to identify suitable equipment to help clients in their work, and to provide design and production service for adapting existing equipment or making 'one-off' items of low tech equipment. Information is not available on the quantity of such services provided by ADCs.

IV.1.4 The relationship between providers of technical and advisory services and providers of employment support and rehabilitation services

As noted, PACTs and DEAs also arrange employment support and rehabilitation services. The providers of technical and advisory services may be the same people as those who are providing employment support and rehabilitation services. However, if additional help is required then the services of Local Occupational Psychology Services may be required or the Employment Service Disability Service may contract with an external provider.

The range of charities and non-profit associations which provide information and services tends to cause confusion for disabled workers accessing support and work adaptations, with overlap in services and needless duplication. Many of these small service providers are not technically competent to extend their services to the provision of adaptations. The Computability Centre (TCC), a national charity, notes overlap and confusion in this area and now seeks to co-ordinate its service with the many other providers who give technical assistance in the use of computers and communication devices. Historically, though, the many small agencies have tended to control small territories in disability service provision and are tempted to extend services to the new technical apparatus now available.

IV.2 TECHNICAL AND ADVISORY SERVICES FOR MODIFICATIONS TO WORK-STATION AND WORK-PLACE

IV.2.1 Technical and advisory services available to enterprises in respect of modifications

Government agencies

As noted, the principal agency responsible for advising in this area is the Employment Service Disability Services, through the Disability Employment Advisers and PACTs.

The Department for Education and Employment (DfEE) and its agency ES encourage employers to consider adjustments through promotional material, emphasising that modifications to the work-station or workplace are often not costly (drawing on evidence from the USA). To meet employers' needs for information on appropriate adjustments and their costs, DfEE and ES commissioned a study of adjustments made for disabled applicants or employees by a sample of employers, to be published in Spring 1998 as 40 case studies.

Consultancies

There is a range of consultancies (some run by disabled people) who sell their services to employers in advising them how to make reasonable adjustments that comply with the new requirements of the DDA.

Employers' organisations

A number of employers' organisations have produced publications for their members about the implications of making reasonable adjustments under the DDA. It is rare for them to provide specific information about particular technical alterations that may be required. However, some have produced videos and others have produced documentation. They include the British Banking Association, the Engineering Employers' Federation, the Electricity Association, the Confederation of British Industry and the Cinema Exhibitors' Association. The Employers' Forum on Disability is producing a series of factsheets on adjustments for people with specific impairments (for example, people who are blind or Deaf).

Disability organisations

In the main it is the larger impairment-specific disability organisations that will advise on technical modifications to the work-station or workplace. In addition, some new multi-impairment disability organisations like The Computability Centre provide similar advice for a pan-disability group.

The National Health Service

Health service providers primarily advise the individual on personal mobility or other impairment needs. However, some, like the Mary Marlborough Centre in Oxford and the Disabled Living Foundation in London, which also have some research activity, provide advice on implementing modifications to the workplace.

Trades unions

A number of trades unions have also produced position papers on the need to make reasonable adjustment under the DDA but do not go as far as providing technical or advisory services.

IV.2.2 Services specifically directed towards job retention

All services are directed towards both retention of employees, who become disabled and accommodating disabled people entering a job. RNIB has a more particular interest in services for job retention, given the numbers who develop visual impairment while in employment. As noted below, the problem is not so much the supply of or demand for advisory services, but the limited mechanisms to enable employers to know about and use any available services.

Private insurers may be more willing to focus on job retention adaptations and services where such activity reduces their responsibility or culpability under Health and Safety legislation and/or avoids their paying out personal health insurance compensation.

IV.2.3 The availability of technical and advisory services and their use by enterprises

A broad array of technical and advisory services is available. The principal co-ordinating body behind this is the Employment Service Disability Services. However, there is a burgeoning industry of technical advisers, which has the potential for creating some confusion amongst enterprises. There is little doubt that, over a period of time, market forces will influence this situation in enabling the more effective and efficient advisers to flourish while the number of less efficient organisations, that provide inappropriate or inadequate help and technical support, will diminish.

Anecdotal evidence would suggest that there is a far greater take-up of services within service industries. It also appears that larger employer are more likely to use the services.

The DDA appears to be increasing the demand for advice and consultancy. The Computability Centre, a resource for disabled individuals, educators, the health sector and voluntary organisations as well as for employers, reported a 40 per cent increase in calls to its freephone helpline in the last four months of 1996; however, employers and employees made only 17 per cent of the 5,700 calls in 1996.

IV.2.4 Factors which encourage or discourage the use of technical and advisory services

The major factor, which influences the use of technical advisory services is the lack of awareness and ignorance about the information available. Employers in the main are also ignorant of the fact the Government funding is available to change work-stations or workplace environments, via the Access to Work programme. Whether the introduction in 1996 of employer charges for ATW discourages the use of advisory services is currently being researched as part of a survey commissioned by ES.

The DDA has obviously promoted an increased awareness of the need for employers to make reasonable adjustments, but it is as yet unclear whether or not they are familiar with the availability of these services and the Government funding to support their endeavours to retain people who become disabled.

Historically, the role of the DEAs has not been held in very high esteem in the ES. Attempts have been made to change this but there is still some historic impact, which undermines the value of this position: this means that it may be less likely to attract highly motivated, dynamic staff. As noted in Part III, employers are thought to have little regard for vocational rehabilitation providers (including those who advise on technical help) who appear unfamiliar with enterprise needs and methods of working.

IV.3 TECHNICAL EQUIPMENT

IV.3.1 The provision and funding of equipment to meet individual needs

Table III.1 showed that 'Special aids and equipment' accounted for 82 per cent of support provided under the ATW programme (Beinart et al., 1996). Within this category, just under half (43 per cent) were posture aids: of those 80 per cent were ergonomic chairs; 26 per cent footstools or footrests; and 17 per cent adjustable writing slopes. The next largest sub-category was visual aids: 85 per cent were computer equipment or software such as scanners, CCTV and speech synthesisers. Other computer equipment and software (mainly standard keyboards, monitors and printers) accounted for 20 per cent. Aids for hearing difficulties amounted to 20 per cent of aids: 35 per cent were Minicoms and text telephones; and 26 per cent telephone amplifiers and volume controls. Just eight per cent were mobility aids, mostly wheelchairs. Adaptations to premises and equipment accounted for seven per cent of the overall assistance, including the installation of ramps,

accessible toilets and adaptations to existing office chairs and desks.

As in the ATW scheme as a whole, if the disabled person is already employed the scheme will meet up to 80% of costs relating to specialist equipment over ,300 for the first year and 100 per cent of any costs in subsequent years. If the cost of equipment exceeds ,10,000 over a three-year period the scheme will meet the whole cost. It is likely that most of the provision of technical equipment was 'one-off'. It appears that there is no budgetary ceiling for any of the sub-categories of assistance. An individual disabled person can have up to ,21,000 spent to meet his or her assessed needs over a five-year period.

We have no detailed information about provision by charities outside the state-run programme.

Manufacturers

Manufacturers are rapidly increasing in number in response to the DDA. There is now a large range of products and services available to help enterprises make technical adjustments to their workplace. The delivery of these services is completely unregulated and if there is no external advice for the enterprise then they are vulnerable to purchasing equipment that is not the ideal solution for the disabled individual. Every year there is a national exhibition for manufacturers (NAIDEX) which usually attracts 80,000 to 100,000 visitors.

A 1994 market report on equipment for disabled people valued the total market for aids and equipment at an estimated ,950m, with the National Health Service (NHS) accounting for around 60% of this total. Although the overall market is very large, many of the market sectors are quite small measured in volume terms, because of the individual nature of disabilities. The fragmented structure of the industry has consequently evolved with many low-volume producers, competing in all the sectors of demand. The report stressed the need for the supplier industry to consolidate into larger units, as many of the firms are too small to be able to invest in the next phase of technical developments.

There are also likely to be radical changes in the supply industry, with amalgamations and rationalisation of manufacturing bringing more efficient production and possibly lower prices. This would help to reduce the funding gap so that more people would be able to benefit from the latest technology.

IV.3.2 Comparison of the availability and use of provision to support job retention and provision to support access to work

ATW overwhelmingly favours disabled people already in work: in the SCPR survey (Beinart *et al.*, 1996) the majority of users (85 per cent) were already in paid work when requesting ATW. The survey found that about a quarter of recipients had developed a disability which affected their work in the last three years, while about a fifth had been having work problems for over 20 years. A fifth of survey respondents said they would not still be in the job without ATW help. There have been reported difficulties for unemployed disabled people in accessing provision.

ATW support is provided after assessment in response to demand from a disabled person or, less usually, the employer of a disabled person. There is no right to receive the aid requested. In a minority of cases reported in the SCPR survey the provision resulted from the suggestion of a DEA.

IV.3.3 The balance between provision to the disabled person and to the enterprise

Access to Work was designed around the individual disabled person. If alterations are required to the built environment or work-station of the disabled person then this is dependent upon the employer employing a disabled person in the first place. If the disabled person has been provided with technical equipment to remain in employment and then chooses to move to another enterprise, they are at liberty to do so and the equipment

will follow them. If, however, the Access to Work Scheme has been used to invest in the infrastructure of the built environment, then obviously this will not be removed if the disabled person moves elsewhere.

Changes to the rules in 1996 mean that grants may now be made to the employer or to the disabled person. The effects of this are being researched.

IV.3.4 The adequacy of provision

The ,19 million which is available for the Access to Work scheme as a whole (in 1996-97) is not adequate to meet demand, although the budget was increased from the previous ,12.9 million. However, there are indications from the Minister for Employment that, with the DDA, there will be an increasing expectation that enterprises should pay for the adaptations necessary for disabled people to be retained in employment. This situation would be untenable if disabled people did not have their rights protected by law. However, it is inevitable that the proportion of state funding is likely to reduce and enterprises will be increasingly expected to fund workplace adaptations.

IV.3.5 Factors which encourage or discourage take-up by employees and by enterprises

The major factors, which influence the take-up of financial support are the lack of awareness and the limited information which is available about the scheme. In addition, the administrative process can sometimes be quite cumbersome and lengthy, resulting in employers choosing to fund the adjustment themselves rather than wait for the time involved for the Employment Service to agree the funding package that may be required.

As noted, special aids and equipment seem to be the most popular aspect of the ATW scheme. Use of help for adaptations to premises seems low by comparison. The previous free-standing scheme for adaptations to premises, incorporated within ATW, was little used.

The impact of the new arrangement, whereby employers are expected to procure the aids themselves and then claim a grant towards the costs, is currently being researched. It seems likely to reduce take-up, given that employers need to resource the provision themselves.

There are occasional opportunities for the joint funding of adaptation services. Examples might include a disabled person who requires an adapted car for their job: this could be part-funded by the Motability scheme and part-funded by Access to Work. If an individual needs a wheelchair for use both at home and at work, it is possible that the Health Authority and Access to Work Scheme may consider joint funding.

IV.3.6 Disabled people who benefit and those who miss out

ATW recipients

The government-commissioned survey of ATW one year after introduction, carried out by SCPR, provides evidence of the characteristics of disabled people who benefited. Comparisons were made between the recipient sample and respondents to the Labour Force Survey (LFS) in winter 1994/95 (although the definitions of disabled people in the two surveys were not strictly comparable).

Age and sex

ATW recipients were more likely to be in the 25 to 49 age range and less likely to be in older or younger groups than were the disabled labour force generally. ATW recipients were also substantially more likely to have higher qualifications than disabled people in the labour force generally, but this may be partly accounted for by the age difference. ATW appears to benefit more women than would be expected from the LFS: 51 per cent of recipients in the ATW survey were women.

Industrial sector

There were large differences in industrial sector, as shown in Table IV.1:

Table IV.1: ATW recipients and Labour Force Survey by Standard Industrial Classification		
	<i>Recipients %</i>	<i>LFS %</i>
Agriculture, forestry , fishing	1	3
Energy and water supply	0	1
Manufacturing	14	20
Construction	1	7
Distribution, hotels and restaurant	7	20
Transport and communications	3	7
Banking, finance, insurance etc	10	14
Other services	61	30

Source: Beinart *et al.*, 1996

The main industries in the 'other services' category for ATW recipients are public administration (26 per cent), health and social work (21 per cent) and education (ten per cent).

Occupation

Looking at occupational classification, the survey found that four in ten applied for support in connection with clerical and secretarial occupations (52 per cent of women compared with 27 per cent of men); 17 per cent worked in associate professional and technical occupations, such as scientific technicians, legal associate professionals and computer programmers.

About one in five ATW recipients were civil servants.

About four in five (81 per cent) worked full-time in their ATW-supported job and 17 per cent worked part-time (less than 30 hours a week).

ATW recipients were less likely to be self-employed.

Disability

ATW recipients appear more likely than the disabled population at large to have difficulties seeing or hearing: 21 per cent of ATW recipients had visual problems and 23 per cent hearing problems.

In summary, it seems that ATW aids and adaptations benefit the better qualified, middle-age range, women, people in secretarial, clerical, professional and technical occupations, those working full-time and people with visual and hearing impairments. It appears that recipients have relatively stable employment in one job.

The profile of recipients raises questions about the role of ATW for part-time and casual workers. Disabled workers who have multiple jobs will find it difficult to transport adaptations between workplaces and this can inhibit the funding of aids.

Beneficiaries of voluntary provision

Some disability groups are better resourced than others and this is reflected in the coverage of adaptations for disabled workers with specific impairments; people with visual impairments appear to fare better than some other groups. The number of people who receive practical aids and adaptations for employment from voluntary sources is likely to be small.

IV.4 ACCOMMODATING WORK ROUTINES TO THE DISABLED WORKER

IV.4.1 External advice services which assist in the adjustment of work routines to individual needs

External advice is available from the sources mentioned in IV.2.1 but, as far as we know, there is no market specifically in advice for the adaptation of work routines. It is difficult to quantify external advice services available to the enterprise for adjustment of work routines. The breakdown of support provided through Access to Work reflects measurable interventions rather than advice. It is possible that DEAs working for the ES Disability Service advise on accommodating work routines as part of their role in arranging concrete adaptations.

Some impairment-specific voluntary organisations are working proactively with employers. RNIB, for example, is working with employers in the financial sector to tackle the issues of technical development and changing work practices. Some voluntary organisations, notably in the mental health field, are advocating the use of 'buddies' to provide on the job support to people who are at risk of losing a job because of illness or disability.

There is evidence from several surveys that employers do make changes to work routines to accommodate employees who becomes disabled. The Multi-Purpose Survey of Employees in 1996 (see I.2.2) found that 30 per cent of the employers who were surveyed and who were covered by the DDA had made changes to working practices to accommodate disabled employees. The most common changes were the redeployment or transfer to other duties of those who had become disabled. Twenty-nine per cent had made changes to working time. It is likely that changes are made in response to needs without having recourse to external sources of advice. Within larger workplaces, union representatives or occupational health departments may provide advice.

IV.4.2 Comparison of the availability and use of provision to support job retention with provision to support access to work

The adjustment of work routines is more likely to apply in situations where an employee becomes disabled.

The Access to Work scheme, which has given support to more people who are already in a job than was originally intended, can provide help to adjust work routines through the financing of 'support workers'. Support workers are most commonly provided to help people with visual impairments to read at work (34 per cent of recipients in the SCPR survey), for communicators or interpreters (25 per cent), or to help with particular tasks at work (20 per cent). They are thus a form of aid rather than an adjustment to the nature of the work.

The type of support sometimes known as 'job coach' or 'buddy' does not seem to be available for job retention through ATW. People in these roles can be influential in changing the organisation of the work, as well as supporting the individual to do the job. Job coaches can be provided in Supported Placements (a separate ES scheme) but are used mainly on entry to a job. Agency providers contracted to ES to provide supported employment also use job coaches, but again rarely for retention. Some pilot projects have been proposed by voluntary bodies to use buddies for retention.

Anecdotally, some employers are interested in using external services to help them to adjust work routines. The Disability Leave pilot scheme, described in Part I, promotes such action. The problem lies in forging links between employers, employees in need and external providers of advice.

IV.4.3 Factors which encourage or discourage take-up by employees and by enterprises

As in the case of technical equipment (IV.3.5), the main factors, which discourage take-up are a lack of awareness and a lack of information.

However, some demand for external advisory services in relation to accommodating work routines is likely to flow from efforts such as the Disability Leave Initiative (see I.1.3).

As yet, few cases brought to Industrial Tribunals under the DDA have focused on adaptations to work routines. If such requirements are highlighted by test cases it is possible that demand for services will occur.

IV.4.4 Disabled people who benefit and those who miss out

No data are available about adaptations to work routines.

Action to adapt work routines needs to be timely. In addition, it is possible that employees who become disabled and who need such adjustments may not fall within the scope of the DDA and employer action will be discretionary. As with other voluntary practices, the employer is free to decide which employees are worth investing in.

People who become mentally ill are particularly likely to need adjustments to work routines and employers are said to be ill-informed about appropriate actions.

IV.5 SIGNIFICANT SERVICES FOR PROMOTING JOB RETENTION OR RETURN TO WORK

There is limited evidence on the full range of provision available. Access to Work has been shown to be used primarily for aids and adaptations for individual workers in work. The combination into Access to Work of a number of separate schemes has improved accessibility and disabled workers now find it easier to obtain multiple aids, adaptations and other supports according to their assessed needs.

IV.6 DESIGN AND IMPLEMENTATION

IV.6.1 The effects of inter-agency collaboration in the design and development of adaptive technologies

There is little doubt that there is quite a lot of collaboration between the agencies involved in the design and implementation of services which promote job retention and return to work. However, the incredibly large number of individual organisations involved means that collaboration takes place in an *ad hoc* and uncoordinated way, which has a significantly adverse impact on the delivery of service. It is expected that the pilot programmes established under the National Disability Development Initiative (III.6.1) will help resolve some of these difficulties.

IV.6.2 Factors in control, funding, management or staffing which impede or facilitate adaptation

services

Current levels of Disability Services staffing and funding are not adequate to ensure effective services to adapt work-stations, workplace and job procedures.

A number of problems were identified in the government-commissioned survey of ATW one year after implementation (Beinart *et al.*, 1996):

- speed of delivery of support: the mean waiting times for 'adapted equipment/premises' and 'special aids and equipment' were 9.3 weeks and 7.2 weeks respectively; 23 per cent of recipients of special aids and equipment waited more than nine weeks;
- DEAs experienced problems in one third of the cases about which they were interviewed: these involved delays in assessment, obtaining technical reports or medical reports, equipment installation, and administrative delays;
- the requirement to demonstrate value for money encouraged PACTs to utilise the Central Equipment Service which provided second-hand ATW equipment - but users in an independent monitoring study reported problems with second-hand equipment;
- PACT managers repeatedly mentioned obtaining three price quotations and 'shopping around' for the most competitive price: this adds to administrative burden and delays;
- it was felt that more advice was needed in assessing clients' technical needs;
- increased workload and bureaucratic procedures were reported.

In our opinion, an overriding government body could become the hub of research, advisory bodies, training and design which would greatly facilitate the process.

IV.7 LINKS WITH EMPLOYMENT POLICIES

IV.7.1 The effect of employment policies on the use of adaptation services

The introduction of the DDA, which has encouraged many employers to change their employment policies, is expected to have a significant impact on the take-up of services to adapt work and the workplace. Currently, the DDA applies only to employers of 20 or more, but this is under review. Small employers not subject to the Act are less likely to be willing to pay the charges under the cost-sharing arrangements for ATW grants and may lack the resources to procure the necessary adaptations. Policies, which encourage employers to change practices voluntarily have had less effect on small employers.

IV.7.2 Effect of labour market structure and demand on use of adaptation services

The growth in part-time work may create more opportunities for disabled people who find full-time work not practicable because of tiredness or other factors. However, there is little evidence of ATW being used to support people in part-time jobs. It is likely that home working (or tele-working) will enable disabled people to participate in mainstream employment with the use of adaptive technology such as computers and modems. It is clear that, as the economy in the UK becomes more service-based, there is a greater potential to use adaptive technology to enable the participation of disabled people in the workplace. However, the gradual down-sizing and delayering of organisations will have an adverse impact on the use of adaptive technology because it is less likely that disabled people will be able to compete in these environments. Although service industries in theory offer more flexibility to change the demands of the job to meet individual needs, many organisations have become streamlined to the extent that opportunities for job adjustment or redeployment

are very limited. Small employers can find it particularly difficult to adapt the nature of the job, in part because of the consequences for the workload or earnings of other employees.

IV.8 LINKS WITH BENEFIT AND COMPENSATION PROGRAMMES

IV.8.1 Arrangements for the joint funding of adaptation services

There are no links for the joint funding of adaptation services involving benefit and compensation programmes.

IV.8.2 Opportunities to receive rehabilitation benefits in adjusted working arrangements

Disabled people receiving incapacity benefits may work under the exempt earnings scheme to earn a small amount of money without it effecting their current benefit situation. This must be deemed necessary by the individual disabled person's general practitioner but is very rarely used. There is no option of receiving help from Access to Work for 'exempt' work and this has been identified as a defect of the ATW programme.

IV.9 LINKS WITH EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

IV.9.1 Co-ordination between employment support, rehabilitation and workplace adaptation services

There appears to be relatively good co-ordination between employment support and workplace adaptation services: this has a positive influence on job retention and return to work. PACTs have responsibility for both aspects and are well placed, when making assessments, to provide a wide range of support. Advice on adapting working arrangements appears less well developed, however. Medical rehabilitation services rarely help with workplace adaptation.

IV.10 The most relevant factors affecting the potential of job adaptation measures to promote job retention and return to work

- Legal obligation under the Disability Discrimination Act.
- Awareness and information about the practicality of various adjustments, how to obtain them and the funding available.
- Assumptions of limitation, imposed by employers and service providers on disabled people.
- Assumptions of limitation imposed by disabled people on themselves, resulting from psycho-social factors following the onset of a disability.
- A lack of imagination, fear and general ignorance about the employment potential of disabled people.
- Failure of service providers to recognise and deal with employers as customers.

V. ENTERPRISE STRATEGIES

This final Part provides information about effective enterprise policies, management systems and programmes to retain workers whose continued employment is at risk because of disability. The focus is on activities, which are introduced and managed by enterprises as an integral part of human resource and workplace relations management. It includes both integrated policies for the management of disability and specific practical initiatives in the workplace to promote job retention.

V.1 CORPORATE POLICIES AND PLANS

V.1.1 The development and prevalence of corporate employment policies and plans for the retention of disabled employees

Few enterprises in the UK currently have strategies for the retention or return to work of workers whose employment becomes jeopardised by disability. Human resource functions are required to regularly demonstrate their worth to shareholders and management and find it difficult to maintain their welfare stance. Increasingly, any enterprise welfare programmes are outsourced to independent counsellors and trainers, as it is easier to allocate the costs of such programmes externally. The availability of social security benefits and NHS medical support removes much of the pressure on enterprises in this area. Furthermore, the key internal drivers and players to initiate job retention strategies are unclear. Prevention, compensation and rehabilitation issues in the workplace tend not to overlap into job retention strategies and the related staff in UK enterprises operate separately from each other.

While integrated 'disability management' is uncommon, large enterprises are increasingly adopting statements of intent for the retention of workers who become disabled and there are some initiatives to favour retention. However, although there is considerable research interest in employers' practices, this possibly gives a false impression of the importance of the issue in policy and practice terms.

Equal opportunities policies

There is some evidence that UK enterprises with more than 20 employees are modifying policies with regard to disabled employees as a response to the employment provisions of the DDA. Under the Act, enterprises are under a duty to make a reasonable adjustment to accommodate the retention of workers deemed under the Act to be disabled (see I.1.2).

In December 1996, a survey by *Equal Opportunity Review* (EOR) staff, directed at the question of disability policy, found that 87 per cent of respondent employers had a written policy on the employment of disabled people. However, it should be noted that, out of the 1,400 companies approached, only 218 (15 per cent) responded. Respondents to EOR surveys are more likely to be large companies and those with some commitment to 'good practice' in employment of disabled people are probably more likely to respond. As reported in I.2.2, the more reliable Multi-Purpose Survey of Employers (MPSE) in the spring and summer of 1996 of 1,100 establishments with more than ten employees found that 45 per cent of companies covered by the DDA had a formal policy on employment of disabled people. A second wave of the survey is being carried out in late 1997.

It is widely accepted that enterprise-level disability and employment policy in the UK has been influenced by the development of equal opportunities policies originally intended to address employment discrimination against women and black and ethnic minority workers. It is our opinion that it would be exceptional if an enterprise with an established equal opportunities policy did not include the treatment of disabled people within such a policy. Specific policies addressing the employment of disabled people are less common: a national random survey commissioned by the government before the DDA was introduced into Parliament found that only 17 per cent of establishments had such a policy, compared with 48 per cent which included policies for disabled people in general policies.

The following is an example of a typical Equal Opportunities statement:

Our aim is to ensure that no potential employee or existing employee receives less favourable treatment than any other prospective employee or member of staff on the grounds of race, colour, nationality, ethnic or national origin, religion, gender, marital status, disability, or is disadvantaged by conditions or requirements which are not justified in terms of the job to be

done.

(Large local authority)

Most employers who responded to the EOR survey had a disability policy prior to the DDA. However, the survey provides no information on whether the organisations, which responded to the questionnaire have taken any action or developed any policies relating to the retention or return to work of disabled employees.

Diversity policies

As part of a ten year study in diversity management, a 1997 survey of 445 enterprises found that 28 per cent had a diversity policy against 81 per cent having an EEO policy. It was concluded that the concept of diversity as part of organisational culture was still in its infancy in the UK.

Diversity policies are based on the principle that the natural diversity in the community should be reflected within an enterprise. Such policies are gaining favour with the Institute for Personnel Development and ethnic minority communities, and have gained some ground among employers with a public interface, such as the BBC. Arguments for valuing diversity and the 'business case' for inclusive employment and promotion policies are closely allied. In principle, at least, diversity policies can cover all disabilities, illnesses and injuries, as the core philosophy of diversity management is to 'value the individual'. However, the extent to which diversity policies promote the retention of disabled workers as such is unclear.

The European Business Network for Social Cohesion (see V.1.2) promotes the employment and retention of marginalised groups, although the focus of this network is currently on racial and ethnic diversity rather than disability. The logic of this approach stems from the fact that 1997 is the European Year Against Racism and ethnic and racial differences are more likely to be visible, thus more easily targeted, than disability.

Policies for job retention

A survey conducted in 1993 reported that companies already employing disabled people and larger enterprises were more likely to have experienced an existing employee becoming disabled and understand the greater pressure to 'do the right thing' in such cases. This may indicate that programmes for the job retention of *existing* disabled or ill employees are more likely to be embraced by enterprises than programmes for the employment of disabled workers in general.

In some enterprises, policies for the retention of workers who become disabled are closely associated with procedures designed to deal with incapacity and retirement on the grounds of ill health. There are a variety of workplace-based permanent health insurance or pension policies available to enterprises in the UK, which may influence job retention. We have no evidence of the direct application of these by enterprises to job retention but there is, however, indirect evidence of their application to channel certain categories of worker toward redundancy or to influence the disabled worker's incentive to remain at work (see V.10.4). For instance,

Employees who are unable to meet the requirements of their contract due to physical or mental incapacity shall be given every consideration in terms of counselling, retraining and re-deployment to help them perform to a satisfactory standard. The company does however reserve the right, should this be necessary, to terminate a contract of employment by reason of incapacity. Subject to certain conditions, employees who are considered incapable of continuing in the employment of the company may apply to the trustees of their pension plan for ill health retirement.

(Large engineering company)

One of the authors of this report approached a small sample of twelve large employers in the private and public sectors and enquired if they have a written policy addressing the retention of workers who become disabled or who experience health problems.

These organisations included:

- two large city local authorities and a large inner city police force
- a large engineering company
- a major telecommunications provider
- two high street banks
- a major electricity provider
- a large civil service department
- a healthcare provider.

Each organisation reported that they had a written policy, which addresses the retention of employees who become disabled. These policies are in most cases only statements of intent, rather than effective procedures for managing the job retention of disabled workers. For instance:

The company is willing to make to make reasonable adjustments to the physical features of premises or employment arrangements to help accommodate employees with disabilities and will make every reasonable effort to retain employees who acquire a disability or health problem within the course of their employment.

(Engineering company, employee handbook, 1997)

We are committed to making every effort to retain people who become disabled and this has long been company policy. It is, nevertheless, the most challenging of the five commitments (Disability Symbol). Among other measures, increased use of supported employment is being considered.

(Line managers' information pack, telecommunications provider, 1997)

We will make every effort, if an existing employee becomes disabled, to retain them within the workforce, wherever reasonable and practicable.

(Policy statement, bank, 1997)

A major flaw in studies of employers' retention policies is that they focus only on intentions and not on actual practice in the event of someone becoming disabled. In the government-commissioned telephone survey of a random sample of employers, virtually every respondent reported that they would be prepared to take positive steps to retain an existing employee who becomes disabled.

Influence of models of good practice

Employers who adopt the Employers' Forum on Disability (EFD) Agenda on Disability Ten Points for Action make a commitment that any employees who become disabled will be given the fullest support to maintain or return to a role appropriate to their experience and abilities within the company. Nothing is known about the effects of this commitment on actual practice in retaining such employees.

Similarly, enterprises that use the Disability Symbol, which is promoted by the Employment Service, are making a commitment to make every effort to retain workers who become disabled. There is a procedure in place for the Employment Service to review the performance of organisations using the symbol, although very few have had the symbol withdrawn because they were not honouring previous commitments. As one might expect, Disability Symbol users are much more likely than non-users to have a specific employment policy for disabled people and are more likely to be employing disabled people. However, the direct influence of the programme on practice is not proven and it is likely that it is mainly employers with good existing practices which signed up to the scheme.

Sick leave and absenteeism policies

The impetus for an enterprise to establish a sick-leave or absenteeism policy can vary. For example, such a policy may be underpinned by a genuine concern for the employees' health or, conversely, by a belief that workers who take sick leave are malingerers. Conceptually, at least, an absenteeism policy can promote an open dialogue about the needs of disabled workers to take time off. In theory, workers may subsequently be given some flexibility to attend clinics etc. during work time rather than be forced to use up their sick leave allocation and disguise their needs.

Attendance incentives are becoming an active strategy to reduce absenteeism. An illuminative example of the application of such incentives to promote job retention is found in the Oldham Health Care Trust. As part of its incentive scheme to promote attendance, the Trust offers a rehabilitation plan where disabled workers are offered shorter hours on full pay for a limited period. In conjunction with other rehabilitation interventions, such as enterprise-based occupational therapy, this aims to promote both attendance and recovery. An interesting option for staff at the Oldham Health Care Trust is that employees who do not take any sick leave for a year are eligible for bonus Air Miles prizes.

A 1996 survey by the Industrial Society estimated that 15 per cent of organisations paid attendance bonuses; these organisations also tended to have higher sickness absence rates. This suggests that attendance bonuses are used to encourage the attendance of workers in low motivating jobs. In our opinion, however, their use can promote attendance under duress if a person ill or injured, and discourages effective rehabilitation and recovery. Attendance incentives may exacerbate the situation of workers who need sick leave as a buffer against forced resignation (see V.8.3).

Remuneration policies

We could find no evidence of enterprise remuneration policies which directly address retention. However, performance-related pay schemes, attendance/absenteeism policies, and workplace health, incapacity and pension schemes can have a considerable impact on a disabled worker's decision or ability to remain in employment.

Performance-related pay schemes can apply to disabled workers under the DDA where pay may be reduced in line with decreased or fluctuating productivity. This allows workers to remain in employment when disability or illness consistently affects productivity or performance. Such a scheme may not be applied just to disabled workers but must be standard practice for all comparable classes of work; it may thus be difficult for an enterprise to apply this strategy selectively, simply to accommodate disabled workers.

The performance and attendance rates of the individual disabled workers can directly impact on the redundancy, training, and promotions policies of UK enterprises.

V.1.2 Prominent actors and influences in the development of policies and plans for the retention of disabled employees

Within enterprises

Human resource functions

In many enterprises, the human resource (personnel) department includes staff who are responsible for managing the enterprise's EEO policy, Health and Safety obligations, employee benefits such as private health insurance and the occupational pension scheme, and co-ordination between training, job performance, remuneration and workplace health. In small and medium-size enterprises this role is likely to be handled by the manager or owner, or delegated to an office clerk.

Historically, the human resource functions of middle and larger-sized enterprises have adopted a welfare philosophy towards employees, and job retention has been informal but supportive. More recently, the human resource function has not remained as a small welfare office attached to the payroll section but is seen as a strategic resourcing function of the enterprise. The benefit of this new profile is that the role of employees in adding value to the enterprise is made more obvious, while the disadvantage is that the cost-benefit scrutiny of human resource activities has increased.

Occupational health professionals

In the larger enterprises, there is generally a range of occupational health professionals on site and may include a doctor, occupational health nurse, occupational hygienist, and other health professionals such as chiropodists and haematologists. A study conducted in 1992 found that, overall, health professionals were available in eight per cent of private sector workplaces; this proportion varied from five per cent in those employing fewer than 25 people, to 32 per cent with between 25 and 199 employees, and 68 per cent of those with more than 200. Only 36 per cent of employees in the private sector are thought to be covered, compared with 98 per cent in the public sector: the percentage of all employees is around 53 per cent. The role of these professionals in the workplace is a topic of considerable debate at the moment in the UK. Their role in job retention programmes brings some professional dilemmas to the surface in relation to the screening of those returning from sick leave, the determination of disability and protection under the DDA, determining the appropriateness of reasonable adjustments, confidentiality concerns, and decisions about lay-offs and terminations.

James *et al.* (1997) reviewed the roles of occupational health (OH) professionals in the UK and argue that OH professionals play a reactive role in the enterprises which employ them. Table V.1 is compiled from a survey by Bunt (1993) of public sector organisations:

Table V.1: Role of Occupational Health Professionals in the Public Sector	
<i>Responsibilities</i>	<i>%</i>
Medicals	89
Regular health checks for some staff	83
Advising on health and safety measures needed	82
Attending health and safety meetings	82

Identifying other areas which might cause health problems	72
Monitoring sickness absence records	54
Implementing health and safety procedures	51
Management of Health and Safety	47
Carry out Control of Substances Hazardous to Health assessments	37
Treating ill health/accidents	18
Other	3
Base: employees in public sector organisations using health professionals	
Source: James, Bruyère and Cunningham 1997, citing Bunt 1993.	

Union representation

The role of unions in the workplace is undergoing considerable change, with a likely redirection of effort toward cooperation with management rather than resumption of the adversarial relationships of a decade ago. The introduction of European Works Councils (see I.3.1) should improve the visibility of the union (or other employee representatives), and the policies of the new government toward employee representation should encourage formal workplace labour consultations on health and safety and equity issues. Union representation of disabled workers is inconsistent. Union policies which trade sick days for productivity bonuses may aggravate the condition of disabled workers and make them the scapegoat for productivity losses. Furthermore, union membership may be a prerequisite for support and those disabled workers who are on casual or part-time rates and/or do not contribute fully to union funds may be disadvantaged.

Board and Senior Management Teams

Support from such teams can depend on their personal experiences of disability and resultant empathy for disabled workers.

Facilities managers

Facilities managers (concerned with the built environment) are responsible for the acquisition of equipment and furniture at the workplace. A disability-aware facilities manager can often work proactively by purchasing office furniture etc. with inbuilt adjustments, reducing the need for much specialised equipment.

Health and safety managers

Health and safety managers are more visible in large enterprises and may be hesitant to consider any job retention measures. They will be aware that workers who are not fully fit and healthy can be seen as posing a health risk to themselves, other workers, and the customer and general public with whom the enterprise interacts. They will also be aware that continued employment while injured or ill could lead to later claims of

aggravated injury at law.

Others

Other internal players may include consultative groups comprising disabled employees and equal opportunities or diversity forums.

Outside the enterprises

Government agencies

The Employment Service co-ordinates and markets the Disability Symbol through local PACTs. PACTs have access to enterprises in their job finding and placement function. PACTs and regional officials of the Employment Service advise on the development of enterprise policies and practices with regard to the adoption of the five Symbol Commitments, one of which relates to job retention. However, it is not known how far these actors provide support for the development of corporate retention policies.

The Department for Education and Employment provides codes of practice and leaflets providing advice on the DDA.

Trade unions

Through its Disability Campaign Headquarters, the Trades Union Congress (TUC) supports the employment rights of disabled workers. This is done through public campaigns, providing strategies for negotiating for improved conditions for disabled workers, such as disability leave.

Specific unions maintain campaigns to raise employer or worker awareness of certain illnesses particularly prevalent to their craft or industry. Such campaigns can be very powerful in raising the reporting rate under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) and improving compensation claims under Industrial Injuries Disablement Benefit for certain illnesses (e.g. miners' 'black lung').

The Trade Union Disability Alliance (TUDA) is a relatively new and small organisation of disabled trade unionists from a range of unions. It trains and seeks representation by and for disabled workers. It runs short courses to educate union members in disability issues and strategies for empowering disabled workers.

Insurers

Private insurers in the UK cannot be seen to be proactive in the area of job retention: they focus on marketing generic products rather than providing customised enterprise-based services. The Association of British Insurers (ABI), representing 95 per cent of British insurers, publishes a guide for insurers for disabled people which includes the legal requirements of the DDA for the inclusion of disabled workers in group and individual occupational schemes. In the UK, the work-relatedness of injury and disease has a bearing on the response to disabled workers by insurers.

Employers' federations

The Confederation of British Industry (CBI) promotes the retention of disabled people through the 'business case'. In its 'checklist for action' the CBI suggests that employee profiles be compiled to assess individual needs and that subsequent flexible working patterns and other work accommodations be considered. The Union of Industrial and Employers' Confederations of Europe (UNICE) delegates issues concerning the employment of disabled workers to the national levels so its direct involvement in job retention policies is not evident in the UK. Overall, UNICE supports a proactive and interdisciplinary response to disability at work.

Community-based networks

There are ten regional or local Employers' Networks on Disability in the UK, which draw on subscriptions and grants to co-ordinate and distribute information on innovations and the provision of goods and services to, and the employment of, disabled workers. These networks promote the Disability Symbol and disability best practice policies. Coverage of these local networks is low and the main reason for not joining is the lack of any perceived need for the type of support one could provide. The Department for Education and Employment has produced a guide to establishing networks such as these.

The European Business Network for Social Cohesion (EBNSC) is a network of companies, which endorse the Declaration of Businesses against Exclusion. The London Enterprise Agency (LEntA), a consortium of 20 major UK companies, coordinates the EBNSC in the UK. LEntA is well resourced and able to pilot inclusive employment programmes, especially around London.

Other external actors

- The Commission of the European Union.
- Voluntary organisations and small companies, including those run by disabled entrepreneurs, providing technical advice and support.
- Other employer and professional organisations (Employers' Forum on Disability (EFD), Institute for Personnel Development (IPD), the Industrial Society, and industry or sectoral employers' organisations).
- Organisations of and for disabled people.

V.2 CO-ORDINATED RESPONSES TO DISABILITY

V.2.1 The development and prevalence of integrated disability management systems

Individual enterprises have adopted distinct arrangements for managing disability in the workplace. There is little evidence of the development of arrangements for the systematic management of employee disability within UK enterprises. Arrangements that do exist cannot be regarded as 'integrated management systems', as approaches tend to be piecemeal.

It is possible, in theory, to link disability management-type programmes in UK enterprises with other personnel functions such as training, health and safety, occupational health, performance appraisal and Equal Employment Opportunity (EEO) concerns. Given the relative lack of occupational health programmes in the UK workplace, compared with the regulatory presence of health and safety practices in most UK workplaces, it is conceivable that any integrated programmes would include the health and safety function. However, the statistic that only 40% of work injuries are reported (HSC, 1996) suggests that proactive health and safety surveillance in the UK is limited.

Insurer input

The 'safety net' of the welfare state (sometimes dubbed the 'culture of dependence') is limiting the incentives for employers and insurers to develop disability management programmes in the UK. Both employers and workers view the state as providing for disabled people both in injury and old age and therefore the former see little reason to work pro-actively to retain disabled workers. This is seen in contrast to the USA, where one interviewee for this study found that employees in USA-based firms believed that, despite rhetoric to the contrary from government, individual employees would need to be self-sufficient if they become retired through ill health or disability.

V.2.2 The characteristic features of integrated disability management systems

Integrated disability management programmes are relatively sparse in UK enterprises. Generally, the different staff responsible for collaborating in the development of such programmes are separated by disciplinary barriers: occupational health professionals have a distinct role in providing health examinations; health and safety professionals focus on compliance with regulations; EEO staff also focus on compliance; while human resource professionals focus on absence, productivity and health insurance coverage.

While at times these groups can co-operate, as in the examples below, it is often difficult to have good information on the needs of the workplace. Disability audits, which are a key to developing an integrated response, are difficult to implement. Workers are not willing to identify themselves as disabled when this information will be shared on a database across the enterprise. In the past, the human resource department performed a separate welfare role where disabled workers could express their concerns in confidence.

The dilemma in the development of integrated disability management systems is that it can be seen as a tool to marginalise disabled workers and target them for redundancy as much as to target them for job retention support.

The following examples illustrate the features of disability management systems in the UK, as identified in interviews for this report:

The Post Office has developed an in-house service for employees who become disabled. It has been reported that occupational health staff at the Post Office work at the Post Office's own Disability Advice Centre. This is a resource base within the Post Office that is staffed by experts on adjustments and workplace accommodation. This Centre is available to all Post Office employees and contains a large range of equipment varying from different types of seating through to voice output computers for employees with visual impairments. Once they have received their initial Occupational Health assessment they are then assessed by the Disability Advice Centre. This internal resource is used to help the individual return to their original job or find an alternative employment opportunity within the Post Office. Integration within the Post Office has been improved with the merger of its Occupational Health and counselling departments.

Midland Bank has a rehabilitation policy which provides an opportunity for employees who become disabled to return or continue to work. The process involves independent employment assessment and retraining where appropriate.

The Ministry of Defence (MOD) has recently adopted a three-year action plan to promote equality of opportunity for disabled people at the MOD (within the civilian workforce). The policy on retention, in common with that of other organisations, is to provide advice to managers to ensure a flexible approach to retaining staff with a progressive disabling condition and individuals who become disabled while in employment.

UNUM, a supplier of long term disability insurance, provides a rehabilitation counselling service by medically qualified disability counsellors who focus on early intervention strategies looking at personal, medical and occupational circumstances. They review and advise on disability benefits and allowances and determine what type, if any, of particular rehabilitative help is needed in order to assist job retention or return to work.

Enterprises have been classified into three types, in relation to their responses to disability at work: those with a history of proactive EEO programmes; those aspiring to reform their corporate response to disability in line with the DDA; those with little experience in developing disability policies and unlikely to respond to the

DDA.

Disability audits

These can be quite revealing and, if presented in a constructive way to respondents, they can provide an accurate picture of disability at work. For example, employees need to believe that the survey is being conducted to improve the quality of work life for disabled workers and not to target or marginalise any worker who identifies themselves during the audit.

V.2.3 Prominent actors and influences in the initiation and development of integrated disability management systems

Within enterprises

Human resource functions

Responsibility for maintaining a disability management database generally rests with human resource departments. The willingness of human resource professionals to devote time and resources to maintaining a disability management programme differs greatly across UK enterprises, as generally they need to demonstrate the value-adding rationale of such programmes on a continuing basis.

Occupational health professionals

Although represented in a minority of workplaces, occupation health professionals are keen to develop and maintain disability management integration at work, as it reinforces the credibility of OH at the workplace.

Senior managers

Benevolent support for job retention from senior managers is unlikely to translate into the development of integrated disability management systems unless the costs of such programmes are agreed upon between department heads and chief executives.

Pension administrators

Integrated disability management programmes are likely to receive the sort of attention from pensions administration which is counter-productive to retention. Disabled workers who are recorded on such systems can be targeted for enterprise retrenchment or retirement on grounds of ill health, so as to reduce the cost of early retirement to the pension fund. Moreover, retirement on the grounds of ill health is a common ploy to shift the pension burden onto health insurance.

Trade union representatives

Trade union representatives can be supportive of the integration of disability management at work mainly through the role of the health and safety representatives in unionised sites. Trade union representatives will be aware of the possibility that disabled workers, targeted in such programmes, may eventually be harassed into early retirement, 'scapegoated' for productivity decreases, or marginalised into lower quality work enclaves.

Health and Safety representatives

At present there are approximately 200,000 Health and Safety representatives in UK workplaces and they form an important role in the identification of risks and hazards and in enterprise policies, despite the move to the deregulation of health and safety. This role is enhanced when the representative is also the shop steward for the union (a policy encouraged by unions and the Health and Safety Executive). Recent legislation has

encouraged non-union sites to form joint safety committees and health and safety committees. However, although about 75 per cent of workers are covered by health and safety representatives, there is concern that the smaller workplaces are not adequately covered. Although the new health and safety consultation of employee regulations encourage the formation of employer-employee collaboration, they do not extend the same rights to non-unionised sites as the earlier 1977 legislation. For example, health and safety representatives appointed by employers under the new rules do not have the rights of normal union health and safety representatives to inspect the workplace, investigate hazards and accidents and deal with health and safety-related complaints.

Outside the enterprises

The Health and Safety Executive (HSE)

The HSE is interested in improving the recording rates of workplace injury and ill-health following criticisms of existing systems (RIDDOR) in recent surveys.

Vocational rehabilitation professionals and institutions

There is some development of disability management-type courses within some further educational establishments, although this is not well advanced.

PACTs

Access to the working environment by the DEAs and other PACT members provides a potentially valuable link between different health and human resource staff within enterprises. There is anecdotal evidence that PACT staff is frequently approached by line managers to give advice on job retention or return to work strategies for workers other than PACT clients. This role allows PACT members to suggest collaboration among the enterprise staff who approach them individually.

Disability-related voluntary organisations

Disability-related voluntary organisations produce their own publications, which provide advice to employers on the particular access to work and job retention strategies for a specific disability. In our opinion, although these organisations are seen as useful in supplying advice and referrals on disability-specific issues, they have yet to demonstrate their full understanding of workplace issues (such as productivity and enterprise culture).

Insurers

It is not surprising that insurers are considering the application of disability management-type programmes in response to the rising costs of occupational health insurance claims. Their willingness to increase premiums in line with experience ratings is, at the moment, the only strategy to indirectly encourage integrated disability management at the workplace.

Unions

The autumn 1997 Trades Union Congress encouraged a renewed effort to forge social partnerships across UK industry. A central plank of such partnerships is job security, and job retention strategies fall conveniently into the coverage of such partnerships.

V.3 PRACTICAL PROGRAMMES AND INTERVENTIONS IN THE WORKPLACE

V.3.1 Enterprise programmes targeted at employees potentially absent from work because of disability

Health and safety

As well as new legal obligations under the DDA to retain disabled employees by making adjustments to the physical environment or working arrangements, it is likely that the recent expansion of workplace health and safety regulations, largely driven by European Union law, and the widespread development of employee sickness absence management policies may be catalysts for the introduction of proactive disability management programmes in the UK, as both insurers and the Health and Safety Executive are aware of the potential for active workplace strategies in the management of disability.

In recent years, health and safety legislation has been introduced in the UK covering the following areas:

- control of substances hazardous to health;
- noise at work;
- regulations on risk assessment;
- manual handling regulations;
- provision of protective equipment at work;
- minimum standards of lighting, ventilation, temperature, rest rooms and the general maintenance of the workplace and equipment.

A study conducted by Incomes Data Services reported that the recent expansion in health and safety legislation in the UK has influenced the development of enterprise-level occupational health services.

Occupational health

There are no data available on the role of the occupational health services in influencing the job retention of newly disabled workers. The main emphasis of these services would appear to be on health screening, that is, the early identification of the health problems of individual workers, leading to treatment.

It is our opinion that the growth in occupational health services and the raised emphasis on improving workplace health and safety in the UK will have a positive bearing on the job retention of newly disabled workers.

Workplace rehabilitation

Vocational rehabilitation programmes in the workplace are relatively rare. In a recent survey of over 200 branches of UNISON only half the employers in the survey had health promotion and stress management training programmes, and rehabilitation programmes were even less common (29 per cent).

The management of sickness absence

There have been considerable changes to the management of sickness absence in the UK in recent years. Most public and private sector organisations have taken steps to reduce levels of sickness absence amongst employees. However, measures have been taken in the main to reduce levels of casual or intermittent absence rather than long-term absence. It is our opinion that the general reduction in employee sickness absence in recent years can help employers to devote more attention and resources to employees who are genuinely in need of measures that will aid their job retention, such as assessment, rehabilitation, counselling and job accommodation.

UK employers have correlated sickness absence rates with 'non-sickness'-related factors such as minor ailments, a lack of commitment to one's work and family responsibilities, though evidence from Labour Force Surveys (LFS) and case studies tends to refute this. For example, the 1987-1991 LFS found that 42 per cent of absence spells were of more than six days' duration and 32 per cent were of two weeks duration.

Health credits

With encouragement from trade unions, a small number of employers (for example, Sheffield and Stockport health authorities, together with the trade union UNISON) have developed the concept of health credits. In Sheffield, staff is allocated ten health credit hours a year. These are paid hours off work, which can be used by the member of staff in any way that they wish. Elsewhere they are termed mental health days or hours. The belief is that allowing such leeway is seen by staff as a recognition of the need to promote health. It is seen as reducing stress and recognising that people have commitments outside work which may be difficult to meet without taking time off: such recognition is seen as a way of improving morale.

Employee assistance programmes (EAPs)

According to EAP Association publicity, EAPs have been in place in the UK for over twenty years, provided, in the main, through employee welfare schemes: the availability of external providers developed towards the end of the 1980s. The EAP Association claims that there are now more than a dozen companies providing external EAPs to over 600 organisations in the UK. It is difficult to assess the prevalence of employee assistance programmes in the UK. When asked by us, the Institute for Personnel and Development (IPD) reported that there is no information available on the numbers or names of UK employers making use of internal or external EAPs.

EAPs are normally provided by external private agencies, who vary greatly in competence. Generally, an external provider offers a telephone helpline for employees to voice their emotional, financial, marital or drug dependence problems; the employee may subsequently be offered a short series of face-to-face counselling sessions provided under the EAP and funded by the employer. A recent study of enterprise use of EAPs noted the lack of accountability or professional quality benchmarks for EAP providers, but also noted their positive contribution to the management of absenteeism.

Health surveillance programmes

The low reporting rate under RIDDOR shows that only a small percentage of work accidents and illnesses are reported in the UK. One way for enterprises to take positive action to encourage the reporting of accidents and reduce hazards is to conduct health surveillance. A key strategy of health surveillance is the identification of employees at 'risk', and the retention of disabled workers would be accommodated in any comprehensive surveillance programme. A recent report for the HSE found that 40 per cent of large employers and 25 per cent of small enterprises (with less than 25 employees) had a health surveillance programme in place.

V.3.2 Enterprise personal support programmes

Most large employers provide counselling, retraining and, if necessary, medical and therapeutic support for their employees. However, the provision of mentoring, personal care assistants and transport to work is much less common.

Access to training and career progression

A neglected aspect of support for disabled workers is the quality of their work life after the disability has affected their employment. A recent study of 24 UK medium-to-large enterprises found that the monitoring of disabled workers' training and career paths is often limited. In a sample of firms the researchers found that

one third either monitored the proportion of disabled workers participating in general organisational training or planned to do so, and only a third of respondents monitored the career paths of disabled employees.

V.3.3 Enterprise-initiated programmes to adjust the workplace and work-station

The Employment Service part-funds certain adjustments under the Access to Work Scheme. Many large employers, however, fund adjustments themselves and rely on the Employment Service only for the provision of technical advice. We asked a sample of 12 large UK employers if they had acquired items of equipment or other adjustments through Access to Work. Approximately one third said they funded adjustments themselves. Three of the organisations held central budgets for such funding and reported that demand on these budgets had increased significantly since the enactment of the DDA.

Table V.2 shows the actions which employers said they would be willing to take if an existing employee became disabled, taken from the report of a telephone survey commissioned by the government.

Table V.2: Actions that employers would be willing to take to retain an existing employee who becomes disabled in employment			
<i>Action</i>	<i>Yes</i>	<i>No</i>	<i>Depend</i>
allow for special leave necessitated by disability	88.0	3.4	
train/retrain	81.2	9.0	
provide flexible working patterns	78.8	11.0	1
provide additional on-the-job support	77.5	9.7	1
employ job sharing	65.1	6.9	
provide counselling	62.9	32.0	
modify workplace/premises	56.7	17.5	2
provide special equipment	55.6	10.8	3
use home working	16.8	77.6	
Random sample, weighted, N'1,241.			
Source: Dench, S., Meager, N. and Morris, S. (1996)			

The Multi-Purpose Survey of Employers (MPSE) in 1996 (see I.2.2) found that 43 per cent of companies covered by the DDA who employed disabled people had made changes to the physical environment and 30 per cent had made changes to working practices to accommodate disabled employees. Thus, the difference between 'willingness' and actual action is apparent.

The cost of the provision of special equipment to disabled workers is a key question. An earlier survey in 1993 found that 43 per cent of a sample of 1,077 employers thought there were extra costs in employing people with disabilities. Many employers were unwilling to estimate these costs but, of those that responded to this question, most were prepared to spend five to ten per cent of the person's gross salary as an initial cost and four to seven per cent per year as an ongoing contribution. Surveys have shown the actual costs incurred: the MPSE found that 61 per cent reported that the costs were nil and 19 per cent spent less than ,100 per disabled employee in the previous year.

V.3.4 Enterprise initiatives aimed at co-workers

Disability awareness training

Many large UK employers carry out disability awareness training and a significant number have provided specific training on the employment provisions of the DDA. Many cases of alleged disability discrimination brought under the DDA will concern dismissal on the basis of disability and early tribunal cases are confirming this. It would seem logical, therefore, that employers should focus on training programmes on the duty of reasonable adjustment and on the avoidance of disability discrimination. The provision of disability awareness training by external consultants is expanding.

A recent study found that half of the respondent enterprises approached by the researcher had considered or implemented this form of 'awareness raising'. Table V.3 outlines the responses of the 24 firms.

Table V.3: Extent to which disability awareness training has been carried out for particular groups of employ			
<i>N</i> '24	<i>Yes</i>	<i>Intended</i>	<i>No</i>
senior managers	6	1	17
line managers	10	3	11
human resource staff	13	0	11
all non-managerial staff	2	2	20
Source: Cunningham and James (unpublished)			

It seems clear that the majority of initiatives aimed at co-workers have come about in response to the DDA and are made possible by extensive marketing by external consultants (many of whom are disabled people). Within enterprises, the trades union representatives' role may expand in this direction but trades union representation is now at an all-time low.

V.3.5 Evidence of outcomes of programmes and practical interventions in the workplace

The impact of such programmes has rarely been explored; rather, they are assumed to be effective. Duckworth (1995) demonstrated that disability awareness or equality training in its own right does not achieve all the changes required. He argued that it is vital to have a legal framework, which protects the rights of disabled people and an understanding within the business community of the commercial benefits of employing disabled people.

The DDA covers the actions of co-workers who support the disabled worker to initiate proceedings under the DDA. Harassment or victimization of the supportive co-worker by the employer is unlawful. Thus it is conceivable that such programmes may lead to greater advocacy by co-workers of disabled colleagues. This may, in turn, prohibit employers from informing employees about the full coverage of the DDA.

V.4 WORK ACCOMMODATIONS

V.4.1 Schemes initiated by enterprises to adapt working hours and work

Arrangements to adapt working hours and work tend in the main tend to be informal and *ad hoc*. Any 'schemes' are confined to encouraging managers to 'explore the possibility' of workplace accommodations. There seem to be few consistent or co-ordinated procedures to put work accommodations into action.

Examples of such 'schemes' include:

Explore the possibility of restructuring the post of a newly disabled employee or consider the possibility of flexible working or homeworking.

If a colleague becomes disabled, whether as a result of an illness or accident, there are steps which can be considered to enable them to return to work, either in their previous job or to alternative duties more suited to their changed abilities. In some cases a period of rehabilitation will be necessary before discussion and plans are made to facilitate return to work.

The Disability Leave project, detailed in Part I, encourages employers to consider adaptations of working hours and work demands as a matter of course when an employee becomes disabled.

Tele-working

Home-working strategies for disabled workers are currently being investigated by a European Commission-assisted project (MITRE). For example, the Royal National Institute for the Blind (RNIB) has set up a tele-centre through MITRE to employ and train blind people in tele-marketing. People who become visually impaired while in employment are particularly vulnerable to job loss. Although this example is of an enterprise which mainly employs disabled workers, such initiatives may also be cost-effective for other enterprises in accommodating disabled workers.

Disabled tele-workers in the UK are also involved in another European Commission initiative - COMBAT (Corporate Marketing to Overcome the Barriers Affecting Disabled Tele-Workers) which aims to establish new tele-businesses and capitalise on new technologies to further the employment of disabled workers. No figures are available on the number of disabled workers in these enterprises. The UK, however, has 31 per cent of the total European base for tele-working call centres (3,117 installations averaging 33 agents each) and as this grows currently at 80 per cent annually it will provide opportunities that COMBAT can exploit in the near future. These tele-working centres can be used by any enterprise as a form of work enclave for disabled workers who would benefit from such technological support utilised by tele-centres.

An Italian initiative (TWIN) has pilot centres in the UK. TWIN seeks to 'plan and evaluate the opportunities for the development and interconnection of specialised tele-work centres aimed at the integration of people with disabilities in the labour market at a pan-European level'.

Flexible work teams

The self-managing team is a popular concept in UK enterprises. The trend to introduce team-based pay, bonuses and rewards can, however, militate against the inclusion of disabled workers.

V.5 'RETURN TO WORK' PROGRAMMES

V.5.1 Enterprise-led 'return to work' programmes targeted at employees absent from work because of disability

A 1997 exploratory survey of 77 employers sought to gauge formal return to work activity and found these programmes to be patchy and inadequate. The study covered a wide range of enterprise size; 59 per cent were from the private sector and 41 per cent from the public sector. Sixty per cent of the enterprises had some form of return to work policy. Table V.4 outlines the types of options offered to three groups of employees: employees temporarily unable to carry out their full duties; employees permanently unable to carry out their full duties; employees who contract a progressive condition which affects their ability to carry out current duties.

Table V.4: Return to work options provided to employees		
<i>Options</i>	<i>Provided to all three categories of employees (%)</i>	<i>Not provided to employees (%)</i>
Adjustments to working hours	46	7
Transfer to other work	38	13
Light work opportunity	40	28
Occupational and/or physical therapy	15	70
Home employment	14	72
Provision of rehabilitation	11	81
Counselling	41	37
Job duty rotation	24	57
Retraining	23	53
Equipment and tool modification	27	60
N'77		
Source: Cunningham, 1997.		

The low priority given to rehabilitation support is noticeable and, given the broad sampling frame of the survey, would probably be indicative of the general attitude to workplace rehabilitation in the UK as a whole.

Disability leave project

The disability leave pilot project (see I.1.3) established an opportunity for a group of employers to consider employee retention policies. Disability leave began with the aim of protecting jobs for employees who develop impairments in order to provide them with enough time to reach an informed understanding of future work potential.

This approach can be logically extended to offer a work break to enable disabled employees and their employers to make any adjustments required, whether practical or psychological. The process involves assessment, alleviation of employers' concerns, a disability leave policy, internal funding for case management and the provision of reasonable adjustments. The initial assessment is vital as this establishes the baseline from which procedures can be developed to ensure everything practicable is done to retain an employee who becomes disabled.

Insurance policies

Enterprises with insurance policies to provide replacement staffing when workers are on sick leave may be less interested in a return to work programme. The staff replacement coverage in insurance agreements, however, tends to attract higher premiums than more proactive insurance agreements.

Occupational health staff

In the UK the role of occupational health staff is primarily devoted to health assessments rather than return to work programmes (see V.1.2).

V.5.2 Components of return to work programmes and evidence of outcomes

Employee representatives and written procedures

The study by Cunningham (1997) noted the active role of employee representatives in return to work; 80 per cent of union-recognised enterprises indicated that a union representative was used to support the process. In addition, 41 per cent of enterprises with a written procedure noted a decrease in absence levels over the last three years, while 26 per cent recorded an increase (n'34). Of those without a written policy, 15 per cent recorded a decrease in absence records over recent years while 40 per cent noted an increase (n'20).

Existing contacts

It appears that disabled workers utilise former employers and personal networks rather than public services when returning to work. In a 1993 study, about 14 per cent of a sample of disabled workers who had received Invalidity Benefit in the preceding year had returned to work. Of these, 64 per cent had returned to their previous employer, 13 per cent had found work through a friend or relative, nine per cent through a newspaper and only four per cent found work through a Jobcentre (or unemployment benefit office). Most of these employees thought the return to work position was the type of job they wanted (82 per cent) while ten per cent thought it was a stop-gap, with the remaining eight per cent being unclear.

Assistance from employers

In the same survey, respondents were asked if they had received any assistance from their employer to carry on their work despite their health problems. After excluding a third of the employees who were not working at the time their health problem started or who could not have carried on working because of the nature of their health condition, three in four (77 per cent) said their employer provided no assistance. For the one in four who did receive assistance, the types of assistance were: assignment to light duties (45 per cent); change to other work (31 per cent); getting other staff to help (19 per cent); permitting the employee to work shorter hours (14 per cent); or modifying the equipment for the employee to use (five per cent). These results support the findings by Cunningham (1997 - see Table V.4) concerning the use of flexible routines rather than

physical adaptations to assist disabled workers retain or return to their jobs.

Discussions with employers

Respondents were also asked if they had discussed the possibility of return to work with their employer at a later date. Excluding employees who said that their employer did not know about their health condition, two in three (66 per cent) said they did not discuss this with their employer.

Table V.5: Invalidation Benefit recipients who discussed the possibility of return to work with their employe			
	<i>All (379)</i>	<i>Men (173)</i>	<i>Women(206)</i>
<i>Outcome</i>	%	%	%
Could not return	32	38	24
Could return to			
- same job, same conditions	47	42	53
- job with lighter duties	8	8	6
- shorter working hours	6	5	7
- different job	5	6	4
- other answer	4	3	7
Unclear	2	1	3
Source: Erens and Ghate, 1993.			

This table suggests that there are no clear strategies for job retention or return to work on the part of employers. Nor do individual disabled workers have a clear idea of the options to pursue.

V.5.3 Enterprise measures to help disabled workers to find suitable employment elsewhere

Outplacement schemes

Employment in the UK underwent significant change during the 1980s and early 1990s. In response to downsizing by many companies, a broad range of commercial outplacement services has been developed. These are used both for disabled people and other employees. In essence, the employer pays the outplacement service to find a new position for the employee being made redundant or otherwise dismissed. Outplacement schemes are often used during periods of mass downsizing to reduce bad publicity and ill feelings. The schemes also act as a buffer to claims of unfair dismissal and discrimination.

Business links and networks

The Department for Education and Employment publishes a *Good Practice Guide for Employers' Networks on Disability* in which members are encouraged to make a commitment to the employment of disabled workers (see V.1.2). This commitment extends to supporting a disabled worker's employment with other members when one member cannot retain the worker.

V.6 MOST PROMINENT STRATEGIES

No one strategy appears to be most prominent. The broad array of policies, programmes and practices appears to have developed in a very idiosyncratic manner. As a result, the return to work of the disabled individual is very much determined by chance.

The employer forums and networks are attracting much government praise and the strategy of 'leadership by example' tends to operate in most cases.

V.7 DEFINITION AND ASSESSMENT OF DISABILITY

V.7.1 The effect of perceptions of 'disability' on enterprise job retention programmes

As the DDA is the guiding piece of legislation affecting policy and practice in this area, the definition of disability under the Act will have a significant impact on perceptions of disability. For example, drug and alcohol dependency are specifically excluded conditions. It is as yet unclear whether or not stress and obesity will be included under the Act. In addition, illnesses which last less than 12 months will not be considered as disabilities unless they are likely to recur. People with HIV and other non-symptomatic conditions are specifically excluded from the definition of disability under the Act.

As noted in section I.9, it is unclear how occupational stress, diffused RSI and some occupationally induced diseases are conceptualised for purposes of health and safety coverage and compensation. Before enterprises are willing to respond to these concerns they must be convinced of the existence of these health issues. Often the employer's defence is that these health issues lack a clear trigger or onset, which is much more visible in the case of industrial accidents. Now, however, the rise of 'gradual mental stress' compensation claims (cumulative emotional problems stemming from adverse psychosocial problems at work) account for about 11 per cent of all occupational disease claims.

Attention has recently spread to issues such as passive smoking and asthma, further encouraging both the regulatory agencies and enterprises to consider health and safety issues, which have no clear triggers. It has also led to reviews by the Industrial Injuries Advisory Council and the HSE in an effort to stem the flood of civil claims for these conditions

Disfigurements, especially tattoos and body piercing, which are not covered under the DDA, may be accommodated in diversity policies. In some UK sub-cultures, such 'deliberately acquired disfigurements' are important status indicators but lead to negative perceptions at work and can also be potentially hazardous to health, for example, when pierced nose, lips etc. become infected. In contrast, any efforts to remove tattoos may be treated more favourably as disfigurement and come under a retention of disabled workers' policy.

V.7.2 The effect of procedures for identifying and assessing disability at work on access to enterprise job retention and 'return-to-work' programmes

No individual disabled person would ever be specifically excluded from retention or return to work programmes but, as the DDA has now established a new definition of disability, it is likely that this definition will also be incorporated into many programmes to ensure continuity. Occupational health practitioners are encouraging self-identification under the protection of the DDA. If illnesses and conditions at work have no clear cause, triggering job retention strategies is problematic and it is difficult to initiate early interventions.

The time delays between the onset of a potentially disabling condition or illness and its effect on attendance and productivity tend to be obstructive. Workers can only wait until their condition has adequate physiological signs, which attract attention and compensation through PHI or IIDB and protection under the DDA. The presence of a progressive condition can still lead to exclusion from occupational health schemes, and poor performance reviews.

Industrial injury disablement benefit assessment and compensation claims

Employers liability insurance is a statutory obligation. Claims for compensation for industrial injury and ill-health rose threefold between 1983 and 1988 and the assessment criteria, and backdating of claims, have been reviewed in response.

Claims for industrial injury disablement benefit require more than 14 per cent incapacity to receive any financial benefit for most accidents. The disability level must be 20 per cent for deafness although for certain lung diseases a threshold does not apply. Furthermore, the benefit can be claimed if a number of illnesses or injuries can be aggregated to achieve the 14 per cent rate. Overall, the medically-based assessment does not encourage the worker to seek early intervention related to the development of industrial deafness or illness, especially as there are no clear triggers or events which activate a claim. People with occupational disease or partial deafness may wait until their condition has deteriorated to the compensatory threshold rather than seek early treatment and attract attention prematurely to their disability. On the other hand, this strategy is diminished due to new restrictions on backdating claims for IIDB which affect compensation for industrial diseases and other progressive conditions. Concern has also been voiced that information on such diseases and conditions and individual case histories are held by third parties such as the occupational health professionals and are not released to either the DSS or disabled worker in time for an application for compensation to be made.

V.8 INTERNAL RELATIONSHIPS

V.8.1 Effects of the relationship between actors within the enterprise on strategies to promote job retention

Co-workers

Co-worker resistance to the employment of disabled people has been demonstrated by Duckworth where he interpreted the complex relationship between co-workers' attitudes and behaviours towards disabled people. Duckworth argues that many of the difficulties posed by co-workers can be overcome by the delivery of disability equality or awareness training within a legislative framework that protects employees' rights.

Finance departments

Finance departments are likely to examine the productivity of individual disabled workers before initiating job retention efforts. Productivity seems to be the dominant measure of value of employees at the lower hierarchies of enterprises in the UK; this perception by UK employers would appear to lag behind those in the USA, for example, where loyalty, corporate culture and corporate image play a more important part in determining job retention strategies.

Union-management partnerships

Integrated disability management systems require bi-partite support in the workplace. The following, relatively unusual, example illustrates such a system:

At VSEL shipbuilders in Barrow in Furness, selected workers are trained as stress counsellors, maintain an occupational hazards database and systematically carry out surveillance on

exposure and health problems based on worker-held records. The chair of the safety committee for 13 unions at the site co-ordinates a range of employee-led health and safety initiatives which have a strong job retention element. The programmes include an employee-managed database of hazards in relation to asbestos exposure, asthma, dermatitis, noise and vibration white finger exposure. This information is used to argue for job flexibility and job transfers for affected workers before the conditions lead to compensation and health-related dismissal. Additionally, a Roving Medical Report card is being used by many of the 5,500 employees to encourage their GPs and other health professionals to co-ordinate care and consider job retention strategies with reference to their health issues at every consultation.

A key aspect of the VSEL programme is that the needs of both management and disabled employees are managed by an intermediary (a Health and Safety Welfare Forum) to encourage employees to identify their needs and protect their confidentiality and job security. Once their needs are recognised, the forum initiates support and possible transfer to other duties.

Friction between Health and Safety and Human Resources

Bruyère and James (1997) note that, without the active co-ordination of health and rehabilitation, there is a danger of health and safety practices that undermine rehabilitation, or vice versa.

In most large and medium-size workplaces the human resource function manages both health and safety and employee productivity. It is difficult for the human resource function to be seen as an impartial and equitable provider of workplace support for disabled workers in relation to job retention activity. In some organisations, the employer contracts out the occupational health services to ensure the separation between workplace health and safety and personnel management. An example of such services is the non-profit-making Rochdale Occupational Health Services, which provides occupational health cover to more than 100 companies around Manchester. Its independent nature, together with the focus on preventive health and quality assurance, are seen as valuable aspects of the organisation's service.

V.8.2 Effects of recruitment and remuneration practices on job retention

Short-term contracts

The rapid introduction of short-term employment contracts has the potential to adversely affect job retention.

Pre-employment health screening

The DDA itself does not make explicit reference to screening. Despite attempts to prohibit it, the government's view is that 'in general employers should be free to use whatever recruitment procedures best meet their needs and to conduct medical examinations of employees where that seems appropriate'. A disabled applicant may need to demonstrate their ability to perform and maintain a particular job role during the recruitment interview. However, if an employer uses health screening as an excuse for not employing a disabled employee, they will have to justify any potential discrimination before an industrial tribunal.

Remuneration

As performance appraisals increasingly include sickness absence as one of many criteria for considering individual pay levels, it is likely that disabled workers who require periods of rest and recuperation will find that their quality of work and remuneration falls, even through a job retention programme.

The DDA does not prevent employers from paying disabled people less if they are in performance-related pay schemes and their productivity is affected by their impairment, as long as this can be justified. The rights to employment enjoyed by disabled people under the DDA are also balanced by their responsibilities to comply

with their contract of employment.

Disabled workers can be legitimately excluded from profit-related pay schemes if they have high absenteeism levels, as this constitutes an eligibility criterion.

V.8.3 Financial opportunities for and obstacles to internal job retention measures

It is necessary to develop a sound financial argument to ensure that employers understand the cost of ill-health retirement on the grounds of disability. Once this has been explored in detail (as has been done by the Post Office), then the employer can be persuaded by the business case of job retention or return to work. However, acceptance of the argument will depend on whether internal accounting procedures allow for costs to one department to be off-set against gains to another.

Exploration of the link between performance-related pay bonuses and sick leave helps to identify internal obstacles to job retention. As an example, the HSE has recently investigated complaints at the CoSteel plant that the company calculated bonuses on the basis of the amount of sick leave taken by each team at the plant in a month. If an employee takes one day off in a month, all other members of the team will lose half their bonuses. In this climate, each team member is encouraged to pressure other members not to take time off. It could be argued that such a link between sick leave and performance-related pay will encourage team members to look after the health of other members and thus support job retention but it is more likely to dissuade any team from accepting members who require the relief of sick leave.

V.9 LINKS WITH EMPLOYMENT POLICY OBLIGATIONS, RECOMMENDATIONS AND INCENTIVES

V.9.1 Enterprise compliance with disability employment obligations and agreements

Although larger enterprises appear to be complying with the spirit of the DDA, research has, so far, only identified paper policies and self-reported actions. The TUC has concerns about the use of loopholes for employers in adhering to the spirit of the DDA and notes that it is referred to as the 'Bigot's Charter' in some quarters. For example, discrimination can be 'justified' in many cases by the employer (sections 5.27-5.28) if they have 'material and substantial reasons, taking into account their duty to make reasonable adjustments'. The guidance notes on reasonable adjustment use the word 'easily' in providing examples of reasonable accommodation. The concept of 'reasonable' adjustment also depends on the financial position of the employer. The TUC was also concerned that the DDA lacked enforcement and stated that 'one of the best ways to kill a civil rights concept is to pass a law and not enforce it'. The new government's commitment to establish a disability rights commission was welcomed.

In considering the impact of the DDA across employment sectors and establishments, it must be noted that 96% of employment establishments in the UK employ less than 20 people and account for 20% of the national workforce. The sector spread of the DDA is also limited by the exclusion of certain occupations, such as military and paramilitary forces, which historically are well overdue for cultural change and disability awareness. The 20 employee threshold is under review, as are excluded occupations.

V.9.2 Congruence between enterprise strategies and external practice recommendations and standards

In the face of the complexity of the DDA, employers are recognising that they can take one of three responses. First, they can do nothing and hope they evade prosecution for discrimination. Second, they can be minimalistic and try to comply with the DDA. This approach may succeed but, because of the difficulties in interpreting concepts such as reasonable adjustment and justification for discrimination, it is fraught with difficulty and may lead to errors and Industrial Tribunal cases. The third is to adopt a best practice approach.

In recent years, the 'business' case has been the focus of arguments to employ and retain disabled workers. The business case relies on the following perceived, but debatable, financial advantages of retaining disabled workers:

- Most disabled workers are reliable and trustworthy, grateful for employment and likely to take the same or less days sick as other workers.
- Supporting disabled workers is less costly than dismissal when there is a possibility of civil or criminal action by the aggrieved worker.
- Flexible routines required by the disabled worker may lead to profitable innovations in human resource management in other cases.
- Disabled workers are more able to align the company's possible market expansion into services or equipment for disabled, ill or injured customers.
- The enhanced corporate image resulting from disability-friendly job retention policies may be visible to customers and governments and result in increased patronage and government contracts.
- Co-workers will be confident that the employer will accommodate their illnesses, injuries and disabilities. This may be reflected in higher overall job satisfaction, and may lead to greater commitment and productivity and less absenteeism.
- The enterprise will save the costs involved in recruiting, selecting and training a replacement worker if the dismissal of a disabled worker is not convenient to the natural attrition or downsizing strategy of the enterprise.

Prior to the development of this argument, many employers believed it was their social responsibility to support their workers through illness and injury. This simple argument is now absent in the UK, to the point where financial advisors to enterprises dissect the cost-benefits of each job retention programme before committing themselves to the support of their disabled workers.

The weakness in pursuing the business case too vehemently is that the reverse argument, namely that job retention should not be attempted if it is not financially beneficial to the firm, conflicts with the social responsibility argument. Employers are left confused in the choice of criteria to apply to their job retention decisions. This disjunction may be overcome by developing the 'diversity' argument into an inclusive employment strategy (see V.1.1). The subsequent richness of opinions, values, abilities and perspectives may be profitable to the firm; in addition, such a programme represents a social compact with the local community. The value of the diversity strategy lies in its visibility and coverage, which makes it easier for the human resource function to promote and operate it.

Inter-sectoral differences

Enterprise strategies differ greatly. Empathetic and proactive strategies to retain disabled workers are visible in the same sectors, which are renowned for their negligence of health and safety and exploitation of workers. The benefits of the best practice enterprises in these sectors is that they demonstrate that retention strategies are achievable in sectors previously thought to be dominated by destructive corporate cultures. For example, the retail sector, known for its overuse of contingent workers, finds Marks and Spencer leading by example with active support for ill, injured or disabled employees; Oldham NHS Trust provides innovation among NHS trusts - a sector targeted for a crackdown by the HSE; Midland Bank provides best practice in the banking sector which is currently moving swiftly to downsize and place staff on zero-hours contracts. This

suggests that individual enterprise factors such as managerial commitment and organisational culture determine effort rather than sectoral factors in this area.

Access to medical records and the DDA

An interesting view in determining the reasonableness of workplace adjustments under the DDA is that the employee needs to be seen to be co-operating with the employer in adjusting the workplace. Employers can argue that the employee's action in not providing the employer with access to relevant medical records is obstructive. In our opinion, it would be useful for medical information to be reorganised so as to provide enough information for adaptations to be considered, while still maintaining confidentiality about sensitive details concerning the disabled worker's condition.

V.9.3 Ways in which employment and labour market policies impede or facilitate enterprise-led work adaptation programmes

European Union law

When implemented, the EU Working Time Directive will be of particular use to disabled workers whose job is jeopardised through health issues, which are aggravated by shift work or a lack of rest breaks. The Directive requires, amongst other things, that: where an employee suffers health problems recognised as being connected with night work, the employee should be transferred to day work where possible; night workers should be provided with free health assessments; if the work at night involves heavy physical/mental strain then employees in such work should work only a maximum of eight hours per night.

Some enterprises are already adapting their shift work patterns in line with EU law. For example, Ilford Photographic Chemicals has changed its work patterns after staff complained that the 12-hour shifts were causing ill health and that the two-day changeover between shifts was not long enough for recovery.

V.10 ENTERPRISE STRATEGIES AND BENEFIT/COMPENSATION PROGRAMMES

V.10.1 Effects of the availability and level of out-of-work benefits on enterprise recruitment and dismissal policies

It is commonly assumed that, because of the very existence of insurance-based incapacity benefits, an enterprise has little or no compunction about 'letting go' of an employee whose capacity to do the job is affected by disability, injury or ill health. There is, however, little research to validate this assumption. The level of incapacity benefit is low compared with earnings (not earnings-related) and there may be a contrary pressure on more magnanimous employers to avoid releasing employees to a substantially reduced standard of living; this assumption is rarely stated and also untested. The absence of direct wage subsidies - other than through Supported Placements, which as yet are rarely used for job retention, and the Job Introduction Scheme - may make it difficult for an employer to retain a less productive employee.

Permanent health insurance packages have been used to pressurise employees into giving up employment, particularly in enterprises seeking to reduce their workforce. The level of benefits is likely to influence an employee to choose retirement at the onset of a disability which affects their employment.

Private occupational pension schemes often provide temporary or 'bridging' pensions for members who retire before state pension age. The rules differ between insurers and can be related to ill health or redundancy or be varied at the employee's request.

V.10.2 Enterprise responses to in-work social security benefits

Enterprises seeking to reduce the wage costs of part-time workers commonly offer employment at below the

national insurance threshold of 16 hours per week. As the threshold for DWA is itself set at 16 hours per week, there is little incentive for enterprises looking for part-time workers to accommodate potential recipients of DWA.

In-work occupational health cover

There is an interesting paradox in that, although occupational health insurance (OHI) is marketed to enterprises on the assumption that such schemes will lower absenteeism rates, in practice employees may be using this coverage to take time off work for minor operations, dental work and other consultations.

V.10.3 The co-ordination by benefits agencies and enterprises of disabled workers' transition from benefits support to waged income

There is no evidence of co-ordination between the benefits agency and enterprises, other than through paper transactions.

V.10.4 Co-ordination of the benefit-wage package by benefits agencies and enterprises

Continued eligibility for the DWA requires 26-weekly assessments, which generally combine a self-assessment and a supporting medical opinion. There is no formal co-ordination between employers and the benefits agency in supporting or rejecting continued claims for the DWA. Eligibility for DWA is on the grounds of 'disadvantage in getting or keeping work' and no reference is made to the type of work. In comparison, private occupational health insurers are able to coordinate benefits programmes with the disabled worker's employer and to cut payments to workers whose condition allows them to resume employment.

The lack of co-ordination has prompted the TUC to move into providing a linking role between agencies, insurers and enterprises.

Occupational health care providers

The Association of British Insurers (ABI) is currently compiling a database on disabilities and related risk, which will be used by its members in assessments of disabled workers. This segmentation of the disabled population will lead to differentiated coverage and premiums for groups of disabled workers in UK enterprises in the near future.

Two other current strategies being pursued by occupational health care insurers are of concern. First, there is evidence that insurers have introduced an excess on claims (a cost-shift to the employee) and that this excess prevents small or frequent claims being made. This in turn discourages disabled workers from seeking early intervention from the fund. A recent health care survey reported that 31 per cent of insurers in this area had introduced this excess. Moreover, 11 per cent have psychiatric cover exclusions.

The second strategy of the occupational health care insurers involves using the DDA protection of dismissal provisions to encourage employees to identify their health needs to the insurer and enterprise. In our opinion, insurers significantly overestimate the degree of protection and coverage of the DDA. This provides a false sense of security to disabled workers in enterprises where the culture is not naturally supportive of disability and where the insurer can subsequently raise the premium to the enterprise on the basis of its disability and illness rates.

V.10.5 Opportunities for disabled employees to join, self-fund or top-up workplace health benefits and pension plans

The low coverage of PHI schemes, including for disabled workers with atypical work activities, limits the opportunities for many workers to rely on workplace health benefits. The Association of British Insurers,

however, encourages employers to include disabled workers in their occupational health schemes, noting that 'disabled persons, whose propensity to take ill-health retirement or die in service is not materially higher than for other members, must be admitted to the scheme as normal'.

The rights of disabled workers under the DDA to pensions and other benefits is complicated. A law bulletin notes that there is no duty to make reasonable adjustments in respect to occupational pensions, sick pay schemes and similar benefits relating to arrangements in respect of termination of service, retirement, old age or death, accidents, injury or sickness, invalidity, or any other prescribed matter'. In fact, less favourable treatment may be justified on the grounds of cost. Disabled workers can even be required to pay the same contributions as other employees despite being entitled to lesser benefits.

Joining a PHI or occupational pension plan is only the first step for such schemes to be useful to disabled workers. Eligibility requirements for benefits differ greatly and few schemes encourage an active job retention or return to work strategy.

A recent survey of retirement of the grounds of ill health found that over half of the organisations had a minimum length-of-service or age requirement; only 28 per cent of organisations had a length-of-service qualifying period (of between one and five years). The survey used definitions relating to work activities that had been applied in an earlier survey by the National Association of Pensions Funds. Twenty-five per cent of organisations used a definition based on the worker's 'inability to do any job at all' while 53 per cent applied the definition of being 'unable to do his/her normal job'. In our opinion, disabled workers may find themselves performing menial jobs in the enterprise and not be able to take advantage of occupational health insurance to see them through a period of rehabilitation or re-training.

V.11 LINKS WITH EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

V.11.1 Enterprise response to externally funded support and advisory services

Section V.9.2 considered the multiple and contradictory arguments for implementing job retention programmes that are espoused by different support and advisory agencies or associations.

There may be a mismatch between the needs of clients supported by external agencies and enterprise workforce requirements. Table V.6 shows the problems that people with impairments perceive as influencing working life. The problems correlate more with flexibility at work and flexible human resource practices than with the provision of special adaptations, devices or communication support. It suggests that flexible workloads, working hours and rest breaks would do much to accommodate the special needs of disabled people.

	<i>Always a problem</i> %	<i>Sometimes a problem</i> %
cannot work more than 30 hours a week	23	8
has to take 20 or more days a year off work	20	8

has to take extra rests at work	16	17
needs help from someone to do the job	6	12
needs special equipment, aids or adaptations to do the job	9	6
cannot do as much work as other people without health problems	27	17
has difficulty communicating with work colleagues	9	9
N'700 PACT clients		
Source: Beinart, 1997.		

These findings are supported by a study of former Invalidity or Incapacity Benefit (IB) recipients who are now ineligible for the benefit due to the tighter 'all work' functional ability tests. This study highlights the fluctuating conditions of disabled workers. For example, eight per cent of the 1,225 former IB job seekers said they could never work a 7 to 8-hour day and 21 per cent said they could sometimes. Furthermore, 18 per cent of the sample said they could only sometimes work a full five-day week and seven said they could never. Moreover, about 35 per cent said they sometimes require several extra rests during a full working day, whereas 16% said they always needed these rests.

The results of both these studies point to the need for flexibility at work in the hours worked and the timing of rests during the day. The fluctuating conditions of disabled workers require that such rests and hours need to be provided in a flexible but irregular way, rather than being implemented in a standardised form. This is difficult for many enterprises to implement as a policy, as it could potentially be abused. However, some enterprises are allowing workers to take sick leave in small time periods (for example, a morning or afternoon) rather than requiring workers to take a whole day off work for a condition or illness requiring no more than an extended recuperative rest break during a working day.

Job coaches

Job coaches provide a link between an enterprise and external support services which is worthy of more consideration. Further use of job coaches would be welcomed by some enterprises in the UK. In evidence to the House of Commons Social Security Committee on Incapacity Benefits, the Employers' Forum on Disability stated that:

job coaches offer a service which is highly regarded by both employers and people with disabilities. They help the employer to minimise the potential costs and disruption to routine created when they employ someone who requires additional support and/or training. Job coaches can ... provide the individual's colleagues with training and support; provide on-the-job training and retraining as the individual's needs change or the job changes over time.

There are indications that organisations using job coaches are those whose infrastructure is more costly to maintain in other ways. NHS Trusts are thought to use job coaches as they reduce the costs associated with in-house programmes. It should be noted that job coaches are still almost exclusively used for entry or re-entry to employment.

The fact that a job coach is present within the workplace may provide opportunities for dialogue with management on strategies connected with other disabled workers at the site. In our opinion, this opportunistic relationship is potentially valuable to both the enterprise and the support service. An alternative view is that reliance by employers on job coaches allows the former to avoid both management and social responsibilities. The funding of job coaches is itself problematic.

V.11.2 Co-funding and partnership between enterprises and other agencies

There is often poor co-ordination between enterprises, disability organisations, government departments and insurers over employment support and rehabilitation services, with a resulting over-delivery of services in certain areas and gaps in others. The complex inter-relationship between these various bodies is currently very difficult to manage within the UK employment environment. It is hoped that the National Disability Development Initiative (see III.6.1) will help to develop programmes to simplify this process.

Cunningham's study on return to work activity in 77 enterprises noted the reliance on internal non-specialist staff to manage and advise on return to work efforts. Only 19 per cent of the enterprises in the study used rehabilitation specialists, more than three-quarters of whom were external to the enterprise. Only 21 per cent used ergonomists, while 12 per cent used a disability manager.

Enterprise-insurer relationships

In an interview with the marketing director of a major UK insurer of occupational health schemes, it was noted that much of the insurance risk in these schemes (80 per cent) was handed on to a few major re-insurers in the UK. This strategy removed the primary insurer from any relationship with the enterprise in relation to collaborating to reduce insurance claims by instigating proactive workplace strategies.

In a longitudinal study over five years on the use of occupational pension schemes as an avenue for retirement on the grounds of ill health, it was found that 15 per cent of people in such schemes took this route. The research report argued that occupational pension schemes are used to 'medicalise' job dissatisfaction and that enterprises preferred this 'ill-health retirement' route rather than the use of redundancy programmes. Musculoskeletal problems and stress were often cited as reasons for retirement on the grounds of ill health; however, the decision to award retirement benefits was often based on unclear or inconsistent criteria.

V.11.3 Opportunities and barriers to the effective co-ordination of external support services and enterprise programmes

The effective co-ordination of external support services and enterprise programmes is impeded by the complex multi-agency approach in this area. This often leads to ineffective, inefficient use of resources. It is hoped that the National Disability Development Initiative (III.6.1) will resolve some of these difficulties. The current problems were reported in the Windsor Consultation, which was conducted by the Employers' Forum on Disability and sponsored by the Department for Education and Employment and the Camelot Group.

Disability leave

The late intervention of vocational rehabilitation services in response to the deteriorating health or disablement of existing employees is an issue for rehabilitation professionals. The ability to gain access to disabled workers while they are still in employment, and to use this as an opportunity to discuss job retention strategies with both the employer and employee, is severely limited due to the limited provision of sick leave. Vocational rehabilitation counsellors can use the period of disability leave (as piloted in some companies) to gain access to workers and adapt the workplace or retrain the worker for a position in the enterprise.

V.11.4 Opportunities for and barriers to disabled workers' co-ordination of their workplace support

Use of personal readers, signers and other attendants at work

Disabled workers who bring personal attendants to the workplace need to be aware that they are introducing another person into the workplace and that this person requires space, freedom from harassment and an equally high quality of working life as is afforded to any employed person. The perception of this person by co-workers and their accommodation of the person into working life can pose barriers to the use of attendants at work. Several issues will need to be adequately resolved, including the attendant's access to confidential records and meetings.

Personal aids and adaptations

Enterprise policy toward the use of personal computer equipment (for example the introduction of computer viruses on the IT system), insurance cover for damage to such equipment and aids, and the inspection of personal electrical equipment and physical devices by workplace safety inspectors may obstruct the use of such equipment on site.

Duty of care

The law is unclear about an employer's duty of care to personal assistants, especially when the attendant is co-funded by the employer, insurer and a public agency. Attendants who are funded by a single source will be covered by their employer's occupational injury insurance, whereas co-funded assistants may fall between the enterprise's public liability cover and the employer's and funder's cover.

V.12 LINKS WITH SERVICES FOR ADAPTATION OF WORK AND WORKPLACE

V.12.1 Enterprise response to external services to undertake adaptations

Effort and awareness

In the survey by Cunningham of 77 enterprises and their return to work programmes, half had made some adaptations (with 52 per cent of these using the Access to Work scheme) and a further 12 per cent intended to do so. Sixty-three per cent of those providing aids and adaptations had contact with the PACTs, with three per cent intending to do so. The survey supported earlier research, which suggested poor awareness by employers of the government programmes available. The Executive Director of the Employers' Forum on Disability noted that many employers were unaware of the availability of support and that those who were aware of these services found the 'red tape' to be exhausting.

Effects of adjustment on co-workers

An interesting aspect of the DDA (section 6.4) is that the effect of workplace adjustments on co-workers is considered when determining the reasonableness of such adjustments. We would speculate that expensive technical support may unfairly boost a disabled worker's productivity, prevent co-workers from carrying out their duties effectively, or reduce the quality of their working life (by taking up space and resources normally available to all workers).

V.12.2 Arrangements to assist enterprises with purchase of external services

The Access to Work scheme has been described in section I.2.3.

Occupational health insurance

The minority of workplaces which are covered by occupational health schemes do provide a range of adaptations under this cover. These have a limit on expenditure and may be supplemented by the disabled

workers themselves or by the enterprises. For some enterprises and disabled workers, a cheaper form of occupational health cover, a hospital cash plan, is available. The hospital cash plan works like a voucher scheme to gives members a fixed sum to spend each year on aids and medical appliances (and also covers home help, stress counselling, homeopathy, physiotherapy etc).

V.12.3 The match between available services and user requirements

Relationships with PACTs

The focus by PACT staff on cost containment in the provision of aids and adaptations can create friction with the enterprise when this leads to conflicts between a client, the enterprise and PACT staff. In one case, even though the enterprise was willing to cover the additional 20 per cent cost of the ATW equipment, the PACT staff sought to reduce the quality of the adaptation. In this case, it was felt that the training provided to PACT staff was insufficient and their current attitude was likely to alienate both enterprises and disabled workers.

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Sweden

Anders Karlsson

Swedish Council for Work Life Research

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PREFACE

The *International Research Project on Job Retention and Return to Work Strategies for Disabled Workers* is an initiative of the International Labour Organisation (ILO) and the Global Applied Research and Information Network on Employment and Training (GLADNET). It reflects ILO and GLADNET joint aims of establishing a base for cross-national research and strengthening links between research analysis and policy reform in the field of employment of disabled people.

The Project is a response to a combination of developments which highlight the need for more effective policies and practices in support of workers whose prospects of remaining in employment are jeopardised by work injury, illness or disability. Persons with disabilities are increasingly claiming rights to stay in work as well as to access employment. Pressures on state budgets, the rising costs of compensation claims and disability benefits, and changes in the structure of the labour market are strengthening policies in favour of job retention and return to work. Enterprises are developing their own strategies to minimise the costs of disability and to retain valued employees. Overall, the balance of responsibility is shifting from the state to the enterprise.

Policies and practices to prevent disabled workers from leaving work unnecessarily, and to facilitate rapid return to employment if job loss cannot be prevented, are recent developments in many countries. The cross-national exchange of information on initiatives and their effects is limited. The first aim of this Project has been to gather information about what has been attempted, by whom, for what purposes, in which contexts and to what effects. The second, more ambitious, aim, is to examine the interaction between the various policies and practices, identify dysfunctions, and work towards more coherent and cost-effective strategies for job retention and return to work which might be applied in different national systems. The ultimate objective is to identify strategies, which can be put into effect in the workplace.

The Project was constructed in two phases. In Phase One, eight exploratory desk-based studies were commissioned from researchers in Canada, France, Germany, the Netherlands, New Zealand, Sweden, the United Kingdom and the USA. The eight countries invited to participate represent a spectrum of policy approaches and enterprise practices, which affect the retention and return to work of workers with disabilities. Australia joined the project at a later stage.

The studies formed the basis for a *Key Issues* Paper, published simultaneously with the eight country reports. This Paper aims to inform, stimulate debate and pave the way for constructive discussion of questions for further exploration through cross-national collaboration in Phase Two.

National government departments, agencies, a private sector organisation, and the ILO co-sponsored Phase One of the Project. Overall responsibility for the Project rests with the ILO (Vocational Rehabilitation Branch, Employment and Training Department). The design, implementation and analysis of the research in Phase One were the responsibility of the Research Co-ordination Unit established at the Social Policy Research Unit, University of York (UK) in April 1997. Research specialists in the main areas of enquiry, based in study countries, contributed at all stages of the research process and, with ILO representatives, met with the research co-ordinators as a Research Advisory Group.

The country studies

The Project recruited and supported national informants from research institutes in all eight countries. During the second half of 1997 they completed a Schedule of Questions developed by the Research Co-ordination Unit to describe policies and practices, document evidence of their effects and provide grounded commentary on how policies and practices interact. The principal sources were policy documents, survey data, research evaluations and critical reviews. Informants were encouraged to contact sources in government departments and agencies, disabled people's organisations, labour unions and employers' groups. Where documented information was lacking, informants interviewed experts in the field.

The eight country reports are important resources for the development of job retention policy and practice both within and across countries. Each report brings together within a single volume: descriptions of policies, practices and programmes which impact on job retention and return to work; evaluative material; and informed commentary. They cover five themes: employment and labour market policies; benefit and compensation programmes; employment support and rehabilitation services; adaptation of work and workplace; and measures developed and implemented by the enterprise. In line with the research aim of

identifying coherent and co-ordinated strategies, the informants both comment on dysfunctions in national systems which obstruct job retention efforts and identify links between themes.

It should be noted that the situation described in the reports may have changed. This is especially true of the Netherlands where further reforms were expected in the first half of 1998 and the United Kingdom where the government changed in May 1997. Important developments in the USA were announced in March 1998.

The reports produced by the eight teams of national informants conformed to the format laid down by the Schedule of Questions. The original reports have been edited for publication by the Research Co-ordination Unit in co-operation with their authors. However, they remain essentially the 'raw data' for analysis and should be read in that light. Each report follows the same sequence of headings, which reflect the original open-ended questions. As the questionnaire prompted informants to respond flexibly to suggestions about possible areas to address under each question, the content varies from report to report. The reader should note that, at the end of a thematic section, commentary may be included on the links between that theme and those which precede it.

Terms used in the study

The study concerns paid competitive employment in the open labour market.

The term 'disabled workers' is broadly defined. It covers individuals who become disabled, injured or ill whose prospects of continuing or advancing in employment are jeopardised when an acquired impairment, illness or deteriorating condition - physical or mental - presents difficulties in fulfilling the requirements of the job, reduces earning capacity or affects other rewards of working. They may or may not qualify under legal definitions of disabled persons. The term also covers workers with disabilities whose working capacity is not diminishing but whose continued employment is nevertheless threatened by prejudice or discrimination, or by the loss of supports, which have maintained them in the job.

'Job retention' means staying with the same employer, with the same or different duties or conditions of employment, and includes return after a period of paid or unpaid absence. 'Return to work' refers to the resumption of employment by a worker who has crossed the threshold from a continued employment relationship into non-employed status; the main interest of the study is in policies and practices which return the disabled individual to work at an early stage.

Acknowledgements

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Patricia Thornton

Research Co-ordination Unit

Social Policy Research Unit, University of York, UK

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Copies of the 'Methodology Paper' and the 'Informant Briefing and Schedule of Questions' may be obtained from the Research Co-ordination Unit, Social Policy Research Unit, University of York, YO1 5DD, UK.

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I. EMPLOYMENT POLICIES

The purpose of this Part of the report is to describe policies, which maintain those workers in employment whose continued employment is at risk because of disability. It provides evidence of the effects of those policies and identifies factors, which influence their effectiveness. The emphasis in this part is on national (or state/provincial) policies formulated by government, and by bi-partite or tri-partite policy-making and advisory bodies.

Sections 1 to 5 are concerned with legislation, incentives and other 'persuasion' policies which oblige and encourage enterprises to retain disabled employees. A distinction is made between employees who become disabled and those who are already disabled. Information is provided about employment policies which encourage disabled employees to retain or return to their jobs. Sections 6 to 8 focus on the factors which affects the success of policies. They also examine the labour market factors which contribute to the retention or loss of jobs among disabled people.

I.1 POLICIES WHICH AIM SPECIFICALLY TO INFLUENCE ENTERPRISES TO RETAIN NEWLY DISABLED EMPLOYEES

I.1.1 Legal obligations and binding agreements intended to prevent and restrict the dismissal of

employees who become disabled

Under the terms of the Employment Security Act 1974, an employee's reduced ability to work on account of sickness or functional impairment does not constitute grounds for dismissal. Reduced working capacity should instead result in the employer using the assistance made available by labour market policy and taking special action to make the work easier or transferring the employee to less demanding tasks. As a general rule, there is no question of dismissal on account of illness as long as the employee is receiving sickness benefit from the national insurance office. However, dismissal is permitted if an illness or functional impairment involves a permanent reduction in work capacity that is so significant that the employee can no longer be expected to carry out any work of any importance.

Even in cases where employees cannot perform work of any significance, the employer must investigate whether it is possible to find other work for them before dismissing them. In this context the employer has to use all reasonable means to reorganise the business so as to avoid dismissing the employee. Typically, this demand involves making use of vacancies and does not require a new position to be created. Another limitation on the obligation to transfer the employee is that it will only apply to tasks for which the employee is sufficiently qualified.

The assessment of whether the employer has factual grounds for dismissing an employee under the Employment Security Act includes the question of satisfying the statutory demand for rehabilitation measures. It could be said that the Employment Security law interacts with the provisions of the Work Environment Act 1966 (see I.1.2) when it comes to the rehabilitation responsibility of the employer. However, it is not immediately obvious what the employer's rehabilitation responsibility involves, in terms of the extent of financial responsibility or ability to take economic and organisational considerations into account.

Swedish law displays a good deal of respect for the employer's right to run the operations of the company and to supervise the work. This makes it hard for an employee to win a case in court against an employer: the courts do not, as a rule, question the way an employer runs a business or, for instance, deals with questions of rehabilitation.

Employment security law does, however, provide disabled, sick and injured persons with relative adequate security, according to Ann Numhauser-Henning, Professor of Civil Jurisprudence at the University of Lund. Their job security is strengthened in comparison with workers in general.

It is generally more difficult to reach the level of 'work of some significance' among salaried employees than among the more traditional blue collar occupations (according to Eva-Helena Kling, senior legal officer at the Swedish Union of Salaried Employees in Industry). Despite its shortcomings, the law on employment security represents a powerful incentive not to resort to arbitrary dismissal.

Many employers, not least those in the public sector, show little interest in following the rules, according to Bo Eriksson, head of legal affairs in the Swedish Trades Unions Confederation (LO) legal protection division. They often begin at the wrong end: instead of initiating rehabilitation measures and adapting the work, they attempt to push off responsibility onto somebody else or hope that the employee will resign voluntarily.

In normal cases of dismissal on account of lack of work, the order in which employees are released is based on the accumulated period of employment with the employer of each employee. Those with the least accumulated period of employment are made redundant first. The rule that the length of accumulated period of employment is the determining factor for being declared redundant can, however, be circumvented if the union and the employer agree on a different course of action. There are reasons for suspecting that these contractual ranking lists for redundancies in the latter case do not always respect the position of the disabled on the ranking list.

According to the Employment Security Act, an employee whose working capacity is reduced and who on account of this has been provided with special employment at a company shall have prior rights to continued employment regardless of the ranking list, if this can be arranged without serious inconvenience. Special employment includes specially adjusted workplaces and employment with wage subsidy. It is worth noting that the employee must also in these cases be qualified for the tasks he or she is to continue to perform.

This rule has been tested by the Labour Court only in a few isolated instances. Even in industry, this rule is probably only applied to a rather limited extent. This is due to the fact that both the employer and the union organisations find it difficult for reasons of efficiency to retain employees who are disabled. In the past, there were plenty of easy jobs, which made it easier to retain many disabled employees. Today however, these tasks have more or less been eliminated as a result of rationalisation.

Breach of the employment security law results in sanctions in the form of damages to be paid by the employer to the employee and in some cases also to the union organisation.

It is almost impossible to determine with any certainty how well the law has been able to protect the jobs of disabled employees. The only in-depth study of the occurrence of discrimination against disabled employees in working life was made in 1997 by the Disabled Persons Ombudsman. As far as security of employment is concerned, the following results may be noted.

Of those with disabilities who were interviewed, five per cent stated that they had lost their jobs on at least one occasion on account of their disability, seven per cent said they had been encouraged to resign on account of their disability. Four per cent stated that a period of employment for a limited time had not been extended on account of their disability. Among all the interviewees, individuals with reduced mental functioning capacity and stomach and intestinal ailments are subject to discrimination more than other categories of disabled persons. The survey was not able to demonstrate any significant differences between genders.

The discrimination survey took the form of a questionnaire sent to 5,000 individuals of working age (16-64) with physical, medical or mental disabilities, which can lead to constraints in their day-to-day lives. The group investigated corresponds to one million people in the economically active age groups. The response rate to the survey was 62.8 per cent.

1.1.2 Legal obligations to promote the retention of employees who become disabled

The employer's responsibility to strengthen the position of the employee at the workplace is laid down in the Work Environment Act 1977 and in the General Insurance Act 1962.

Work Environment Act

The Work Environment Act requires that an employer shall systematically plan, lead and control a business in such a way that the work environment satisfies the demands made in laws and ordinances. The employer shall investigate occupational injuries, regularly investigate the risks the company's activities involve and take any measures necessitated by this. Measures, which cannot be taken immediately shall be planned and scheduled. The employer shall document the work environment and the measures taken to improve it to the extent required by the operations of the enterprise. Action programmes shall then be established. In addition, the employer shall ensure that operations include suitably organised activities for work adaptation and rehabilitation.

The activities for work adaptation and rehabilitation are covered in more detail in mandatory directives issued by the National Board of Occupational Safety and Health as follows:

- a) the employer shall indicate targets for work adaptation and rehabilitation activities;

- b) the employer shall regularly check the needs of the employees;
- c) the employer shall begin work adaptation and rehabilitation for those employees who need it as soon as possible;
- d) the employer shall clarify how work adaptation and rehabilitation should be distributed. A person working on work adaptation and rehabilitation shall have the necessary authority and resources, as well as the skills and competence required for the tasks;
- e) the activities shall be organised so that they can be arranged in consultation with the individual employees affected by the measures and with their representatives on work environment issues;
- f) the activities shall be organised so that they can be carried out in collaboration with the local social insurance office and the authorities involved;
- g) the employer shall follow up the activities annually and make the changes required by the results of the follow-up;
- h) the employer shall have the procedures necessary for the activities;
- i) if the nature or scope of the activities so require, then targets, division of responsibility, follow-up and procedures shall be documented in writing;
- j) the employer shall adapt the individual employee's work situation on the basis of his/her capacity for the tasks. This shall particularly take into account whether the individual employee has any disability or other reduction in his/her work capacity.

In 1997 Statistics Sweden carried out a joint survey of the employment conditions of disabled individuals together with the Disabled Persons Ombudsman, at the request of the Swedish Council for Work Life Research. According to this survey, 43 per cent of the disabled people who have a job and are in need of occupational aids or some other work place adaptation, stated that the employer had not taken measures to adapt the workplace.

The General Insurance Act

An insured person who is registered with a national insurance office is entitled to rehabilitation measures and rehabilitation compensation. Persons entitled to register with a national insurance office include Swedish citizens and persons who are resident in Sweden. According to the General Insurance Act, the insured person's employer shall be responsible, in consultation with the individual concerned, for ensuring that his/her need for rehabilitation is analysed as soon as possible and that any measures needed for effective rehabilitation are taken. The national insurance office co-ordinates and supervises the measures which are needed for these rehabilitation activities. The work, provided the insured person agrees, shall be arranged in co-operation with the insured person's employer and union, the health and medical service, the social welfare office, and labour market authorities, as well as any other authorities which may be involved. In this context, the insurance office shall seek to ensure that these bodies, each within its own area of activity, shall take the measures, which are needed for effective rehabilitation of the insured person.

The Statistics Sweden/Disabled Persons Ombudsman investigation into discrimination against disabled employees in working life which is referred to above shows that 12 per cent of those questioned stated that on some occasion they had not received the rehabilitation they needed. Twenty-seven per cent of those questioned replied that they do not know or that rehabilitation was not an option, while 61 per cent answered

that they had been given the rehabilitation they needed.

In 1997, the central union federation for workers in Sweden - the Swedish Trades Unions Confederation (LO) - carried out a survey of work environment activities among the safety representatives of its member unions. According to the Work Environment Act, the safety representative represents the employees in connection with questions relating to the work environment.

As far as rehabilitation measures are concerned, 40 per cent of the safety representatives stated that the employer investigates the reasons for long term or recurrent sick leave. Some 15 per cent of representatives reported that, although the employer investigates the causes, measures are not taken. More than 20 per cent stated that the employer transfers the employee to other tasks, and some 15 per cent that the work/work environment is adapted to the individual. According to more than 25 per cent 'other measures' are taken.

As many as 15 per cent of representatives stated that neither investigations are made nor measures taken. An equally large proportion stated that an investigation is carried out but no measures are taken. And as many as almost 20 per cent did not know what measures are taken in connection with long-term sick leave. This means that it is not mainly the investigations that are the problem, but the absence of measures when there is a need for rehabilitation for individuals who are on long-term sick leave. (As several alternative replies were possible, the final figure is not 100 per cent.)

Act Concerning Certain Measures to Promote Employment

Under the terms of the Act Concerning Certain Measures to Promote Employment of 1974 (amended in 1985), the employer has a responsibility to discuss with the County Labour Board:

1. measures to improve the working conditions of elderly workers who are already employed or employees whose work capacity is reduced;
2. measures to safeguard continued employment;
3. the recruitment of elderly employees or employees with reduced work capacity, and measures to promote the employment of such persons.

When there are reasons, the County Labour Board shall, on the basis of what has emerged from the discussions with the Board, give the employer instructions regarding measures that should be taken to provide better employment opportunities for elderly workers or workers with reduced work capacity. In this context, the Board can demand that the employer, in connection with recruitment activities, increases the proportion of such employees in the work force in accordance with more detailed information provided by the Board.

If the employer does not comply with the instructions sent by the Labour Market Board, the Board can require the employer not to employ other workers than those referred to it or approved by the public labour office.

This Act has come in for intense criticism as it has never been applied in the manner described in the above paragraph. In other respects, it has only been applied in a small number of cases. The minimal application of the act, to put it no more strongly than that, has resulted in its very existence on the statute book being questioned. The failure to apply the Act is due to the way the application of the law is constructed. The very authority which is dependent on good contacts with employers in order to find work for job applicants also has to apply rules which are regarded by the employer as both highly interventionist and burdensome. The Labour Market Board has not been capable of handling its dual role, which has left the Act Concerning Certain Measures to Promote Employment in something of a limbo.

A committee appointed by the Government, which was due to present recommendations in the spring of 1998

for a bill concerning discrimination against disabled people at work, was also directed to review the Act Concerning Certain Measures to Promote Employment.

1.1.3 Voluntary policies and programmes which encourage enterprises to retain newly disabled employees

On account of the extensive and defined responsibility of the employer for job retention hardly any collective agreements have been reached between unions and employer organisations.

The programme of voluntary support that exists in this area in the form of financial grants for various types of practical experience and trial employment, as well as the system of wage subsidies, is primarily designed for individuals without work. As far as people who already have jobs are concerned, what is left is the possibility for the employer to apply for a grant for occupational aids and to persuade the insurance office to defray all or part of the cost of rehabilitating the employee, if the employer does not have the financial means to defray the cost of rehabilitation.

1.2 POLICIES TO OBLIGE AND ENCOURAGE ENTERPRISES TO RETAIN DISABLED WORKERS IN GENERAL

1.2.1 Obligations and binding agreements to promote retention of disabled workers in general

Adaptations

According to the Work Environment Act, working conditions shall be adapted to the varying physical and mental aptitudes of the employees. The employer shall also see to it that the enterprise includes adaptations and rehabilitation activities, which are organised in a suitable way.

The National Board for Occupational Health & Safety carried out a centrally organised project to examine employers' organisation of work adaptations and rehabilitation during the period 1994 to 1996. In total 960 inspections were made, with 781 different demands being made in this area. The project produced the following results as far as compliance with the rules is concerned. The most common failing is the lack of necessary procedures for workplace adaptations (16 per cent). The next most common shortcoming is that enterprises have no action programmes for various situations involving drug abuse (14 per cent). The third most common problem concerns the allocation of powers, resources, knowledge and competence for workplace adaptations and rehabilitation activities (14 per cent). Failings in respect of employers' goals in connection with adaptations and rehabilitation were noted in 13 per cent of cases. Failures with regard to the adaptation of individual workplaces were only referred to in two per cent of cases.

Quota system

Sweden does not have a quota system for individuals with reduced functional capacity. Although some discussions have been held about this, other more flexible methods for promoting the employment of disabled individuals have so far been preferred.

Discrimination

There are not currently any laws or other rules which ban discrimination on the grounds of disability. However, an official committee has prepared a draft bill which is due to be presented to Parliament in May 1998. A supporting proposition notes that both direct and indirect discrimination against disabled people are to be prohibited, whether in the selection of job applicants, making offers of employment, or in the course of employment (for instance in respect of promotion, training or salary scales). The prohibition covers cases where the employer can be reasonably expected to provide support and adaptation measures (in the form of, say, technical devices or changes in the physical working environment). There would, therefore, be a duty on

the employer to adapt the workplace. Nor does discriminatory intent, or even negligence, have to be shown: both conscious and unconscious discrimination are included. Employers would also be required to investigate any instances of reported harassment in the workplace that are based on a person's disability, and to take action to prevent continued harassment. The proposition suggests that the Disability Ombudsman be given the responsibility for overseeing the enforcement of the new law.

I.2.2 Voluntary policies to persuade and encourage enterprises to retain disabled workers in general

There are hardly any voluntary policies, which deal with job retention, either at an enterprise level, industry level, or in agreements between unions and employers. One of the reasons is that society has taken upon itself a considerable degree of responsibility for rehabilitation. The rehabilitation of employed persons is handled either by the employer alone, jointly with the insurance office, or in some cases in co-operation with the union.

One exception is 'The Galaxy' project which gives occupationally disabled building workers an opportunity to continue working despite their functional impairment. 'Galaxy' is a joint industry initiative by the building workers' union and a number of major building companies. A Galaxy job involves placement in a job with the aid of a wage subsidy at a normal workplace. The tasks are adapted to take account of the employee's needs in accordance with an individual action plan. The aim of the project is physical and mental rehabilitation and a return to regular employment without a wage subsidy. At present 1,200 people with disabilities are employed on Galaxy projects.

The Swedish Employers' Confederation has laid out its views on disability in relation to the labour market. Publications such as *Going for Growth* and *Disabled but Able* appear to help fill the information gap and encourage employers to create job opportunities for disabled people.

I.2.3 Financial incentives which encourage enterprises to retain disabled workers in general

The main financial incentives for employers are wage subsidies and grants for occupational aids.

Wage subsidies

According to the ordinance on wage subsidies, such subsidies may be paid to employers who recruit a disabled worker. In the case of a disabled worker who is already employed the employer will receive the wage subsidy only if the employee returns to work after having been in receipt of a full sickness compensation in accordance with the General Insurance Act and is considered not capable of retaining the employment without the grant being paid. Only in a small number of cases have wage subsidies been paid for workers who are already employed.

The level of wage subsidy is determined on the basis of the work capacity of the disabled worker and the degree of disability. As a main rule, the subsidy paid amounts to a maximum of 80 per cent of the labour cost. The wage subsidy is intended to compensate the employer for the loss of production which is due to the employee's disability.

The subsidy is paid for a period of no more than four years. It shall be reviewed regularly. The subsidy may be prolonged beyond the fourth year of employment only if this is justified in the light of the work capacity of the disabled worker and his or her ability to transfer to a job where a wage subsidy would not be needed.

Wage subsidies are by far the most common labour market policy measure for job applicants with disabilities. At the end of 1996 approximately 45,000 people were employed with the aid of wage subsidy.

Grants for occupational aids

According to the ordinance on compensation within the health insurance system in accordance with the General Insurance Act, grants for occupational aids may be paid as one aspect of the rehabilitation of a gainfully employed, insured person. Grants shall be paid by the national insurance office for occupational aids when the use of these can shorten a prolonged period of sick leave and enable the employed person to return to work. Occupational aids may also play an important role as a preventive measure. Payment of a grant for an occupational aid by the insurance office is thus not conditional on the insured person being on sick leave. Nor is it necessary for obtaining a grant for an aid that the disability has any connection with a previous illness.

In the case of a person with a disability who starts employment it is the Labour Market Board which has responsibility for procuring the occupational aid during the first 12 months of the period of employment.

Occupational aid is an overall name including both technical occupational aids which could be personal and special arrangements or devices at the workplace. Grants for personal occupational aids are applied for by the insured person, while the employer applies for a grant to adapt the workplace. The maximum grant is 50,000 kronor each for the employer and the insured person. Higher amounts may, however, be granted if there are special reasons. In the case of grants to the employer the employer has to defray 10,000 kronor of the cost, after which a grant corresponding to one half of the residual cost is paid. However, according to the ordinance, if there are special reasons and it is a critical factor enabling an insured person to remain at work, a grant of more than half of the residual cost may be paid. The concept of special reasons includes the company's financial position and the general conditions for obtaining aids for the insured person and retaining his or her employment.

The grant paid to the insured/employed person may amount to the entire cost, up to a limit of 50,000 kronor, if the aid or arrangement is of no benefit to anybody else at the workplace other than the insured person. In other cases, according to the ordinance the maximum grant payable is half of the cost up to the maximum amount, as specified.

Grants may not be paid to acquire an aid or a device which is normally needed for the job or which is required to make the work environment satisfactory. By normal equipment are meant such tools, devices or arrangements that are necessary to perform tasks in a way that is required for the job in question. Grants may only be paid for additional costs for special aids or devices which are individually designed to help overcome the disability of the individual. Grants may not be paid for the repair of a fixed device, machine or building.

Travel costs in connection with investigations and training or the provision of instructions concerning the use of occupational aids are covered by the grant for occupational aids.

As already noted, grants for occupational aids may, according to the ordinance, be paid to the employer or the insured person. By insured person is meant, according to the ordinance, a gainfully employed person. It follows from the General Insurance Act that a person must be registered with the insurance office to become entitled to a grant. It is of no relevance whether the insured person is employed or self-employed.

Grant for work assistant

An employer who recruits a disabled person or has a disabled employee is entitled to a grant of up to 50,000 kronor per year for a work assistant. The grant is paid for expenditure in connection with specific personal support at a workplace on behalf of a seriously disabled person if the disability gives rise to expenditure for such support to a level which significantly exceeds what may be regarded as normal for the position or work in question.

Within the overall complex of measures, the breakdown of funds spent includes 36 per cent for occupational aids, 34 per cent for work assistants and 27 per cent for self-employment assistance. All in all, some 130

million kronor were spent on these three measures in 1995/96.

I.3 POLICIES AND PROGRAMMES TO SUPPORT DISABLED EMPLOYEES AT RISK TO RETAIN THEIR EMPLOYMENT

I.3.1 Mechanisms to support the rights of employees whose continued employment is at risk because of disability

Union support

If an employer breaches the employment security law by, say, dismissing an employee with a disability without proper grounds, or breaches a collective agreement, the employee's union can take the employee to the Labour Court. If the union does not wish to represent the employee he or she can represent him/herself in the first instance in the County Court with the possibility of appealing to the Labour Court as the court of final appeal.

According to the Co-determination at Work Act 1976, a union is entitled to call for negotiations with an employer on issues, which affect the relationship between the employer and an employee. These negotiations could, for example, relate to questions of adapting the work environment, discrimination and other matters, which relate to the disability of an employee. The right of a union to call for negotiations does not mean that it can compel the employer to make a decision. The negotiations could very well in the end be fruitless - as is the case with many negotiations.

It is evident from the discrimination survey carried out by the Disabled Persons Ombudsman that very many of those who have been subject to discrimination at work on account of their disability had not been given any support by their union.

Of those who answered the question about union support in the group of interviewees, 40 per cent stated that they had not asked for the support of their union, 14 per cent stated that they did not belong to a union and 29 per cent stated that they had not been discriminated against. Seven per cent of those questioned stated that they had never received the support of their union when they had been discriminated against at work while nine per cent stated they had been given such support.

During the spring of 1995 the Disabled Persons Ombudsman carried out a survey that included questions about the activities of employer associations and unions in connection with disabled workers. Two-thirds of the 60 unions which replied to the survey stated that they had a liaison officer for questions relating to the disabled. Only one organisation was able to show a policy programme for the disabled, and two organisations referred to their publications of memoranda relating to disabled persons. A further eight organisations described other types of independent work in questions relating to disabled workers.

Labour inspectorates

Supervision of compliance with the Work Environment Act and ordinances issued on the basis of the act is exercised by the National Board for Occupational Health and Safety and, subject to its supervision and guidance, by eleven Labour Inspectorates throughout the country. The supervisory authority is entitled, upon request, to obtain information and documentary records and call for investigations, as needed to exercise its supervision under the terms of the Act. The supervisory authority is entitled to have access to workplaces where it may carry out investigations. It is incumbent on the local police authority to provide the support required to exercise supervision under the terms of this Act.

The Labour Inspectorate is entitled to serve employers with injunctions or prohibitions which are needed to ensure compliance with the Work Environment Act. These injunctions and prohibitions also cover the

employer's obligation to modify the work environment of disabled employees. In connection with decisions concerning injunctions or prohibitions the Labour Inspectorate can impose financial penalties. If an employer does not take a measure which is required under the terms of an injunction the Labour Inspectorate is entitled to arrange for remedial action at the employer's expense.

Safety representatives

At a workplace with at least five regular employees, one or more safety representatives shall be appointed from among the employees. The representatives are appointed by the local union organisation that is bound, or is usually bound, by a collective agreement with the employer. The safety representative represents the employees on questions relating to the work environment and shall endeavour to bring about a satisfactory work environment.

If a safety representative considers that measures need to be taken to create a satisfactory work environment, he or she shall contact the employer and request that such measures be taken. The employer shall respond on this request without delay. If the employer fails to respond within a reasonable period of time, the Labour Inspectorate shall decide, at the request of the safety representative, whether an injunction or prohibition should be served.

Support from individuals and from associations for disabled people

Individuals and associations for disabled people can help and represent disabled employees when their rights are encroached on. As a rule, however, the employee is represented by his or her union.

The Disabled Persons Ombudsman

A government authority known as the Disabled Persons Ombudsman was created in 1994 with the object of watching over the rights and interests of disabled people and preventing discrimination on account of a disability. The authority is also involved in labour market questions. In 1996, 100 cases of discrimination were reported to the Ombudsman, 17 of which concerned discrimination at work. In over half of these 17 cases, the Ombudsman succeeded in bringing about a change or a measure on behalf of the person reporting the discrimination. However the Disabled Persons Ombudsman does not have any powers or means of compelling employers to take measures. Nor does the Ombudsman have any right to represent the individual in a dispute with the employer. The method adopted is an exchange of views, preferably by mail, in which the ombudsman expresses a view about the conduct of the employer. Legal and another practical advice for the individual who has reported the discrimination is another aspect of the work in connection with reports of discrimination.

I.3.2 Financial incentives directed at employees whose continued employment is at risk because of disability

There are no general financial incentives for employees whose employment is at risk because of disability. However, wage subsidies, occupational aids and personal assistance are available to employers (see I.2.3).

I.3.3 Programmes which support a move to another employer or to self-employment

There are no special labour market policy instruments or other official programmes, which focus on a change of employer when the risk of dismissal on account of a disability, injury or sickness has arisen. A person who has lost his/her previous job is entitled to the same service from the Labour Market Board as other unemployed persons.

However, 'employers' circles', established in the early 1990s, involve, among other activities, the transfer of employees from one company to another (as described further in V.5.1).

Assistance with self-employment

There is also a special labour market measure, known as self-employed aid, which is intended to help disabled persons start their own businesses. This aid may be given to disabled persons who cannot obtain suitable employment on the regular labour market without labour market measures; it amounts to a maximum of 60,000 kronor. One condition for payment of self-employment aid is that the business can be assumed to make a significant contribution to the person's livelihood. Self-employment aid may be combined with the special grants given to unemployed people to help them start their own businesses.

An investigation by the Labour Market Board into the state of employment three years after the granting of self-employment aid, which was published in 1995, showed the following results.

The businesses had a survival rate of 57 per cent after three years. These results are on a par with previous investigations, despite the extremely precarious conditions facing many businesses during this period. Half of those whose companies were still in business stated that their main source of income was the business of their firm. More than half of them believed that their business could expand in the future.

Of those companies still in business three years after receipt of self-employment aid, most of them, 77 per cent, stated that they started a new company when the self-employment aid was granted. By far the most common types of business among these companies were retailing, repair, laundry or other service activities.

Most of them stated that self-employment aid accounted for only a relatively small proportion of the start-up cost. Only 23 per cent stated that it represented more than 50 per cent of the total costs. However, 58 per cent stated that the self-employment aid was of great importance as a means of enabling them to start their own firms.

The most common reason (38 per cent) why companies were no longer in business was stated to be illness. Bankruptcy accounted for 13 per cent of the reasons stated. Of those companies that had been discontinued, 46 per cent had been in business for over two years.

In reply to the question of what was the main type of activity or employment after the company had been closed, one quarter stated that they had other jobs, another quarter that they were unemployed and 15 per cent that they had benefited from some other type of labour market measures, and approximately one third had some other type of occupation. By other occupation is normally meant sickness or pension.

Since it started, self-employment aid has affected relatively few people by comparison with other labour market policy measures. The total in the 1993/94 fiscal year was 485 persons.

I.4 BENEFICIARIES

I.4.1 Impact of definitions of disability and eligibility criteria on access to and coverage of policies

The laws, which exist to promote job retention are based on very general and broad definitions of the target groups.

The *Employment Security* law provides job security for all employees.

The rules in the *Work Environment Act* protect the employee and refer to adaptation of the work environment on the basis of the aptitudes of the individual employee for the work, without being especially precise about which groups have protection at work.

The rules relating to rehabilitation in the *General Insurance Act* refer to persons who are insured with a national insurance office and who are able to be rehabilitated, as well as stating that the insured person's

employer has responsibility for investigating need and taking measures. Persons entitled to register with a national insurance office include Swedish citizens and persons who are resident in Sweden.

In the ordinance concerning grants for occupational aids the person applying for support is also defined as a gainfully employed, insured person (insured with the national insurance office).

As can be seen, the definitions are very broad and so is the application in the sense that all recognised groups of disabled persons are included in the application of the rules. Problems of application can arise when new, as yet controversial, groups of disabled persons apply for support: for example, people with a particular sensitivity to electromagnetic radiation, those who consider themselves disabled due to poisoning by amalgam dental fillings, and people who are obese. Understandably, disputes have arisen over the interpretation of the rules and what support measures are included, the amount of the grant, etc.

I.4.2 Disabled workers who benefit and those who miss out

No group of disabled persons is excluded since job retention is applied so broadly. It is possible that the way the rules are applied may mean that certain groups who are disabled might be over- or under-represented in rehabilitation, dismissal or work to adapt the work environment. However, no data are available on this.

I.5 JOB RETENTION POLICIES IN CONTEXT

I.5.1 The salience of policies for job retention within the overall context of national policy to promote the employment of disabled people

It is very difficult to rank job retention within the framework of a national policy for the employment of disabled persons. A good deal of work and resources are devoted by the government to job retention and employment of disabled persons. In the case of job retention, the National Insurance Board, as the central social insurance administration, has main responsibility; in the case of work for unemployed disabled individuals, the main responsibility rests with the Labour Market Board, the central labour market administration.

Developments in the 1990s have involved a tightening of the employer's responsibility for the work environment and for the rehabilitation of employees (see III.2.1). The work environment responsibility includes the adaptation of the work environment on the basis of the aptitudes of the individual employee by means of occupational aids and other devices at the workplace. The employer has the main responsibility both administratively and financially for the rehabilitation of employees. Whereas, during the 1980s, the State paid the whole of sickness benefit, a 1991 Act on sick pay gave employers the responsibility for paying sick pay for the first four weeks of sickness: this will be shortened to two weeks in April 1998.

As far as the employee is concerned, the 1990s have seen some deterioration in benefit levels in the event of sick leave. The conditions for benefits for lost income in the event for sickness and the right to early pension have been noticeably tightened. Account may only be taken of reduced work capacity due to medical factors in connection with early pension, for example, and not, as in the past, also those due to labour market factors. At the same time, some efforts have been made to persuade more people to combine employment with benefits.

All in all, therefore, it may be said that the 1990s have seen an increased emphasis on job retention, through employers' greater responsibility for the work environment and rehabilitation, and a benefit system which discourages employees from going onto benefits. At the same time, there has not been any corresponding weakening of the measures to promote the entry of disabled persons into the labour market.

I.5.2 The most prominent job retention policies

The most important instruments for job retention are the Employment Security Act and employers' responsibility for the work environment and rehabilitation. (For a more detailed description see I.1.2.)

No distinction is made between persons who are already disabled and those whose functionality is reduced after entering employment. Job security, the work environment and rehabilitation responsibility apply in full to both groups. Nor in the case of the special types of aid that are available, such as grants for occupational aids, is any distinction made between the two groups.

I.6 IMPLEMENTATION OF JOB RETENTION POLICIES

I.6.1 The effectiveness of institutional arrangements for monitoring and enforcement

Applications for a wage subsidy, procurement of an occupational aid and other rehabilitation measures are in principle voluntary actions, which cannot be forced on an employer. However, there is some indirect compulsion as a result of the Employment Security Act. The failure of an employer to take any or sufficient measures for rehabilitation can mean that the grounds for dismissal are deemed not to exist. In such circumstances, a dismissal would conflict with the Employment Security Act, and it can be declared null and void and involve the employer in paying heavy damages. Unjustly treated employees can take the employer to court on their own or, if they obtain the support of their union, together with the union for breach of the Employment Security Act.

(The role of the *unions* in connection with discrimination on account of disability is discussed in I.3.1.)

The *national insurance office* has a somewhat vague supervisory responsibility for the rehabilitation of individual workers. When it comes to financial support, the insurance office is entitled to decide on compensation for rehabilitation and the procurement of rehabilitation services. However, it has no sanctions to resort to in the case of gross breach of the rehabilitation rules by an employer. Once the insurance office reports the employer to the labour inspectorate for breach of the rehabilitation rules a power to impose sanctions has been created. It could be said that the supervisory responsibility of the insurance office has largely been assigned to the Labour Inspectorate.

As the Work Environment Act states that an employer is responsible for having suitable arrangements for rehabilitation activities, the supervisory authorities (the Board for Occupational Health and Safety and the Labour Inspectorate) can influence the practical requirements regarding the way the rehabilitation operations are organised.

In individual cases the *Labour Inspectorate* can examine whether the employer is fulfilling the obligation to organise the work on adaptations and rehabilitation. However, its area of responsibility does not extend to the rehabilitation of an individual worker. Its supervisory responsibility is essentially concerned with system issues, such as demands made on employers to carry out rehabilitation activities, to have a rehabilitation organisation and the allocation of responsibility, etc. The Inspectorate can call upon employers to organise adaptation and rehabilitation measures in a particular way or at least in a better way. Such an injunction can be enforced by the Inspectorate under penalty of a fine.

The effectiveness of the Inspectorate's supervisory activities depends on close co-operation with the insurance offices. The following comment may serve to throw light on this:

'The problem facing the Labour Inspectorate is that we do not know if the organisation the company has for adjustment and rehabilitation functions or not. Nor do we know if there is anybody to rehabilitate in any case. The Labour Inspectorate therefore cannot assess the way an employer handles work adjustment and rehabilitation. The insurance offices, on the other hand, possess this knowledge and it is here that we must complement each other. As a result of its contacts with companies, the insurance offices also have useful

information about which people are engaged on rehabilitation questions and the quality of their work. (Joint Project in County of Kalmar, Project plan March 28, 1994)

The work of the Labour Inspectorate in connection with work adaptation and rehabilitation was evaluated between 1994 and 1996. The evaluation consisted of two questionnaires, which were sent to all inspectors at the Labour Inspectorate's offices. The result was reported on the basis of the second survey which was carried out in 1996. A clear majority of those questioned consider that work adjustment and rehabilitation is rather important (55 per cent) or very important (34 per cent). The vast majority (70 per cent) draw attention to and comment, often or more frequently, on shortcomings that are discovered by inspections in connection with work adjustment and rehabilitation. The proportion who rarely draw attention to shortcomings in this regard had declined in comparison with 1994 to 30 per cent and those who never point out shortcomings during their inspection have in principle totally disappeared. Just over half (54 per cent) of the inspection personnel consider that the occupational health and safety board regulations regarding work adaptations and rehabilitation are rarely available at workplaces. However, there has been a slight change since 1994, when 57 per cent stated that these regulations were rarely available. As regards supervision in the area, the majority (60 per cent) find the regulations a valuable aid. The proportion of inspecting personnel who have frequent contacts with insurance offices during their supervisory work is 14 per cent. The majority of the personnel, 55 per cent, have only had such contacts in a few cases. The total proportion of inspecting personnel who have contacted insurance offices on a few occasions during their supervisory work has risen from 56 per cent in 1994 to 69 per cent in 1996. The main increase was noted among those inspectors who have had contacts with insurance offices on many occasions. This proportion more than doubled from six per cent to 14 per cent.

It is unusual for an inspector to contact a workplace on many occasions as a result of a request by an insurance office. Only four per cent have done this on several occasions. However, most have done it a few times, while 43 per cent have never done this or have not even received a request. By comparison with 1994, however, contacts with workplaces as a result of requests from an insurance office have increased. The proportion who consider that work adaptations and rehabilitation have been given too much emphasis in relation to other work environment factors is 41 per cent, which is seven percentage points more than in the 1994 survey. However, the proportion who consider that these questions have not been given enough emphasis fell slightly between the two surveys from 66 per cent in 1994 to 59 per cent in 1996.

It is important to note that the National Board for Occupational Health and Safety's project only touches to a limited extent on the employer's responsibility for individual adaptation measures. This is due to the relatively recent introduction of the regulations in this area and to the limited amount of experience that has been accumulated on how to deal with them.

The first appeal against an injunction served by the Labour Inspectorate concerning individual work adjustment was made to the National Board for Occupational Health and Safety in 1996, five years after the rules came into force.

The following statistics released by the Occupational Health and Safety Board show on how many visits to work places the Labour Inspectorate discussed rehabilitation and work adjustment:

<i>Year</i>	<i>Questions concerning rehabilitation and work adaptations</i>	<i>Total number of visits</i>	<i>Proportion of visits with rehabilitation adaptations (</i>
1996	2,538	38,546	6.6

1995	3,300	41,414	8.0
1994	3,604	46,912	7.7
1993	1,390	43,592	3.2

The statistics show that the interest of the Labour Inspectorate in rehabilitation and work adaptations has increased in recent years.

It is important to be aware of the constraints that exist on the ability of the Labour Inspectorate to exercise supervision over employers' work adaptations and rehabilitation activities. Given the Labour Inspectorate's resources, a company will under current conditions be visited by a labour inspector once every five years on average.

I.6.2 Factors which affect the take-up of financial incentives and adoption of voluntary job retention measures by enterprises

The willingness of companies to make use of the various grants which are available to promote the retention of individuals with disabilities at work depends very much on the generosity of these systems. The reduction in the maximum level of wage subsidy from 90 per cent to 80 per cent of the wage, which took place in 1996, meant numerous threats of dismissal, especially by non-profit organisations with limited financial resources and greater difficulty in finding work for more people with the aid of wage subsidies. In this context, the greater generosity with grants for occupational aids has also been mentioned.

Other factors employers refer to are the need for a trial period during which work capacity can be determined as an introductory phase of a recruitment process. Special liaison and resource officers who are well informed about disabilities and have a realistic view about work at the company are also other points on the list of requirements.

I.7 INTERACTIONS BETWEEN EMPLOYMENT POLICIES AND PROGRAMMES

I.7.1 Ways in which employment policies complement or contradict one another

The extensive Swedish social security network of labour market policies and social policy measures (wage subsidies, sheltered employment and early retirement) make it easier for an employer, not least at the moral level, to dismiss an employee with a disability. Employers know they are not forcing a worker into a life of poverty and need but into the care of the community. It is also not unknown for employers to encourage their employees to apply for an early pension.

I.7.2 Impact of the distribution of responsibility for employment policy

According to the official Agency for Administrative Development's final report, 'Working life oriented rehabilitation - a multiple sector analysis' (1994:15), none of those involved in vocationally related rehabilitation can be said to have an overall view of the situation of the individual, despite the co-ordinating role of the national insurance office. The various parties each have different incentives to seek to rehabilitate an individual. They also have different sources of finance and no single one of them has responsibility for the overall use of the resources. Each of them operates within its own set of guidelines. The cost can thus be pushed off to another sector. With the existing model for players and financing it is difficult to maximise cost efficiency.

(See also III.6.1 concerning the distribution of responsibility for the provision of services.)

I.8 LINKS TO LABOUR MARKET FACTORS

I.8.1 Elements of labour market policies which influence the effects of job retention measures

The strengthening of the Work Environment Act in the 1990s, which brought an increase in employer responsibility for the rehabilitation of employees and individual adjustment of the work environment, should have resulted in improved rehabilitation and adjustment activities for those who were already employed. However, offsetting factors included the recession in Sweden at that time and the relatively loose supervision of employers' rehabilitation and work adjustment activities. However, no in-depth studies have been carried out in this area.

Support and subsidies for other groups on the labour market who are regarded as more attractive could make it more difficult for disabled individuals to enter the labour market, even with support. At present, groups other than the disabled are also entitled to benefit from labour market policy measures, including young people and immigrants, for example.

The high level of unemployment and growing competition for such jobs as are available also mean stiffer competition for labour market measures. In such circumstances, the special labour market measures for disabled people tend to be used for other groups as the borderline between the various groups of job applicants is not exactly razor sharp.

The difficulties of getting new jobs, that are associated with high unemployment, also reduce the interest of workers in fighting for their rights with regard to rehabilitation and the work environment, for example. The unions also tend to adopt a more cautious approach.

I.8.2 Changes in labour market demand and the structure of the labour market

Growing international competition and the accelerating rate of technical advances tends to benefit individuals with a higher education and a high general level of competence. At present we can see a growing element of work teams and enriched job content and demands on employees to be more flexible and change tasks. There is a trend towards more qualified salaried positions while simple tasks of a repetitive character are disappearing. New organisational structures require more knowledge, training and education, personal flexibility and breadth.

This tendency places large groups of disabled persons at a disadvantage, both with regard to entering and also to retaining their place in the Swedish labour market.

An investigation carried out at the end of 1996 into the employment conditions of disabled people showed that 55 per cent of persons between 16 and 64 years of age who have a physical, medical or mental disability which can involve restrictions in their day-to-day lives have a job. The corresponding figure for the public at large in the same age groups is 71 per cent. The study covered more than 5,000 people with one or more disabilities.

The survey shows that the corresponding 19 per cent of the population between 16 and 64 years of age have a physical, medical or mental disability which can lead to restrictions in their day-to-day lives. This corresponds to at least one million people.

In the investigation, 'employed' people are defined as individuals who, during the week the survey was carried out, performed some work (for at least one hour) as either a paid employee, a self-employed person or an unpaid helper in a company belonging to a member of a family. Individuals who have a job providing support for the disabled person or who are in sheltered employment for disabled persons are also regarded as employed. The breakdown between employed and unemployed people with respect to different groups of

disabled persons is as follows:

Table I.8.1: Number of individuals with disabilities who are employed or unemployed

<i>Percentages</i>	<i>Unemployed (disabled)</i>	<i>Employed(</i>
Asthma-allergies	40.9 " 2.7	59.1 " 2.7
Diabetes	45.4 " 6.2	54.6 " 6.2
Dyslexia	57.7 " 10.4	42.3 " 10.4
Deafness	23.4 " 8.2	76.6 " 8.2
Epilepsy	62.8 " 11.8	37.2 " 11.8
Cardiovascular illnesses	61.7 " 6.3	38.3 " 6.3
Impaired hearing	31.7 " 4.5	68.3 " 4.5
Stomach & intestinal illnesses	40.4 " 6.8	59.6 " 6.8
Lung illnesses	70.6 " 11.9	29.4 " 11.9
Psoriasis	30.3 " 7.3	69.7 " 7.3
Mental health problem	77.6 " 6.0	22.4 " 6.0
Learning difficulty	87.7 " 12.9	12.3 " 12.9
Impaired mobility	51.1 " 2.3	48.9 " 2.3
Stammer, linguistic, speech or voice impairment	48.0 " 15.1	52.0 " 0.1
Impaired vision	36.8 " 4.6	63.2 " 4.6
Other	45.1 " 3.8	54.9 " 3.8
Don't know	83.8 " 32.3	16.2 " 32.3
All	45.2 " 1.3	54.8 " 1.3

Source: Statistics Sweden, 1997

Among the employed members of the total population it is more common to have full-time work than is the case among the employed disabled population.

Table I.8.2: Employed disabled persons: breakdown by gender and full-time and part-time employment

<i>Percentages</i>	<i>Male (disabled)</i>	<i>Female (disabled)</i>	<i>Total (disab</i>
Full-time 35+ hours	82.3 " 1.7	52.5 " 2.3	67.8 "1.5
Part-time 20-34 hours	13.3 " 1.5	38.5 " 2.2	25.5 "1.4
Part-time 1-19 hours	4.2 " 0.9	9.3 " 1.3	6.6 "0.8

Source: Statistics Sweden, 1997

Table I.8.3: Employed Total population - Breakdown of male and female into full-time and part-time

	<i>Male (pop.)</i>	<i>Female (pop.)</i>	<i>Total</i>
Full-time 35+ hours	90.4 " 0.5	61.4 " 0.9	76.4 "0.5
Part-time 20-34 hours	6.2 " 0.4	31.4 " 0.8	18.4 "0.5
Part-time 1-19 hours	3.3 " 0.3	7.2 " 0.5	5.2 "0.3

Notes: As with the total employed population, disabled men work full-time to a greater extent than disabled women. Almost two in five disabled women in employment work part-time, between 20 and 34 hours a week

Source: Statistics Sweden, 1997

As with the employed total population it is a fact that, among disabled people, men are more likely than women to be in full-time work. A majority of all employed people, either among disabled people (88 per cent) or the population at large, have established employment (86 per cent).

One in ten of employees among disabled people and the total population are self employed. When it comes to work in the public sector and the private sector the breakdown is similar in both groups: about one third of both groups work in the public sector and approximately two thirds in the private sector.

Half of disabled people and half of the entire population in the economically active age groups (16-64) have an upper secondary school education (50 per cent and 49 per cent respectively). When it comes to higher education fewer than one fifth of disabled people (18 per cent) have such an education, while more than one quarter (28 per cent) of the population at large have.

When it comes to which industry people work in, disabled people and the population at large follow broadly the same pattern. Here too the differences between the genders are similar.

II. BENEFIT AND COMPENSATION PROGRAMMES

The purpose of this Part of the report is to examine how social benefit and compensation programmes affect possibilities for disabled workers to retain or rapidly resume their employment. The main focus is on the application of benefit programmes in employment; that is, opportunities to combine earnings with income from disability benefits, workers' compensation or other employment-related reparations. The obstacles presented by systems for out-of-work benefits are also examined. The theme covers cash benefits and payouts and, where significant, allowances against taxable income. Programmes may be funded from tax revenues, or from earmarked or general insurance funds to which employers and/or employees contribute.

The first section presents information about workers' and other compensation programmes. This is followed by a discussion of arrangements for combining benefits and earnings from work. Provision is then considered for income support out of work, and its effects on work resumption. The final section examines interactions between disability benefit programmes and employment policies.

II.1 COMPENSATION PROGRAMMES FOR WORK-RELATED INJURY OR ILLNESS

II.1.1 Principal compensation programmes for work-related injury or illness

According to the General Insurance Act, a person registered with the social insurance office is entitled to sickness compensation. With effect from the month in which the insured person reaches the age of 16, he or she will be registered with the social insurance office, if resident in Sweden. Today a full sickness benefit comprises 75 per cent of the established sickness compensation based income. (It was previously 90 per cent.) The same rules on compensation for loss of income due to illness apply to both work-related injuries and illnesses and sick leave which is not due to a work-related injury.

On the other hand, there are special rules in the Industrial Injury Act which are based on the principle that anyone who is injured at work should be placed in principle in the same financial situation as though no injury had occurred. An insured person (according to the General Insurance Act) who as a result of an occupational injury finds his/her capacity to earn an income has been reduced by at least one fifteenth, has the right to compensation once the illness is over, in the form of a life annuity for the loss of income which has arisen.

Three types of illness compensation are available: sick leave, sickness compensation and sickness benefit.

During the first two weeks of *sick leave*, sick pay is paid by the employer (see I.5.1). No compensation is paid on the first day of illness; the level for the remaining period of illness is 75 per cent of the employee's wage. (The level of compensation was reduced from 90 per cent of wages to 80 per cent (in most cases) in July 1994, and to 75 per cent in January 1996; in January 1998 it will be raised back to 80 per cent.)

After the sick-pay period compensation for loss of income is paid by the social insurance office in the form of *sickness compensation*. The level of this compensation is also 75 per cent, to be raised to 80 per cent in January 1998.

Thirdly, *sickness benefit* is granted by the social insurance office if it is considered that the employee's working capacity will be reduced for a year, but not permanently, and that a work rehabilitation programme is not appropriate for the near future. The fact that medical treatment or medical rehabilitation is being provided or may be needed, does not constitute any obstacle to sickness benefit. Sickness benefit can be paid to people who are unemployed.

Most employees in Sweden have the right under the terms of collective agreements between unions and employer organisations, to supplementary sickness compensation from the 29th day of illness and up to the 90th day of a period of illness. This amount is ten per cent of the employee's salary. Such collective agreements have become more common since the situation deteriorated within the social insurance system.

Sickness and pension insurances regulated in collective agreements are available for disabled persons on the same terms as for other union members.

If the social insurance office's investigation shows that the insured person's work capacity has been permanently reduced by at least one quarter as a result of illness or other reduction in physical or mental capacity, the individual in question may be entitled to early retirement. Early retirement should be granted when a more definite medical condition has occurred and work rehabilitation measures are considered inappropriate. When assessing an insured person's work capacity a concept of disability is applied which can be described as work disability due to medical factors.

The same rules apply to early retirement and sickness benefit and the amount of both of these benefits is the same.

In this context *rehabilitation compensation* should also be mentioned. Rehabilitation compensation consists of rehabilitation benefit and a special benefit.

Rehabilitation benefit should cover the loss of income suffered by an insured person who participates in a rehabilitation programme. One condition for this form of compensation is that work capacity is reduced by at least one quarter as a result of illness. For the duration of the rehabilitation programme, work capacity is considered to be reduced to the extent that it prevents the insured person from being gainfully employed. The purpose of rehabilitation benefit is to enable the individual to gradually return to gainful employment. The level of rehabilitation benefit is the same as for sickness compensation.

As in the case of sick pay, sickness compensation, sickness benefit and early retirement, rehabilitation benefit can be divided into 1, 2 or 3 benefit. Three-quarters compensation can be paid to an individual whose work capacity is reduced by at least three-quarters, but not entirely. Half compensation can be paid to an insured person whose work capacity is reduced by less than three quarters but by at least one half. Finally, quarter compensation can be paid to an individual whose work capacity is reduced by less than half but by at least one quarter. All of the forms of compensation can be paid out parallel with a job. Where a person is completely unable to earn an income through working, benefit is paid at the full level. All the benefits form part of the Swedish general social insurance system and are available to Swedish citizens as well as persons resident in Sweden who are not Swedish citizens.

Special benefits are paid to cover certain costs which arise when the insured person takes part in rehabilitation programmes. These benefits are paid for certain course fees, the cost of recorded books and books in braille, teaching aids, travel costs and expenses.

Assessment

The assessment of work capacity is carried out in stages. The individual's inability to return to his/her normal work is initially related to other work for the employer. If there is no possibility of other work with the employer, or such work would require excessively prolonged rehabilitation measures, the insured person's work capacity should be assessed in relation to the open labour market in general. This assessment covers the whole of the national labour market. The insured person can be assessed as able to work even if there are no vacancies to apply for. If the individual, despite his/her illness, can manage to do a normal job on the labour market, then he/she has no right to compensation from the social insurance office.

If an insured person can no longer manage to do his/her normal work full-time, other work with the same employer, or a normal job on the labour market, but is still assessed to have some residual work capacity, then the right to partial benefit will be considered.

The criteria for assessing work capacity in those cases where the insured person cannot return to his/her

normal work should be the same, regardless of whether this relates to the right to sickness compensation or the right to early retirement, i.e. regardless of the prognosis and duration of the reduction in work capacity.

Streamlining of system

In recent years there have been changes in the rules, which are intended to streamline the system. This can mean, for instance, that the opportunity to take into account factors other than purely medical ones in assessing, for instance, the right to sickness compensation, are radically reduced. One principle is that society's basic security system should be streamlined on the basis of the various reasons for needing help, whereby sickness compensation and early retirement should provide security in the event of a medically based reduction in work capacity. Problems, which are not medical should primarily be dealt with by means of labour market measures or other social policy means (such as unemployment or welfare benefits).

This streamlining is also an outward expression of increased professionalisation and the added emphasis within Swedish social policy on returning to work. This involves referring people to the bodies in society which are best suited to dealing with their problems and taking advantage of any partial work capacity to a greater extent than before.

However, in assessing work capacity, consideration will still be given to the age, place of residence, education and previous work experience of the insured person. However, the scope for taking these factors into account has declined.

II.1.2 Features of the compensation process which affect job retention and return to work

An incentive for returning to work from the perspective of the individual employee is that the various forms of sickness insurance provide a much lower financial gain than their ordinary salary.

A recent proposal to extend employers' responsibility for an employees' sickness compensation from the first two to the first four weeks of illness aroused great concern. There was a perceived risk that the greater financial burden imposed on the employer would make it even harder for persons with a disability to obtain work and might also lead to a person with extensive sick leave obtaining a weaker position on the labour market. However, at present no studies have been made which can confirm these fears.

On the other hand, nor is there anything to indicate that the extended responsibility of the employer for loss of income in the event of illness has led to an increased interest in the work environment and rehabilitation issues among employers.

The proposal to extend employers' responsibility for sickness compensation has now been withdrawn, and responsibility stands at two weeks' compensation.

II.1.3 Influences of key actors involved in the process

The main figure in the formal sense is the individual employer (see I.6.1 and III.2.1). It is the employer's responsibility to ensure that rehabilitation and adaptation measures are provided in a suitable way at the workplace.

Under the General Insurance Act, an employer has to carry out a rehabilitation survey if:

1. the insured person has been completely or partially absent from his/her work for longer than four consecutive weeks as a result of illness;
2. the insured person's work has often been interrupted as a result of short periods of illness, or

3. the insured person requests it.

The rehabilitation survey shall be sent to the social insurance office within eight weeks of the date the sickness has been reported. In the case of points 2 and 3 above, the eight-week period is calculated as beginning from another point in time.

If there is good reason, for instance if the employer does not fulfil the responsibility to provide a rehabilitation survey, the social insurance office will take over responsibility for the survey.

The social insurance office shall ensure, in consultation with the insured person, that his/her requirements for rehabilitation are defined as soon as possible and measures are taken to ensure effective rehabilitation. The social insurance office shall ensure that rehabilitation measures begin as soon as medical and other factors permit.

If the insured person needs rehabilitation measures for which compensation can be paid, the social insurance office shall draw up a rehabilitation plan. The rehabilitation plan shall state the rehabilitation measures which can be considered and who shall be responsible for them, a timetable for the rehabilitation and other information required for carrying out the rehabilitation programme. The plan shall also include information about the estimated cost for compensation during the rehabilitation period.

The social insurance office shall regularly monitor that the rehabilitation plan is adhered to and when necessary make changes to it.

II.1.4 The effects of compensation on job retention, return to work and exit from employment

A hardly surprising observation is that the 'generosity' or 'stinginess' of the various compensation systems has an effect on a person's willingness to return to work or to leave working life.

Throughout the 1990s the levels of compensation during illness and rehabilitation have been steadily reduced. The employer's responsibility for sick pay has gradually been expanded, so that it now covers the first two weeks of illness. The government's endeavours to streamline the system have made it more difficult to receive sickness compensation, sickness benefit and early retirement on any grounds other than strictly medical ones. Parallel with these negative financial incentives for the individual employee, the demands on employers with regard to the work environment and rehabilitation have become more stringent and have been clarified. Nevertheless, the legislation concerning sick pay contains provisions which protect the employer from the additional costs which may be incurred in employing persons with a high level of sick leave. An employer can receive compensation for sick pay for employees suffering from illnesses which can be assumed to lead to a large amount of sick leave. At present, some 7,000 persons are covered by this special 'high risk protection'.

These various measures have resulted in radical changes to previous patterns for sick leave and early retirement. The average number of sick days compensated for with whole or partial sickness compensation per insured person amounted to 25 in 1988. In 1995 the corresponding figure was down to 12 days. In 1993 just over 60,000 early retirements and sickness benefits were approved. During the years since then the number has declined sharply and in 1995 the number of newly approved early retirements was little more than 40,000.

It does not appear that the development of the population's health is moving in the same direction as the amount of compensated sick leave. Both self-declared illness and the number of visits to doctors are increasing. It is reasonable to assume that a rising percentage of the cost of ill-health is falling on the employer and the individual. The employer is paying compensation for the first two weeks of illness and the employee is finding that he/she cannot be off work in case of illness or is using holiday days or other forms of

leave.

One concern, which has been associated with prolonging the sick-pay period is that persons with a high level of sick leave, often persons with various forms of disabilities, will find it more difficult to obtain and retain a job. There is a risk that the increased responsibility for sick leave, the work environment and rehabilitation represent an incentive for the employer to release and refrain from recruiting functionally impaired persons and those who are often ill. However, as yet no reliable studies are available to prove these effects.

II.1.5 Characteristics of disabled workers who do or do not retain their employment or return to work following successful or unsuccessful claims

The National Social Insurance Board has carried out a study of long-term sick leave, rehabilitation and early retirement, which means that the rehabilitation studied mainly related to sick leave for more than 60 days. As the vast majority of people who are off work due to long-term sickness in Sweden have a job, the results presented below are particularly relevant. A certificate of good health after completion of a rehabilitation measure should thus be seen as a return to work.

Age, sex and diagnosis

Factors which have proved to have great significance on whether a certificate of good health is obtained after completion of a rehabilitation measure are age, illness, diagnosis and type of measure.

Persons under the age of 35 who are sick and undergo rehabilitation measures have a much greater chance of receiving a certificate of good health than those in higher age groups who have undergone such measures. The category obtaining certificates of health to the lowest extent are people in the age groups above 50.

Table II.1: Certificate of good health with and without rehabilitation measures for those with long periods of sickness by age group

	<i>Relative risks Logistical regression</i>	
Age group	Certificate of good health Without measures	Certificate of good health with measures
16-24	1.0	5.7
25-29	0.7	1.8
30-34	1.0	2.5
35-39	1.3	(2.6)
40-44	1.2	(1.8)
45-49 (ref.)	1	1
50-54	0.7	(0.7)

55-59	0.4	0.8
60+	0.2	0.5

Notes: Based on 60,000 occasions of sickness with a duration of at least 60 days during 1991-1994.

Insignificant categories in brackets ($p \neq 0.05$). The model checks for gender, age, marital status, ethnic origin, illness diagnosis, early periods of sick leave, employment, vocational group, psycho-social burden, region of employment and fiscal year.

Source: National Social Insurance Board (1997) *Risk and Health Factors*

Work probably has less significance for whether young people take sick leave, and they receive more training or investigative measures rather than work training. Measures are often introduced at a much earlier stage with young people than with old people on sick leave, which indicates that the problems associated with rehabilitation are fewer. Based on the results reported, it might be tempting to draw the conclusion that rehabilitation measures are only meaningful for those under the age of 35. However, the results are to a great extent an expression of the greater difficulty in rehabilitating older sick persons because their sickness is usually more severe. The fact that the measures are taken much earlier for young persons can also be seen as an expression of the greater ease with which their problems can be identified and handled.

The results of the rehabilitation measures also vary depending on the type of illness diagnosis. In two of the diagnosis groups where rehabilitation measures exist, there is an abnormal level of certificates of health. In the diagnosis groups of injuries and poisonings, as well as for back complaints, the level of certificates of good health is 60 per cent higher than the average for those who have undergone measures (see Table II.2). On the other hand, if one looks at the group which has not undergone measures, there is a vast difference between injuries/poisonings and back complaints. The injuries group there has a 2.7 times greater chance of obtaining a certificate of good health, while those with back complaints have a 0.6 times lower chance of obtaining a certificate of good health. There is no higher incidence of measures for injuries and poisonings, but measures such as work training are soon introduced where needed. Those on sick leave due to injury or poisoning who need measures have probably experienced more serious incidents than those who do not require measures, and their starting position is therefore worse. This may explain their relatively lower chance of obtaining a certificate of good health compared with those who do not need measures.

People with back complaints who have become the object of measures, on the other hand, have much greater chances of recovering from their illness than those who have not undergone measures. As with injuries and poisonings, there is no higher incidence of measures, but they are introduced at an early stage in the illness and often comprise investigative measures. Within the other large group within motory organ complaints, other diseases in soft tissues, including fibro myalgia, there is a much greater risk of early retirement than for other diagnoses. There is a much larger group of women than men on sick leave for illnesses similar to fibro myalgia. This indicates that rehabilitation, in particular work training, that is often provided for women with fibro myalgia and similar problems does not lead to a positive result.

Table II.2: Certificate of good health with and without rehabilitation measures for those with long periods of sickness in various diagnosis groups

<i>Relative risks. Logistical regression</i>		
Diagnosis group (ref. average of all diagnoses)	Certificate of good health	Certificate of good health

	without measures	health with
Tumours	0.7	(0.4)
Mental health problems	1.4	(1.1)
Nerve system diseases	0.7	(0.6)
Circulatory organs	0.7	(1.1)
Digestion, urinary and genital organs	2.3	(1.4)
Symptoms/ incomplete diagnosis	0.9	(1.8)
Injuries/ poisoning	2.7	1.6
Motory organs:		
1) Back illness (Lumbago, ischias, etc.)	0.6	1.6
2) Other soft tissue illness(Fibro myalgia, etc.)	0.8	(0.6)
3) Other motory organs	1.0	(0.9)

Notes: Based on 60,000 occasions of sickness with a duration of at least 60 days during 1991-1994.

Insignificant categories in brackets ($p \leq 0.05$). The model checks for gender, age, marital status, ethnic origin, illness diagnosis, early periods of sick leave, employment, vocational group, psycho-social burden, region of employment and fiscal year.

Source: National Social Insurance Board (1997) *Risk and Health Factors*

It is primarily those on sick leave who are in serious need who undergo measures, which explains why the proportion of those receiving certificates of good health is generally lower in this group than among those who have not received rehabilitation measures. Different types of measures are also aimed at different target groups and thus have partially different purposes. Those on sick leave who undergo training courses have a certificate of good health level on a par with those on sick leave who do not undergo measures: given that they are in more serious need to start with, this would indicate that rehabilitation leads to good results. The results expressed in terms of certificates of good health are, however, weaker for those who do work training at their own or another work place (as compared with those who do not do work training) and weakest for those who have investigative measures. This should be seen not only as an expression of the effectiveness of the measures, but also as an expression of the difficulties various groups of people on sick leave experience in getting back to work, regardless of the rehabilitation measures.

II.1.6 Effects on job retention and return to work resulting from the interaction between compensation programmes and out-of-work benefit programmes

It is difficult to find any distinction between the compensation system at work and when the person has no work. One cannot see any thought out, overall and clear difference between the systems. On the other hand, there are differences between certain parts of the systems, which can provide an incentive in one direction or the other.

The rules governing benefits and compensation which may arise for unemployed persons (unemployment benefit funds, unemployment allowance, training allowance, sickness compensation, rehabilitation pay, social benefits, etc.) are not co-ordinated. This is an incongruity, which can be said to counteract the emphasis on return to work. At many income levels it is more beneficial in financial terms for the individual to be on sick leave than unemployed. There is therefore a risk that an unemployed person who could work will try to obtain sick leave. For the same reasons there appear to be difficulties in bringing to a conclusion the many rehabilitation cases where the insured person is not convinced that the rehabilitation efforts will lead to employment.

The income ceiling for compensation from an unemployment benefit fund is much lower than the income ceiling for sickness compensation. Even if both systems entitle a person to compensation equivalent to 75 per cent of his/her salary (80 per cent with effect from 1998), then the calculation will be much less advantageous for persons with a medium or high income compared with the result for sickness compensation.

A further factor, which is believed to induce insured persons not to want to be given a certificate of good health when they are unemployed, is that it is nowadays regarded as being of higher social status to be on sick leave than to be unemployed or dependent on social welfare.

When the compensation level for sickness compensation and rehabilitation pay is raised to 80 per cent of the salary, there will be some accentuation of the incentives for these forms of benefit compared with the compensation levels for early retirement.

II.2 OPPORTUNITIES TO COMBINE WORK AND BENEFIT

II.2.1 Provision for combining income from work and from disability-related social security benefits

Return to work with income

There are also a number of possibilities for a person receiving sickness benefit or early retirement pension to try working without their right to benefit being influenced immediately.

The rules for withdrawal of an early retirement pension have long been governed by an awareness of the importance of not disrupting a rehabilitation process. The social insurance office shall apply the rules on withdrawal or reduction of early retirement pension with caution if an insured person makes an attempt to return to work.

The insured person normally has the right to try out a job for up to three months without his/her entitlement to pension being affected. In addition, the forecast for the insured person's ability to be able to continue working should be good before the entitlement to pension is affected.

Return to work without income

A common form of rehabilitation focused on working life is 'training in an actual environment'. This measure involves the insured person making an attempt to return to his/her previous job, or another one that is better suited, with the approval of the social insurance office and still retaining compensation from the social insurance office. Training in an actual environment can be arranged, where appropriate, with the original employer or with another company. The idea behind this measure is that persons on sick leave can test their strength and capacity in a calm atmosphere, without any pressure to perform well. There is no formal

limitation for the duration of this type of training. A measure of this kind can be broken off due to a deterioration in the insured person's health or the insured person demonstrating that he/she has some form of work capacity and returning to normal work. In the latter case the early pension is of course reconsidered. (A doctor who writes a sick note should clarify whether the patient can visit his/her work place despite their illness.)

Early retirement pension on hold

The General Insurance Act contains rules which make it possible to put an early retirement pension on hold. The purpose of the rules is to facilitate and create the right conditions for trying to work. A person who has had their early retirement pension withdrawn or reduced as a result of returning to gainful employment can apply for the benefit to be reinstated without requiring a doctor's certificate, provided that:

- the application is made within five years from the month the pension was withdrawn or reduced;
- the gainful employment on which the withdrawal or reduction of the pension was based has ceased; and
- the application refers to benefits corresponding to no more than, and calculated on the same pension points as applied to, the pension the insured person was drawing at the time of withdrawal or reduction.

The facility for putting an early retirement pension on hold has been used very rarely. However, no reliable statistics are available on how many applications are processed on the basis of the rules for putting an early retirement pension on hold. Nevertheless, they only amount to a few per annum.

A person who draws an early retirement pension or sickness benefit and who has begun rehabilitation aimed at returning to working life is entitled to retain his/her pension during the rehabilitation period. If the sickness benefit ceases during the period of rehabilitation, the insured person may be granted continued sickness benefit. The fact that the person is undergoing rehabilitation means that they cannot be considered as being fit for work.

II.2.2 Effects on numbers retaining and numbers returning to work

The number of persons on long term sick leave who regained the capacity to work in 1995/96 was slightly higher than in the previous year. This change is partly due to the provision of information and to partial sick leave being used to a greater extent. The number of partial compensations paid out within the sickness benefit system, in relation to full compensation, was higher than in the 1994/95 fiscal year. This can be explained by the fact that the social insurance offices' efforts, in the form of information to doctors and employers, mapping/analysis of sickness leave patterns, feedback of results to doctors and the time for work training, have been limited. Instead, partial sickness leave is being used to a greater extent.

II.2.3 Impact of definitions of disability or capacity for work on access to and coverage of benefit programmes

The conditions for being able to use the support measures described are in principle that the individual is insured according to the General Insurance Act. To receive this type of insurance, one must be a Swedish citizen or resident in Sweden. A strict medical examination is made to determine the various types of sickness compensation, without taking other factors into account. The social insurance office makes its decisions from case to case on whether the individual is entitled to any of the types of compensation or measures it can offer. Otherwise there are no special qualification requirements.

II.2.4 Interactions between in-work benefits and other in-work income support programmes

The main labour market policy instrument specially aimed at disabilities is employment with wage subsidy. At the end of 1996 the number of persons employed with support in the form of wage subsidies was around 45,000.

Wage subsidies can be paid to employers who recruit a person with a 'work disability'. Wage subsidies can only be paid for a person with a work disability who is already employed in a company if the employee returns to work after having received full sickness benefit in accordance with the insurance act, and is judged to be unable to retain the job without a subsidy being paid. The level of the subsidy is determined on the basis of the individual's capacity to work and the degree of disability. The maximum subsidy, with a few exceptions, is 80 per cent of the wage cost. The main rule is that no proportion of the employee's monthly wage in excess of 13,700 kronor may be used as a basis for the subsidy. The subsidy will be reviewed regularly. If a person who has received a subsidy moves over to employment without a subsidy, the payment of the subsidy may be resumed within three years, if the person with the disability suffers a reduction in his/her working capacity.

Employment with a wage subsidy shall be placed on the same footing as normal employment, which means that wage subsidy employment entitles the employee to sick pay, sickness compensation and sickness benefit and can be combined with these and with early retirement. A person can, for instance, be employed half-time and be on half-time early retirement. The half time worked can be subsidised by paying a wage subsidy to the employer. The level of the subsidy is based on the working capacity during the remaining half time.

Although it is difficult to comment on the importance of the possibility to combine wage subsidy with various types of benefits for sickness and injury, it would not be too bold to suggest that this possibility makes it easier to obtain gainful employment.

II.2.5 Disabled workers who benefit and those who miss out

No groups are explicitly excluded from either compensation for loss of income or wage subsidy. On the other hand, it may be the case that certain categories of employee are over-represented or under-represented in the system. However, statistics provided by the Swedish Labour Market Board in respect of disability registration and wage subsidies do not relate to identical groups, and they use a different definition of disability from the Statistics Sweden survey.

II.3 TRANSITION BETWEEN BENEFITS AND WORK

II.3.1 The effects of the disability benefit system on return to work

The pressure on individuals to return to work has been increased by increased demands to use partial compensation during illness, stricter requirements to take into account only medical factors when providing a sick note, and reduced levels of compensation. This can to some extent be noted in the radically reduced number of sickness compensation payments and the reduced number of early retirement pensions being granted.

II.3.2 Effect of entitlement to benefits in kind on return to work

There are no special 'in kind' benefits attached to disability and work in Sweden.

II.3.3 Co-ordination between agencies in assessment for benefits eligibility

As the National Social Insurance Board is the central authority responsible for working life rehabilitation for persons already employed, there should be no major problems of co-ordination within the Board's area of

activity. The social insurance offices' activities are governed by laws and legal precedents which also comprise the basis for the National Social Insurance Board's directives and general guidelines in this field.

However, co-ordination problems may arise between different authorities when it comes to working life rehabilitation.

At a national level discussions are held and agreements reached on closer co-operation on the issue of vocational rehabilitation in the 'Cæsar Group', a joint group containing representatives from the National Board of Occupational Safety and Health, the National Labour Market Board, the National Social Insurance Board and the National Board of Health and Welfare. The group has the task of co-ordinating and following up activities within the fields of the work environment and rehabilitation, on the basis of the government's targets and guidelines, and of producing proposals for measures to drive and stimulate the development of activities at local, regional and central levels. The authorities concerned have divided up the responsibility for rehabilitation activities in two central agreements.

At a local level there are co-ordination groups, which according to the National Social Insurance Board's directives should be found in each local government area, in order to facilitate the co-ordination of rehabilitation activities. The groups have the task of co-ordinating measures, deciding on priorities and agreeing on how collaboration should be organised in connection with the practical work relating to individuals. Corresponding co-ordination groups are also to be set up at county level.

III. EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

This Part examines the integration of personal support and rehabilitation services within the workplace. It deals with the external support services available to individual workers and their employers where continued employment is at risk because of disability. (Internal services, initiated and managed by enterprises, will be covered in Part V.) The discussion also includes services for early return to work once employment has been lost.

The main focus is on service interventions, which support job retention by employees who become injured, ill or disabled and also their return to employment during the process of recovery. It concerns active rehabilitation services that help disabled people to recover capacities and skills, as well as services that support their re-adjustment to work. (Services involving adaptations to the work environment and to working arrangements will be discussed in Part IV.)

More specifically, sections III.1 to III.5 will cover policy about employment-related personal support and rehabilitation services, provide details of services and their providers, and describe the service beneficiaries. The remaining sections will examine the factors influencing the effectiveness of support services for job retention and early return to work. They include a discussion of relationships between the various employment support and rehabilitation services, their relationship to the employment sector, and their interaction with employment policies and compensation and benefit programmes.

III.1 POLICY AND RESPONSIBILITY FOR POLICY AND PROVISION

III.1.1 The main bodies responsible for employment support and rehabilitation policy, and links to other agencies with employment or benefits/compensation responsibilities

The National Social Insurance Board is the central administrative authority for social insurance and the associated system of benefits. The overall goal of the activities of the authority is to provide financial security during the various stages of life via the national insurance offices by means of the general social security insurances and the associated system of benefits. The National Social Insurance Board should also work to reduce the need for long periods of sick leave and early retirement.

According to the ordinance on labour market policy activities, which provides guidelines for the Labour Market Board, the activities of the labour market authorities include vocationally related rehabilitation. According to the ordinance, this shall be provided by the Labour Market Institute.

The role of the Occupational Health and Safety Board, which consists of the 11 labour inspectorate offices in the country, is to ensure that the provisions of the Work Environment Act with regard to the employer's responsibility to rehabilitate and adapt the working environment are respected.

The central authorities with responsibility in this field are therefore the National Social Insurance Board, the Labour Market Board and the Occupational Health and Safety Board.

The National Social Insurance Board is accountable to the Ministry of Social Welfare, while the Labour Market Board and the Occupational Health and Safety Board are accountable to the Ministry of Labour. All these authorities finance their activities out of budgets provided by the state.

III.1.2 The relative priority accorded to support for retention, return to work and first time entry to employment

If we measure the relative priorities for the various measures on the basis of the magnitude of the resources applied, the Labour Market Board's measures for disabled unemployed people are considerably greater than the amounts the social insurance offices provide in support to employees and employers who rehabilitate their workers. However, such a comparison is not strictly correct, since employers are also required to apply their own resources to rehabilitation.

No distinction is made between persons who are seeking work for the first time and those who have previously had employment but have become unemployed. It is therefore not possible to weigh the support for these two groups against each other.

III.1.3 The weight given to employment support and rehabilitation policies for disabled people in the national system

Efforts to provide active rehabilitation measures rather than passive benefits are especially clear and have become more evident during the 1990s.

III.2 SUPPORT SERVICES FOR JOB RETENTION

III.2.1 The main funders and providers of services to support job retention

Measures to promote job retention are primarily the responsibility of employers. The emphasis on employer responsibility was highlighted first in the work environment legislation and in the General Insurance Act from the beginning of the 1990s. Previously the employer's responsibility for rehabilitating employees was more diffusely defined.

The Work Environment Act 1977 (amended 1991) contains the requirement that the employer should adapt working conditions or take other appropriate measures to take into account the employee's particular capability for work. (Rehabilitation in the individual case is regulated in principle in Chapter 22 of the General Insurance Act.) The object of rehabilitation shall be to restore work capacity and the ability for supporting oneself by means of paid employment, in the case of a person who has had an illness. The insured person's employer shall be responsible, in consultation with the insured person, for ensuring that the need for rehabilitation is clarified as soon as possible and that the necessary measures are taken for effective rehabilitation. Employers are entitled to financial aid from the state for certain measures, mainly via the national insurance offices. Developments during the 1990s have involved greater priority being given to job retention, which means a greater responsibility for the National Social Insurance Board. On the other hand,

the role of the Labour Market Board and its resources for promoting employment for disabled people have not been reduced to any great extent.

Employers often require external support in rehabilitation and work environment activities. The procurement of such measures within this field takes place within a free market where some 400 companies currently supply services within the field of rehabilitation. The largest provider in this market is Working Life Services (Arbetslivstjänster) which was established in 1990 and is the contract services arm of the Labour Market Board within the field of vocational rehabilitation. Its business is directed towards companies and authorities and is fully financed by means of fees/charges. Working Life Services seeks to prevent and limit the exclusion of workers from working life due to changes at the work place, lack of competence or an unsatisfied need for rehabilitation. Rehabilitation should be the main focus and be complemented by preventive development work directed towards the individual and the group as well as at an organisational level. Working Life Services accounted for 21 per cent of the social insurance offices' expenditure on the procurement of vocational rehabilitation during the first half of 1997. In total other private rehabilitation companies accounted for 28 per cent of their expenditure.

III.2.2 Relationships between the providers of services and bodies with policy responsibilities

Individual employers and insurance offices have no restrictions on the purchase of rehabilitation services. There are no specific limitations or restrictions for providers of rehabilitation services such as, for instance, accreditation.

In organisational terms, the dominant provider - Working Life Services (WLS) - is a part of the Labour Market Board's organisation. The decision making process moves down the line from the Director-General of the Board, via the Director of the County Labour Board, to the local manager of WLS at county level. The Director-General has decision-making authority over Arbetslivstjänster and is chairman of its Business Council. WLS has a presence in each county as an operative activity and is a resource in the same way as the Job Centres and the county Labour Market Institutes.

III.2.3 The range and types of services provided

The main principle behind WLS's activities is that each measure is tailor-made to meet each customer's individual needs.

The following services are provided by WLS:

- a) vocational guidance
- b) competence inventory/plan
- c) work-related psychological competence
- d) rehabilitation in working life
- e) work organisation competence
- f) business competence.

Rehabilitation in working life refers to those factors of expertise that influence the degree of success of rehabilitation activities. It includes factors such as motivation, assessment of work capacity and training, but also includes factors relating to the importance of the workplace and the role of other parties. It includes matters of a financial character, the legal framework for both the organisation and the individual, and consideration of the preventative strategies that are most beneficial. Rehabilitation competence also involves

workplace analyses and the development of occupational technical aids or other changes at the place of work.

Transport

Disabled people who cannot make use of the normal public transport system can obtain special transport through their local authority. This special transport usually involves the provision of travel by taxi or a special vehicle at the rates applying on the ordinary public transport system or at a highly subsidised price. The special service usually entitles the recipient to travel to and from work.

III.2.4 Characteristics of enterprises using external support services for job retention

The breakdown of WLS's operating revenue for the first half of 1997 by users of its services is as follows: social insurance offices 50 per cent, county and municipal councils 16 per cent, internal 12 per cent, other private businesses ten per cent, manufacturing industry six per cent, government administration four per cent and state enterprises two per cent.

The users of WLS's services are predominantly large organisations.

The main reason why companies and authorities engage WLS is their desire to retain personnel and their recognition of the link between profitability and healthy personnel who are content at their place of work.

III.2.5 The prevalence of externally provided support services

The WLS activities currently most in demand are competence inventories, competence planning and aptitude tests.

Since 1 July 1990, the social insurance offices have been receiving special funds for the procurement of work related rehabilitation services. The amount has varied from one fiscal year to the next, but it has been running at between 500 and 700 million kronor, which is equivalent to some 20 per cent of the total costs for rehabilitation. The services the insurance offices purchase consist of rehabilitation analyses and direct measures intended to facilitate return to work. The procurement of different types of rehabilitation measure is determined by the need in each individual case on the basis of the aim of rehabilitation.

The social insurance offices engage the following leading companies in the field of rehabilitation. Rygghälsan in Gothenburg, for instance, has rehabilitation programmes including medical assessments and courses of treatment/training for people with back complaints. WLS offers the services of the Job Centres and the Labour Market Institutes in return for a fee (see III.2.3). AMU-gruppen has considerable experience of tailoring training to meet the needs of employers. Work trials, examinations and training can also be purchased from Samhall or from local companies or organisations. Rygginstitutet endeavours to improve back care for individuals who wish to improve their expertise and training. If work related services of the kind described are provided by health care centres and hospitals, these may also be purchased by social insurance offices. Such services may include back and neck treatment for persons on sick leave.

Table III.1: Use of funds to purchase services, breakdown by producer

Producer	'91	'92	'93	'94	'95	'96	91-96
Private producer	25	21	28	37	36	30	31
WLS	36	33	26	21	18	21	25

National Employment Training Board	17	20	17	12	10	10	13
Other education/ retraining	4	4	8	9	9	10	8
Samhall	6	5	5	7	9	10	7
Medical authority	7	8	7	6	7	8	7
Rygginstituttet	3	6	6	6	5	6	6
Other work training	1	1	1	1	2	3	2
Private consultancy services	1	1	1	2	3	3	2
Total	11	13	16	18	20	22	100
MSEK	381	427	528	612	652	741	

Source: National Social Insurance Board (1997) *Risk and Health Factors*

Even though WLS is still the largest producer in the field the proportion of services purchased from this company has gradually declined. The same downward trend is also true for purchases from AMU, whereas training provided by other producers has increased. Among the public producers, however, the social insurance offices have steadily increased their purchases from Samhall. Otherwise, purchases from private producers have increased most and most purchases are now made from the private sector. This trend can partly be explained by the growth and development of the market for purchased rehabilitation services since the social insurance offices were first granted funds for such purchases at the beginning of the 1990s.

III.2.6 The extent to which services support job retention

WLS completed more than 11,000 assignments in 1995/1996, in which the purpose was to return as many people as possible to work. The total consultation time amounted to almost 318,000 hours and 62 per cent of these assignments resulted in a recommendation for a return to work with the same employer or a recommended course of education or training. The remaining people were sent back to the social insurance office or to their employers for recommendations for technical aids at work, an enquiry with regard to early pension, etc.

WLS has also followed up how its customers perceive the quality of the services provided in 1996. 2,575 customers answered the question: 'How would you sum up your impression of WLS's methods of working?' The scale runs from 'Very good' (5 points), to 'Very poor' (1 point). The average number of points received was 4.3.

III.3 USERS OF SUPPORT SERVICES FOR JOB RETENTION

III.3.1 Eligibility criteria and procedures for identifying users (disabled workers and their employers)

In order to be entitled to rehabilitation measures from the local insurance office an individual has to be registered with the national social insurance office. To qualify for the protection, rehabilitation measures and

adaptation of the work environment as stipulated in the Work Environment Act, it is sufficient to be in employment. In some areas the Work Environment Act also applies to students.

The General Insurance Act makes the employer responsible for ensuring that the need for rehabilitation measures is investigated and assessed (see II.1.3 and III.2.1). As was discussed in II.1.3, employers are obliged to carry out a rehabilitation investigation where required and send the results to the social insurance office. The aim is to enable rehabilitation measures to be introduced as soon as possible. There is a clear connection between early intervention and the degree of success. There should therefore be a strong connection between the rules for identifying people who are in need of measures and successful job retention.

However, one factor, which conflicts with this assumption is that the rules are often not followed. Rehabilitation investigations are seldom carried out. Where they are carried out, they are often of very poor quality and are sent to the insurance office too late.

In a survey of 100 cases of illness reported to an insurance office in 1994, the following results emerged:

The social insurance offices had only received a rehabilitation investigation in 49 cases out of 100. A small number of these had been received within the statutory period - eight weeks from the commencement of sick leave. Few investigations had been sent in before the insurance office had reminded the employers of their obligations in one way or another. Several of the investigations sent in by the employed contained very scant information. It was difficult to form an opinion of the nature and extent of the problem on the basis of these documents. When it came to possible courses of action in these cases, the information was even more meagre.

A number of social insurance officers expressed feelings of resignation with regard to rehabilitation investigations. They felt that there was little point in putting a lot of time and energy into chasing investigations, which usually required supplementing.

During the 1990s there has nevertheless been a trend towards early measures in work-oriented rehabilitation. The average time for a measure in 1988/89 was around 300 days, while the corresponding average time in 1993/94 was around 140 days.

III.4 SUPPORT SERVICES FOR RETURN TO WORK

III.4.1 The main services for return to work

The Labour Market Board's measures for the unemployed can be divided up into measures related to the state of the economy, which are directed towards all those seeking work, including those with a disability, regardless of whether or not they were previously employed. In addition, there are special measures for individuals with disabilities.

The number of persons registered with the employment offices/labour market institutes who have a disability in December 1996 was 83,796. The total number of persons registered was 835,007.

Measures related to the state of the economy

One of the goals of the National Labour Market Board is to maintain the proportion of disabled persons in measures, which are related to the state of the economy. This was laid down in the government's instruction to the Board for 1995/96, which states that the proportion of disabled persons in cyclical labour market measures should be far higher in relation to their proportion among unemployed job seekers in general. It is a priority to put a high percentage of disabled persons in labour market training.

Below follows a brief description of the most common measures.

Labour market training is a form of training for individuals which is either purchased freely by the labour market authorities or involves the use of places in the regular education system. The training should be vocationally oriented.

Employment development is a six-month work period of practice for unemployed persons who are in receipt of unemployment benefit. This activity ceased at the end of 1996, when it was replaced by other measures.

Workplace introduction is the name of a programme which enables unemployed persons to obtain work practice with an employer for six months. The condition for the employer to receive a trainee, is that the employer agrees to employ this person for at least six months after the expiry of the period of work practice. Some exceptions are made for individuals with a disability. They can have a longer period of work practice and the obligation for a further six months of employment may also be lifted.

Relief work: Persons who cannot be offered a job or other suitable labour market measure are instead placed in relief work. Only such necessary work tasks as increase the number of employees above a level that is feasible within the employer's ordinary budget can be regarded as relief work. The period doing relief work may not, as a main rule, exceed six months. A government subsidy may be paid to the employer amounting to no more than 50 per cent of the wage cost, up to a level that is capped at 7,000 kronor.

Datortek is a form of labour market training for young people between the ages of 20 and 25. Those who take part in these activities spend a maximum period of three months receiving half-time training in computing. The rest of the time they should be engaged on labour market projects.

Temporary training replacement: An employer who has a maximum of four employees and who allows one employee to take part in training and at the same time employs an unemployed person referred by the National Labour Market Board as a full-time temporary replacement, can be awarded a grant by the County Labour Board. The grant amounts to 500 kronor for each working day the replacement is employed, subject to a maximum of 40,000 kronor per person trained.

Result of the measures related to the state of the economy

There is no difference between the proportion of functionally-disabled persons and others looking for work who move to measures dependent on the state of the economy after being registered as unemployed with an employment office. For both groups the percentage was seven per cent per month in 1995/96.

Disabled persons accounted for 11.5 per cent of all those occupied on such measures during the 1995/96 fiscal year. During the same period this group accounted for 10.6 per cent of all those registered at employment offices and labour market institutes.

Of the disabled persons who left such measures during the 1995/96 fiscal year, 9.9 per cent went directly into employment. Of all the disabled persons who left such measures, a majority - 6.7 per cent - went to a job without support for disabled people. Among the other job seekers, i.e., persons without a disability, a much higher percentage - 17.3 per cent - went straight into employment. It is important to note that two-thirds of the disabled persons who obtained work in 1995/96 following measures dependent on the economic cycle still obtained work without the need for support for disabled people.

The most effective measure proved to be the temporary training replacement. 27.5 per cent of disabled people who worked as temporary training replacements went direct to a job. 18.7 per cent of disabled people who took part in work place introduction schemes went direct to a job.

A lower percentage than average went direct into employment after employment training (5.2 per cent), Datortek (5.7 per cent) and labour market training (7.1 per cent).

A higher proportion of disabled men (10.7 per cent) who finished cyclical measures found work than was the case with women (8.9 per cent). This is mainly the result of a larger number of men going to jobs with support for disabled people. The ranking order by measure in relation to the percentage going back to work is approximately the same for disabled men as it is for women.

People with learning difficulties had a relatively high percentage of transfers direct to employment after being occupied on cyclical measures - 12.0 per cent compared with 9.9 per cent for all disabled persons. People with learning difficulties had an exceptionally high rate of transfers to employment with support for disabled people (8.2 per cent), compared with the group as a whole (3.2 per cent).

These statistics relate to transfers to work immediately after completion of the measure. Studies of transfers to work six months after the completion of the measures indicate a much higher percentage in employment.

Special measures for disabled persons

Wage subsidies are the most comprehensive labour market policy measure for disabled persons and covered 45,000 people in September 1996. For a description of the rules regulating wage subsidies, see II.2.5.

The proportion of persons leaving wage-subsidised jobs was between 14 and 15 per cent per annum in the mid-1990s. During a six-month period in 1993 the following reasons were given for the cessation of a wage-subsidised job:

- 1.3 per cent continued with the same employer;
- 0.7 per cent went to another employer;
- 3.5 per cent left at their own request;
- 6.2 per cent were dismissed by the employer;
- 3.1 per cent other reasons.

Employment with wage subsidy, sheltered employment in the public sector, and employment at Samhall AB are all deemed to be employment with wage subsidy. Sheltered employment in the public sector and Samhall AB are sheltered activities set up primarily for disabled persons. It is most often persons with severe disabilities who work at these sheltered workplaces. These forms of employment shall only be used if a person cannot obtain work on the open labour market, with or without a wage subsidy.

Wage subsidies and cyclical measures are mainly financed using government funds administered by the National Labour Market Board in the case of wage subsidies and by the National Social Insurance Board in the case of training grants to cover the cost of labour market training, workplace introduction and employment development.

The systems for employment-oriented rehabilitation differ as regards both the responsible authorities and regulations, depending on whether the person concerned is an employee or seeking work. However, the insurance offices are responsible for co-ordinating labour market-oriented rehabilitation, which also covers the activities of the Labour Market Board. Decisions on individual cases of rehabilitation measures for job seekers are the responsibility of the Labour Market Board and cannot be imposed by the insurance offices or the National Social Insurance Board.

There are no special measures directed towards persons seeking work for the first time. Nor is it possible to distinguish this group in the National Labour Market Board's statistics.

III.4.2 Integrating return to work services into work environments

The measures described in III.4.1, as well as other less frequently used measures, are all based on the voluntary principle, on the part of both the job seeker and the employer. There are no direct or indirect coercive measures, which can be used to create employment for disabled people.

Wage subsidies are by definition an integrated form of measure. One instrument to integrate employees with wage subsidies at the workplace is the demand for an action programme. This should contain agreements between employment offices, employers, employees and unions on work tasks and work adaptation. The purpose of the action programme is that it should support the rehabilitating focus of the job so that the wage subsidy can in time be reduced/abolished.

A survey carried out in 1994 showed that only 31 per cent of the employees with wage subsidies had an action programme. The content of these plans was often insufficient. The employment offices' files stated that a wage subsidy decision had been made, which parties were involved, the date of the follow-up and, in cases concerning the follow-up of a decision already taken, a description of the results. There was very seldom any information about the future or information of significance to rehabilitation, such as work adaptation, training, support from co-workers, etc.

III.4.3 The types of enterprise providing return to work opportunities in co-operation with employment support and vocational rehabilitation services

The following table shows how many people received wage subsidies in particular types of employment.

Table III.2: The number of persons with wage-subsidised employment by type of employer

<i>Employer</i>	<i>Number in '95/96</i>	<i>Percentage i</i>
Government authorities	3,731	8.4
Institutions equivalent to government authorities	143	0.3
Social insurance offices	323	0.73
Non-profit organisations	15,316	34.4
Municipal authorities	5,838	13.1
County councils	1,313	3.0
Public utilities	56	0.1
Private sector companies	16,172	36.3
Other employers	1,642	3.7
Total	44,534	100.0

The lowest average level of wage subsidy is 42.7 per cent of the wage in county councils, and the highest level is that among public utilities and social insurance offices at 79.8 per cent and 79.9 per cent of the wage respectively.

III.5 USERS OF SUPPORT SERVICES FOR RETURN TO WORK

III.5.1 Mechanisms for identifying and accepting users who have left their employment

If it turns out that an applicant at an employment office is in need of special guidance or rehabilitation measures as a result of his/her disability, or they cannot obtain work without the labour market policy measures reserved for applicants with a disability, the disability shall be entered in the National Labour Market Board's register.

The applicant's consent is required for registration as a disabled person. If the applicant does not consider that he/she has a disability and is not interested in any measure reserved for those with disabilities, no disability shall be entered in the register. The code shall indicate the disability which, according to the assessment, is the main reason for the difficulty experienced in obtaining work.

The handicap codes are as follows:

1. Heart disease, vascular disease and/or lung disease
2. Impaired hearing/deafness
3. Impaired vision
4. Reduced mobility
5. Other somatic related disability (includes allergies, diabetes and stomach/bowel diseases)
6. Mental health problem
7. Learning difficulty
8. Socio-medical disability (refers to people with social problems which are the cause of their reduced work capacity; this would include drug- or alcohol-related problems, or problems related to criminal activities).

It is important to note that the definitions are in practice very broad and none of the established groups of disabilities or diagnoses are excluded.

Many persons with some form of disability are referred to the employment office by the social insurance office, the social services or some medical rehabilitation activity when the medical or social rehabilitation is regarded as complete. These referrals can be made, for instance, by making an appointment for the individual at the employment office. The transfer of persons to the employment office is also arranged by collaborating agencies.

III.5.2 Arrangements for user choice and user control of service packages

The National Labour Market Board's services for unemployed people can mainly be said to be based on obligations rather than rights. By this is meant that the various labour market policy measures which could be considered for a particular job seeker are not rights. There is usually no right of appeal against a decision to

refer an individual to a measure. This may be contrasted with the benefits, which follow from social insurance, which can usually be reconsidered by a higher instance or administrative court following an appeal by the person claiming the benefit.

The freedom of choice, which exists lies in there being no compulsion to accept employment. However, in the long run there is a risk of loss of unemployment benefit if a person refuses to accept a job to which he/she is referred.

There is no system of vouchers or the equivalent.

III.5.3 Disabled workers who benefit and those who miss out

Measures related to the state of the economy

The proportion of disabled women without work who transferred to measures related to the state of the economy in 1995/96 was the same as for men - seven per cent. A higher proportion of disabled men than women moved on to employment development and relief work. A higher proportion of the women moved to labour market training.

Disabled persons aged 24 and younger transferred to cyclical measures to a greater extent than older persons in 1995/96. Young people mainly transferred more frequently to workplace introduction.

The group of disabled people with the lowest percentage placed in measures dependent on the state of the economy in 1995/96 was that of persons with mental health problems. The proportion of this group who transferred to employment was also low.

Special measures for disabled people

Women were distinctly under-represented among the employees with wage subsidies. They accounted for 40 per cent of all such employees.

Older persons, aged 45 or more, comprise a majority (56 per cent) of the employees with wage subsidies. Persons aged 45 and over can be said to be represented fairly evenly in relation to the number of disabled persons registered at employment offices and labour market institutes.

With the exception of socio-medically disabled people, the various groups of disabled persons can be said to be represented among those with wage subsidies in relation to their percentage of disabled people registered at employment offices and labour market institutes.

III.6 DESIGN AND DELIVERY OF EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

III.6.1 The effects of the distribution of responsibility for provision of services

The following account reflects the criticisms of the division of responsibility within the current system for rehabilitation.

Rehabilitation is a general concept for all measures of a medical, psychological, social, employment-oriented or career-oriented nature which are intended to help persons return to a normal life. The various rehabilitation measures overlap with one another, at the same time as each authority has its own methods of approach and its own concept of rehabilitation. Experiences of rehabilitation in recent years indicate a lack of co-ordination with regard to the goals of their activities. Often they do not all pull in the same direction, which leads to conflicts of priorities.

The need to co-ordinate resources to improve rehabilitation has been discussed in various contexts in recent years. There is a need to make more effective use of the collective resources to more satisfactorily meet individuals' needs for support measures. People who are chronically unemployed, or who have psycho-social or health problems, can easily end up in a grey zone between the different systems, as they do not fall straightforwardly into a particular authority's area of responsibility. This can often result in their being passed round in a circle to the social services, social insurance office, employment office and health and medical services, often resulting in short-term and ineffective measures.

The Swedish government considers that it is now time to introduce a possibility for voluntary co-operation for the authorities involved, with the purpose of supporting everyone in need of special measures. The local co-operation projects which will be developed will not require any special approval from the government or the respective authority, and the local units will themselves decide and implement the co-operation, on the basis of local conditions and requirements. With effect from 1998, therefore, funds will be made available to the social insurance offices with the aim of improving forms of co-operation and thus making rehabilitation more efficient, especially for groups for which more than one agency is responsible.

Criticism has been expressed that the current rehabilitation activities do not fully satisfy the requirements for differentiation and specialisation. The expected increased dispersion of various types of activity in the rehabilitation field through the creation of a market for purchasing services has been realised to some extent, but needs to be expanded further. In many areas only a few institutions are involved and their activities are relatively standardised.

The National Audit Agency has concluded that there are serious shortcomings in the medical decision-making process. The social insurance administration is forced to spend far too much time on communicating in various ways with the medical sector to obtain more details and improvements in certificates and statements. In addition, local social insurance offices frequently have to follow up doctors in order to obtain information that has not been provided on sick notes. The time the social insurance administration spends on trying to influence the medical decision-making process, or at least part of it, could be better spent on developing actual rehabilitation activities.

The Agency for Administrative Development was requested by the government to make an overall analysis of rehabilitation, with an emphasis on employment-oriented rehabilitation. (The Agency for Administrative Development is an authority, which provides support to the government and ministries in the work of reviewing state activities, making them more efficient and administering them.) Its report was prepared in 1994 and included a presentation of the following views concerning the division of responsibility and efficiency:

'There is no clear division of responsibility between many of the institutions involved. Nor is there a positive connection between rehabilitation and performance. There must be incentives even for those whose profession is working with rehabilitation. At present the system works so that one organisation saves money by refraining from taking measures regardless of the fact that higher costs are then charged against another budget.'

'Those with an explicit responsibility for rehabilitation activities are accountable to different principals. No institution can be said to have an overall view of all the principals involved in any individual's case, despite the co-ordinating role of the insurance office. Different bodies have different incentives to help promote the rehabilitation of an individual. The institutions also have different sources of finance and no one institution has responsibility for how resources should be used in total. Each one acts within its own budget. The costs can thus be passed over to another sector. With the existing model of institutions and financing, it is difficult to maximise cost efficiency. Common to all the institutions involved is the fact that there is very little information about the existence of persons who are passed around between the systems.'

‘In terms of competence, as well as ‘culturally’, there are differences between the personnel categories of the various institutions. In combination with the institutions’ differing priorities, this means in some cases that groups of individuals have difficulty in getting their needs met, as the institutions make their assessments on the basis of different frames of reference. For example, the local social insurance offices and employment offices often have differing opinions regarding when an unemployed person on sick leave has been completely rehabilitated.’

‘The regional and local organisations of the social insurance administration, the National Labour Market Board and the Board of Occupational Health and Safety differ from each other, which can make local collaboration difficult. A further complicating factor in densely populated areas is that the individual can be registered with a local social insurance office which is geographically remote from his/her workplace, which makes it that much more difficult for the insurance office and the employer to collaborate effectively.’

‘The social insurance administration, the National Labour Market Board and the municipal authorities shall balance active measures against the payment of cash benefits. A heavy workload on the personnel of one of these institutions could mean that the work of administering cash benefits is given higher priority than active measures. All public institutions in the rehabilitation field are also under great pressure to save. This involves a risk that incentives will be devised to shift the cost burden on to other institutions.’

‘In order to make it possible to assess the results and effects of society’s rehabilitation activities, the measures, means of control and activities must be measured against stated targets. If comparisons of cost-efficiency are to be made between different measures, means of control and activities, it is necessary that the overall goals are more in line with each other than they are at present. Specific targets for various measures and operational targets for various institutions should also correspond.’

‘There is a risk that the effect of the resources devoted to supporting priority groups will diminish or disappear altogether if comparisons are made with the allocation of comparable resources to groups where the chances of success are greater. Claims have therefore been put forward by various parties that targets and rules for rehabilitation should be designed so that they are dependent on the economic climate.’

‘The state’s overall goal of healthy economic growth matches industry’s targets. On the other hand, employers lack any direct incentives to promote the individual’s welfare and employment. It can be difficult to combine employers’ endeavours to conduct their activities rationally and cost effectively with, say, rehabilitation measures in the form of work adaptation. This assumes, for instance, that such measures are regarded as profitable and generate a financial return. Without incentives in the form of ‘carrots’ or sanctions, it is more difficult to create a sound work environment, provide support for rehabilitation and achieve society’s overall welfare goals.’

‘The greater responsibility of employers for the rehabilitation of employees found expression in changes in the general insurance law and the work environment law. However, experience shows that small and medium-sized companies in particular, which have few resources and little experience of rehabilitation, find it difficult to live up to their responsibilities. The social insurance offices have estimated that only 40-60 per cent of the rehabilitation investigations, which should have been sent to them have been received. In many cases these offices have to take over tasks which are the employer’s responsibility and this often happens several months after the employee has become ill. This creates a great deal of extra work for the insurance offices. Costs, which should be defrayed by the employer are instead being passed over to the insurance offices which, in practice, have no sanctions that can be applied against negligent employers.

‘A perception of the goals of employment-oriented rehabilitation encompassing all sectors is today mainly implicit. The basic aim of the different systems is for individuals to be rehabilitated as far as possible so as to be able to function in working life. The question, however, is whether a more explicit shared perception of goals is required to prevent the different systems from working against each other. The control over

employment-oriented rehabilitation would probably benefit from the further development of both common overall goals and the more operative targets connected to particular sectors. The same applies to follow-up and assessment.'

'The financial incentives for employers are difficult to describe unambiguously. No financial incentives for employers to fulfil their responsibilities in accordance with the General Insurance Act are incorporated into the system.'

'One particular problem in connection with authorities' rehabilitation activities is the procurement of services by social insurance offices and employment offices. It is impossible to obtain an overall view of the range of services and institutions on the market. This results in problems in guaranteeing the quality of the services purchased. Measures have been taken by both the social insurance offices and the labour market authorities to improve the purchasing skills of their personnel. This is probably not enough. There are a variety of ways of further supporting the personnel in this task.'

Differences of opinion sometimes occur between social insurance offices and the employment offices over when an unemployed person on sick leave is medically rehabilitated and healthy and thus ready for labour market measures. This is a problem, which has grown in recent years, as a result of rising unemployment and thus more people on long-term sick leave without employment.

III.6.2 The results of vocational training and rehabilitation

In order to be able to describe the rehabilitation measures for those already in employment, we have to use studies of the rehabilitation of individuals on long-term sick leave, in the absence of more adequate surveys. As the vast majority of the people on long-term sick leave still have their jobs, these surveys are still relevant.

The great majority of people on long-term sick leave will never undergo employment-oriented rehabilitation measures, but will return to work spontaneously. A majority of those on sick leave can thus be said not to need rehabilitation measures. This is the explanation why those on long-term sick leave who do begin rehabilitation measures have a 40 per cent lower level of obtaining a certificate of good health than those who do not undergo rehabilitation measures.

Persons on sick leave who have undergone investigations have a 70 per cent lower chance of receiving a certificate of good health than those who have not undergone any measures. The equivalent figure for persons who have undergone work training at another work place is 50 per cent, for work training at their own work place the figure is 30 per cent and for education/training it is ten per cent.

Persons on sick leave whose case is investigated undoubtedly have the greatest need for rehabilitation measures and are relatively infrequently given a certificate of good health after undergoing this measure. Often these individuals need further measures to enable them to receive a certificate of good health and return to work. Persons on sick leave who have received training probably have a better starting point before the training and may have undergone other rehabilitation measures before the training course.

Persons on sick leave who are offered work training at another workplace are more likely to have problems caused by their earlier work or other problems which make a return to their earlier work place difficult. It is thus mainly persons on sick leave who have undergone training or had the opportunity to do work training at their own workplace who most likely to return to work.

After taking account of participation in rehabilitation programmes, age and different diagnoses, it becomes evident that:

- persons who have completed sick leave where there has been rehabilitation have a 45

per cent greater chance of remaining healthy six months after being given a certificate of good health than those who finish their sick leave, but have not had rehabilitation;

- persons under the age of 35 on sick leave, who have undergone rehabilitation measures, have a very good chance of being given a certificate of good health, compared with older persons who have undergone measures;
- persons on sick leave with various types of back complaint also show very positive results when it comes to obtaining certificates of good health after employment-oriented rehabilitation.

The greatest risk of recurrent sick leave arises when the first employment-oriented rehabilitation is begun within 30 to 59 days of the person registering as sick. The chance of remaining healthy for at least six months after the sick period is 60 per cent greater for sick periods where rehabilitation measures are started very early during the period of sick leave, i.e. within 19 days of the first day of sick leave. However, the same positive effects are shown in sick leave where the first employment-oriented measures were begun after six months.

A common assumption is that the best rehabilitation results are achieved by taking early measures for rehabilitation. However, those with the best chances are chronically sick persons who began the first measure one year after registering as sick. It may nevertheless be the case that measures taken at an early stage produce better results, but that this is mainly the case with medical type measures. Here, however, we are considering employment-oriented measures.

The fact that rehabilitation measures are introduced at the right time during sick leave seems to have a decisive significance for the results of the measures. For some types of sick leave the right time could be at a relatively late stage.

(See III.4.1 for the results of the National Labour Market Board's rehabilitation work.)

III.6.3 Arrangements for outcome-related funding and financial incentives to staff

As was mentioned in III.6.1, there are currently no financial incentives to employers to fulfil their responsibilities in accordance with the legislation. Nor are there any targets against which rehabilitation activities can be measured.

III.7 LINKS WITH EMPLOYMENT POLICIES

III.7.1 The effects of employment policy obligations and agreements on opportunities for vocational rehabilitation

The General Insurance Act and the Work Environment Act do not give details as to how rehabilitation should be implemented. The idea is that the individual, the employer and the regional social insurance office should reach an agreement on the best possible rehabilitation measures, based on the needs of the individual, for instance rehabilitation at work. However, it is not possible to impose rehabilitation at the workplace against the wishes of the employer. The ability of the Labour Inspectorate to use its system of sanctions, as provided by the Work Environment Act, only arises in connection with inadequate adaptation of the work environment in individual concrete cases and the general organisation of rehabilitation activities at the workplace in question.

If it were the case that the lack of rehabilitation in the workplace is a general characteristic of the employer's rehabilitation activities and if this can be seen to contravene the statutory demands for suitably organised work adaptation and rehabilitation, then there is a possibility for the Labour Inspectorate to intervene. In the final analysis, this means that the Labour Inspectorate can demand that the employer organises the work

adaptation and rehabilitation activities in a particular way or at least in a better way. On the other hand, the Labour Inspectorate cannot intervene in a specific individual rehabilitation case.

Rehabilitation at one's own workplace is one of the most common rehabilitation measures. A survey made of persons on long-term sick leave (90 days or more) in Stockholm and in Jämtland shows that, of those who underwent employment-oriented rehabilitation between the years 1992 and 1994, between 42 and 44 per cent were given training at their own workplaces. These percentages relate to persons on long-term sick leave who retained their jobs. The two regions compared are in many ways each other's opposites. The Stockholm region is densely populated and has the country's largest city, while Jämtland is a sparsely-populated region in the north-west of the country.

III.7.2 The effects of financial incentives to employers on opportunities for vocational rehabilitation in the workplace

It is difficult to detect any clear financial or other incentives to rehabilitate employees at their own workplaces. This is partly due to the fact that the employer cannot be compelled to do so, nor will he incur sanctions if he does not defray the cost of rehabilitation away from the employee's own workplace, even if this should be the employer's responsibility.

A possible financial incentive for an employer who is also prepared to take financial responsibility for rehabilitation could nonetheless be that rehabilitation at the employee's own workplace is cheaper than rehabilitation outside and the employee may be able to do some work at his/her own workplace as part of the rehabilitation. However, these and other potential factors which may promote rehabilitation at the employee's own workplace have not been investigated and it is therefore difficult to comment on whether there is any incentive for the employer on the whole. The high rate of rehabilitation at the employee's own workplace would indicate, however, that there is such a financial incentive.

III.7.3 The relative priorities given to disabled people and other client groups

Employment-oriented rehabilitation is in most cases intended for people with physical impairments or mental health problems. Such rehabilitation is a natural step for people whose work capacity has been reduced for medical reasons, which may be of a more or less permanent nature.

According to the ordinance on labour market policy activities, the National Labour Market Board should pay particular attention to measures which promote the employment of elderly employees and employees with a reduced work capacity and make it easier for disabled persons to keep their jobs.

As mentioned above, the National Labour Market Board has to pay particular attention to measures to promote the employment of employees with a reduced work capacity and make it easier for disabled persons to keep their jobs. Each county has at least one labour market institute whose role is primarily to support measures that will help disabled people to find work. In addition, there are a number of labour market institutes which have special resources for certain groups of disabled persons; those with impaired vision, with impaired hearing or deaf, physically disabled people, people with learning difficulties, people with mental health problems and those who are socio-medically disabled.

The Board also has a special delegation for career-oriented rehabilitation and other labour market policy measures for disabled people. This has an advisory capacity and has, in particular, to follow and support the development of measures promoting employment for disabled people, co-ordinate state, local authority and other measures to utilise the work capacity of disabled people, and disseminate information in this field.

Disabled people represent 30 per cent of all persons who take part in the National Labour Market Board's range of measures. In autumn 1996, 14 per cent of all those registered with the employment offices/labour

market institutes were disabled. In the case of state budgets, the percentage of the budgeted funds used by disabled people is higher than the proportion of disabled people among those registered with an employment office.

For 1995/96 the Swedish government stated in its official instruction to the National Labour Market Board that the proportion of disabled persons undergoing labour market policy measures dependent on the state of the economy should be much higher than the proportion of disabled people among all unemployed people seeking employment. This target was achieved during the period in question. The percentage of unemployed disabled people registered with employment offices or at labour market institutes was 10.6 per cent in 1995/96, while they accounted for 11.5 per cent of those undergoing measures dependent on the state of the economy.

One of the three targets set by the government for the National Social Insurance Board's operations in 1997 was to endeavour to prevent and reduce ill-health and, by actively working with and co-ordinating rehabilitation, to help to enable sick and disabled persons to return to work. It is almost impossible to relate the Board's measures for disabled people to other groups. The National Social Insurance Board has a special responsibility for employment-oriented rehabilitation. Otherwise the local social insurance offices work on administering social insurance benefits. They have no corresponding tasks with regard to any other group.

In other words, one can draw the conclusion that high priority is given to enabling disabled people to participate in the labour market, at least as far as the work of the National Labour Market Board and the National Social Insurance Board is concerned.

III.8 LINKS WITH BENEFIT AND COMPENSATION PROGRAMMES

III.8.1 The relationship between funding of benefit and compensation programmes and vocational rehabilitation policies and services

The financing of the various types of benefit in cases of illness within the social insurance system uses public funds, apart from the four first weeks of an employee's sick leave, which are paid for by the employer. Another exception is partial financing by the employer when applying for grants for occupational aids.

In the case of employment-oriented rehabilitation within the National Labour Market Board, a training grant may sometimes be paid in the form of a daily allowance from the local social insurance office. Daily allowances and other types of training grant are completely financed out of public funds.

The employer's responsibility for rehabilitation also includes responsibility for financing the measures. However, the financing obligation is not unlimited. Although it is stated that the employer has the primary responsibility for rehabilitation, the responsibility for financing must be limited to the responsibility the employer has for the measures, which may be taken within or in connection with his own activities or so that the employee can remain with the company. An examination of the circumstances of each individual case, taking into account both the employee's and the employer's circumstances, is necessary to determine what can reasonably be demanded from an employer in terms of measures. The secondary responsibility for rehabilitation rests on the local social insurance office, in which case the costs are defrayed out of public funds.

In practice the local social insurance offices fund a large part of the total employment-oriented rehabilitation undergone by employees. A survey of employment-oriented rehabilitation for persons on long-term sick leave in Stockholm and Jämtland shows that between 74 and 79 per cent of the total rehabilitation costs for employees are covered by the local social insurance offices and not by the employer who has the primary responsibility for the financing.

III.8.2 The co-ordination of assessment of eligibility for disability benefits and vocational rehabilitation services

Both sickness compensation, in the form of sick pay and sickness benefit, and rehabilitation compensation are administered by local social insurance offices. As was have noted earlier, the levels of sickness compensation and rehabilitation compensation are the same. This means that the potential for co-ordinating these two systems is good. The disbursement of life annuities to compensate for loss of income in connection with occupational injuries is also administered by the social insurance offices.

Sickness compensation and sickness benefit are paid out when work capacity is reduced as a result of illness and during medical treatment and rehabilitation. Rehabilitation compensation is paid to a person who takes part in employment-oriented rehabilitation and includes rehabilitation pay to compensate for the reduction in work capacity, which follows from participation in a rehabilitation measure.

III.8.3 Arrangements to combine the receipt of benefits with rehabilitation in the workplace

There are no limits placed on the possibility of combining sick-pay, life annuity and wage subsidy with rehabilitation at work. The lack of such combinations in practice could be due to the order of priority in a person's return from an active sickness period to work. The reduction in work capacity as a result of illness and participation in medical treatment and rehabilitation is compensated for by means of sick-pay and sickness benefit. At a later stage, after medical rehabilitation, there is often a need for employment-oriented rehabilitation. In these cases it may be necessary to pay rehabilitation compensation and make a grant for occupational aids.

III.9 LINKS WITH BENEFITS AND EMPLOYMENT POLICIES

III.9.1 The relationship between policies for vocational rehabilitation, benefits and employment

The General Insurance Act, which regulates both sickness benefits and employment-oriented rehabilitation for employees is imbued with a strong determination on the part of the government to restore the individual's work capacity as soon as possible.

These intentions are in practice counteracted by such factors as:

- lack of financial incentives for the employer to rehabilitate: rehabilitation measures may appear costly, especially to a small employer;
- comparatively high levels of compensation in the event of illness, and in some cases of early retirement, reduce the individual's interest in taking part in rehabilitation measures;
- a relatively high level of unemployment by Swedish standards, which provides a ready supply of labour, which in turn reduces the employer's interest in rehabilitation;
- insufficient knowledge among employers about employment-oriented rehabilitation;
- insufficient scope to impose sanctions on employers who contravene the rehabilitation regulations;
- an increasingly tough climate in the labour market and ever-increasing demands for flexibility and mobility, which in many cases make a return to work more difficult for persons with disabilities.

There has been a tendency in society in recent years for fewer persons to take sick leave and for the number of persons taking early retirement to decline. The increase in the number of unemployed persons with a disability has also been less than the increase in unemployment as a whole. It should be noted that the starting situation for the disabled group was much worse before the major employment crisis at the beginning of the 1990s.

The proportion of disabled persons who were employed in 1997, in the age group 16 to 64, was 55 per cent. The corresponding figure for the population as a whole is 71 per cent. For the most vulnerable groups of disabled persons (people with learning difficulties or mental health problems) the employment rate is between 12 and 22 per cent.

III.10 The most relevant factors influencing the integration of personal support and rehabilitation services into the workplace

Cost neutrality is a factor mentioned by employers as a condition for employing persons with a disability. By this they mean that a person with a disability should not result in the employer incurring extra costs because of his/her disability. The degree of financing and rehabilitation measures, aids and adaptation measures provided by the state therefore probably plays a significant role in how willing employers are to become involved in the rehabilitation process.

Another measure in demand among employers is help in administering their extensive rehabilitation responsibility. Many employers seem to perceive the processing of the various support systems for disabled people and their responsibility for rehabilitation as burdensome and they would like more and better support from local social insurance offices and employment offices.

The support of unions and employer associations is very important for successful rehabilitation work. The Labour Inspectorate and social insurance offices alone cannot take responsibility for ensuring that the work environment and rehabilitation activities within enterprises function satisfactorily. The unions especially have in practice tremendous opportunities to play an important and positive role in this context.

Sufficient resources and high competence among the personnel at social insurance offices and Labour Inspectorate offices are also of great importance for effective rehabilitation work in enterprises. Informal contacts between social insurance offices and employers probably represent the most frequently used means of providing support for enterprises.

IV. ADAPTATION OF WORK AND WORKPLACE

Part IV is concerned with practical solutions to adapting the work-station, workplace and job procedures to the needs of workers who become disabled. It focuses on external services available to enterprises to assist them in making adjustments, whether those services are accessed directly in the marketplace or via agencies. External services may provide advice or practical help both in adjusting the demands of the job and in adapting the work environment, temporarily or permanently. They may operate as private consultancies, voluntary bodies, quasi-governmental agencies, or as part of employment services.

The initial sections of this Part consider policy responsibilities, details of providers, funders and users, technical advisory services, sources of technical equipment and advice about accommodating work routines. Later sections focus on the factors which affect the success of adaptation services in promoting job retention and return to work.

IV.1 RESPONSIBILITY FOR POLICY AND PROVISION

IV.1.1 The main bodies responsible for work environment policies and their role in promoting

adaptations

Issues relating to the work environment are regulated primarily by the Work Environment Act. As mentioned earlier, the work environment regulations also incorporate demands for the adaptation of the working conditions of individual employees. Such adaptation would include, for example, technical modifications, the adaptation of tools, and measures relating to the organisation of work. It is the responsibility of the Labour Market Board to ensure that the law is adhered to. The Labour Inspectorates are regional supervisory authorities in the field of the work environment and are part of the Board for Occupational Health and Safety. The Labour Inspectorates shall carry out inspections and issue injunctions and prohibitions to be enforced by means of penalties to ensure that the rules of the Work Environment Act are respected.

The Labour Market Board has a particular responsibility to ensure that the development of technical aids for work for disabled people is carried out with clear objectives and as efficiently as possible, and that procurement is arranged constructively and with foresight to encourage new technical solutions in concrete working situations.

The Disability Institute works on technology and methods development as well as on the testing of personal aids for disabled people. Although the work of the Institute is not specifically focused on technical aids at work, personal aids are also used in working life. The aim of the activities of the Institute is to improve the quality of life for people with a disability by means of effective technical aids and an accessible environment. The institute is the central organ for technical aid issues and is run by the state and by the County Councils Association. It engages in research and development, testing, competence development and information.

NUTEK (the National Board for Technical and Industrial Development) is a state authority which concentrates on technical support for disabled people and which has recently begun to co-operate with the National Board for Communications Research with regard to programme measures relating to disabilities and technology, although with no specific focus on disabled people in working life.

The National Social Insurance Board has secondary responsibility for rehabilitation under the terms of the General Insurance Act, in relation to the individual employer. If an employer, for whatever reason, fails to take the necessary steps for rehabilitation, the Social Insurance Office can intervene and initiate them. Such rehabilitation steps could include obtaining occupational aids and adaptation of the workplace.

Health care provided by county councils and municipal councils may also contribute to the provision of technical aids. In the first instance the county council is obliged to provide and finance technical aids for the individual, aids which may of course also be used at work.

IV.1.2 Comparison of the attention given to policies which promote job retention and those which promote access to work

The specific rules concerning grants for occupational aids are virtually identical for a person seeking employment and for the prospective employer, as for someone who is already employed and their employer. The rules are somewhat less favourable for an employer applying for a grant from the social insurance office.

The Work Environment Act and the rules in the General Insurance Act concerning the general responsibility of the employer to provide rehabilitation make extensive demands on the employer to adapt the work environment for an employee. Under the Work Environment Act, however, employers' responsibilities apply only to actual employees, not to job applicants. It may therefore be claimed that the needs of existing employees are accommodated to a far greater extent than those of potential employees.

If a law is passed against the discrimination of disabled people in work, interest may shift towards the job applicant. If insufficient access to the workplace is seen in some instances as discrimination, the employer

may be forced to carry out adaptations at an early stage in order to meet the needs of the prospective employee.

IV.1.3 The main providers of technical and advisory services

The Labour Market Institute helps the unemployed person and the prospective employer by providing advice when the person is recruited. This advice covers adaptation measures generally without focusing on specific technical issues. In the latter case external assistance is called in.

Another party in the field with strong links to a state authority is Working Life Services. For a more detailed description of WLS see III.2.1 and III.2.3.

Other parties involved in the field of technical aids are independent of the authorities responsible for the provision of such aids. The individual employee and employer apply to the social insurance office for a grant for an occupational aid and/or adaptation of the workplace or the employer pays for such adaptation him/herself.

IV.1.4 The relationship between providers of technical and advisory services and providers of employment support and rehabilitation services

The parties in the field operate within a free market and any relationships between them are regulated by agreements. In some cases, the same company can be involved in the provision of occupational aids and other types of employment-related rehabilitation.

IV.2 TECHNICAL AND ADVISORY SERVICES FOR MODIFICATIONS TO WORK-STATION AND WORKPLACE

IV.2.1 Technical and advisory services available to enterprises in respect of modifications

Main providers

Two of the parties in the field (the Labour Market Institute and WLS) have already been described in earlier sections. The provision of technical aids is otherwise handled by a number of companies, either private or run by organisations for disabled people. These companies either manufacture the products themselves or act as agents for other producers. One of the largest companies in the field - Enter - is run by the National Association for Persons with Impaired Vision.

Occasionally the technical aid division of the county council participates in providing advice and help in acquiring a technical aid for work (such as chairs and computer aids).

Financing

The social insurance offices are responsible for grants for technical aids and modifications to the workplace for those who are already employed.

The Labour Market Board is responsible for ensuring that equivalent support is provided to unemployed people with disabilities to enable them to obtain and perform a job. The support is available when someone with a disability is employed and for any needs which may arise during the first twelve months of employment. Applications are made to the County Labour Board and social insurance offices, which are part of the Labour Market Board and county authorities for general labour market issues.

The County Labour Boards and social insurance offices have in practice very extensive influence over the equipment purchased. In many cases they decide for which equipment funds will be made available.

Regulations

The same rules apply to the payment of funds in two separate statutes, one for the social insurance offices and one for the county labour boards. Occupational aids is a general name for technical aids which could be personal or specific modifications of the workplace.

Grants for personal aids are applied for by the insured person, while the employer applies for funds for adaptation of the workplace. Grants can be given to both the employee and his/her employer at the same time for modifications to the workplace and for occupational aids. The grant amounts to a maximum of 50,000 kronor each for the employer and the employee. If the grant is for computer based aids a higher sum may be provided.

No grants may be paid for aids or modifications normally required at that workplace or which are required to ensure that the work environment is satisfactory. Nor may grants be paid for the repair of a fixture, a machine or a building.

In one respect, however, the regulations for the social insurance offices differ from those for the county labour boards. Grants paid by the social insurance office to the employer for technical aids may be provided with support for half the cost for the aid or modification in excess of 10,000 kronor. Somewhat less generous rules exist for the employer in comparison with the payment of grants by the county labour board.

Since both occupational aids and modifications to the workplace are generally part of the employer's responsibility for rehabilitation and the work environment, the employer is liable for the cost of equipment and modifications. This is also the case when a grant is not paid by the social insurance office or the labour market board. In general terms it should be the employer's responsibility to utilise the opportunities available to make retention of an employee who for medical reasons is unable to pursue his/her previous occupation as easy as possible. This responsibility includes obtaining technical aids in cases where this is necessary, within reasonable limits. In assessing the employer's responsibility, consideration is taken of the cost of the technical aids or modifications in question, how essential for the activities at the workplace the equipment is considered to be and how certain the assessment is that the employee will be assisted by the aid/modification.

IV.2.2 Services specifically directed towards job retention

The provision of technical aids by the social insurance offices is for those already in employment, which means that their activities are directed towards job retention.

IV.2.3 The availability of technical and advisory services and their use by enterprises

Access to technical aids for work is generally good with regard to both technical solutions and the generosity of the system. In Sweden funds have been available for satisfying most of the reasonable requirements for development of technology for adapting the workplace in individual cases. It may be assumed, however, that the high cost of technical aids could deter small companies in particular. This tendency is exaggerated when the aid in question is not computer-based.

The rules are generous and the availability of technical aids is well distributed throughout the country. The system has possibly been more generous towards those with severe disabilities than towards those with minor disabilities who have not participated in any labour market policy measures.

Despite a lack of reliable evaluations we may conclude that the provision of technical aids does not constitute an obstacle for disabled people seeking employment. The problem is rather the lack of employers willing to take on a person with a disability.

IV.2.4 Factors which encourage or discourage the use of technical and advisory services

Limits on the grants from the social insurance office for purchases of technical aids present a restrictive factor in connection with the use of aids and modifications of the workplace. In practice, however, there is a fair chance of obtaining a larger grant than the stipulated 50,000 kronor due to the exception made for computer-related technical aids since, nowadays, most technical aids are computer based or contain such components.

One difficulty associated with the availability of technical aids is the lack of aids for numerically small groups of disabled persons or groups whose need for aids receives attention at a relatively late stage. People with learning difficulties are an example of such a group.

Some criticism has been expressed that personal occupational aids, particularly fixtures and workplace modifications, are not sufficiently and actively used to create sound working conditions for disabled people. This problem has been explained as stemming from a lack of incentive for employers along with the absence of guidelines on the responsibility for the provision of technical aids.

The lack of incentives for research, development and the dissemination of information in the field adds to the problem. There is a lack of tangible demand and easily accessible means for research and development to improve incentives. The number of organisations and people initiating and carrying out development projects is far too low.

An obvious factor which has an adverse effect on the employer's interest in obtaining technical aids is the high cost. This factor is particularly important for small companies. The company's costs are naturally influenced by the limits which exist on the amount of funding available and which technical aids are eligible for funds from the social insurance office and the Labour Market Board.

A positive factor is that the prices of technical aids, including computer based aids, have fallen in recent years.

Many workplaces are now computerised, which makes modification easier.

Unfavourable factors mentioned to explain the lack of technological development include the following:

- ideas for development have been lacking or have not been formulated adequately (i.e. What type of work? For what category of disability? etc.);
- there are far too few technical development researchers within the field of disability;
- a redefinition of disability is needed, which takes into consideration developments on the labour market, the importance of specialisation and the development of IT;
- an increase in general unemployment and therefore a greater tendency among employers to avoid hiring/retaining people with disabilities;
- a generous early retirement pension system which possibly reduces the incentive for technical development with the object of providing severely disabled people with adequate work opportunities.

IV.3 TECHNICAL EQUIPMENT

IV.3.1 The provision and funding of equipment to meet individual needs

Section IV.2.1 described the main providers and funders of workplace modifications and technical aids.

The view of the Labour Market Board is that targets are being fully met. The problem is not so much a lack of funding for technical aids, as a lack of job opportunities for disabled people. During 1995/1996 the Labour Market Board spent just over 71 million kronor on technical equipment, of which around 33 million was for computer-based aids. This is a reduction of 20 per cent compared with 1994/1995.

The National Social Insurance Board's annual report for 1995/1996 discloses that not all the funds earmarked for the purchase of occupational aids via the social insurance offices had been used. Only 85 per cent of the funds of just over 157 million kronor had been used during the fiscal year 1995/1996.

IV.3.2 The balance between provision to the disabled person and to the enterprise

The balance in the above-mentioned special rules for occupational aids is reflected in the employer and the employee being eligible for the same maximum amount of 50,000 kronor for the purchase of occupational aids.

An important distinction is that the employer applies for a grant for the adaptation of the workplace while the employee applies for a grant for an occupational aid. This distinction is generally in the interest of the disabled person since an occupational aid is generally more expensive than adaptation of the workplace.

When the employer applies for a grant from the social insurance office for an already employed person, he/she has to contribute 10,000 kronor of the cost of the equipment. The grant paid amounts to half the cost in excess of 10,000 kronor. When the grant is paid by the Labour Market Board for a disabled person to be hired and for needs arising during the first twelve months of employment, the cut-off amount of 50,000 kronor does not apply.

The Work Environment Act and the General Insurance Act make general demands on employers in respect of technical aids. Funding for appropriate provision, however, may need to be negotiated in individual cases and may require the input of resources from the employers themselves (see V.12.1).

IV.3.3 The adequacy of provision

Bertil Sköld, Department Director of the Association for Persons with Impaired Vision, believes that the provision of technical aids functions well in general and meets the needs that exist. The highly decentralised structure of the provision of equipment by the social insurance offices does, however, make expensive modifications something of a problem. In many cases the social insurance offices would prefer not to pay the full cost of the more expensive items of equipment and modifications.

According to Guy Lööv, ombudsman for the National Federation of Disabled People, it is relatively common for social insurance offices to feel that the provision of an occupational aid or a fixture is classified as a work environment undertaking, which should be paid for by the employer. This can include even less expensive aids. The handling of the financial support varies depending on who deals with the case, the social insurance office involved and the type of aid in question. In certain cases, particularly the procurement of non-computer based aids, the ceiling of 50,000 kronor is a problem. On account of the ambiguity of the rules it can be hard to predict whether the sum requested for a certain technical aid will be granted or not.

The County Labour Board, on the other hand, is more willing to accommodate the applicant, according to Guy Lööv. The Labour Market Board has a stronger labour market perspective than the social insurance offices. Personnel cuts in recent years at the social insurance offices, without any reduction in their workload, have meant that an increasingly literal interpretation of the rules has clouded their labour market perspective.

IV.3.4 Factors which encourage or discourage take-up by employees and by enterprises

The Labour Market Board regards the dissemination of information as a problem. They also mention the

attitude of employers as creating difficulties in this context.

The cost of technical aids is perceived to be high, especially among small companies.

IV.3.5 Disabled people who benefit and those who miss out

Large groups of people who have so far managed to retain their jobs on the open market find it difficult to fend for themselves in the transition from an industrial to an information and service-oriented economy. Those suffering from dyslexia and people with learning difficulties are such groups.

Smaller groups of disabled persons are often ignored in connection with investments in technological development, by comparison with the traditionally stronger groups of disabled persons (partially impaired vision and hearing, and those with motor disabilities). Those who are both deaf and blind, and others with multiple disabilities, may be included in this group.

A disproportionately large proportion of adaptations carried out in 1990 was for those with impaired vision. Although the figures since 1990 may have changed slightly, the same basic ratio still applies - adaptations for the benefit of persons with impaired vision predominate, despite the relatively small size of this group among the total group of disabled people of working age. This can be explained by impaired vision being perceived to be more work-related and eligible for compensation within the systems existing within employment provision. Adaptations for people with visual impairments are also often easier to specify. A visual impairment is often of a technical nature, which means that if the concrete disability can be compensated for, the disabled person can then often function very well in his/her daily life.

IV.4 ACCOMMODATING WORK ROUTINES TO THE DISABLED WORKER

IV.4.1 External advice services which assist in the adjustment of work routines to individual needs

Most companies that sell rehabilitation services also deal with issues concerning changes in the organisation of work. Work organisation is an integrated aspect of the work of these companies, alongside rehabilitation and adaptation (as discussed in III.2.1 and III.2.2).

For the person seeking employment, discussions concerning the organisation of the work with the employer are included as part of the Labour Market Institutes' adaptation of the workplace.

IV.4.2 Comparison of the availability and use of provision to support job retention with provision to support access to work

An employer's responsibility to adapt the organisation of work is a consequence of the Work Environment Act and relates to all existing employees. There is, however, no corresponding responsibility towards potential new employees, in either individual or general terms.

IV.4.3 Factors which encourage or discourage take-up by employees and by enterprises

The extensive cuts carried out in public sector administration have reduced opportunities for adapting tasks and supervision. The high level of competence of the personnel at the Labour Market Institutes, as well as the close contacts between the Institutes and employers, makes the adaptation required for formerly unemployed disabled people easier when they wish to return to working life.

The demands made on employers by the Work Environment Act to adapt the organisation of work on the basis of the individual capabilities of the employee are naturally a positive factor in this context.

The increasingly high tempo of working life makes adaptation of the work organisation more complicated.

IV.4.4 Disabled people who benefit and those who miss out

Those groups who require an adaptation of work routines are particularly affected by problems since this area remains rather underdeveloped in Sweden. People with learning difficulties and those with repetitive strain injuries are examples of such groups.

IV.5 DESIGN AND IMPLEMENTATION

IV.5.1 The effects of inter-agency collaboration in the design and development of adaptive technologies

In Sweden there has been extensive co-operation between government, research establishments, manufacturers, educational institutes and disability organisations, particularly in relation to technologically advanced development projects or where basic awareness has been lacking. The advanced projects to develop technical solutions have numbered around 100 during the 1990s. The co-operation has demanded extensive work input and called for co-ordination since the parties came from different organisations. A positive effect of this co-operation has been achieved in terms of organisational goals (that the technology is put to good use in the organisation) and technical goals.

IV.5.2 Factors in control, funding, management or staffing, which impede or facilitate adaptation services

The financing of joint projects is not a particular problem. There is, however, no unified management of financing and therefore no unified control of the projects. Most of the projects are conducted at local level and the results have not been sufficiently disseminated - which means it has been difficult to replicate them elsewhere.

There is a lack of awareness among the social insurance offices, the personnel at the Labour Market Institutes and among companies of the potential that new technology provides for adapting work procedures.

IV.6 LINKS WITH EMPLOYMENT POLICIES

IV.6.1 The effect of employment policies on the use of adaptation services

The rules laid down in the Work Environment Act represent a direct demand that the employer should adapt working conditions to each individual employee's capacity for work. The Labour Inspectorates are also able to impose sanctions for breaches of these rules, even though in practice this very seldom occurs. The unions, via the health and safety officers, who represent the employee in connection with the work environment and who seek to promote a satisfactory work environment, can take up issues concerning adaptation of the workplace in negotiations with the employer.

The adaptation of the individual worker's environment is also an integrated aspect of the employer's responsibility for rehabilitation. The General Insurance Act, however, makes it impossible to impose sanctions on employers who do not fulfil their satisfactory obligations.

Inadequate adaptation can be an obstacle to the possible dismissal of an employee in the case of illness, injury or disability. Inadequate rehabilitation measures, such as inadequate adaptation of the work environment, can make a dismissal null and void.

All in all, these three laws make considerable demands on the employer to adapt the individual's working conditions. The potential for adaptation would be more favourable if the opportunity to obtain grants from the social insurance office were used more.

The 1997 survey by Statistics Sweden confirms that the combined effects of these measures are not

completely sufficient. Forty-three per cent of disabled people in employment who are in need of technical aids, a support assistant or workplace adaptation, believe that their employer has done nothing to adapt the workplace on the basis of their needs.

IV.6.2 Effect of labour market structure and demand on use of adaptation services

The current situation of high unemployment can be assumed to reduce the interest of employers in rehabilitation and adaptation of the workplace since there is a considerable reserve of labour ready to accept any vacancies.

IV.7 LINKS WITH BENEFIT AND COMPENSATION PROGRAMMES

IV.7.1 Arrangements for the joint funding of adaptation services

From the description in IV.2.1 of the regulatory system, it is clear that the main idea behind the rules is that the financing of occupational aids and other modifications should be shared. In practice, a considerable part of the equipment is financed out of public funds via the social insurance offices and county labour boards.

IV.7.2 Opportunities to receive rehabilitation benefits in adjusted working arrangements

There are no links between other rehabilitation measures and the adaptation of work and the workplace. It is, in other words, completely feasible to combine the use of occupational aids with the provision of other support for rehabilitation.

IV.8 LINKS WITH EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

IV.8.1 Co-ordination between employment support, rehabilitation and workplace adaptation services

Despite shortcomings, there is a high degree of co-ordination between employment support and rehabilitation and the adaptation of the workplace. The co-ordinating role of the social insurance offices for the rehabilitation of individuals is perhaps the most obvious evidence.

In several studies, it has been concluded that there are a number of failures of co-ordination (as discussed in III.6.1). The positive effects of closer co-ordination between the parties in this field have not been studied in any depth.

IV.9 The most relevant factors affecting the potential of job adaptation measures to promote job retention and return to work

The most relevant factors affecting the potential for job retention and return to work are:

- information for, and improvement of awareness by, employers;
- help by means of advice to employers to find tasks for disabled people in purely practical terms;
- training to improve the competence of personnel at Labour Market Institutes and social insurance offices - particularly in respect of technical solutions, the work situations where technical solutions have been successful, and, more generally, the opportunities for disabled people arising from changes in the labour market;
- stimulating the procurement of technical aids by the government or by state authorities and the continuation of generous rules relating to the procurement of occupational aids.

V. ENTERPRISE STRATEGIES

This final Part provides information about effective enterprise policies, management systems and programmes to retain workers whose continued employment is at risk because of disability. The focus is on activities which are introduced and managed by enterprises as an integral part of human resource and workplace relations management. It includes both integrated policies for the management of disability and specific practical initiatives in the workplace to promote job retention.

V.1 CORPORATE POLICIES AND PLANS

V.1.1 The development and prevalence of corporate employment policies and plans for the retention of disabled employees

The employer's responsibility for job retention is governed by the Work Environment Act and the General Insurance Act. The regulations in the Work Environment Act also cover the organisation and planning of the employer's job retention activities. The extensive regulation of this area and the local insurance offices' supervisory role in individual rehabilitation cases means that the Swedish system is marked by a large measure of involvement on the part of various public institutions. The employer's scope for independent action is greatly circumscribed by the existing regulations.

The Working Life Fund

From 1990 to 1995, the state and individual enterprises co-operated in a unique initiative called the Working Life Fund, which aimed to create a better work environment, increase productivity in companies, and reduce the amount of sick leave. The latter objective was to be accomplished through grants to employers to improve the working environment and to provide rehabilitation. The Fund had 11 billion kronor at its disposal (excluding inputs from individual enterprises themselves) and it initiated 25,000 workplace programmes. More than 50 per cent of employees in the country were estimated to be somehow affected by these programmes. The Fund was time-limited. Although established during an economic boom, it operated through a period of extreme recession and completed its work at a time of mixed economic development.

The management of the Fund's grants was undertaken in a 'mild' way and was directed more towards influencing employers through persuasion rather than through administrative pressure. Its influence often consisted in broadening a project from a focus on just the physical environment to the organisational aspects of the work environment. Just over a fifth of grants were allocated to measures aimed at improving the physical environment (representing more traditional work environment measures), less than a fifth were for rehabilitation measures, and more than one half were for changes in work organisation: for instance, changing from Tayloristic, functional systems to target-managed groups.

Although the Fund has been the subject of many analyses and evaluations, these have mostly been limited to specific themes or sections or types of enterprise. There has been little evaluation of the overall effects of the Fund. One of the problems relating to evaluation is that some of the positive effects achieved through the Fund were also accomplished in enterprises which were not in contact with the Fund - changes which were due to economic and political changes in society during the 1990s. It is highly unclear to what extent the measures for a better work environment led to permanent improvements. The Fund has been criticised for not establishing what lessons might be learnt from the initiative.

Some of the effects of the Fund have nonetheless been included in a final evaluation by the Working Life Institute in 1997. This found that rehabilitation measures and an improved work environment, resulting from the activities of the Fund, led to good socio-economic outcomes. A major cost/benefit study, in which enterprises, which received grants from the Fund were compared with similar enterprises which did not receive grants, showed a clear pay-off in terms of sick leave as a result of an improved work environment.

According to the Swedish Confederation of Blue-Collar Workers, the Fund played a very important role in improving the work environment. The programmes made employers aware that it can be economically profitable to invest in a better work environment and better work organisation.

One study showed the following positive effects of the work of the Fund:

- work environment projects were carried out sooner and were more comprehensive due to the intervention of the Fund;
- the so-called 'soft' issues were given a higher priority;
- there were more organisational changes and more work to increase the competence of employees in the projects of the Fund than in other project;
- there was a greater awareness of the importance of the work environment for the enterprise, not least an awareness of the connection between work environment and the balance sheet;
- the work environment of women was improved to a greater extent than in other projects which did not receive grants from the Fund.

A survey based on 37 per cent of the workplaces on the Fund's register showed that the savings for society over a period of five years would be 3.5 billion kronor. Another study showed that the contributions of the Fund led to two thirds of the reduction in absenteeism at the workplace.

V.1.2 Prominent actors and influences in the development of policies and plans for the retention of disabled employees

The most important partners for employers in the planning and organisation of rehabilitation and adaptation work are the union organisations at the workplace and the local social insurance offices.

It is reasonable that the social insurance offices and the unions should have some influence on rehabilitation activities, especially in view of their right to report any shortcomings to the Labour Inspectorate.

V.2 CO-ORDINATED RESPONSES TO DISABILITY

V.2.1 The development and prevalence of integrated disability management systems

No information is currently available on this topic. Some companies have earned a reputation for working systematically to recruit disabled persons. One such example of a large company is McDonalds, which has long had several employees with learning difficulties.

One likely reason for the lack of information in this field, and probably for a lack of practical experience, is the considerable responsibility assumed by the state with regard to both the financing of support for employment of disabled people and the implementation of the various labour market policy measures.

V.3 PRACTICAL PROGRAMMES AND INTERVENTIONS IN THE WORKPLACE

V.3.1 Enterprise programmes targeted at employees potentially absent from work because of disability

It is obvious that some companies have developed 'early warning systems' to help them identify potential problems. These initiatives have come about as a result of the efforts of the Working Life Fund (V.1.1). The

question of whether the systems will remain is not known, and the dispersion effect is also unknown.

V.3.2 Enterprise-initiated programmes to adjust the workplace and work-station

If such programmes do exist, they are a part of the rehabilitation and adaptation work commented on under V.1.1. Occupational aids and equipment for disabled people at the workplace are the responsibility of the employer, according to the Work Environment Act.

V.3.3 Enterprise initiatives aimed at co-workers

There are no comprehensive surveys, which provide specific information on this issue. Initiatives in this area can of course be fitted into the framework of the employer's responsibility for rehabilitation, but there are no explicit requirements. Special programmes directed towards employees with the aim of improving knowledge of and feelings of solidarity with disabled persons are probably a relatively rare phenomenon.

Two surveys carried out by the Disabled Persons Ombudsman in the form of questionnaires asked two categories of employer, state authority and local authority about the existence of training for personnel in fields relating to disabilities.

State authorities

The Disabled Persons Ombudsman carried out a survey of 192 state authorities' accessibility for physically disabled persons in 1995. Twenty-nine per cent of authorities said they provided training for staff on disability. Almost one-third of these stated that the training was for colleagues of employees with a disability. In connection with the recruitment of the disabled person, they had organised training related to that person's disability, for instance, teaching in sign language if the person was deaf or hearing impaired.

Regularly recurring training for all or some of the personnel was provided in one in five authorities.

The category of personnel given this training varies, depending on the activities. At universities and colleges it is usually the student counsellor or contact persons for disabled students, at museums and theatres it is personnel who have contacts with the public, at government authorities and companies in the real estate and communications field it is managers, supervisors and engineers with special areas of responsibility. In other areas it could be the safety representative or the occupational health and safety committees.

The size of the authority, as well as whether there is an employee with a severe disability, are significant factors determining whether or not any training is organised.

Local authorities

A similar survey to that relating to state authorities was carried out by the Disabled Persons Ombudsman in 1996 to chart the local authorities' accessibility for disabled people.

During the 1990-1996 period, 75 per cent of the country's 288 local authorities had provided training for their personnel in questions relating to disabilities.

These training courses had taken place in connection with the recruitment of personnel at seven per cent of local authorities. More general training for all or some of the personnel had been provided by 37 per cent of local authorities, and training of personnel with a special responsibility in connection with disabled people had been provided by 52 per cent of local authorities.

Other initiatives

The 'Lika Villkor' Trust (or 'Equal terms') is a newly-formed joint project involving a number of central union and employer organisations and three associations for disabled people. The aim of the project is to draw attention to the opportunities which should also be given to people with disabilities to get into the labour market. Today some 50 companies are involved in the 'Equal terms' project.

A company which becomes involved in 'Equal terms' is obliged to inform its employees that it has done so, and what it involves. Most affiliated companies have taken on work experience trainees who have some form of disability. In connection with this, around half of the companies have organised speeches at personnel meetings on the effects of the disabilities.

The project as a whole is still fairly new and of limited scope, and little documentation is available about it. Its impact has yet to become clear.

V.4 WORK ACCOMMODATIONS

V.4.1 Schemes initiated by enterprises to adapt working hours and work demands

The adaptation of working hours for disabled employees has not been studied and it is therefore difficult to comment on it. However, this report has indicated that adapting the organisation of work is one of the least developed areas in Swedish work environment policy (see IV.4.3).

V.5 'RETURN-TO-WORK' PROGRAMMES

V.5.1 Enterprise-led 'return-to-work' programmes targeted at employees absent from work because of disability

These are also areas, which have only been surveyed to a limited extent. As a result of the extensive responsibility assumed by the state, there is also only a limited interest among employers in taking independent initiatives.

Employers' circles

With the support of funds from the Working Life Fund, there were attempts to start up 'employers' circles' at the beginning of the 1990s. These activities have continued, even after the winding up of the Working Life Fund in 1995, although with less intensity. An employers' circle can be described as a voluntary collaboration between employers in a certain region, primarily on rehabilitation issues. Such collaboration can also cover other activities in the field which are intended to raise competence. The activities include work training in various companies and the transfer of employees from one company in the circle to another. As member of a circle, an employer must be prepared to accept employees from other member companies in the circle. There is some exchange of experiences regarding each other's work in such fields as rehabilitation, but also other types of experiences.

In the country as a whole, the number of employers' circles is estimated to be 10 to 15, including approximately 200 enterprises. In the region of Stockholm there are only a few circles, with five to seven companies in each. The member companies are generally large companies with many employees. These circles do not show any tendency to break up - which indicates that members are satisfied with their work. However, the circles have not managed to take in many new companies.

Arbetslivstjänster, companies specialising in health issues within enterprises, and private consultancy firms are the usual administrators of the circles; their administrative work is carried out on a commercial basis.

Galaxy

In section I.2.2, reference was made to the Galaxy project in the construction industry, which involves the placement of disabled people in regular employment with the aid of a wage subsidy.

V.6 MOST PROMINENT STRATEGIES

Responsible companies usually have a strategy of adhering to the rules on rehabilitation in the General Insurance Act and the Work Environment Act and of working closely with the National Labour Market Board, which arranges placements for employees with disabilities.

V.7 DEFINITION AND ASSESSMENT OF DISABILITY

V.7.1 The effect of procedures for identifying disability at work on access to enterprise job retention and 'return-to-work' programmes

In Sweden a fairly broad concept of disability is applied, which is reflected in the various regulations in this field. This also means that companies assimilate this broad categorisation in their internal work. Most recognised diagnoses, which involve a physical impairment or mental health problem, are included here, even 'invisible' disabilities. For an example of the most common groups of disabilities, see the Table in I.8.2 concerning disabled people in employment.

Some groups, which usually fall outside the definition of disabled people are individuals addicted to drugs and alcohol and persons suffering from stress, unless this stress is expressed in the form of a mental health problem or physical disability. Nor has the group of severely overweight persons made much impact as an established group of disabled people.

The interesting point about the group comprising alcohol and drug abusers is that they have been defined by the National Labour Market Board as disabled in certain contexts and then come under the heading of socio-medically disabled. These groups' organisations do not regard themselves and are not generally regarded as organisations for disabled people.

V.8 INTERNAL RELATIONSHIPS

V.8.1 Effects of the relationship between actors within the enterprise on strategies to promote job retention

The involvement of the union in questions relating to disabled people is very important for disabled persons' job retention. The unions have both extensive power and opportunities to utilise the instruments, which exist to support individuals in the Employment Security Act, the Co-Determination at Work Act, the Work Environment Act and the General Insurance Act. An employee who has a union on their side in a court case against an employer does not run the risk of having to pay expensive court costs in the event of losing the case. The Work Environment Act and the Co-Determination at Work Act also give the unions special powers (for instance in relation to the appointment of workers with a remit for the Work Environment Act, and for calling meetings with employers on work environment issues).

However, union involvement does not always exist, which can make it very difficult for a person with a disability whose employer is against them: unions are often not very concerned with disability issues in general, and many disabled people have felt themselves let down by the unions.

Nor is it unusual for other employees primarily to express solidarity with the employer, rather than with the disabled person, in the event of a dispute.

V.8.2 Effects of hiring and remuneration practices on job retention

As a result of the Employment Security Act, the Work Environment Act and the General Insurance Act, hiring and remuneration practices do not constitute any direct obstacle to disabled persons' possibilities of retaining their jobs.

The main problems are experienced by disabled persons seeking work. As yet there is no protection against discrimination against disabled persons seeking employment and there are no rules limiting the use of medical tests in connection with the hiring of persons in the private sector.

V.8.3 Financial opportunities for and obstacles to internal job retention measures

Given a lack of surveys or other information, it is difficult to find any material for an analysis of financial opportunities or obstacles for internal job retention.

V.9 LINKS WITH EMPLOYMENT POLICY OBLIGATIONS, RECOMMENDATIONS AND INCENTIVES

V.9.1 Congruence between enterprise strategies and external practice recommendations and standards

Earlier comments show that the requirements of the Work Environment Act with regard to the work environment of disabled persons are far from fulfilled, whether with regard to the organisation of rehabilitation activities or individual work adaptation.

The same applies to a similar extent to employers' work on individual rehabilitation.

However, it is important to bear in mind that Swedish legislation still makes relatively limited demands on employers. There is currently no ban on discrimination at work due to disability, no requirement for the employer to recruit persons with disabilities and no requirement for any form of action programmes or policies in this field, with the exception of those already mentioned concerning the organisation of rehabilitation activities.

V.9.2 Ways in which employment and labour market policies impede or facilitate enterprise-led work adaptation programmes

On the whole, Swedish labour market policy provides support for employers' attempts to adapt the work environment. This is partly achieved through the demands made on employers in the Work Environment Act, demands which in the final analysis could also result in sanctions, and partly through the relatively generous system which exists for grants for purchasing occupational aids and equipment for the workplace and the system of wage subsidies.

However, one might suspect that the local social insurance offices' responsibility for the rehabilitation of those who are already employed and their ability to finance rehabilitation measures in many cases represent a negative incentive for less ambitious and more calculating employers.

V.10 ENTERPRISE STRATEGIES AND BENEFIT/COMPENSATION PROGRAMMES

V.10.1 Effects of the availability and level of out-of-work benefits on enterprise recruitment and dismissal policies

The state's assumption of responsibility for persons without work in the form of labour market policy measures and subsidies makes it easier for an employer to dismiss employees or to avoid recruiting persons with disabilities, with a good conscience.

V.10.2 Enterprise responses to in-work social security benefits

The will to hire or retain employees with disabilities is dependent on whether or not the employment involves extra costs for an employer. Long periods of sick leave, which the employer is responsible for financing, have a negative influence on the desire to hire and/or retain disabled employees.

It is not known to what extent partial sickness compensation, sickness benefit and early retirement appeal to employers. However, in recent times there has been an increase in the number of persons in receipt of partial sickness compensation.

It does happen that employers in wage negotiations have wanted to penalise financially persons who have extensive or long-term sick leave. There are examples of cases where disabled persons have also suffered from such a policy.

V.10.3 The co-ordination by benefits agencies and enterprises of disabled workers' transition from benefits support to waged income

Section II.1.3 describes the procedures to be undertaken by social insurance offices to draw up and monitor rehabilitation plans.

V.10.4 Opportunities for disabled employees to join, self-fund or top-up workplace health benefits and pension plans

Insurances and other benefits, which follow from collective agreements do not exclude persons with disabilities. Many disabled persons usually find it hard to take out private insurance policies, which contain a risk analysis.

V.11 LINKS WITH EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

V.11.1 Enterprise responses to externally funded support and advisory services

Companies are unsurprisingly receptive to the idea of financial support in connection with the hiring of persons with disabilities. The National Labour Market Board cites the reduced scope for wage subsidy jobs in 1995/96 as an explanation for the difficulties in getting disabled persons into employment during that period.

V.11.2 Co-funding and partnership between enterprises and other agencies

Shared financing and collaboration in the field of rehabilitation is mainly between the employer and the local social insurance office, as described earlier.

V.11.3 Opportunities and barriers to effective co-ordination of external support services and enterprise programmes

One factor in favour of hiring external assistance is the professionalism of the help and in many cases an external source of financing, i.e. the local social insurance office.

V.11.4 Opportunities for and barriers to disabled workers' co-ordination of their workplace support

In some cases it is the employee who applies for rehabilitation and work adaptation. This is the case with grants for occupational aids to the extent that these aids are intended for the employee personally.

The employer should be responsible, in consultation with the employee, for ensuring that the employee's need for rehabilitation is made clear and for any necessary measures being taken. A potential rehabilitation

plan that the local social insurance office sets up should also, where possible, be established in consultation with the employee.

V.12 LINKS WITH SERVICES FOR ADAPTATION OF WORK AND WORKPLACE

V.12.1 Enterprise response to external services to undertake adaptations

A common complaint from officers at local social insurance offices is that employers are not prepared to invest resources in adapting the workplace.

It can also be seen from the survey of employment conditions for disabled people referred to earlier that a very high percentage of all disabled persons feels that their employer does not meet their needs for adaptation measures at the workplace. Almost one in two people (43 per cent) said that the employer had done nothing to adapt the workplace to their disability.

V.12.2 Arrangements to assist enterprises with purchase of external services

Since the beginning of the 1990s the local social insurance offices have been allocated funds for the independent procurement of employment-oriented rehabilitation. These funds can also be used for the rehabilitation of those already employed, which makes the local social insurance offices an important co-financier for the employer.

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Study Report

New Zealand

Regina Pernice and Neil Lunt

School of Health Sciences and School of Social Policy Studies and Social Work, College of Humanities and Social Sciences, Massey University

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PREFACE

The *International Research Project on Job Retention and Return to Work Strategies for Disabled Workers* is an initiative of the International Labour Organisation (ILO) and the Global Applied Research and Information Network on Employment and Training (GLADNET). It reflects ILO and GLADNET joint aims of establishing a base for cross-national research and strengthening links between research analysis and policy reform in the field of employment of disabled people.

The Project is a response to a combination of developments which highlight the need for more effective policies and practices in support of workers whose prospects of remaining in employment are jeopardised by work injury, illness or disability. Persons with disabilities are increasingly claiming rights to stay in work as well as to access employment. Pressures on state budgets, the rising costs of compensation claims and disability benefits, and changes in the structure of the labour market are strengthening policies in favour of job retention and return to work. Enterprises are developing their own strategies to minimise the costs of disability and to retain valued employees. Overall, the balance of responsibility is shifting from the state to the enterprise.

Policies and practices to prevent disabled workers from leaving work unnecessarily, and to facilitate rapid return to employment if job loss cannot be prevented, are recent developments in many countries. The cross-national exchange of information on initiatives and their effects is limited. The first aim of this Project has been to gather information about what has been attempted, by whom, for what purposes, in which contexts and to what effects. The second, more ambitious, aim, is to examine the interaction between the various policies and practices, identify dysfunctions, and work towards more coherent and cost-effective

strategies for job retention and return to work which might be applied in different national systems. The ultimate objective is to identify strategies which can be put into effect in the workplace.

The Project was constructed in two phases. In Phase One, eight exploratory desk-based studies were commissioned from researchers in Canada, France, Germany, the Netherlands, New Zealand, Sweden, the United Kingdom and the USA. The eight countries invited to participate represent a spectrum of policy approaches and enterprise practices which affect the retention and return to work of workers with disabilities. Australia joined the project at a later stage.

The studies formed the basis for a *Key Issues Paper*, published simultaneously with the eight country reports. This Paper aims to inform, stimulate debate and pave the way for constructive discussion of questions for further exploration through cross-national collaboration in Phase Two.

National government departments, agencies, a private sector organisation, and the ILO co-sponsored Phase One of the Project. Overall responsibility for the Project rests with the ILO (Vocational Rehabilitation Branch, Employment and Training Department). The design, implementation and analysis of the research in Phase One were the responsibility of the Research Co-ordination Unit established at the Social Policy Research Unit, University of York (UK) in April 1997. Research specialists in the main areas of enquiry, based in study countries, contributed at all stages of the research process and, with ILO representatives, met with the research co-ordinators as a Research Advisory Group.

The country studies

The Project recruited and supported national informants from research institutes in all eight countries. During the second half of 1997 they completed a Schedule of Questions developed by the Research Co-ordination Unit to describe policies and practices, document evidence of their effects and provide grounded commentary on how policies and practices interact. The principal sources were policy documents, survey data, research evaluations and critical reviews. Informants were encouraged to contact sources in government departments and agencies, disabled people's organisations, labour unions and employers' groups. Where documented information was lacking, informants interviewed experts in the field.

The eight country reports are important resources for the development of job retention policy and practice both within and across countries. Each report brings together within a single volume: descriptions of policies, practices and programmes which impact on job retention and return to work; evaluative material; and informed commentary. They cover five themes: employment and labour market policies; benefit and compensation programmes; employment support and rehabilitation services; adaptation of work and workplace; and measures developed and implemented by the enterprise. In line with the research aim of identifying coherent and co-ordinated strategies, the informants both comment on dysfunctions in national systems which obstruct job retention efforts and identify links between themes.

It should be noted that the situation described in the reports may have changed. This is especially true of the Netherlands where further reforms were expected in the first half of 1998 and the United Kingdom where the government changed in May 1997. Important developments in the USA were announced in March 1998.

The reports produced by the eight teams of national informants conformed to the format laid down by the Schedule of Questions. The original reports have been edited for publication by the Research Co-ordination Unit in co-operation with their authors. However, they remain essentially the 'raw data' for analysis and should be read in that light. Each report follows the same sequence of headings which reflect the original open-ended questions. As the questionnaire prompted informants to respond flexibly to suggestions about possible areas to address under each question, the content varies from report to report. The reader should note that, at the end of a thematic section, commentary may be included on the links between that theme and those which precede it.

Terms used in the study

The study concerns paid competitive employment in the open labour market.

The term 'disabled workers' is broadly defined. It covers individuals who become disabled, injured or ill whose prospects of continuing or advancing in employment are jeopardised when an acquired impairment, illness or deteriorating condition - physical or mental - presents difficulties in fulfilling the requirements of the job, reduces earning capacity or affects other rewards of working. They may or may not qualify under legal definitions of disabled persons. The term also covers workers with disabilities whose working capacity is not diminishing but whose continued employment is nevertheless threatened by prejudice or discrimination, or by the loss of supports which have maintained them in the job.

'Job retention' means staying with the same employer, with the same or different duties or conditions of employment, and includes return after a period of paid or unpaid absence. 'Return to work' refers to the resumption of employment by a worker who has crossed the threshold from a continued employment relationship into non-employed status; the main interest of the study is in policies and practices which return the disabled individual to work at an early stage.

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Patricia Thornton

Research Co-ordination Unit

Social Policy Research Unit, University of York, UK

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Copies of the 'Methodology Paper' and the 'Informant Briefing and Schedule of Questions' may be obtained from the Research Co-ordination Unit, Social Policy Research Unit, University of York, YO1 5DD, UK.

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I. EMPLOYMENT POLICIES

The purpose of this Part of the report is to describe policies, which maintain those workers in employment whose continued employment is at risk because of disability. It provides evidence of the effects of those policies and identifies factors, which influence their effectiveness. The emphasis in this part is on national (or state/provincial) policies formulated by government, and by bi-partite or tri-partite policy-making and advisory bodies.

Sections 1 to 5 are concerned with legislation, incentives and other 'persuasion' policies which oblige and encourage enterprises to retain disabled employees. A distinction is made between employees who become disabled and those who are already disabled. Information is provided about employment policies which encourage disabled employees to retain or return to their jobs. Sections 6 to 8 focus on the factors which affects the success of policies. They also examine the labour market factors which contribute to the retention or loss of jobs among disabled people.

I.1 POLICIES WHICH AIM SPECIFICALLY TO INFLUENCE ENTERPRISES TO RETAIN NEWLY DISABLED EMPLOYEES

I.1.1 Legal obligations intended to prevent and restrict dismissal of employees who become disabled

Human Rights Act 1993

The only legal obligations that prevent and restrict dismissal of employees who become disabled are laid out in the Human Rights Act (1993). As with other anti-discrimination and human rights legislation, the Act has generic coverage, i.e. for job applications, promotion, as well as dismissal. It applies to disabled workers in general, as well as to those who become disabled.

The Human Rights Act came into force from 1 February 1994, replacing earlier human rights legislation - Race Relations Act 1977 and Human Rights Commission Act 1977. Disability was newly added to the 1993 Act which prohibits discrimination on the grounds of sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinions, employment status, family status, and sexual orientation.

'Disability' is taken to mean:

- i) Physical disability or impairment
- ii) Physical illness
- iii) Psychiatric illness
- iv) Intellectual or psychological disability or impairment
- v) Any other loss or abnormality of psychological, physiological, or anatomical structure or function
- vi) Reliance on a guide dog, wheelchair, or other remedial measure
- vii) The presence in the body of organisms capable of causing illness.

Coverage extends to a person, their relative or any associate, and covers current disability, past disability or suspected grounds of disability.

Section 22 makes it unlawful to:

- a) refuse or omit to employ the applicant on work of that description which is available;
or
- b) offer or afford the applicant or the employee less favorable terms of employment, conditions of work, superannuation or other fringe benefits, and opportunities for training, promotion, and transfer than are made available to applicants or employees of the same or substantially similar circumstances on work of that description; or
- c) terminate the employment of the employee, or subject the employee to any detriment, in circumstances in which the employment of other employees employed on work of that description would not be terminated, or in which other employees employed on work of that description would not be subjected to such detriment; or
- d) retire the employee, or to require or cause the employee to retire or resign, for any of

the prohibited grounds of discrimination.

Section 23 makes it unlawful for any person to use or circulate any form of application for employment or to make an enquiry of or about any applicant for employment which indicates, or could reasonably be understood as indicating, an intention to commit a breach of Section 22 of this Act.

Section 29 (1) outlines that the Act does not prevent different treatment based on disability where:

- a) The position is such that the person could perform the duties of the position satisfactorily only with the aid of special services or facilities and it is not reasonable to expect the employer to provide these services or facilities; or
 - b) The environment in which the duties of the position are to be performed or the nature of those duties, or of some of them, is such that the person could perform these duties only with a risk of harm to that person or to others, including the risk of infecting others with an illness, and it is not reasonable to take that risk.
- 2) Nothing in subsection (1)(b) of this section shall apply if the employer could, without unreasonable disruption, take reasonable measures to reduce the risk to a normal level.
 - 3) Nothing in section 22 of this Act shall apply to terms of employment or conditions of work that are set or varied after taking into account:
 - a) any special limitations that the disability of a person imposes on his or her capacity to carry out the work: and
 - b) any special services or facilities that are provided to enable or facilitate carrying out the work.

Implementation of the Act

The Act is in early stages of implementation.

The Act is administered by the Department of Justice. When first introduced in Parliament the Minister stated, 'Its purpose is to consolidate, revise, and strengthen the law relating to discrimination'. Parliamentary discussion around the passage of the Act was dominated by the sexual orientation clause and disability did not figure highly in debates.

Under the Human Rights Act there continues to be a Human Rights Commission, established under section 4 of the Human Rights Commission Act 1977. The Commission has a number of functions including: promoting education and publicity of human rights; co-ordinating programmes; publishing statements and guidelines; receiving submissions from the public; and inquiring into infringements under the Act.

The Complaints Division of the Human Rights Commission receives complaints, conducts investigations, monitors the Act; and performs a conciliation role. The Division may call for compulsory conciliation, which may lead to a settlement that includes compensation or an apology. If there is no settlement, or its terms are not observed, then proceedings may take place. Remedies can then include the issuing of a declaration, a restraining order, and payment of damages.

(For interaction between the Human Rights Act and the *Privacy Act 1993*, the *Health and Safety in Employment Act 1992* and the *Employment Contracts Act 1991* see I.7.1.)

Awareness

The Human Rights Commission conducted a series of educational presentations to raise awareness around the Act. This included presentations given to disability groups, employees and unions, and employers and managers. Although 48 pre-employment workshops were held there were difficulties in attracting small businesses. Overall, employment is the largest source of enquiries for the Commission and the implications of the Act for pre-employment matters are least well-known.

Some feel that the passage of the Act may have unduly raised expectations. According to the 1995-6 Human Rights Commission Report: 'The Human Rights Act which came into effect in February 1994 included disability as a ground for unlawful discrimination and raised expectations within the disability sector that the Act would significantly alter access to goods, services, accommodation and education for people with disabilities ... it remains an issue of concern to the Commission and the disability sector that not enough people with disabilities feel significantly empowered to use the Act to effect change in their daily lives'.

The Act led to a major initiative to produce an education and training resource based on the experiences of people with disabilities.

Outcomes

Of 774 enquiries between 1 July 1995 to 30 June 1996, eight per cent related to disability. Of the 241 complaints opened in the year ended 30 June 1996, 22 (eight per cent) related to disability discrimination in employment under Section 22, and four under Section 23.

There is concern about the time and resources taken to investigate a complaint: 'In order to increase the timeliness and effectiveness of its service, the Complaints Division continues to emphasise the benefits of conciliating complaints as opposed to investigating and then obtaining a formal finding or Complaints Division opinion.'

Other

New Zealand has no requirements to retain or redeploy a newly disabled employee, no requirements to follow special dismissal procedures, and no penalties for terminating employment (apart from those laid out under the 1993 Human Rights Act).

I.1.2 Legal obligations intended to promote the retention of employees who become disabled

(For the provisions of the Human Rights Act 1993 see I.1.1.)

Accident Compensation Scheme

Since 1974 the New Zealand Accident Compensation Scheme has been regarded in New Zealand and overseas as an innovative and sensible approach to the problems associated with compensating and rehabilitating persons who have had an accidental injury.

It was designed on five principles: community responsibility, comprehensive entitlement, complete rehabilitation, real compensation and administrative efficiency. It was a scheme which provided comprehensive entitlement to compensation for all persons who had a 'personal injury by accident'. Cover under the scheme applied to all personal injury by accident without proof of 'fault' (no-fault scheme) and no matter how or where the accident occurred, whether at work, at home, on the road, at sport or recreation or elsewhere. The right to take proceedings in a New Zealand court to recover compensatory damages arising directly or indirectly out of personal injury by accident suffered was abolished. This scheme has operated since 1974 (with some changes over time, e.g. in 1982) but with some significant amendments resulting from the *Accident Rehabilitation and Compensation Insurance Act 1992* (ARCIA). The Accident Compensation Commission (ACC) was set up in 1974 with legal obligations to promote the retention of injured employees;

its name was changed in 1982 to the Accident Compensation Corporation and in 1992 to the Accident Rehabilitation and Compensation Insurance Corporation (although it remains known as ACC).

The 1992 changes principally involved:

- a shift in ACC's responsibility from compensation to rehabilitation.

Under *ARCIA*, ACC provides vocational rehabilitation to people whose impairment is a result of personal injury caused by accident. Vocational rehabilitation is limited to claimants who are receiving weekly compensation for loss of earning capacity; receiving weekly compensation for loss of potential earning capacity; and likely without vocational rehabilitation to become entitled to weekly compensation. Vocational rehabilitation is available for up to a maximum of three years to achieve the goal of maintaining employment or to provide a capacity for work. ACC works with employers, rehabilitation service providers and medical practitioners to develop vocational rehabilitation plans for claimants. This includes:

- vocational guidance
- employment preparation assistance
- workplace modifications and accommodations (environmental - removing barriers, installing special equipment; job modification - hours of work and work procedures etc).
- work trials
- training
- self-employment assistance.
- experience rating for employers.

Under the *Accident Compensation Act 1982* there were provisions for granting rewards and imposing penalties on employers according to their safety record; although no penalty system was ever introduced by ACC, for a period safety incentive bonuses were paid to employers with good accident records. The introduction of experience rating, however, reflects an attempt to levy employers more accurately by grouping them into industry categories: employers are costed for their work injury claims using a formula that is laid out in the *ACC Experience Ratings Regulations 1993*. The impact of this has been felt by most large companies - some have received a rebate for having a good claims record, while some receive a loading for having a high claim record.

- the abolition of lump sum awards.

(The accident compensation scheme will be discussed further in II.1.1.)

Other

New Zealand has

- no obligations to review job demands
- no obligations to make accommodations
- no obligation to (re)train.

I.1.3 Legal obligations intended to prevent disability

Health and Safety in Employment Act 1992

The principle objective of the *Health and Safety in Employment Act (1992)* is to prevent harm to employees at work. The Act seeks to promote excellence in health and safety management by employers; prescribes, and imposes on employers and others, duties in relation to the prevention of harm to employees; provides for the

making of regulations, and the development and approval of codes of practices, relating to hazards to employees.

Section (6) prescribes: 'Employers to ensure the safety of employees - every employer shall take all practicable steps to ensure the safety of employees while at work; and in particular shall take all practicable steps to:

- a) provide and maintain for employees a safe working environment;
- b) provide and maintain for employees while they are at work facilities for their safety and health;
- c) ensure that plant used by any employee at work is so arranged, designed, made, and maintained that it is safe for employees to use;
- d) ensure that while at work employees are not exposed to hazards;
- e) develop procedures for dealing with emergencies that may arise while employees are at work'.

The Minister may be asked to approve a statement of preferred work practices or arrangements or regulations.

The Health and Safety Act 1992 offers a new approach for promoting excellence in the management of health safety in places of work. The stated focus is on preventing harm arising out of work activities - whatever the place of work. The Act puts the primary responsibility on the employer, who has a duty to provide a safe and healthy work environment. Previously problems existed with fragmented and inconsistent safety and health legislation. The legislation aims to reduce, simplify and update. It provides a coherent framework for the promotion of excellence in the management of risk in the workplace.

(For interactions between the Health and Safety Act 1992 and the ACC Experience Ratings Regulations 1993 see I.7.1.)

There are several views about the extent of compliance with the 1992 Health and Safety in Employment Act. Bradley, for example, notes an unsatisfactory level of compliance. He points out that, in select committee submissions, the indications were that the Occupational Safety and Health (OSH) service has been under-resourced. His survey of 131 local and regional organisations and utilities New Zealand-wide in 1995 revealed that:

- 50 per cent of respondents believed the Act had caused a 'paper war'
- 16 per cent had no circulated OSH policy
- 27 per cent had no understanding of the impact and ramifications of the Act on the general workforce.

The impact of contracting out has a big effect on how the responsibility under the Act to secure safe working environments works in practice. Many of the large forestry and logging companies, for example, contract with smaller teams, and require these individuals to be adequately trained. This devolves responsibility for training to the smaller sub-contractors and away from the larger firms.

I.1.4 Voluntary policies and programmes which encourage enterprises to retain newly disabled employees

(See I.2.2 for Equal Employment Opportunity Policies (EEO) which aim to encourage the recruitment and retention of disadvantaged groups, including disabled workers.)

Accredited Employers Programme

One voluntary programme relating to financial provision for newly disabled people is the Accredited Employers Programme, which was piloted in 1994 by the ACC. This enables employers with reasonable financial assets and capacity to meet approval criteria to take certain duties and responsibilities normally undertaken by ACC. Approved employers manage the work injury claims of their employees for the first year following injury, which involves paying weekly compensation and other entitlements, paying all medical and rehabilitation expenses, and managing and administering the claims within the ARCI Act 1992. For their part, the employer is paid an amount estimated to be the value of costs associated with the first 12 months of a claim. The ACC conducts an extensive audit to ensure that employers under the Programme have all necessary health and safety, claim management and rehabilitation procedures and systems in place.

Financial incentives for the retention of newly disabled employees are thus built into the ARCI scheme. (Subsidies, grants and incentives for the recruitment and retention of disabled workers in general are reported in Section I.2.3.)

Other

New Zealand has no bi- or tri-partite agreements or industry-wide standards or benchmarks that are specifically aimed at retention of newly disabled employees.

I.2 POLICIES TO OBLIGE AND ENCOURAGE ENTERPRISES TO RETAIN DISABLED WORKERS IN GENERAL

I.2.1 Obligations to promote the retention of disabled workers in general

Accessible work environments

The *NZ Building Standard 4121 (1971)* was a recommendatory code of practice concerning building design for people with disabilities, which exempted only transport terminals and public lavatories. Later, Section 25 of the *Disabled Persons Community Welfare Act 1975* made it a requirement that reasonable and adequate provision be 'made for disabled persons who may be expected to visit or work in the building or premises to enter and carry out normal activities and processes therein.'

The *Building Act (1991)* is a recent development which gives added impetus to existing provisions. The Act provides for buildings, as defined under section 25 of the *Disabled Persons Community Welfare Act*, to have the means of access and facilities that meet the requirements of that Act to ensure that reasonable and adequate provision is made for people with disabilities to enter and carry out normal activities and processes in those buildings.

The Act was introduced because of the ineffectiveness of previous measures. Standard 4121 (1971) only made recommendations, while after 1975 there was a failure to realise that section 25 of the *Disabled Persons Community Welfare Act* took precedence. In 1985 Standard 4121 (1985) introduced new mandatory standards, but did still not contain the direct means of enforcement.

Section 6(e) of the *Building Act (1991)* refers to the need to 'provide, both to and within buildings to which section 25 of the *Disabled Persons Community Welfare Act 1975* applies, means of access and facilities that meet the requirements of that Act to ensure that reasonable and adequate provision is made for people with disabilities to enter and carry out normal activities and processes in these buildings'.

Buildings cannot be changed unless the territorial authority is satisfied that the new building will:

‘comply with the provision of the building code for means of escape from fire, protections of the property, sanitary facilities and structural and fire-rating behaviour, and for access and facilities for use by people with disabilities (where this is a requirement in terms of section 25 of the Disabled Persons Community Welfare Act) and nearly as is practicable to the same extent as if it were a new building; and continue to comply with the other provisions of the building code to at least the same extent as before the change of use.’

The 1991 Building Act and the 1975 Disabled Persons Community Welfare Act each refers to the other and must be read together in respect of the provision of adequate and reasonable access and facilities for people with disabilities. Before the 1991 Act came into force, section 25 of the Disabled Persons Community Welfare Act was the only provision of any Act that required buildings to include access and facilities for people with disabilities. It provides that adequate and reasonable provisions for people with disabilities were to be provided in new buildings and in the ‘major reconstruction’ of existing buildings. The Act maintains the status of section 25, but requires changes to existing buildings that are being altered.

The clear intention of the two Acts is that buildings must not be constructed in such a way as to prevent people with disabilities from undertaking work of which they are physically capable. What is ‘reasonably practicable’ is to be decided on each individual case. Territorial authorities have no power to waive or modify requirements to comply ‘as nearly as is reasonably practicable’. The only powers to grant waivers or modifications are in respect of existing buildings, not new ones, and are exercised by the Building Industry Authority. Only the Building Authority itself can: ‘... provide for a waiver or modification from all or any of the requirements of this section if, having regard to all the circumstances, the Building Industry Authority determines that it is reasonable to grant the waiver or modification’.

If there is any alteration of a building (no matter what size or effect) then it must be made accessible and usable by people with disabilities, as nearly as possible as if it were an entirely new building. Thus more buildings will be altered over time and made usable for people with disabilities. If there is a change of use in a building then the building must be made accessible and usable by people with disabilities, as nearly as possible as if it were an entirely new building.

According to Angus, ‘hopefully, the combined efforts of the legislative amendments and the inclusion of the access requirements as part of the normal procedures under the Building Act, will usher in a new era of accessibility in the built environment for the present and future benefit of people with disabilities’.

The combined efforts of individuals and organisations, including the Disabled Persons Assembly and NZ CCS, were successful in bringing about the 1991 Act. The next logical step is to ensure that the proposed NZ Building Code actually implements the access provision in the Building Act. The Act includes the means for this to be achieved by providing that the members of the Building Standards Authority should possess a mix of knowledge and experiences around building and construction, economics and commerce, local government and resource management, and consumer affairs and the provision of facilities for people with disabilities.

From observation made at Building Industry Authority Standards seminars, many building owners and designers are hostile and try to avoid the requirements of the Act. Some commentators, however, recommend that the Act be seen as an opportunity rather than an obstacle.

The Barrier Free Trust (a non-statutory organisation) provides courses to train ‘Barrier Free Auditors’. These are provided, for example, to territorial authorities who have responsibility for issuing compliance certificates. The Trust is also contracted by large employers to provide audits. One branch of the ANZ Bank, for example, has introduced a disability-accessible counter. Similarly, Midland Health and Southern Health have recently done barrier free audits. The Trust also has an advocacy role, acts as a watchdog to BIA determinations, and fields complaints from people with disabilities. Despite this, there is said to be less

activity and interest in identifying and eliminating workplace barriers than in securing accessibility to more general public places.

Quota and quota-levy schemes

New Zealand has no quota or quota-levy schemes.

I.2.2 Voluntary policies to persuade and encourage enterprises to retain disabled workers in general

Equal Employment Opportunity (EEO) policies aim to encourage the recruitment and retention of disadvantaged groups, including disabled workers. We explore EEO policies in both the public and private spheres.

Employment equity in the public sector

The *State Sector Act (1988)* makes provision for equal employment opportunity in the public sector. Specific EEO groups listed in Section 56 of the Act are Maori, ethnic or minority groups, women and persons with disabilities.

Section 56 sets out the requirements for the chief executive of a Public Service Department to be a 'good employer'. In addition to establishing and maintaining equitable employment policies and practices for staff generally, employers are expected to introduce specific measures to address the disadvantages faced by particular groups of staff. Each year the chief executive must develop and publish an EEO programme for the department and an annual EEO report that provides an account of the extent to which the plan has been achieved. Under section 6 of the Act, the State Services Commission has a responsibility to monitor the EEO programmes and policies in the public service.

Background

Equal employment opportunities have a long tradition in public service. The first governmental statement on equal employment opportunities was signed by 12 of the major governmental employing authorities in 1984. (There has, however, been unprecedented change in the structure of the public sector since that time, with significant impacts on EEO initiatives. This is reported below.)

EEO began with a focus on social justice issues and ideas of fair employment practice and anti-discrimination measures. More recently EEO has developed a focus on business outcomes - gaining access to the widest possible labour market, offering better service to customers, increasing organisational productivity, and closer integration of EEO into the business heart of the organisation, including organisational culture and core management practices. This development has led to suggestions that, over time, EEO may disappear and be incorporated into effective management practices.

Implementation of EEO in the public service

Since 1990 there has been a trend for EEO to be more closely integrated into the human resource systems, management approaches, and core business of the department rather than be addressed as an 'add-on' measure. It appears, however, that theoretical discussion around the value and necessity of integrating EEO outruns the more practical implementation and development.

EEO activities highlighted by public service organisations in 1995-96 included:

i. Baseline EEO practices

For example, the Department of Social Welfare (DSW) began a programme for addressing the needs of staff

with disabilities. Over 1995-6 this involved establishing a national network of these staff and providing an infrastructure for ongoing consultation.

ii. Affirmative action policies

The Inland Revenue Department produces guidelines on creating suitable working environments for people with disabilities, for use by managers and supervisors.

Another example is from the Department of Labour, whose EEO statement suggests that no new accommodation will be leased or purchased which does not meet the requirements of NZ Building Standard 4121. They also aim to continue to employ a minimum of five staff under the *Mainstream* programme, and offer two management development opportunities.

iii. Removing bias from human resource policies and practice

The Inland Revenue Department publishes guidelines for managers on equal employment opportunity and the use of interview procedure, for all EEO groups, including people with disabilities. The DSW has produced a guide for managers on the building-access and functional requirements of people with disabilities. Similarly, *EEO for People with Disabilities - A Practical Resource* was aimed at line and human resources managers and EEO practitioners in the public service. (The latter was also intended to be useful for the private sector.)

iv. Activities focused on changing organisational culture

More than a third of public service organisations planned to provide EEO awareness training seminars to staff and/or managers. For example, the NZ Employment Service of the Department of Labour planned to hold four disability awareness seminars, one of which would be specifically targeted at managers.

The DSW supports an EEO Network as an investment in establishing positive interaction between employer and employees. One of the aims of the DSW is to develop supportive personnel practice, such as mentoring or coaching, to reduce isolation of people with disabilities and enhancing retention rates within the departments. The Social Policy Agency and Corporate Office will support the national network to be established for staff with disabilities, ensure that managers are aware of the resources available to support, and development (especially technology) that can assist, people with disabilities in the workplace.

The most frequently mentioned current EEO practices for disability were those around improving physical access to buildings.

Monitoring and evaluation of EEO in the public sector

Measuring the success of EEO policy in the public service is problematic. There are great difficulties in using and interpreting quantitative indicators as a measure of progress. Moreover, procedural and behavioural changes within organisations are only gradually reflected in their statistical profile. There is a range of issues to be resolved around monitoring the recruitment and retention of people with disabilities in the public service.

The *State Services Commission* (SSC) started systematic monitoring in 1991. In their annual collection of material they draw on information from two sources: the EEO documents provided by each Public Service Organisation, and reports written for each Department by the SSC as part of its monitoring responsibilities under Section 6e of the State Sector Act (1988).

Recent statistics show that 40 public service organisations employed a total of 34,863 staff. The size of these organisations ranged from a total workforce of 12 to a workforce of 6,625. As Table I.1 indicates, there is a lack of disability data held across public service departments, and this has worsened over recent years. (NB.

Disability data is collected only on appointment not on applications.)

Table I.1: Percentage of disability data held across the public service 1992-6

<i>Year</i>	<i>Percentage</i>
1992	72
1993	71
1994	74
1995	65
1996	59

Table I.2 suggests that the percentage of people with a disability in the public services has fallen in recent years, although it is not clear if this is influenced by the limited amount of data being reported.

Table I.2: Representation of EEO groups 1991-96 (disability)

<i>Year</i>	<i>Percentage</i>
1991	14.1
1992	15.0
1993	15.6
1994	15.5
1995	14.8
1996	11.1

People with disabilities are more likely to work in certain types of public service organisation than others. It is not clear, however, whether this is influenced by the level of identification and reporting of disability.

The fact that some organisations contain significant numbers of people in EEO groups, while others do not, has led to calls for identifying departmental, rather than public service-wide, goals for representation.

Table I.3: Representation varies across types of public service organisation

	<i>Percentage</i>

Public service	11.1
Policy	12.0
Mixed	10.7
Large service delivery	10.1
Medium service delivery	10.7
Small service delivery	16.4

Table I.4: Percentage of people with disabilities earning \$60,000 or more

<i>Year</i>	<i>Percentage</i>
1991	1.6
1992	4.0
1993	2.6
1994	3.0
1995	3.8
1996	6.8

Validity of data

As indicated, people with disabilities have reached their lowest level of representation, although this decline may be the result of the reduced level of disability data held. The representation of people with disabilities has fallen from an initial high of 20 per cent of those organisations that provided disability data in the 1988 census. However, only a small number of Departments provided disability data for the 1988 census and collection methods have changed, making it difficult to draw valid conclusions from this.

There is variance in the level of EEO data that are held across departments, particularly for disability statistics. There has been a drop in the level of disability statistics held, from 72 per cent of staff in 1992 to 59 per cent in 1996 (see Table 1). Only seven departments held 100 per cent of disability data for their staff as of mid 1996. The low level of disability data precludes any analysis of changes in representation and salary distribution for public servants with a disability.

While there is a higher level of EEO data recorded for applications for vacancies, there has been an extremely low level of data collected from those appointed - disability data was recorded for only 36 per cent of new appointments to the public service. Disability data on cessation is equally low - disability data are recorded

for only 20 per cent of cessations. Thus, low levels of data mean that questions such as whether people in EEO groups are being appointed to the public service, and whether strategies targeted at increasing the representation of EEO groups have been successful, remain unanswered.

Departments have reported difficulties in collecting information on disability, and have questioned the usefulness of aggregating information on a wide range of conditions into one category. For example, it would appear from the information on salary distribution that people with disabilities are well represented in the higher levels within the public service (see Table I.4). This contrasts with anecdotal evidence that there is a concentration in the lower salary range. This difference may be due to the aggregation of a wide range of conditions into one category. This can hide the variability in the group and mask the significant dissimilarities.

Examples of the non-reporting of disabilities are illustrated by figures from within the Department of Social Welfare:

- i) Department of Social Welfare: staff without disabilities 1,951; staff with disabilities 1,301; staff disabilities not recorded 3,266.
- ii) NZ Income Support Service: staff without disabilities 1,477; staff with disabilities 936; staff disabilities not recorded 1,745.
- iii) NZ Children and Young Persons Service: staff without disabilities 436; staff with disabilities 315; staff disabilities not recorded 1,139.
- iv) NZ Community Funding Agency: staff without disabilities 67; staff with disabilities 26; staff disabilities not recorded 31.
- v) Social Policy Agency; staff without disabilities 1; staff with disabilities 24; staff disabilities not recorded 68.

Some departments have experienced difficulty in collecting EEO data, attributable in part to concerns about privacy or confidentiality and that sensitive information could be used to discriminate, now or in the future. Under the terms of the Privacy Act 1993, Departments and the SSC have clear responsibilities in the collection and reporting of EEO information. Each time EEO data is collected, the purposes for which it is being gathered must be clearly stated. This information should also clarify the proposed recipients, whether or not it is mandatory to supply the information, and how confidentiality will be maintained. The Privacy Act makes it unlawful to use the data for purposes other than for which it is collected. It may be that if, after assurances, employees are still reluctant to provide information, the department may need to consider if there are aspects of the organisational culture which contribute to a perception that it is 'unsafe' to provide information.

Most Departments acknowledge the need for information on people with disabilities within the public service so that the representation and distribution of this group can be explored and monitored over time. Rather than cease the collection of disability statistics, departments want to see improvements in the quality of the data collected, and guidelines for departments on how the information can best be used. A workshop run specifically to discuss the collection of EEO statistics on people with disabilities had representatives from disability advocacy groups and from agencies with responsibilities for the employment of people with disabilities. The outcome was an agreement that the State Service Commission's method of collecting statistics would be aligned with definitions and categories developed by Statistics NZ. Data to enable cross-tabulation of disability and ethnicity will be collected at the end of June 1998.

The adoption of a uniform definition of disability in 1997-8, along with categories for the collection of

disaggregated information, should provide more detailed and useful information on people with disabilities in the NZ public service. It is hoped that these changes will increase the confidence of both staff and departments in the usefulness of the data and contribute to a higher level of data available for future analysis. Some believe it is important to provide information on educational qualifications held by public service employees in order to address the issue of 'underemployment'. The feeling has also been expressed that previously employers had high expectations of employing people with disabilities, but are now less 'tolerant'. There is also a perception that people with disabilities are reluctant to identify themselves as having a disability and to organise within the workplace. Divisions within the disabled community may also be evident, with groups such as sight or hearing impaired people not wanting to identify themselves as 'disabled'. It is not clear into what a Chief Executive Officer (CEO) level commitment to EEO translates in terms of middle level management practices.

In relation to workplace adaptation and the public service, 'It would appear that the need for adaptation for people with disabilities in the public service remains an issue that is not being met and requires consideration'. The majority of individuals from the study, however, commented that they had active EEO programmes in their place of work. This suggests that EEO programmes may need to be refocused to meet the practical requirements of people with disabilities.

Changes in the public service

Changes in the public services have had particular impact on people with disabilities. The current public service environment is vastly different from that of the mid-1980s. Since 1984 there has been massive change in the structure of public service. At March 1984 the numbers in public services were 66,000; by December 1994 this was 33,000. Members of EEO groups were said to be most vulnerable to downswing.

During public service reforms, there has been a greater emphasis placed on performance. Arguably, this may be seen to impact on people with disabilities, who make up the one group which faces particular issues surrounding productivity. Competition is strong within the public service, placing an emphasis on education and qualification which may further disadvantage disabled people. Disability consultant Robyn Hunt expressed concerns that people with disabilities do not have the 'critical mass' necessary to keep the disability issue on the agenda when EEO is being subjected to mainstreaming (the pressure to abandon special EEO initiatives and use the same recruitment procedures as for non-EEO groups).

Robyn Hunt has also identified the need for management intervention and leadership, management, ownership and accountability to ensure effective EEO policy for the future. Hunt has developed a series of checklists around how to get started in establishing EEO policy; establishing disability networks; implementing EEO disability policy; recruiting, selecting and inducting staff with disabilities; and developing emergency procedures. She also believes that greater awareness of the business reasons for EEO highlights the pragmatic advantages of practising EEO for people with disabilities in the public service. This could contribute to EEO having a higher profile than formerly.

The existence of particular and timely social or economic movements can assist a particular EEO group and an organisation's readiness for, or receptivity to, EEO intervention. Thus, for example, the inclusion of people with a disability within the provisions of the Human Rights Act 1993, together with the disability survey to be undertaken by Statistics NZ, may provide some heightened awareness both for employers and for people with a disability themselves, and create a more receptive environment for EEO policy for people with disabilities.

Similarly, changes in the culture of the public service *could* mean greater receptivity to EEO measures and to accommodating people with disabilities. There are some suggestions that EEO is considered an accepted and valued part of the workplace culture, and observable changes include the changes in physical accessibility for people with disabilities.

Equal Employment Opportunities in the private sector

It is less straightforward to gain a handle on private sector EEO policy.

According to a publication from the New Zealand Employers' Federation, the Federation has 'long supported the principle of equal opportunities in employment, education and training, emphasising how important it is that employment decisions be made on the ground of relevant merit not the basis of personal characteristics unrelated to skill and ability'. In 1985 the NZ Employers' Federation introduced the concept of equal employment opportunities within the private sector by developing an EEO statement. There was a 3-year phasing of programmes for private sector firms employing over 50 employees. Many firms, however, felt that asking about disability was an invasion of privacy and were also confused about what the definition was. Generally, people with disabilities were not being acknowledged as a designated group within EEO.

For a short period after 1990, the private sector had legal responsibility to develop equal employment opportunities policy and programmes. This requirement, enacted by Labour, was repealed by the incoming 1991 National Government. The majority of employers were said to comply only grudgingly with these requirements.

Now the Human Rights Act can be said to provide a 'practical reason' for introducing EEO policy and programmes.

The NZ Employers' Federation believes that any EEO policy in the private sector must reflect the size and operational requirements of individual employing organisations.

It is difficult to find examples of innovative EEO policies operating in the private sector for persons with disabilities. The EEO Trust database reveals little on EEO strategies for disabilities at the employer level.

As a general point, there is less interest in EEO policy from government, government officials, employers and unions. The last mentioned are more concerned with job losses, redundancies, departmental reorganisations, and loss of services.

I.2.3 Financial incentives which encourage enterprises to retain disabled workers in general

Several financial incentives are currently offered to retain disabled workers:

The ACC scheme

The *New Zealand Accident Compensation Scheme*, commonly called the ACC scheme, is based on the Accident and Rehabilitation and Compensation Insurance Act 1992 (ARCIA) (see II.1.1); this provides financial support for the retention of jobs or return to work of people injured in the workplace. An early intervention strategy within the scheme attempts to gain the cooperation of employers at the outset to ensure that the person retains their place at work and that a return to work is not delayed. When an employee is unable to return to full work hours but is able to work part-time, the employer is required to pay only for the part-time work. Through an abatement process, the injured person will receive earnings-related entitlements from the ACC until pre-accident earnings levels are reached (see II.1.4). This arrangement acts as an incentive to encourage enterprises to retain disabled workers.

It seems that the ACC is effective in its efforts to retain jobs for people who have had an injury or accident, as it has both advantages to the employer and the employee. The majority of injured persons (90 per cent) retain their jobs and are compensated for medical claims only.

Modification Grant Scheme and Job Support

The *New Zealand Employment Service* provides programmes that are primarily aimed to gain employment for people with disabilities but can also be used to retain employment:

1. The *Modification Grant Scheme* provides a grant (\$10,000 max) to the employer to help meet the costs of modifying the workplace or to provide equipment so that the person can be employed (for more details see III.2.3).
2. *Job Support*, a programme administered by *Workbridge* (an employment placement agency for people with disabilities) was set up in 1994 under contract from the *New Zealand Employment Service*. *Job Support* (which is based on concerns about the cost of disability) makes individualised funding available to purchase support services needed by a person with a disability to work in open employment and to receive the appropriate rate of pay for the job. It can also provide a temporary or long-term wage subsidy to compensate employers for a worker's lower productivity or the extra supervision or training required. It is mainly used for first-time entry into a job, but it can be used to maintain the job (where ongoing support is required by the employed person with a disability in order to keep the job). (There is a distinction between retaining and maintaining employment.)

In 1995/96, 582 people with disabilities assisted by the *Job Support* programme. The programme is popular and applications for the programme have dramatically increased. However, the funding situation is precarious. The 1996/97 budget was \$2 million, but funds ran out in July. The government promised more funding before the end of the year. Even if more funding is made available, 65 per cent of next year's budget will be used on renewals. Unfortunately, there is little research on the effects of services in terms of job retention.

3. *Job Plus* is a temporary wage subsidy paid to employers who provide permanent, full-time work for people with disabilities. The usual maximum subsidy is \$214 per week for a maximum of 52 weeks. Severely disadvantaged job seekers with a disability may receive a maximum of \$325 per week for 52 weeks. A total of 20,932 *Job Plus* placements were made in 1995/96, of which 3,484 were people with disabilities.

The Disabled Persons Employment Promotion Act 1960 and the Minimum Wage Act 1983

Both the *Disabled Persons Employment Promotion Act 1960* and the *Minimum Wage Act 1983* promote opportunities for employment for people with disabilities in sheltered employment or the open labour market. This is via providing exemptions from the minimum wage where the workers concerned are unable to earn wages at or above the minimum rate. Employers and workers are consulted over the DPEP in relation to granting of exemptions.

The *Disabled Persons Employment Promotion 1960* is 'an Act to make better provision for the employment of disabled persons'. Under the Act 'disabled person' means 'a person who, by reason of injury or disease or congenital deformity or old age or other physical or mental incapacity, is substantially handicapped in obtaining or keeping employment of a kind which, apart from that injury or disease or congenital deformity or old age or incapacity, would be suited to his experience and qualifications'.

The Act enables Ministers to approve organisations whose object is the care, treatment and rehabilitation of disabled persons. It allows exemptions from awards and agreements regulating employment. The Act is administered by the Department of Labour.

To promote employment opportunities for people with disabilities in the open labour market, the *Minimum Wage Act 1983* provides for permits to be granted to allow workers to accept wages at a specified rate less than the minimum where the workers satisfy the Labour Inspector that they are incapable of earning wages at

the minimum rate prescribed under the Act. The permits set a minimum wage for the worker concerned, for a period specified in the permit, generally up to a year. This provision has been little used in recent years, but, with the re-issuing of DPEP Act exemptions, it is becoming more widely used in the context of supported employment options. Approximately 70 under-rate permits were in effect in late 1996.

The usual suspensory loan limits are: home alteration (\$7,900 - a special means test applies above this level); car purchase (\$11,806); adaptation of car (\$708).

A review of sheltered workshops and the operation of the Disabled Persons Employment Promotion Act is currently underway.

I.3 POLICIES AND PROGRAMMES TO SUPPORT DISABLED EMPLOYEES AT RISK TO RETAIN THEIR EMPLOYMENT

I.3.1 Mechanisms to support the rights of employees whose continued employment is at risk because of disability

The large number of small employers in New Zealand and the decline in union strength, particularly since the 1991 Employment Contracts Act, limit the significance of workplace representatives. It would appear that disability rights and associated EEO initiatives are not high priorities for New Zealand unions at present; their current position is one of weakness vis-a-vis employers.

There are a number of informal disability advocacy organisations in existence. Under the terms of the *Health and Disability Commissioner Act* 1994, nine advocacy organisations have entered into service agreements to provide advocacy within ten regions. However, the thrust of the services is towards health issues and there is little involvement in supporting employees whose continued employment is at risk because of disability.

The overall aims of the *Health and Disability Commissioner Act* are to promote and protect the rights of health and disability services consumers. It establishes procedures to deal with complaints against providers of health or disability services, but has little jurisdiction over employment issues. It is notable that disability issues are subsumed within a health context.

I.3.2 Financial incentives directed at employees whose continued employment is at risk because of disability

Training Support (formerly Rehabilitation Allowance and Travel and Vocational Allowance).

Before 1 July 1995 - under the Disabled Persons Community Welfare Act - a Rehabilitation Allowance (at \$22.95 per week) was available to cover out-of-pocket expenses, such as fares, to support a disabled person seeking training or in employment. A 'Training Support Allowance' was also made available.

After 1 July 1995 - under the Disabled Persons Community Welfare Act - both Rehabilitation Allowance and the Training Support Allowance have been merged into a new entitlement, 'Training Support' funded by the Community Funding Agency of the Department of Social Welfare and managed by Workbridge. The Job Support programme (see I.2.3) was also established to assist with the extra costs of being in employment.

As well as meeting the eligibility criteria, applicants for Training Support must present a planned individual programme aimed towards working to improve future employment prospects. Training support is reviewable annually, and applications are not means-tested. Payments are made only during the specific period of the training, and there is no set amount payable (though there is a maximum weekly payment of \$100, for a period of three years).

Training Support aims to 'provide greater flexibility in meeting the training needs of people with disabilities

who are working towards a career goal'. Training Support may be used to meet costs not met by other programmes or grants in connection with training. These include transport costs, CV expenses, special equipment, provision of a support person, and course fees.

On 1 July 1997, the funding contracts for Disability Employment Placement and the Training Support and Self Start Funds transferred from the DSW to the Department of Labour.

Disability support services

Since 1993, disability support services have been progressively transferred from the DSW to the four Regional Health Authorities (RHAs), which are purchasing services for health and disability support services in New Zealand (although the RHAs are due to be replaced by a Transitional Health Authority). These transfers are almost complete, apart from the decision on responsibility for the provision of vocational services for people with disabilities. At the RHA level, vocational rehabilitation involvement is limited to assessment for vocational needs, the provision of some day activity services, and a small number of sheltered employment sites.

RHAs have taken over the administration of programmes replacing entitlements under the Disabled Persons Community Welfare Act, from July 1 1995. Although there may be regional differences between RHAs, it is understood that entitlements from RHAs closely match the former levels of entitlement under the DPCW Act. The aims of the Disabled Persons Community Welfare Act 1975 include support to people with disabilities to obtain mainstream employment opportunities. Section 15 provides payment for equipment to enable disabled persons to be mobile to enable them to undertake employment or educational or vocational training. Under section 16A of the Disabled Persons Community Welfare Act, DSW may provide up to \$11,800 towards purchasing a motor vehicle 'necessary to enable a disabled person to undergo training for, or obtain or retain, employment'.

The four Regional Health Authorities provide funding for Equipment Management Services for persons to undertake education and/or vocational training and obtaining and/or retaining employment.

Assistance linked to vocational rehabilitation

Section 26(3) of the *ARCI Act* obliges ACC to provide social rehabilitation assistance as part of vocational rehabilitation. This includes the purchase and modification of motor vehicles, and the provision of aids and appliances.

The costs and benefits of returning to work

The majority of injured persons (90 per cent) retain their jobs. Partial employment or part-time employment is negotiated between ACC's case managers and the employer. This provides some incentive to return to work, as the injured person may be able to receive full income (and not just 80%) through the process of abatement (see II 1.4.). Once employment is lost, however, the incentives are generally low for a severely injured person to return to work, as often jobs are not available which offer as high an income as the pre-injury level of earning.

Nevertheless, for people who have been on sickness benefits and were high income earners the incentives are high to return to work and receive pre-illness earnings. Some limited part-time work may be accepted to supplement the benefit. Generally, it is not financially rewarding to work more hours, as this will result in reductions in the main benefit, as well as the accommodation supplement and other grants and benefits. For many people with severe disabilities, the economic benefits for participating in employment are minimal. Any net increases in earned income over income support (invalids benefit) may be more than offset by the increased work-related costs of disability. It is not clear what impact, if any, these benefits will have on job

retention strategies.

I.3.3 Programmes which support a move to another employer or to self-employment

No programmes specifically support a move to another employer or to self-employment. The ACC, for example, is reluctant to support self employment initiatives.

Up to 1 July 1995, *Self-Start Business Funding* was provided under the Disabled Persons Community Welfare Act. Loans of up to \$5,250 were available to enable disabled persons to stay in business or become self-employed by, for instance, the purchase of equipment or making alterations which would enable the person to commence a business. Applicants had to demonstrate the ability to work for a minimum of 20 hours per week; a business feasibility study was also required from someone with practical business experience. The loan was rebated by one-fifth each year, and written off after five years.

After 1 July 1995, the administration and funding for Self-Start was transferred to Workbridge. Although eligibility for funding is based on similar grounds as formerly, the business must have the objective of making a profit and enabling the persons to become financially self-sufficient. Loans or grants are available for people with disabilities. Grants are not subject to means-testing and applicants do not have to be registered with Workbridge.

In addition, the *Enterprise Allowance Scheme* is available for long-term unemployed people and for persons at risk, which may include persons with disabilities. This provides a weekly payment to those going into self-employment. Some persons will be eligible for both schemes.

The New Zealand Community Funding Agency's *Self-employment Grant Programme* contributes to the provision of assistance to people with disabilities to develop and promote opportunities for financial independence through self-employment.

I.4 BENEFICIARIES

I.4.1 Impact of definitions of disability and eligibility criteria on access to and coverage of policies

People injured by accident are covered by New Zealand's Accident Compensation Scheme. Those incapacitated by illness are covered by the New Zealand Income Support Service (Department of Social Welfare) by a sickness or invalids' benefit. (These two systems are further discussed in II.1.1.)

The legal definitions set under ACC have become tighter (see II.1.1).

I.4.2 Disabled workers who benefit and those who miss out

People with minor injuries are likely to benefit more, excepting those who are covered by the Foundation for the Blind, which - because of historical factors - is able to ensure that provision is provided for the groups it includes. Those who are more generally disadvantaged within the labour market - through a lack of education and qualifications - are more likely to lose out, as are older and minority ethnic groups.

I.5 JOB RETENTION POLICIES IN CONTEXT

I.5.1 Most prominent job retention policies

ACC is the most prominent job retention policy because of the experience rating, based on an employer's work injury claims record (see I.1.2). The aim of this system was to make employers aware of the true costs of accidents and to reward employers with low claim costs: it is thus in the interests of employers to have injured people back at work as quickly as possible. The scheme focuses attention on *newly* disabled workers,

and particularly on conditions resulting from injury rather than sickness.

I.6 IMPLEMENTATION OF JOB RETENTION POLICIES

I.6.1 The effectiveness of institutional arrangements for monitoring and enforcement

The operation of ACC ensures there are close links between employers and ACC case managers.

(The implementation of the Human Rights Act is discussed in I.1.1.)

I.6.2 Factors which affect the adoption of voluntary job retention measures and take-up of financial incentives by enterprises

It is arguable that there is a lack of employer awareness about Modification Grants and similar financial incentives. Employers also have a desire to avoid bureaucracy and red tape. (See also I. 2.3.)

I.7 INTERACTIONS BETWEEN EMPLOYMENT POLICIES AND PROGRAMMES

I.7.1 Ways in which employment policies complement and contradict one another

It is unclear how the *Human Rights Act*, just in the early stages of implementation (see I.1.1), will interact with the *Privacy Act*. According to one source, 'It is possible that the Privacy Act 1993 will complicate employers' ability to respond to a complaint since this Act makes it unlawful to reveal personal information without the consent of the person concerned. As a consequence, if permission to reveal personal information is not given, an employer facing a discrimination complaint may have difficulty establishing that the best person for the job was in fact selected. Disclosure of personal information without the consent of the individual it relates to is not so likely to be a problem where a subsequent Complaints Review Tribunal hearing is held. This is because the Privacy Act allows disclosure without consent for the conduct of proceedings before any court or tribunal.'

The *Employment Contracts Act 1991 (ECA)* does not mention discrimination on the grounds of disability. Recent case law has indicated, however, that the discrimination provisions under the *Human Rights Act* may give rise to a personal grievance claim against an employer under the ECA. According to Taylor, the ECA has the advantage that it can usually be combined with another personal grievance or claim that is not directly related to the specific aspect of discrimination. He quotes the example of an employee who may claim to have been discriminated against as well as claiming unjustified dismissal and breach of employment contract. The ECA has the advantage that the Employment Tribunal can be quicker than the Human Rights Commission to reach a resolution.

Some conflicts are perceived to exist between the *Human Rights Act* and the *Health and Safety in Employment Act, 1992* (see I.1.2) and in particular the duty of employers prescribed under section 6 (a) to: 'take all practicable steps to provide and maintain for employees a safe working environment'. Employers have reported being concerned that people with disabilities are a greater risk in terms of complying with the *Health and Safety in Employment Act 1992* (e.g. a person with an intellectual disability may be perceived as having more difficulties following health and safety guidelines for their activities or for their immediate environment, or the assumption that people with physical disabilities are not safe).

The *Health and Safety Act 1992* (see I.2.2) may have implications for the *ACC experience rating* (see I.1.2 for ACC Experience Ratings Regulations 1993) where there is a link between the levy paid by the employer and the cost of harm occurring to the employees of that employer. There are also higher penalties for breaching the Act of up to \$100,000 or one year in prison. A study by Wren supports the idea that the ACC has been more effective than the Department of Labour in promoting and improving occupational safety and health.

Research carried out by the Equal Employment Opportunities Trust revealed that employers placed a higher priority on complying with OSH because they have to, than with the *Equal Employment Opportunities programmes* (see I.2.3) because the latter are not mandatory. Although employers may conform to occupational health and safety requirements, informed sources suggest that discrimination against disabled people continues to occur in the workplace, despite the Human Rights Act.

The Office of the Privacy Commissioner has noted that there are important issues arising under the Privacy Act in relation to EEO monitoring (see I.2.3). Despite the *Human Rights Act* and *State Sector Act* there is an express lack of statutory provision authorising or requiring the questioning of individuals for monitoring purposes. The fact that collected information may be sensitive does not necessarily mean there is a problem under the Privacy Act, although if matters are not handled carefully there is scope for problems. EEO monitoring could easily breach privacy principles if care is not taken in programme design and implementation. Blair Stewart expresses the belief that if proponents of EEO policies wish to encourage their use and adoption by employers, they should take the initiative to guide employers on the way to carry out these policies so that they do not breach the privacy law.

Currently, the *Human Rights Act* can be said to provide a 'practical reason' why *EEO* policies and programmes should be introduced. With these in place, policies, procedures and other institutional barriers which cause, tend to cause or perpetuate inequality of opportunities can be eliminated, and compliance with the Act can be more easily guaranteed.

The inclusion of people with a disability within the provisions of the Human Rights Act 1993, together with the disability survey to be undertaken by Statistics NZ, may provide some heightened awareness both for employers and for people with a disability themselves, and create a more receptive environment for EEO policy for people with disabilities.

Consistency 2000 is a project undertaken by the Government to identify and resolve inconsistencies in legislation and government policy and administrative practices within the new grounds of the Human Rights Act 1993. However, the future of the project is in doubt and the likelihood is that Government will give itself more permanent exemptions to compliance with the Act.

I.7.2 Impact of the distribution of responsibility for employment policy

Although all people with disabilities are eligible to use New Zealand Employment Services, local offices may refuse people with disabilities and direct them to use the specialist services of Workbridge.

The 1992 ARCI Act may be seen to operate more in the interests of employers than employees. The scheme is definitely a 'meaner and leaner scheme' for the injured employee. The majority of employees, however, may benefit from ACC's focus on rehabilitation and early intervention strategies which may result in good job retention. This may in turn be of benefit to both the employer and employee. The introduction of experience rating is an incentive for employers and is generally seen as cost-effective by them.

I.8 LINKS TO LABOUR MARKET FACTORS

I.8.1 Elements of labour market policies which influence the effects of job retention measures

The *1991 Employment Contracts Act (ECA)* raised issues about the ability of workers with a disability to negotiate contracts from what is generally considered to be a less than comparable position of strength. Pre-1991, collective negotiations at the national level affected six out of ten workers and all employees, whether union members or not, were covered.

The 1987 Labour Relations Act provided for Under-rate Workers permits to be negotiated into awards and

agreements. The ECA offers flexibility to choose either individual or collective contracts. It extends personal grievance procedures to cover all employees, not just union members. So for people with disabilities under the Act, the access to personal grievance procedures has been widened at an individual level. Minimum employment conditions are now found in the Minimum Wages Act 1983, Parental Leave and Employment Protection Act 1987 and Holiday Amendment Act 1991. Negotiation is the key to ECA - in the past smaller workplaces relied on national awards - but under the new Act there are no such provisions. It is generally accepted that the ECA has radically shifted the balance of the bargaining process in favour of employers.

It is now easier for employers to engage workers on a temporary, fixed-term or casual basis. The 1987 Labour Relations Act had limited the use of insecure workers but, under the ECA, collective negotiations of contracts have no preferred status, and employers can choose to restrict collective negotiations to the enterprise, as opposed to the occupation or industry. There are fewer contractual restrictions on the use of casual workers. The overall findings of one piece of labour market research are that 'bargaining arrangements under the ECA have done nothing to encourage the stability of employment and have in fact encouraged the casualisation of labour'.

I.8.2 Changes in labour market demand and the structure of the labour market

According to the Business Development Section of the Ministry of Commerce, there were 192,241 enterprises in early 1996. Eighty-three per cent (160,495) employed five or less full-time equivalent staff. Only 0.6 per cent of NZ businesses (1,190 in number) employ a staff of 100 or more. These figures are likely to be understated because they do not count agriculture and livestock production enterprises or what are described as 'economically insignificant' enterprises. Very small businesses - with up to five staff - employ 285,691 full-time equivalent staff. Large organisations - with more than 100 staff - employ 509,839 full-time equivalents, or about 40 per cent of the total employed.

The statistics that are available allow very little to be said about duration of employment with any one employer, although it is likely that there has been a rise in short duration employment. There are a number of possible explanations of this: changes to the nature of work; seasonal influences, skills requirement; changes in the type of technology and changes in the actual engagement of workers.

There seems to be a general agreement that the labour market has become looser and more 'non-standard' i.e. part-time, contract work, limited hours, functional flexibility etc. However, it is not clear whether this offers opportunities or constraints to disabled people. On the one hand, part-time hours may assist those who have e.g. fatigue or particular demands on their time, but it requires a flexible benefit system to top up wages and also across a range of support services. On the other hand, contract work may mean constant change, which may not suit people. As the majority of New Zealand enterprises are small, this may have an adverse effect on return to work for people with disabilities as larger firms are more able to offer retention or alternative employment possibilities.

Pay inequality in New Zealand is high by OECD standards.

(For changes in the structure of the public sector see I.2.2.)

I.8.3 Changes in the union movement

The union movement has witnessed significant decline over the last decade - mostly attributable to the Employment Contracts Act 1991 (see I.7.1) and the harsher economic environment. Unions appear to have had little success in trying to secure the discussion of equal employment opportunities. Flexibility in the labour market is very much employer- rather than employee-driven.

There is considerable evidence of a decline in union participation. Union membership has fallen at a time

when the workforce is expanding, so union density has fallen more sharply than membership itself.

The table below illustrates unions, membership and density 1985-1995.

Table I.5: Unions, membership and density, 1985-1995

	<i>Unions</i>	<i>Membership</i>	<i>Density (%)</i>
Dec 1985	259	683,006	43.5
Sept 1989	112	648,825	44.7
May 1991	80	603,118	41.5
Dec 1991	66	514,325	35.4
Dec 1992	58	428,160	28.8
Dec 1993	67	409,112	26.8
Dec 1994	82	375,906	23.4
Dec 1995	82	362,200	21.7

Union membership by industry for the period 1991 to 1995 is shown below. The largest decline in union membership has occurred in: the retail, wholesale, restaurants, cafes and accommodation sector; the agriculture, fishing and hunting sectors; in mining and related services; and construction and building services.

Table I.6: Union membership by industry, 1991-1995

<i>Industry</i>	<i>December 1991</i>	<i>December 1995</i> <i>1991-1995</i>	<i>% decline</i>
Agriculture/fishing/hunting	14,234	4,120	
Mining & related services	4,730	1,593	
Manufacturing	114,564	76,714	
Energy & utility services	11,129	11,312	
Construction & building	14,596	5,372	
Retail, wholesale, cafes & accommodation	64,335	17,559	
Transport & communication	52,592	49,156	
Finance & business	32,219	26,241	
Public & community	205,925	170,133	

Total	514,324	362,200	
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Currently, nearly half of the unions have less than 1,000 members, which is a distinct change from the pre-Employment Contracts Act era.

I.9 GENERAL BARRIERS TO EMPLOYMENT

Consumer reports note that the major barriers to employment are particularly transport, but also discrimination in terms of physical access, attitudes, low expectations and income maintenance issues.

I.10 CULTURAL FACTORS

New Zealand is a bicultural state. All public policy is framed and operates within the Treaty of Waitangi which is the document providing for the settlement of New Zealand in the 1840s and the formal agreement between Tangata whenua (Maori) and Tauwi (European settlers). Since the mid-1980s considerable attention has focused on the Treaty in public policy debates. There is considerable variation in how the articles of the Treaty are interpreted. However, it is commonly agreed that three goals of Maori well-being are addressed in the document:

- i) participation
- ii) partnership (genuine sharing of power)
- iii) protection.

An under-researched aspect of the Maori culture are the spiritual links related to a person's disability and the disabled Maori's perceptions of the cause of disability and the impact of their personal disability on the surrounding Maori community. One researcher identifies such a link in the Maori belief that disabilities have a spiritual cause that influences their views about rehabilitation.

Although Aotearoa/New Zealand is officially a bicultural state, policy and service models have been driven according to one distinct set of values. It is not clear how an alternative world view and approach to policy can be incorporated within the existing policy framework. For example, how would policy take account of Maori notions of disability and spirituality? The most that seems to be happening is that front-line services are being provided by Maori for Maori (e.g. with supported employment) but there is little example of a fundamental shift of how we conceptualise disability from the Maori world view. Within Aotearoa / New Zealand we are still wrestling with the question: what would a bicultural disability employment policy look like? Indeed, what would any bicultural policy look like?

II. BENEFIT AND COMPENSATION PROGRAMMES

The purpose of this Part of the report is to examine how social benefit and compensation programmes affect possibilities for disabled workers to retain or rapidly resume their employment. The main focus is on the application of benefit programmes in employment; that is, opportunities to combine earnings with income from disability benefits, workers' compensation or other employment-related reparations. The obstacles presented by systems for out-of-work benefits are also examined. The theme covers cash benefits and payouts and, where significant, allowances against taxable income. Programmes may be funded from tax revenues, or from earmarked or general insurance funds to which employers and/or employees contribute.

The first section presents information about workers' and other compensation programmes. This is followed by a discussion of arrangements for combining benefits and earnings from work. Provision is then considered

for income support out of work, and its effects on work resumption. The final section examines interactions between disability benefit programmes and employment policies.

II.1 COMPENSATION PROGRAMMES FOR WORK-RELATED INJURY OR ILLNESS

II.1.1 Principal compensation programmes for work-related injury or illness

People injured by accident or occupational disease are covered by New Zealand's Accident Compensation Scheme (commonly known as ACC). Those incapacitated by illness are covered by the New Zealand Income Support Service (Department of Social Welfare) by a sickness or invalids benefit.

New Zealand Accident Compensation Scheme

History of the scheme

New Zealand's accident compensation scheme, commonly known as the ACC scheme, developed from a 1966 review of workers' compensation by a Royal Commission chaired by Mr Justice Woodhouse (the Woodhouse Commission). The report submitted to Government in 1967 embodied the 'social contract' approach to accident compensation. It was created during a time of low unemployment, high productivity and affluence in New Zealand. The Woodhouse Commission based its proposals on five principles: collective or community responsibility; comprehensive entitlement; complete rehabilitation; real compensation; and administrative efficiency.

The *Accident Compensation Act 1972* was passed and came into force in 1974. It replaced all existing provisions for compensation in New Zealand by a universal scheme. All New Zealanders - and visitors to New Zealand - were comprehensively covered for personal injury by accident (including industrial diseases), 24 hours a day without recourse to common-law actions for damages. The scheme provided entitlement to a range of benefits to the injured person and, in fatal cases, his or her dependents. These benefits were intended to support the injured person during the period of incapacity and recovery, providing compensation related to losses sustained and costs incurred as a result of injury. This included permanent disability (lump sums based on an assessed percentage of disability, on pain and suffering and on loss of enjoyment to life), loss of earnings (set at 80 per cent of previous income), funeral costs, treatment costs and rehabilitation. A non-earner, e.g. a housewife, would be entitled to permanent disability and treatment costs, funeral costs and social rehabilitation only, not loss of earnings.

Strong rehabilitation objectives were included in the founding legislation. Although there was no statutory right to vocational rehabilitation, no job security rights and no specific provisions relating to 'return to work', there were strong directive provisions underpinning the ACC's discretion. Funding was provided from government, employers, and motor vehicle owner levies. Criminal injury coverage was included in 1975. In 1975 the employers' levies were increased by 50 per cent and in 1978 cash bonuses and penalties were introduced.

The process of amendment of the Act began almost immediately and perceived operational difficulties were remedied in the consolidating *Accident Compensation Act 1982*. The 1982 Act strengthened the rehabilitation clauses by including a specific directive to place greater emphasis on rehabilitation. However, the tradition remained for compensation to be a statutory right and for rehabilitation assistance to be discretionary.

Until 1984, ACC's income had been maintained at a level in excess of expenditure. This had allowed the Corporation to build up reserves of capital sufficient to cover more than 12 months costs. By 1987, the scheme had used most of its reserves and was virtually bankrupt, necessitating a dramatic rise in the levy on employers. In addition New Zealand was in a period of high unemployment and poor economic growth.

In 1990 the new National Government appointed a Ministerial Working Party to review the Accident Compensation Scheme. After considering its report, the Government published a statement of policy outlining the proposed changes to the scheme intended to make it 'fairer, cost-effective and sustainable'. Following a consultation period, legislation was introduced which eventually became *the Accident Rehabilitation and Compensation Insurance Act 1992 (ARCIA)*. This was followed by *Amendment Acts (no 2) 1993 and 1996*.

The *ARCIA* was designed by the Government to address the boundaries of the scheme and its costs, by more accurately defining which injuries were covered and how benefits were to be provided. It was to reform the scheme in terms of its fairness and affordability, as costs had been rising at an unacceptable rate (e.g. by the early 1990s ACC was paying out somewhere between \$30 million and \$50 million a year in lump sums for sexual abuse alone). Also, insufficient funding was predicted by the end of 1993. The main intention of the new Act was to maintain the scheme's financial affordability by becoming a quasi-commercial insurance provider. The Act's preamble states that it is an 'Act to establish an insurance-based scheme to rehabilitate and compensate in an equitable and financially affordable manner those persons who suffer personal injury'. It is drafted in the form of an insurance scheme. Nevertheless the benefits available are limited and, unlike negotiated insurance which covers insured risks, the person insured '... cannot negotiate the terms of the policy including the extent of cover and the premium to be paid'. In fact ACC (now the Accident Rehabilitation and Compensation Insurance Corporation) is still a compulsory monopoly provider.

The current scheme

The revised scheme is a Government-sponsored, no-fault and compulsory programme. All people (of any age) who are injured by accident anywhere in NZ are covered. The scheme is funded by (a) an employers' account (employers pay a premium for each employee), (b) a motor vehicle account (based on motor vehicle registration and fuel tax), (c) a non-earners' account (premiums appropriated from parliament, with funds applied to personal injuries, other than motor vehicle-related), (d) an earners' account (premiums are paid by all employees and self-employed people), and (e) a medical misadventure account (premium income funded by non-earners' and earners' accounts). 32.5 per cent of the total of the 138,611 claims for 1996 were work-related.

The legislation defines personal injury as death or physical injuries to a person and any mental injury, which results from such physical injuries. Such injuries must be caused by an accident or by gradual process, disease, or infection arising out of and in the course of employment, medical misadventure or be a consequence of treatment for personal injury. 'Accident' is defined as a specific event or events involving the application of external force or resistance. These more restrictive wordings of both 'personal injury' and 'accident' replace the previous broad definition of 'personal injury by accident'

The system is universal in NZ and coverage is for 24 hours per day with free medical treatment, hospital service and earnings-related compensation. It is a no-fault system which prohibits recourse to civil damages suits. A restriction in the scheme, however, pertains to illness and disease. Illness and disease which are not work-related are not covered and such conditions are referred to social welfare benefit and sickness benefit. It is possible to claim for disease and infections arising out of and in the course of employment. The new legislation (*ARCIA 1992*) has retained most of its original principles (in the *Accident Compensation Act 1972*). The principle of earnings-related compensation to the value of 80 per cent of previous income and the 24 hour no-fault coverage for personal injury have been retained.

The legislation makes rehabilitation a right and earnings related compensation after the first year more discretionary in contrast to the previous legislation. The **full** payment of medical costs for workers' work injuries, which were available previously, has now been withdrawn, and lump sum payments for pain and suffering and loss of enjoyment of life have been abolished. Instead, an independent living allowance, with an upper limit of NZ\$60 per week for non-economic loss was introduced. This allowance is intended to assist

the injured person with the additional costs of living with a disability, not as a means of compensating for injury. It is a tax-free allowance payable on a weekly basis and assessed in proportion to loss or disability. NZ\$60 is paid for 100% disability. However, in reality it has been noted that this allowance is extremely difficult to get and that the average amount received for a permanent partial disability has been NZ\$5 per week.

Under section 50 of the 1992 Act, and under the ARCI Amendment Act (No.2) 1966, ACC was required to develop a work capacity assessment procedure (WCAP). The aim of the procedure is to 'reduce the social, economic and physical impact of personal injury on individuals in the community' and to 'help people who have been injured by accident to return to independent living and employment promptly, sustainably, and cost-effectively'. The assessment is also intended to test long-term claimants' fitness for work in a way that is more consistent and thorough than general practitioners' certificates.

ACC conducted an assessment of the work capacity procedure (WCAP) in early 1997, involving 39 volunteers receiving weekly compensation. However, a relatively large number (168) of the 207 claimants identified from ACC's database declined to take part in the Field Trial. The degree of potential for sampling bias is thus high.

Although medical assessors were able to make decisions in all the Field Trial cases, all eight assessors indicated that the decision-making process was, to some degree, hindered by the incompleteness of the claimants' previous medical and vocational records. The majority of medical and all the vocational assessors saw the supporting administrative guidelines as assisting them in their assessments of claimants. However, the majority of assessors saw a potential for these resources to be improved. Some of the medical assessors, for instance, considered that their decision-making and report back to ACC could be both clarified and simplified if the report-back forms were more explicit about the official categories of assessment outcome recommendations that were required.

Some claimants expressed confusion about what the actual medical decisions were regarding their capacity for work. The majority of the claimants viewed the proposed WCAP as fair and reasonable, i.e. they were satisfied with the procedures used by ACC to assess their work capacity in employment areas other than their pre-injury employment. Those that considered the process to be unfair primarily found fault with the medical assessment procedure used to assess work capacity, or felt they were not adequately informed about what to expect in or from the vocational and medical assessments.

The research can be criticised for using a very small, self-selected and unrepresentative sample, which is an inappropriate basis for legitimising the new procedure. The ACC nonetheless prepared two draft documents on WCAP for public consultation before incorporating them into their procedures on 1 October 1997. It intends to conduct a full evaluation following implementation of the procedure.

Sickness and Invalids Benefits

Sickness Benefit is one of the main social security benefits provided by the Department of Social Welfare and is intended as a short-term benefit. It is based on sections 54-56 of the Social Security Act 1964. It is a benefit for a person temporarily unable to work through illness or accident (those not covered by ACC), or who will be unable to work for an indefinite period, and where an employer's duties to pay under the terms of the individual employment contract have been exhausted. The person will thus have lost salary, wages or other earnings. The applicant is entitled to this benefit provided that age (above age 16) and resident requirements (ordinarily resident in New Zealand, and have resided continuously in New Zealand for a period of twelve months) are met. In order to qualify for Sickness Benefit, an applicant's condition and incapacity for work must be verified by a medical practitioner. This is usually the sick person's general practitioner. Since September 1995, Sickness Benefit medical certificates are issued for a maximum of four weeks. The applicant must then be reassessed by a doctor chosen by the New Zealand Income Support Service (in the Department

of Social Welfare), again at 13 weeks, then 12 months and annually thereafter. It is a means-tested flat-rate benefit.

Since July 1996, people who receive this benefit are able to earn NZ\$80 a week before benefit abatement rises to 70c in the dollar and their main benefit is reduced.

The *Invalids Benefit* is intended as a form of long-term assistance for people who are permanently and severely incapacitated. If an applicant for the benefit is totally blind or is permanently and severely restricted (by 75 per cent or more) in his or her capacity for work as the consequence of an accident (not covered by ACC), illness or congenital defect, the applicant is entitled to the Invalids Benefit. It is based on sections 40-46 and 53A of the Social Security Act 1964. The applicant must be ordinarily resident in New Zealand at the time of application and must have been so resident at least ten years before application. The rate of benefit varies with the income and domestic circumstances of the beneficiary up to a specified level and is means-tested. The sick person is eligible for health subsidies, accommodation supplements, home help, a weekly disability allowance, help with telephone charges and a training allowance.

Since July 1996 people who receive Invalids Benefits can earn NZ\$180 per week before the benefit abatement rate rises to 70 per cent.

Comments

People injured by accidents under the ACC compensation scheme are treated more generously financially and also have higher medical benefit entitlements than those on Sickness or Invalid Benefit. Moreover, they are not means-tested.

This system is discriminatory and has advantaged injured people over those who are sick. This has resulted in many people feeling that a 'welfare caste system' has been established on the basis of the cause of incapacity, and it also led to a division in the disability community. This division and its consequences have contributed to a bias by some doctors and incapacitated workers towards establishing that a specific condition is personal injury rather than illness. If back pain, for example, can be attributed to heavy lifting rather than the ageing process, it may attract subsidies for treatment and compensation for time off work, which would otherwise not be available. Given that the causes of back pain are impossible to diagnose, a blurring of the boundaries of ACC cover occurs frequently. Also some doctors in the community have a reputation for issuing ACC medical certificates easily.

A Bill was introduced in 1990 to enable sick people to be treated on the same basis as those who had had accidents. Although the Bill was defeated as a result of a change of government, people receiving ACC compensation had been concerned that, if passed, it would have reduced their compensation in order to increase compensation for others.

The work capacity assessment procedure (WCAP) was introduced on 1 October 1997. Although it is too early to specify its effects, it was expected that the 'tail' of long-term claimants would be reduced.

The 1992 changes have been controversial. The main criticism has been that the scheme no longer provides comprehensive compensation and is 'too mean ... and compensation is absurdly low'. In the light of these perceived inadequacies in the levels of compensation the debate has focused on the issue of whether injured persons should be allowed to sue for compensation when they are the victims of the negligence of others. A further criticism is that the WCAP has adverse affects on people with disabilities by shifting the cost of injury onto the injured claimants and their families. Also, some people fear that the changes in ACC's legislation signal the possibility that accident compensation will become privatised and the original principles of the scheme will be lost. Others welcome privatisation, competition and choice.

For non-earners (e.g. children and their carers) who do not qualify for weekly, earnings-related compensation, the lump sum was their only significant income from ACC. It is now replaced by the independent allowance which is based on a measure of disability and is payable to a maximum of \$40 per week. Duncan quotes an example '... whereas previously a rape victim or a woman whose ovaries were accidentally removed by the wrong surgeon would have received a large lump sum, she may now receive little more than subsidised medical and counselling costs if her resulting physical disability is minimal'.

The direction of ACC may depend on the outcome of the next general elections, which are likely to take place in 1999. In August 1996, before the last elections, the Labour Party, currently the main opposition party, announced in their newsletter that they were planning to scrap the 1992 Act and that they would place more emphasis on prevention.

II.1.2 Features of the compensation process which affect job retention and return to work

Injury through accident

The injured person is covered usually after the first medical treatment. The employee has to advise his or her supervisor/manager of work absence. The supervisor/manager advises the company's rehabilitation co-ordinator (in large companies this may be the occupational health nurse, in smaller companies this may be the personnel manager, in very small companies this may be the manager) when absence exceeds a specified time (e.g. one week, two weeks) or level of injury severity. The reason for absence is defined as being either injury or illness - this distinction is important as only injuries (and occupational disease) are covered by ACC, whereas illness is covered by the Department of Social Welfare. The rehabilitation co-ordinator contacts the employer to liaise with the employee, doctor, manager/supervisor, personnel, payroll section and ACC case manager. The case manager assesses return to work options, develops a return to work plan and obtains medical clearance. The return to work plan is implemented and monitored until the return to usual duties occurs. The injured person has to apply for entitlements, such as weekly compensation, rehabilitation, household help or independence allowance. Weekly compensation consists of 80 per cent of pre-injury income. Neither entitlement to a lump sum award nor access to common law remedies are available. The distinctive feature in this process is close liaison with ACC as soon as possible.

In practice, this proposed procedure is not working as well as it could work. Case managers have reported that they have a workload of an average of 150 to 200 cases, also staff turnover is reported to be very high. People with disabilities report dissatisfaction due to frequent changes in case managers and constant changes to the scheme. Also employers are still not fully aware of their responsibility in this process. There have been suggestions that employers have even discouraged injured workers from reporting their injury to ACC (due to the experience rating that was introduced by the 1992 ACC legislation - see I.1.2). However, there is no reported evidence for this.

Sickness or Invalids Benefit

The sick person is usually covered after the specified time allowed in the individual's contract to stay off work. The employee has to advise his or her supervisor/manager of work absence. The supervisor/manager advises the company's personnel manager (in very small companies this may be the manager) when absence exceeds the specified time (e.g. 1 week, 2 weeks). No entitlement to a lump sum award is available. There is usually an incentive for the employee to negotiate with the employer a return to work, as loss of employment would mean that, once a person is no longer eligible for sickness benefit (and is well enough to return to work), he/she would have to transfer to unemployment benefit.

In practice, the sick person depends very much on the good will of the employer and the individual employment contract. People on sickness benefits are currently in the vulnerable position of potentially losing their jobs. If they are members of a union, alternatives can be negotiated between the union and the employer.

However, since the Employment Contracts Act, union membership has decreased and many employees are not union members (see V 2.3).

II.1.3 Influences of key actors involved in the process

Injury through accident

The Accident Rehabilitation Compensation Insurance Corporation's personnel (case managers) work together with employers, rehabilitation providers and medical practitioners. Successfully retaining one's job depends on:

- i) the individual's employment contract (requirements outlined in the initial contract between employee and employer with reference to alternative duties);
- ii) the employer having a rehabilitation programme in place and having consulted with the relevant union on the principles of keeping the position available until the injured worker's recovery and/or rehabilitation;
- iii) the medical practitioner who provides the injured person with an ACC medical certificate.

In practice, some efforts have been made by employers to enable injured employees to return to work. However, there has been some ill feeling by some employers against doctors who give ACC medical certificates easily.

Sickness or Invalids Benefit

The employee receiving Sickness or Invalids Benefit has to negotiate with the employer, after receiving medical clearance, for a return to work. The individual is very vulnerable to losing their job; it depends on the industry, the employer and the individual. The union could be involved. Also it depends on the individual's employment contract (requirements outlined in the initial contract between employee and employer with reference to alternative duties).

II.1.4 The effects of compensation on job retention, on return to work and on exit from employment

Injury through accident

The ACC's early intervention strategy attempts to gain the cooperation of the employer at the beginning, to ensure that a return to work is not delayed. Providing that the injured person maintains up-to-date medical certificates, weekly compensation may be payable from the end of the first week of incapacity. The first four weeks are paid at the short-term rate (based on 80% of previous four weeks earnings). From the beginning of the fifth week, the long-term rate applies (based on 80 per cent of the previous 52 weeks earnings).

When an employee is unable to return to full work hours but is able to go back to work part-time, ACC requires information about what wage is paid by the employer to enable ACC to calculate the remaining payment to be made. The incentive for the injured person to go back to partial or part-time work is to receive income from their employer and through earnings-related entitlements from ACC (through the abatement process) until pre-accident earning levels are reached.

If the person's absence from work results in a loss of employment, the injured person has the right to vocational rehabilitation. However, in many cases there are few monetary incentives to go back into the workforce. When 80 per cent of earnings-related compensation is compared with the income of people who have been on sickness benefits and then have to apply for unemployment benefits, it is clear that people on

ACC are usually much better off. A study by Pernice found that there was considerable reluctance to accept any type of employment which could jeopardise their regular and secure entitlement to compensation. The New Zealand Employers Federation also accuses ACC claimants of using the ACC as 'a de facto unemployment scheme' and cite that up to 27,000 of the current 60,000 long-term clients in the early 1990s were still receiving ACC payments because they could not find a job.

The introduction of the work capacity assessment procedure in October 1997 will mean that many injured persons who have been assessed as having a capacity for work will not be entitled to a continuation of their weekly compensation. This applies even if a job cannot be found due to lack of employment opportunities. This procedure may encourage those who are able to work to look for and accept 'suitable' employment. The Disabled Persons Assembly has commented that the cost of injury has been shifted onto people who have been injured and who may be unable to obtain employment through no fault of their own. Moreover, ACC and employers may then have less incentive to provide rehabilitation. Although WCAP may be seen as 'cost-effective', the relevant costs are far wider than the cost to ACC of earnings-related compensation. Any meaningful assessment of the cost of injury to individuals and the community would need to take account of the 'opportunity costs' of disabilities arising from injury. These wider costs of injury, being indirect, are not easily measured. Nonetheless, the NZ Employers' Federation itself has welcomed WCAP, as it considers it a fair process and a first step in returning fit people to work, or at least removing them from the ACC scheme.

Sickness or Invalids Benefit

According to one report, the vast majority (80 per cent) of people on Invalids and Sickness Benefits want employment and want to be in real work. This reflects the general wish of people with disabilities to be in work: desired labour force participation rates have been estimated at 89.5 per cent for males and 74 per cent for females.

A person receiving a Sickness Benefit who was previously on a middle or high income will be worse off than when working and will have to negotiate with the employer to return to work. The incentive to return to work is high. However, a low income person may not have many incentives to return to work. If the person is unable to return to work and is no longer eligible for Sickness Benefit, he or she would be considered unemployed and would have to transfer to an unemployment benefit (which is paid at a lower rate than Sickness Benefit).

II.1.5 Characteristics of disabled workers who do or do not retain their employment or return to work following successful or unsuccessful claims

Injury through accident

An analysis of ACC data revealed that a higher percentage of people over the age of 50, people injured in motor vehicle crashes, those with head and multiple location injuries and those with amputations, dislocations, injuries to internal organs and OOS (Overuse syndromes) remained on compensation longer than other groups. (No gender differences were found.)

Individuals who are injured are more likely to be working in risky jobs and industries. These include agriculture, farming, forestry and meat processing, but are less likely to be professional occupations. There will be difficulties for manual workers to find alternative work that requires re-training and significant investment of time and training. There are also difficulties with finding alternative work opportunities in geographically separated labour markets.

Sickness or Invalids Benefit

The recipients of Sickness and Invalids Benefits show distinctive age-sex profiles. Twenty-seven per cent of

the age group 50-59 were on either one of these two benefits, with men over-represented in the group. Overall, men are more frequent recipients of an Invalids Benefit than women. The recent National Household Disability Survey (1996) conducted by Statistics New Zealand found that people with multiple disabilities are more likely to receive benefits than those with single disabilities.

According to the Quarterly Review of Benefit Trends (for the period ended March 1997) a total of 29,367 people were in receipt of Sickness Benefit, of whom 12,324 (42 per cent) were women and 17,043 (58 per cent) were men. There were 45,099 people on Invalids Benefit: 19,256 women (43 per cent) and 25,843 men (57 per cent).

II.2 OPPORTUNITIES TO COMBINE WORK AND BENEFIT

II.2.1 Provision for combining income from work and from disability-related social security benefits

Injury through accident

The majority of injured persons (90 per cent) retain their jobs and are compensated for medical claims only. Partial employment or part-time employment is negotiated between ACC's case managers and the employer. This provides some incentive to return to work, as the injured person will receive full income (and not just 80 per cent) through the process of abatement (see II.1.4.)

Sickness and Invalids Benefit

Partial employment or part-time employment is sought, if full-time employment is not available, but only to supplement the benefit. Sickness beneficiaries are able to earn up to NZ\$80 before their main benefit is reduced. People on Invalids Benefits can earn NZ\$180 (gross) a week before the benefit abatement rate rises to 70 per cent. In-work benefits are available for limited periods under the Job Support scheme administered by Workbridge (see I.2.3).

II.2.2 Effects on numbers retaining and numbers returning to work

Injury through accident

The majority of injured persons retain their jobs. There are good incentives to accept part-time or partial employment until fully rehabilitated. Once employment is lost, however, the incentives are generally low for a severely injured person to return to work, as often jobs are not available which offer as high an income as the pre-injury level of earning. The chance of being injured are high in agriculture, forestry and the meat industry, and lower in the service sector. There are also regional differences, reflecting the location of these industries.

Sickness and Invalids Benefit

For people who have been on Sickness Benefit and were high income earners, the incentives are high to return to work and receive pre-illness earnings. Some limited part-time work is accepted to supplement the benefit. Generally, it is not financially rewarding to work more hours, as not only is the main benefit reduced, but so are the accommodation supplement and other grants and benefits. For many people with severe disabilities the economic benefits of participating in employment are minimal. Net increases in earned income over income support (Invalids Benefit) may be more than offset by increased work-related costs of disability.

II.2.3 Impact of definitions of disability or capacity for work on access to and coverage of benefit programmes

Injury through accident

The injured person's capacity to work is assessed by his or her general practitioner (ARCIA 1996 Amendments). If the person does not return to work before three months have elapsed, ACC may stop paying weekly compensation. The new WCAP (October 1997) will be requested after the injured person has completed their vocational rehabilitation plan, agreed by him/her and the case manager. This assessment will be completed by occupational assessors and general practitioners (medical assessors contracted by ACC). The duration of the vocational rehabilitation period can extend from three months to up to three years. The WCAP procedure determines whether there is any clinical reason stopping a person doing 'suitable full-time work' (at least 30 hours per week). ACC ceases compensation after another three months, even if a person is unable to find work because of lack of employment opportunities, but is fit to be employed.

Sickness and Invalids Benefit

The person applying for a Sickness Benefit must provide a certificate from a medical practitioner. As noted in II.1.1, reassessment by a doctor chosen by Income Support is necessary after four weeks, 13 weeks, 12 months and annually from there on. The sick person can be verified as fit to resume normal work, unfit for any work or fit for limited work. Incapacity to work is established on the basis of medical condition. A scale has been developed in consultation with the New Zealand General Practitioners Association to assist doctors in determining percentage incapacity, as only those who have a 75 per cent incapacity or more qualify to receive Invalids Benefit. A 75-84 per cent incapacity means 'functioning across a range of work areas is severely restricted. Incapacity is such that even with appropriate adaptation of the work environment and support it is improbable that the patient will participate in open employment'.

II.2.4 Effects of claiming and assessment procedures on take-up of in-work benefits

Injury through accident

There is no asset or income test for the injured person on ACC compensation (see section II.2.1) Therefore the uptake of in-work compensation is an advantage.

Sickness and Invalids Benefit

There is both income and asset testing and the beneficiary would start losing benefit once a certain amount of income is received (see section II 2.1).

II.2.5 Interactions between in-work benefits and other in-work income support programmes

Provision for combining income from work and from disability-related benefits have been discussed in section II 2.1. In addition, workplace modification grants (max. NZ\$10,000) and Job Support (which can be used as a wage subsidy to assist return to work) are available.

II.2.6 Disabled workers who benefit and those who miss out

Injury through accident

In general the worker on ACC compensation, who is injured by accident, benefits. Also anybody with higher education is advantaged as they may be more likely to be aware of the system and have greater success in accessing its measures.

Sickness and Invalids Benefit

People on sickness or Invalids Benefit miss out as the abatement system does not recognise the costs of disability. In the case of low-income earners, provided they work full-time (min 30 hours per week) and earn below NZ\$24,000 per year, additional benefits such as the disability allowance, the medical subsidy and

some of the accommodation supplement are retained. High income earners lose all the above benefits. Individuals must take the initiative to report and to begin the process of establishing a claim. This may disadvantage minority ethnic groups.

II.3 TRANSITION BETWEEN BENEFITS AND WORK

II.3.1 The effects of the disability benefit system on return to work

Injury through accident

For people on ACC compensation it is financially advantageous to return to work as they would lose 20 per cent of their income if they became unemployed. If part-time employment can be negotiated between the injured person and the employer, there would be the incentive that income received could be at pre-injury levels. Other added incentives would be the quick return to the familiar workplace and work environment. There may thus be both psychological benefits (retention of possible job satisfaction, self-esteem, contact with work colleagues, retention of work structure and routine) as well as economic ones.

Sickness and Invalids Benefit

For people on sickness benefits the return to work has financial incentives. If they have lost their jobs during their period of illness and are no longer eligible for Sickness Benefit, unemployment benefit is the only alternative. Some limited part-time employment with income up to a specified level adds income to an otherwise meagre benefit. For people on Sickness Benefit there is generally little financial incentive to work, as the disability-related costs may be high and only high-income earners would benefit.

II.3.2 Provisions for financial support to disabled workers for transition between benefits and work

Injury through accident

During work trials the injured person retains 80 per cent of earnings-related income.

Sickness and Invalids Benefit

If employment is unsuccessful, the person will have to apply for Unemployment Benefit or Invalids Benefit, which may be difficult to get back (see definition of incapacity).

II.3.3 Effect of entitlement to benefits in kind on return to work

Injury through accident

Injured people who are in employment generally retain medical benefits under ACC and are eligible for subsidised health services (depending on the level of disability).

Sickness and Invalids Benefit

When people on Sickness Benefit are considered fit to work and return to full time employment, they lose accommodation supplements, family support and subsidised health services (unless they are low income earners who are entitled to subsidised health services). People on Invalids Benefit will retain many of the subsidised health entitlements.

II.3.4 Co-ordination between agencies in assessment for benefits eligibility

As the incapacitated worker is assessed according to whether he or she has been incapacitated by an accident

or by illness, there is no co-ordination between the Accident Rehabilitation Insurance Corporation and the New Zealand Income Support Service (Department of Social Welfare). Two quite separate systems are operating parallel to each other. However, both ACC and the New Zealand Income Support Service co-ordinate with medical practitioners, physiotherapists and occupational therapists etc.

III. EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

This Part examines the integration of personal support and rehabilitation services within the workplace. It deals with the external support services available to individual workers and their employers where continued employment is at risk because of disability. (Internal services, initiated and managed by enterprises, will be covered in Part V.) The discussion also includes services for early return to work once employment has been lost.

The main focus is on service interventions which support job retention by employees who become injured, ill or disabled and also their return to employment during the process of recovery. It concerns active rehabilitation services that help disabled people to recover capacities and skills, as well as services that support their re-adjustment to work. (Services involving adaptations to the work environment and to working arrangements will be discussed in Part IV.)

More specifically, sections III.1 to III.5 will cover policy about employment-related personal support and rehabilitation services, provide details of services and their providers, and describe the service beneficiaries. The remaining sections will examine the factors influencing the effectiveness of support services for job retention and early return to work. They include a discussion of relationships between the various employment support and rehabilitation services, their relationship to the employment sector, and their interaction with employment policies and compensation and benefit programmes.

III.1 POLICY AND RESPONSIBILITY FOR POLICY AND PROVISION

III.1.1 The main bodies responsible for employment support and rehabilitation policy, and links to other agencies with employment or benefits/compensation responsibilities

Currently there is no centralised national policy on employment support and rehabilitation. Responsibilities for funding, provision and services are spread out over a number of agencies in the health, social welfare, education and employment sectors and in each sector appropriate policies exist and are periodically revised (see section III.2.1). However, there is no national strategy and these policies are frequently contradictory in terms of intentions and operation.

The main bodies responsible for employment support and rehabilitation policy are: the ACC-Accident Rehabilitation and Compensation Corporation, the New Zealand Employment Service (NZES), the New Zealand Community Funding Agency (NZCFA) and the four Regional Health Authorities (RHAs):

ACC provides vocational rehabilitation for people whose impairment is a result of personal injury caused by accident.

NZES assists people who are unemployed to obtain work; this service is part of the Department of Labour. The services provided by the NZES are available to all New Zealand citizens and permanent residents.

The service currently manages two programmes designed to meet the specific needs for vocational support by people with disabilities. These programmes are: the Modification Grant Scheme and the Job Support Programme (the latter is administered by Workbridge, a national not for profit employment placement agency for people with disabilities - see I.2.3).

NZCFA funds special vocational assistance programmes including nationally-based umbrella groups as well as local and smaller community providers. It is linked to the Department of Social Welfare and has an important interface role between government, the community and the voluntary sectors.

NZCFA ensures that appropriate services and support are available to people with special needs and disabilities. It provides funding to organisations for rehabilitation, vocational training and training support. The latter is financial assistance to assist with the extra costs incurred by people with serious disabilities who are undertaking an approved course of assessment, work experience, training or education.

The RHAs have received funding in two main phases (July 1993 and July 1994) for disability support services. They are linked to the Disability Support Services (DSS) within the Ministry of Health. Funding for vocational support is limited to the assessment for vocational needs, the provision of some day activities and a small number of sheltered employment sites. They also fund assessment and Rehabilitation Units through Crown Health Enterprises (CHEs) [hospitals]. Many of these units have a vocational/return to work focus, mostly through referrals from ACC. (Following the National-New Zealand First Coalition agreement in December 1996, the four Regional Health Authorities will be replaced with a single funding body by July 1998. Also the Crown Health Enterprises will be renamed as regional hospitals and community services and their competitive and profit-making focus will be removed.)

Comments

The New Zealand Government is aware of the need for improved coordination of vocational policies, strategies and rehabilitation services. A review of vocational services is currently in progress. The Disability Sector has published a position paper on 'Vocational support for people with disabilities and strongly recommends that the Disabled Persons Employment Promotion Act 1960 (see I.2.3) be repealed. This Act legitimises the removal of employment protection and rights in sheltered workshops. Throughout the document it is stated that people with disabilities need the same conditions of employment as non-disabled people. It is argued that provisions need to apply wherever the person works, whether it is in open employment or a specialised employment setting. In both environments the same sorts of reciprocal employer/employee rights and responsibilities should apply. If special conditions are needed such as flexible working hours, these should be negotiated on an individual basis. This argument is supported by the Ministry of Health, Disability Support Services (DSS) who have also argued for the Act to be repealed. The Disabled Persons Assembly (DPA) has regularly made recommendations for vocational support and also made policy statements on employment through their publications. The Association for Supported Employment in New Zealand has prepared a discussion document (November 1996). It proposed that the Department of Labour would be the most appropriate purchaser of employment and vocational services. Workbridge's publication 'The Next Step' suggests that it is well placed to be contracted directly to the Departments of Labour and Education to be responsible to distributing all vocational funding and co-ordinating the disability sector on all vocational issues.

In summary there is discontent with the lack of coordination of government agencies, lack of rationalisation of funding of the vocational support sector and also the lack of a national policy for employment support. The process of mainstreaming vocational services for people with disabilities will occur in 1997/98, when responsibility for purchasing specialist placement services for people with disabilities will transfer from the NZCFA to the New Zealand Employment Service. Also to be transferred from NZCFA will be responsibility for the Self Employment Grant Programme and the training support programme. Significant changes with regard to aspects of legislation and practice in the short and medium term are very likely.

III.1.2 The relative priority accorded to support for retention, return to work and first time entry to employment

The ACC-Accident Rehabilitation Compensation Insurance Corporation

Any person injured by accident is given support for *job retention* or *return to work*. Currently ACC is focusing on supporting those people to return to work who are claiming compensation. Vocational rehabilitation is designed to help meet this objective. The provision of vocational rehabilitation by ACC is governed by sections 22-24 of the Accident Rehabilitation and Compensation Insurance Act (1992). Vocational rehabilitation must be considered cost effective and appropriate by ACC and is provided for a maximum of three years. There has been a recent policy shift from compensation to rehabilitation. ACC is not an agency responsible for first time entry to the workforce.

The New Zealand Community Funding Agency

The NZCFA funds a variety of programmes to support the special needs of those with a disability to develop their ability to *first time entry* to the workforce. This includes vocational rehabilitation, supported employment and training programmes. Recent policy developments are that the government has decided that the most appropriate arrangement for vocational services for people with disabilities is a progression towards mainstreaming the purchase of these services. In future, therefore, responsibility for purchasing vocational services for people with disabilities will be aligned with those agencies, which purchase equivalent services for the general population.

As noted in III.1.1, the *New Zealand Employment Service* provides two programmes to meet the particular needs of people with disabilities: the Modification Grant Scheme, which aims to help *gain* and *retain* employment and to work to full ability, and the Job Support Programme, which assists people with disabilities to move into open employment.

Comments

Job retention and return to work are ACC's priority. The Accident Rehabilitation Compensation Insurance Corporation's legislation (ARCI Act 1992) and its practical application emphasize job retention (e.g. through early intervention strategies). First time entry into the workforce by people with disabilities is the main concern of Workbridge (a national agency) and of a variety of vocational and job placement agencies including supported employment agencies.

III.1.3 The weight given to employment support and rehabilitation policies for disabled people in the national system

ACC emphasises employment support, early intervention strategies and rehabilitation for the injured person. Case managers work together with employers, rehabilitation service providers and medical practitioners.

A person on Sickness or Invalids Benefit has to actively seek assistance for job placement by registering with Workbridge (a national not-for-profit employment placement agency for people with disabilities) or a supported employment agency.

III.2 SUPPORT SERVICES FOR JOB RETENTION

III.2.1 The main funders and providers of services offered to support job retention

The key sources of government funding for services offering job retention specifically for people with disabilities are:

1. Programmes funded by the New Zealand Community Funding Agency (Department of Social Welfare)
2. Support services funded by the Regional Health Authorities

3. Programmes funded by the Accident Compensation and Rehabilitation Insurance Scheme
4. Programmes funded by the New Zealand Employment Service and contracted to Workbridge
5. 'Training Opportunities' funded by the Education and Training Support Agency (ETSA).

III.2.2 Relationships between the providers of services and bodies with policy responsibilities

The NZCFA invites community organisations wishing to provide vocational services to submit proposals for funding. Any group seeking funding has to submit proposals for funding to either the RHAs, to the Department of Labour or to ACC; it is then subject to an approval process, in order to ascertain its ability to provide the service.

III.2.3 The range and types of services provided

The Accident Rehabilitation and Compensation Insurance Corporation (ACC) is the main body that focuses on retention of jobs and return to work. It provides:

- referral to and payment of counselling
- vocational guidance
- employment preparation assistance
- workplace modifications and accommodations (includes removing environmental barriers, installing special equipment, job modification e.g. work hours and work procedure)
- work trials (includes workplace assessments, worksite based training, supported employment which involves ACC continuing subsidy or job coaching for a defined period in return for the employer offering paid work)
- job clubs
- training (which includes worksite training, supported employment, education or skills-based training) and
- some self-employment assistance.

Almost all other services have their main emphasis on entry to employment, and in some instances subsequent support, for those who have never worked, are long-term unemployed or are not covered by the ACC scheme. These are described below.

Community-based agencies and voluntary agencies provide services mainly for entry to work and support once entry has been achieved:

- specialist employment placement (includes work-related training and employment placement of clients with a disability),
- supported employment (contribution towards extra costs associated with enabling a person to participate in a workplace, includes meeting of productivity shortfalls and cover of other expenses e.g. attendant care, job coaching and personal support)
- self-employment grant

- sheltered employment (sheltered workshops)
- day activity programmes.

The *New Zealand Employment Service* provides services mainly for entry to work:

- modification grants (\$10,000 max.) aim to help people with disabilities gain and retain employment and to work to their full capacity. The grant may be given to an employer to help meet the costs of modifying their workplace or providing specialised equipment so that a person can be employed
- Job Plus - a temporary wage subsidy paid to employers who provide permanent, full-time work for people with disabilities. The usual maximum subsidy is \$214 per week for a maximum of 52 weeks. Severely disadvantaged job seekers with a disability may receive a maximum NZ\$325 per week for 52 weeks
- careers advice (enables NZES to refer long-term and disadvantaged job seekers [including people with disabilities] to approved providers for professional career guidance and counselling)
- Job Start provides grants to meet the short-term costs of taking up a specific job vacancy, (max NZ\$250 per year)
- Job Connection - a fully subsidised work experience scheme which aims to enable long-term unemployed people to re-establish their work record and develop skills so that they can find ongoing employment. Under Job Connection, people who have been registered unemployed for four years or more are placed in paid jobs with employers for 26 weeks
- Taskforce Green (TFG) is a project-based subsidised employment programme for disadvantaged job seekers. Sponsors of projects (which are of benefit to the environment or the community) are given a subsidy of NZ\$214 per week for each job seeker. The aim is to provide an opportunity to gain or regain self-esteem and self-confidence, learn new skills and gain or regain work habits in order to improve chances of finding unsubsidised work. Taskforce Green had a total of 7,626 placements in 1995/96 of which 1,244 were for people with disabilities
- Community Taskforce (CTF) provides part-time, unpaid work experience through participation in projects of benefit to the community. Participants stay on a benefit and gain an extra NZ\$20 per week. Community Taskforce placed 1250 people with disabilities in 1995/96

Workbridge under contract from NZES mainly focuses on entry to work and support once a job has been achieved:

- Job Support Programme. Job support makes individualised funding available to purchase the support services needed by a person with a disability to work in open employment and receive the appropriate rate of pay for the job. This includes job coaches, mentoring, on-the-job attendant care, interpreter services, special equipment, additional costs of transport or parking, and disability awareness training for co-workers. It can also provide a temporary or long-term wage subsidy to compensate employers for a worker's lower productivity or the extra supervision or training required

- Self-start (a grant up to NZ\$5,000 for people with disabilities wanting to move into self-employment)

Workbridge also refers trainees to the *training opportunities programme* (an opportunity to train towards industry-recognised national certificates and diplomas under the skill enhancement programme).

In the 12 months to 30 April 1996 Workbridge enrolled 8,780 people, of whom 2,313 reported having multiple disabilities. It was stated by Winter that: 'Last year Workbridge moved more than 1,000 people off benefits into paid employment, many of those through the Job Support Fund. Two other funds, also administered by Workbridge, are based on the same Cost of Disability concept: Training Support and the Self-Start fund for the self-employed'.

The *State Services Commission* provides central management and funding for the 'Mainstream' programme - a supported employment programme for people with disabilities. The programme aims to assist its clients to gain and ultimately maintain permanent meaningful employment within New Zealand's Public Service.

Mainstream offers placements for people with disabilities in integrated settings within New Zealand's Public Service. It supports participants and pays the usual rate for the job over a two year period (since July 1997). Employment can be full or part-time but must be for a minimum of five hours per week. After two years the employer endeavors to retain the worker and offer tenure. Participants are entitled to up to \$1,500 annually for external vocational-related training.

The scheme is considered to be complementary to, but distinct from, EEO policy. In the first year, the person has a 100 per cent subsidy, in the second year a 50 per cent subsidy. Workbridge nominates people with disabilities to participate in the programme who are placed with the Public Service Department and Crown Agencies.

Research was commissioned in 1996 to examine whether those placed into departments under the auspices of the programme retained positions and gained promotion. The research covered 70 people. Fifty-one per cent of women and 39 per cent of men said they had been provided with adaptive equipment. The study found that within the period 1984-96:

- 91 per cent had gained other/permanent positions
- 20 per cent were promoted.

The enhanced Mainstream Supported Employment Programme (with a changed funding structure to increase numbers of participants and provide more support) programme has a budget of \$1,388,000 in 1997/8 covering 60 people. It will cost \$37,500 per employee over two years as opposed to \$68,750 over the previous four years.

In answer to Parliamentary Questions about the minimum terms and conditions of employment which must be agreed by Government Departments and agencies participating in the Mainstream Programme, Shipley, the then Minister of State Services replied: 'The term and conditions of employment of people with disabilities working under the auspices of the Mainstream programme, are those which apply to any Public Service Employee. The State Services Commission also requires that a mainstream memorandum of understanding be signed by representatives of both the particular employing Department and the Commission. The memorandum sets out the roles and responsibilities of all parties concerned in the placement, including clauses relating to the level and duration of the salary subsidy, training and eventual tenure of participants. The contract of employment is a matter for negotiation between the mainstream client and the employing department. This may be either an individual, employment contract or the departments collective contract.'

III.2.4 Characteristics of enterprises using external support services for job retention

The public sector is more developed in the use of external supports for four reasons:

- a) compulsory EEO policies (see I.2.2), including EEO coordinators to monitor policies. The Equal Employment Opportunities Contestable Fund [EEO Fund] and the Equal Employment Opportunities Trust were established to promote EEO programmes and practices in private sector workplaces
- b) the Mainstream programme (see III.2.3)
- c) employment assistance programmes are far more likely in the public rather than private sector.
- d) employer knowledge of external support services tends to be limited and many see disability as a problem, often based on disappointing experiences.

III.2.5 The prevalence of externally provided support services and identify any trends

ACC has national coverage, Workbridge has offices nationwide (limited services in rural areas) and Supported Employment Agencies are present throughout New Zealand (although many of them have no special programmes). Most towns with over 20,000 population have a sheltered workshop/day activities service. CHEs (hospitals) have regional provision of assessment and rehabilitation services with immediate post-accident treatment and referral to ACC.

Due to some sheltered workshops using supported employment options, supported employment is growing in terms of coverage and prevalence. Overall growth and prevalence of external support is slow due to static growth in government funding.

III.2.6 Arrangements for external providers to organise support in the workplace

Many providers have extensive protocols governing their relationships with employers and employer groups. However, there seems to be a tendency for the relationship to be directly related to financial incentives. Links by ACC to employers to organise support seem to be strong when a person is likely to return to work. Workbridge's emphasis on a business-like and customer-oriented approach to marketing its services to the employers and disabled people has resulted in an enhanced image of disabled people as potential employees. It is likely that Workbridge's marketing strategy has increased public awareness and employers' awareness of people with disabilities. Workbridge has national agreements with McDonalds and is planning similar agreements with other large companies.

One large company favoured the Workbridge approach because of the belief that the organisation took the time to learn about the business ethos and culture of the company and to understand the company's operations. This company now only deals with Workbridge who have a dedicated 'account manager'.

III.2.7 The extent to which services support job retention

ACC supports job retention. Workbridge's mission is 'to meet the aspirations of people with disabilities for full participation and equal opportunity in the labour market' and it encourages and strongly supports training, raising skill levels and job placement.

III.3 USERS OF SUPPORT SERVICES FOR JOB RETENTION

III.3.1 Eligibility criteria and procedures for identifying users (disabled workers and their employers)

The responsibility for user groups is split (see also section III.2.3) depending on the cause of disability. ACC is the agency responsible for those who are disabled by accident. Workbridge and a range of community providers are responsible for everyone else.

Eligibility for ACC's vocational rehabilitation is determined by the individual's potential for job retention or return to work. Because of cost savings there is a strong incentive to focus on those clients who appear to be less disabled than others. Also the injured person is merely offered rehabilitation without an appropriate job being secured in the end.

People may also self-refer to Workbridge.

III.3.2 Disabled workers who benefit and those who miss out

Injured people who are less disabled seem to benefit both from ACC and from Workbridge services. Both agencies are criticised for providing less satisfactory services for those with severe disabilities. This seems to depend, though, on individual offices e.g. the Christchurch office has been praised for its efforts to place clients who have psychiatric disabilities.

Many people with severe disabilities and those with psychiatric and intellectual disability are increasingly the main users of supported employment agencies (whose services vary around the country).

The ACC has a Strategic Cultural Unit (formerly the Cultural Development Unit). The latter had a mandate to help ACC become more responsive to cultural needs. Its mission was two-fold: to increase cultural awareness within ACC staff and to build networks with key Maori and Pacific Island organisations. The new Strategic Cultural Unit monitors all business units and advisors.

III.4 SUPPORT SERVICES FOR RETURN TO WORK

III.4.1 The main services for return to work

Return to work services are the responsibility of ACC. Once registered with ACC, vocational rehabilitation programmes are available for three years to achieve successful return to work. ACC is a funder and a provider, but can also purchase services from other service providers e.g. from Workbridge, supported employment agencies and special consultants.

Services provided under ACC are described in section III.2.3.

As ACC is the main funder and provider of return to work services, it will also purchase services from agencies whose main placement activity is first time entry to work.

Services provided by other bodies are described in III.2.3.

III.4.2 Integrating return to work services into work environments

Generally there is little integration of return to work services into work environments.

III.4.3 The types of enterprise providing return to work opportunities in co-operation with employment support and vocational rehabilitation services

Generally the service industry, such as McDonalds or Warehouse, provide return to work opportunities.

III.5 USERS OF SUPPORT SERVICES FOR RETURN TO WORK

III.5.1 Mechanisms for identifying and accepting users who have left their employment

People with disabilities who register as unemployed or as job seekers will be automatically referred to Workbridge by the New Zealand Employment Service (NZES). If an injured person is still within three years of ACC registration, they will be referred back to ACC by NZES.

III.5.2 Arrangements for user choice and user control of service packages

Job support, training support and self-start (see section III.2.3) are individualised funding programmes.

ACC case managers control the expenditure on service packages and clients have limited choice.

Stephen Lavery, the marketing manager at Workbridge, has proposed the 'Lavery Job Card System' which operates as a sort of training voucher for people with disabilities. The system incorporates three players: customer, service provider and funder. He outlines four components of the system: job credit; purchase; outcomes and quality; and payback. The Job Card would hold the amount allocated for employment services for each individual. This would be redeemable at Job Card franchises who would only be paid on employment outcomes not outputs.

III.5.3 Disabled workers who benefit and those who miss out

Persons with lesser physical and sensory impairments and those without a history of mental illness are the most likely to be served by agencies, particularly if this is accompanied by education and previous work experience. Those perceived as severely disabled may miss out. If severity of disability is linked to minimal education and work history, access to support services may be limited.

III.6 DESIGN AND DELIVERY OF EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

III.6.1 The effects of the distribution of responsibility for provision of services

The advent of ACC has created a dual system in New Zealand. Since 1974 there has been one system for those disabled by accident, and another for everyone else (see section II.1.1)

There is very fragmented responsibility across government departments which has prevented the possibility of a nationally coherent policy and service responsibility.

Most providers tend to have to access several sources of funding to survive, which creates a burden in terms of compliance and reporting requirements.

There is no national system for reporting on outputs and outcomes. Therefore there is no evidence of the efficiency of the service, of the numbers using services and requiring services. Quality of services tends to be variable, with little attempt at independent evaluations or auditing of service quality.

III.6.2 The effect of relationships between services on their effectiveness

There is considerable disharmony and lack of cohesion among service providers because of:

- a) the contracting environment - which means a contestable and competitive tendering process in which it is difficult to develop inter-agency/service cooperation;
- b) conflicting philosophies, primarily between the marketing and business approach, represented by Workbridge and ACC, and the inclusive/support model represented by

the supported employment movement. These models of service delivery have different approaches to assessment and eligibility issues. They also have the effect that the marketing and business approach demands funding for training and placement, whereas the inclusive/support model demands more for long-term support. Both models are accepted and funded, but neither seems to have the resources to provide effective services.

III.6.3 The results of vocational training and rehabilitation

There is no established relationship between specialist vocational training and job placement/retention. At the end of training programmes, resources are often limited for placement and follow-up services (e.g. funds for the Job Support Programme in 1997 had run out by the middle of the year). Workbridge places more people into training than work e.g. in 1995/96 6,752 people were placed in 9,028 training/education opportunities and 3,584 people were placed in 4,476 jobs.

III.6.4 Arrangements for outcome-related funding and financial incentives to staff

Both ACC case managers and Workbridge coordinators receive output bonuses, which tends to encourage that only those with minimal barriers to employment will be served. Workbridge and Supported Employment Agencies are outcome-based, but there is little monitoring and evaluation of outcomes by the funding agency.

III.6.5 Most significant factors in facilitating or impeding overall success

The most important factors concerning job retention or return to work are:

- good links to employers by case managers (from ACC) or placement co-ordinators (from Workbridge, supported employment agency or other vocational placement agencies);
- sufficient funding for the Job Support Programme;
- Modification Grants (see section III.2.3);
- the marketing approach by Workbridge, which seems to have enhanced the image of people with disabilities as potential employees and increased employers' awareness of people with disabilities.

III.7 LINKS WITH EMPLOYMENT POLICIES

III.7.1 The effects of employment policy obligations and agreements on opportunities for vocational rehabilitation

There are no obligations on the part of employers other than those contained in the Human Rights Act concerning discrimination. Moreover, the effects of any obligations or agreements are largely unknown, as there is no reporting system in place.

III.7.2 The effects of financial incentives to employers on opportunities for vocational rehabilitation in the workplace

Formal incentives in the form of wage subsidies are the main reasons for employer participation. However, there is a danger that jobs disappear at the end of the wage-subsidy period (six months tenure) and employers are able to take on another person. Therefore the same employer may have positions that are permanently filled with disadvantaged people (many of whom are disabled).

III.7.3 The relative priorities given to disabled people and other client groups

People with disabilities on Invalids Benefit have limited access to generic employment support programmes as they are not officially registered as unemployed. They do not always need specialist vocational support. By rights, they should be able to seek assistance from mainstream vocational support providers. However, in reality they are referred to seek help from Workbridge as the specialist agency. The Prime Ministerial Taskforce on Employment failed to include people with disabilities as a specific target group in the extra funding that was made available to the long-term unemployed and the young age groups.

Also, EEO for people with disabilities comes in third place after gender and ethnicity in terms of priority.

III.7.4 Effects of changes in labour market structure and demand on opportunities for rehabilitation in the workplace

The New Zealand Employment Contracts Act (1991) and the broader economic/employment policies seem to ensure that there is a labour surplus (unemployment figures are currently around six per cent, with wide regional and demographic variations). These policies ensure that people with disabilities remain 'surplus to requirements' and encourage a charitable policy response rather than a serious consideration of underlying issues (reinforced by broader discriminatory views about disability).

The last decade has seen a rapid increase in casual, part-time and poorly paid jobs. This has increased some opportunities for people with disabilities in terms of workforce entry, but only into the margins of the labour market e.g. food service industry.

III.8 LINKS WITH BENEFIT AND COMPENSATION PROGRAMMES

III.8.1 The relationship between funding of benefit and compensation programmes and vocational rehabilitation policies and services

There is little direct relationship between NZ Income Support Services and vocational rehabilitation policies that are encouraging a return to work. Benefit abatements operate as a disincentive to return to work.

Eligibility for benefits has been severely tightened, which increases the risk to people with disabilities who get and then lose a job, and then can only get an unemployment benefit, which is paid at a much lower rate. Therefore people with disabilities have an incentive to highlight their dependence and inability to work rather than risk job placement - particularly on the margins of the labour market where lay-offs and redundancies are frequent.

The three year period ACC clients have in terms of vocational rehabilitation, puts enormous pressure on individuals who have more severe disabilities. For these reasons many people with disabilities put more effort into keeping compensation rather than 'risk' a return to work.

III.8.2 The effects of benefit or compensation regulations on opportunities for vocational rehabilitation

Eligibility varies between the various agencies. It is frequently based on the nature of the disability e.g. the Foundation of the Blind provides services for those registered with the Foundation. In theory, however, everyone is eligible for vocational support services, except for ACC clients who in their first three years must access services through ACC (for more details see section II.2.3). In reality, restricted funding means that eligibility does not translate automatically into access to service delivery.

III.8.3 The co-ordination of assessment of eligibility for disability benefits and vocational rehabilitation services

There is little coordination of assessment or eligibility which means that many people are unnecessarily reassessed. The new DSS Framework has tried to address the issue of a national standard for assessment, and implemented a coordinated procedure in the years 1993 to 1997. No evaluation has been done and people in the disability community have not reported any changes as yet.

III.8.4 Arrangements to combine receipt of benefits with rehabilitation in the workplace

ACC provides work trials (see section III.2.3). Since 1 July 1996 people on Invalids Benefit have been able to earn up to \$180 per week without any abatement of their benefit, but it is too early to tell whether this encourages either rehabilitation or a return to work.

III.9 LINKS WITH BENEFITS AND EMPLOYMENT POLICIES

III.9.1 The relationship between policies for vocational rehabilitation, benefits and employment

The lack of any legislative or policy relationship between vocational rehabilitation, benefits and employment frequently means that changes are made in one area that have a negative impact on other areas. For example: the current tightening of eligibility for Invalids Benefit, due to significant policy changes by NZ Income Support since September 1995, included new rules such as shorter periods of validity of medical certificates and reassessments by doctors chosen by Income Support. The implication is that the doctors who have been chosen are more accurate, rigorous and tighter. These changes may signal to people with disabilities that a return to work has added risks if placement is not permanent and/or unsuccessful. The increase in the number of applicants for Invalids Benefit may serve as limited evidence that people with disabilities are not returning to work.

The abatement rates have a similar effect in that people can be financially worse off due to 'employees' not being eligible for many of the costs of disability (see section II.2.2). Although recent increases may have a beneficial effect in the long term, at present the effects are unknown. Also, to be eligible for Invalids Benefit a person has to be severely incapacitated (Percentage Incapacity Scale) (see section II.2.3) in terms of work. If a person on Invalids Benefit gets a job, the status of this 'incapacity ... [which] is such that even with appropriate adaptation of the work environment and support it is improbable that the patient will participate in open employment' is negated and it has been reported that eligibility is unlikely if the person becomes unemployed.

If a job is not permanent or unsuccessful, the ACC client is generally not eligible to return to compensation-related earnings, but goes onto Unemployment Benefit or Invalids Benefit (another reason why numbers on Invalids Benefit may have increased).

III.10 The most relevant factors influencing the integration of personal support and rehabilitation services into the workplace

Integration of personal support and rehabilitation services in the workplace is primarily influenced by eligibility criteria that change over time - which seems to shift the emphasis concerning who and what programme is responsible for carrying the costs of disability. New Zealand's policy is strongly influenced by short-term (three year electoral term) cost-shifting and cost-cutting as part of broader economic policies aimed at reducing state involvement, rather than rehabilitation or return to work policies. Critics of the present approach believe an integrated approach to policy would require a larger financial investment and commitment to return to work.

A report by the Vocational Coalition recommended that the Department of the Prime Minister and Cabinet should ensure better coordination and place a stronger emphasis on individually structured vocational opportunities. They recommended that vocational training should be goal-oriented and strictly time-limited.

IV. ADAPTATION OF WORK AND WORKPLACE

Part IV is concerned with practical solutions to adapting the work-station, workplace and job procedures to the needs of workers who become disabled. It focuses on external services available to enterprises to assist them in making adjustments, whether those services are accessed directly in the marketplace or via agencies. External services may provide advice or practical help both in adjusting the demands of the job and in adapting the work environment, temporarily or permanently. They may operate as private consultancies, voluntary bodies, quasi-governmental agencies, or as part of employment services.

The initial sections of this Part consider policy responsibilities, details of providers, funders and users, technical advisory services, sources of technical equipment and advice about accommodating work routines. Later sections focus on the factors, which affect the success of adaptation services in promoting job retention and return to work.

IV.1 RESPONSIBILITY FOR POLICY AND PROVISION

IV.1.1 The main bodies responsible for work environment policies and their role in promoting adaptations for job retention and return to work

Occupational Health and Safety (OHS - a division of the Department of Labour) is responsible for registering and monitoring workplace environments and safety. OHS has no specific brief or connection with disability/rehabilitation policies, although anecdotal evidence suggests that OHS is more likely to cite disability as a hazard in the workplace. OHS has brought about several expensive prosecutions of employers, who tend in turn to see disability as a 'risk' to avoid. When considering employing a disabled person, the liability is uppermost in employers' minds as a result of OHS regulation.

The Department of Labour has a Modification Grant Scheme for employers to adapt their workplace for a particular individual (see I.2.3).

Workbridge's Job Support and Training Opportunities Programme will pay for modifications to workplace and equipment in jobs and training settings (see I. 2.3).

The four Regional Health Authorities provide funding for Equipment Management Services (see IV.1.3) for mobility within the home, for the person to remain in or return to his/her home, for persons to undertake education and/or vocational training and obtaining and/or retaining employment.

IV.1.2 Comparison of the attention given to policies which promote job retention with that given to policies which promote access to work

Given that performance is typically measured in terms of the numbers of people trained and placed, job retention or preventive efforts are seen as less important. According to Campbell, only a relatively small proportion of New Zealand employers were and still are very active with their preventive efforts: they are very much the exception.

IV.1.3 The main providers of technical and advisory services

The main providers are the agencies contracted by the RHAs to manage access to equipment (Equipment Management Services). These agencies in turn either employ or contract registered occupational therapists and other specialists for assessment and design services. Assessors are 'accredited' by the Equipment Management Service according to guidelines provided by the RHAs.

There is a National Disability Resource Centre which provides technical and advisory services as its core

business. Local Disability Resource Centres provide access to information about products and technical advice. A market place has been established to promote competition between providers of technical and advisory services. However, restricted funding means that access to equipment is difficult, especially if it is for employment. The priority of the Equipment Management Service is to provide services and equipment for mobility within the home or for the person to remain in or return to his/her home.

IV.1.4 The relationship between providers of technical and advisory services and providers of employment support and rehabilitation services

Employment support providers will seek assistance from technical and advisory services. However, the Equipment Management Service has to be approached first to negotiate access to funds to pay for the equipment.

IV.2 TECHNICAL AND ADVISORY SERVICES FOR MODIFICATIONS TO WORK-STATION AND WORKPLACE

IV.2.1 Technical and advisory services available to enterprises in respect of modifications

The Barrier Free Trust (a non-statutory organisation) provides courses to train 'Barrier Free Auditors'. These are provided, for example, to territorial authorities who have responsibility for issuing compliance certificates for the 1991 Building Act. The Trust is also contracted by large employers to provide audits (see V.3.3). It also has an advocacy role, acts as a watchdog to Building Industry Authority determinations, and fields complaints from people with disabilities. Despite this, there is said to be less activity and interest in identifying and eliminating workplace barriers than in securing accessibility to more general public places.

There is little in terms of technical and advisory services which are directly accessible to enterprises. There are some instances of private consultancies and firms that specialise in disability accessible buildings. Broadly, however, access to technical and advisory services is through disabled individuals and their service providers. The exception is the 'Building Code' which requires all new public buildings and places to be wheelchair accessible.

IV.2.2 Services specifically directed towards job retention

Job support and modification grants can be and are used to support job retention. However, employers' knowledge of the available resources is likely to be poor (see I.2.3).

IV.2.3 Factors which encourage or discourage the use of technical and advisory services

Funds are limited, and employers' awareness is also likely to be limited. The priority of fund allocation is for mobility needs in the home.

IV.3 TECHNICAL EQUIPMENT

IV.3.1 The provision and funding of equipment to meet individual needs

Access to equipment is through the Equipment Management Services (EMS) which manage government spending in this area. EMS also determine access to advice and assistance. The provision of equipment is supply- rather than demand-driven, and EMS operate within a capped budget. Priorities, therefore, have to be determined within this budget. The EMS criteria are that the person with the disability: (a) has to be assessed as having at least one of the specified disabilities (physical, sensory, psychiatric, intellectual or age-related), that this is likely to continue indefinitely and results in reduced independent functioning to the extent that ongoing support is required; (b) has to reside within the region of the EMS; and (c) needs the equipment for mobility in the home; (d) returns to the home and remains in the home; (e) needs the equipment for full-time

education; or (f) needs the equipment to retain or enter employment.

Funding has also been available through lottery funds, by individual application. However, this has been withdrawn very recently due to the perception that government has been using this option as an excuse to reduce or keep static its own spending in this area.

IV.3.2 The balance between provision to the disabled person and to the enterprise

The focus is almost exclusively on the individual rather than on the needs of the enterprise at large. To activate and enter the system, a disabled person must be seeking placement with the assistance of a service provider.

In the case of movable equipment, the NZ Employment Service gets an agreement from the employer that the worker can take that equipment with them when they leave.

IV.3.3 Factors which encourage or discourage take-up by employees and by enterprises

Employers' and disabled people's knowledge about the availability of equipment and technical assistance is poor.

IV.3.4 Disabled people who benefit and those who miss out

Blind and visually impaired people have better access to equipment, due to historically developed private/charitable funding. Priority tends to be given to in-home equipment and mobility rather than employment-related.

IV.4 ACCOMMODATING WORK ROUTINES TO THE DISABLED WORKER

IV.4.1 External advice services which assist in the adjustment of work routines to individual needs

The external advice services available to employers are provided by staff from Workbridge (placement coordinators), the various supported employment agencies and ACC (case managers). The main role of these staff is to co-ordinate the services needed for the employment of the person with a disability. They meet with both the employer and the person with a disability. They provide the necessary administrative services, advice on all matters concerning the employment (e.g. job share, work hours, how to access equipment, workplace modification etc.) and coordination of services (e.g. if a job analysis or an assessment by occupational therapists is necessary).

The quality of the external advice services depends on the competence of the staff and their relationship with employers. An employer's access to equipment, advice services etc. usually depends on the person with a disability seeking work rather than on the employer's work retention strategies. Employers with EEO coordinators are more likely to consider such issues, particularly in the public service.

IV.4.2 Comparison of the availability and use of provision to support job retention with provision to support access to work

Most support focuses on access to work. Support is generally provided to individual disabled job seekers, rather than to employers directly.

IV.4.3 Disabled people who benefit and those who miss out

Those people who require minimal investment are the most likely to receive services. The marketing of services and availability of direct support to employers are limited, especially in the context of job retention if

a person becomes disabled. However, to create a demand when there is such a limited supply could create other problems, although it may lead to pressure for greater government commitment.

IV.5 SIGNIFICANT SERVICES FOR PROMOTING JOB RETENTION OR RETURN TO WORK

EEO efforts in the public sector may have marginally promoted thinking about the retention of people with disabilities in the workplace (see I.2.2).

The EEO Trust is responsible for promoting voluntary equal employment opportunities policies in the private sector.

ACC, the service provider for injured people, is significant in promoting return to work (see section II.1.1), and is the major purchaser of workplace modifications and equipment.

IV.6 DESIGN AND IMPLEMENTATION

IV.6.1 The effects of inter-agency collaboration in the design and development of adaptive technologies

We are not aware of any systematic attempt at collaboration among various institutes, government departments and disability organisations. All stakeholders tend to pursue *ad hoc* solutions around individual needs, when the person with a disability becomes a job seeker. ACC purchases research predominantly in the area of accident and injury prevention.

IV.7 LINKS WITH EMPLOYMENT POLICIES

IV.7.1 The effect of employment policies on the use of adaptation services

Arguably, employment policy and the New Zealand labour market are committed to the maintenance of a labour 'surplus' and there is little incentive for enterprises to adapt workplaces or work in the interests of the disabled person. Therefore little funding is made available to support work. An increasingly part-time and casualised labour market provides a ready supply of non-disabled workers and gives little incentive for workplace adaptation.

V. ENTERPRISE STRATEGIES

This final Part provides information about effective enterprise policies, management systems and programmes to retain workers whose continued employment is at risk because of disability. The focus is on activities, which are introduced and managed by enterprises as an integral part of human resource and workplace relations management. It includes both integrated policies for the management of disability and specific practical initiatives in the workplace to promote job retention.

V.1 CORPORATE POLICIES AND PLANS

V.1.1 The development and prevalence of corporate employment policies and plans for the retention of disabled employees

Equal Employment Opportunities.

Section I.2.2 discussed the general operation of Equal Employment Opportunities policies in both the public and private sectors. In terms of EEO policy and programmes, attention is focused on recruitment, to a lesser extent on promotion, and rarely on the issue of retention. Acknowledgment of retention and voluntary policies is rare. A NZ Employers Federation publication from 1985 mentions that when employees become disabled efforts must be made to:

- i) restructure and retain individuals in jobs;
- ii) survey other jobs;
- iii) secure specialist help.

There appears, however, little evidence of programmes within the private sector, then or now, to ensure that these intentions are met.

A more recent initiative from the Employers Federation relates to plans for introducing rehabilitation guidelines, and its organisations are already involved in promoting rehabilitation activity among employers.

The EEO Trust has a database that holds examples of good practice for EEO policy. It is difficult, however, to identify evidence of innovatory practices for disability. EEO policy for gender and ethnicity is more likely to take priority.

There appears to be little innovation: businesses are downsizing and profit margins are short. Even when the private sector was forced to implement EEO it is argued there was only reluctant compliance.

The Human Rights Act may have changed the climate a little.

It is important to understand the changing economic situation in New Zealand to fully understand this dearth of enterprise-level responses to EEO and employing people with disabilities. The last decade has seen major economic restructuring. The drive for profit and the assumptions (whether misplaced or not) that efficient employment practices necessarily exclude people with disabilities serve to remove disability issues from the agenda. Securing equal employment opportunities for people with disabilities are, arguably, not a priority. Communications and discussions with summit groups and organisations within the field of equal employment opportunities support this view. Business is said to frame issues in terms of 'risk management', examining options for transferring risks to someone else, treating risks, terminating risks, or tolerating risks.

Good Employer awards

Workbridge, New Zealand Employment Service Centres and Disabled Peoples' Assembly regions previously operated 'Disability Pride: Good Business Awards' which aimed 'to recognise employers who show excellent business practice in the employment of people with disabilities'. This was for initiatives undertaken by employers over the previous year which showed that employers value the contribution which people with disabilities make to their business, e.g. by re-designing a job to suit a disabled person and developing a career development plan for staff with disabilities. This scheme was discontinued in 1995, partly because some disabled people's organisations were said to find the scheme patronising, while the scheme was also said by its sponsors to have reached the end of its 'marketing life-cycle'.

The Fletcher Challenge Award for Employment of People with Disabilities operated with the support of Rehabilitation International. Two categories of awards were available - for employers and for people with disabilities. It is difficult to find evidence about when these schemes ceased operating.

There are some private companies that are said to actively recruit people with disabilities. These include Fletchers, Dupont International, Quality Hotels, Lampen Group, Hort Research and MacDonalds' Family Restaurants. Some of these companies have stated that they recruit people with disabilities because they feel they have a social responsibility, their companies are large, they are often national employers and they have the possibility of finding suitable or alternative employment for people with disabilities. In addition they mentioned a good relationship with the employment agency (eg. Workbridge) or with ACC. Having had a positive experience with people with disabilities in the past was described as an important factor in their willingness to employ persons with disabilities.

Accredited Employers Programme

The Accredited Employers Programme, which was piloted in 1994 by the ACC, enabled employers with reasonable financial assets and capacity to meet approval criteria to take certain duties and responsibilities normally undertaken by the ARCI Corporation. Approved employers manage the work injury claims of their employees for the first year following injury, which involves paying weekly compensation and other entitlements, paying all medical and rehabilitation expenses, and managing and administering the claims within the ARCI Act 1992. For their part, the employers are paid an amount estimated to be the value of costs associated with the first 12 months of a claim. The ACC conducts an extensive audit to ensure employers under the scheme have all health and safety, claim management and rehabilitation procedures and systems in place.

Workwise

Grant Tweddle (ACC) reports on an Auckland initiative called Workwise which involves work-based programmes involving partnership between a range of stakeholders. The aims of the Workwise programme are to:

- promote education of staff, injury prevention and safe work habits;
- identify the requirements of the job to allow for safe and sustainable early return to work;
- develop return to work options which allow injured workers to be reintegrated into the workforce while continuing their recovery;
- develop comprehensive disability management strategies within the workplace.

Workwise is an example of disability management and preventative services being developed in cooperation with unions, employers and existing service providers. It seeks to develop a centre of excellence, delivering specialist occupational medical services to primary care practitioners; advisory services to employers in terms of workplace assessments; and occupational health and safety initiatives. It provides education programmes to both medical practitioners and employers and is being carried out in conjunction with the Occupational Medical Unit at Auckland University. They are developing both education programmes for the workplace and model workplaces. One of the best ways to convince employers of the benefits of good health and safety systems is believed to be by using evidence from other employers. However, the only examples that are given are the Devonport Navel Base and the Special Air Service Group. According to Tweddle, 'both have in place well-developed health and safety programmes supported by specialised occupational medical services and active physical rehabilitation programmes. More importantly, both groups realise that work site interventions are powerful and essential forces for managing and preventing disability from injury. They recognise the potential of workplace disability prevention programmes to reduce health care costs and the incidence of long-term disability'. These two sites are not typical New Zealand employers and there is no evidence of Workwise moving beyond military establishments. Nevertheless, Tweddle believes that New Zealand employers have much to gain from adopting the same proactive approach to dealing with the consequences of injury.

V.1.2 Prominent actors and influences in the development of policies and plans for the retention of disabled employees

The EEO Trust and EEO Contestable Fund (EEO Fund) were established to promote EEO programmes and practices in private sector workplaces. They are jointly funded by employers and government, and activities include the management of an EEO resource database and a variety of educational and promotional activities

designed to assist employers to meet their obligations to people with disabilities.

The EEO Trust is a membership-based organisation. It aims: to use the recognition of merit to increase diversity in workplaces at all levels and in a range of occupations; to develop a workplace culture which values diversity; and to prevent unfair discrimination in the workplace. It has a membership of well over 200 organisations.

V.2 CO-ORDINATED RESPONSES TO DISABILITY

V.2.1 The development and prevalence of integrated disability management systems

There appear to be very few examples of integrated disability management systems except for that of *Workwise* which was discussed in V.1.1.

Although prevention is often seen as an element of integrated disability management systems, Campbell notes a decline in ACC's prevention activities. He believes that the 1992 ARCI Act prescribes a more restricted role for the ACC in prevention. He states: 'Before the run-down of ACC's preventative efforts, much attention was paid to safety education in its wider sense. Apart from a variety of formal courses, much effort was devoted to working with industrial undertakings, giving on-the-spot advice and assisting them with their management systems approaches'.

V.3 PRACTICAL PROGRAMMES AND INTERVENTIONS IN THE WORKPLACE

V.3.1 Enterprise programmes targeted at employees potentially absent from work because of disability

Little evidence was available about enterprise programmes concerning employees potentially absent from work because of disability. Counselling is likely to be the most common activity.

Some evidence does exist about co-ordinated practical programmes in the workplace, although these do not necessarily target workers with high absence records. The Manawatu Wanganui Regional Council, for instance, has recently completed research into existing and potential health and wellbeing initiatives in its workplaces. Management and union representatives worked together to identify initiatives relating to areas such as: family friendliness, flexible employment, internal communications, planned and coordinated approaches to self management, flu vaccinations, group medical insurance, the welfare support system (EAP) and others.

V.3.2 Enterprise-initiated programmes to adjust the workplace and work-station

Midland Health and Southern Health have recently carried out 'barrier free audits' (see IV.2.1).

Other than these examples, however, we were unable to find any details of enterprise-initiated programmes.

V.3.3 Enterprise initiatives aimed at co-workers

Any enterprise initiatives that exist are not aimed at promoting retention. Rather, emphasis is on recruiting people with disabilities.

HIV Awareness

There are particular problems around the dismissal of employees who disclose they are HIV positive. The Aids Foundation within New Zealand has provided a model policy for employers and suppliers of goods and services. It recommends that an employee with HIV should not be restricted from work nor redeployed solely

on the basis of diagnosis. Any impaired performance should be considered on the same terms as any other condition. Redeployment should only take place where there is agreement between employer, employee and physician. Normal unfair dismissal and leave conditions also apply, and the employer should ensure counselling is provided on the same terms as when employees face other personal problems.

V.4 DEFINITION AND ASSESSMENT OF DISABILITY

V.4.1 The effect of perceptions of ‘disability’ on the enterprise job retention programmes

As discussed elsewhere in this document, there remains a prevailing assumption among private and public organisations, employers and unions that disabled people are less ‘productive’. There appears to be a view of disability that concentrates on ‘impairment’, particularly physical impairment, rather than the impact of social and workplace supports.

V.5 LINKS WITH EMPLOYMENT POLICY OBLIGATIONS, RECOMMENDATIONS AND INCENTIVES

V.5.1 Enterprise compliance with disability employment obligations and agreements

There are suggestions that employers are managing to evade the spirit and terms of the Human Rights Act and continue to discriminate against disabled people. As discussed earlier, employers are also trying to gain exemptions from the requirements of the 1991 Building Act.

There are suggestions that the ACC experience rating (see I.1.2) can encourage employers to privatise workplace injuries. Although large firms can apply for Accredited Employer Status under the ACC scheme and manage workplace injuries, this does not apply to small firms. However, small firms are being encouraged to act as if they were accredited employers. Thus, if a person is injured the firm deals with it in-house (sorts out rehabilitation and return to work plans etc.) Because these firms do not report it to the ACC their experience rating stays low. This has potential advantages for the firm. But if the firm goes out of business the individual may find him/herself with large medical bills etc. and he/she may not be eligible for ACC assistance because the injury was not reported within the prescribed time limit.

V.6 ENTERPRISE STRATEGIES AND BENEFIT/COMPENSATION PROGRAMMES

V.6.1 Effects of the availability and level of out-of-work benefits on enterprise recruitment and dismissal policies

There may be a belief by employers that people with disabilities are adequately supported by the benefits system. This may undermine attempts to recruit and retain disabled people within the workforce.

V.6.2 The co-ordination by benefits agencies and enterprises of disabled workers’ transition from benefits support to waged income

No documented evidence is available on this. However, it is our opinion that the role of the ACC case manager is critical.

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International Research Project on Job Retention and Return to Work Strategies for Disabled Workers

Study Report Netherlands

Boukje Cuelenaere and Rienk Prins
AS/tri Research and Consultancy Group

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PREFACE

The *International Research Project on Job Retention and Return to Work Strategies for Disabled Workers* is an initiative of the International Labour Organisation (ILO) and the Global Applied Research and Information Network on Employment and Training (GLADNET). It reflects ILO and GLADNET joint aims of establishing a base for cross-national research and strengthening links between research analysis and policy reform in the field of employment of disabled people.

The Project is a response to a combination of developments which highlight the need for more effective policies and practices in support of workers whose prospects of remaining in employment are jeopardised by work injury, illness or disability. Persons with disabilities are increasingly claiming rights to stay in work as well as to access employment. Pressures on state budgets, the rising costs of compensation claims and

disability benefits, and changes in the structure of the labour market are strengthening policies in favour of job retention and return to work. Enterprises are developing their own strategies to minimise the costs of disability and to retain valued employees. Overall, the balance of responsibility is shifting from the state to the enterprise.

Policies and practices to prevent disabled workers from leaving work unnecessarily, and to facilitate rapid return to employment if job loss cannot be prevented, are recent developments in many countries. The cross-national exchange of information on initiatives and their effects is limited. The first aim of this Project has been to gather information about what has been attempted, by whom, for what purposes, in which contexts and to what effects. The second, more ambitious, aim, is to examine the interaction between the various policies and practices, identify dysfunctions, and work towards more coherent and cost-effective strategies for job retention and return to work which might be applied in different national systems. The ultimate objective is to identify strategies which can be put into effect in the workplace.

The Project was constructed in two phases. In Phase One, eight exploratory desk-based studies were commissioned from researchers in Canada, France, Germany, the Netherlands, New Zealand, Sweden, the United Kingdom and the USA. The eight countries invited to participate represent a spectrum of policy approaches and enterprise practices which affect the retention and return to work of workers with disabilities. Australia joined the project at a later stage.

The studies formed the basis for a *Key Issues* Paper, published simultaneously with the eight country reports. This Paper aims to inform, stimulate debate and pave the way for constructive discussion of questions for further exploration through cross-national collaboration in Phase Two.

National government departments, agencies, a private sector organisation, and the ILO co-sponsored Phase One of the Project. Overall responsibility for the Project rests with the ILO (Vocational Rehabilitation Branch, Employment and Training Department). The design, implementation and analysis of the research in Phase One were the responsibility of the Research Co-ordination Unit established at the Social Policy Research Unit, University of York (UK) in April 1997. Research specialists in the main areas of enquiry, based in study countries, contributed at all stages of the research process and, with ILO representatives, met with the research co-ordinators as a Research Advisory Group.

The country studies

The Project recruited and supported national informants from research institutes in all eight countries. During the second half of 1997 they completed a Schedule of Questions developed by the Research Co-ordination Unit to describe policies and practices, document evidence of their effects and provide grounded commentary on how policies and practices interact. The principal sources were policy documents, survey data, research evaluations and critical reviews. Informants were encouraged to contact sources in government departments and agencies, disabled people's organisations, labour unions and employers' groups. Where documented information was lacking, informants interviewed experts in the field.

The eight country reports are important resources for the development of job retention policy and practice both within and across countries. Each report brings together within a single volume: descriptions of policies, practices and programmes which impact on job retention and return to work; evaluative material; and informed commentary. They cover five themes: employment and labour market policies; benefit and compensation programmes; employment support and rehabilitation services; adaptation of work and workplace; and measures developed and implemented by the enterprise. In line with the research aim of identifying coherent and co-ordinated strategies, the informants both comment on dysfunctions in national systems which obstruct job retention efforts and identify links between themes.

It should be noted that the situation described in the reports may have changed. This is especially true of the

Netherlands where further reforms were expected in the first half of 1998 and the United Kingdom where the government changed in May 1997. Important developments in the USA were announced in March 1998.

The reports produced by the eight teams of national informants conformed to the format laid down by the Schedule of Questions. The original reports have been edited for publication by the Research Co-ordination Unit in co-operation with their authors. However, they remain essentially the 'raw data' for analysis and should be read in that light. Each report follows the same sequence of headings which reflect the original open-ended questions. As the questionnaire prompted informants to respond flexibly to suggestions about possible areas to address under each question, the content varies from report to report. The reader should note that, at the end of a thematic section, commentary may be included on the links between that theme and those which precede it.

Terms used in the study

The study concerns paid competitive employment in the open labour market.

The term 'disabled workers' is broadly defined. It covers individuals who become disabled, injured or ill whose prospects of continuing or advancing in employment are jeopardised when an acquired impairment, illness or deteriorating condition - physical or mental - presents difficulties in fulfilling the requirements of the job, reduces earning capacity or affects other rewards of working. They may or may not qualify under legal definitions of disabled persons. The term also covers workers with disabilities whose working capacity is not diminishing but whose continued employment is nevertheless threatened by prejudice or discrimination, or by the loss of supports which have maintained them in the job.

'Job retention' means staying with the same employer, with the same or different duties or conditions of employment, and includes return after a period of paid or unpaid absence. 'Return to work' refers to the resumption of employment by a worker who has crossed the threshold from a continued employment relationship into non-employed status; the main interest of the study is in policies and practices which return the disabled individual to work at an early stage.

Acknowledgements

The publication of eight country reports of a very high quality in a short space of time would not have been possible without the expert attention of Andrew Nocon of the Social Policy Research Unit who edited the reports with remarkable care and efficiency. His task was made easier by the eight teams of informants who most willingly answered queries and approved the edited versions to tight deadlines.

The Project wishes to acknowledge the contribution of Dan Kearns who assisted with research design, supported the national informants and masterminded international tele-communications.

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Patricia Thornton

Research Co-ordination Unit

Social Policy Research Unit, University of York, UK

April 1998

Copies of the 'Methodology Paper' and the 'Informant Briefing and Schedule of Questions' may be obtained from the Research Co-ordination Unit, Social Policy Research Unit, University of York, YO1 5DD, UK.

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I. EMPLOYMENT POLICIES

The purpose of this Part of the report is to describe policies which maintain those workers in employment whose continued employment is at risk because of disability. It provides evidence of the effects of those policies and identifies factors which influence their effectiveness. The emphasis in this part is on national (or state/provincial) policies formulated by government, and by bi-partite or tri-partite policy-making and advisory bodies.

Sections 1 to 5 are concerned with legislation, incentives and other 'persuasion' policies which oblige and encourage enterprises to retain disabled employees. A distinction is made between employees who become disabled and those who are already disabled. Information is provided about employment policies which encourage disabled employees to retain or return to their jobs. Sections 6 to 8 focus on the factors which affects the success of policies. They also examine the labour market factors which contribute to the retention or loss of jobs among disabled people.

It should be noted that the following description is made at a time of substantial changes in the area of benefit programmes (cf. Part II) as well as in rehabilitation policy and programmes. There are few evaluative studies of the previous arrangements, whereas the considerable legal and administrative changes currently occurring mean that only an outline of future developments can be provided. Where new structures or measures are clear, they are mentioned in the report. Where, however, the future administrative structure or policy regarding the rehabilitation and employment of disabled people is unclear, the discussion will be kept short. This report reflects the situation at 1 September 1997.

Finally a definitional point: we use the term 'work incapacitated' for absence from work due to sickness, impairment or injury, lasting up to one year. When work incapacity has lasted (fully or partially) for over one year it is called 'disability'.

I.1 POLICIES WHICH AIM SPECIFICALLY TO INFLUENCE ENTERPRISES TO RETAIN NEWLY DISABLED EMPLOYEES

I.1.1 Legal obligations and binding agreements intended to prevent and restrict the dismissal of employees who become disabled

Employment protection for work incapacitated employees is laid down in civil law (article 1639h of the Civil Code (BW), last amended in 1995) and for public servants in the 'Special Decree on Labour Relations' (BBA) of 1945 (article 6). The most important protective right is that employees who are work incapacitated may not be dismissed for up to two years, and that the employer has to do 'everything reasonable' to assist the work incapacitated employee.

The employment protection means that employees who are work incapacitated can only be dismissed if certain strict criteria are met. The background of the dismissal policy with regard to work incapacitated workers is that they should not be dismissed because of their incapacity or illness. Both the employer and the

employee should do everything reasonable to keep the employee in their current work or in an alternative job within the enterprise.

This 'ban' on dismissing a disabled employee extends for the first two years of work incapacity. Subsequently, the employer has to ask permission for dismissal at the Employment Service, which has to seek advice from a social security agency. Central to this advice, and to whether or not permission is given, is the question whether the employer has sufficiently proved that other or adapted work cannot be provided.

In 1995 the government explicitly stated that the protective measures against dismissal should be taken very seriously by all parties involved, in order to retain more employees in the workforce instead of letting them leave employment by claiming disability benefit. Special attention was required in the case of disabled employees with a disability level of less than 15 per cent (cf. II.1.1): existing protection was not effective as this group are not officially classed as disabled (cf. I.5.2).

The social security agencies which administer various employee benefit schemes (cf. II.1.3.) have a preventive function with regard to the dismissal of employees. From the first moment they have contact with the employer because of the long term work incapacity of an employee (cf. II.1.1), the social security agency should bear in mind that this situation could possibly lead to dismissal and, consequently, it should do everything possible to prevent this. One of the most important means is the 'work resumption plan' which has to be made at the latest 13 weeks after an employee reports sick (cf. II.1.1).

In 1995 the directors of the Employment Service agencies noticed a 22 per cent reduction in the number of requests for dismissal on grounds of disability (De Vos and Smitskam, 1997). The total number of requests for dismissal in that year was about 68,000. It is possible that this reduction was partly due to recent changes in the Sickness Benefits Act (ZW) and the Disablement Benefits Act (WAO) (cf. II.1.1). These changes aimed to increase employers' responsibilities in relation to sickness and disability, and to achieve an increased awareness of the risks and costs of disability among both employers and social security bodies. Legislation coming into force in January 1998, which extends employers' responsibilities and the costs resulting from employees' disabilities (see Appendix 1), cannot be regarded as a direct sanction for dismissing newly disabled employees. However, it is certainly meant as a disincentive to letting employees go on disability benefit after the first year and then dismissing them a year later (Maas-Grasmeijer 1996).

I.1.2 Legal obligations and binding agreements intended to promote the retention of employees who become disabled

Apart from disincentives and legal prohibitions to the dismissal of work incapacitated employees, there are some additional incentives and legal obligations to promote the retention of newly disabled workers. However, it is important to note that these 'positive, stimulating obligations' for a long time were not common in Dutch policy and measures.

Obligation to adapt work

The basic obligation is laid down in civil law (Art. 1638z BW). This is the obligation for the employer to adapt the work to employees' capacities. In practice this means that, if a partially disabled employee makes an offer to the employer to do other work that is suitable for him/her, the employer is obliged to accept this offer (although exceptions are possible) (De Vos and Smitskam 1997: 65). However, there are no data available to support the view that such initiatives are often taken by employees and accepted by employers.

Work resumption plan

Another important obligation on the part of the employer is to report a work incapacitated employee to the social security agency within 13 weeks of the person reporting sick. This measure aims to prevent permanent

disability and to stimulate the employer to start rehabilitation and work resumption soon, if necessary in cooperation with the social security agency. The report has to be accompanied by a 'work resumption plan' in which the employer reports what has been done so far to promote job retention and what will be done in the near future to facilitate work resumption (art. 38 lid1 ZW and art. 71a WAO). If the employer does not comply with this reporting obligation, payment of the disability benefit (after 52 weeks of work incapacity) can be postponed until 39 weeks after the actual report is submitted. During this postponement the employer has to continue paying the regular wage.

The results of the work resumption plans have not been thoroughly evaluated yet. At first glance this seemed more a 'paper obligation' than a real action by employers. The social security agencies have to judge these plans and use them in their supervision of employers' reintegration policies. They also may fine an employer who does not provide the work resumption plan on time, with a maximum fine of Dfl 10.000 guilders. (An insufficient plan can result in a fine of Dfl. 1000). (De Vos and Smitskam, 1997: 67 -71).

A recent study showed that the social security agencies consider that the information which is provided is in most cases inadequate to judge whether or not the employer has done enough to retain the employee. However, social security doctors and vocational experts seldom use the possibility of fines. It is not yet clear whether no fines are being levied, as social security administrative departments also have some discretion in this and the study discussed here did not include these departments (Van Deursen and Veerman, 1997).

I.1.3 Voluntary policies and programmes which encourage enterprises to retain newly disabled employees

The basic principle of Dutch job retention policy is that employers and employees are themselves mainly responsible for the continuation of employment in the former or adapted job. Financial incentives have been introduced to stimulate both parties, with employers now being required to pay wages at a 70 per cent level for up to 52 weeks (for details see II.1.1). Both employers and employees thus have a direct interest in keeping down sickness absence and promoting job retention.

Since the introduction of this policy many employers have developed so-called 'sickness absence policies' (Veerman *et al.*, 1996; Ter Huurne *et al.*, 1997). The contents and intensity of these policies vary widely. Some enterprises only improved their sickness reporting procedures, while others began integration projects in which occupational health and safety aspects are evaluated and improved. These measures were often embedded within human resources management policies.

Usually the reasons why an employer begins a 'sickness absence policy' are high absence and work incapacity rates. In those cases the improvement of working conditions is a means of achieving several goals, amongst which a decrease in sickness absence and the retention of employees at risk of becoming disabled are only two parts (Kompier *et al.*, 1996). This means that enterprises which have relatively few problems with regard to sickness absence and the prevention of disability tend to pay little attention to this policy.

The situation can be summarized by saying that all job retention policies on the part of employers lie somewhere between 'compulsory' and 'voluntary'. Because of their legal obligations and the way these are checked by the social security agencies, employers have to put effort into job retention policies, but they are free to choose the way to do so.

It is unclear to what extent collective labour agreements include additional obligations for the integration of partially disabled persons. There is no published material about such voluntary agreements, and experts estimate that non-obligatory measures are rare.

I.2 POLICIES TO OBLIGE AND ENCOURAGE ENTERPRISES TO RETAIN DISABLED WORKERS IN GENERAL

I.2.1 Obligations and binding agreements to promote the retention of disabled workers in general

The distinction between ‘newly’ disabled workers and disabled workers in general is not particularly relevant for many policy measures aimed at the job retention of disabled workers, as most of the measures that apply to newly disabled workers also apply to disabled workers in general.

Dismissal procedures have been discussed in I.1.1.

Obligations to create a non-disabling work environment

General obligations for employers are laid down in the Handicapped Workers Employment Act (WAGW). This Act has been in operation since 1986 but the implementation of various elements has not been successful.

An employer is obliged to adapt work and the workplace to the capacities of disabled worker as far as this can reasonably be demanded. There is a general obligation for employers, employers’ organisations and labour unions to promote job retention and return to work for disabled workers.

Quota scheme

The WAGW aimed at a quota of three or five per cent of work places to be filled by disabled people, but the exact percentage for each economic sector was left to social partners to agree to. As these parties did not agree, there is not yet any obligation, nor any monitoring of the number of persons occupying a job which fulfils this arrangement.

Anti-discrimination legislation

So far, no explicit anti-discrimination legislation has been introduced in relation to disabled people. The general ‘Law on Equal Treatment’ prohibits discrimination due various reasons like religion, gender or marital status. Disability is not included as one of the grounds. A debate is now taking place as to whether disability should be explicitly included. The privatisation of sickness benefits (cf. II.1.1) gave rise to this debate, as employers applied stricter health-related criteria when engaging personnel, which is considered a most unwanted consequence. This debate has raised awareness that discrimination is still taking place against disabled people in the Netherlands and should be abolished.

New methods of financing the WAO, involving a greater role for employers (see Appendix 1 - the Pemba Act), could mean that employers may wish to introduce stricter health criteria when recruiting staff. To prevent this from happening, a new Medical Examinations Act, due to come into force in January 1998, will seek to prevent discrimination against disabled people in relation to employment (see Appendix 2).

I.2.2 Financial incentives which encourage enterprises to retain disabled workers in general

In general there are no rewards for an employer who retains a disabled worker, nor are there any targets set. Retaining a disabled employee is seen as part of an employer’s normal legal obligations, that is, to offer the employee adapted work. Only in cases where exceptional costs are involved can some provisions be subsidised. The overall situation is different, however, for employers who recruit a disabled person from outside the enterprise. In their case, it is easier to obtain financial incentives (such as items I.1-3 on Table I.1), provided certain criteria are met, than it is for employers who retain existing employees.

Provisions

Despite financial responsibility lying with employers, there is a range of provision available which may, in certain circumstances, be used to stimulate or facilitate the continued employment or re-employment of

persons with full or partial disability. The provisions directed at employers include:

1. Dispensation from the obligation to pay a specified minimum wage to disabled workers
2. Wage subsidy and training-on-the-job subsidy
3. Job coaching/supported employment
4. Exemption from compulsory wage payment in case of sickness
5. Early re-examination of disability level
6. Early award of disability benefit
7. Provisions for work adaptations

Obligations and sanctions for employers, on the other hand, include:

1. Obligation to adapt the workplace
2. Obligation to register and provide information
3. Quota obligation
4. Obligation to offer adapted work to own employee
5. Obligation to report a case of sickness absence within 13 weeks
6. Work resumption plan
7. Sanction for (non-) adapted work in the second year of work incapacity
8. Sanction for (non-) adapted work
9. Right of redress for social security agency
10. Obligation to have a working conditions policy

We will describe the most important financial provisions for employers who retain disabled workers.

Provision for work adaptations (werkvoorzieningen art. 57, lid 1 AAW - General Disablement Pensions Act)

If an employer incurs extensive costs in adapting a workplace to the condition of a disabled worker who receives partial disability benefit, then the employer can be subsidised for these extra costs. The employer has to meet strict criteria about the type of costs and the type of adaptations.

Research shows that employers seldom use these provisions (Donker *et al.*, 1996; De Vos *et al.*, 1995, 1996). In 1995 the costs of only 660 work adaptations were reimbursed. The main reasons were: the bureaucracy that accompanies this provision; the lack of information among employers about it; and the view among employers that, if they employ this person, it is in some ways easier for them to finance the extra costs themselves (as they do not have to find out the criteria, fill in forms or wait for decisions).

Wage subsidies for employers (LKS eigen werkgever, Art. 62 WAO)

Wage subsidies for an existing employer are available on condition that the subsidy is for a maximum of 25 per cent of gross income and the employee works at least 15 hours a week. If the employer offers work that can be regarded as 'normal', and requires a 'normal' contribution on the part of the employee, then the subsidy is not given (De Vos and Smitskam, 1987: 29).

The social security agencies have a discretionary power to interpret whether an employer meets the criteria. The social security agencies are very strict in interpreting the criteria, in particular the criterion that subsidies should only be for additions to employers' 'normal' efforts (cf. I.5.1). Therefore it is not surprising that the total subsidies given in 1994 were much less than policy makers had expected. This was especially the case with subsidies for existing employers in comparison with subsidies granted to 'new' employers. Only three per cent of all subsidies were awarded to existing employers (Donker *et al.*, 1996).

Exemption from compulsory wage payment in case of sickness

An important recent measure to enable partially disabled workers re-enter the workforce is the exemption from compulsory wage payments if the worker becomes sick. Those employees who received disability benefit before starting work, or who were eligible for such a benefit, can apply for benefit during the first three years after re-entry into work instead of having the employer pay (70 per cent of) their wages. In this way the employer faces no financial consequences during the time they are work incapacitated.

It should be noted that all these provisions and subsidies are bound by strict conditions and are subject to extensive administrative procedures. Therefore the use that is made of these provisions and subsidies by employers who want to keep their employees at work, is very limited (see also V.12.3).

Another remarkable aspect is that they only can be applied to the employee who already has been evaluated for the disability benefit programme and has been recognised as 'partially disabled'.

There are no other external incentives to keep an employee at risk in the workforce. For instance we do not have an instrument such as 'contract compliance' to promote the job retention of disabled workers.

I.3 POLICIES AND PROGRAMMES TO SUPPORT DISABLED EMPLOYEES AT RISK TO RETAIN THEIR EMPLOYMENT

I.3.1 Mechanisms to support the rights of employees whose continued employment is at risk because of disability

There are no mechanisms or organisations in the Netherlands to support the rights of individual employees whose job is at risk because of disability. The workers council (OR) has a right only to contribute to decisions on the choice of an occupational health and safety service and to discuss occupational health and safety policies in an enterprise in general. These rights do not apply to individual employees. If an individual is a union member and he or she is not satisfied with the efforts the employer makes to continue the job contract, then the individual could ask the union for help. But this is not a mechanism especially aimed at disabled workers at risk.

I.3.2 Financial incentives directed at employees whose continued employment is at risk because of disability

Difference between wage and benefit level

The most important financial incentive for an employee to stay in paid work is that, in all cases, the disability benefit is lower than the previous earned income. This is more than an absolute difference between the wage and the benefit: financial possibilities also differ markedly. In the case of disability benefits there are few possibilities to increase income, while in a more normal working situation, salary increases may be expected.

Recent research among employees with a sickness absence of at least three months showed that the direct threat of the low level of the disability benefit does not, of itself, motivate employees to make particular efforts to return to work. The prospect of a lower income from disability benefit does, however, motivate employees to return to work after long-term work incapacity (Cuelenaere, 1997).

Wage supplements

Only a few incentives focus more directly on the employee's situation. Firstly, there is the possibility of a supplementary benefit. If the work meets certain criteria, especially criteria with regard to the fit between an employee's capacities and workplace demands, then the employee may qualify for a supplementary benefit. Under changes introduced in 1994 as a result of the 1993 Act to Restrict Claims for Disability Benefits, however, fewer people than before can apply for such a benefit. In many more cases, the social security agency will state that the employee is able to earn his or her old salary in other work. Therefore, staying in the old job with reduced work capacity is no longer rewarded with a supplementary benefit.

Postponement of disability assessment

A stimulating measure that usually applies more in the case of return to work than job retention, is the postponement of a disability assessment while a person is undergoing education or shortly after starting a new job. If a previously employed disabled person finds a new job following a course of education, the outcome of an early disability examination will probably be a lower disability percentage rating, which will therefore result in a lower rate of benefit or no further benefit at all (see section II.1.1). In order to give employees a trial period, in which they can test if they really can hold down the job or find a job that corresponds with their recent education, this examination is temporarily postponed. This measure functions as an indirect financial incentive or guarantee of income.

I.3.3 Programmes which support a move to another employer or to self-employment

From January 1998, employers' contributions to the disability benefit scheme will be partly determined by the number of employees who have become entitled to disability benefit in previous year: the fewer the number of such employees, the lower the employer's contribution (see Appendix 1). Employers who are unable to arrange for an employee to stay in their own enterprise will have an incentive to try to arrange for the employee to move to another firm, thereby avoiding the need for a claim for disability benefit.

In the Netherlands there are three, fairly minimal, provisions to assist work incapacitated or disabled workers to work as self-employed. The first, income supplements (art. 59b AAW), is meant for self-employed people who are partially disabled and who continue their own business or profession, but earn less as a consequence of their disability. With this provision their income can be supplemented to the level of their previous earned income.

For partially disabled workers who want to become self-employed, there exists a credit facility (art. 57, lid 1 AAW). If one has a financially sound plan but nevertheless has problems obtaining credit elsewhere, the social security agency may provide a credit. This facility is not promoted and is therefore rarely used (De Vos and Smitskam, 1997). Another provision aimed at people becoming self-employed is the decree on 'Welfare for Self-Employed People'. People in receipt of income maintenance or an employee benefit (such as a disability benefit) and who want to start up as self-employed can, under strict conditions, receive a loan as well as a temporary supplementary social welfare benefit.

Self-employed people usually are privately insured against the risk of sickness and disability. The private insurance companies, which specialise in such policies, apply a wide variety of job retention or return to work measures and various forms of support. A private insurance company that holds about 25 per cent of the market of sickness and disability insurance for self-employed people, has stated (in a verbal communication)

that it succeeds in helping 90 per cent of people back to some form of work: this is 90 per cent of all clients who had been work-incapacitated for two or three months and for whom full medical recovery was no longer expected. (In 1995 a total of 720,000 persons were self-employed.) This insurance company cooperates with outplacement agencies (which find employment for people who have been made redundant), commercial employment agencies, educational organisations and specialist agencies to help people with traumatic experiences (for instance, as a result of crime) to return to work.

I.4 BENEFICIARIES

I.4.1 Impact of definitions of disability and eligibility criteria on access to and coverage of policies

Changes to the criteria and assessment methods for disability benefit (cf. II.1.1) mean that lower benefits are now payable when a person transfers to disability benefit after 52 weeks of work incapacity: such a transfer is now more difficult and less attractive.

I.4.2 Disabled workers who benefit and those who miss out

Most of the policies and measures described in this Part of the report are applicable to employees who have been assessed and who receive full or partial disability benefit.

With regard to this category, three groups can be distinguished:

a) *non-disabled people* (degree of disability < 15 per cent): if a person is not disabled in accordance with the disability criteria the theoretical loss of earning capacity is less than 15 per cent. The person is supposed to be able to earn about the same income as before the illness or impairment occurred. However, this does not mean that they have no restrictions, as they may still be unable to carry out their job.

b) *partially disabled people* (15 - 80 per cent): being partially disabled means that a person has some remaining earning capacity. He or she will be entitled to a partial disability benefit for the (partial) loss of earning capacity. A partially disabled worker is entitled to services and work support from the social security agency or the employment agency.

c) *fully disabled people* (80 - 100 per cent): a person is assessed as fully disabled if he/she has fully lost his or her earning capacity due to restrictions or loss of capabilities. Workers with mental disorders are likely to be more often assessed as fully disabled, because their work capacity is harder to measure exactly than is the case with physical impairments. A fully disabled person is entitled to full disability benefit (cf. II.1.1).

Most job retention policies aim at the middle group: partially disabled people. There is little space for preventive measures, since a person has to be officially registered as disabled before any services are provided. There are few positive incentives for employers or employees to put efforts into return to work (job retention) (Wevers, 1997). It is only recently that more attention has been given to the first group: employees who still have the same earning capacity as they had before but who are often no longer able to do the work they are trained for and experienced in. Therefore this group also needs support when trying to find new work, either with their previous employer or with a new employer.

Gender differences

During the first year of sickness absence, women accounted for 42 per cent of the working population but 49 per cent of cases of sickness absence (CTSV, 1996b). Women were over-represented among people joining the disability benefit scheme in 1995 (of whom they constituted 51 per cent), but they accounted for 33 per cent of all disability benefit recipients (CTSV, 1996c).

Age differences

Younger employees (under the age of 35) are over represented among people on sickness absence: while they constituted 45 per cent of the working population in 1995, they accounted for 59 per cent of reported cases of sickness absence (CTSV, 1996b). Thirty-four per cent of employees entering the disability scheme were under 35: this group included 41 per cent of all women entering the scheme and 26 per cent of men (CTSV, 1996c).

Diagnosis

The most common diagnoses among people on sickness absence in 1995 were (in descending order of frequency) respiratory disorders, musculoskeletal impairments and psychological problems (CTSV, 1996b). Among people entering the disability scheme, the most common diagnosis groups were: psychological problems (27 per cent, including 24 per cent of men and 30 per cent of women) and musculoskeletal impairments (25 per cent: 27 per cent of men and 23 per cent of women) (CTSV, 1996c).

Earlier occurring disability

Discussions and policy changes regarding the (re-)employment of disabled persons mainly concentrates on insured people within the workforce. Small categories, such as people whose disability occurs early in their lives (including people with learning difficulties), are covered by a separate scheme which has no relationship with employment and which, consequently, largely falls outside the scope of this study.

I.5 JOB RETENTION POLICIES IN CONTEXT

I.5.1 The salience of policies for job retention in the overall context of national policy to promote the employment of disabled people

In government policy a lot of attention has been given to long-term work-incapacitated employees, and particularly to ways of preventing them from claiming disability benefit. In recent years the obligations on employers to adapt work and to do 'everything reasonable' to keep the employee at work have been increasingly stressed. However, the first stage of a possible 'disability career' is mainly seen as the responsibility of the individual worker and the employer, and there are almost no financial incentives for the employee or employer to work towards job retention. Staying in employment is regarded as part of the normal work, personnel policy and obligations that employees and employers have. During the first year of work incapacity, only a restrictive incentives policy is operated, in which the government seeks to avoid 'subsidising' either the employer or the employee for actions they should take anyway.

At the same time, many studies stress the importance of early interventions in order to have the highest chance of successful job retention. The importance for job retention of action in this early work incapacity period is recognised by the Ministry of Social Affairs and Employment as well as by social security agencies. But, so far, the lack of concrete supportive measures that are available at this initial stage contrasts with the importance of this period.

More measures and incentives are available, however, to assist those workers to return to work who are already (fully or partially) disabled.

I.5.2 Policies affecting the retention of newly disabled workers

The majority of employees who are work-incapacitated return to work with their own employer, without the assistance of any special measures. Around two thirds of employees who have been absent for three months due to sickness return to work within 52 weeks of being able to do so (CTSV, 1996). The main factors that influence successful job retention are not so much policy factors, but relate more to the individual efforts of

the employee and the employer (supported by the Occupational Safety and Health (OSH) service) and their motivation to continue their existing working relationship (De Vos, 1995; Cuelenaere, 1997). (See V.1.1 for details of contracts with OSH services.)

Compulsory wage payment during sickness period

In recent years we have witnessed a decrease in sickness absence rates, a slower growth of the number of disability benefit recipients compared to earlier years, and an increased awareness of sickness absence and job retention issues at an enterprise level. These changes have occurred since arrangements have focused on the financial responsibility of employers and employees themselves from 1994 (cf. section II.1.1). So far there is no evidence that a more recent change (in 1996) to extend employers' compulsory wage payments from 26 to 52 weeks has had any additional effects (Veerman *et al.*, 1996; Ter Huurne *et al.*, 1997).

I.6 IMPLEMENTATION OF JOB RETENTION POLICIES

I.6.1 The effectiveness of institutional arrangements for monitoring and enforcement

Given that return-to-work policies have been relatively underdeveloped in the Netherlands, there are few monitoring or enforcement obligations. The most important means of enforcing an obligation lies in the way employment protection and the special dismissal procedure for disabled workers is monitored by the employment agency and, in the case of an appeal, by a judge. This obligation is subject to a high degree of legal protection and enforcement and is taken increasingly seriously; as noted earlier, the number of employees dismissed on health grounds has decreased (cf. I.1.1).

More attention is now being given to the enforcement of obligations. For instance, the Social Security Advisory Board (CTSV - cf. II.1.3) is now examining whether penalties are being, or could be, imposed by social insurance agencies if employers make no or insufficient work resumption plans.

I.6.2 Factors which affect the adoption of voluntary job retention measures and take-up of financial incentives by enterprises

Sickness absence policy, health and safety policy and job retention policy within an enterprise are generally influenced by an awareness of the financial problems caused by sickness absence (Kompier *et al.*, 1996). If, in an individual case, an employer is willing to support job retention, this often depends on the relationship between the employer and the individual employee. An employer is more willing to put efforts into job retention if an employee has performed well in the past, fulfils a specialised - and especially a core - function in the enterprise, and is generally valued by the employer (Veerman and Cavé, 1993; De Vos *et al.*, 1996). The severity of the disability and the possibilities of job adjustments within the enterprise influence the employer's willingness to promote job retention and the possibilities of doing so.

Furthermore, private insurers (cf. II.1.3) may stimulate and support employers to keep partially disabled employees in the workforce. Finally, more knowledge about provisions and measures may stimulate their take-up.

I.7 INTERACTIONS BETWEEN EMPLOYMENT POLICIES AND PROGRAMMES

I.7.1 Ways in which employment policies complement or contradict one another

Employers' increased financial responsibility for sickness absence and job retention has also led to a more restrictive policy in many enterprises concerning personnel recruitment and selection. Many employers control their employees' absence more strictly; in many enterprises, financial incentives have been introduced to reduce absence. Another consequence has been that employers select new employees more strictly according to their health risks (Veerman *et al.*, 1996; Wevers, 1997). Prevention and job retention have so far

received less attention in enterprises. One of the reasons is that there are almost no measures or (dis)incentives that focus on the crucial first period of absence and possible retention.

I.7.2 Impact of the distribution of responsibility for employment policy

In the first period of sickness absence it is mainly the employer, with the support of the OSH service, who is responsible for reintegration and job retention. When it becomes clear that an early and relatively smooth return to previous work is not possible, and especially when the employee crosses the barrier of the disability assessment, then the social security agency has more responsibility. A significant problem in this division of responsibility is the lack of information exchange between the OSH service and the social security agency. From the perspective of the employee and the employer it seems they have to give the same information to two organisations at different times. In some cases, depending on the way the OSH service operates and on the contract between the OSH service and employer, the OSH service continues to support the employee during the whole period in which the worker is work-incapacitated but still has a contract with the employer (usually a maximum of two years).

An employee who is classified as partially disabled and who is not working is in most cases entitled to two benefits: a disability benefit and an additional unemployment or social assistance allowance. Both benefits are provided by the social security agency, but by different departments of that agency. The eligibility criteria for unemployment and disability benefits differ, especially concerning availability for the labour market. Being unemployed means that a person has to be fully available to accept work. Participating in job retention provision such as vocational training or part-time work can interfere with this requirement. Unfortunately, the two departments rarely cooperate and therefore clients sometimes are confronted with conflicting demands or bureaucratic problems (Donker *et al.*, 1996; Wevers, 1997). This situation can form a barrier to job retention or, at the very least, is not conducive to efforts at job retention. Legislation is in preparation to restructure the administrative processes.

I.8 LINKS TO LABOUR MARKET FACTORS

I.8.1 Elements in labour market policies which influence the effects of job retention measures

Until recently, policies to promote work resumption for long-term unemployed people, those on social welfare, and disabled workers were carried out by separate bodies with separate subsidy arrangements, authorities and regulations. Because of unsatisfactory results across this whole area, a more integrated administrative organisation is being implemented, the so-called 'SWI-policy' (literally: cooperation (between) work and income). The main goals of this new policy are to make the job retention measures operate more effectively, reorganise different measures for subsidies and provision, and bring more people back into the labour market. This is a very recent development and, so far, attention has mainly been paid to the organisational aspects of the new integrative policy. It is too early to evaluate any results for different client groups, such as for disabled workers (Wevers, 1997; Van der Krogt and Duijndam, 1997).

In general terms, it is worth mentioning that, because of their greater financial responsibility for sickness pay, employers have become more anxious about employees' health risks. Temporary workers, whether or not they are recruited through a non-governmental, commercial, employment agency, are still insured under the Sickness Benefits Act and therefore the employer does not have to pay when they are sick (cf. II.1.1). Temporary personnel have therefore become more attractive to employers. More employers have been using this option since the changes in the Sickness Benefits Act (Veerman *et al.*, 1996). At first glance this seems to be disadvantageous for employees, because of the increased job insecurity. On the other hand, developments in the commercial employment agencies seem more hopeful. Such developments include the greater professionalisation of workers who regularly work for a commercial employment agency. The larger commercial agencies offer their workers a legal position that is more secure and is more comparable to that of a regular employee with a permanent job, albeit with conditions attached. Although developments in sickness

benefits policy lead to a higher demand for temporary workers, some temporary workers tend to gain some of the rights enjoyed by regular workers (such as pension schemes and parental leave).

II. BENEFIT AND COMPENSATION PROGRAMMES

The purpose of this Part of the report is to examine how social benefit and compensation programmes affect possibilities for disabled workers to retain or rapidly resume their employment. The main focus is on the application of benefit programmes in employment; that is, opportunities to combine earnings with income from disability benefits, workers' compensation or other employment-related reparations. The obstacles presented by systems for out-of-work benefits are also examined. The theme covers cash benefits and payouts and, where significant, allowances against taxable income. Programmes may be funded from tax revenues, or from earmarked or general insurance funds to which employers and/or employees contribute.

The first section presents information about workers' and other compensation programmes. This is followed by a discussion of arrangements for combining benefits and earnings from work. Provision is then considered for income support out of work, and its effects on work resumption. The final section examines interactions between disability benefit programmes and employment policies.

II.1 COMPENSATION PROGRAMMES FOR WORK-RELATED INJURY OR ILLNESS

The benefit programmes operated in the Netherlands in the case of work incapacity or disability have been subject to considerable changes in the past few years. The most recent, concerning the disability benefit scheme, were introduced in January 1998. This Part will describe the programmes currently in operation and also sketch the new regulations insofar as they have been decided by Parliament. In order to set that discussion in context, some of the major features of the current Dutch arrangements will first be outlined.

No distinction between work-related and non work-related work incapacity

A particular feature of health-related income replacement schemes in the Netherlands is the abolition of causality. Since 1967 no distinction has been made between work-related (occupational injury and disease) and non-work related incapacity (illness), either in eligibility criteria or in the level and duration of benefits payments. Both risks were covered by the same schemes: at the onset of work incapacity, the Sickness Benefits Act (ZW); in the case of permanent work incapacity, the Disability Benefits Act (WAO). The abandonment of causes of work incapacity originated from norms and values concerning the equal treatment of employees, irrespective of the reasons for their reduced work capacity, and was linked to a prevailing dimension in Dutch culture: the desirability of a reduction in inequality.

Sickness and disability: related programmes

The sickness benefit arrangement and the disability benefit programme are related. They can be regarded as two phases of one (work incapacity) process. This means that, contrary to the situation in many other countries, the sickness benefit arrangement is not part of the general health insurance scheme (cf. II.1.1) and, consequently, sick pay is not provided by sickness funds. Furthermore, the disability programme is not included in the old age pension scheme, but is considered as a follow-up arrangement for those who are long-term sick. Both programmes are administered by five 'executive agencies', which also provide other benefits (e.g. for unemployment).

Civil servants under private sector arrangements

The preceding comments do not relate just to the arrangements and organisation that apply to employees in the private sector. Civil servants, who traditionally have their own income replacement schemes, will increasingly be covered by the same arrangements as in the private sector. From 1998 the arrangements and

procedures outlined here also apply to the public sector, so the following descriptions also cover the situation of the civil servants.

II.1.1 Principal compensation programmes for work-related injury or illness

The Sickness Benefits Act (compensation for temporary work incapacity due to sickness and injury)

Since March 1996, the Dutch sickness benefits system has been changed considerably: the employer is now obliged to pay the wages of the sick employee for the first year of sickness, at a level of 70 per cent of the salary, but at least the minimum wage. The wage payment may be more than 70 per cent, where this has been included in collective labour agreements. Two waiting days may be applied (at the expense of the employee), where this has been stipulated in the employee's contract, the company's regulations, or the collective labour agreement.

Salary is paid for a maximum of 52 weeks, but not longer than the duration of the contract. After 52 weeks of sick leave the employee is covered by the Disability Benefits Act (WAO). The employer is free to insure fully or partially against the risk of wage payment in the case of sickness of employees. This voluntary insurance should be provided by a private insurance company.

The payment of sickness benefit (70 per cent of wages) from the first day (or after two waiting days) does not apply to certain categories of employees, such as:

- those who lost their job during the first year of sickness
- employees with a temporary labour contract
- unemployed people
- women who are sick due to pregnancy and childbirth (who receive 100 per cent of daily wage)
- previously disabled workers who re-engaged into employment (during the first three years of re-employment).

The procedure for those employees where the employer is obliged to continue wage payment in the case of sickness is as follows:

1. The employee reports sick to the employer (within a specified number of hours, as defined in a sickness protocol each employer should have, according to the law).
2. From 1 January 1998 each employer is legally obliged to engage an Occupational Safety and Health (OSH) Service. The contract between an employer and an OSH service includes an agreement about the way the OSH service will support the employer. A risk inventory and evaluation has to be part of this legal obligation. Occupational physicians themselves are employed by the OSH service and have their office at the service although, in the case of larger firms and where this is agreed in the contract, they may have an office base at the firm. The number of hours they spend at an enterprise is open to negotiation, as are the criteria for selecting the sick-listed employees whom they wish to see. Depending on the type of contract with the OSH service, the OSH lay inspector may visit the employee at home, or the client may - after some days - be invited to see the occupational physician.
3. The company doctor assesses whether the employee is unable to work, sets an expected date of work resumption, and supervises the return to work process. The physician reports to the

employer on the legitimacy of the sickness absence, expected date of work resumption, need of (temporary) adaptations for early return, etc.

4. In case the client or the employer does not agree with the outcomes of the evaluation by the occupational physician, they may request a second opinion from the social security agency.

5. Depending on the terms of the collective labour agreement, the client receives 70 per cent or more of the wage (with a maximum of Dfl. 294.42) from the first, second or third day of sickness.

6. In the 13th week of work incapacity the employer has to present a work resumption plan to the social security agency. The agency checks whether the employer did 'everything reasonable' to make the (adapted) resumption of work possible. If the employer - without sound reasons - refuses to cooperate with this social security agency on work resumption, he may be fined.

7. Before the 40th week of work incapacity the client should claim disability benefit from the social security agencies.

For those few categories of employees that fall under the old Sickness Benefits Act arrangements, procedures are slightly different. The sickness benefit is paid by one of the five social security agencies, each administering the scheme for certain economic sectors. Evaluation of work incapacity is carried out one by the agency's social security doctors, who also undertakes the assessment of disability when the employee does not return to work within 52 weeks. Sickness benefits are paid monthly.

The Disability Benefits Act (WAO) (originally 1967, last changes 1994)

The WAO entitles disabled employees to a full or partial disability benefit, after 52 weeks of work incapacity. This benefit can be claimed for a period of five years; benefit payment can be prolonged on application, provided that the eligibility criteria are met.

Disability benefit is awarded if the employee is partially or fully disabled and is unable to earn the same wage in current employment as in a previous occupation. This definition depends on the wage-earning capacity of the employee, not on the medical condition or impairment. In assessing the degree of disability, it is not only the last job in which the person was employed that is taken into account. The scheme considers any work that the employee might do in the light of his/her strength and capabilities (the principle of 'commonly accepted employment'). So the social security agency should not only consider the limitations of the insured person but should also emphasize the work that can still be done (and, where appropriate, prescribe vocational rehabilitation).

After claiming disability benefit, the employee's eligibility is assessed by the social security agency doctor, a legal and a vocational expert. The amount of benefit awarded depends on three factors:

- a) the degree of disability
- b) the employee's last-earned wage (daily pay), and
- c) the age on the date on which benefit payment commences.

The Dutch scheme comprises seven classes of disability, which correspond with different benefit levels (cf. Table II.1.):

Table II.1 Degrees of disability and benefit levels (first phase)

<i>For a disability percentage of</i>	<i>The benefit is:</i>
	% of 100/108 times the daily wage
15 to 25%	14
25 to 35%	21
35 to 45%	28
45 to 55%	35
55 to 65%	42
65 to 80%	50.75
80% or more	70

The disability benefit consists of two phases, which vary as to duration and the basis of benefits:

1. Benefit to compensate for loss of income on the basis of the daily wage. The duration of this benefit depends on the employee's age on the date of commencement of benefit payment. Table II.2 gives an overview of these age-related periods.

Table II.2 Duration of disability benefit payment in the Dutch scheme (*first phase*)

<i>Age</i>	<i>Duration</i>
up to 32	0 years
33 - 37	2 year
38 - 42	1 year
43 - 47	12 years
48 - 52	2 tears
53 - 57	3 years
58	6 years
59 or older up	to the 65th birthday

2. A follow-up benefit, which may be awarded when the client claims a continuation of benefit payment after completion of the first phase.

By splitting the benefit payment into two separate stages, in which the client takes the initiative for the second stage, a re-examination of benefit recipients is guaranteed.

The benefit level is calculated as follows: for each year that a person is over 15 on the date on which his disability benefit is paid, two per cent of the difference between the previous wage (a maximum of Dfl. 297.51 per day as of 1 July 1997) and the minimum wage is added to the minimum wage. The amount thus obtained is used as the basis for calculating the benefit rate. The benefit percentage depends on the degree of disability.

Follow-up benefit may be paid until the recipient reaches the age of 65. This calculation applies to those persons who became, or will become, entitled to WAO on or after 25 January 1994.

Reform of the Disability Benefits Act

The Dutch parliament has recently agreed further reforms in the disability benefit scheme, operational from January 1998. Its main features reflect the changes that have already taken place in sickness benefit arrangements: the introduction of more responsibility for employers and employees to stay in employment, and an increase in the financial risks for employers when employees leave the workforce due to disability. (See Appendix 1 for further details.)

II.1.2 Influences of key actors involved in the process

The main actors involved in the operation of the present arrangements are the following institutions:

- a) The role and responsibility of the *government*, specifically the Ministry of Social Affairs and Employment, is concentrated on setting the goals of social protection policy and elaborating laws and, to a limited extent, guidelines. It also decides on the levels of contributions to be paid by employers and employees. For some of its tasks it consults advisory bodies, consisting of representatives of employers' organisations, labour unions and independent experts.
- b) The *Social Security Advisory Board* (CTSV) is the independent supervisory body which assesses whether social security agencies administer social security regulations according to the law, guidelines and professional standards, in order to ensure fair and efficient operation. The board reports to the Ministry of Social Affairs and Employment.
- c) The administration of employees' social insurance programmes is assigned to the *National Institute for Social Security* (LISV). Its executive board consists of representatives from employers' organisations, labour unions and members appointed by the Crown. Its responsibilities include the implementation of the Sickness Benefits Act, the Disability Benefits Act and the Unemployment Act. For this study it is important to note that the LISV has to collaborate with the job centres and municipal social assistance offices to reintegrate unemployed and disabled persons into the labour market.
- d) *Social security agencies* are commissioned by the LISV on a contract basis to carry out the allocation of benefits. The LISV stimulates competition between these administrative bodies in order to increase the quality of service and keep the price as low as possible.
- e) *Private insurers* play a role insofar as they insure the risk of continued wage payments to sick employees. As at spring 1997, 80 per cent of employers had a voluntary insurance policy

for this risk, covering 45 per cent of employees (Ter Huurne, Veerman *et al.* 1997). Insurers cooperate or affiliate with groups of OSH services which provide medical and reintegration expertise.

f) In the past few years private *OSH services* have played an important role in the operation of income replacement schemes in cases of sickness and disability. The legal task of OSH services is to support employers in implementing their sickness absence policies. To that end the occupational physician assesses the employee's work incapacity and advises the employer on measures for earlier work resumption. At the end of 1996, 86 per cent of employers were affiliated to an OSH (Ter Huurne, Veerman *et al.* 1997).

The role of *employers' organizations and labour unions* in the policy and operation of the benefit programmes under study has been limited in the past few years. They are represented in:

- sector councils, which advise the LISV on matters that are specific to the industrial branch it represents;
- the executive board of the LISV (where employers' organisations and labour unions each have three representatives);
- the Socio-Economic Council, which advises the government on the labour market, labour relations, social security policy, etc.

Finally, representative *organisations of patient/clients* or persons with an employment-related disability sometimes have a voluntary, not legally prescribed, consultative role to the government and the LISV regarding legal issues and administrative questions.

II.1.3 Characteristics of disabled workers who do or do not retain their employment or return to work following successful or unsuccessful claims

Table II.4 gives information on the number of successful and unsuccessful claims in recent years (cf. II.2.3). Unfortunately there are no statistics available on the labour market position of these successful and unsuccessful claimants.

In addition to those who claimed a disability benefit for the first time, there also is a group of disability benefit recipients who lost their benefit after re-examination. We know a little more about this group (Table II.3).

Table II.3: Number of disability benefit recipients who no longer qualify for disability benefit

<i>Year</i>	<i>Number</i>	<i>Men</i>	<i>Women</i>
1993	95.400	61%	39%
1995	106.500	59%	41%

(CTSV, 1996b)

The reasons for no longer qualifying differ significantly for men and women. In 1995, 55 per cent of men no longer qualified because of retirement or death; for 45 per cent of the men the reason was recovery. For women we see an opposite pattern: 69 per cent no longer qualified because they recovered.

Unfortunately, recovering is here used as a technical benefit concept, meaning that their remaining earning capacity was 85 per cent or more and therefore the required minimum degree of disability of 15 per cent was not met. It is important to note that it is the theoretical and not the actual earning capacity which is taken into account and that the 'recovery' therefore gives no indication at all about the person's actual work situation.

II.1.4 Effects on job retention and return to work resulting from the interaction between compensation programmes and out-of-work benefit programmes

There is, in general, no explicit relationship between claiming a disability benefit and job retention or return to work. The available data do not provide information about the work status of disability benefit recipients. Therefore, it is not known how many recipients or which groups with a partial disability benefit are in work. However, from empirical research it is known that about one third of disability benefit recipients return to work within two years. The chances of returning to work are somewhat higher for recipients who are young, male, with a higher education and who still have good contact with their former colleagues and employer (Nijboer *et al.*, 1993).

II.2 OPPORTUNITIES TO COMBINE WORK AND BENEFIT

II.2.1 Provision for combining income from work and from disability-related social security benefits

Under the present *sickness benefit scheme* (applicable to employees with a temporary contract, etc.) there is provision to combine the receipt of partial sickness benefit and a partial wage. This is called 'therapeutic work resumption' and comprises, on a temporary basis, the partial resumption of work in combination with the payment of partial sickness benefit for the remaining part of work incapacity.

Wage subsidies and training-on-the-job subsidies (inwerksubsidies) may be provided to an employer when engaging a previously partially disabled employee (cf. I.2.3).

The present *disability benefit programme* with seven degrees of disability intrinsically presupposes the combination of partial disability benefit receipt and partial employment. Furthermore, when the recipient of a partial benefit is not employed for the remainder of his/her work capacity, additional partial benefits may be paid from the unemployment scheme of the social assistance scheme.

In addition, persons with a partial disability benefit who re-enter employment may apply for a *supplementary benefit* when accepting a job with lower earnings than the earnings on which their benefit was based (related to previous job) (cf. I.3.2.).

II.2.2 Effects on numbers retaining and numbers returning to work

One problem regarding the application and effects of integration measures concerns the lack of statistical data on their application and impact. In the past, the operation of arrangements for disabled people was mainly focused on the fair and rapid provision of benefits. The preventive and rehabilitative aims of social security were for a long time underdeveloped. Consequently, the recording, monitoring and reporting of data on clients, measures taken, decision process and impact, was poor. Moreover, five social security agencies carried out the arrangements, and they also differed to some extent in their administrative methods. Since the reforms, and the growth of an awareness of quality standards in social security administration, the situation is improving and more unity is introduced. Nevertheless, it will take some time before adequate information is available on a regular basis.

II.2.3 Effects of claiming and assessment procedures on take-up of in-work benefits

The eligibility criteria for the disability benefit programme do not comprise means or income tests. The checks carried out by the social security agency relate to administrative criteria such as duration of

employment, payment of insurance contributions, etc.

The main elements of the assessment procedure concern aspects of health and earning capacity, which lead to the following distribution of outcomes of the claiming process:

Table II.4: Accepted and refused disability benefit claims 1990-1995 (in thousands)

	<i>Accepted</i>	<i>Refusals</i>
1990	116.2	29.9
1991	115.8	33.8
1992	99.8	37.5
1993	103.9	36.7
1994	78.7	46.8
1995	72.0	50.1

Source: CTSV (1996) *Kroniek van de sociale verzekeringen 1996 (Social Insurance Chronicle 1996)*. S96/9. Zoetermeer: College van toezicht sociale verzekeringen.

II.2.4 Interactions between in-work benefits and other in-work income support programmes

In-work social security benefits as such do not exist in the Netherlands.

However, the possibility exists to combine a partial disability benefit with a partial wage (cf. II.2.1). This possibility can be attractive and has been shown to be effective in the past. Employees who can no longer fully perform their previous tasks could still be employed for a lower wage but without income loss (e.g. in a part of their old job, or in the same job but with lower productivity), if they qualified for a partial disability benefit.

However, qualifying for a partial benefit combined with (partially) performing former tasks has become more difficult since the introduction of the new concept of 'commonly accepted work' (cf. II.1.1). As a consequence, a work-incapacitated worker is more easily regarded as fit for other work and is supposed to look for another job, instead of receiving a partial benefit and performing part of the previous job.

(See also section V.10.2 about the impact of these arrangements on employers.)

II.3 TRANSITION BETWEEN BENEFITS AND WORK

II.3.1 The effects of the disability benefit system on return to work

Until the early 1990s the disability benefit system in the Netherlands showed, for almost all age groups, higher prevalence and incidence rates than in other countries. In particular the high 'entrance' rates in the younger age groups and low 'completion rates' ('leavers') evoked questions as to the health condition of young insured people and the incentives and operation of the scheme. Table II.5 shows that, for a large

majority of Dutch beneficiaries, disability benefit receipt was almost a permanent status.

Table II.5 Disability benefit recipients, new recipients and completions by age in Belgium Germany and the Netherlands (1986-1990)

Age	Recipients ¹			New recipients ²			Compl. ³	
	B	G	N	B	G	N	B	C
up to 24 years	2	(0.2)	9	2	(0.2)	6	484	
25-34 years	12	2	44	4	1	10	239	
35-44 years	38	11	112	8	3	16	135	
45-54 years	105	39	268	16	11	30	77	
55-64 years	408	472	960	29	44	43	160	
Total	56	75	137	8	8	15	140	

Notes: ¹ per 1,000 people insured (1990)

² per 1,000 people insured (1986-1990)

³ per 1,000 disability benefit recipients (1986-1990)

Source: Beljaars & Prins 1997

The low rate of completion of benefit payment indicates that return to work was very low, which can be ascribed to various factors:

- no re-evaluation of disability
- a lack of reintegration measures and incentives for their application, bureaucratic procedures, contradicting criteria
- a passive attitude on the part of employers, social security agencies and clients
- comparatively favourable benefit conditions, compared to unemployment benefits and social assistance allowances.

Since the introduction of the new disability benefit arrangements, completion rates changed substantially. Whereas about 85,000 completions were noted in 1993, these rates increased to 105,000 in 1994 and 1995 - a 24 per cent increase (Nool *et al.*, 1996). These completions were almost entirely due to the re-assessment of beneficiaries in the light of the new eligibility criteria.

It had been expected that a lower rate of benefit, or the ending of benefit payment, would be decided for about 21 per cent of people who were re-assessed, and that 50 per cent of these would resume work (in the case of full disability benefit) or extend their working hours (in the case of partial disability).

Data from an interim evaluation (Nool *et al.*, 1996, Table II.6) describe the outcomes of assessments and decisions on a cohort aged under 35 years (1994, N' 53,000) and a cohort aged 35-40 years (1995, N'38,500). It is shown that a considerable proportion of persons received lower or no benefits (1994: 52 per cent, 1995: 35 per cent).

Table II.6 Outcomes of re-examinations of disability benefit recipients

<i>Outcomes of assessment</i>	<i>1994</i> <i>(aged < 35 yrs.)</i>	<i>1995</i> <i>(aged 35-40 yrs.)</i>
No longer disabled	37%	18%
Lower class of disability	15%	17%
Same class of disability	46%	61%
Higher class of disability	2%	4%
Total	100%	100%

Source: Nool *et al.*, 1996

However, the results indicate that far fewer persons resumed work than had been expected. One year after the re-assessment, only 22 per cent of re-assessed persons worked more hours than at the time of re-assessment. About 73 per cent did not work more hours. Of these 73 per cent, about 37 per cent received other benefits (unemployment, social assistance) and 36 per cent received no other benefit at all. So only 22 per cent of those re-assessed as being fully or partially able to work indeed had increased their (gainful) employment. Further analyses showed that work resumption was higher in the group that did not work at all before re-assessment, than in the group of partially disabled people who were already in partial work before re-assessment.

II.3.2 Provision for financial support to disabled workers for transition between benefits and work

No provision of this type exists.

II.3.3 Effect of entitlement to benefits in kind on return to work

This type of entitlement does not exist.

II.3.4 Co-ordination between agencies in assessment for benefits eligibility

The social security agencies that assess eligibility to disability benefits receive guidelines from the LISV, and are monitored by the CTSV. Coordination takes the form of working groups on technical, legal and professional subjects, and on the issue of compulsory guidelines.

III. EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

This part examines the integration of personal support and rehabilitation services within the workplace. It deals with the external support services available to individual workers and their employers where continued employment is at risk because of disability. (Internal services, initiated and managed by enterprises, will be covered in Part V.) The discussion also includes services for early return to work once employment has been lost.

The main focus is on service interventions which support job retention by employees who become injured, ill or disabled and also their return to employment during the process of recovery. It concerns active rehabilitation services that help disabled people to recover capacities and skills, as well as services that support their re-adjustment to work. (Services involving adaptations to the work environment and to working arrangements will be discussed in Part IV.)

More specifically, sections III.1 to III.5 will cover policy about employment-related personal support and rehabilitation services, provide details of services and their providers, and describe the service beneficiaries. The remaining sections will examine the factors influencing the effectiveness of support services for job retention and early return to work. They include a discussion of relationships between the various employment support and rehabilitation services, their relationship to the employment sector, and their interaction with employment policies and compensation and benefit programmes.

Introduction

In the Netherlands, major changes have been taking place in relation to policy and infrastructure for rehabilitation and reintegration:

1. Because of moves towards privatisation in income replacement policies, the role of social security agencies in respect of return to work measures is changing considerably.
2. A forthcoming Law on Reintegration (due to come into force later in 1998) will add further changes to the responsibilities, organisation, operation and criteria for interventions aiming at reintegration into the labour market.

The changes originating from the first point are already taking place. The main changes already decided and in preparation involve:

- a shift of responsibility for the provision of reintegration measures for disabled people from social security agencies to the employment services (which already deal with return to work for unemployed people);
- the partial integration of the *administration* of three sectors of social protection which (should) all promote return to work: one 'front office' will be introduced, carrying out intake and assessment of three categories of clients who are currently being treated separately: unemployed people (employment service), social assistance clients (municipalities) and partially disabled clients (social security agencies).

The reforms relating to the forthcoming Law (point 2) have not yet been fully elaborated. The main areas of

change concern: a reduction in the variation among criteria for eligibility for provision and measures, the streamlining of procedures, the introduction of new strategies (e.g. client vouchers), and the integration of budgets from various sources.

Consequently, the description in the following pages, even more than in the previous section, reflects a system in transition. We will try to describe the past (insofar as this is relevant), the present situation (which, in particular, lacks adequate empirical sources), and the main dimensions of future organisation (as far as can be seen now). The situation may therefore change over the coming months.

Finally, it should be noted that no distinction is made in the Dutch system (with regard to the available measures or the organisations dealing with these issues) between those still employed but at risk, and those who want or have to re-enter the labour market. Consequently, the difference between job retention and job return is not strictly applicable.

III.1 POLICY AND RESPONSIBILITY FOR POLICY AND PROVISION

III.1.1 The main bodies responsible for employment support and rehabilitation policy, and links to other agencies with employment or benefits/compensation responsibilities

Responsibilities

The *National Institute for Social Security* (LISV) is responsible for employment support for partially disabled workers (or workers who are assessed as less than 15 per cent disabled but who, after a 52 week period of work incapacity, cannot return to their employer). The *Fund for Disability Insurance* (FAOP) is responsible for workers in the public sector.

The tasks of these two agencies with regard to employment support are carried out by the *social security agencies*. Until March 1997, these were responsible for the provision of employment support and rehabilitation. In their employment support work the social security agencies were able to use, buy or hire external services from external organisations. Following the reorganisation of social security, however, the primary role of the social security agencies in rehabilitation and reintegration has decreased. Following an interim holding arrangement for remainder of 1997, the *Employment Agency* will, from 1998, be the only institution responsible for the provision of employment support: the social security agencies will *have to* buy employment support from one of the larger employment support units (in one of the social security agencies) and from the employment services. The social security agency for the public sector (Uszo) also has a contract with a non-governmental employment agency (Boonk *et al.*, 1997).

At the present time, it is not yet clear how tasks, responsibilities and budgets will be divided between LISV, social security agencies and employment offices. From 1998, the social security agencies will only be responsible for support for continued employment with a previous employer. The employment services will be responsible for employment support to people joining a new employer.

Assessment

An important element of employment support is assessment: the evaluation of a client's capacities in order to advise what type of work would be suitable. To carry out this assessment, several types of services are available in the Netherlands, which stem from different origins. Five main types (Mul & Hazelnet, 1996) are:

1. Labour assessment centres ('Arbeidsonderzoekcentra')

These centres originally carried out assessments for sheltered workplaces, and they cover all types of functional impairments. Their main activities are: assessment, training, support at the workplace (consultancy), organising placements and trial placements (to test the 'fit' between client and work). Their

funds mainly derive from budget allocations that are restricted to sheltered workplaces, and from social security agencies and local welfare services.

2. Labour exploration centres ("Arbeidsexploratiecentra")

These were originally linked to medical rehabilitation centres. They deal mainly with clients with physical impairments who entered a medical rehabilitation programme. Their activities comprise: assessment (mainly medical tests), training and education, coaching at the workplace, and trial work placements. These activities are mainly commissioned and paid for by insurance companies, pension funds, enterprises, social security agencies, and health care organisations.

3. Reintegration projects

These projects are mainly initiated by health care social work and special foundations. They differ with respect to client groups (thus, different disabilities are taken into account). Activities covered in these projects are: assessment (mainly vocational tests), training and education programmes, coaching and direct support in placement at an employer, placements and trial placements. Funds for these projects are mainly provided by social security agencies and the regional employment service bureaux.

4. Vocational rehabilitation projects

These are related to initiatives in mental health care. The activities carried out are assessment (mainly labour market orientation tests), vocational training and 'work-habitation'. These activities are financed by mental health care organisations, prevention institutes (for addiction), local social welfare services and health insurers.

5. Private assessment consultants

These are relatively new in the Dutch market. They operate on a commercial basis but no overview is available of the type or scope of their activities.

III.1.2 The relative priority accorded to support for retention, return to work and first time entry to employment

Until recently, the priority in Dutch policy has been on return to work. In the first stage of work incapacity, where job retention is at stake, it was left to employers and employees to take the initiative and policy support was not regarded as necessary. As indicated in Part II, however, recent changes in the Disability Benefits Act have forced the government and employer to pay more attention to job retention and return to work in general. Although it is clear from many studies, and accepted as a principle, that the best chances for work incapacitated workers to return to work are with their own employer, the Dutch arrangements did not comprise many measures or financial resources directed at this first stage of a possible 'disability career' (cf. Part I). Furthermore, measures for employment support were available for people whose disability arose at an early stage in their lives, but they did not play a substantial role in either expenditure or socio-political discussions.

III.1.3 The weight given to employment support and rehabilitation policies for disabled people in the national system

Until the discussions on the forthcoming Law on Reintegration, most available measures and provision focused on clients who, after one year of work incapacity, had been assessed for disability benefit. So interventions often started too late.

Further, more weight has recently been given to improve the organisation of employment support and

rehabilitation.

Regarding past arrangements, it should be noted that the available financial sources were not fully exhausted. It is generally accepted that, due to lack of knowledge and complex procedures, there was an under-utilization of the available measures and provision (De Vos & Smitskam, 1997).

III.2 SUPPORT SERVICES FOR JOB RETENTION OR RETURN TO WORK

Background

As was stated in the introduction to this Part, there is no clear distinction in the Dutch system between support services for job retention and support services for return to work (where job retention applies to return to work with the previous employer, with whom the employee still has a contract, while return to work applies to work with a new employer after a period of long-term work incapacity or receipt of disability benefit). This distinction is thus not relevant in the operation of support arrangements.

A more important distinction in the Dutch system concerns the timing of disability assessment, which generally takes place after continued wage payment has ended. The major distinction depends on whether or not a client has been assessed for eligibility under the Disability Benefits Act. This assessment of eligibility for full or partial disability benefit usually takes place after about one year of sickness and wage payment due to work incapacity. The contract with the former employer, however, lasts at least until two years after the beginning of the long-term sickness period. The support services discussed in this section are all meant for workers who have undergone this disability assessment. For most of the services there exists no relevant differentiation for employees who still have an employment contract and those who do not.

This section, therefore, will refer to support for both job retention and return to work, although any relevant differences will be indicated. Some studies show that about 60 per cent of all clients assessed as disabled cannot return to their own employer (Boonk *et al.*, 1997).

III.2.1 The main funders and providers of services

As was indicated in III.1, the social security agencies are to be the main initiator of the use of services which, from 1998, have to be bought from employment services. The social security agencies are the starting point for the provision of services for job retention or return to work, and have to start the reintegration process.

The main funds for job retention and return to work support are the National Work Incapacity Funds (AOF and AAF), which derive their income from social security contributions paid by employers and employees. A distinction is made in these funds between the costs of general executive services and the costs of specific measures and provision (general costs in 1997 amounted to 170 million guilders, measures and provision to 220 mln. guilders; source: Boonk *et al.*, 1997). Other sources of funds, albeit of lesser importance, are the General Unemployment Fund and the European Social Fund (for specific measures or projects).

The forthcoming Law on Reintegration will establish a Reintegration Fund which will integrate various funding sources.

III.2.2 Relationships between the providers of services and bodies with policy responsibilities

As indicated previously, the National Institute for Social Security (LISV, see II.1.3) has a coordinating role with regard to the organisation of job retention and return to work services, and also seeks to promote competition between social security agencies. Its tripartite composition (representatives from employers' organisations, labour unions and independent members appointed by the Crown) guarantees a relatively independent position vis-a-vis the Government, but also incorporates representatives from the major actors involved.

III.2.3 The range and types of services provided

In addition to what has already been described in section I.2.3, the following types of services can be initiated by social security agencies and provided by the employment service or private providers:

- assessment/vocational guidance test
- vocational training/education
- counselling about job search
- general counselling

It is estimated that each of these services is used by about one quarter of people who use employment support services (Mullenders *et al.*, 1997).

Most of the activities of social security agencies are carried out for clients who have recently entered the disability benefit scheme. Some disabled workers spontaneously ask for employment support at the social security agencies.

There are also a variety of mostly small-scale projects to help workers who are already disabled to return to work. Initiators of projects can vary: examples include social security agencies, patient/client organisations and mental health care organisations. Most projects work with a limited number of clients (between two and 50) and have a modest scope and content. The characteristics of clients vary considerably; some projects have been designed for former psychiatric patients. A common feature of the projects is that they try to take account of the needs of both clients and the labour market (employers). In practice this means that most projects focus on upgrading clients' qualifications as well as generating interest from employers. They also support employers with advice about the adaptation of work sites, working hours, possibilities for subsidies, etc. Most of these projects also work with some kind of 'after care': the project or provider keeps contact for a while after the client has found a workplace, in order to support the employee and employer in case problems arise. The small scale of the projects and the individual attention and support that are given are considered the basis of their success (Wevers *et al.*, 1993).

III.2.4 Characteristics of enterprises using external support services

In the Dutch system, employers (and their OSH services) rarely take the initiative to make use of job retention or return to work services. The contractors or the bodies that commission such support services are mainly the social security agencies or employment agencies. However, some larger enterprises, with a longer history of having their own OSH service, may also have a disability management programme (cf. Section V).

Statistics on reintegration measures provided by external agencies are not reported regularly. Consequently, there is no sound empirical information on the enterprises that make use of these services either directly or indirectly. The statistics provided by the agencies that initiate or fund measures only give an incomplete picture of the scope and costs of the services applied (Wevers, 1997). In general, the enterprises which employ a relatively high percentage of disabled workers are generally doing fairly well economically, tend to be industrial organisations (there are few partially disabled people in the hotel/cafe sector, for instance), have a 'good' sickness absence policy, and are larger than average; most of the disabled workers are employees who worked in the enterprise before becoming disabled.

III.2.5 Integrating return to work services into work environments

The integration of return to work services into work environments is limited in the Netherlands (trial placements were mentioned in III.1.1). The services that exist are in the form of small-scale projects,

especially projects for workers with mental health problems (Wevers *et al.*, 1993). The emphasis in those projects is more on individual support and training than the operation of broader 'programmes'.

III.2.6 Arrangements for external providers to organise support in the workplace

The relationships between providers, employers and/or clients are indirect and mainly depend on activities or initiatives from the social security agencies. The new Law on Reintegration aims to stimulate 'self-initiatives' on the part of clients and employers.

III.2.7 The extent to which services support job retention/return to work

Despite the increased attention given to employment support in order to facilitate job retention, the results so far are generally considered disappointing. About 33 per cent of clients who receive employment support (in any form) find work within a year (Donker *et al.*, 1996). But this same percentage has been found in a group of clients who did not receive specific support. Clients themselves do not believe that the activities of the social security agency and employment services improve their chances to keep or obtain work (Donker *et al.*, 1996).

Specific projects sometimes have higher success rates, depending on the type of clients and the intensity of the service. In general when the vocational rehabilitation and employment service are customised rather than being a 'standard' programme, success rates seem to be higher (Ernste *et al.*, 1995). This is, however, less applicable in the case of clients with disabilities arising from mental disorders. The highest success rates were obtained in those few projects where the social security agency cooperated fruitfully with the employment agency and client organisations. (It should be noted that these outcomes concern the 'old' situation, which is going to change.)

III.3 USERS OF SUPPORT SERVICES

III.3.1 Eligibility criteria and procedures for identifying users (disabled workers and their employers)

Work incapacitated workers who qualify for partial disability benefit or who are assessed as less than 15 per cent disabled (and have no opportunity to return to their employer) are eligible for employment support services. These clients, not their employers, are the users who have to be identified and encouraged to use vocational or re-employment services.

As indicated before, the Dutch situation was, until recently, characterised by a complex organisational structure, contrasting (or sometimes even conflicting) eligibility criteria, complaints about lengthy and non-transparent procedures, and - in general - initiatives beginning at too late a stage of the work-incapacity process.

Administrative aspects

The decision process for employment support is based on three sources:

- a) the disability assessment (eligibility to benefit)
- b) vocational check of possibilities for job retention
- c) assessment of motivation and other individual characteristics

When the employment service (from 1.1.1998 onwards) decides that a client needs employment support, the next step is to determine the type of support needed. This may involve an assessment, vocational guidance test, vocational education, job training or job search training.

Specialist organisations which provide services that can be purchased for a client by a social security agency include:

- commercial employment agencies (formerly temporary work agencies), which sometimes have specialists in employment support for clients with a labour market disability;
- centres for vocational training;
- job search training provided by the public employment services.

Methods and procedures for the assessment of a need of vocational rehabilitation and re-employment support are in a transitional phase. A new system for the intake and assessment of clients is being developed. As a starting point for the 'reintegration plan', this system classifies clients into four categories. They differ in the degree of 'distance from the labour market': the first category needs little or no support (just a little 'push'), whereas the fourth category comprises clients with a severe lack of labour market possibilities.

Outcomes

Some data are available for one of the current providers - which is still related to a social security agency, but which will be integrated in the employment services next year. The 48,100 clients receiving employment support in 1996 consisted of three categories (Boonk *et al.*, 1997):

- a) 'Regular clients': new ones as well as those who had been re-assessed. The 'new ones' were work-incapacitated workers for whom the results of the disability benefit assessment showed that they were partially disabled and that they had no possibility of returning to their former employer. Those who had been re-assessed were the disabled workers who were already receiving partial disability benefit and whose disability percentage was lowered following regular re-assessment. This group of regular clients consisted of 29,100 persons.
- b) Disabled workers who already received a partial disability benefit, and whose disability percentage was lowered after incidental re-assessment under the changed Disability Benefits Act arrangements. This group of clients comprised 11,200 persons.
- c) 'Spontaneous' clients: disabled workers who apply for employment support. This group consisted of 7,700 persons.

Most regular clients' first contact for employment support lasts about one year.

III.3.2 Arrangements for user choice and user control of service packages

No arrangements exist at the moment for user choice and user control of service packages.

Until recently, the client has generally been regarded as the 'motor' of the process, meaning that his or her motivation and activities are the main factors in determining the timing and content of support and the chances of success. In practice, this has meant that the employment support counsellor at the social security agency 'discusses' the whole process with the client and they determine together what support is needed.

Changes now in process include:

- a) a slow shift to a more disciplinary attitude on the part of the bodies that aim to motivate and support clients (originally this approach was introduced in respect of unemployed people and social assistance clients, but it is increasingly being applied with regard to disabled clients).

b) the forthcoming Law on Reintegration explicitly foresees experimental projects with 're-employment vouchers' (personal budgets), which give clients the means:

- to select and purchase the employment support needed ;
- or to stimulate an employer to engage them: after a given period of employment, this will be rewarded with a bonus provided by the voucher.

The latter measure is the subject of much debate at present, but preparations are in hand for an experimental project.

III.3.3 Disabled workers who benefit and those who miss out

The clients who receive employment support are mainly those who:

- are already working, or were still working at the time of their disability examination;
- do not need to seek work because of a disability examination;
- have a relatively high educational level;
- are younger than average.

This means that clients who already have a 'better' starting position received more employment support than those who had less chances (Boonk *et al.*, 1997).

Although there is insufficient research information about the precise results of employment support, it can be estimated that around two thirds of clients who received employment support found a job with a new employer. However, this does not imply that these clients found a job because of the support they receive. The majority of the clients who found a job stated in an evaluation that they would have found this job anyway, even if they would have not received support (Boonk *et al.*, 1997; Mullenders *et al.*, 1997)

Wevers *et al.* noted in 1993 that better chances of return to work were found among younger, better educated male workers. However, if the disability was (at least partially) due to the working situation, the chances of returning to the former employer seemed to be low. In addition, motivation is generally considered an important factor, and motivation is also linked to perceived labour market chances. Men and younger incapacitated workers are more easily motivated to participate in these services and to return to work (Boonk *et al.*, 1997; Mullenders *et al.*, 1997). In a current International Social Security Association (ISSA) project on Work Incapacity and Reintegration we have found that being a 'breadwinner' (the only person in the household with an income) is also an important condition for return to work. However, the relationship with supportive measures has not yet been analysed.

III.4 DESIGN AND DELIVERY OF EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

III.4.1 The effects of the distribution of responsibility for provision of services

As outlined at the beginning of this Part, the distribution of responsibility for the provision of services is currently changing. Market competition between service providers has only recently been introduced and it is still too early to comment on its effects.

However, it can be questioned whether the concentration of decisions about services in the employment agency improves opportunities for disabled people (regardless of whether they are provided by private or

public providers). Until 1998, support for disabled people lay in the hands of the social security bodies which had extensive vocational expertise (due to their role in making assessments for disability benefit). On the other hand, these agencies had less insight into the demand for labour, which is (somewhat) better monitored by the employment services.

III.4.2 The effect of relationships between services on their effectiveness

As described earlier, the previous situation was characterised by a complex infrastructure, lack of early interventions, and contrasts in criteria for interventions. These factors restricted their potential effectiveness.

III.4.3 The results of vocational training and rehabilitation

The current transitional process highlights the need for a modern system of vocational rehabilitation and reintegration. Aspects which are being discussed or are to be implemented include:

- the need for well-founded assessment ('distance from the labour market', cf. III.3.1);
- the need for individualised reintegration plans rather than general or standard programmes;
- the need to develop quality standards and an integrated system of monitoring and information about clients, measures, processing time, etc.;
- the need to give more consideration to the demand side of the labour market, and to simplify procedures in order to reduce employers' fear of a lot of paperwork.

III.4.4 Arrangements for outcome-related funding and financial incentives to staff

The intention of stimulating agencies and providers by means of outcome-related bonuses is being discussed but no concrete plans for guidelines have so far been developed.

III.4.5 Most significant factors in facilitating or impeding overall success

From the studies carried out some 'determinants' of success are generally accepted, e.g.:

- the client's motivation;
- the client's labour market characteristics (e.g. qualifications, age);
- individual, customised support instead of standard programmes.

III.5 LINKS WITH EMPLOYMENT POLICIES

III.5.1 The effects of employment policy obligations and agreements on opportunities for vocational rehabilitation

Employment policy obligations are not particularly relevant in the Dutch system. Neither collective labour agreements nor other agreements tend to include specific aims or actions concerning the re-integration and re-employment of disabled persons.

III.5.2 The effects of financial incentives to employers on opportunities for vocational rehabilitation in the workplace

No systematic study has been carried out into the impact of financial incentives to employers. The general impression (as given by rehabilitation and employment experts) is that the financial incentive to employing a

partly disabled person is only decisive for a small minority of employers. If an employer is convinced the person is the right one for the job (in terms of qualifications and motivation), financial extras have a secondary or negligible role. Moreover, the paperwork involved in obtaining financial support tends to be seen by employers as being a disadvantage.

III.5.3 The relative priorities given to disabled people and other client groups

One of the major issues in the whole employment support debate concerns the number of available jobs, and their lack of fit with the numbers and qualities (in terms of education and qualification) of the people who are to be reintegrated. This structural problem will become more obvious in the Netherlands when, from 1.1.1998 onwards, the employment services will also include disabled people among their clients. Competition between support to various categories of clients may then become more visible within the offices of the employment agencies.

III.5.4 Effects of changes in labour market structure and demand on opportunities for rehabilitation in the workplace

Two tendencies seem to be evident in the Netherlands:

a) In contrast to many other countries, part-time working is increasingly accepted by Dutch employers. Opportunities for partially disabled persons should, as a consequence, become more favourable.

b) At an administrative/operational level there still is a lack of insight into the demand side of the labour market. It is estimated that three quarters of vacancies are not reported to or known by the employment services, and this agency is just one of the ways used by employers to recruit personnel. There is also a lack of insight into the consequences of changes in technology for the required qualifications of people re-entering the labour market.

III.6 LINKS WITH BENEFIT AND COMPENSATION PROGRAMMES

III.6.1 The relationship between funding of benefit and compensation programmes and vocational rehabilitation policies and services

As indicated earlier, a new fund will be created under the forthcoming Law on Reintegration to facilitate the use of reintegration services and provision. At the moment the funding of measures is complex.

The experimental introduction of vouchers (cf. III.3.2) will be a new financial mechanism in employment support.

III.6.2 The effects of benefit or compensation regulations on opportunities for vocational rehabilitation

By improving his or her qualifications following vocational rehabilitation (especially through educational provision), a client can be assessed as being less disabled than before (see II.1.1). Since vocational rehabilitation does not include a job guarantee, this lower benefit was regarded as a disincentive to improve qualifications through vocational rehabilitation. To prevent this side-effect, measures were introduced in 1994 and 1995 not to carry out a new disability assessment in the first three years following rehabilitation.

III.6.3 The co-ordination of the assessment of eligibility for disability benefits and vocational rehabilitation services

The assessment of eligibility for disability benefits and for vocational rehabilitation services are separated in the Dutch system. Firstly a client has to be assessed as eligible for a disability benefit. If the client is partially

disabled or less than 15 per cent disabled, he or she can become eligible for rehabilitation services. The benefit assessment is carried out by the social security agency and the rehabilitation assessment takes place at either the employment services or (until 1.1.1998) in a support unit of the social security agency. These two processes are thus separated by place and organisation as well as in time: the employment support and rehabilitation assessment takes place some time after the disability benefit assessment.

The two processes also differ in the extent to which strict procedures have been prescribed. The disability benefit assessment follows a fairly strict protocol, while more decisions are subject to the discretion of the official in the assessment procedure for rehabilitation services. In the latter process, more subjective criteria play a role, such as impressions of the client's presentation and motivation (Mullenders *et al.*, 1997).

The separation of these two assessment processes has at least two consequences. Firstly, an important period of time is wasted. The disability benefit assessment takes place between eight and 12 months after the start of work incapacity. The rehabilitation assessment happens later, beginning at about the 15th month after the start of work incapacity. A client therefore has to wait a few months, and these are crucial months. Secondly, this means that not all clients who are partially or less than 15 per cent disabled are assessed as being eligible for employment support or rehabilitation services. The group without support or rehabilitation consists partly of clients with good labour market chances, but mainly clients with few labour market chances. This group is supposed to have a theoretical earning capacity but, if the practical possibilities to earn this (theoretical) income are examined, it becomes apparent that there are no possibilities at all. This difference between theoretical and real possibilities is an important characteristic of the present Dutch system which leads to a group of partially disabled workers having no labour market prospects.

IV. ADAPTATION OF WORK AND WORKPLACE

Part IV is concerned with practical solutions to adapting the work-station, workplace and job procedures to the needs of workers who become disabled. It focuses on external services available to enterprises to assist them in making adjustments, whether those services are accessed directly in the marketplace or via agencies. External services may provide advice or practical help both in adjusting the demands of the job and in adapting the work environment, temporarily or permanently. They may operate as private consultancies, voluntary bodies, quasi-governmental agencies, or as part of employment services.

The initial sections of this Part consider policy responsibilities, details of providers, funders and users, technical advisory services, sources of technical equipment and advice about accommodating work routines. Later sections focus on the factors which affect the success of adaptation services in promoting job retention and return to work.

IV.1 RESPONSIBILITY FOR POLICY AND PROVISION

IV.1.1 The main bodies responsible for work environment policies and their role in promoting adaptations for job retention and return to work

According to both the letter and the philosophy of the law, it is individual employers who are mainly responsible for work environment policies, particularly with respect to job retention. Employers receive support from the Occupational Safety and Health (OSH) service - which they are obliged to do. When commissioned by employers (or their personnel managers), OSH experts carry out adaptations, sometimes making use of external experts/consultants, providers of technical devices, etc.

Social security agencies have to assess whether a (former) employer has tried 'everything reasonable' (in the text of the law) to promote job retention. One of the elements of the employer's efforts should be to examine whether adaptations can support job retention. The social security agency (in particular its vocational expert) also has to give advice about work adaptations or workplace adaptations that could keep the employee in the

workforce. The social security agencies have (until recently) had technical experts who have advised employers about their specific situation, but this technical expertise is no longer so readily available. The social security agencies also decide whether costs of a workplace adaptation will be reimbursed (art 57a AAW; cf. I.2.2). In addition, social security agencies hold the primary responsibility for promoting adaptations in the case of return to work.

The largest social security agency (GAK) has now privatised the department which provides technical expertise. The resulting company, 'ZVN-advies' (Advice on Care Provision, Netherlands), advises employers on complex cases of return to work. They provide assistance with, for instance, deciding which subsidy is best suited to the situation of a specific employee. A division of ZVN-advies ('Welzorg werksupport' or 'Welfare Work Support') specialises in technical equipment and workplace adaptations. It has the expertise to advise on the adaptations needed in particular cases, and also has technical equipment available in its various locations in most major cities. It also acts as an intermediary between employers and other external providers of technical adaptations.

IV.1.2 Comparison of the attention given to policies which promote job retention with those which promote access to work

As indicated earlier, Dutch policy does not make a real distinction between job retention and access to work. In the light of the large number of people now coming under the disability benefit arrangements, however, employers are increasingly focusing on job retention. This will be even more evident from now on, given that employers' contributions to the disability benefit scheme will depend on the number of employees that have entered the disability benefit scheme: the more employees who joined the scheme, the more the employer has to pay (see Appendix 1). While employers are thus increasingly concerned with job retention, national policy (in relation to social security) is focusing more on return to work.

IV.1.3 The main providers of technical and advisory services

Technical adaptations are mostly carried out by private, generally specialist, providers. Different providers operate in different local areas. They are often contracted and paid by the social security agency for carrying out such adaptations. Providers are aware of the conditions the adaptations have to meet in order to fit within the criteria for reimbursement.

IV.1.4 The relationship between providers of technical and advisory services and providers of employment support and rehabilitation services

In far as can be seen, there is no real relationship between these two types of providers.

IV.2 TECHNICAL AND ADVISORY SERVICES FOR MODIFICATIONS TO WORK-STATION AND WORKPLACE

Sections IV.2, IV.3 and IV.4 make a distinction between modifications to work station and workplace, adapted technical equipment and accommodating work routines. However, this distinction is not always an easy one to make in the Dutch situation. Under certain conditions, all work provisions or work adaptations can be financed on the basis of a single legal regulation (art. 57 and 57a AAW, cf. I.2.2). It can also be difficult to differentiate the various modifications, given that they may all form part of one rehabilitation process.

As an example: an employee can still perform a part of the task. In order to have a full-time job, a new task had to be added. This task is available, but requires some additional vocational training. To perform both tasks it is necessary that the employee can (for instance) use a chair when necessary, and that colleagues help in lifting packages of more than seven kilograms. In this example probably only one formal aspect is

acknowledged, the vocational training. The other elements, i.e. the restructuring of the work process (by combining two tasks), the new chair and the help of colleagues, are necessary in order to make this job retention a success, but they will not be officially reported. These important but informal elements of a rehabilitation process are therefore seldom recorded or found in statistics or other empirical sources.

An empirical study of disabled workers returning to work (albeit carried out some years ago and under the old system), shows the percentages of usage of type of adaptation (Table IV.1). (The study dealt with a sample of 7,322 employees who were absent due to sickness for one year between 1 July 1989 and 30 June 1990. One of the main research questions was how many of them had returned to work (with their own or a new employer) one and a half years later. It turned out that 2,224 (30 per cent) had returned to work, of whom 68 per cent had returned to their own employer.)

Table IV.1: Prevalence of adaptations among disabled workers who rejoined the workforce

<i>Adaptation type</i>	<i>Number</i>	<i>Percentage</i> <i>(of all employees who returned to work, n'2,224)</i>
task change (work content)	876	
change in working hours	604	
reducing speed of work	512	
purchase/buying devices	121	
training	93	
adapting tools/equipment	49	
otherwise	179	

Notes: Multiple answers possible.

No information is available about the providers (internal or external) of these adaptations.

Source: Nijboer *et al.*, 1993

IV.2.1 Technical and advisory services available to enterprises in respect of modifications

Several manufacturers and consultants provide technical support and equipment. Some employers' organisations also have their own advisory service, e.g. in the construction sector. However, many employees and employers find it difficult to obtain information about suppliers and possible adaptations. The support they receive depends on the OSH service and particularly the social security agency.

Funding for extensive adaptations is available under the General Disablement Pensions Act, subject to strict criteria being met (see I.2.2).

IV.2.2 The availability of technical and advisory services and their use by enterprises

A recent survey of a representative sample of about 4,000 employers showed that the formal provision to adapt the workplace (art 57.1 en 57a AAW) had been used only for 0.06 per cent of their employees. Informal adaptations (i.e. adaptations financed by employers themselves) were reported to be more frequent. Adaptation of the work environment took place for 0.25 per cent of employees (Veerman *et al.*, 1996).

IV.2.3 Factors which encourage or discourage the use of technical and advisory services

Enterprises mainly depend on their internal provider and consultant: the OSH service (cf. V.1.1). The OSH service holds the monopoly of information with respect to the employer. If the OSH service provides the employer with sufficient and sound information and support, this will encourage the use of technical and advisory services.

An important discouraging factor, however, is that many employers lack information. They have no overview of the market of technical and advisory services and possibilities, or any insight into possible financial sources for adaptations. The latter is also caused by the bureaucratic way in which applications for funding are handled by social security agencies.

IV.3 TECHNICAL EQUIPMENT

IV.3.1 The adequacy of provision

Little information is available about the use or adequacy of technical equipment. Nevertheless, in a sample of disabled workers re-entering the workforce, it was found that only four per cent used adapted tools or equipment and only ten per cent used any kind of technical provision at all (Nijboer *et al.*, 1993). The study by Veerman *et al.* (1996) reported that technical equipment had been adapted for 0.17 per cent of employees.

IV.4 ACCOMMODATING WORK ROUTINES TO THE DISABLED WORKER

IV.4.1 External advice services which assist in the adjustment of work routines to individual needs

There is no overview of providers that support the client and employer in changing work procedures etc. In most cases of job retention or return to work, some adjustments of the work routine take place. This can vary from a change in tasks the employee has to do, to asking help from colleagues in specific situations. Reductions or shifts in working hours are usually organised without help from external services, but rely on the OSH service, client and employer.

IV.4.2 Factors which encourage or discourage take-up by employees and by enterprises

Accommodation of work routines or job content often happens informally. Employers and employees, sometimes with advice from the vocational expert from the social security agency, discuss what would be the best work procedure when taking into account the employees' functional limitations. Often this results in more or specific help from colleagues, a partially new task, or some other (usually small) modification. No records are kept of these kinds of changes and adaptations.

Statements from consultants indicate that factors facilitating these adaptations include: close cooperation between the OSH and social security expert, motivated employers and employees, indispensability of the employee and, more generally, a well developed social/sickness absence policy in the firm.

IV.5 SIGNIFICANT SERVICES FOR PROMOTING JOB RETENTION OR RETURN TO WORK

The most important factors in successful job retention and return to work are individual agreements between

an employer and employee about how to adapt the work to keep the person in the workforce. These agreements arise through an informal process of negotiation, and on the basis of advice or suggestions from the OSH service. In the majority of cases of job retention or return to work some adaptations or change in the work is made, either temporarily or permanently. The majority of these are arranged informally.

IV.6 DESIGN AND IMPLEMENTATION

IV.6.1 The effects of inter-agency collaboration in the design and development of adaptive technologies

The design and development of adaptive technologies has a low policy priority and no information is available on inter-agency collaboration. The government does not support R&D in this area as the main actors have to arrange their research or collaboration when they feel the need. Other funds are used for financing actual measures rather than the evaluation and development of new strategies.

IV.6.2 Factors in control, funding, management or staffing which impede or facilitate adaptation services

Workplace adaptations do not take place very often. The strict criteria an employer has to meet in order to have adaptations reimbursed, and the long time the social security agency needs to decide whether or not an adaptation will be paid, are the main factors that reduced the use of financial incentives under the old system. The frequent lack of knowledge on the part of both clients and employers has already been noted.

The new Law on Reintegration aims to improve the situation concerning funding, staff, flexible procedures (no waiting periods), scope for experiments and initiatives from clients themselves.

IV.7 LINKS WITH EMPLOYMENT POLICIES

IV.7.1 The effect of employment policies on the use of adaptation services

There is no information about the effect of employment agreements on the use of adaptation services. However, we do not expect there to be any real relationship between the two.

IV.7.2 Effect of labour market structure and demand on use of adaptation services

No specific information is available about the effect of labour market structure on the use of adaptation services. However, social security agencies have been interested to know whether claims for adaptation costs reflected investments that might more appropriately be considered as modernisation of the production process.

IV.8 LINKS WITH BENEFIT AND COMPENSATION PROGRAMMES

IV.8.1 Arrangements for joint funding of adaptation services

The main funding for work adaptations was described in I.2.2. Joint funding is rare.

IV.8.2 Opportunities to receive rehabilitation benefits in adjusted working arrangements

There are no specific arrangements for receiving benefits in adjusted working arrangements. Of course, the regular possibility of combining a partial income with a partial disability benefit is possible in this case too (cf. II.2.1).

IV.9 THE MOST RELEVANT FACTORS AFFECTING THE POTENTIAL OF JOB ADAPTATION MEASURES TO PROMOTE JOB RETENTION AND RETURN TO WORK

From the foregoing it can be concluded that job adaptation measures in the Netherlands are not clearly visible, often take place in an informal/internal setting, and have an uncertain but probably limited effect on promoting job retention and return to work. The factors that play a role are as follows:

Firstly, we can state that there is no history of job adaptation measures in the Netherlands aimed at overcoming the effects of disability. The main focus has always been on benefit systems for those who are unable to work, not on adapting work to give disabled workers a chance to work. Recently there has been a shift in policy focus, with greater attention being paid to return to work and the adaptation measures this requires. So far, this has not led to any noticeable results with regard to the development or use of work adaptations.

Secondly, it is of course a very limited number of work incapacitated or disabled workers for whom adaptations would be a real solution. Most disabled workers are not so severely impaired that they need a lot of adaptations.

Thirdly, the criteria that have to be met in order to have costs of adaptations reimbursed are rather strict and entail a good deal of bureaucracy. Therefore the adaptations are not easily accessible.

Fourthly, the main actor in the job retention process is not an external but an internal service: the OSH service.

The individual employer and employee are mainly responsible for the whole reintegration process. Therefore the chances of successful job retention or return to work depend to a large extent on the employer's perception of the client's capacities, and possibilities to adapt the workplace or the work process.

V. ENTERPRISE STRATEGIES

This final Part provides information about effective enterprise policies, management systems and programmes to retain workers whose continued employment is at risk because of disability. The focus is on activities which are introduced and managed by enterprises as an integral part of human resource and workplace relations management. It includes both integrated policies for the management of disability and specific practical initiatives in the workplace to promote job retention.

It will be clear that a noticeable change has occurred in Dutch firms during the past few years with regard to their responsibilities and either compulsory or voluntary actions towards sickness absence and the prevention of disability.

The majority of employers' actions still focus on the prevention and reduction of short-term absences and work incapacity, and underestimate the importance of - and opportunities for action on - longer-term work incapacity. Strategies which focus on the latter are less developed.

V.1 CORPORATE POLICIES AND PLANS

V.1.1 The development and prevalence of corporate employment policies and plans for the retention of disabled employees

In Dutch company policy and practice, there are few corporate policies or plans which address the retention of employees who are or who become disabled. Equal opportunity or diversity policies are equally rare.

However, a number of enterprises have developed specific policy practices under the heading of sickness absence policy, stimulated by the Working Conditions Act. As mentioned earlier (cf. Parts I and II) the employer is the main responsible actor for payment and reintegration in the first year of sickness absence, and

is obliged to do 'everything reasonable' to retain the employee in the workforce. It is important to bear in mind that policies for sickness absence and working conditions are linked in Dutch law and regulations. Improving working conditions is regarded as important to reduce long-term sickness absence and work incapacity. Therefore a relatively large part of corporate policies and plans deals with working conditions as well as with sickness absence.

Since the privatisation of the Sickness Benefits Act, a process that started in 1994, employers have become more aware of their responsibilities in this area. Most employers have some kind of sickness absence policy.

A survey of a representative sample of employers, carried out at the end of 1996, identified six types of approach with regard to working conditions (prevention), sickness absence and reintegration (Ter Huurne *et al.*, 1997). This classification, which is based on the content of the contract with an OSH service, comprises:

1. Enterprises without a contract with an OSH service

From 1998 onwards, all enterprises are obliged to have a contract with an OSH service, so this category will soon no longer apply. But at the end of 1996 about 14% of the sample in the survey had no such contract.

2. Enterprises with a limited contract for OSH services

These enterprises do have a contract with an OSH service, but it has a very limited scope (e.g. monitoring of sick employees). This was the case for 22 per cent of enterprises.

3. Enterprises with a policy characterized by procedural elements, directed at the individual employee

Important procedural elements include regulations about checking on absent employees, the provision of support to return to work as soon as possible, and rules regarding the notification and recording of sickness absence. About 33 per cent of employers applied this type of policy.

4. Policies with special elements directed at the individual employee

Important special elements are, for instance, the use of an in-company socio-medical team (consisting of an occupational physician, personnel department, line managers, OSH nurse) or the frequent use of pre-employment medical examinations. About 11 per cent of enterprises could be characterised by this type.

5. Enterprises with a policy directed mainly at working conditions

Important elements of this policy are the recording and reporting of occupational injuries, use of inventories of, and assessment of, workplace risks, and advice about the improvement of working conditions. About six per cent of enterprises in the sample had this type of policy.

6. Enterprises with an 'integral policy'

These enterprises have a policy that focuses both on the improvement of working conditions, and on elements directed at the individual employee. About 14 per cent of enterprises were characterised as having such an 'integral' policy.

Finally, it can be noted that policies which make use of financial incentives only focus on the prevention of short spells of work incapacity (e.g. extra holidays in the case of no absences in a year), not on the retention of employees.

V.1.2 Prominent actors and influences in the development of policies and plans for the retention of disabled employees

The recent changes to the Sickness Benefits Act and the Working Conditions Act (cf. Part II) have institutionalized these developments.

On a much smaller scale, two national advocacy organisations should be mentioned: the Council for Disabled Persons ('Gehandicaptenraad') and the National Committee for Persons with a Chronic Disease ('NCCZ'). The Council for Disabled Persons is a coordinating organisation of several organisations for disabled people: the member organisations generally represent people with one particular impairment. The NCCZ is an organisation of professionals, which aims to improve the position of chronically ill people in all areas of society. Through information and public relations exercises, both organisations try to influence employers' organisations, labour unions, the government and other relevant organisations. In a few instances, the two organisations, in cooperation with an employer's organisation, have contributed to the development of policies aiming at facilitating employment for disabled workers (e.g. by a large retailer).

The National Committee for Persons with a Chronic Disease last year also held a competition for enterprises that succeed in job retention for employees with long-term health problems ('models of good practice'). Many nominated enterprises focused on good and flexible working conditions and a well-balanced sickness absence policy. IBM Nederland won the competition in 1996. An important reason for their award was their sickness absence levels being below the average for the sector, and the fact that they contract a specialist trainer who supports employees during the reintegration process (Dynamiek, 1997).

Within Dutch firms there are no particular actors involved in the development of policies or plans for job retention: disabled people's representatives, as can be found in some German firms, are unknown in the Netherlands.

V.2 CO-ORDINATED RESPONSES TO DISABILITY

V.2.1 The development and prevalence of integrated disability management systems

As mentioned earlier (e.g. V.1.1), most enterprises have some kind of sickness absence policy, as prescribed by law. Features of such policies include the importance of staying in contact with absent employees and keeping them informed about the work and the workplace, in order to prevent them from 'slipping away' out of the work process. Earlier studies showed that once this 'anonimization process' has reached a critical value (e.g. six - 13 weeks of work incapacity), it is more difficult for the employee to return to work (Klein Hesselink *et al.*, 1993; Veerman 1989). An extra barrier is then created, the so called 'work resumption threshold' (a famous term in Dutch sickness absence theory).

However, integrated disability management systems as such hardly exist in the Netherlands (which will not be surprising in the light of the developments sketched in earlier chapters). With employers' increasing financial responsibility and awareness of the need to improve the fit between work and worker in general, the need for this type of integrated approach may increase. At a national level, the Ministry of Social Affairs is now starting to consider the issue of disability management systems.

V.3 PRACTICAL PROGRAMMES AND INTERVENTIONS IN THE WORKPLACE

V.3.1 Enterprise programmes targeted at employees potentially absent from work because of disability

There are few examples of workplace medical clinics or therapies. With the increasing influence of private insurers we note, however, a growth in such facilities. Where employers contribute to particular insurance schemes, some private insurers already offer employees special medical services, such as training to cope with stress.

Developments continue to take place in the services offered by the private insurers for the prevention of work incapacity. Some larger insurance companies, with experience in disability insurance for self-employed people, offer comprehensive service packages for insured employers and their employees. These services include preventive measures like regular health check-ups, fitness programmes and psychological support. Employees who have become work incapacitated can apply for technical consultations, for instance, if adaptations are needed.

Such enterprise-oriented policies are relatively new in the Dutch system and no empirical data are yet available on the use of these services or their effects. Their role continues to be under discussion, given that employers and insurers also provide some services of this sort in order to prevent and avoid the waiting-lists that exist in some sectors of Dutch health care.

V.3.2 Enterprise personal support programmes

There are no work-related or enterprise-initiated programmes for personal care assistance, medical or therapeutic support, transport to work, counselling, mentoring or retraining. When disabled individuals need these types of support (for instance personal care assistance), they can apply for personal provision either on the basis of the General Act on Special Health Costs (AWBZ) or the General Disability Act (AAW). This application and support are independent of being an employee.

V.3.3 Enterprise-initiated programmes to adjust the workplace and work-station

Most attention is currently given to the earlier stages of work incapacity, i.e. the period of 52 weeks in which the employer has to pay wages. Programmes that are being developed tend to focus on working conditions and the prevention of sickness absence.

An example is a programme to improve the way in which scaffolds in the construction sector are built. This project was initiated by a foundation of employers and employees to improve working conditions in the construction sector. The results of the project were positive: the workers themselves judged the new working materials positively and reported fewer physical problems than before (Kompier *et al.*, 1996). But it should be noted that such programmes are not directed at newly disabled persons: in such cases adaptations should be 'custom-made'.

V.3.4 Enterprise initiatives aimed at co-workers

There is no systematic attention given to the possible resistance of co-workers towards disabled colleagues. Nevertheless, general information is available, for instance in 'the personnel manager's handbook', aimed at informing colleagues and preparing immediate supervisors for the employment in the department of a new disabled worker.

V.4 WORK ACCOMMODATIONS

V.4.1 Schemes initiated by the enterprise to adapt working hours and work

Few schemes exist to adapt working hours or work; nor are there any overviews of company practices in this regard. Action from employers to adapt working hours and work demands are taken on the basis of individual cases (cf. Part IV).

Outcomes of such adaptations themselves have to be considered on an individual basis. When the employer and the employee are both motivated and the health problems of the employee do not deteriorate, then the outcomes of adaptations are usually considered positive, as shown in some studies (e.g. Cuelenaere, 1997; De Vos *et al.*, 1996).

V.5 'RETURN-TO-WORK' PROGRAMMES

V.5.1 Enterprise-led 'return-to-work' programmes targeted at employees absent from work because of disability

The focus of employers' policies tends to be on 'sickness absence' in general, and not specifically on the return to work of people with a considerable work incapacity record. There are no enterprise-led 'return-to-work' programmes as such. However, some well accepted general notions, published in personnel management handbooks and articles, include recommendations such as:

- keep in contact with people who on long-term sickness absence, and
- consider opportunities for the resumption of work on a part-time basis.

Both of these aim at lowering the psychological threshold for work resumption.

When discussing policy and programmes, it is very important to keep in mind that long-term sickness absence forms only a small proportion of the total amount of sickness spells. Therefore it is not surprising that only limited attention is given to long-term absence policy. For every 100 spells of sickness absence, about six to eight cases last longer than three months. So smaller enterprises, in particular, are rarely confronted with cases of long-term absence.

In the light of employers' basic obligation to do 'everything reasonable' to help the employee back to work, it is usually the employer or the direct supervisor of the employee who keeps in touch with the absent person. The occupational physician plays a supportive role and can, based on his/her contacts with the employee, suggest temporary adaptations in work content, working hours and workload. As mentioned before, since the privatisation of the Sickness Benefits Act, employers are paying more attention to sickness absence and also to employees on long-term absence. So far, this has slightly increased the opportunities of long-term absent employees to return to their own employer (Boonk *et al.*, 1997). The effect of this policy on return to work to a new employer is not yet clear.

V.5.3 Enterprise measures to help disabled workers to find suitable employment elsewhere

The responsibilities for job retention and return to work are legally divided between employers and social security agencies. Employer are responsible for job retention in their own firm. If the social security agency's assessment of the work incapacitated worker and the workplace shows that there are no possibilities to retain a job with their existing employer, then the social security agency takes over responsibility.

The social security agency is responsible for trying to arrange employment with another employer. Therefore employers themselves do not have special mechanisms for helping a disabled employee to find a job with a new employer. However, this does sometimes happen informally.

From 1998, it will be more in the employer's own interest to support such 'outplacement' of work incapacitated workers, as the new law on the differentiation in employers' contributions for the disability arrangement will then come into force (see Appendix 1).

V.6 MOST PROMINENT STRATEGIES

From the information given here and in previous sections, it will be clear that national policy, as well as policies and strategies at an enterprise level, focuses more on short-term absence. Policy is directed at prevention, by improving working conditions, and at reducing the length of absence by keeping in close contact with absent employees. The forthcoming new arrangements will stimulate employers to prevent disability.

V.7 DEFINITION AND ASSESSMENT OF DISABILITY

V.7.1 The effect of perceptions of ‘disability’ on enterprise job retention programmes

An important feature of the Dutch situation is that sickness and disability are, to a certain extent, regarded as private matters which, at first sight, are not the employer’s business. Therefore an employer does not have the right to be informed about the diagnosis, problems or medical condition of the absent employee - only about the existence of work incapacity. The work incapacitated employee has to inform the occupational physician, but this doctor is not allowed to pass on this information to the employer, at least not without the employee’s consent.

Consequently, employers seldom have any problem- or illness-related programmes. In particular, problems such as alcohol dependence and obesity are regarded as private matters, about which the employees involved are reluctant to inform their employer or colleagues (who should not ask for details). In many cases, however, employees do inform their employer or direct supervisor directly, and on a voluntary basis. But this depends purely on the wishes of the employee and his/her relationship with the employer or supervisor.

V.7.2 The effect of procedures for assessing disability at work on access to enterprise job retention and ‘return-to-work’ programmes

The assessment of work incapacity is the responsibility of the occupational physician (or, after 52 weeks, a social security doctor). Consequently, there is one key actor who both examines the employee and knows the working conditions and personnel policy. So the conditions for quick and adequate actions are optimal. The type of contract between the employer and the OSH service, however, determines how well this works in practice.

V.8 INTERNAL RELATIONSHIPS

V.8.1 Effects of the relationship between actors within the enterprise on strategies to promote job retention

Several conditions within an enterprise facilitate job retention. We may summarise them as follows (based on handbooks and the comments of other specialist commentators):

- a) Management has to acknowledge the problem of sickness absence and support attention being given to this subject. It should also be acknowledged that there often are financial costs involved.
- b) The cooperation and commitment of line managers is needed: they should accept sickness management as part of their job.
- c) Within the enterprise there should be a minimal consensus about the type of measures needed to reduce high sickness absence rates.
- d) The approach to reduce sickness absence and promote job retention should not only focus on person-related causes and conditions, but should also include changes in the structural causes of absence or barriers for job retention (e.g. time constraints, type of leadership, etc.).

V.8.2 The effects of recruitment practices on job retention

The recruitment and employment strategies applied by employers do not give any particular consideration to disabled people.

Although it has been mentioned that health screening has increased as part of enterprises' recruitment practices (due to the prolonging of the wage payment period for the employer), we do not know how this affects job retention. Higher employer sensitivity to the health condition of employees also leads to the use of more temporary contracts, which are not renewed for people with problematic attendance records.

V.8.3 Financial opportunities for internal job retention measures

As a reaction to their increased financial responsibility for sickness absence, some employers have also increased financial incentives and disincentives for employees with regard to sickness absence. In some enterprises employees receive one or more extra days off if they have no absences during an entire year. In other enterprises, the employees do not receive their wages for the first day of sickness absence (the 'waiting day'). By the end of 1996 these financial measures to reduce sickness absence were applied by about one third of enterprises. Medium-sized enterprises in particular (with ten to 100 employees) applied this type of measures (Veerman *et al.*, 1996).

No information is available about financial incentives provided by employers to reduce the duration of the work incapacity period and to improve return to work (apart from the general issue of the income-benefit ratio).

V.9 LINKS WITH EMPLOYMENT POLICY OBLIGATIONS, RECOMMENDATIONS AND INCENTIVES

V.9.1 Enterprise compliance with disability employment obligations and agreements

In the Netherlands, employment obligations concerning disabled people have never come into force. The Handicapped Workers Employment Act (WAGW) does prescribe that employers and labour unions should agree in their sector on a percentage of disabled workers that has to be employed. This percentage varies between three per cent and seven per cent. However, employers' organisations and unions never decided on this issue, so the enforcement of these quotas has never been carried out (cf. I.2.1). Consequently, employers vary in the degree to which they follow these recommended percentages.

V.9.2 Congruence between enterprise strategies and external practice recommendations and standards

External recommendations and standards have not been elaborated, apart from what has been said about general sickness absence management guidelines. Some enterprises probably have their own codes. But we have no information about these, or about which standards have been met.

V.10 ENTERPRISE STRATEGIES AND BENEFIT/COMPENSATION PROGRAMMES

V.10.1 Effects of the availability and level of out-of-work benefits on enterprise recruitment and dismissal policies

It has been argued that, as a result of the privatisation of the Sickness Benefits Act, employers will be able to select new personnel more critically in respect of health matters. Indeed, since 1994 we have seen an increase in pre-employment medical assessments (health screening). The financial risks for employers will increase from 1998 onwards, when a higher disability benefit contribution has to be paid if employees become disabled and qualify for disability benefit.

In addition, the unions have argued that the dismissal policy of enterprises has become more strict and that more employees have been dismissed on health grounds. This is hard to prove, though, since health reasons are not formally allowed as a reason for dismissal.

V.10.2 Enterprise responses to in-work social security benefits

In-work social security benefits as such do not exist in the Netherlands, although a partial disability benefit may be combined with a partial wage (see II.2.4).

The recent introduction of the concept of ‘commonly accepted work’ in relation to disability benefit (see II.1.1) means, however, that it is more difficult to qualify for a partial benefit and combine this with part-time work. For a worker who does not qualify for partial benefit, the reduction in income may be too great for the employer to supplement. This has made it more difficult for employers to keep partially disabled workers in the workforce.

V.10.3 The co-ordination by benefits agencies and enterprises of disabled workers’ transition from benefits support to waged income

We have no information on the coordination or cooperation between social security agencies and individual employers where the latter employ disabled workers. Anecdotal evidence indicates examples of both good relations and communication, as well as complaints about bureaucracy.

V.10.4 Co-ordination of the benefit-wage package by benefits agencies and enterprises

Social security agencies and enterprises generally operate separately, and the coordination of partial benefits and wages is not necessary. The employee has to inform the social security agency about his or her income. In some cases the social security agency pays the benefit to the employer and the employer pays the ‘full’ salary to the employee.

V.10.5 Opportunities for disabled employees to join, self-fund or top-up pension plans

The basic old age pension (AOW, funded through general insurance) is not affected by receiving a disability benefit. Supplementary pensions, arranged with enterprise or sector pension funds, can be affected. Some of these supplementary pension funds do keep former contributors who have become disabled. Others cancel their eligibility for benefits and cease collecting contributions once a worker has become disabled. The practices of the pension funds differ by sector.

V.11 LINKS WITH EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

V.11.1 Enterprise responses to externally funded support and advisory services

Job retention and return to work occur more in some sectors than in others, even though the external support or advisory services do not differ. Since the process of job retention depends mainly on the efforts of the individual employer and employee, the employer’s individual attitude to or perception of job retention is an important factor that determines the use of external support.

In the cleaning sector, for instance, we know that employers are reluctant to use support or to promote gradual job retention in general. Although it is known that gradual return to work is important for successful job retention, this is not always appreciated by the employers. Employers in this sector state that strong competition in the sector leads to very small margins in the way they can organise their work.

Even if job retention measures do not lead to extra costs, employers do not use these measures because of the extra work they cause. (They seem to fear that extra activities will reduce their competitiveness.)

V.11.2 Opportunities and barriers to the effective co-ordination of external support services and enterprise programmes

Given that few specific enterprise programmes exist, coordination with external support services is not relevant. In more general terms, barriers arise over cooperation between external agencies and enterprises in the processes of job retention or return to work.

The organisation of employment support and other elements of external support is still in transition. Part of the tasks that were previously conducted by social security agencies were transferred to the employment agencies in January 1998. However, tasks have not yet been clearly distributed between these organisations. It is, therefore, sometimes difficult for employers to find out where they can receive what type of support and, even more importantly, which organisation will provide them with the necessary information.

V.12 LINKS WITH SERVICES FOR ADAPTATION OF WORK AND WORKPLACE

V.12.1 Enterprise response to external services to undertake adaptations

The perception of the effort it takes to use support, independently of the type of support, mainly determines the use of support. Of course this perception can be influenced by better access to information and support.

V.12.2 Arrangements to assist enterprises with purchase of external services

More and more private consultants operate in the 'reintegration market'. They offer information about possibilities of facilitating return to work, relevant services, and support for employers in claiming assistance. In fact this work should be done by the vocational expert of the social security agency. There is a difference between social security agencies (which operate in different sectors) in the intensity of their contact with individual employers. Social security agencies generally keep better contact with larger employers, for instance through meetings of the socio-medical team, than with smaller employers.

V.12.3 The match between available services and user requirements

Especially with regard to work adaptations, the match between available adaptations and user requirements has generally been poor (De Vos et al, 1996). The criteria an employer has to meet in applying for an adaptation are too strict. The main impeding criteria are, firstly, that the adaptation has to be purely employee-oriented and not workplace-oriented. The adaptation will only be reimbursed if it creates an adapted workplace for the individual employee who needs this and if the adaptation needed is exceptional. Many workplace adaptations will either not be regarded as exceptional or will be regarded as improving the quality of the workplace in general and not just the individual position. Other criteria are that the adaptation may not be used to make good any outstanding maintenance needs or to produce unfair competition.

APPENDIX 1: The Pemba Act

The objectives of the Contribution Differentiation and Market Forces in Connection with Disablement Benefits (Pemba) Act are to offer financial incentives to employers to prevent disability in the workforce and stimulate reintegration policies (Ministerie van Sociale Zaken en Werkgelegenheid, 1997b). The new legislation comes into force on 1 January 1998. It was introduced in order to create another incentive for the employer to do 'everything reasonable' to keep employees in the workforce. If this is not possible within an enterprise, employers will have an incentive to try to arrange for the employees to move to another firm, thereby preventing them from entering the disability benefit scheme.

Up to 1 January 1998, all employees paid contributions for WAO (Disablement Benefits Act) and AAW (the General Disablement Pensions Act). Employers provide part compensation for these contributions by way of the so-called 'compensatory allowance'. As of 1 January 1998 employees will no longer pay WAO and AAW contributions since these will be replaced by a single WAO contribution to be paid in full by the employer. Several compensatory measures will be introduced so that neither the employee nor the employer will notice

this in terms of salary or salary costs. For employees, the level and duration of benefits will not change.

Employers' contributions will be partially determined by the number of employees that became entitled to a disability benefit in previous years. The fewer employees who claimed disability benefit, the lower the contribution the employer has to pay. Employers will pay the same basic contribution percentage, plus a differentiated contribution which will differ for each enterprise, depending on the number of employees claiming disablement benefit (the 'disablement risk'). If, for a particular company, this risk is lower than the national average, then the employer will be given a reduction on the contribution to be paid. A higher than average risk implies a higher contribution.

The differentiated contribution will be used to cover the costs of benefits that will have to be paid out after 1 January 1998. It will pay for the costs incurred over the first five years of an employee's disability. The basic contribution will be deposited in a fund which will be used to cover the costs of long-term disabled persons (longer than five years) and the cost of existing benefits (benefits which commenced prior to 1 January 1998). Employers will pay these contributions to one of the social insurance agencies.

An employer is under an obligation to pay the basic contribution: the differentiated contribution is not compulsory and employers may choose to bear the risk themselves. If this is the case, then they must pay out disablement benefit to any employee who becomes incapacitated for work after 1 January 1998, for the first five years of disablement. If an employer does not choose to bear the risk, they must pay the differentiated contribution to the social insurance agency. In that case, if a claim is then made for disablement benefit, it will be paid out by this agency.

An employer choosing to bear the financial risk of any of employee who becomes disabled may wish to cover that risk by taking out insurance with a private insurance company. The government's intention is to allow market forces to take effect by means of competition.

If an employer chooses to bear the financial risk, it is very important for the employees that the compulsory WAO contributions can be paid; even if the company runs into less fortunate times. Employers which apply for acceptance as employer that bear the risk themselves must be able to provide security in the form of a declaration drawn up by a reliable credit institution or insurer stating that any benefits will be met, even in the event of the company's insolvency.

Employers who bear the risk themselves pay out disablement benefit during the first five years of disablement of any of their employees. In other words, they are under an obligation to pay out disablement benefit to all those employees who were in their employ at the time they became ill. It goes without saying that this only applies with respect to employees who become incapacitated for work after 1 January 1998. It is quite possible that employers might be required to pay out disablement benefit to a person who is no longer in their employ.

Employers bearing the financial risk themselves are also responsible for reintegration. If such employers feel there are no further possibilities for adapted work in their company, they may request the social insurance agency to take over their reintegration activities. The agency will then check whether the employer who has undertaken to bear the risk has taken adequate action to make a return to work in the company possible. This will be done on the basis of a set of minimum requirements. Employers who fail to prove that they have done their absolute best run the risk of a Dfl. 25,000 fine.

Employers who engage a disabled person can be rewarded by way of remission and reduction of WAO contributions. If employers spend more than five per cent of their total salary bill on staff with a disability, they do not have to pay the basic WAO contribution for those employees. They are also given a reduction on the basic contribution for their other employees. This reduction applies up to a maximum of 15 times the average salary bill per employee. This measure makes it attractive for employers to take on disabled persons

or persons with a chronic illness.

APPENDIX 2: The Medical Examinations Act

The Medical Examinations Act will come into force on 1 January 1998. The Act stipulates that medical examinations are prohibited except for jobs which require specific medical requirements: in other words, if health problems could give rise to risks involving the safety or health of the employee or that of others. For instance, it could be necessary to have prospective engine drivers undergo a medical examination to see whether or not they are colour-blind (Ministerie van Sociale Zaken en Werkgelegenheid, 1997b).

During job interviews, employers may not ask any questions concerning the candidate's health or past sick-leave record. The new Act also prohibits medical examinations in connection with collective insurance taken out by the employer. For example, this includes collective pension insurance and supplementary occupational disability insurance, as well as insurance taken out by employers to cover their own financial risk in connection with the sickness of their personnel. Medical questionnaires or medical statements are also regarded as a form of medical examination and are consequently forbidden.

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Key Issues

Research Co-ordinator
Patricia Thornton
Social Policy Research Unit
University of York, UK

Contributors

Martin Albrecht • Monroe Berkowitz • Hans Braun • Michèle Coda-Vailant • Boukje Cuelenaere • Edwin de Vos • David Dean • Stephen Duckworth • Najiba Fradin • Alina Gildiner • Pierre Grapin • Morley Gunderson • Norman Hursh • Danielle Jafflin • Anders Karlsson • Daniel Kearns • Andrew King • Thibault Lambert • Neil Lunt • Peter McGeer • Michael Mendelson • Isabelle Mérian • Paul O'Leary • Regina Pernice • Rienk Prins • Robert Ransom • Erwin Seyfried • Donald Shrey • Gabriele Stoikov • Terry Sullivan • Tahar Tizroutine • Eskil Wadensjö • Wolfgang Zimmermann

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National Informants:

CANADA: Morley Gunderson, Centre for Industrial Relations, University of Toronto; Alina Gildiner, Department of Community Health, University of Toronto; and Andrew King, National Institute of Disability Management and Research and United Steelworkers of America.

FRANCE: Pierre Grapin, Thibault Lambert, Najiba Fradin, Tahar Tizroutine, Association Nationale de Gestion du Fonds pour l'Insertion Professionnelle des Handicapés; Danielle Jafflin, Chantal Halimi, Michèle Coda-Vailant, Caisse Nationale de l'Assurance Malaide; and Isabelle Mérian, Fédération des Associations Gestionnaires et des Etablissements de Rééducation pour Handicapés.

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Patricia Thornton

Research Co-ordination Unit

Social Policy Research Unit, University of York, UK.

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PREFACE: THE PROJECT EXPLAINED

1. The *International Research Project on Job Retention and Return to Work Strategies for Disabled Workers* breaks new ground by examining the inter-relationships of public and enterprise policies and practices as they affect the retention and return to work of disabled workers. The enquiry encompasses public policies to promote employment of disabled people; benefit and compensation programmes; employment support and rehabilitation services; provision to adapt work and workplace; and measures developed and implemented by the enterprise. The Project aims not only to identify successful policies and practices which are transferable from one country to another but also to inform the development of effective, efficient and equitable job retention and return to work strategies for disabled workers. The ultimate objective is to develop strategies which can be put into effect in the workplace.
2. The Project is an initiative of the International Labour Organisation (ILO) and the Global Applied Disability Research and Information Network on Employment and Training (GLADNET). The Project was designed to link research with the current and emerging concerns of governments, employers and workers. It reflects ILO and GLADNET joint aims of establishing a base for cross-national research and strengthening links between research analysis and policy reform in the field of employment of disabled people.
3. The Project has been constructed in two phases. The first descriptive and exploratory phase culminates in May 1998 at the Washington Symposium organised by the USA Government. The Symposium brings together stakeholders and researchers from the participating countries to debate the key issues emerging and to formulate a relevant and realistic plan for more focused research and development work in phase two of the Project.
4. Responsibility for the Project rests with the ILO (Employment and Training Department, Vocational Rehabilitation Branch). The design, implementation and analysis of the research in phase one was the responsibility of the Research Co-ordination Unit established at the Social Policy Research Unit, University of York (UK) in April 1997.
5. Eight countries participated in phase one: Canada, France, Germany, the Netherlands, New Zealand, Sweden, the United Kingdom and the USA. National governments, agencies and, in one country, a private sector organisation, as well as the ILO, contributed to the phase one budget. Australia joined the project at a later stage.
6. The Project recruited national informants from research institutes in all eight countries to carry out desk-based research. During the second half of 1997 national informants completed a standard Schedule of Questions developed by the Research Co-ordination Unit to describe policies and practices, document evidence of their effects and provide grounded commentary on how policies and practices interact. The Research Co-ordination Unit provided on-going support to informants.
7. In six of the eight countries, research specialists in the main areas of enquiry helped to develop the design and methodology, analyse the data and draft the Key Issues Paper. The research experts, the research co-ordinators and the ILO representatives met together as a Research Advisory Group.
8. Eight country reports, based on national informants' responses to the Schedule of Questions, have been prepared for publication at the Washington Symposium by the Research Co-ordination Unit, with financial support from the ILO; printing costs were met by the US Department of Labor.
9. This *Key Issues Paper*, which draws on the eight country reports, has been prepared for participants at the

Washington Symposium. It aims to inform, to stimulate debate and to pave the way for constructive discussion of questions for further exploration through cross-national collaboration. In particular, the Paper:

- identifies policies, programmes and practices which can support job retention and return to work, and considers their effectiveness within their national contexts
- identifies barriers and facilitators to effective policies and practice in national systems
- addresses the potential transferability of particular policies and programmes from one national system to another
- begins to construct strategies for job retention and return to work which link policies and programmes efficiently and equitably.

10. The Washington Symposium was designed as an integral part of the Project to bring together actors within government, agencies and enterprises who are involved in developing, implementing and managing policies, representatives of disabled people and researchers. The Symposium offers participants opportunities to:

- bridge the knowledge gap, both across and within participating countries
- compare perspectives on job retention policies and practices
- explore the potential for and constraints on transfer from one national system to another
- collaborate in a research and development programme to achieve gains for disabled workers, enterprise and governments.

11. A report based on the Symposium discussions and conclusions will be prepared by the Research Co-ordination Unit and distributed to participants.

12. Phase two of the Project will cover additional countries and will consist of in-depth research on priority issues and on promising strategies for job retention.

Copies of the 'Methodology Paper' and the 'Informant Briefing and Schedule of Questions' may be obtained from the Research Co-ordination Unit, Social Policy Research Unit, University of York, York, YO10 5DD, UK.

1. INTRODUCTION

1.1 A new focus on job retention

A combination of developments has led to a new international interest in the situation of workers whose continued employment is at risk because of illness or disability. For workers with disabilities, staying in work has generally become more difficult, with deregulation of the labour market and pressures on enterprises to sustain competitiveness in an increasingly global market, leading in many countries to 'downsizing' and casualisation of labour. On the other hand, rising compensation costs mean that dismissal is no longer the automatic response to the occurrence of disability. Enterprises in some contexts now find retention a cost-effective option and have developed their own practices for managing disability.

Pressures on budgets for public services and benefits, and political and ideological change, are encouraging states to disengage from centrist disability employment policies and services and to reassess their role

vis-à-vis the employer. New public policy approaches include increasing employers' responsibilities to prevent and manage the occurrence of disability, financial incentives to minimise benefit and compensation claims, and marketisation of services which can help people with disabilities to retain employment. These shifts are by no means universal, and long-established regulatory approaches continue to offer disabled workers some protection and support in the face of labour market change.

In many ways, recent developments to promote access to employment by people with disabilities favour the retention of working people who become disabled. Consider, for example, new concepts of disability as the product of barriers in the environment; laws which emphasise rights of disabled people in work; and pressure led by disabled people's movements to combat discrimination on grounds of disability. It is nevertheless significant that disabled people as an organised lobbying force have not taken ownership of job retention issues and remain focused mostly on entry to work. But policies designed for 'disabled people' may not be adequate to support the continuing employment of all those workers whose capacity to continue in the job is affected through ill health or disability: those with 'new' occupational diseases, those with fluctuating conditions whose permanency cannot be gauged, and those whose (invisible) disabilities do not fall within the scope of legal definitions.

A new focus on job retention thus requires us both to re-think the balance between public policy regulation and discretionary enterprise practice, and also to acknowledge that the population whose continued employment is affected extends beyond those identified, or who self-identify, as disabled.

1.2 Who are 'disabled workers'?

In this study, the term 'disabled workers' is broadly defined. It covers individuals who become disabled, injured or ill, whose prospects of continuing or advancing in employment are jeopardised when an acquired impairment, illness or deteriorating condition - physical or mental - presents difficulties in fulfilling the requirements of the job, reduces earning capacity or affects other rewards of working. They may or may not qualify under legal definitions of disabled persons. The term also covers disabled workers whose working capacity is not diminishing but whose continued employment is nevertheless threatened by prejudice or discrimination, or by the loss of supports which have maintained them in the job.

1.3 What do we mean by job retention and return to work?

For the purpose of this study, 'job retention' means staying with the same employer, with the same or different duties or conditions of employment, and includes return after a period of paid or unpaid absence. 'Return to work' refers to the resumption of employment by a worker who has crossed the threshold from a continued employment relationship into non-employed status; the main interest of the study is in policies and practices which return the disabled individual to work at an early stage.

1.4 What are job retention policies?

A starting point for the Project is that enterprises have their own policies and practices which determine job retention. The national institutional, economic and regulatory framework creates the scene within which they operate, but ultimately enterprise policies and practices determine who is hired, dismissed or retained. How job retention at the enterprise level is encouraged, complemented or constrained by public policies is a central question for the Project.

We adopt a broad interpretation of public policy to include not just regulation but also non-interventionist and voluntaristic approaches. A stance against intervention in the affairs of companies through regulation or incentives is itself a public policy which creates space for other policy developments, such as voluntary change in employment practices whether for reasons of business advantage or out of social responsibility.

Many countries do not distinguish job retention aims within their general policies to promote employment, policies which are often dominated by programmes to increase access to employment for disabled people who are out of work or have never worked. Alternatively, job retention may be identified as a distinct approach which requires special legislation, incentives and programmes. Public policies and services dedicated to job retention are, however, recent phenomena found in only a few of the study countries. Early return to work policies which focus on early intervention once the job is lost, are also comparatively recent in most.

Some broader-based policy measures with catch-all objectives (first time entry, re-entry and retention) such as human rights and anti-discrimination legislation and quota-levy schemes, as well as some schemes which set out mainly to promote entry to work, may have unexpected or unintended effects in keeping in work people who become disabled.⁽¹⁾ Rather than restrict the enquiry to policies and services designated for job retention and/or return to work, the study 'interrogated' a range of policies to identify their job retention or return to work effects. In some instances, then, we are imposing analytical categories on a broad range of activities, while in others we are reporting on policies and practices with clear job retention or return to work remits. Developing strategies for job retention may mean re-orienting existing policies in that direction, as much as inventing new policies.

1.5 Understanding the policy implementation process

Identification of policy intentions and outcomes is only part of the picture. It is the way in which policies are put into practice - the *process* - which determines their effects on job retention and return to work. Accordingly, the study aimed to map the range of actors in the process, the positions they adopt and their inter-relationships, and to begin to understand the constraints and facilitating factors, both within and across the various organisations concerned with job retention and return to work. A closer understanding of the dynamics of process may be pursued in phase two of the Project.

1.6 How do policies and practices interact?

There is much to learn from initiatives in the study countries designed to promote job retention and return to work and from more broadly-based policies which also have those effects. But their success may be impeded by conflicting policies or practices or by inadequate links to other programmes, services or facilitators in the national system. A further aim of this project, therefore, is to examine the dynamics within national systems with a view to identifying ways in which elements might interact more effectively and efficiently.

The research was designed around five 'themes'⁽²⁾ in eight national systems:

public policies to promote employment of disabled people

benefit and compensation programmes

employment support and rehabilitation services

adaptation of work and workplace

enterprise strategies.

A national 'system' in the context of this study refers to the many 'elements' within a country⁽³⁾ which influence the retention or early return to work of disabled workers. These elements take the form of policies (laws, rules, operating principles), programmes (structures for implementation and funding), practices (operating processes) and players (policy makers, agencies, representative bodies, service providers, actors within the workplace and so on). The five 'themes' outlined above represent conceptual groupings of these elements within the national system. Elements operate independently, or in combination, within and across

the themes, and can be interpreted in terms of system dynamics.

1.7 What are the Project's yardsticks?

The elements within the system and their dynamics are measured against four yardsticks: activity, effectiveness, efficiency and equity.

Activity refers to the degree of effort and interest, as well as resources, devoted to job retention and return to work within each national system. The concept does not imply measurable 'inputs'; it is, rather, a barometer of the national climate.

Effectiveness refers both to the quantitative and qualitative effects (intended and unintended) of policies, programmes and so on and to results of the interactions (efficiency). The project recognises that what is 'effective' is contested among government departments, enforcement agencies, service providers, employers and other workplace actors, and workers with disabilities themselves. Disabled workers' perspectives on desirable outcomes are under-represented in the study so far.

Efficiency refers to the interactions between elements, both within and across themes. It is assumed that job retention is more likely to be achieved if elements within national systems work together more efficiently. It is also assumed that more efficient systems will be less costly; cost-effectiveness will be investigated in phase two of the Project.⁽⁴⁾

Equity refers to the coverage within the system of sub-populations of disabled workers. It is assumed that effective and efficient policies and practices must also be equitable (or fair). In phase one, attention was given to the distribution of opportunities for work retention across the public and private sectors, industry, occupation and tenure, and to how policies and practices impact on disabled workers depending on type of disability, age, gender and minority grouping.

Equity between those in work and out of work is also an issue. Without a corresponding policy commitment to improving access to employment, promotion of job retention and return to work may disadvantage those who have never worked or are long-term unemployed, and may reinforce existing inequalities in the distribution of employment opportunities, notably among women and indigenous or visible minorities. An effective job retention strategy may have undesirable side-effects if long-term disabled people seeking employment are not hired when priority is given to retaining workers with newly acquired impairments.

1.8 How transferable is practice from one system to another?

The Project assumes that, through researching national systems, obstacles and solutions to job retention and return to work can be identified and practical proposals formulated for application in other systems, to improve the prospects of disabled individuals who wish to stay in work. It is assumed that certain ideas for 'good practice' can be transported from one national setting to another, provided that the contexts in which they operate are well understood.

The larger Project aim is to formulating potential *strategies* to support job retention and return to work. Some of these strategies are 'minor' collaborations or synergies between elements, not necessarily comprehensively linked across the system but potentially transferable from one setting to another. Others are more developed. It is expected that in phase two minor strategies can be developed and combined into more comprehensive or 'grand' strategies.

These aims are highly ambitious and the obstacles should not be under-estimated, as the following extract from the Canada report demonstrates:

The employment policies described so far were not designed as part of a co-ordinated strategy to facilitate the

job retention of disabled persons. Each policy generally has its own rationale, with disabled workers usually being just one of the many groups that have access to a program, and with job retention usually not being a specific objective, although it may well be facilitated by the policies.

2. THE PARTICIPATING COUNTRIES IN CONTEXT

Eight countries participated in phase one of the Project: Canada, France, Germany, the Netherlands, New Zealand, Sweden, the United Kingdom and the USA.⁽⁵⁾ In several dimensions, the eight countries cluster into two groups: the predominantly English-speaking countries⁽⁶⁾ and the four mainland European nations⁽⁷⁾. We summarise, in general terms, some of the more striking differences reflected in their approaches to employment of disabled people. In the next section we report on job retention and return to work activity in the eight national systems.

2.1 Labour market policies

National labour market policies create the framework within which policies for disabled people operate and jobs are kept or lost. The study did not set out to detail the differences within national policy approaches to regulation of the labour market, chart trends or chronicle changes in political direction.⁽⁸⁾ We nevertheless can draw a simple distinction between traditions of labour market intervention in the countries of mainland Europe and less interventionist stances taken by Anglophone⁽⁹⁾ countries. In the more regulated German, French, Dutch and Swedish systems, laws which control how workers are hired, the conditions of their tenure and how they are dismissed provide the foundation for public employment policies to protect persons with disabilities. Less regulated approaches, in the USA, New Zealand and the UK, avoid imposing such constraints on business activity.

2.1.1 Measures to support job creation

Across mainland Europe wage subsidies, recruitment grants and relief of national insurance contributions are widely used to create jobs for long-term unemployed and other disadvantaged groups including disabled people. There are also special incentive schemes in Germany, France and Sweden to promote employment of disabled people. Swedish active labour market policies positively favour disabled people. Incentives are a relatively new feature of Dutch policy, however.

The UK has not developed wage subsidies specifically for disabled people in the competitive labour market, although if unemployed they will benefit from a new 'Welfare to Work' programme which includes recruitment incentives. Active labour market programmes developing in federal Canada may benefit unemployed persons with disabilities; wage subsidies operate at provincial levels, some specifically for workers with disabilities, as in Quebec.

Public subsidies to employers are incompatible with the free-market philosophy in the USA.⁽¹⁰⁾

2.1.2 The role of labour unions

Generally, the level of trade union membership has been falling, most dramatically in New Zealand (by over 50 per cent in ten years). Collective bargaining is most dominant in the countries of mainland Europe, where very high proportions of employees are covered. In the Anglophone countries, where company and plant level bargaining predominate, coverage is highest in Canada, while only one in ten are covered in the USA. Collective agreements in the workplace are one of the more important vehicles by which trade unions can advance policy for the employment of persons with disabilities; in France the law in favour of the employment of disabled people encourages enterprise-level agreements to formulate and implement plans for the recruitment and retention of disabled workers.

2.1.3 Severely disabled people in employment

The mainland European countries all have large and expanding sheltered employment sectors to which certain severely disabled people entering the labour market may be directed. ⁽¹¹⁾ In the Netherlands, for instance, there are almost no people with learning disabilities ⁽¹²⁾ in open employment. Although the idea of supported employment in competitive employment is taking hold in mainland Europe, it has not achieved the same degree of ideological importance as in the Anglophone countries, where segregated employment has generally fallen out of favour and where severely disabled people have more opportunities for competitive open employment. This difference in policy emphasis must be borne in mind when considering strategies for maintaining the employment of those people who are already disabled when taking up employment.

2.2 Disability employment law

The two groups of study countries practice different concepts of law which translate into contrasting approaches to achieving the common social aim of reducing inequalities between disabled and non-disabled people in employment. In the predominantly English-speaking countries employers are expected to respond to individual claims and precepts of civil rights. In the countries of mainland Europe, on the other hand, laws impose obligations on employers to behave in predetermined ways towards defined groups protected by the law. In France, Germany and the Netherlands disabled people may benefit from the law only after they have been assessed against specified eligibility criteria. These differences are illustrated by two contrasting legislative approaches: quota systems and disability discrimination legislation.

2.2.1 Quota systems

Employment quotas for many years have played some part in the disability employment policies of most countries of Europe. ⁽¹³⁾ The 'quota-levy' is the main pillar of national disability employment policy in Germany and France (since 1987). To over-simplify two complex schemes, employers must employ a target percentage of recognised disabled workers or pay a levy which is redistributed, through a fund, both to support the costs to employers of employing disabled people and to finance measures to promote the employment of recognised disabled workers. ⁽¹⁴⁾

Quota systems (and the special protection against dismissal which applies to beneficiaries of the German law) are based on principles of collective obligation towards disabled people - an obligation which rests on society as a whole, implemented by employing organisations as societal representatives, and overseen by agents of the state. In most Anglophone countries such notions of obligation and redistributive justice are contrary to principles of individual rights and, certainly in the USA, to the employer's right to hire.

2.2.2 Human rights and anti-discrimination legislation

All four English-speaking countries have human rights or anti-discrimination legislation. Human rights legislation protects individuals against discrimination on a range of grounds, including disability, and in a range of areas, including employment. New Zealand has a Human Rights Act (1993), all Canadian jurisdictions have human rights statutes covering disability (dating from 1977), and protection against discrimination on grounds of disability is guaranteed by the Canadian Constitution.

The USA and the UK have anti-discrimination legislation specific to disabled people, with specific provisions relating to employment; the Americans with Disabilities Act (ADA) 1990 ⁽¹⁵⁾ and the Disability Discrimination Act (1995). Under human rights and anti-discrimination legislation the individual has to initiate a complaint. The complaint may be resolved by conciliation, or legal action by the complainant or an independent commission may result.

In mainland Europe, legislation which covers discrimination on grounds of disability is as yet rare, although disabled people's organisations campaigned vigorously to achieve rights in the new European Treaty and advocate rights-based legislation at national level. Recent amendments to the constitution in Germany and the penal code in France to protect people from discrimination on grounds of disability may have symbolic importance but as yet little or no practical effect. Legislation to protect disabled people from discrimination in working life, including a duty on employers to make adaptations, is likely to be introduced in Sweden, however.

2.2.3 Protection against dismissal

The differences between the two groups of countries also can be illustrated by approaches to preventing dismissal of disabled people. In the example of Germany and the Netherlands, a recognised disabled worker has automatic protection under the law, unless approval of dismissal is granted to the employer by an agency of the state. In the Anglophone countries, disability discrimination laws come into effect only after the person with disabilities has been dismissed and if discrimination on grounds of disability can be demonstrated. In this way, employers are *inhibited*, rather than *prohibited*, from dismissing a worker with disabilities.

In this context, it is important to note that employees in European Union countries have some form of protection against dismissal, depending on permanency of employment contract, number of hours worked and a minimum period with the employer. In the USA, employees have no statutory protection against dismissal. Thus, the ADA, combined with the Family and Medical Leave Act 1993 which gives employees (in firms of over 50 employees) a right to up to 12 weeks sick leave and to return to their job (or an equivalent) within that period, offers significant 'protection against dismissal' in the US context.

2.3 Policies to promote 'good employment practices'

Disability discrimination laws prompt employing organisations to adapt their recruitment and employment practices in reaction to the requirements of persons with disabilities. 'Equal employment opportunity' is a more pro-active policy approach. It encourages, or requires, employers to examine their recruitment and employment practices and make changes to equalise opportunities in accessing, maintaining and advancing in employment.

Such policies are evident in the Anglophone countries in the study. In New Zealand, public service departments must develop their own equal employment opportunity policies, produce an annual programme and publish results, monitored by a state commission, for specified groups including people with disabilities. A short-lived legal requirement on the private sector has been replaced by promotion of voluntary action. The UK has had a long-standing preference for 'persuasion' policies rather than legal requirements. Good employment practices in recruitment and retention of disabled people have been promoted by non-statutory codes of practice and by schemes to encourage self-identification as good practice employers, in both public and private sectors. Governments, the social partners and some voluntary organisations have promoted the business advantages of reaching out to a disabled customer base through employing disabled workers.

In Canada people with disabilities are one group covered by the Federal Employment Equity Act (and similar legislation in Quebec). Under this Act (which applies only to federal public servants, Crown corporations and federally regulated firms employing 100 people or more) employers must identify barriers limiting employment opportunities, and develop and implement a plan to promote a fully equitable workforce. Voluntary employment equity operates at the provincial level. Affirmative action of this kind has not been successful in increasing the numerical representation of workers with disabilities although, as it also applies to women as a special group, women with disabilities may have benefited.

2.4 Benefit and compensation systems and rehabilitation

Completely separate insurance programmes exist in Canada and the USA to compensate for specified work-related injury or illness. In New Zealand the compensation programme is restricted to people disabled through accident (work-related or not). In the Canadian provinces and in New Zealand there are separate authorities which administer the funds for payment of work injury compensation, while in the USA the main actors are private insurance carriers who play an essential role in the administration of the programmes alongside the States. As it is in the interests of the funds or insurers (and fundamentally the firms who pay the insurance premiums) to reduce compensation payments, these systems also provide for rehabilitation and return to work support. The result is that workers with disabilities covered by these compensation schemes receive quite different, and usually better, benefits and services than workers who become disabled through other causes.

In the countries of mainland Europe and the UK, workers are insured against work-related injury or illness within the wider social insurance system. The arrangements for compensation and levels of benefit differ in some countries if disability is work-related but, generally speaking, beneficiaries do not receive different services from those who become disabled through other causes.⁽¹⁶⁾ The links between social insurance compensation and rehabilitation are most pronounced in Germany and Sweden. Germany has a principle of 'rehabilitation before pension' where the insured person's public pension fund should first provide medical and then vocational rehabilitation. The Swedish national social insurance agency has extensive responsibilities, together with employers, for ensuring that workers re-acquire lost working capacity as soon as possible.

The UK social security department, which pays industrial injury compensation, has no responsibilities for rehabilitation. Nor does the social security agency in New Zealand. The prime function of the social security agencies in the USA and Canada is also to administer benefits, although they may purchase vocational rehabilitation services for selected beneficiaries with disabilities. Here it is important to understand that the English-speaking countries traditionally have had 'all or nothing' social security disability benefits systems where beneficiaries have only very limited opportunities to earn while receiving benefits. The countries of mainland Europe, on the other hand, pay partial, as well as full, benefits according to remaining earning or working capacity. Their systems allow a partial benefit to be combined with income from paid work; and in Sweden and the Netherlands this is basic to sickness and disability benefit policy.

Companies in the USA and Canada commonly purchase private health coverage and insurance for their employees against the risk of disability. These employee benefits are an important part of the US system as there is no universal health care. There is a growing private insurance market in the UK, and in the Netherlands evidence of insurers following the US model of funding return to work services to minimise employers' compensation payments.

2.5 Employment support services and adaptations

In Sweden, France and Germany substantial funding is devoted to employment supports for disabled people and their employers (including training, adaptations, technical aids, wage subsidies, recruitment grants and direct services). The funds gathered through the quota-levy systems are major sources of financial and practical support to assist French and German employers in meeting their obligations towards disabled people. Public expenditure on re-integration of disabled people into working life is very low in the Netherlands, and reforms have been proposed to improve use of available funds.

Disabled people in Sweden and the UK can apply to earmarked funds for practical aids and personal assistance in work. Help to disabled people specifically for support in employment is unusual in other countries. Adaptive equipment and assistive devices for independent living are well-developed in several countries but rarely tailored to supporting employment.

A central tenet of disability discrimination legislation and some human rights laws (New Zealand is an exception) is that individuals with disabilities should not be put at a disadvantage in meeting the requirements

of the job. This means that 'accommodations' or 'adjustments' should be made to the individual's work or working environment, such as modifying the equipment they use, making the workplace accessible or modifying the work schedule. Accommodation requirements are built in to some workers' compensation programmes in Canada. Only limited public funding for adaptation of the workplace and for making accommodations for workers with disabilities exists in Canada and the USA. There some businesses can be reimbursed for some of the costs through the taxation system, but, unlike in the other six countries, there is no system of grants.

2.6 Enterprise activity

The opportunity and impetus for the enterprise to develop and implement its own strategies for employment of persons with disabilities vary from country to country. Sweden, for example, reports that the framework of state regulation squeezes out any opportunity for independent activity. Yet in New Zealand, where employers can act relatively freely, employers are thought to see employing people with disabilities as a threat to efficient employment practices and a risk to profitability. Independent enterprise activity is most developed in the USA where employers have almost no statutory obligations in the employment field but have economic incentives to adapt their employment practices. Larger employers in the USA have developed a variety of activities and programmes intended to prevent disabilities from occurring and to minimise their costs. These activities are considered in more detail later.

3. JOB RETENTION ACTIVITY IN THE STUDY COUNTRIES

In the previous section we highlighted the commonalities and differences in national approaches to promoting employment of persons with disabilities. Here we summarise job retention activity within the eight national systems and highlight the key features and developments.

3.1 Countries of mainland Europe: summaries

The Netherlands' income and labour policy is undergoing rapid change. Strategies to reduce high sickness absence rates and costs to the disability benefit system have led to new responsibilities on employers: to identify and reduce risks in the working environment; contract with occupational health advisers; contact absent employees; and draw up individual work resumption plans. Penalties on employers were resisted and strategy has shifted markedly towards financial incentives, introducing employer responsibility for sick pay (for up to 12 months) and, since 1998, requiring them to contribute to the disability insurance scheme (or use the private insurance market) to insure against the costs of the first five years of disability. Uniquely in Europe, part of the firm's premium is differentiated, depending on claims experience. A consequence of these incentives has been 'risk selection' at the recruitment stage and legislation has been passed to prevent medical screening. Take-up of incentive subsidies for wage costs and adaptations is very low. Most adaptations for job retention are carried out by the company. The system focuses on short-term sickness absence, and rehabilitation of longer-term disabled people has low priority.

Job retention also has an increasingly high policy profile in *Sweden*, a country with a strong work ethic. Policy emphasises prevention of disability through improvements to the working environment. Established duties on employers to promote healthy work environments and make adaptations for individual needs in the workplace have been followed by initiatives to reduce sickness absence. Employers now have responsibilities for the first weeks of sick pay and in cases of sickness absence must plan for rehabilitation. As in the Netherlands, the sickness and disability benefits system has been tightened to reduce costs of sickness absence and long-term disability benefits. Ear-marked funding for adaptations in the workplace is substantial but under-used. A short-term national fund dedicated to improving working conditions has demonstrated to employers that workplace improvements can lead to economic gains. In a highly regulated system, employers have little opportunity for independent action. There are some examples of social partners' initiatives to promote employment opportunities for people with disabilities.

In **France**, concern about the outflow of disabled workers from employment at a time of high and rising unemployment prompted programmes in support of retention. Since the 1987 reforms to disability employment law, larger enterprises under the quota-levy system are encouraged to develop integration plans, covering retention, rehabilitation and training, as an alternative to paying the levy, and the body that administers the levy fund (AGEFIPH) works pro-actively with large combines. The quota system itself is tailored more towards encouraging recruitment. AGEFIPH interventions include temporary financial support to retain employees who become disabled while practical help is arranged, diagnostic advice and grants towards adaptations.

Employers' associations are active in promoting job retention but most enterprise activity is framed by the law. The proportion of state expenditure devoted to employment rehabilitation is low. Return to work activity is dispersed among a range of agencies and providers and improved co-ordination has been a priority. Considerable national effort is devoted to job creation and subsidies to reduce unemployment among disabled people and other disadvantaged groups.

In **Germany**, the quota-levy scheme allows employers to keep in their employ (often in light work) those, mostly older and long-term employees, who acquire health limitations. By encouraging them to register, employers can fulfil the implicit social contract, and avoid the uncertainty attached to new recruitment of disabled workers and the embarrassment of paying large levy dues. The current economic conditions force firms to shed labour, however. Works councils and disabled persons' representatives have effective roles in procedures which require employers to obtain external permission to dismiss a registered severely disabled person. Return to work is a strong institutional feature, supported by the various pension funds which invest in rehabilitation as a first resort before payment of pension. Interventions by these funds veer towards retraining and new employment opportunities, rather than efforts to accommodate the disabled person with their existing employer; a 1997 review by the Federation of Pension Funds has proposed a redirection towards job retention to improve efficiency. Various support services and subsidies for (re)entry to work may be used for retention. Some interventions are specifically designed to support efforts by enterprises to retain workers who become disabled.

3.2 Emerging issues: mainland Europe

Principles of social responsibility to disabled workers have been difficult for enterprises to sustain in the face of down-turns in the economy and may be difficult to re-establish in times of economic boom.

Principles of social solidarity are eroding fast in the Netherlands, with decreasing public and political will to support the massive costs of the disability benefits system and rapid privatisation of the disability insurance system.

A response to the rising costs of sickness and disability benefits in the Netherlands and in Sweden has been to shift responsibilities from the state to the enterprise (most dramatically in the Dutch system) both for payment of sickness benefit and for early intervention to reduce sickness absence.

Occupational health services are becoming key players (as in the Netherlands) as enterprises take on more responsibilities for retention of workers who become disabled.

Differentiated insurance premiums, as an incentive to Dutch employers to prevent employees entering the disability benefits system, is a new development in Europe.

Job retention is mainly a social insurance policy issue, although in France, where the costs of disability pensions have not escalated, the prime movers are the employment department and the quota-levy fund agency.

Regulatory systems tend to circumscribe independent action by the enterprise but may also, as in the case of the French reforms of 1987, stimulate new initiatives to support retention.

The substantial budgets of quota-levy funds and the fund raised from pay-roll taxes in Sweden are important facilitators of job retention.

Works councils and trades unions play reactive roles in defending rights not to be dismissed and in France and Germany are particularly active in reaching agreements to further job retention policies within the enterprise.

Employers' networks for disability seem best developed in France, where employers' associations and disability associations are also active providers of services to support job retention and return to work.

3.3 The Anglophone countries: summaries

In *Canada*, requirements to re-employ and accommodate the return to work of injured workers are a new and emerging area in workers' compensation (in Ontario, Quebec, British Columbia and New Brunswick). These changes, as well as restrictions on eligible claims, have been driven by the need to restore the financial viability of the compensation funds. Since 1998, the Ontario scheme has been re-oriented towards prevention of workplace injury to meet this aim, and responsibility for first intervention for retention or return to work is shifted from the compensation board to the employer and employee. Insurance premiums which relate to the rate of claims (known as 'experience rating') offer some incentives to employers to prevent compensation claims. A reported adverse effect is pressure on injured employees to drop claims or to return to work before they are ready. There are no other public policies specifically for job retention but a shift in emphasis from more general policies that improve access to work to those that promote job retention is reported, reflecting a general concern about the inadequacy of 'equal opportunities' and the need for policies which deliver outcomes. Reasonable accommodation requirements are considered key to such a strategy. The Canadian report notes that pressure on governments to reduce deficits is shifting to employers more of the costs of services (such as vocational rehabilitation) and of transfer payments.

In terms of *USA* national priorities, reducing numbers on the disability benefit rolls receives greater attention than policies to support employees who are at risk of becoming unemployed due to a disability. However, the ADA and FMLA combined, backed by occupational health and safety legislation, have had significant effects on job retention practices. Employers are responsible to pay medical and indemnity benefits for work-related injury and, because insurance premiums relate to claims, there is an incentive, particularly for large firms, to reduce the occurrence of disability and return the employee to work as soon as possible. However, workers' desires to achieve the best rates of compensation and litigation reduce possibilities for early intervention. Larger firms operate some form of 'disability management' system for claims handling, prevention of disability, accommodation of workers with disabilities and so on. Workers who become seriously ill or injured are eligible for vocational rehabilitation (VR) under all State workers' compensation programmes and participation is mandatory in 15 jurisdictions. Return to the same job, modified if necessary, with the same employer, takes priority. VR services are either administered by a State workers' compensation or public VR agency, or financed by private sector insurance carriers or self-insured employers. As in Canada, options are limited for persons with disabilities not covered by workers' compensation or employers' own benefit plans. Federal/State VR is oriented towards first-time entry to employment, particularly serving people with severe disabilities, and federal expenditure on VR is very low.

In *New Zealand*, the single programme which positively affects job retention is the accident compensation and insurance scheme which, like workers' compensation boards in parts of Canada, provides case-managed rehabilitation services. Return to work is negotiated and not mandatory, while rehabilitation is a right. Again, 'experience rating' is a built-in incentive to employers to retain workers who acquire disabilities. Supplements to the income of returning workers who are unable to work full time also serve as incentives to employers. A

pilot scheme allows approved employers to take on the total management of claims for the first year following injury. Support services are directed towards access to employment and maintenance of people with disabilities who find jobs. The recent Human Rights Act and promotion of equal employment opportunities appear to have little impact on enterprise behaviour and the New Zealand report suggests that employment of people with disabilities is not a priority in a highly competitive climate.

In the *UK*, the rising costs to the state of disability benefits combined with long-standing political concern about 'benefits dependency' and disincentives to work, and employment services for disabled people directed towards (re)entry to employment, have meant that policy for job retention was left in the hands of the employers. The new government has begun to stress the importance of preventing disabled people from leaving employment (and so claiming benefits). A 'new deal' has been announced as part of the new Welfare to Work approach, although specific design details are only now beginning to emerge. There are few incentives to employers to retain disabled workers. The recent Disability Discrimination Act, which follows years of encouragement to adopt good disability employment policies, may impact on employers' retention practices and encourage voluntary initiatives instituted by leading-edge employers. Practical help to disabled people for workplace access supports people who become disabled in employment but vocational rehabilitation plays a marginal role in the system. Employers' networks on disability focus on access to work more than job retention.

3.4 Emerging issues: Anglophone countries

The excessive compensation costs to workers' compensation and accident compensation boards in the USA, Canada and New Zealand have stimulated measures to encourage employers to retain those injured workers who are able to return to work.

Requirements on the employer to re-employ and accommodate an injured worker are found in some Canadian provinces.

Experience rating, where the cost of insurance is related to the disability record of the company, is an incentive to retain workers who become disabled.

Injury and accident compensation systems discriminate against workers who become disabled for other reasons. The latter have restricted opportunities for compensation, for income maintenance benefits and for rehabilitation.

Adversarial compensation systems reduce possibilities for job retention.

In the New Zealand scheme rehabilitation is a right. Rehabilitation is mandatory in some Canadian compensation schemes and in a minority of US workers' compensation programmes.

Disability discrimination legislation in the USA supports retention and re-employment of working individuals with disabilities, particularly those who acquire a disability.

In the USA the management of the occurrence of disability, and its prevention, is now an accepted function of larger enterprises, prompted by experience rating and reinforced by rights-based legislation. Canada also reports some enterprise disability management initiatives where labour representatives have had a key role. In the UK disability management is an emerging development as part of good employment practice and encouraged by recent disability discrimination legislation.

4. DISABILITY EMPLOYMENT POLICIES

All eight countries have developed policies which influence enterprises' employment practices with regard to workers with disabilities. For example, enterprises are encouraged, or required, to avoid discriminating on

grounds of disability, to refrain from discharging disabled workers, to keep jobs open for workers absent on sick leave, or to make it easier for the disabled worker to do the job. Of course, special measures for workers with disabilities are only part of the picture, and policies which apply to *all* workers also affect the job security of those who are disabled.⁽¹⁷⁾

4.1 The changing labour market

Job retention and return to work strategies for workers with disabilities are challenged by changes in the structure of the labour market and in employment conditions in many countries.

Structural changes include a growth in service industries and a decline in traditional industrial sectors, a shrinking public sector, streamlining of large firms, 'out-sourcing' and a growth of small employers and of self-employment.

Employment opportunities are increasingly 'non-standard', including part-time jobs (which may involve very low hours), short-term contracts and agency employment.

These changes expose the shortcomings of some regulatory approaches which exclude small firms, require minimum periods of employment before disabled workers can take advantage of the law, or exclude part-time workers. Workers with disabilities in emerging labour sectors can miss out through restrictive coverage of work-injury regulation and of compensation systems. Women in part-time work, transient workers and some minority ethnic groups concentrated in small businesses or self-employment are particularly disadvantaged.

Agency working and subcontracting not only remove some disabled workers from the reach of the law but also change the nature of employers' obligations towards them. In the changing labour market there is an increasing role for public policy to support self-regulation among enterprises. For example, companies may choose to exercise financial leverage on subcontractors to demand of them standards in employment practice, just as governments may do through the device of contract compliance.

The advent of the 'flexible' labour market can bring opportunities for some disabled people. Some needs may be met through re-allocation of tasks to create 'light duties', flexible hours, job-sharing, part-time working, home-working and tele-working. These solutions often fit with employers' needs to reduce labour costs. But what are the benefits of flexible employment to the worker with disabilities and what are the costs? Opportunities for flexible employment are by no means universal. The German report comments on limited room for manoeuvre with increasing competition and pressure for efficiency measures. Other countries report narrow profit margins in some service industries and limited scope for flexibility in stream-lined public sectors.

The new labour market requires employees to be functionally flexible, and undertake ongoing training and re-skilling. If this human resource management ethos leads to less rigid employment structures disabled workers may stand to benefit. Flexibility, and tailoring solutions to individual needs, are key elements in successful job retention strategies. But how far is 'flexibility' part of the culture of those industries where workers become disabled?

Should public policy follow the flow of the changing labour market or stand against the tide to protect the interests of employees, including disabled workers? Should it, for example, advocate that workers with disabilities should 'hitch a ride' in the growth service-sector ⁽¹⁸⁾ or direct effort to supporting job retention in declining industrial sectors? Deciding on the balance between these extremes is the first step towards a strategy for job retention and return to work of workers with disabilities.

4.1.1 Job retention and the small firm

Many of the legal measures which promote job retention do not apply to firms with fewer than a set number of employees. Changing employment conditions, rationalisation of large enterprises and the growth of small firms indicate that the already large number of excluded people with disabilities is set to increase.

Laws are commonly framed to allow alteration of thresholds; for example, the ADA threshold was gradually raised during the implementation phase, as was that in the law which introduced the quota-levy system in France. The UK government is to lower the minimum size of firm covered by the DDA. Deciding where to draw the line is not straightforward. Thresholds are set to take account of enterprises' ability to comply with the legal requirements, enforcement agencies' capacity to oversee their adherence and the costs of supporting beneficiaries under the law. If bringing smaller enterprises within the scope of law is to be effective, they will need practical advice and extra funding for the costs of compliance, particularly where there is a requirement to accommodate disabled workers, and minimal bureaucratic requirements.

4.2 Policy approaches

Policies are influenced by different assumptions about why job retention and return to work are desirable objectives, about the parts that the state, employers and employees should play in achieving them, and about the relative roles of legislation, financial incentives, publicly-funded support and voluntary action.

At an *analytical* level, we can identify three main types of policy approach and corresponding public policy measures:

collective responsibility - exemplified by quota systems, affirmative action, protection against dismissal, wage subsidies, promotion of the socially responsible firm

individual rights - exemplified by anti-discrimination and human rights legislation, equal employment opportunity policies, information and guidance

business incentives - appeals to companies' financial interests through experience rated insurance premiums, diversity policies, promotion of the 'business case'.

Clearly, employment policies are not uniform and often in a state of flux, with different forces at work within national systems and different actors taking different positions. But employment policies within the study countries can be broadly characterised according to these analytical types. In some systems one type of approach stands out while in others a mix can be observed.

An emerging development overlays these three broad approaches. Pressures to reduce expenditure on disability benefits or injury compensation claims, alongside other fiscal pressures, have led to shifts of responsibility to the employer from the state. In some systems, increasing employer responsibility is now viewed as a sustainable policy approach, supported by the argument that workplace rehabilitation and early work resumption are better solutions for the individual, as well as less costly to the state.

4.2.1 Target groups

These policy approaches target different populations. Measures based on collective responsibility and individual rights generally are designed to support employment of individuals with enduring disabilities. While most of these laws are framed to include workers who become disabled, and in practice they are often the main beneficiaries, they are normally conceived as measures to promote and maintain the employment of individuals who are disabled when they take up work. Status as a disabled person is the passport to the rights and privileges of the law.

Policies based on business incentives, and the emerging policy line of increasing employer responsibilities, concern workers who *become* or are *at risk of* becoming ill or disabled. Workers are targeted for interventions

because of their status as an insured person or because of their value to the company. We do not know how many meet legal definitions of a 'person with disabilities'. It seems that these policies favour the retention of workers with short-term disabilities or disabilities that are simple to accommodate; they do not necessarily have a right to return to work and sometimes are required to co-operate in the return to work process.

4.3 Maintaining the employment relationship

Maintaining the employee's connection with the employer is clearly essential if the other supports for job retention - income supplements in work, support services and rehabilitation in the workplace, and adaptations of work and workplace - are to be put in place. We report some public policy approaches, examine some of their interactions with other elements in the system, and explore their potential transferability to other systems.

Looking across the study countries we find two public policy approaches:

maintaining the connection with the employer during sickness absence or medical treatment

legal protection against dismissal on grounds of disability.

The first approach targets workers with short-term disabilities. The second targets those with more enduring or permanent disabilities. Because of the different policy orientations in many systems one or other of these groups of disabled workers misses out. The challenge for a job retention strategy is to identify and remove anomalies within systems, to make sure that workers with both short-term and long-term disabilities benefit, and to prevent one group gaining at the expense of the other. The first step, however, is to examine effectiveness and equity in the different approaches to maintaining the employment relationship.

4.4 Keeping the job open during sickness absence

We found two main mechanisms for keeping the job open during sickness absence: linking employment protection to social insurance or workers' compensation; and disability leave.

4.4.1 Linking employment protection to social insurance benefits

One potentially useful approach is to legislate to protect the employment of recipients of social insurance sickness or disability benefits. This can apply both where the insurance agency pays the benefit and where the employer is responsible. In Sweden, where the employer now pays during the first two weeks of sickness absence, as a general rule there is no question of dismissal while the person is receiving national sickness insurance benefit. In the Netherlands, where the employer is now responsible for payments for up to five years, a disabled employee may be dismissed only after two years and only with permission from the authorities. In those countries, the employer is legally required to have arrangements for rehabilitation in the workplace and to initiate action to support the return to work. Compliance is monitored, though less stringently in Sweden. The current policy approach in the Netherlands is founded on business incentives, while in Sweden employers are expected to respond to legal obligations with few extra incentives.

In France, a newly disabled person who is work-injured or who receives a disability pension has protection against dismissal for the duration of the period of sick leave and, if found fully fit, will return to the job. Otherwise, the employer must reassign the person to another job. Medical judgements are important in determining the outcome and if resettlement within the enterprise is impossible, dismissal may ensue. The disabled person may challenge the decision in the courts. The quota-levy system serves as an incentive to retain disabled employees.

Where retention is mandatory, as in these examples, effectiveness relates to the incentive structures, the mechanisms for control, and the rehabilitation infrastructure to support the worker's return to the job.

4.4.2 Linking employment protection to injury and accident compensation

In Canada, USA, New Zealand and Germany, workers who suffer work-related injuries or accidents fall within separate compensation programmes which provide for rehabilitation as well as financial compensation. The priority in all systems is to return the disabled worker to the original employer. There are three main approaches: requirements to reinstate the injured worker, business incentives and intervention strategies.

In some Canadian workers' compensation schemes there is now a *re-employment requirement*. In Ontario (the example given) the employer is required to reinstate and accommodate the injured worker in their former job, or in a comparable job with comparable wages, if return is within two years of the injury.⁽¹⁹⁾ If the employer is reluctant to re-employ, mediation follows and some kind of settlement is achieved in three-quarters of cases. In the long run, the employer can be fined but not forced to reinstate the worker. Recent changes to the law place the responsibility on the employer and employee to make and maintain contact, whereas previously the workers' compensation board drew up a rehabilitation plan. As a rule in the Canadian systems, companies receive rebates on their insurance contributions if claims decrease and this is an incentive to employers to assist the return to work effort. However, it may lead employers to resist workers' claims for compensation.

Although State workers' compensation laws in the USA generally do not forbid discharge following the onset of a work-related injury or illness, there are *business incentives* to return the injured worker to work as soon as possible. Employers are responsible for paying medical and indemnity benefits. As such benefits are either company-insured or experience rated when insurance is purchased, their cost is related to the disability record of the employer. However, there are also incentives to injured workers to maximise their awards by not returning to work. Disputes over liability and over the degree of occupational impairment tend to lead to lengthy legal and medical assessment procedures. Litigation is a barrier to return to the job. No information is available on numbers of disabled workers staying in work or their characteristics. Evaluation of overall effectiveness is hindered by the involvement of a range of insurers.

The accident compensation scheme in New Zealand (ACC) emphasises *early intervention* to gain the co-operation of the employer at the start so that the person retains their place of work. There is no requirement on employers to take back the accident-injured person and no litigation. Most (90 per cent) retain their jobs with medical compensation only. Experience rating, introduced in 1993, is intended as an incentive for retention. A further incentive is temporary payment by ACC of earnings-related entitlements so that the person may return to the job part time.

Intervention to gain the co-operation of the employer is also a useful approach in Germany. Under the statutory occupational accident programme, as for other employees absent undergoing rehabilitation measures, there is no legal arrangement to keep the job open.⁽²⁰⁾ Employers are encouraged to do so, or offer vacancies, through mediation by the specialist case managers (Berufshelfer) who give priority to returning persons undergoing rehabilitation to their original occupational branch. A substantial part of the rehabilitation effort is devoted to these measures and it seems that many larger companies do keep the original job open or find temporary light jobs until the previous job can be resumed. Economic constraints make this increasingly difficult. There are some incentives in the shape of integration benefits but employers' insurance premiums are not set according to the record of the individual firm. Overall, however, the German rehabilitation system tends to promote retraining and return to a new employer. Indeed, return to the previous occupation is explicitly avoided if it poses a continuing risk to the person's health.

The outcomes of these approaches are hard to assess. Hard data in terms of jobs retained or lost have limited explanatory value. There are lessons to be learnt - for both injury compensation schemes and social insurance programmes - by examining elements in the *process*: the role of the physician in determining fitness for work; the procedural obstacles to settling claims; and how case managers access employers and achieve co-operation. The populations covered by injury and accident-related schemes and by social insurance

schemes differ, however.

Compensation programmes which are restricted to injury or illness that 'arises out of and in the course of employment', and the accident compensation schemes, tend to focus on injuries associated with a particular event. They are ill designed for degenerative, accumulative, stress-related and over-use conditions. Pressures on the financial viability of workers' compensation programmes are leading to even more restrictive definitions of eligible illnesses; under the new provisions in Ontario, for example, stress is ruled out and chronic pain is under review. Anomalies appear if parallel state programmes provide different levels of benefit or rehabilitation for those who cannot claim that their condition is work-related or who are excluded from coverage of the programme. The issue is most acute where eligibility for and access to social security benefits is restricted (by means-testing or long-waiting periods, for example). Critics of the dual system of accident compensation and social insurance in New Zealand consider it inequitable and socially divisive.

In North America, where workers' compensation programmes are of long standing, the private insurance market has stepped into the breach and employers purchase insurance for their employees. Although it is observed that some USA enterprises have begun to break down the distinction between work-related and non-work-related disabilities, and to provide similar claims-related services for both, this is not the norm and more valued employees who are difficult to replace tend to be selected for interventions.

4.4.3 Disability leave

Disability leave can be useful for individuals with short-term disabilities whose contracts of employment provide limited job security. This is exemplified by the USA Family and Medical Leave Act (FMLA) of 1993, the many State statutes and voluntary initiatives which preceded it, and good practices by employers not covered by the law. Under the FMLA, private employers (with over 50 employees) and public agencies must meet requests from employees for up to 12 weeks' leave to recover from a serious health condition or for family reasons. If return is within 12 weeks, the employer is obligated to give the employee their former or an equivalent position.

A drawback with this approach is that individuals have to claim their right to leave: research into the operation of the FMLA found that individuals were reluctant to ask because they feared that they might lose their job or their work would suffer. A problem associated with taking leave is that the individual then has a history of lost working time and can find it difficult to change employer. Employers are thought to be unwilling to hire them because of the risk of the cause recurring. Such instances of discriminatory hiring are difficult to prove under the ADA.

Voluntary 'disability leave' has been piloted by a UK voluntary organisation for blind people with some employers. The employer is encouraged to support the return to the job of employees on short-term absence (who may not qualify for protection against dismissal or who may be discouraged from returning) and to help in the process by making temporary or longer-term adjustments. Practice is promoted by the business case that it is financially worthwhile to the company to retain the employee. The USA experience indicates that mandated medical leave, established on a foundation of voluntary practice, in combination with accommodations for returning workers required by the ADA, has had a significant impact on job retention, especially benefiting blue-collar workers.

4.5 Preventing dismissal on grounds of disability

Laws which prevent dismissal on grounds of disability can benefit workers who become disabled as well as those who are already disabled. Three models are considered.

4.5.1 Protection against dismissal in Germany

Germany provides an example of a negotiated approach to protecting the jobs of permanently disabled workers. The employer must consult the disabled persons' representative (such a representative is obligatory in firms with more than five severely disabled workers) and the works council, before applying to the authorities for permission to dismiss a registered severely disabled person. The parties are expected to work towards negotiated settlements, and three-quarters of cases of retention are achieved without official procedures. The opinions of the internal representatives are very influential in the process. If the authorities intervene they may provide advice on adaptations and financial support to retain the disabled worker.

The down-side of this approach is the negative impact on employers' hiring decisions. Because assessment as a disabled person does not measure working capacity, registered severely disabled persons who experience no difficulties in working life also benefit from the protection against dismissal. Severely disabled workers have an extra five days leave, for which the employer pays.

On the other hand, the effect of the German quota-levy system has been to protect *newly* disabled employees from dismissal. Employers press those, mainly older, workers who experience health problems to register. 'Internal recruitment' accounts for 80 per cent of those recorded for the purpose of the quota. At the same time, employers can meet the 'reciprocity expectations' of their employees, demonstrating loyalty to them and fair treatment.

4.5.2 Non-discrimination legislation

The German approach, where the employee has automatic protection until dismissal is granted, contrasts with the individual rights approach found in human rights and disability discrimination legislation. While it is against the law for the employer to dismiss a person on grounds of disability, legal procedures usually come into effect only if a complaint of unfair dismissal is made, that is, after the job has been lost. If the complaint is settled the employee may be reinstated.

The 'omnibus' human rights legislative approach - covering other groups, as well as people with disabilities, experiencing discrimination in all walks of life - may have different effects from legislation specific to disabled people in employment. A drawback with omnibus legislation is that the rights of disabled workers can have a low profile and other groups' interests can dominate. Equal employment opportunity or employment equity laws may interact, however, and raise workplace actors' awareness of disabled workers' rights not be discriminated against.

Disability discrimination acts generally cover broadly defined populations of individuals with long-term impairments that limit daily activities, but may also encompass progressive conditions, past disability, being perceived as disabled, and emotional disorders that generally fall outside popular conceptions of disability. Disability is viewed as a relationship between the individual with impairments and the working environment, which means that the employer has to make reasonable changes to the work or workplace so that the disabled person is not put at a disadvantage in carrying out the requirements of the job.

Evidence from the USA indicates that the ADA supports job retention. Over half of the 75,600 charges filed up to end November 1996 were for discharge violations and the majority were resolved by mediation. The pattern of recorded disabilities of those complainants suggests that they were workers who became disabled, rather than individuals who were disabled when they took up the job. The USA report comments that the ADA has helped to protect the jobs of blue-collar workers who receive fewer employee insurance benefits. Only one in ten of all complaints were for hiring violations, possibly reflecting the difficulties faced in proving discrimination in recruitment decisions; and, clearly, the number of persons with disabilities applying for jobs will be much lower than the number of existing employees covered by the law. The numbers of complaints filed or cases resolved by mediation are inadequate measures of the effectiveness of non-discrimination legislation, however. Only by looking inside the enterprise will it be possible to assess the impact of such laws in preventing dismissal occurring in the first place.

To take advantage of non-discrimination laws, persons with disabilities need to know their rights, feel empowered, have confidence in the system, and have the resources to drive a sometimes costly and time-consuming process where the outcome is uncertain. Without advocacy, the rights-based approach may favour the better educated and more affluent; rights commissions with powers to investigate employment practices may help to redress this imbalance. We need to know more about the consequences of the adversarial process on employer/employee relationships and on the quality of working life for the person who returns to work.

Different ways of resolving disputes have different outcomes. Conciliation has the advantage to the employee of earlier resumption of work and avoidance of the stress of litigation. On the other hand, a public decision against the employer may bring changes in practice which are of benefit to a wider population of disabled workers than the successful claimant alone.

We need to know more about how best to frame non-discrimination legislation to help the enterprise to support individual rights in employment. The precision of the legislation, consistency of court decisions and the detail of codes of practice all affect ability to plan appropriate changes.

4.5.3 Building disability into employment security law

The approach in Sweden combines requirements to make adaptations with the option of individual action. Under the general employment security law, reduced working capacity is not grounds for dismissal. [\(21\)](#) Rather, the employer is expected to take action to make the work easier, using externally provided aids, to transfer the employee to less demanding tasks or to initiate rehabilitation measures. The employee or the union can take the employer to court for groundless dismissal and damages may be awarded; cases are hard to win, however. It is thought that overall the law inhibits arbitrary dismissal and disabled employees have strengthened job security compared with other workers. This does not protect disabled workers against discrimination. Survey evidence shows that employees have lost their jobs or been pressed to resign on account of their disability, and a law against discrimination in working life is to be introduced.

Swedish employment security law is complemented by working environment and social insurance laws which place responsibilities on employers to adapt the working environment to the needs of functionally disabled workers and to ensure that rehabilitation needs are identified and acted upon, so that working capacity is restored as soon as possible. Definitions of target groups are very general and do not obviously conflict. Difficulties in the system appear to stem from the lack of 'sticks' and 'carrots', and from unclear responsibilities and disjunctive practices among the various governmental agencies, rather than from conflicting public policy objectives.

A related way forward might be to make it easier to claim unjust dismissal on grounds of disability under employment law. In Canada, mechanisms to prevent unjust dismissal only indirectly cover dismissal on grounds of disability and such a case is likely to be difficult to prove. [\(22\)](#)

4.6 Supporting employers' costs

Generally, the employer bears the costs of keeping the job open for a returning employee. Identifying and supporting those costs are central to a job retention strategy. An initiative by AGEFIPH, the body administering the French quota-levy fund, provides short-term financial support to retain a worker who becomes disabled (as defined by the law) and to allow adaptations to be made. This is requested primarily by traditional blue-collar industries, and beneficiaries are mostly older, male and with low educational qualifications, and with motor impairments.

4.7 Transferability across systems

Some of these measures supporting job retention are imbedded in national systems and do not lend themselves easily to replication in others. Approaches founded on collective responsibility have developed in a socio-political context where decisions are made in a consensus-oriented way, where there is a history of employment issues being decided more co-operatively between labour unions and management, and a social contract between employers and employees. Rights-led approaches are found in more adversarial systems. Some systems take for granted the necessity of professional assessment, classification and registration of disabled people, while in others such processes are unacceptable to persons with disabilities.

Transference across English-speaking countries of measures based on precepts of individual rights has been facilitated by a 'common law' legal system, a common language, and solidarity among disabled people's movements with a shared commitment to civil rights for people with disabilities. Transplantation is easier in a receptive climate where rights legislation to prevent discrimination on grounds of sex and race has already had an impact. In the USA and the UK⁽²³⁾ disability discrimination legislation was introduced into less interventionist systems where enterprises were encouraged through business incentives or good practice initiatives to change their employment practices. USA experience suggests that non-discrimination legislation will have more impact on retention if founded on existing good practices, backed by heightened public acceptance of the rights of persons with disabilities. Disability discrimination legislation requires a relatively broad definition of disability which enables individuals to self-identify under the terms of the law.

The idea that business advantages might flow from a diverse workforce which includes disabled people is gaining ground in the USA, New Zealand and the UK. Whether this relatively weak form of incentive has any impact on job retention is hard to say. Financial incentives to retain disabled workers appear increasingly relevant as more responsibilities pass from state to enterprise and as employers find it difficult to reconcile duty with business objectives. Insurance-related incentives to employers, first developed in injury and accident compensation schemes, are now found in the special circumstances of the Dutch disability insurance system. In other social insurance systems risks are shared. Private insurers are positioned to influence enterprise job retention strategies in systems where the costs of disability fall to the employer.

4.8 Key issues in employment policy

Changes in the structure of the labour market and conditions of employment reduce the scope of public policy and increase enterprise autonomy. Business communities, locally, nationally and internationally, have the opportunity to regulate their own practices and to use their trading influence to promote equitable job retention.

There is a need to identify, at national and local levels, those areas of the labour market where job retention is most problematic and to consider where policy interventions might best be directed.

Individual rights movements are a growing force in Europe. Models of disability discrimination legislation are evolving in more interventionist systems. Definitions of disability, procedures for enforcement and mediation and accommodation requirements will have differential effects on employers' ability to retain workers with disabilities, as well as on disabled workers' opportunities to claim their rights under the law.

Requirements to accommodate - to adapt the work and workplace so that the individual with disabilities is not disadvantaged - are key to a coherent job retention strategy and can bridge the gap between conflicting definitions of disability. Including accommodation requirements in compensation systems as well as in rights legislation is a way forward.

Measures to promote job retention can have negative consequences for individuals with

disabilities wanting to take up work or move to a new employer. Perverse effects have been noted in both collective and individual rights-based approaches. But selective hiring to avoid those who pose a financial risk is particularly associated with policies which aim to reduce the incidence and duration of disability-related claims and consequently reduce costs to the employer. An equitable strategy for job retention and return to work requires effective non-discrimination measures to prevent risk selection at the recruitment stages.

Insurance-related financial incentives are increasingly dominating the enterprise response to disability and have a part to play in supporting job retention. But these policies also may have negative effects on those disabled workers who are actively discouraged from claiming compensation or are pressed to return to the job too early. Job retention may not always be in the best interests of the disabled worker.

With increasing enterprise responsibility for containing the costs of disability there can be room for discretion in choosing whom to support. Non-discrimination legislation is a significant element in the return to work strategy where companies have incentives to retain the workers they most value.

The effectiveness of the different approaches to linking employment protection to receipt of sickness, disability or injury benefit should be explored further. The spectrum ranges from stringent requirements on the employer to retain the beneficiary, to negotiated interventions on the part of the benefit agency. There can be lessons for countries where such arrangements do not exist, or exist for only a subset of workers with disabilities.

As the emphasis shifts to early intervention and rehabilitation, securing the job of the disabled worker is increasingly necessary. The issue of how to identify and support the costs to the employer has become a priority.

As responsibility shifts from government to employers and disabled employees the need is highlighted both for collective representation of disabled people in planning for job retention and for individual advocacy in the workplace. New models of advocacy are developing as persons with disabilities within employing organisations and labour unions form alliances to provide support to their peers.

5. BENEFIT AND COMPENSATION PROGRAMMES

The benefit system for individuals who become disabled in work typically comprises several parts. Under social insurance and occupational insurance schemes, there are occupational injury or accident compensation programmes, sickness benefits, rehabilitation benefits and disability benefits. Within the privately-insured sector, there can be sickness or short-term disability programmes and long-term disability benefit schemes to which employers or employees, or both, contribute. In some cases, compensation is a combination of several forms of payment.

The basic questions from the disabled worker's point of view are: how the benefit arrangement which applies to them enables them to stay with the existing employer, or leads them to leave their employment; how it assists them in the process of returning to work or presents obstacles; and how it encourages the disabled

person to return to employment or is a disincentive to doing so. For the individual whose working capacity, or ability to earn the previous wage, is reduced by disability, an additional consideration is how far the benefit enables them to resume work part time.

The design of the benefit or compensation programme is important in determining if persons with disabilities will retain their jobs or return to employment, as well as the conditions of that employment. To understand the possibilities and the constraints, we need to consider:

the level of benefit

rules for granting benefits

partial benefit options

options to combine work and benefit

opportunities to obtain or retain benefits during rehabilitation

possibilities to use benefits for the transition back to work.

The design of social and occupational insurance schemes also influences the actions taken by employers. Changes in the compensation system may influence the behaviour of both employers and employees.

5.1 Sickness benefit and compensation systems

If an individual becomes injured, sick or disabled while in employment, the type of benefit arrangement to which he or she is entitled in the first instance will affect opportunities to stay with the existing employer.

5.1.1 Sickness benefit programmes

In a minority of study countries, there is comprehensive coverage for all insured workers under a single pay or sickness benefits scheme. In countries with separate work or accident injury schemes, sickness benefits for those who are not covered are paid variously by the employer (in the first instance) through a private insurance scheme taken out by the employer (or less, usually, funded by the employee contributions) or by a state-financed scheme. Private insurance coverage is most prominent in the USA.

The period of employer responsibility for sickness benefit varies substantially. For example, in the Netherlands by the end of 1997 responsibility had been extended to 52 weeks; in the UK the employer is responsible for sick pay for up to 26 weeks and there is now no separate sickness benefit scheme; in Sweden at the time of the study the employer sick pay period was four weeks, though it has since been reduced to two.

Employer sick pay in New Zealand extends for only one to two weeks, depending on the terms of the individual's employment contract; while statutory sickness benefit, if repeatedly renewed, can be paid indefinitely.

In the USA, there is no statutory sickness benefit. There, private sickness and 'short-term disability' benefit programmes typically last up to 26 weeks; while the mandatory 'temporary disability insurance' programmes in five states, to which employees contribute, can pay benefits for between 26 and 52 weeks.

In the absence of protection to keep the job open, such as the Family and Medical Leave Act in the USA or statutory protection against dismissal, extended employer sick pay can provide a link to enable return to the job and, if the costs are sufficiently high, the employer has an incentive to maintain contact and support return to work. Otherwise, once the employer period of payment has ended, as the New Zealand report notes,

individuals must attempt themselves to negotiate their return to work with an employer on whose goodwill they are dependent, and are vulnerable to job loss.

Employer responsibility for sick pay or sickness benefits may be linked to statutory rehabilitation responsibilities, as is the case in the Netherlands and Sweden where the employer is required to follow up absent workers and plan for work resumption, overseen by the social insurance agencies.

In the statutory schemes for sickness benefit in the less regulated countries the social insurance authority's mandate is limited to claims handling and there is no remit to intervene with the employer to promote return to the job or to provide rehabilitative services to the disabled employee.

5.1.2 Workers' and accident compensation schemes

In Germany, Canada, USA and New Zealand, there are quite separate compensation schemes for workers who become disabled through work-related injury, illness or accident, and they all have rehabilitative components. In Germany, the principle of 'rehabilitation before pension' applies, and the concept of compensation encompasses much more than cash benefits. The statutory occupational accident fund provides a comprehensive range of assistance in kind, as well as monetary benefits, notably to support the expenses of undergoing vocational rehabilitation measures such as training.

The form in which damages are paid for work-related injury may affect the incentive to return to work. In some Canadian workers' compensation systems a lump-sum amount is payable for non-economic loss. The Canadian report speculates that if the payment is made as an initial lump sum, rather than graduated payments as an annuity, it may be used to finance job search activities, although the opposite point of view is that a large sum might support exit from the labour market. In New Zealand, lump-sum payments for pain and suffering and loss of enjoyment of life have been abolished, and substituted by an independent living allowance to assist with the additional costs of disability.

In the USA, most states provide cash damages for permanent occupational, rather than income replacement for lost earnings. This has the advantage that there is usually no disincentive effect to employment once a settlement is reached, since benefits are paid irrespective of current work. However, the pursuit of personal injury damages in the USA system is an incentive not to return to work.

The pension payments in Germany similarly take the place of damages and are not offset against income from work, thus promoting efforts for job retention and return to work.

5.2 Benefit levels

In systems where there are separate work or accident injury programmes, compensation levels and ceilings may be different for an individual whose disability is accident or work-related than for someone who becomes disabled for other reasons and receives a private insurance disability benefit or a statutory sickness benefit. Access criteria, such as qualifying periods in employment or the number of 'waiting days' before the benefit can be claimed, also differ.

Benefits are commonly set as a percentage of lost earnings capacity. Less usually, the percentage impairment is used as the basis for calculating compensation. In one country, benefits are not earnings related and a flat rate is paid.

Most country reports comment on the assumed disincentive to return to work of a high level of compensation compared with earnings lost, but little research evidence is provided on how the 'replacement rate' influences the disabled worker's decision on whether to return to the job or not. [\(24\)](#) Some econometric studies looking at replacement rates in the USA and Canada have shown that higher benefit rates in workers' compensation

schemes are associated with lower probabilities of returning to work. Few studies have distinguished between return to the original employer and to a new employer, however. The replacement rate theoretically affects the employer's decision whether to retain or let go the worker who becomes disabled. These questions might usefully be pursued in phase two of the project by describing and comparing models for determination of replacement rates in different systems.

Clearly, the wage the disabled worker can expect to return to also affects the decision. Where partial benefits are combined with wages, the total can be equivalent to or less than, pre-disability earnings. Country reports note that this presents significant incentives and disincentives to job retention, although again there is little hard evidence cited. As there seems to be increasing use of partial benefits, the incentives and disincentives within them may warrant study.

There are, of course, other influential factors in the return to work decision, including the social rewards of participating in employment and the quality and suitability of the work on offer. The availability of rehabilitation and support to return to work may reduce, but not overcome, the financial disincentives in benefit systems, as can support to negotiate the procedural obstacles. An examination of incentives to return to work thus also needs to take into account the value to the worker of such benefits in kind in an optimal benefit 'package'.

5.3 Incentives to the employer

One way of making employers more predisposed towards retaining the worker who becomes disabled, and also encourages employers to take measures which prevent occupational injuries, is to introduce various forms of incentive in the compensation systems. These can be introduced in a number of ways. The employer can be obliged to pay wages for a period of sickness; as noted, this can vary from a few weeks to up to a year. Use of waiting periods, where the employee receives no compensation for the first days, is a strategy to reduce costs. The most complete way is to oblige the employer to pay for all costs related to sickness, occupational injury and disability - compensation as well as rehabilitation and labour market programmes - for his or her employees.

5.3.1 Experience rating in insurance schemes

More common incentives are the various types of experience rating systems found within the work and accident injury programmes.

In Germany, Canada and New Zealand, firms are classified by industrial sector, depending on how prone they are to occupational injuries, and different contribution rates apply. In Ontario, for example, where the system is financed from payroll taxes, the rate is 1.3 per cent of the insurable payroll in the government sector and 8.5 per cent in construction. The grouping of firms can be quite broad, or finely tuned with a large number of industry categories, as in New Zealand. The aim is to avoid subsidising occupational injury prone industries, rather to spread the risks over all employers according to a principle of collective responsibility.

This industry-wide rating system can be overlain by firm-specific arrangements, such as extra charges or reductions in the contribution rate; in Germany, for example, this possibility is seen as an incentive to act to prevent occupational accidents and work-related illnesses. Rebates for low claims records are reported from Canada.

Experience rating of individual firms is most developed in the USA. There, very small employers pay a rate that reflects the experience of all firms in that line of business but larger firms (covering 85 per cent of workers) pay a rate adjusted to reflect their actual claims experience, and the rate for very large firms is based entirely on experience and not related to the industry average.

As from 1998, experience rating of firms has been operating in the Netherlands, combining an industry-wide rate with the firm's own record of preventing claims on the disability benefits system.

Firm-specific, rather more than industry-wide, experience rating is an incentive to the employer to rehabilitate and retain the disabled employee, as it is in the employer's interests to reduce the number and duration of claims. It may also have a negative effect on disabled workers if they are discouraged from making claims.

Private insurance plans can also be experience rated but, as they are not mandatory, employers faced with rising premiums due to poor ratings have the option of restructuring, reducing coverage or shifting some of the costs to employees, or even eliminating the plan.

Given the increasing interest in insurance-based incentives, further research might usefully explore the effectiveness of different rating systems in terms of job retention.

5.3.2 Disincentives to hiring

A general problem is that the employer's incentive to avoid hiring people with expected high incidence of health problems increases. A potential employee's expected incidence of sickness, occupational injury and disability depends for example on age, gender, education and of course health status at the time of recruiting. If the employer's costs of sickness, injury and disability increase, the employer will invest more in screening people for potential health problems before hiring them. This could be counteracted by special exemptions for the people that are hired who have health problems.

Special provision in Sweden protects the employer from the additional costs; an employer can receive compensation for sick pay for employees suffering from illnesses which can be assumed to lead to a large amount of sick leave.

5.4 Rules for granting benefits

Not only the replacement rates but the rules for granting benefits and the application of the rules are of importance in explaining why workers who become disabled stay in employment. In several countries there is a reported shift towards stricter regulation and application, for example, that the rate of lost capacity (or degree of disability) should be higher, that factors (such as age, or the availability of suitable jobs) should not be allowed to influence the decision, or that rehabilitation measures should be tried before granting compensation.

In deciding on the level of compensation to encourage the return to work, there may be trade-offs to be made. Systems that reduce the monetary incentive to return to work are more likely to have more stringent administrative requirements on employers and employees so as to encourage the return to work. ⁽²⁵⁾ The equity consequences of the interaction between the rules and the benefit levels need to be carefully considered in developing a strategy for job retention.

5.5 Return to the job with partial benefits

An option available to recipients of workers' compensation, sickness and short-term disability benefits in some systems is to return to the job part-time. Part-time options may make it easier for workers with disabilities to remain in the labour market in both the short and the long run and so reduce the prevailing tendency for early exit from the labour market. They may also help the worker gradually to regain full working capacity.

It is not easy to gauge how far these options are being utilised and whether there is any shortfall in provision. It is reported that in the USA, most (about 80 per cent) worker's compensation programmes provide partial

benefits for individuals who return to work at reduced capacity.

Among workers' and accident compensation programmes, the arrangement in New Zealand for part-time return to work is of some interest. The wage paid by the employer is supplemented by earnings-related entitlements from the compensation corporation until pre-accident earnings levels are reached. Part-time employment is negotiated between the corporation's case manager and the employer, as part of the general early intervention strategy, and there is no automatic job protection.

Private sickness and short-term disability benefit programmes (as well as the 'long-term disability' programmes which follow on) in the USA are increasingly providing for partial benefits. Newer, more progressive plans provide a return to work benefit during the first year as an incentive to return to work during the critical initial periods. These provide full disability benefits, regardless of partial disability earnings, as long as they do not exceed the pre-disability level of earning. Private plans are not comprehensive, and are more common among white-collar workers in medium and large enterprises.

Some statutory sick pay and sickness benefit schemes in the study countries also offer opportunities to return to the job part-time.

In Sweden, where partial benefits combined with income from work are commonplace in the social insurance system, the sickness benefit scheme is designed to allow for partial payment of employer-paid sick pay as well as the sickness benefit, in parallel with a job. The Swedish arrangement allows for three degrees of partial benefit (quarter, half and three-quarters). The sickness benefit scheme in New Zealand allows for assessment as partially fit for work, and income from work is seen as a way of supplementing this flat-rate means-tested benefit.

5.6 Return to work from long-term disability benefits

In most systems, the critical work resumption threshold has passed once the disabled worker exhausts the term of sickness or short-term disability benefit, or otherwise meets the criteria for a long-term disability benefit.

In the Anglophone countries, waiting periods mean that several months may have elapsed since first absence from work. In the USA, the waiting period for the social security disability insurance benefit is five months, in the UK normally six months have elapsed, although in Canada the waiting period is only three months. In these countries and New Zealand, although definitions vary, generally speaking beneficiaries are regarded as incapable of gainful employment, although there are limited opportunities to undertake paid work up to an hours or earnings ceilings and to engage in voluntary work.

The work disincentive effects of the design and regulations of these 'all or nothing' benefit systems are widely acknowledged: the loss of disability income by undertaking rehabilitation, training or education; the lack of extra financial support during job search for ex-beneficiaries who are found capable of work; cessation of benefit and loss of benefits in kind on return to work; and the risk of losing eligibility if the return to the job does not work out.

Study countries report some attempts to reduce these disincentives, such as retention of benefits during rehabilitation or training, 'linking rules' which enable the person with disabilities to return to the previous benefit level if the job does not work out, and arrangements to retain the benefit during the first four months of trial work.

In the USA, a battery of work incentives for SSI recipients is designed to enable them to test ability to work and gradually become self-supporting, including full cash payments during the first 12 months, although no information is available about their effectiveness. In all countries, however, the proportion leaving the

disability rolls for employment remains extremely low; in Canada, less than one per cent annually returns to work. The fundamental problem, as articulated in the report from Canada, is that the benefit system is premised on an unsustainable concept of unemployability.

In the systems of mainland Europe, on the other hand, the disability benefit system is designed to allow for partial as well as full benefits. In the Netherlands, for example, where the concept of partial capacity is integral to the disability benefit system, there are seven categories of partial disability. The advantage in these systems is that the partial benefit can be held both in and out of work.

5.7 Supplementing income with benefits

As well as reduced capacity to work full time, for workers with disabilities, return to employment may imply a lowering of the wage. In many cases a change of occupation due to a disability means a wage loss, especially if a change of employer is involved. This increases the employee's incentives to opt for early exit with compensation related to the pre-disability job and earnings. One way of countering this tendency is to provide compensation in addition to the wage. In the Netherlands, it is possible to get a supplementary benefit when accepting a job with lower earnings than those on which the benefit was based.

The United Kingdom reports a means-tested disability benefit which can be claimed only by low paid disabled workers in employment.⁽²⁶⁾ It was designed both to increase the incentive to take up work and to support in work those individuals whose disability put them at a disadvantage in terms of earning power of hours they were able to work. Unlike the other in-work benefits discussed here, eligibility is not restricted to disabled individuals with a work history. In practice, the benefit was taken up mostly by disabled workers who were already in employment, although it is not known how far the benefit was used to support employment after the onset of disability.

There are many forms of subsidy programme which are similar in that they boost the disabled worker's wage but by subsidising the employer rather than the employee.

In France, for example, there is an arrangement to supplement the wage, up to the minimum wage level, of a disabled worker with reduced productivity. Job subsidy programmes appear to be used very rarely to help with the retention of a worker who becomes disabled, however.

An interesting arrangement reported in Sweden is to combine employment with a wage subsidy with a partial benefit such as sickness benefit.

5.8 Benefits for rehabilitation and training

Benefits and rehabilitation are inseparable in Germany, where there are many benefits in kind and it is misleading to concentrate on monetary aspects alone. The statutory occupational accident insurance gives primacy to rehabilitation services in line with the principle of 'rehabilitation before pension', starting with medical treatment as required followed by occupational rehabilitation. A very wide range of benefits is provided during the rehabilitation process, including support for training, aids, psychosocial counselling, rehabilitative sport, modifications to the home and to transport, financial assistance for job search.

Incentives to participate in and complete rehabilitation may be useful in motivating workers with disabilities. It is reported that in Ontario, workers with partial disabilities may receive total benefits if they co-operate with rehabilitative efforts.

In Sweden, a special rehabilitation benefit is payable in place of sickness benefit.

In France, compensation paid during vocational training is boosted to equal the minimum wage of the

relevant profession. Disabled workers may apply for a retraining completion bonus.

5.9 Trial return to the job

One of the obstacles to work resumption is uncertainty over ability to cope. An arrangement reported in Sweden involves the recipient retaining sickness benefit while trying out their strength and capacity in the previous job, or one that is better suited, in an unpressured way, without any formal time limit.

In Germany, there is an interesting arrangement for gradual return to the job, sometimes known as 'step-wise' rehabilitation. The statutory health insurance provides sickness benefits (for up to six months) which can be used as a full wage substitute while the employee gradually increases the working hours as health improves. When the employer re-starts wage payment and to what extent, has to be settled by agreement between the employer and the works council.

5.10 Key issues in benefits and compensation programmes

Looking across the study countries, there is considerable variation in access to benefits to support job retention. Opportunities for partial benefits to support part-time return to the job apply in some compensation schemes but not in others. Some schemes require minimum periods of employment while others do not. The number of waiting days required before benefits can be paid varies from one programme to another. If accident or workers' compensation programmes, statutory sickness benefits or private schemes operate side by side, there can be major inequalities in treatment of workers who become disabled, both in the generosity of the benefit and coverage.

The incentives and disincentives to employers and employees, and the interactions between them, require more detailed study. In particular, more research-based information is required on the part that the benefit level and associated benefits in kind plays in the disabled worker's decision to return to the original employer.

Insurance-based incentives to employers, such as experience rating, appear to be used increasingly to influence employers to retain workers who become disabled, both in mandatory and private systems. The effects of the different types of incentive need to be explored, as well as their adverse consequences for employees and people with health limitations seeking employment.

There is varying evidence of activity to support the return to the job during the period of receipt of sickness benefit. In some systems, employers still have no responsibilities to take action and the benefits authority has no mandate to intervene to support the employer or the employee. Accordingly opportunities are lost for early intervention. Within privately-insured programmes, innovative examples of augmented return to work benefits appear useful.

It appears that greater co-ordination between the various agencies providing benefits at the different stages of the 'disability career' might be beneficial to 'track' the disabled worker and prevent them falling through cracks in the system, particularly in the transition from short-term and to long-term insurers.

Return to work part-time with a partial benefit is a feature of several programmes which appears to offer opportunities for earlier work-resumption and which ties with changes in the labour

market. Those schemes which allow income from work to be gradually increased while benefit reduces are worth further exploration.

6. REHABILITATION AND EMPLOYMENT SUPPORT SERVICES

'Rehabilitation and employment support services' is the omnibus term used here to encompass the broad range of personal support services to prevent ill health developing into a disability at work, help recover working capacities and skills, and support re-adjustment to work. [\(27\)](#)

Adapting the working environment to the needs of the individual is a different, and complementary, approach.

6.1 The policy picture

In most countries there is a wide range of policies to enable people with disabilities to prepare for their return to work and to re-establish themselves in the workplace. In any one country an array of programmes serve different groups, funded from different sources, and within different institutional regimes. Persons with disabilities may receive personal support services via a range of public services (labour market authorities, health authorities, social insurance agencies, veterans affairs departments, social affairs departments, and so on). Services may be restricted to those meeting a definition of disability, or depend on assessed need. Eligibility may depend on receipt of social security benefits, workers' or accident compensation, or unemployment benefits. Services may be directly provided by public bodies or subcontracted to specialist agencies. In parallel to the public system, private and not-for-profit organisations may be direct providers.

It is apparent that policies are often fragmented, not co-ordinated and sometimes even contradictory. In most countries there is little co-ordination across isolated policy areas to create greater consistency in rehabilitation and employment support policies. Each funding institution acts within its own policy framework and its own budget, making it difficult to maximise effectiveness and cost-efficiency.

6.1.1 Policy developments

On-going public policy changes impact on this already complex situation: cost-cutting to reduce financial obligations of public bodies; re-orientation to active labour market policies from passive benefits; rearrangement of responsibilities between social security systems and labour market authorities; and introduction of market principles into publicly-funded services, with separation of purchaser and provider functions.

Developments relating to rehabilitation, job retention and return to work in some study countries reflect these broad policy changes:

increased employers' responsibilities to improve working conditions, minimise sickness absence and support return to the job, as part of wider strategies to reduce the costs to the state of sickness and disability benefits

a new emphasis on rehabilitation and re-employment within workers' and accident compensation programmes, in response in part to rising claims costs

affirmative actions for disabled workers within labour market programmes

withdrawal of state agencies from direct service provision and contracting-out to specialist service providers for return to work.

It is remarkable that most reforms to the structure, organisational framework and provision of services primarily have been driven by financial cut-backs. Cost-cutting and cost-shifting tendencies, and reduced

state involvement in cost-sharing arrangements, limit the adoption of an integrated policy approach. Changes are often incremental, programmes and services in different parts of the system are in a constant state of flux; and quite often new programmes are put in place before it is possible to assess the effects of the last. The need for co-ordination at the policy level is recognised but obstructed by multi-tiered responsibilities, departmental rivalries and competing philosophies.

Reforms are rarely guided by re-evaluation of the relevant concepts and content of rehabilitation or by any coherent set of principles. The corner stones for an integrated and coherent policy approach have still to be identified.

6.1.2 New players

The possibilities for coherent public policy approaches are constrained by the entry of new players to the stage who, as yet, have no integral role in policy development. Increasingly enterprises are developing their own support services for their employees, either in-house or purchased in the market-place. Companies buy private insurance to cover risks of sickness or disability, and insurers are becoming important independent providers of rehabilitation and supports for job retention. In the USA the responsibility for funding and providing job retention services falls almost entirely on the private sector.

Private insurers, already well-established purchasers and providers of employment support and rehabilitation services in the USA, are discovering new markets in systems where employers bear the costs of sickness absence. [\(28\)](#)

The Canadian report notes that automobile accident insurers are leading players, funding rehabilitation services for claimants employed at the time of the accident and employing private rehabilitation consulting companies.

The reduced involvement of public bodies in direct service provision and growing reliance on the market have stimulated the growth of private service providers from whom services are purchased as required. Contracting is also increasing the role of voluntary organisations as providers. While these tendencies increase flexibility and can promote more individualised assistance, they can also stand in the way of a more coherent and principled approach. The competitive tendering process and conflicting service philosophies make it difficult to develop inter-agency co-operation.

The proliferation of independent providers also presents problems for disabled persons, and those who advise them, in first finding out about services and then assessing their relative merits, in an increasingly diffuse and complex system.

6.2 The balance of provision

It is difficult to generalise about the balance of provision over eight complex systems. It is clear that public policy for rehabilitation of persons with disabilities in some systems favours individuals with (severe) disabilities who have little or no work experience (as in the federal-state vocational rehabilitation programme in the USA). In many systems, employment support services concentrate on short-term interventions for those who are almost 'job ready', and health services provide medical rehabilitation, with little to connect the two. In Germany, however, there is a relatively smooth transition from medical to vocational rehabilitation, but a comparatively lengthy process which tends to lead in the direction of retraining for a different occupation rather than a return to the original job.

It seems that, overall, the thrust of public policy is to support disabled people who are out of work rather than those in work or who have a job to return to. Quite frequently, however, programmes do not differentiate between disabled people seeking work and those already in work. The methods of data collection and analysis

used to monitor programmes often make it hard to gauge the respective levels of activity devoted to job retention and return to work and the outcomes of measures.

6.3 Policies for job retention

In most countries, the main rehabilitation provision for those who become injured or disabled in employment is built into either the workers' or accident compensation programmes (USA⁽²⁹⁾, Canada, New Zealand and France⁽³⁰⁾) or the social insurance programme (Sweden, the Netherlands and Germany⁽³¹⁾). Responsibilities for initiating the process, planning rehabilitation, and putting in place services to support work resumption are distributed across employers and insurance agencies. There appear to be three main models:

- i) the enterprise is responsible for monitoring sickness absence, planning for rehabilitation and putting necessary workplace supports in place, while the (social) insurance agency purchases external rehabilitation
- ii) the enterprise takes the initial steps to identify a need for rehabilitation and contacts the insurance agency's or compensation authority's case manager who takes responsibility for care planning and service co-ordination
- iii) the enterprise notifies the compensation authority of the absence; the latter contacts the absent worker to assess need for vocational rehabilitation and provides or co-ordinates services.

In these different approaches to co-ordinating work resumption, the balance of advantage to the employer and to the worker with disabilities appears to vary. If the enterprise has total responsibility for managing the return to work and also bears the costs of claims, rehabilitation of the employee may take second place to minimising the costs of sickness absence or its effects on productivity. Pressure on the injured worker to return to the job too soon is thought to occur in some workers' compensation schemes.

Selecting out employees for rehabilitation interventions is also a possible consequence. It is reported that USA employers and insurers tend to calculate the costs and benefits in deciding whether to invest in rehabilitating an employee, favouring younger and more productive workers. In regulated systems, external monitoring inhibits discretion. In the Netherlands, the employer has to report the absence to the social security agency, along with a plan setting out action already taken to promote job retention and details of how work resumption will be facilitated. The agency checks whether the employer did everything reasonable to make resumption of work possible. But fines for not reporting or reporting late seem to be rarely applied.

In Sweden, where employers now have responsibilities for payment of sickness benefit for two weeks only, there are no sanctions on employers who do not complete rehabilitation investigations or submit them to the social insurance agency, or who fail to meet their responsibilities to finance rehabilitation support in the workplace. Responsibility then falls by default to the social insurance agency. It is argued in Sweden that the lack of clarity in the rules, along with the absence of either 'sticks' or 'carrots', limits efficiency and delays provision of rehabilitation.

The advantage of the second model, as it operates in New Zealand, is that liaison between the case manager and the company can begin at an early stage and co-operation can be won. Return to the job appears to be easier if the enterprise has a rehabilitation unit in place.

The third model, where responsibility is taken out of the hands of the enterprise, may relieve the enterprise of the burden and costs of planning for rehabilitation, which Swedish employers, for example, have found onerous. However, in the absence of strong incentives to the insurance agency delays in starting rehabilitation can occur. Lack of clarity about which fund takes responsibility has been a continuing problem in Germany, leading to considerable delays which interfere with the principle of return to the original employer.

Within these three approaches rehabilitation is variously a right, a requirement or an option. The right to rehabilitation or the requirement to participate does not necessarily lead to equality of access to services, however, as agencies can have considerable discretion in deciding which measures to offer.

6.4 Prevention and early identification

Little information is available about the part played by enterprises in preventing ill health or injury from deteriorating into a more serious condition which leads to sickness absence or disability. Many larger USA companies have well-developed services to educate employees on life-styles detrimental to health and offer private counselling services, in addition to workplace health checks. But cultural differences will inhibit transference of this approach; the Dutch report comments that life-style problems (such as alcohol dependence or obesity) are viewed as essentially private matters about which the employer should not enquire.

In general there is still a reliance on the medical model of rehabilitation, where the physician has prime control. Some UK initiatives aim to educate general practitioners (family doctors) about the therapeutic value of work and the types of workplace support available. Often there is no communication between the employer, the employee with a disability and the treating physician. Private insurance companies, as well as compensation boards, have introduced case managers to link the three parties.

The occupational physician is a powerful player in many systems, acting as gatekeeper to workplace remedies. Dutch employers are legally obliged to engage an occupational health and safety service. Its physician assesses whether the employee is unable to work, sets an expected date of work resumption, and supervises the process.

Confidentiality of medical information, and restrictions on the physician informing the employer about the medical condition of an absent employee without the latter's consent, can inhibit planning of support within the workplace. Solutions then depend on the skills and knowledge of the occupational health service. Raising awareness of job retention options among occupational health physicians has been identified as a priority in some systems.

6.5 Services in the workplace

In comparison with support services for (re)entry to work - which might well be used by disabled people in work - there are rather few publicly-provided personal support services specifically for workers who become disabled. In general, employers' awareness of external services is low. The Swedish social insurance agency has a particularly well-developed, although time-limited, grant scheme for work assistants to aid job retention. Personal readers, signers and support workers are variously available to disabled people in work, or their employers, through national programmes. There are advantages to workers with disabilities if personal support services are available via bodies which also arrange aids and adaptations in the workplace.

Negotiating the maze of providers and bureaucratic procedures to obtain the required support can be problematic for employers. The 'one-stop shop' is one way forward. In Sweden, the largest of more than 400 rehabilitation providers, Working Life Services, is the contract services arm of the Labour Market Board. It operates at county level as a resource (similar to a job centre) to public and private employers, as well as to social insurance offices, fully funded by means of charges. Its services, which include support to the organisation as well as the individual, are used by large employing organisations primarily to support retention.

Co-workers, supervisors and managers also need services, both to support the disabled worker in the job and to help them adjust to working with a disabled person. In Germany, the authorities which specialise in providing support for disabled people (the Hauptfürsorgestellen) may contract 'social and psychological care'

services from independent non-profit-making bodies. These providers and the Hauptfürsorgestellen themselves work with disabled employees on managing the demands of the job and to promote self-help, with co-workers to enlist their active co-operation, and with family members if required to solve work-related problems. External providers in general have an important, as yet under-developed, role to play in encouraging and backing the natural supports in the workplace provided by co-workers and supervisors.

Most public provision to support disabled people in work depends on bringing external services to the workplace. A different approach is reported from Germany. In Bavaria the Hauptfürsorgestellen can pay all or part of the salaries of internal working assistants hired specially by the company or appointed from existing staff, and provide training if needed. Their role is to support disabled workers in coping with the demands of working life, handling conflicts and in performing the job. They also aim to raise co-workers' and line-managers' knowledge of the disability and understanding of the disabled employee's situation. To reduce possible stigma attached to their users, most of whom have psychological support needs, these assistants offer their services to the entire workforce. For larger firms the opportunity to demonstrate (and advertise) social commitment is an incentive to participate. An evaluation of the Bavarian experiment found reduced absenteeism among workers receiving support, a consensus that the atmosphere at work had improved, and relief of immediate line-managers and decrease in internal conflicts through early interventions by the working assistants.

6.6 Maintaining employment

A strategy for job retention must also maintain in employment those workers who were already disabled on taking up work. Incentives and support services to facilitate entry to employment should not lead only to short-term gains, with individuals with disabilities exiting the labour market once subsidy schemes expire or initial support on the job is terminated. The obligations and commitment of employers who take advantage of such schemes need to be considered. A maintenance strategy may mean appropriate phasing-out of job coaching or wage subsidies, and should direct attention to the quality of employment and opportunities for promotion and advancement. Maintenance might be particularly important for those with psychiatric disabilities or individuals with learning disabilities who may wish for ongoing support after short-term measures have ceased. The question remains of who should provide and finance continuing support in the workplace.

6.7 Meeting employers' needs

Some employers' organisations - notably the Employers' Forum on Disability (EFD) in the UK - argue that employers are also customers of employment services and that the way forward is not to persuade and cajole them into employing disabled people but to recognise their own requirements. In their view, the answer lies with action to make it easier for employers to take on or retain people with disabilities who have the skills that companies need. This would include service providers who understand how businesses work and who can assist in promoting change; the approach taken by Workbridge in New Zealand (the employment agency specialising in persons with disabilities) to learn about the business ethos and understand company operations. The EFD proposes that employers have a contribution to make in providing work experience for the staff of employment support and rehabilitation agencies, and in shaping the development of services in general.

6.8 Interventions for return to work

Everywhere there are significant medical and legal obstacles to early interventions. Assessment for rehabilitation is still dominated by medical issues and clinicians' lack of knowledge of vocational rehabilitation. Commonly, the waiting period for assessment is long. Quite often there are different kinds of assessment and people are often unnecessarily reassessed. The average interval from application to acceptance for service provision takes several months. As a result, interventions for vocational rehabilitation

frequently start too late, when the contacts to the former employer are already broken.

Little is reported about interventions at the critical point of taking up an unemployment benefit once employment has been lost. In New Zealand people with disabilities who register as unemployed are automatically referred to the specialist employment agency for people with disabilities.

In the Anglophone countries, with their 'all or nothing' disability benefits systems, interventions to support the return to work of recipients of disability benefits have not been the norm, but new mechanisms are now being developed. A five-year controlled experiment into the efficacy of four case-management models, for new applicants as well as existing beneficiaries, has been completed by the social security administration in the USA. A national vocational rehabilitation programme for recipients of disability insurance benefits was piloted in Canada. Selected recipients who voluntarily agreed were referred to external rehabilitation consultants, and vocational rehabilitation services were delivered through an outside contractor. The pilot was judged successful and a vocational rehabilitation programme is being integrated into the Canada Pension Plan.

There are many examples of innovative projects and programmes in the public and not-for-profit sectors to support disabled people to take up work for the first time, or to help longer-term unemployed disabled people back to work. It appears that return to work success rates may be higher in specific projects where services are 'custom-made', depending on the type of clients and intensity of the service, although the Netherlands report notes that this is less the case for persons with mental disorders. There is scope to orient these projects to the needs of people leaving employment and entering the disability or unemployment benefit system, possibly with funding from social security and employment authorities.

6.8.1 Co-ordinating return to work

Workers who become injured or disabled meet different service providers and benefits agencies. Mechanisms for co-ordination between service providers are required. In several countries the solution for better co-operation and more tailor-made measures is seen in flexible *ad hoc* mechanisms at local level, where decisions are made according to local conditions and requirements. A project aimed at improving return to work outcomes for clients simultaneously involved with some combination of insurers is being piloted and evaluated in British Columbia (Canada) in partnership with the disability community. This partnership approach aims to identify barriers in the process of return to work and potential systemic solutions.

6.8.2 Training and return to work

Special arrangements to enable unemployed disabled people to access mainstream training or work-preparation programmes, or special programmes to give short-term opportunities to persons with disabilities, are reported in the study countries. However, transition from these schemes to work is often a weak point.

The role of vocational retraining in a strategy for return to work depends in part on the importance in the national system of vocational qualifications as a foundation for employment. In Germany and France crucial questions are when and how the worker who becomes disabled can achieve new or extra qualifications, and how this process relates to workplace requirements. The fit between employer demand and the skills of disabled workers is an issue of broader concern, although in some systems outside mainland Europe the emphasis lies with preparing the worker to be 'job-ready' rather than with the acquisition of occupational skills.

Training on the job for disabled workers is a part of active labour market programmes in some countries but opportunities for workplace-based training appear to be less available to more severely disabled workers, especially for those still undergoing medical treatment. Vocational training in the workplace needs to be

organised to minimise the imposition on the employer of onerous responsibilities, costs and disruption of enterprise activity.

6.9 Equity issues

Rehabilitation which relies on residential programmes tends to exclude women who have family commitments; innovations to locate services close to home are reported in Germany. Services appear to be biased towards rehabilitation of those who work full time, although examples are given of arrangements to return to work part time in the first instance. If there is discretion in selecting whom to rehabilitate, older, more severely disabled and less productive workers miss out.

6.10 User choice, accountability and quality of services

Programmes which give real choice to users appear rare to be rare. There are tendencies for more individualised provision with 'service packages' tailored to the disabled individual's needs but whether the user has a choice among elements which make up the package is questionable. 'Case management' is an increasingly popular concept, especially in North America, although in the insurance world it can be more of a device to control costs than a vehicle for extending choice among rehabilitation options. As the range of service options grows, the individual with disabilities will increasingly require information and guidance to make appropriate choices. Yet in some systems there is a contrary trend towards self-service, through 'data-banks' and other computerised sources.

Typically, the provider is accountable to the funder rather than the user. 'Vouchers' and 'tickets' have been proposed to give users quasi-purchasing power, the aim being to stimulate the market and raise quality of rehabilitation services through competition to serve the customer. The underlying purpose of the proposed ticket system in the USA is to increase the very low number of disability insurance beneficiaries leaving the rolls. As originally proposed, the idea was to stimulate quality of service provision by ensuring that providers were rewarded for on-going results, measured by permanency of employment, rather than for intermediate outcomes.

The difficulties of outcome-related allocation of resources, performance measurement and incentives, and 'creaming' effects (selecting those with the greatest prospects of returning to work) are reported in several countries but few answers have been found. Causal links between quality in rehabilitation and in employment are contestable, and additional performance indicators need to be developed.

With increasing privatisation, the need for accreditation in arrangements becomes more urgent. In some systems, contracts are let on the basis of established reputation and standards for quality are not transparent. Public services can lack the expertise to evaluate quality. More needs to be done to gather information on developments by providers to work to external standards and to apply 'total quality management' type systems to achieve internal improvements. In particular, user evaluations of quality need to be developed.

6.11 Monitoring and evaluation

Monitoring of service users and reporting their destinations in terms of job retention or return to work appear to be limited. 'File closure' as a measure of rehabilitation interventions tells us little about whether employment has been achieved. If outcome data do exist, the kind of information which is available normally gives no indication if the employment achieved is due to support through certain programmes or not. Information is held by insurers who develop and evaluate services for return to work and monitor outcomes. But this information is proprietorial and lessons are difficult to learn. The possibility of monitoring the longer-term outcomes, the duration of the employment kept or found, depends on the legislative requirements imposed on the employer, for example the requirement to retain the returning worker for a defined period.

Good outcome-related evaluations, which clearly identify the relevance of rehabilitation and employment support services through counterfactual research designs, are important. But these need to be complemented by process-oriented, qualitative evaluations to understand how rehabilitation interventions interact with personal histories to achieve successful job retention.

6.12 Key issues in rehabilitation and employment support services

- Developing a strategy for rehabilitation to support job retention and return to work is possibly the most challenging aim of this Project. At the policy level, achievement of a coherent and co-ordinated approach is thwarted in many countries by withdrawal of the state, fragmented budgetary responsibilities, competing policy aims, multiple providers and, sometimes, strong attachments to radically different philosophies. A forum to bring together players to identify and agree upon the corner-stones of a coherent strategy may be a step forwards, but only if there is a genuine policy-level commitment to work towards implementation.
- Ways need to be developed to bring into the policy process the emerging players, including independent providers, insurers, employers and enterprise representatives, and disabled workers themselves.
- In some systems, rehabilitation policies are designed specifically to promote job retention. Many have dual aims of benefiting the injured, sick or disabled worker through restoring capacity for valued work and of reducing costs to the employer or insurer. Without adequate checks in the system, the latter aim may take precedence, rehabilitation may become a lower priority, or even denied to the worker with disabilities.
- Linking rehabilitation and employment support services to measures to keep the job open for the returning worker is an important development in many systems. Mandatory or negotiated re-employment and rehabilitation are explicitly connected in many social insurance and compensation programmes.
- The locus of rehabilitative support is shifting overall to the workplace and public agencies are taking on new roles to enable, rather than substitute for, enterprise-based activity. There are models of funding and training for enterprise staff to facilitate support for disabled workers, and in particular workers with mental health needs, which could be developed in other systems. Similarly, 'one-stop shops' which allow easy access to employers to purchase services for rehabilitative support in the workplace appear to be a promising development. Within such models there may be scope to include support services for adaptations of work and workplace, to counterbalance any over-emphasis on changing the individual to fit with pre-existing demands and constraints.
- The structure of statutory sickness and disability benefits in Anglophone systems inhibits opportunities to combine benefit receipt and paid work, and to enable therapeutic employment. Rules are being relaxed in some systems, however.
- The worker with disabilities commonly has to rely on many agencies for different aspects of the return to work process, either simultaneously or sequentially, and co-ordination between them is a growing priority. Multi-agency and multi-disciplinary co-ordination initiatives at local levels may offer transferable lessons, as will evaluations of the efficacy of case management. Arrangements for streamlining assessment procedures and initiatives which bring the physician into a less medically-oriented process need to be explored. Within these processes it is important to examine the opportunities to the disabled worker for informed choice and for influence over the quality of rehabilitation services.
- The issue of quality of service provided is pre-eminent. Providers' own efforts to develop standards and to implement quality systems, as well as new mechanisms to stimulate the market, will provide criteria for allocation of resources as well as for user choice. Employers also have perspectives on the quality of services provided to them and a role to play in ensuring that providers understand businesses and business interests.

7. ADAPTATION OF WORK AND WORKPLACE

Disability is increasingly seen as resulting from the interaction between impairment and the social and physical environment. In this view, the environment has to be adjusted, as far as is reasonable, to meet the needs of the individual, rather than the person rehabilitated to live and work in a 'normal' environment. Adapting to disability, through removing barriers in the social and physical environment as well as in the workplace, has become the hallmark of disability policy in many Western countries over the last decade.

7.1 Measures to reduce social and environmental barriers

Policy measures which remove barriers in the built and social environment also influence the climate for job retention and return to work. Following the ADA - which requires removal of barriers in public offices, hotels, restaurants, shops, health care facilities, schools and so on - the environment has become more 'disability friendly'. An environment which facilitates travelling, shopping and access to health or social amenities may make staying in work a more viable option. Most importantly, measures which improve access to facilities benefit those who work in them. The ADA was backed by a publicly-funded programme of technical assistance, with materials distributed to businesses and libraries and a toll-free ADA telephone information line. The Department of Justice has also funded organisations to provide technical assistance to design professionals, inspectors, contractors and others involved in removing barriers.

A more incremental approach is to adjust national building standards. In New Zealand, for instance, the Buildings Act requires that 'reasonable' and adequate provision is made for people with disabilities to enter and carry out normal activities within new and reconstructed buildings, including where there is a change of use. A non-statutory organisation, the Barrier Free Trust, trains auditors who issue certificates of compliance with the Building Act, has an advocacy role and contracts to some large employers to provide audits.

Legislating to change the way in which services are provided - avoiding discrimination against people with mental illness or learning disabilities, for example - may affect business attitudes to retaining employees with disabilities. The DDA in the UK has stimulated 'disability awareness' and 'disability equality' materials and training.

Typically businesses bear the costs of removing wider environmental barriers. The USA enables businesses to recoup some of the costs of removal of barriers for customers. A disabled access tax credit can be claimed towards the costs of making small businesses accessible to customers and employees with disabilities (as defined by the ADA); it covers sign language interpreters, readers, adaptive equipment and removal of architectural barriers in vehicles or older buildings (the maximum annual benefit is \$5,000). A tax deduction is available to all businesses for making a facility or public transportation vehicle usable by individuals with disabilities (the maximum deduction was reduced to \$15,000 on the introduction of the ADA). Although publicity is improving, these modest provisions have been under-used, in part because of difficulties navigating the claiming procedures, as well as antipathy to dealing with tax authorities. Entrepreneurs have created new businesses out of administering credit processes in return for a portion of the credit obtained.

Persons with sensory and physical impairments employed by service-providing organisations (especially in recently constructed or redesigned premises) stand to benefit most from these measures. Disabled workers in traditional manufacturing and industrial sectors, with no customer contact, miss out. There appears to be inadequate encouragement and support for businesses outside the service sector to remove social and environmental barriers.

7.2 Measures to reduce barriers in the workplace

Apart from the requirements relating to public facilities already described, few measures *require* that disabling barriers are removed within places of employment. Health and safety legislation is the obvious exception. Otherwise, a battery of policy measures can *encourage* voluntary change.

7.2.1 Work environment requirements

Some laws place general obligations on employers to improve working conditions for disabled employees. These are 'laws of good-will' setting out broad expectations. [\(32\)](#)

A recent development in the Netherlands is part and parcel of the policy drive to reduce the costs of disability benefits. Employers must draw up working conditions policies based on an inventory of occupational hazards by the obligatory occupational health and safety service, under contract to the employer. Dutch enterprises have been found to direct these policies towards the individual employee, rather than evaluation of workplace risks and improvement of working conditions.

The Swedish Work Environment Act (which stipulates that the enterprise has suitable arrangements for work adaptation and rehabilitation, studies to identify what is needed, competent personnel and annual follow-up) is an interesting approach but effectiveness will depend on incentives, sanctions or external advice. [\(33\)](#) In Sweden, a labour union is entitled to call for negotiations with the employer on adaptation of the work environment.

Regulatory bodies typically have limited resources to advise on workplace adjustments. In Sweden, where work environment policy is strong, the labour inspectorate is found to have discussed rehabilitation and work adjustment in only seven per cent of workplace visits. Most bodies concerned with workplace safety focus on compliance with standards, investigation of accidents and prosecution of persistent violators. The USA Occupational Health and Safety Administration (OSHA) has recently moved to a more co-operative relationship with employers. It now offers free consultation assistance which includes an appraisal of work practices and hazards in the workplace, and assistance in developing, implementing or improving the employer's workplace safety and health programme. Employers who correct hazards and implement an effective programme may be exempted from OSHA random enforcement inspections for one year.

Occupational health and safety (OH&S) authorities have an increasingly important part to play, both in removal of disabling barriers and in the prevention of 'new' disabilities. In many countries, they are fettered by out-dated, injury-reporting requirements which focus on 'traditional' workplace injuries and diseases, and their resources are concentrated on more hazardous working environments rather than on the emerging service sectors. OSHA (USA) has recently targeted ergonomics as a safety issue to prevent cumulative trauma disorders, complementing enterprise initiatives driven by workers' compensation claims.

7.2.2 Requirements to accommodate

Non-discrimination laws which require accommodations [\(34\)](#) for individuals with disabilities may encourage broad workplace adaptations, if laws are appropriately framed. It is possible that effects will be reduced if there is little evidence of disabled people exercising their rights and if there is no obligation on employers to remedy practices which give rise to discrimination. Larger employers, with experience of disability, may be pro-active in arranging work and workplace to minimise the need for individual adaptations. In the USA, there has been considerable public investment in technical assistance programmes and materials established under the employment provisions of the ADA, and a range of other design or technology related programmes. In general, however, accommodations are individualised.

7.2.3 Business incentives

The Canadian and German reports note that some large organisations have turned to ergonomic assessment and technology in an effort to increase productivity and that this can have a secondary effect in terms of retention of employees who become disabled. Occupational health and safety departments in large Canadian organisations reportedly take an interest in promoting adaptations for preventive purposes, particularly where

injury compensation claims costs are high. However, evidence from the USA suggests that most interventions are directed at sensitising the individual to adopt non-disabling working practices (such as proper use of equipment) rather than at general and more costly modifications of the working environment. It will be interesting to observe how recently introduced experience rating of insurance premiums in the Netherlands interacts with requirements to formulate working conditions policies aimed at preventing sickness absence.

The 'business case' argues that a diverse workforce gives companies a competitive advantage by enabling them to meet better the needs of their customers. The Canadian report notes, however, that workers with disabilities compete with other 'diverse' groups and may lose out if there is a perception of costly accommodation requirements. Diversity policies favour workers in service-providing organisations with visible and acknowledged impairments, and may lead to removal of physical and communication barriers.

7.2.4 Promotion of good employment practices

Equal employment opportunity (EEO) policies in New Zealand expect public service departments to introduce measures to address disadvantages faced by groups of staff, including people with disabilities. The most frequently cited current EEO practices for disability are those that centre on improving physical access to buildings. The business case for employing people with disabilities may bolster interest in EEO and so encourage workplace adaptation which, in turn, may benefit workers who become disabled.

Under employment equity laws and similar voluntary arrangements in Canada, employers should identify possible barriers limiting the employment opportunity of designated groups, and develop and implement a plan aimed at promoting a fully representative workforce, including measures to remove barriers. The law is unclear about practical measures, however. Most attention is given to increasing the representation of women and it seems unlikely that employers would invest in removing physical barriers. This type of approach may be more effective if dedicated to disabled workers and if incentives are attached; contract compliance is one possible method.

7.2.5 External assistance to remove barriers in the workplace

The technical assistance programmes for US businesses are exceptional. Sources of advice and assistance to make changes to the work and workplace appear to be limited in most countries. At federal level in Canada an industrial research assistance programme provides technology development research and services, including ergonomic advice, to support economic productivity and competitiveness. Notably, in Sweden and the USA, several national institutes focus on technical support to people with disabilities, some with a remit for promoting accessible environments; these do not specialise in workplace adaptation, however. Generally, sources of external assistance are unco-ordinated and assistance is not linked to funding. Although several countries have national funds to help with adaptations for individuals, they are seldom used to improve the general working environment.

An innovative five-year programme began in Sweden in 1990. The Work Life Fund was financed through a short-term mandatory tax on employers (1.5 per cent of the company's total wage bill over fifteen months) raising 11 billion kronor (approximately 1.4 billion US\$) for a programme of grants to supplement employers' own investment. It aimed in part to reduce sickness absence. Apart from rehabilitation measures for employees with long-term impaired health, the main thrust of the Fund was to change the organisation of work, as well as to improve the physical environment. More than 50 per cent of employees in the country were estimated to be affected by its workplace programmes. Evaluations found several positive effects, including substantial reductions in absenteeism and concomitant savings to employers who invested in work environment improvements. The work environment improved for women. An important effect of the programme was increased awareness of the importance of the work environment for the company and a realisation that it is economically profitable to invest in better work environments and better work organisation.

7.3 Adaptations for individual need

Adaptation means more than 'a product, instrument, technical system or equipment used by persons with a disability, specially produced or freely available, to prevent, to compensate, to reduce or neutralise the impairment or disability'⁽³⁵⁾. This narrow, 'material' interpretation covers adaptations to the workplace and the work station but not changes to the content of a person's job or the way that tasks are allocated, that is, 'non-material' adaptations to the work itself.

An illustration from the Netherlands distinguishes types of material and non-material adaptations (and their reported occurrence or usage) made for disabled workers returning to work.⁽³⁶⁾ These findings apply for both white- and blue-collar workers, in both industrial and service sectors.

- *Change in tasks and work content* (70 per cent) (including change in work activities, variation in tasks, a move to another job with the same or another employer)
- *Change in duration and distribution of working hours* (48 per cent) (including reduction or elimination of night working, more regular working hours, reduction in the working day or week, shift changes and rest periods)
- *Reducing tempo/speed of work* (41 per cent) (including reductions in productivity targets or customer contacts, help by colleagues, self-organised work patterns)
- *Purchase of special or new devices* (ten per cent) (including mobility within the workplace such as wheelchairs, and transport to and from the workplace)
- *Training* (seven per cent) (including vocational training, on the job training, and job-coaching)
- *Adapting tools/equipment/workplace* (four per cent) (adapting worksite, workstation, machines, buildings, accommodations, lighting, internal climate, chairs etc.)
- *Other types* (14 per cent) (including help in the home to get to work and changing the culture on the shopfloor).

This shows clearly that most adaptations are non-material changes to tasks or routines. Provision of adaptations by external or co-funding agencies will show a different pattern. They seem to concentrate more on funding special and new devices, adapting equipment and workplace, transport facilities and so on, with a focus on permanent, often structural adaptations.

In most countries adaptations have been developed to support entry to employment: a job is chosen and aids (usually permanent) are provided to facilitate it. Modification of an existing position will require different solutions. The limited data available on disabilities of people who become disabled in work indicate that a majority will require non-material changes to the nature and content of the work. In practice, many adaptations of this kind result from negotiations between the employer, the employee and co-workers and are less amenable to external assistance.

7.4 Policies to promote adaptations for individuals

Adaptations to meet individual needs can be promoted from many directions: laws relating to the work environment, health and safety, employment security, workers' and accident compensation, compensation, social insurance, human rights and disability discrimination, and other laws promoting employment of disabled people.⁽³⁷⁾ Accommodation of returning workers may be written into collective agreements, as occurs in Canada. Grants, subsidies and tax credits reinforce some of these public policy approaches. In

combination, these policy initiatives increase awareness of accommodation as an appropriate response to the occurrence of disability. But policies are rarely co-ordinated, not surprisingly, given the wide spread of responsibility across departments and agencies. The Canadian report comments on one achievement when the Ontario Workers' Compensation Act adopted the definitions of accommodation in the Human Rights Code.

At the enterprise level, policies can be complementary, as the USA report suggests.

Workers' compensation and occupational health and safety laws have affected employer, union and employee expectations and provided standards for enterprise disability management practices in modifying job-sites and accommodating returning workers with occupational disabilities. Practices were thus in place to deal with the accommodation requirements of the ADA. The Family and Medical Leave Act (1993) in turn complements the ADA: if workers returning to their jobs after short-term sickness need accommodations, then the ADA swings into action.

The various policy instruments for promoting adaptations have unequal coverage. Rights-based legislation depends on workers taking the initiative and on their meeting the legal definition of disability. The concept of 'reasonable' accommodation based on costs to the employer may disadvantage disabled workers who happen to work in premises which are exceptionally difficult to alter. Because of rising costs, the types of disabilities covered by workers' compensation have been restricted. Other equity issues arise in systems where coverage relates to cause of disability. For example, in New Zealand only individuals injured by accident will receive case-managed services, including adaptations if necessary; the employment service, although it has a grants scheme directed at employers taking on a person with disabilities (and a sub-contracted specialist placement agency provides individually tailored funding for support on the job), has no provision for adaptations for those already in work.

7.4.1 Financial incentives for individual adaptations

It is reported that USA employers attempt to accommodate workers who become disabled mostly to reduce costs. Experience rating of premiums for workers' compensation provides incentives to return employees to work with appropriate adaptations. However, the litigious nature of workers' compensation means that employers can be reluctant to make accommodations if doing so is seen as indicating liability. It may be more beneficial to the employer to allow workers who are more costly to retain to pursue compensation claims and leave their employment; it is clear that decisions on whether to offer support are often determined by a case manager provided by the insurance carrier. This option may be reduced if experience rating is combined with protection against dismissal (as in the Netherlands), or with obligations to co-operate in returning disabled workers to their original job.

7.5 Voluntary action

Enterprises will voluntarily make individual adaptations, regardless of any legal obligations or public programmes, because of loyalty to the worker, the value of the individual to the company, out of 'good corporate citizenship' or other cultural assumptions about employers' responsibilities towards employees. In the Netherlands over 80 per cent of adaptations are arranged and paid for by employers. Dutch case studies have shown that adaptation of work is more easily provided by the employer, and accepted by staff and co-workers, when the worker was injured during work time. The German report notes that industries where work-related disabilities are more common tend to provide for their employees. Public policies in the UK which promote good recruitment and retention practices (such as the 'Disability Symbol') have been effective in increasing employers' willingness to consider making adaptations for a disabled employee.

Larger employing organisations in many countries have developed their own resources for adaptation. For material adaptations many employers (or their insurance carriers) deal directly with suppliers in the commercial market. Even where publicly-funded services exist, employers may not be aware of them, are

deterred by the costs and delays of dealing with bureaucracies, or sometimes are reluctant to attract the attention of bodies whose main role is to monitor compliance.

7.6 Raising awareness

While in many countries there has been a tradition of providing light work, particularly for older workers, the idea that accommodation should be the first response to enable a worker to stay in the job is comparatively recent. Employers and employees who are more accustomed to traditional compensatory or rehabilitative responses to the occurrence of disability, where responsibility is passed to the state or pension funds, may need to be made aware of the possibility and its implications for them. The concept of a right to workplace accommodation may be difficult to accept if responding to disability still has connotations of 'good deeds'.

New legislative requirements can have significant effects on awareness. In the USA, for example, the concern initially created by the ADA caused it to receive a great deal of attention, leading to greater employer and public awareness of disability; employer awareness of accommodation requirements now appears to be high but small firms with no experience of employees with disabilities remain unsure about possible courses of action.

Employers' organisations, which have inside knowledge of employers' needs and concerns, are well placed to promote awareness amongst their members, reduce any fears and to promulgate attitudinal change. In the UK, employers' networks on disability encourage members to learn from one another so that they voluntarily might adopt good practices in workplace adjustment and other aspects of employing disabled people. In France, employers' organisations have set up teams to inform and raise awareness among employers, including advice on modifications in the workplace.

A number of countries report initiatives within the workplace. In France, AGEFIPH funds awareness-raising programmes for management and for occupational health and personnel departments, as well as internal training programmes targeted at union representatives. In Germany, training events for workplace representatives, financed by the authorities, can include topics such as adaptation of workplaces or needs of special groups.

7.7 Sources of information and advice for individual adaptations

Rights-based requirements to accommodate have been supported by programmes specifically to advise employers on implementing accommodations in the workplace. Possible accommodations ('adjustments' in the UK) are described in a technical assistance manual (a code of practice in the UK) rather than finely detailed in the law. In the USA, the Equal Employment Opportunities Commission (EEOC) funds technical assistance grants and direct assistance, including education, training, and written materials. US employers and persons with disabilities may also access a large number of technical assistance programmes, databases and services providing advice on assistive technologies for independent living. Other countries also report innovative information sources on technical adaptations, such as the REHADAT database developed in Germany and adopted in British Columbia (Canada).

In the USA and Canada, the Job Accommodation Network (JAN) provides a toll-free telephone consulting service. The vast majority of calls requested information on accommodations for current employees and a large proportion of calls concern material accommodations, mainly for people with motor impairments. Follow-up surveys of action taken subsequent to calling JAN have been cited in the UK and at European Union level to show the low costs of most adaptations. The UK Department for Education and Employment has published case-studies to demonstrate possible adjustments and their costs.

Despite a burgeoning of information provision, it is commonly fragmented and unco-ordinated. As the report from the USA notes, despite huge publicity efforts, many employers (particularly small employers) remain

unaware. Because they have no need to know about the ADA and accommodation requirements until they are confronted with a disabled employee or applicant, employers lack expertise in accessing information and, when they start searching, they are likely to be overwhelmed by too much complex, confusing and sometimes contradictory information. The report from Canada comments on the profusion of often partisan information, the limited value of computerised data banks and the need for more information clearing houses.

Information is of limited use if employers do not know how to apply it. As the Canadian report comments, many employers cannot identify that they have a problem that could be resolved, much less the type of problem it is, whether to call someone for office ergonomics advice or for systems advice.

7.7.1 Bringing information to the enterprise

Programmes which rely on employers seeking out information appear to have limited potential. The key question is how to bring the right information to a receptive employer at the time that it is needed. Bringing advice, service development and funding under one umbrella organisation is one possible way forward. The French fund (AGEFIPH) is exceptional in having sole responsibility for funding modifications to the workplace, and in combining technical assistance and funding. AGEFIPH has brought into its network of partnerships a national consultancy organisation which provides appraisals of working conditions and ergonomic studies.

Particularly in Europe, employers rely on intermediaries to bring them advice. Information to support retention can be accessed via agencies whose prime business is placement. Recruitment incentives, heavily used in France, encourage enterprise interest in other AGEFIPH provision. The general trend towards contracting out of placement and employment support activities to specialist organisations limits information sharing, however. If agencies develop a reputation as worthwhile organisations to deal with, employers are more receptive to their advice on accommodating disabled employees.

Agencies which police compliance with regulations may be viewed by employers as interventionist and burdensome, rather than as agents of change. There is some evidence of regulatory authorities now taking a more conciliatory approach to promote acceptance of advice. In Germany, for example, the authorities who intervene when dismissal is threatened can show how disabled employees could be retained, by using technical aids, reorganising the workplace or taking up subsidies, and there is evidence that employers are willing to drop dismissal proceedings if a solution to the underlying problem is offered.

Shortfalls in staffing, budget ceilings and targets oriented towards entry to work may inhibit dissemination of information about adaptations for job retention. Agencies may concentrate on co-operative enterprises and neglect emerging sectors which require more effort to penetrate. Some country reports comment on the difficulties facing staff in these agencies in keeping abreast of technological developments, limited opportunities for training and lack of specialist staff.

7.8 Timely intervention

In France, employees are obliged to undergo regular checks by an occupational physician, and in this way needs for work adaptations are identified. Some UK large employers have introduced surveys through which employees are free to express outstanding work adaptation needs. Many larger employers in the USA, and a smaller number in the UK, provide in-house programmes which help employees who participate voluntarily to identify needs which might be accommodated in the workplace. The effectiveness of internal surveillance mechanisms may be limited by assumptions about who deserves intervention and by perceptions of disability. A need for self-disclosure by the disabled worker is an obstacle, particularly for workers with invisible disabilities such as mental illness. Restrictions on sharing confidential medical records are further constraints.

The USA report describes the 'Stop the Pain' programme sponsored by the American Federation of Labor and

Congress of Industrial Organisations. Building on successful campaigns in unionised establishments, it calls on workers to draw attention to work environments and practices which lead to cumulative trauma disorders (repetitive strain injuries). It provides practical guidance to workers in determining the scope of the problem, and methods to gain co-operation from employers in making corrections.

A device has been developed in France to overcome the problem of delays in the procedure to qualify as a disabled person eligible for assistance. AGEFIPH gives enterprises who request it a job retention grant which helps to cover adaptation costs for workers who become disabled - for assessment and training, ergonomic advice in advance of technical modifications, as well as the disabled person's wage costs.

7.9 Paying for adaptations

Whether employers should be offered public funds towards meeting legal obligations is a matter of continuing debate. The assumption that employers are responsible for employment-related costs and the concept of 'reasonable accommodation' underpinning rights-based disability employment legislation both argue against public funding. In the USA, where the costs of disability are seen as a company responsibility and accommodation a civil right, it is up to employers to arrange, procure and pay for reasonable accommodations under the ADA.⁽³⁸⁾ Canada has a limited tax credit scheme, and a case has been made for its expansion to assist employers to pay for adaptations. There is no funding tied to DDA reasonable adjustments in the UK, although the publicly-funded scheme for adaptations may be accessed.

Under work-injury programmes, employers and insurers are responsible for paying for accommodations. However, assistance towards job-site modification is possible in seven US state workers' compensation programmes; in three states there are new requirements that insurers must subsidise worker accommodation as necessary.

The argument that incentives are needed to reinforce legal obligations is advocated by some disabled people's organisations. The Netherlands has introduced a number of subsidies as incentives for workplace adaptations but take-up is extremely low⁽³⁹⁾; adaptation of the working environment remains fundamentally the employer's responsibility. In France and Germany, funding for employers is part and parcel of the quota-levy system, based on the concept of collective responsibility and redistribution.

The general trend appears to be moving towards recognising the difficulties which employers may experience in meeting the costs of more expensive adaptations.

7.9.1 Public funding arrangements

In the systems in the mainland European countries and in the UK, employers and disabled employees can receive funding of certain, mainly material, adaptations from a public agency. Separate funding for job retention is unsure, although in Sweden the social insurance agency funds occupational aids for employees and their employers, and the labour market authority funds adaptations for previously unemployed disabled people. While this arrangement allows a protected budget for job retention, the employer must deal with two separate agencies. The French quota-levy fund (AGEFIPH) has developed special measures both for adaptation and for job retention, many sub-contracted to specialist providers.

Co-funding is a usual approach in Europe. Arrangements vary considerably. There may be limits on the total amount the employer is asked to pay towards a given adaptation, or across a defined time period. More expensive adaptations may be funded from the public budget or costs may be shared. The economic climate, not surprisingly, affects employers' willingness to contribute towards the costs of adaptations, and in Germany this has been found to translate into reduced demand.

Quite often budgets are designed to cover a restricted range of adaptations. The Access to Work (ATW) in the

UK is a good example of a more integrated approach. ATW, an Employment Service programme, was introduced in 1994 and replaced five separate programmes. It provides a wide variety of help, in the form of either a one-off payment, for example to purchase equipment or convert premises, or by providing continuous support, for example by providing help with travel to work costs, personal readers or support workers. The programme is open to people who are disabled, within the meaning of the DDA and need extra help because of their disability. For employed disabled people, financial help is provided towards costs of £300 and over (approximately 480 US\$); all costs above a £10,000 (16,000 US\$) threshold are met, and up to 80 per cent of the costs between £300 and £10,000, over three years.

New Zealand health authorities can fund technical aids for individuals with disabilities in work or seeking to be placed in work, although this is not a priority within budgetary limits. Generally, budgets for support for independent living do not seem to be geared to meeting employment needs. A disability tax credit system, such as that in Canada which allows severely disabled individuals to set some of the costs of attendant support against income tax, might avoid some of the difficulties in funding supports which can be used both at home and in the workplace.

Constraints on the effect of external funding arrangements reported variously from Sweden, Germany, the Netherlands and the UK include:

- limited co-funding for very expensive adaptations
- bureaucratic procedures and lack of resources to negotiate with external agencies
- restrictions that the adaptation must only benefit the disabled individual and should not bring business advantages
- wrangles over cost-sharing
- disputes over whether responsibility lies with the employer or the social insurance agency and consequent uncertainty over whether an application will be granted
- funding tied to a given job, limiting the disabled worker's opportunity to change employer
- requirements on agencies to 'shop around' for best value, leading to delays in provision
- agencies' limited expertise in finding the right solution for the individual and knowledge of new technology
- employers' negative attitudes towards external agencies and lack of positive experience of co-operative working.

7.10 The balance of provision

Public programmes to advise on, provide, or support the costs of adaptations generally complement rather than substitute for enterprise activity. The Netherlands report provides a neat illustration of the complexity of adaptation and the difficulty of recording how the needs of workers with disabilities are being accommodated.

An employee is able to perform only some of his former tasks and in order to have a full-time job, a new task has to be added. This task is available but needs some extra vocational training. To perform both parts of the job the employee needs a new chair to use when he wants to and help from co-workers in lifting heavy packages. In this example, only the vocational retraining will be recorded although the restructuring of the work process, the new equipment and informal support are essential to successful job retention.

Schemes where the employer or employee has to apply for a grant for a specific adaptation seem to have limited take-up compared with the case-managed approach, where the right combination of adaptations is funded to suit the needs of the individual. New technologies appear to favour the retention and return to work of people with visual impairment. People with multiple disabilities tend to miss out.

Some publicly-funded schemes appear to offer only a limited range of solutions, focussing on one-off expenditure on equipment and alterations to premises. Human support services (personal assistants and readers) which require on-going expenditure are rarely major items, although in Sweden personal assistants account for a third of the budget. External services for adaptation have a limited role in advising on and financially supporting job-restructuring. However, initiatives introduced to support entry to work, such as job coaches, are beginning to be taken up to support job retention, notably of people with mental health problems.

Public programmes do not usually offer preventive adaptations (such as ergonomically designed equipment) and employers have to rely on the market and on knowing what is available. Early intervention to support a progressive condition can be problematic.

7.11 Key issues in adaptation of work and workplace

Policies for the removal of barriers in the living and working environment which raise awareness and change attitudes to disability, stimulate the market in technical assistance and adaptations, and set common standards for accessibility will reinforce statutory requirements to appraise and remedy risks in the workplace, duties to accommodate workers with disabilities and voluntary good employment practices.

- It appears that publicly-funded support for individual adaptations is not geared to the changing pattern of employment - part-time working, limited-term employment contracts and agency working. When provision is tied to a particular employment situation, the disabled worker can find it difficult to change job or employer, or to hold more than one part-time job. Legislating to reduce barriers in the built environment, and providing technical assistance and funding, should facilitate flexible working for some persons with disabilities.
- Overall, policies which promote removal of disabling barriers appear to support employment of individuals with physical and sensory disabilities in service sectors. Occupational health and safety authorities and public providers of individual adaptations have found these sectors difficult to cover, however. Response to the new occupational diseases will remain limited unless policy and provision for prevention and for adaptations are targeted at the emerging service sectors.

Provision for workplace adaptations and rehabilitative support may be better co-ordinated if brought within the scope of a single agency and a single budget; there appears to be growing potential within insurance-related strategies for job retention. Combining employer responsibilities for adapting the working environment and for rehabilitation in the workplace appears to be a promising strategy.

- In the absence of enforced legislative requirements, it can be difficult to combine employers' endeavours for rational and cost-effective activity with work adaptation measures which may not be seen as profitable and generating a financial return. National programmes, such as the Swedish Work Life Fund, can increase the realisation that it is economically profitable to invest in better work environments and work organisation.
- There may be a case for encouraging employers' interest in ergonomic assessments and new technologies to increase productivity, if there are checks in the system to support the continued employment of workers whose disabilities need to be accommodated by other means.
- There is a burgeoning market in information, advice, technical services and equipment which employers

and workers with disabilities find difficult to access, comprehend and apply when a need emerges. Employers, occupational health professionals and disabled employees need timely help in the workplace to spot difficulties and identify and try out possible individual solutions.

- How staff working in public and private agencies might keep abreast of technological developments and improve the quality of service to employers and workers with disabilities is a question commonly raised. Agency resources are often limited and links to fragmented training sources difficult to establish. How the right kind of training can be provided and funded is a question for research and development institutes and not just manufacturers and suppliers.
- Whether, and how far, employers should bear the costs of barrier removal and individual adaptations relates to the issue of what it is reasonable to expect them to pay for. There appears to be a special case for supporting small employers who are deterred by the costs of arranging adaptations; and different cost-sharing arrangements could be explored. The costs of bureaucratic procedures, and delays in assessment and supply, are not compatible with running an efficient business, however.

8. ENTERPRISE STRATEGIES

The fifth main theme of the study concerns enterprise policies, programmes and practices supportive of work retention for persons with disabilities. The focus is on those activities within the workplace over which the enterprise assumes control and responsibility. In line with the premise underlying the study, our interest extends beyond those policies and practices where job retention is the specified aim. Company initiatives to provide confidential counselling or policies to reduce sickness absence, for example, can support retention as well as interventions to support return to the job. In developing an enterprise strategy for job retention and return to work we need to look beyond specific initiatives, however, and consider how these might be integrated into enterprise management systems.

8.1 The knowledge base

In comparison with public policies and programmes, policies and practices within the enterprise are not well documented or researched. The orientation of much public policy research towards assessing the impact of measures *on* employers has tended to deny the role of the enterprise as an independent player and creator of policy in the management of disability.

Enterprise practices are idiosyncratic and will vary according to industrial sector, size, union presence and so on. Information is often restricted to isolated practice examples. Approaches to job retention are difficult to characterise and their prevalence hard to gauge. Surveys in some countries have tended to monitor policy statements of intent rather than actual practice. Many companies have developed informal customs and practices to support the employment of workers who become ill or disabled, and their investigation requires unusual research efforts. Research in Germany, for example, identified a pattern of *ad hoc* activities to retain newly disabled workers which were not subject to any internal regulations but dependent on goodwill and co-operative internal relationships.

8.2 Growth of enterprise activity

Companies assuming responsibility for the continued employment of their disabled workers is by no means new. In their hey-day, iron and steel, coal and ship-building industries commonly ran in-house disability programmes, including sheltered workshops and redeployment of injured workers in jobs with rehabilitative value. In the German coal and steel industries, special status is given to long-term employees in heavy or environmentally demanding work who can then be redeployed in light work, and in Germany company-run sheltered workshops are still used. It is not unusual for socially responsible firms to respond to modern risks, such as those associated with use of new technologies, by providing in-house equipment and adaptation units.

In some countries, the scope of independent enterprise activity has greatly expanded, to the extent that

companies have taken on health-related, personal support and rehabilitative services once provided exclusively by external bodies in the community, as well as injury prevention, accommodation of disabilities and managed programmes for work resumption. This trend is most pronounced among larger firms in the USA, and to a lesser extent in Canada, who have adopted a variety of such programmes in the workplace, stimulated by the separate work injury schemes in these countries and encouraged by financial and legal incentives.

In contrast to growing voluntary action on the part of enterprises, legal responsibilities for quite similar activities have been *imposed* on employers by governments, notably in the Netherlands and Sweden where enterprise responsibilities for work adaptation, rehabilitation and work resumption are overseen by the authorities.

8.3 Motivations to promote work retention

Enterprise employment and retention practices must be reviewed in the context of workplace culture, legislation and economics. First and foremost, it is the legislative and constitutional framework which defines the extent to which costs - financial, economic and social - are borne by employers, workers and government for both occupational and non-occupational injury and illness. It is the statutory framework which largely defines roles, responsibilities and actions on the part of employers, workers and insurers in relation to integration and re-integration of injured, ill and disabled workers.

The impetus and opportunity for the enterprise to develop and implement strategies for job retention varies from one country to another. But it is a common theme among the study countries that the primary motivations for work retention among enterprises have been economic and legal. The motivations to reduce the costs of lost time, to increase productivity, and to reduce injury compensation costs, interact with legislative requirements. Although some evidence exists to support the 'goodwill' theory of motivation among enterprises for retention activities - which may also bring indirect financial advantages - financial and legislated motivations dominate the study.

8.3.1 Business incentives

The most obvious single influence affecting the development of voluntary enterprise activity in North America has been the need to control costs of workers' compensation, including medical costs in the USA. In addition to reducing the direct costs of claims, insurance premiums which are set according to claims records (experience rated) are an incentive to prevention and early work resumption. If compensation claims are financed and handled by employers, claims handling can be integrated with support for job retention, although this is inhibited by the growing use of external claims administrators. The effects of insurance-related incentives, which now also exist for non-work injury claims in North America, on the prevention and management of disability will be interesting to compare with developments emerging in other systems.

In New Zealand, a pilot 'accredited employers programme' allows approved employers, with all necessary health and safety and rehabilitation systems in place, to carry out duties normally undertaken by the accident insurance corporation: managing and paying claims for the first year; and paying medical and rehabilitation expenses. The employer is paid an amount estimated to be the costs associated with the first 12 months of the claim.

Controlling the costs of disability benefits is the central aim of Dutch labour and income strategy. The costs now fall to employers for up to five years and a system of differentiated insurance premiums has been introduced. The preventive and controlling roles of the recently established obligatory occupational health services are set to expand further into supporting work resumption.

The need to control the productivity costs of time lost through sickness absence has been an incentive to introduce workplace programmes. It is noted in the USA report that the costs of time lost through chronic illnesses, rather than traumatic illnesses, have led to a growth in enterprise prevention programmes, health promotion, and industrial ergonomics, with a particular focus on early intervention.

8.3.2 Internal agreements

In Canada, trade unions have been significant in requesting rehabilitation and return to work clauses in collective agreements. There is evidence among larger German enterprises, with strong employee representation, of pressure to achieve internal agreements on the employment of severely disabled persons and of persons with health limitations in general. Such agreements reflect the implementation guidelines of the Severely Disabled Persons Act.

In France, job retention among enterprises is included in state contract policy. Based on the 1987 law, covered employers can sign an enterprise agreement that exonerates them from paying levies if it is approved by the authorities. Enterprises are required to take action in two out of four plans relating to disabled workers: recruitment, rehabilitation and training, adaptation to technological changes, and retention if dismissal would otherwise occur. By the end of 1995, almost ten per cent of private sector firms subject to the employment obligation had job retention plans.

8.3.3 Legislative requirements

The most significant legal requirements which encourage and support job retention activity within larger North American enterprises appear to be the workers' compensation laws, with requirements to re-employ and accommodate disabled workers found in some workers' compensation laws in Canada. The accommodation requirements in the ADA and recent rulings under the Canadian human rights code, which obligate labour and management to act jointly on the duty to accommodate, appear to be influential in promoting support for workers with disabilities who are not covered by workers' compensation.

8.3.4 Reputation of the enterprise

Over and above legislative influences, the reputation of the company as a good employer of disabled people can be important for business success, especially among firms which are exposed to the public or compete for well-qualified workers who are concerned about the treatment they will receive. Public image is an important consideration for large firms in Germany who seek to demonstrate their social responsibility to severely disabled workers and to others with health limitations by making internal accommodations (and so avoid the embarrassment of paying large levies for not meeting the employment obligation). Public image is often the extension of the 'corporate culture' to the outside world.

8.3.5 Corporate culture

A common theme is that 'corporate culture' is a significant factor in the emergence of policies and activities supportive of job retention. Programmes appear to succeed in organisations which are receptive to change and take an inclusive approach to decision making, with the support of top management, as well as of workers and supervisors. In small firms the personal commitment of the owner or manager, sometimes arising out of personal experience of disability, can be critical.

8.3.6 Interactions

The interactions are complex and it is misleading to isolate single motivating elements. The USA report notes that while much of the initial development of disability management grew out of workers' compensation and occupational health and safety laws, the benefits of reduced costs, increased competitiveness and increased

employee morale - 'good corporate citizenship' - encouraged its extension. The requirements of the ADA and FMLA had further effects and fostered the realisation that disability management practices make good economic sense.

8.4 Strategic approaches

8.4.1 Disability management at the workplace

The term 'disability management at the workplace' has increasing currency in the English-speaking countries. As articulated in North America, this process ideally involves the pro-active enterprise in assuming control and responsibility for prevention, early intervention and re-integration of injured and disabled workers, and in developing internal systems for planning and co-ordinating workplace-based services.

In the USA, where the concept is most advanced, 'disability management' is still developing. In its most complete form in large enterprises, a disability management system will address disabilities incurred either on or off the job, include headquarters staff as well as field supervisors and employees, and cover mental as well as physical disabilities. The most comprehensive models include employee safety programmes, ergonomic assistance, work-site health clinics, 'wellness' programmes, employee assistance (confidential counselling) programmes, disability claims co-ordination, case-management and modified or gradual work resumption programmes. Also included are ancillary activities such as maintaining an appropriate data system, and the education of supervisors and other personnel in disability prevention and management. Success is thought to depend on responsibility for disability management resting with the entire organisation, with support and commitment from all levels of labour and management, rather than being confined to the human resources department or any other unit.

The ideal is an integrated system rather than unco-ordinated activities. A common approach is to form an interdisciplinary disability management team. Internal co-ordination between departments (medical, occupational safety and health, human resources, managerial divisions and union representation) can be facilitated by a qualified 'disability manager', by a trained member of the human resource department, a member of the occupational health staff, or possibly by a safety representative or workers' representative. Where such a person is best located will depend in part on opportunities for input into enterprise policy development at the strategic level.

8.4.2 Reducing absence related to ill health

In Europe, enterprise policy is typically framed in terms of preventing and reducing workplace absenteeism. The greatest emphasis appears to be placed on monitoring and controlling absence; prevention activities at the workplace, such as improving working environments and promoting health and well-being, and personal support to resume work are less common. Enterprises rarely combine these elements into an overarching strategy or integrate them into organizational policy and practice.

European research suggests that a strategic approach, integrated into management systems, is possible and is to be recommended to employers. The recommended good practice elements bear a remarkable resemblance to disability management ideals. Common elements include: a systematic approach; a co-ordinating project team; active support from senior and line management; active involvement of human resource management and the occupational health service; involvement of works councils, health and safety committees and trade unions; active worker participation; good information and communication; and integration. [\(40\)](#)

A strategy based on reducing costs of absence may appeal in those systems where the costs of work-injury compensation or sickness and disability benefits are not all borne directly by the enterprise. As the European study points out, the package of measures must be balanced to include preventive measures focused on both the person and the work and interventions to reduce the barriers to work resumption. Several country reports

in our study drew attention to the probable ill effects on health of devices to reward workers for good attendance records or, conversely, to penalise them or their co-workers for absence.

8.5 Supporting enterprise strategies

Enterprise job retention strategies (whether framed as disability management or prevention of absence) operate on a modest scale in most study countries apart from the USA. Enterprises generally lack information about their potential value and the knowledge base to implement programmes in the workplace. In the USA and Canada, external bodies such as the Washington Business Group on Health and the Canadian National Institute of Disability Management and Research, as well as other employer organisations, human resource organisations and research institutes funded by workers' compensation boards, along with provider organisations, have been active facilitators.

Several major French groups and enterprises work with AGEFIPH (the body which administers the quota-levy fund) to implement active job retention programmes; for example, a major group of industrial establishments signed a 'framework convention' with the aim of retaining newly disabled workers in production jobs. This model of collaboration between the enterprise and an external public body may contain transferable lessons.

In general, there seems to be a role for governments, insurance funds and other national funding bodies to institute national action programmes to encourage and support enterprise endeavours.

8.5.1 Supporting small enterprises

Generally, it is the largest employers that have, initially, provided the most comprehensive responses to the needs of persons with disabilities. This has been reflected historically in the growth of employee assistance programmes and disability management programmes. Once economic outcomes are demonstrated among the larger enterprises, smaller employers are expected to replicate the most salient features of effective programmes. While it is universally acknowledged that many employment opportunities exist among smaller enterprises, they are less well equipped to respond to the job retention needs of workers with disabilities. Programmes developed in large firms need to be adapted to meet the needs of small and medium-sized enterprises. They need to be supported by information on good practice models and helped with implementation.

8.5.2 Developing standards

Disability management is idiosyncratic and practices vary from company to company. In the USA there are no formal best practice standards at the official government level. Rather, good practice standards are continually evolving in the private sector through groups of employers, insurers and labour unions; most appear to be of relevance to human resource managers in large firms. External recommendations and standards have not been elaborated in those systems where employers have legal responsibilities to improve working conditions and to plan and implement work resumption programmes. More research is required to explore enterprise practices as a first step towards a code of practice.

8.6 Obstacles to effective enterprise strategies

8.6.1 Obstacles within the system

In some countries it is observed that loosening of employment security law, combined with labour surpluses, means that employers attach no priority to retention of workers who become disabled. Employers can avoid responsibilities by placing disabled workers on short-term contracts.

In some systems many employers assume that only social programs have responsibility to care for persons

with disabilities once they become unable to perform work activities at their enterprise. As a consequence, the responsibility to accommodate or retain injured, ill or disabled workers is not built into the enterprise's operations. This is most obvious where there is no separate work injury benefit system, where the costs of medical treatment are automatically met by the state, and where there is relatively easy progression to social insurance or employee benefits.

Experience rating among many workers' compensation schemes may lead to claims avoidance practices by employers which, in turn, lead to adversarial relationships between worker and employer, delays of rehabilitation intervention, and other barriers to work resumption and retention. Some compensation schemes encourage injured workers to extend their absence to achieve the best rates of compensation and similarly create obstacles to early interventions. On the other hand, there are suggestions that financial incentives to employers can lead to the worker being returned too soon and without long-term support.

A recurrent issue in this study, although unique to the USA, Canada and New Zealand, is differential treatment of individuals insured under workers' or accident compensation schemes and those privately insured, or not insured at all. This is an obstacle to a comprehensive approach to management of workplace disability, as it necessitates separate claims management procedures and as enterprises have considerably more discretion in how they respond to non-work-related injuries; advances in integrating the two are reported in the USA, however. Non-discrimination legislation and other accommodation requirements are important countervailing forces in the USA and Canada, as is pressure by labour unions for more equitable treatment.

8.6.2 Definition and assessment of disability

A lack of uniformity in the categorisation of disability means that enterprises may have to respond in different ways, depending on whether the individual has work-related or non-occupational injuries, illnesses and disabilities, or falls within the coverage of non-discrimination or other employment protection legislation. Definitions and assessments of disability vary and sometimes conflict. Different insurance schemes reflect differing operational definitions of disability, the amount of wage replacement benefit, the duration of those benefits, and the circumstances under which benefits and associated services will be terminated.

Most countries have laws and statutes that fail to provide equal protection in employment for persons with non-visible disabilities, such as drug and alcohol addiction, mental illness, or chronic pain syndromes, and enterprise response is contradictory and often adversarial

Clearly, a universal problem among most nations surveyed is the role of medical doctors as gatekeepers of return-to-work decisions. Physicians are often unable to determine an individual's functional abilities objectively and validly, and have little experience in the workplace. Most employers, as well as public and private insurers, demand medical certification for entitlement, yet the most successful initiatives are those able to focus more on physical demands of the workplace and do not assume that workplace disability is a function of a person's medical condition or impairment. Most rehabilitation interventions are focused on the individual, and exclude consideration of changes to the work environment and work retention technology. Models of work retention which define disability in terms of the person-environment-technology interaction need to be tested.

8.6.3 Obstacles within the enterprise

Enterprises do not necessarily have in place the relevant expertise for disability management activities, although specialist disability management courses are now emerging outside the USA, notably in Canada and the UK. Mandatory occupational health services are unusual and occupational health professionals can have limited knowledge of workplace solutions. Limited training for safety representatives, trade unionists and disabled persons' representatives is reported in some countries. In France, however, AGEFIPH funds major

awareness-raising and training programmes in aspects of job retention for works council and union representatives.

Work resumption can be seen as an end in itself with no mechanisms in place to support workers with long-term disabilities. Early intervention strategies, which often bring workers back to work before they have fully recovered, can require medical surveillance to prevent further risk of harm.

Co-worker resistance to the returning worker needs to be addressed by pro-active disability awareness training that challenges underlying attitudes. Some countries report interventions at too late a stage, once discriminatory incidents have occurred. In some systems, opportunities to accommodate the returning worker in a different job are constrained by labour agreements. Job coaches may be viewed as giving the worker with disabilities an unfair advantage, and limited duty assignments may be resented.

The supervisor is commonly identified as a critical player in the implementation of a job retention strategy. Yet reported practices, such as adding hours lost through absenteeism to the workload of remaining workers, reduce the supervisor's interest in retaining a potentially less productive worker. The supervisor needs to be motivated to develop and implement workplace accommodations and support systems, and to promote them amongst the workers for whom he or she is accountable. Mechanisms could be developed to hold supervisors accountable (through performance evaluations or departmental charge-back systems) for the consequences of not supporting job retention activities.

The attribution of costs of reduced productivity to the disabled worker's department can inhibit return to the original unit. An example is given of a German company which established a special cost centre to which newly disabled workers were assigned; the costs were assigned to company overheads rather than the individual's unit. In the USA and Canada the contrary argument is put that the general lack of departmental accountability for the cost of *not* retaining an injured worker means that managers have little incentive to accommodate and retain the worker.

8.8 Assessing outcomes

There is little research into the outcomes of enterprise programmes. The question of the benefits to persons with disabilities has been inadequately addressed. The major focus has been on quantitative variables - notably reduction of lost time, reduction of workers' compensation insurance premiums and increased productivity - rather than qualitative variables that reflect on quality of life improvements for persons with disabilities. The perspectives of disabled workers participating in programmes are rarely integrated into research. The limited research which is available appears to support the economic and social benefits derived from participation in disability management programmes.

Although it has been widely documented that early intervention or early involvement with a disabled person can be an important factor in reduced recovery time and more timely work resumption, there is evidence that to be effective in maintaining long-term employability, early intervention needs to be followed by continued support on the job. Successes occur among those cases where the worker returns with continued enterprise and insurer accommodations and support. More research attention needs to be paid to longer-term outcomes and their workplace-related determinants.

8.9 Key issues in enterprise strategies

Enterprises have developed informal practices as well as formalised policies in response to the occurrence of disability. Before embarking on a strategy to support enterprises in the development of good practices, we need to look from inside the enterprise at the barriers and facilitating factors and comprehend enterprise needs and priorities. This requires the active participation of the range of enterprise actors and an investigatory

approach which delivers benefits to the participants as well as to the wider community.

Across the study countries enterprises are developing new ways of managing the occurrence of disability, both for business reasons and in response to requirements imposed upon them by national policies. The result is not only an increase in services provided within the company which previously fell within the remit of external agencies but also a growth of new forms of provision tailored to the prevention of disability and the management of its occurrence. There is a need for mechanisms to promote the transference of proven good practices across systems, as well as within the country.

There is a growing interest in disability management approaches to the co-ordination of enterprise activity which bring together the range of actors with disparate roles in prevention, early intervention and reintegration of workers with disabilities. The different models of co-ordination need to be elaborated and their effectiveness in different contexts explored. Models need to be tailored to the needs of small enterprises.

Enterprises need information about the potential value to them of approaches to the management of disability. External bodies which can offer funding and expertise and can work in partnership with enterprises, such as the French fund AGEFIPH, appear to have potential.

Disability management is idiosyncratic and although good practice standards are evolving, notably in the USA, external recommendations and standards have not been created at the official government level. Employers, insurers and labour unions, as well as disabled workers' organizations, will have essential roles in the development of codes of practice.

The incentives to enterprises to develop strategies for job retention depend, in part, on the need to control the costs of absence and the consequences for productivity. A strategy based on reducing the costs of absence may appeal in those systems where the costs of work injury compensation or sickness and disability benefits are not borne directly by the enterprise.

In some systems, enterprise interventions to support retention are targeted at those workers who are perceived as being of more value to the company. Labour unions within the enterprise, injured workers' organizations and external requirements to prevent discriminatory treatment are important countervailing forces.

The outcomes for the disabled worker of enterprise programmes have been inadequately addressed, and research has focused on quantitative outcomes. There is some evidence that if early intervention is to be effective, it needs to be followed by continued support on the job. More attention needs to be paid to longer-term outcomes and to their workplace-related determinants.

9. DEVELOPING STRATEGIES

So far, the key issues in relation to the five themes of the study have been identified. In this concluding section we highlight some of the most significant cross-cutting issues relevant to the study countries.

Part-time working

Part-time working is growing overall and in some countries is actively promoted in national policy. There are signs of benefits and compensation arrangements increasingly responsive to the particular needs of persons with disabilities for part-time opportunities. Outside the enterprise, employment support services and provision for adaptations of the work and workplace need to be oriented for supporting part-time work in general, and to opportunities for combining work with benefit in particular.

The small enterprise

Small firms have a marginal position in most of the policies and programmes which support job retention and

return to work. Although some noteworthy successes have been reported in reaching out to small enterprises (such as the French fund AGEFIPH's programme) they have less capacity to bear the costs of a worker who becomes disabled, few structured incentives to do so, and limited resources to find out about and use external sources. Strategies for job retention may need to be tailored specially to the needs of small enterprises, for example by offering more generous funding towards making accommodations for workers with disabilities.

Equitable support for job retention

As job retention increasingly becomes an enterprise concern, and direct provision by statutory agencies takes a less prominent role, there is more discretion for the employer. Particularly where enterprise retention activity is driven by the need to contain costs to the business, employees who are more valued can be selected for support and rehabilitation to the disadvantage, it seems, of less qualified and easier to replace workers. Inequities might be reduced in part by adjusting the employer incentive structures. Advocacy in the workplace and legislation to prevent discrimination in employment appear to be important mechanisms to counter any tendency towards selectivity.

Disincentives to recruitment of disabled workers

Risk selection is a commonly reported effect of policies which protect the employment of disabled workers and of policies which encourage or require enterprises to retain workers who become disabled. Employers are more likely to screen job applicants to avoid hiring someone who might become sick and so impose costs on the enterprise. This tendency could be inhibited by disability discrimination legislation, although discriminatory recruitment practices cannot be entirely overcome, or by mechanisms to support the costs to the employer of employees with abnormally high levels of sickness absence.

Long-term support for workers with disabilities

Policies for early intervention and work resumption may not always be in the best interests of disabled workers and need to be supplemented by medical surveillance and longer-term support on the job. Equally, a strategy for job retention should not exclude the maintenance in employment of individuals who were disabled before entering employment.

Supporting enterprise-based activity

External services will need to be oriented towards bringing support to the enterprise at the time that it is needed and enabling the enterprise to deploy its own resources to support disabled workers. Access to advice and services for adaptation of work and workplace needs to be simplified and resources need to be better co-ordinated to facilitate direct use by employers. Ergonomic assistance needs to be promoted and more attention paid to the person-technology- work interface.

Identifying excluded groups

A coherent strategy for job retention and return to work needs to consider who is intended to benefit. The focus on early intervention and work resumption tends to leave out of the picture workers who are more severely disabled and who encounter barriers in re-entering the labour market, for example after a disabling accident or long-term illness. A focus on short-term absence also ignores the situation of workers whose continued employment is at risk because of unreported illnesses which do not manifest themselves in sickness absence.

Co-ordinating the players

The need for improved co-ordination between multiple players emerges as a key issue across the thematic areas of the study. Achieving co-ordinated programmes is increasingly problematic as new players, with quite

different objectives and philosophies, enter the arena.

Keeping the job open

As the emphasis shifts to early intervention and rehabilitation, ensuring that the worker with disabilities has a job to return to is critical. The effectiveness of the different approaches to linking employment protection to receipt of sickness benefit or injury compensation could be explored, as could the roles of benefits and compensation bodies in facilitating work resumption. The costs to enterprises of keeping jobs open for returning workers need to be identified and mechanisms found to ensure that it is worthwhile for the employer to do so.

Accommodating disability

Requirements to accommodate - to adapt the work and workplace so that the individual with disabilities is not disadvantaged - are a key element in a coherent job retention strategy. Compensation systems which prioritise job retention appear to be strengthened by the inclusion of accommodation requirements. Including accommodation requirements in compensation systems as well as in disability-discriminate legislation reduces inequities in treatment between those who are covered by compensation programmes and those who are not. In the absence of enforced requirements, employers need to be convinced that it is economically worthwhile to invest in adaptations. Where responsibility should lie for the funding of individual adaptations is an issue for debate.

Learning from enterprise strategies

Fundamental to the Project is the intervention between enterprise policies and practices and national policy and regulation. Across the study countries, enterprises are developing new ways of managing the occurrence and consequences of disability. Partnerships between enterprise actors and policy makers need to be developed to facilitate the exchange of good practice between public and private sectors. The International Research Project on Job Retention and Return to Work Strategies for Disabled Workers seeks to stimulate and develop such an exchange through the active participation of enterprise actors, disabled people's organisations and policy makers in phase two of the Project.

APPENDIX

Table 1: Public expenditures and participant inflows in labour market programmes

Programme categories	Canada		France		Germany		N'lands		NZ		
	96-97		1995		1996		1996		95-96		
	Exp	PI	Exp	PI	Exp	PI	Exp	PI	Exp	PI	Exp
1. Public employment services and administration	0.20		0.15		0.24		0.36		0.13		0.25
2. Labour market training	0.21	1.9	0.38	3.5	0.45	1.6	0.12	0.4	0.33	..	0.51
a) Training for unemployed adults and those at risk	0.21	1.9	0.34	2.8	0.45	1.6	0.12	0.4	0.33	..	0.50
b) Training for employed adults	-	-	0.04	0.7	-	-	-	-	-	-	0.02
3. Youth Measures	0.03	0.5	0.25	2.8	0.07	0.7	0.09	0.8	0.09	..	0.11

a) Measures for unemployed and disadvantaged youth	0.01	0.2	0.09	1.0	0.06	0.4	0.07	0.3	0.02	1.3	0.11
b) Support for apprenticeship and related forms of general youth training	0.02	0.3	0.17	1.9	0.01	0.3	0.03	0.5	0.08	..	-
4. Subsidized employment	0.08	0.3	0.42	4.4	0.40	1.4	0.26	..	0.13	..	0.67
a) Subsidies to regular employment in the private sector	0.02	-	0.16	2.3	0.07	0.2	0.13	..	0.09	1.3	0.17
b) Support of unemployed persons starting enterprises	0.04	0.1	0.04	0.3	0.03	0.2	-	-	0.01	..	0.07
c) Direct job creation (public or non-profit)	0.03	0.2	0.22	1.8	0.30	1.0	0.13	..	0.03	0.9	0.43
5. Measures for the disabled	0.03	..	0.09	0.4	0.27	0.3	0.54	0.1	0.03	1.7	0.71
a) Vocational rehabilitation	0.03		0.03	0.4	0.14	0.3	-	-	0.01	0.7	0.08
b) Work for the disabled	-		0.06	..	0.14	-	0.54	0.1	0.02	1.1	0.62
6. Unemployment compensation	1.31		1.43		2.37		3.41		1.16		2.27
7. Early retirement for labour market reasons	0.01		0.36		-		-		-		-
Total	1.87		3.09		3.80		4.78		1.87		4.52
Passive measures (6&7)	1.31		1.79		2.37		3.41		1.16		2.27
Active measures (1-5)	0.56	2.7	1.30	11.2	1.43	3.9	1.37		0.71		2.25

Notes: Exp - Public expenditure as a per cent of GDP. PI - Participant inflows as a per cent of the labour force.

^a Excluding Northern Ireland

.. Data not available

- nil or less than half of the last digit used.

Source: OECD (1997) *Employment Outlook 1997*, Table K.

Table 2: Labour force structure and trends

Total	<i>Labour force</i> ¹		<i>Labour force participation rate (%)</i> ¹						<i>Civilian sectoral distribution (%)</i> ²			
	(1000s)	Annual growth (%)	Total		Male		Female		Agri-culture	Forestry	Fishing	
			1980-1996		1980		1996					
			1980	1996	1980	1996	1980	1996				
Canada	15796		1.6	49.6	53.8	60.1	59.0	39.1	47.6	4.1		
France	26046		0.6	44.2	45.4	54.2	51.0	34.7	38.7	4.9		
Germany ^a	40935		0.6	47.8	49.8	60.2	59.4	36.6	41.1	3.3		
Netherlands	7250		1.6	39.9	46.5	55.1	56.5	24.9	36.8	4.0		
NZ	1780		1.9	42.5	50.1	56.1	55.8	29.1	43.2	10.4		
Sweden	4769		2.4	50.6	54.1	57.4	57.0	44.0	51.3	3.4		

UK	28967	1.3	47.8	50.1	60.0	57.6	36.3	42.4	2.1
USA	136884	1.4	48.5	51.4	58.2	56.4	39.1	45.4	2.9
Australia	9144	2.0	45.9	51.0	58.1	58.0	33.7	43.3	5.1

Notes: The economically active population is defined as all persons of either sex who furnished the supply of labour for the production of goods or services. National practice varies in the treatment of such groups as the armed forces, members of religious groups, persons seeking their first job, seasonal and part-time economic activities. The labour force participation rate is defined as the percentage of economically active adults in each gender group (ages 15-64).

^a In this appendix, data from 1992 onwards refer to the whole of Germany unless otherwise noted.

Sources: ¹ ILO (1997) *World Labour Report 1997-98*, ; ² OECD (1996) *Labour Force Statistics 1974-1994*.

Table 3: Population and labour force participation

	<i>Population 1995</i> ¹			<i>Labour force participation rates</i> 1996 ^{2 a}						<i>Elderly dependent</i> ³	
	total (1000's)	Age structure of population			men			women			
		% of total population									
		under 15	15-64	65 and over	15-24	25-54	55-64	16-24	25-54		55-64
Canada	29,606	20.2	67.7	12.0	63.5	91.0	59.3	59.5	76.4	36.9	
France	58,141	19.5	65.4	15.1	32.4	95.2	42.3	25.9	77.8	31.3	
Germany	81,662	15.9 ^c	68.1 ^c	16.0 ^c	58.5 ^d	92.5 ^d	52.7 ^d	52.7 ^d	72.1 ^d	28.1 ^d	
Netherlands	15,457	18.4 ^c	67.4 ^c	13.4 ^c	61.3	92.7	42.2	60.9	67.5	20.5	
New Zealand	3,580	23.3 ^c	65.1 ^c	11.7 ^c	70.9	92.0	69.0	64.0	73.2	42.8	
Sweden	8,827	18.8 ^c	63.7 ^c	17.5 ^c	48.9	90.0	72.2	46.7	85.5	65.0	
United Kingdom ^e	58,613	19.5 ^c	64.8 ^c	15.7 ^c	75.3	91.9	62.9	65.8	74.5	40.2	
USA ^e	263,057	21.9	65.3	12.7	70.2	91.6	67.0	62.2	76.1	49.6	
Australia ^f	18,054	21.6 ^c	66.6 ^c	11.8 ^c	72.9	91.5	60.3	67.6	69.2	28.6	

Notes: ^a The labour force participation rate is defined as the percentage of economically active adults in each age group.

^b Population aged 65 and over as a per cent of the working age population.

^c 1994 data.

^d 1995 data.

^e Age group 15-24 refers to 16-24.

^f Age group 55 to 64 refers to 55 and over.

Sources: ¹ *Labour Force Statistics 1975-1995*, OECD, Paris 1997 ² OECD (1997) *Employment Outlook 1997*, Table C.

³ *Ageing in OECD Countries, Social Policy Studies No. 20 1996*; Table A.3.

Table 4: Unemployment 1996-97

<i>Standardised</i>	<i>Unemployment rates 1996</i> ²	<i>Incidence</i>
		<i>su</i>

	<i>unemployment rates</i>							men - as a per cent of male unemployment		women - as a per cent of unemployment	
	<i>Dec'97</i> ¹	men			women			6 months and over	12 months and over	6 months and over	12 r
		15-24	25-54	55-64	15-24	25-54	55-64				
Canada	8.6	17.5	8.7	7.8	14.6	8.5	7.6	28.5	15.3	26.7	
France	12.3	22.1	9.3	8.6	31.9	13.0	8.6	58.6	37.1	64.0	
Germany ^b	10.0	8.4	7.0	15.2	7.5	9.3	23.0	62.9	45.6	68.0	
Netherlands	4.7 ^c	11.3	4.3	3.5	11.6	7.5	5.1	81.2	53.5	81.5	
NZ	6.8 ^d	12.3	4.7	4.3	11.0	5.1	2.7	40.2	23.8	36.5	
Sweden	9.1	16.7	7.4	8.6	14.5	6.7	6.5	40.3	18.5	36.0	
UK	6.6	17.8	8.0	9.5	11.1	5.6	3.4	63.5	45.9	47.7	
USA	4.7	12.6	4.2	3.3	11.3	4.4	3.4	18.5	10.4	16.2	
<i>Australia</i> ^c	8.1	15.4	7.2	9.8	14.1	6.4	4.5	50.8	30.9	45.4	

Notes: ^a While data from Labour Force Surveys make international comparisons easier they are not perfect. Difference in questionnaire wording and design, survey timing and age group definition mean that care is required in interpretation.

^b Long-term rates for Germany are 1995 data.

^c For age group 55-64 refers to 55 and over.

Source: ¹OECD (1997) *Quarterly Labour Force Statistics, 1997 No 2*; ²OECD (1997) *Employment Outlook 1997, Tables C and I*.

Table 5: Part-time employment

	<i>Part-time employment as % of total employment</i>						<i>Female part-time employment % of total part-time employment</i>		<i>Average annual hours actually worked per employment</i>	
	women and men		women		men		1994	1996	1994	1996
	1994	1996	1994	1996	1994	1996				
Canada	18.8	18.9	28.6	28.9	10.7	10.7	68.8	69.1	1737	15
France	14.9	16.0	27.8	29.5	4.6	5.3	82.7	81.7	1635	
Germany ^a	15.8	16.3	33.1	33.8	3.2	3.6	88.1	87.4	1602	
Netherlands	36.4	36.5	66.0	66.1	16.1	16.1	73.8	73.8	..	
New Zealand	21.6	22.4	36.6	37.3	9.7	10.4	75.0	74.3	1851	
Sweden	24.9	23.6	41.0	39.0	9.7	9.3	80.1	79.5	1532	
United Kingdom	23.8	22.1	44.3	42.7	7.1	5.6	83.6	86.0	1728	
USA	18.9	18.3	27.7	26.9	11.5	10.9	67.3	67.9	1947	
<i>Australia</i>	24.4	25.0	42.6	42.6	10.9	11.7	63.2	62.6	1879	

Notes: National definitions of part-time work. See OECD Labour Market and Social Policy Occasional Papers No. 21 *The Definitions of Part-time Work for the Purpose of International Comparisons* (forthcoming).

.. not in series

^a 1996 data are for 1995.

Source: OECD (1997) *Employment Outlook 1997, Tables F and G*.

Table 6: Employer tenure and job security

*Average employer tenure*¹

*Perce*_t

				(years)			percentage not worried about 1 of their company	
	total	men	women	age	age	age	1992	19
				15-24 years	25-44 years	45 or more	%	
Canada	7.9	8.8	6.9	1.6	6.5	13.8	74	
France	10.7	11.0	10.3	1.6	9.0	17.5	72	
Germany	9.7	10.6	8.5	2.4	7.7	16.2	73	
Netherlands	8.7	9.9	6.9	1.8	7.6	16.0	71	
Sweden ^b	10.5	10.7	10.4	2.2	8.2	15.9	66	
United Kingdom ^b	7.8	8.9	6.7	2.2	7.0	12.2	52	
USA	7.4	7.9	6.8	1.6	6.2	12.4	60	
Australia ^a	6.4	7.1	5.5	1.9	5.9	11.1	69	

Notes: ¹Tenure refers to the amount of time a worker has been continuously employed by the same employer in waged or salaried employment. Data drawn from national household surveys with differing question wording. New Zealand is not in this series.

^a 1996 ^b Data in 1992 columns refer to 1993.

Source: OECD (1997) *Employment Outlook 1997*, Tables 5.3 and 5.6.

Table 7: Industrial relations

	Trade union membership ^a		Trade Union Density		Change in trade union density ^c :-		Collective bargaining coverage rates ^d		Dominant levels over
	year	Union membership (1000's)	period	Union membership ^b as a percentage of:	period	Union membership as a percentage of:	year	proportion (%) of employees covered by agreements	
				wage and salary earners		wage and salary earners			
Canada	1993	4128	1993	37.4	85-93	-0.7	1996	37.0	Comp
France	1995	1758	1995	9.1	85-95	-37.2	1995	90.0	N
Germany	1995	9300	1995	28.9	91-95	-17.6	1996	90.0	N
Netherlands	1995	1540	1995	25.6	85-95	-11.0	1996	80.0	N
New Zealand	1995	362	1995	24.3	86-95	-55.1	1995	23.1	Comp
Sweden	1994	3180	1994	91.1	85-94	8.7	1995	85.0	N
UK	1995	7280	1995	32.9	85-95	-27.7	1994	25.6	Comp
USA	1995	16360	1995	14.2	85-95	-21.1	1995	11.2	Comp
Australia	1995	2440	1995	35.2	85-95	-29.6	1995	65.0	Comp

Source: ILO(1997) *World Labour Report 1997-98*, Tables 1.1, 1.2, 1.3 and 3.1.

Table 8: Real earnings growth for different groups of workers over the past five and ten years^a (percentage changes) - earnings of full-time workers

	Total		Men		Women		Youth (20-24)		Prime-age
	Past 5 years	Past 10 years	Past 5 years	Past 10 years	Past 5 years	Past 10 years	Past 5 years	Past 10 years	Past 5 years
Canada (1995)	0.7	3.8	-1.4	1.5	6.5	14.1	-2.0	-1.5	-0.4

France (1994)	2.6	7.2	2.1	6.7	4.4	10.0	1.1	1.1	1.1
Germany ¹ (1994)	9.9	21.0	7.6	19.7	15.7	26.1	9.6	19.5	3.0
Netherlands ² (1994)	3.3	9.3	2.7	8.4	7.7	17.1
NZ ³ (1994)	-0.6	-2.8	-1.3	-4.0	5.8	6.0
Sweden (1994)	-2.3	9.3	-2.0	10.8	-0.2	10.0	-9.6	4.2	-3.3
UK (1996)	8.5	23.2	7.8	21.9	11.7	33.4	1.6	13.4	6.0
USA (1995)	-0.9	-3.1	-4.8	-6.3	0.2	3.7	-8.2	-11.0	-2.8
Australia (1995)	5.5	1.8	5.8	2.7	6.6	3.9	2.3	-4.8	7.9

Notes: ^a All nominal wage series have been deflated by each country's consumer price index.

.. Data not available

¹ All data refer to West Germany only.

² Data for the past ten years refer to the past eight years.

³ Data for the past five years refer to the last six years.

Source: OECD (1997) *Employment Outlook 1997*, Table 1.5.

Table 9: Occupational injuries

Persons injured

(thousands)		year	year	
Canada	compensated injuries, includes occupational diseases	1995	411.214	1995
France	compensated injuries	1991	787.111	1991
Germany	reported injuries, relates to the territory of FRG before 3.10.1990, includes commuting accidents,	1993	2199.356	1993
Netherlands ^c	reported injuries	1992	64.657	..
NZ	compensated injuries, year ending March of year indicated, including commuting accidents and occupational diseases.	1994	37.817	1993
Sweden	reported injuries, includes persons with dental injuries.	1995	33.587	1995
UK ^c	reported injuries, year beginning April of year indicated, excludes road accidents	1995	150.299	1995
USA	reported injuries, establishments with 11 or more employees, including occupational diseases	1991	2963.40	1991
Australia	compensated injuries, includes occupational diseases	1994	135.729	1995

Notes: ¹ Data taken from the ILO Yearbook is collated according to the latest versions of the International Standard Industrial Classification of all Economic Activities; the International Standard Classification of Occupation and the International Standard Classification of Status of Employment.

.. not in series .

^a The original figure in the ILO report is per 1000 persons employed.

^b Per 1,000,000 hours worked.

^c Under-reporting makes comparison problematic.

Source: ILO (1997) *Yearbook of Labour Statistics 1997*, Tables 8A, 8B and 8C.

1. ¹ The Americans with Disabilities Act (ADA) was mainly introduced to encourage access to work, although job retention has been the major outcome. A consequence of the German quota is 'internal recruitment' for the quota calculation of employees who become disabled, and minimal new recruitment of disabled workers.

2. ² Although suitable housing, transport and personal care are essential to sustain employment for many disabled workers they were not specifically addressed in the study. No specific questions were asked about access to health services.

3. ³ Where the provincial jurisdictions govern within a federal country, such as Canada, the notion of a 'national' system is problematic.

4. ⁴ *Given that costs and benefits are distributed across workers with disabilities, private sector employers, private and quasi-governmental agencies and providers, private and public insurers and a number of government departments, the calculation of cost-effectiveness will necessarily be restricted to efficiency gains within parts of the system.*
5. ⁵ *Australia joined the project at a later stage and is not included here.*
6. ⁶ *Canada is bi-lingual. New Zealand is a bi-cultural state.*
7. ⁷ *The UK, Sweden, the Netherlands, Germany and France are members of the European Union.*
8. ⁸ *The Appendix presents economic development and employment-related data in statistical form.*
9. ⁹ *It is not possible to characterise the federal/provincial systems in Canada. The country report indicates a current reluctance amongst governments to introduce or sustain costly labour market policies and regulations if they jeopardise business investment decisions and job creation.*
10. ¹⁰ *An exception is a tax credit scheme which promotes employment of targeted low-income groups including referred individuals with disabilities undergoing vocational rehabilitation.*
11. ¹¹ *In France around 90,000 mostly in centres d'aide par le travail (CAT); in Germany approximately 140,000 in sheltered workshops; in the Netherlands around 80,000 in social employment organisations; in Sweden 30,000 in SAMHALL (Thornton, P. and Lunt, N., 1997, *Employment Policies for Disabled People in 18 Countries: A Review*, York: Social Policy Research Unit, University of York).*
12. ¹² *'People with learning disabilities' or 'people with learning difficulties' are the accepted terms in UK and European Commission English-language usage when referring to individuals with 'intellectual disabilities'; the equivalent terms 'mental retardation' or 'mental handicap' are not now acceptable.*
13. ¹³ *An unenforced quota in the Netherlands has a low profile among the several employment promotion measures in a rapidly changing system.*
14. ¹⁴ *The calculation of quota fulfilment is complex. Certain disabled workers (e.g. very severely disabled, blind people, young and older workers, new recruits) count for more than one. Contracting with sheltered workshops counts towards the quota. In France, enterprises can meet the quota in full by signing an agreement to formulate and implement an integration plan.*
15. ¹⁵ *The ADA 1990 marked the culmination of many disability rights laws (and other civil rights legislation) beginning with the 1973 Rehabilitation Act and developed by Congress and the various states.*
16. ¹⁶ *In Germany there is separate statutory occupational accident insurance but the Rehabilitation Harmonisation Act stipulates that the various insurance funds provide similar rehabilitation measures.*
17. ¹⁷ *The Ideas-2000 Project is exploring the question of whether generic policies are more effective than special programmes in increasing the employment of persons with disabilities.*
18. ¹⁸ *Yelin, E. and Trupin, L. (1997) 'Successful labour market transitions for persons with disabilities: factors affecting the probability of entering and maintaining employment', draft paper prepared for Conference on Employment Post the Americans with Disabilities Act', Washington DC, November 17-18.*
19. ¹⁹ *Of those injured workers (50 per cent of the total) receiving vocational rehabilitation through the programme and re-entering the workforce, three-quarters returned to their employer in 1994 and 1995.*
20. ²⁰ *Dismissal is possible if the period of absence is long, if health limitations are likely to be enduring, and if retention is against the interests of the company. If the works council refuses to approve the dismissal the employer must pursue the case in the*

labour courts. If the absent person is a registered severely disabled person, permission must be sought from the *Hauptfursorgestelle*, which is usually granted.

21. ²¹ Dismissal is allowed if the person cannot carry out work of any significance but the employer must use all available means to avoid dismissal.

22. ²² In Canada all employees have common law protection against wrongful dismissal (that is, the employer must show just cause for dismissal); while disability itself is not 'just cause', some of its consequences, such as excessive absenteeism or incompetence to perform the job could be grounds for dismissal. There is also a grievance procedure for employees covered by a collective agreement and statutory protection under employment standards for non-union employees.

23. ²³ While the UK had a quota scheme until the passage of the DDA (1995) it was almost unused and the main thrust of government policy was to promote voluntary adoption of good employment practices.

24. Given the breadth of the themes reviewed, no specific information was requested about replacement rates.

25. A position expressed in the Canada report.

26. Disability Working Allowance is to be abolished and replaced by a disability tax credit scheme.

27. ²⁷ The terms 'occupational rehabilitation', 'vocational rehabilitation' and 're-integration' are used if customary in national systems.

28. ²⁸ By Spring 1997, 80 per cent of Dutch employers had insured against the risk of paying wages in the first year of sickness absence.

29. ²⁹ In the USA, while workers who become seriously ill or injured are eligible for vocational rehabilitation services (participation is mandatory in 15 States), less severely disabled workers are often ineligible and tend to be covered by the private services which many private insurance providers and employers now provide or purchase.

30. ³⁰ The work-injury compensation programme in France provides for a right to vocational retraining.

31. ³¹ In Germany responsibilities are split among pension funds: the statutory accident insurance fund and the other pension funds are responsible for the medical and occupational rehabilitation of the majority of workers, while the federal employment office takes care of those, mainly younger, workers who have not yet qualified for pension fund coverage.

32. ³² For example, the German Severely Disabled Persons Act obliges employers to establish and provide for disabled employees adequate workplaces according to their skills and capabilities so that permanent employment can be assured. A 1985 study found almost no differences between disabled and non-disabled employees.

33. ³³ A 1997 survey found that only just over half of the functionally disabled employees in need of aids or workplace adaptations stated that their employer had taken measures to adapt the workplace.

34. ³⁴ The term 'adjustment' is used in the UK.

35. ³⁵ World Health Organisation.

36. ³⁶ Nijboer, I.D., Grünemann, R.W.M. and Andries, F. (1993) *Werkhervatting na arbeidsongeschiktheid (Work resumption after disability)*, Den Haag: VUGA Uitgeverij B.V.

37. ³⁷ Work environment and Occupational health and safety legislation may require employers to survey the workplace and act on any needs for adaptation identified within the workforce and avoid aggravating the condition of an ill or injured worker. The Swedish Employment Security Act requires employers to explore needs for adaptation before any attempts at dismissal. Some workers' compensation laws have built-in requirements to accommodate returning workers (as in Ontario). Employers may be

required to co-operate with agencies charged with rehabilitation of injured individuals, who may recommend adaptations as part of the rehabilitation package. Social insurance legislation which increases employers' responsibilities for employees who go absent on sick leave (in Sweden and the Netherlands) involves identifying necessary accommodations to enable rapid work resumption of employees. Reasonable accommodation/adjustment are duties under the Americans with Disabilities Act and the UK Disability Discrimination Act and accommodation is a requirement under Canadian human rights law.

38. ³⁸ *Under the tax credit schemes noted in 7.1, USA businesses may recoup some of the costs of general adaptations; publicity suggests that this may be used for individual employees but the bias is towards accommodating new employees.*

39. ³⁹ *A representative sample survey of 4,000 employers in the Netherlands found that the formal provision for reimbursement of adaptations to the workplace had been used only for 0.06 per cent of their employees.*

40. ⁴⁰ *Gründemann, R.W.M. and Vuuren, C.V. van (1997) Preventing Absenteeism at the Workplace: European research report, Dublin: European Foundation for the Improvement of Working and Living Conditions.*

International Research Project on Job Retention and Return to Work Strategies for Disabled Workers

Study Report Germany

**Martin Albrecht and Hans Braun
Centre for Labour and Social Policy
University of Trier**

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PREFACE

The *International Research Project on Job Retention and Return to Work Strategies for Disabled Workers* is an initiative of the International Labour Organisation (ILO) and the Global Applied Research and Information Network on Employment and Training (GLADNET). It reflects ILO and GLADNET joint aims of establishing a base for cross-national research and strengthening links between research analysis and policy

reform in the field of employment of disabled people.

The Project is a response to a combination of developments which highlight the need for more effective policies and practices in support of workers whose prospects of remaining in employment are jeopardised by work injury, illness or disability. Persons with disabilities are increasingly claiming rights to stay in work as well as to access employment. Pressures on state budgets, the rising costs of compensation claims and disability benefits, and changes in the structure of the labour market are strengthening policies in favour of job retention and return to work. Enterprises are developing their own strategies to minimise the costs of disability and to retain valued employees. Overall, the balance of responsibility is shifting from the state to the enterprise.

Policies and practices to prevent disabled workers from leaving work unnecessarily, and to facilitate rapid return to employment if job loss cannot be prevented, are recent developments in many countries. The cross-national exchange of information on initiatives and their effects is limited. The first aim of this Project has been to gather information about what has been attempted, by whom, for what purpose, in which contexts and to what effects. The second, more ambitious, aim, is to examine the interaction between the various policies and practices, identify dysfunctions, and work towards more coherent and cost-effective strategies for job retention and return to work which might be applied in different national systems. The ultimate objective is to identify strategies which can be put into effect in the workplace.

The Project was constructed in two phases. In Phase One, eight exploratory desk-based studies were commissioned from researchers in Canada, France, Germany, the Netherlands, New Zealand, Sweden, the United Kingdom and the USA. The eight countries invited to participate represent a spectrum of policy approaches and enterprise practices which affect the retention and return to work of workers with disabilities. Australia joined the project at a later stage.

The studies formed the basis for a *Key Issues* Paper, published simultaneously with the eight country reports. This Paper aims to inform, stimulate debate and pave the way for constructive discussion of questions for further exploration through cross-national collaboration in Phase Two.

National government departments, agencies, a private sector organisation, and the ILO co-sponsored Phase One of the Project. Overall responsibility for the Project rests with the ILO (Vocational Rehabilitation Branch, Employment and Training Department). The design, implementation and analysis of the research in Phase One were the responsibility of the Research Co-ordination Unit established at the Social Policy Research Unit, University of York (UK) in April 1997. Research specialists in the main areas of enquiry, based in study countries, contributed at all stages of the research process and, with ILO representatives, met with the research co-ordinators as a Research Advisory Group.

The country studies

The Project recruited and supported national informants from research institutes in all eight countries. During the second half of 1997 they completed a Schedule of Questions developed by the Research Co-ordination Unit to describe policies and practices, document evidence of their effects and provide grounded commentary on how policies and practices interact. The principal sources were policy documents, survey data, research evaluations and critical reviews. Informants were encouraged to contact sources in government departments and agencies, disabled people's organisations, labour unions and employers' groups. Where documented information was lacking, informants interviewed experts in the field.

The eight country reports are important resources for the development of job retention policy and practice both within and across countries. Each report brings together within a single volume: descriptions of policies, practices and programmes which impact on job retention and return to work; evaluative material; and informed commentary. They cover five themes: employment and labour market policies; benefit and

compensation programmes; employment support and rehabilitation services; adaptation of work and workplace; and measures developed and implemented by the enterprise. In line with the research aim of identifying coherent and co-ordinated strategies, the informants both comment on dysfunctions in national systems which obstruct job retention efforts and identify links between themes.

It should be noted that the situation described in the reports may have changed. This is especially true of the Netherlands where further reforms were expected in the first half of 1998 and the United Kingdom where the government changed in May 1997. Important developments in the USA were announced in March 1998.

The reports produced by the eight teams of national informants conformed to the format laid down by the Schedule of Questions. The original reports have been edited for publication by the Research Co-ordination Unit in co-operation with their authors. However, they remain essentially the "raw data" for analysis and should be read in that light. Each report follows the same sequence of headings which reflect the original open-ended questions. As the questionnaire prompted informants to respond flexibly to suggestions about possible areas to address under each question, the content varies from report to report. The reader should note that, at the end of a thematic section, commentaries may be included on the links between that theme and those which precede it.

Terms used in the study

The study concerns paid competitive employment in the open labour market.

The term 'disabled workers' is broadly defined. It covers individuals who become disabled, injured or ill whose prospects of continuing or advancing in employment are jeopardised when an acquired impairment, illness or deteriorating condition - physical or mental - presents difficulties in fulfilling the requirements of the job, reduces earning capacity or affects other rewards of working. They may or may not qualify under legal definitions of disabled persons. The term also covers workers with disabilities whose working capacity is not diminishing but whose continued employment is nevertheless threatened by prejudice or discrimination, or by the loss of supports which have maintained them in the job.

'Job retention' means staying with the same employer, with the same or different duties or conditions of employment, and includes return after a period of paid or unpaid absence. 'Return to work' refers to the resumption of employment by a worker who has crossed the threshold from a continued employment relationship into non-employed status; the main interest of the study is in policies and practices which return the disabled individual to work at an early stage.

Acknowledgements

The publication of eight country reports of a very high quality in a short space of time would not have been possible without the expert attention of Andrew Nocon of the Social Policy Research Unit who edited the reports with remarkable care and efficiency. His task was made easier by the eight teams of informants who most willingly answered queries and approved the edited versions to tight deadlines.

The Project wishes to acknowledge the contribution of Dan Kearns who assisted with research design, supported the national informants and masterminded international tele-communications.

Thanks are due to the ILO for meeting the cost of editing the reports and to the US Department of Labor for covering the printing costs.

Patricia Thornton

Research Co-ordination Unit

Social Policy Research Unit, University of York, UK

April 1998

Copies of the 'Methodology Paper' and the 'Informant Briefing and Schedule of Questions' may be obtained from the Research Co-ordination Unit, Social Policy Research Unit, University of York, YO1 5DD, UK.

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LIST OF ABBREVIATIONS

AGDHFS	Arbeitsgemeinschaft der Deutschen Hauptfürsorgestellen	Association of German Hauptfürsorgestellen
ANBA	Amtliche Nachrichten der Bundesanstalt für Arbeit	Official News from the Federal Employment Office
BfA	Bundesversicherungsanstalt für Angestellte	Federal Insurance Institute for Salaried Employees
BMA	Bundesministerium für Arbeit und Sozialordnung	Ministry for Labour and Social Affairs
FAZ	Frankfurter Allgemeine Zeitung	(newspaper)
GdB	Grad der Behinderung	degree of disability
GDR		German Democratic Republic

HVBG	Hauptverband der gewerblichen Berufsgenossenschaften	Main association of the industrial employers' liability insurance funds
iwd	Informationsdienst des Instituts der deutschen Wirtschaft	Information service of the Institute of the German Economy
JR		job retention
PSD	Psychosozialer Dienst	psychological and social service
RTW		return to work
SchwAV	Schwerbehinderten-Ausgleichsabgabeverordnung	Compensatory Levy Regulation
SchwBG	Schwerbehindertengesetz	Severely Disabled Persons Act
VATM		vocational assistance training measures
VDR	Verband Deutscher Rentenversicherungsträger	Association of the Pension Insurance Funds
ZENTRAS	Zentrum für Arbeit und Soziales	Centre For Labour and Social Policy

I. EMPLOYMENT POLICIES

The purpose of this Part of the report is to describe policies which maintain those workers in employment whose continued employment is at risk because of disability. It provides evidence of the effects of those

policies and identifies factors which influence their effectiveness. The emphasis in this part is on national (or state/provincial) policies formulated by government, and by bi-partite or tri-partite policy-making and advisory bodies.

Sections 1 to 5 are concerned with legislation, incentives and other 'persuasion' policies which oblige and encourage enterprises to retain disabled employees. A distinction is made between employees who become disabled and those who are already disabled. Information is provided about employment policies which encourage disabled employees to retain or return to their jobs. Sections 6 to 8 focus on the factors which affects the success of policies. They also examine the labour market factors which contribute to the retention or loss of jobs among disabled people.

Introduction

The main legislation concerning disabled people in Germany is the Severely Disabled Persons Act of 1974 (*Schwerbehindertengesetz SchwbG* - referred to in this report as 'the Act') . The Act covers people whose degree of disability is at least 50 per cent and who either live legally in the FRG, have their usual residence there or are employed there. In the case of people who cannot find or hold a job because of disability, however, the relevant degree of disability needs to be at least 30 to 50 per cent (Thornton and Lunt, 1997, p.114). The identification of the degree of disability by a formal procedure provided by the Act is only required in order to receive the special forms of assistance and rights according to this Act and for tax and other compensation for disadvantages (BMA, 1996, p.15). Determination of disability status is the responsibility of a special independent institution (*Versorgungsamt*) and has to result from a voluntary application by the disabled person (Semlinger, 1985, pp.2, 145). The degree of disability is determined exclusively by an essentially medical procedure which is based on the 'Guidelines for Medical Expert Examinations under the Social Compensation Act and the Severely Disabled Persons Act', issued by the Federal Ministry for Labour and Social Affairs in 1983. The degree of disability is expressed in increments of ten degrees between 20 and 100 (Thornton and Lunt, 1997, p.116).

I.1 POLICIES WHICH AIM SPECIFICALLY TO INFLUENCE ENTERPRISES TO RETAIN NEWLY DISABLED EMPLOYEES

I.1.1 Legal obligations and binding agreements intended to prevent and restrict the dismissal of employees who become disabled

The Severely Disabled Persons Act provides special protection against the dismissal of severely disabled employees (" 15-22 SchwbG). The employer's rights of contract termination are restricted insofar as a dismissal has to be approved by a public welfare authority (*Hauptfürsorgestellen*). If an employee is severely disabled the employer has to make an application to the *Hauptfürsorgestellen* in order to dismiss the employee. From that point on, special protection against dismissal will be effective for a period of four weeks. Within this period, the *Hauptfürsorgestellen* have to take a decision in accordance with the regulations of the dismissal procedure (see I.3.1). The same applies if an employee has not yet been officially given the status of a severely disabled person but has applied to the responsible authority (*Versorgungsamt*) for it. The special protection against dismissal is still effective pending a decision. This does not mean (as it will be pointed out in I.3.1) that the respective person cannot be dismissed at all, but that a *Hauptfürsorgestelle* has to be involved. It will treat the case as if the person were severely disabled, yet may still approve the dismissal under certain circumstances. The *Hauptfürsorgestelle* must consider the interests of all participants and, if possible, achieve an amicable agreement. Following an amendment in 1986, the special employment protection applies only after a six-month probationary period (Winkler, 1997, p.4; Semlinger, 1985, p.37 ff.).

People often become disabled while in employment. When a person is asked about health problems during the appointment process, she/he is obliged to inform the employer about any disability. However, if a disability occurs after having been hired, employees are not obliged to tell anybody. If employees who have

recently become disabled and/or have just applied for severe disability status receive notice of dismissal, they are granted a period of one month to inform their employer and to claim special protection against dismissal. (Note that the Works Councils Act only grants a general three week period for protesting against the notice.) Applying for severe disability status merely as a reaction to the notice is not permitted. Moreover, special protection against dismissal (while a decision is pending about severe disability status) only applies where the application for such status has been made before notice is given of dismissal. As soon as the employer learns about severe disability status or the application for it, she/he has to draw up a new notice of dismissal in which the approval by the Hauptfürsorgestelle has to be applied for. In the case that the *Versorgungsamt* as the deciding authority ascertains a degree of disability which does not correspond to severe disability (i.e. is less than 50 per cent), the employer's notice will be effective even if the Hauptfürsorgestelle does not approve it, on the basis that the latter's responsibility only covers severely disabled employees (source: personal communication/ Aktion 16).

Despite the special protection against dismissal, data suggest a slight erosion of job security. First, disabled people's share of inflows into unemployment exceeds their share of total work-force (in 1994: 3.7 per cent compared to 3.2 per cent) (ANBA, 1996a, p.117). Secondly, the number of applications for dismissals to the Hauptfürsorgestellen has risen, and most dismissals have been approved (see I.3.1). The limited effectiveness of the Severely Disabled Persons Act is due to its being largely only a law of 'good will' in promoting the employment of disabled people. In addition, its apparently decreasing effectiveness is associated with periods of economic downturn, so that most dismissals have been due to plant closures or a general reduction of jobs. Nevertheless, the fact that this particular procedure is laid down in the Act may prevent some dismissals. The extent to which this is the case cannot be estimated (Winkler, 1997, p.7).

In some cases, disability requires medical treatment (in the form of medical rehabilitation measures) which causes the employee to be absent from work for a lengthy period of time. This particularly applies to disabilities resulting from occupational accidents (see Part II, Section 1). In such cases, there is no legal obligation on employers to keep a job open for the absent employee. Protection against dismissal in an individual case of absenteeism as a result of disability-related medical rehabilitation is not separately laid down by law. In practice, this situation is similar to that of employees with longer periods of sickness. If a newly occurring disability is connected with long periods of absenteeism, if there are objective grounds to assume a negative health prognosis in the longer term, and, if retaining the respective employee clearly stands against the interests of the enterprise (for example in relation to the profitability of work) dismissal during the period of medical rehabilitation is possible. In addition, employers will usually also consider the employee's tenure when deciding on dismissal. Dismissal may be justifiable if, for example, an employee who works for a relatively small hi-tech enterprise and whose working capacity can only be restored to a lower level than required for her/his previous job cannot be offered an adequate alternative position by the enterprise. The viability of the enterprise may then indicate dismissal. In any case, it has to be economically justifiable for an employer to bear the loss of working hours caused by an employee who has to undertake rehabilitation for many months but who has not been given notice. An employee undergoing rehabilitation will probably not be able to ensure that a job is held open for two years, for example, if only a small enterprise is involved.

Dismissals may take place under the conditions mentioned above even if severe disability status has been granted or applied for. The difference in such cases is that the Hauptfürsorgestelle has to approve dismissal (which it does in most cases, see I.3.1). Even though the above-mentioned criteria are not specifically laid down in law in respect of disabled employees, they correspond to employers' views and to precedents set down by the labour courts (source: personal communication/Aktion 16).

Where the conditions pertaining to dismissal do not clearly favour the employer's position, for example if periods of absenteeism are not extensive or if health problems are less severe and fall outside the Hauptfürsorgestelle's sphere of responsibility, the input of a works council may determine whether a dismissal is actually carried out. The works council may refuse to approve the dismissal and the employer is then compelled to take the case to a labour court. In practice, large enterprises, in particular, tend to hold jobs

open for employees who have to undertake a longer period of medical treatment, in order that they can return to work afterwards. Their subsequent job may be less demanding than the previous one. This arrangement is intended to be a temporary solution until the employees are able to return to their previous position, giving them enough time to regain their full capacity while still being integrated in the company and maintaining their employment relationship (see Part V). However, only large companies with a wide range of employment opportunities usually have the opportunity to pursue such a strategy; even among them it is becoming more difficult due to an increasing emphasis on outsourcing (source: personal communication/Aktion 16).

I.1.2 Legal obligations and binding agreements intended to promote the retention of employees who become disabled

Employment quota

Although not specifically intended to promote the retention of employees who *become* disabled, the employment quota does have this effect in practice. Through retaining employees who become disabled, enterprises are able to fulfil their legally set employment quota. Many employers persuade older employees with health problems to apply for official registration as severely disabled who would otherwise not do so. More than 80 per cent of all disabled employees are internally recruited, the main reasons being the unclear productivity of external recruits, particularly disabled people and the lesser stigmatisation and prejudices in relation to people already known within an enterprise (Frick and Frick, 1994). Disaggregated industry-level data show a positive correlation between the average tenure of a firm's employees and the percentage of its disabled employees (Frick and Frick, 1994). Registration campaigns, however, are often aimed at employees who would be retained anyway and whose employment is not really endangered. The fulfilment of the quota is then a statistical device which does not serve to improve the employment position of newly disabled people (Semlinger, 1985, p.69, 75).

I.1.3 Voluntary policies and programmes which encourage enterprises to retain newly disabled employees

The federal government and the governments of the Länder are involved in a wide range of publications which are intended to document and provide information about the situation of disabled people. They subsidize research projects and issue brochures and guides containing information about integration possibilities; these are aimed at disabled people themselves, at potential employers and other institutions supporting the integration of disabled people. By describing and explaining types of disabilities and their consequences, legal provisions and their implications, and possibilities for the social and labour market integration of disabled people, governments contribute to the elimination of prejudices which result from a lack of knowledge. They may thereby encourage enterprises to voluntarily retain newly disabled employees.

In their role as employers, governments and the public administration make a great effort to fulfil the employment quota. They want their behaviour to be an example (benchmark) to the private enterprise sector. The federal government is obliged to report to parliament every year how many severely disabled persons have been employed by the federal administration. On October 31, 1996, the federal administration reached an employment quota of 6.9 per cent (see I.2.1 for discussion of the quota system). The public administration of the Länder, though, did not fulfil the employment obligation: on average, the quota was 4.7 per cent (Old Länder: 5.1 per cent, New Länder: 3.1 per cent). Only in one Land was the employment quota fulfilled (Saarland: 7.1 per cent) (SU 5/98, pp.26-29).

(An example of voluntary enterprise-level cost calculations to retain newly disabled employees is given in Part V.)

I.2 POLICIES TO OBLIGE AND ENCOURAGE ENTERPRISES TO RETAIN DISABLED WORKERS IN GENERAL

I.2.1 Obligations and binding agreements to promote the retention of disabled workers in general

The rights of disabled people

According to Section 10 of Book 1 of the Social Code, persons who are physically, mentally or psychologically disabled, or who are in danger of becoming disabled, have a 'social right', independent of the cause of disability, to the assistance which is required to secure them a place within the community, in particular in working life, in accordance with their inclinations and abilities (BMA, 1996, p.7).

In 1994, the disability rights movement pushed through an amendment to Article 3 of the constitution which - in its initial version - states that nobody may be discriminated against because of gender, race, religious or political beliefs, etc. The amendment added that 'nobody should be discriminated because of her/his disability' (Frehe, 1995, p.72; cf. also Bundesreg, 1994, p.115).

Obligation to create a non-disabling work environment

Section 14 of the Severely Disabled Persons Act 1974 (amended in 1986) contains a general obligation for employers to promote the employment of disabled persons. Particularly relevant for the retention of disabled workers is Subsection 3 of this Section. This obliges employers to establish and provide adequate workplaces for disabled employees, according to their skills and capabilities, so that permanent employment can be ensured (Winkler, 1997, p.4; Schwbg, Semlinger, 1985, pp.73, 153).

Few data are available about the extent to which adequate workplaces have been provided for disabled employees in order to ensure permanent employment. A self-assessment of both disabled and non-disabled employees in 1985 showed that the working conditions and job characteristics were almost the same for both groups. The majority of the disabled were satisfied with the workplace conditions. Similar conclusions can be drawn from the 'segregation-index' which quantifies the relative concentration of disabled persons in special jobs and/or industries (Sadowski/Frick, 1992, p.86 ff., 90; Burger/Schröder, 1994, p.8 f.; Oyen, 1989, p.518).

Quota and quota-levy scheme

The general guideline (in '14 of the Act) is complemented by a concrete obligation for public and private employers with a workforce of 16 or more to employ a minimum of six per cent disabled workers (section 5, subsection 1 of the Act). This is not intended specifically to achieve job retention; rather it aims to foster the employment of disabled people in general. An employer who does not fulfil this obligation has to pay a compensatory levy of 200 DM per month per compulsory workplace ('11 of the Act, with calculation method and possible deductions in ' 55, AGDHFS 1996, p.6, 3.2). The revenue is used for different supportive measures provided by the Hauptfürsorgestellen of the Länder (55 per cent) and for a compensation fund provided by the Federal Minister of Labour and Social Affairs (45 per cent, from which 50 per cent is allocated to the Federal Labour Office) to finance national measures for the integration of severely disabled persons (" 11, 12 of the Act). The rationale for the levy is twofold: on the one hand, it provides direct incentives for integrating or retaining disabled people in enterprises; on the other, it seeks to distribute the employment costs of disabled employees equally among enterprises. As noted above (I.1.2), the retention of disabled workers enables a company to maintain its employment quota and prevents the need to pay a higher compensatory levy. To some extent, therefore, the quota system fosters the retention of disabled employees (Winkler, 1997, p.4; Schwbg; BMA, 1995, p.354 f.).

However, the effectiveness of the quota system as a whole is limited. The figures even show a (more or less steady) decline in the compliance with the legal provisions. The quota of six per cent has never been realized; the highest level of employment of disabled people ever reached was 5.9 per cent in 1982. Since 1986, there has been a continuous decrease in the fulfilment of the quota (from 5.2 per cent in 1986 to 4.0 per cent in 1995). While the Western Bundesländer are slightly above this average (4.2 per cent in 1995), the Eastern

Länder only reach a quota of 2.9 per cent (Zentras, 1997, tab.29-34). The number of unfilled workplaces show a steady increase: in 1995, more than 21 million workplaces had to be taken into account to convert the six per cent quota into a concrete number of workplaces on which disabled people have to be employed according to the law (that is more than 1.27 million compulsory workplaces). Of those, 428,494 places have not been filled with disabled people (cf. Zentras 1997, tab. 34). The unemployment rate among disabled people is significantly higher than the general unemployment rate: in 1995, the difference between the rate of general unemployment and the unemployment rate among the severely disabled was 6.5 percentage points for West Germany (for the latter the rate was 15.8 per cent). In East Germany, the difference was only 1.1 percentage points (16.0 per cent unemployment rate for the severely disabled) (Henninges, 1997, appendix tab. 13; ANBA, 1996a, p.117). In 1996 the unemployment rate among severely disabled people rose to 15.9 per cent (West, (compared to 9.1 per cent general unemployment) and to 18.9 per cent (East, compared to 15.7 per cent general unemployment); it reached a peak of 17.9 per cent in October 1997 (Bundesregierung , 1997, p.69 f.). In the Old Länder, however, the increase in the unemployment rate among severely disabled people was not as pronounced as in the general unemployment rate. In January 1998, the number of severely disabled unemployed people crossed the 200,000 mark for the first time. The total number was 202,939, a rate (for severely disabled people) of 18.5 per cent (Sozialverband Reichsbund, 1998, p.5).

The legal instruments for the enforcement of the quota are considered to be inadequate. So the stimulating and compensating function of the compensatory levy is in doubt: 200 DM per workplace not filled by a disabled person is usually less than the employers' costs for the five days of additional vacation privilege of disabled employees and the adaptation of the workplace (cf. Oyen, 1989, p.519). The main drawback though is seen in the fact that the general obligation for employers to promote the employment of disabled persons and to allow for the participation of the disabled employees' representatives represent procedural regulations, which are not really legally enforceable, rather than substantive legal norms. Breaking these regulations merely represents an infringement of rules rather than illegality. Non-compatible behaviour of employers might be fined (up to 5000 DM); however, the consequences of their behaviour are still valid and have to be borne. In fact, fining has rarely occurred so far, not only because it is very difficult to prove wilful and negligent action on the part of the employer, but also because the success of the employment service in getting/retaining disabled people employed is dependent on the cooperation of the employers so that the employment service lacks interest in fining them (Arlitt, 1996, p.288 f., 292; Frehe, 1995, p.73; Semlinger, 1985, p.74, 150, 153).

There are two more aspects to be added with regard to the effectiveness of the employment quota for job retention of disabled employees:

The legislation acknowledges that employers can also contribute to the employment of disabled people awarding contracts to sheltered workshops. If these employers do not fulfil the quota, 50 per cent of the total amount of the invoices (less the material cost) will count towards the compensatory levy which these enterprises have to pay (' 55 of the Act). This regulation tends to reduce the supporting effects of the quota for job retention.

On the part of the employers, the employment quota is criticized for being of the wrong standard. The corporate sector has not been fulfilling the quota since it was introduced. However, employers emphasize that the number of vacancies for severely disabled people which would have to be created by the enterprises to fulfil the quota is significantly higher than the number of registered unemployed severely disabled people: In 1994, for example, there were 397,700 vacancies in West Germany measured against the quota requirements, while only an average of 155,500 severely disabled people were registered as being unemployed in 1995 in West Germany. At the end of September 1995, 151,767 unfilled vacancies were being offered to severely disabled people in West Germany. Even more striking was the imbalance in East Germany, where there were 20,000 unemployed severely disabled people and 107,000 vacancies (also in 1995). Moreover, there was almost a balance between the number of unemployed severely disabled people and vacancies offered to them (112: 100). In October 1996, 513,187 additional vacancies for severely disabled persons would have been

necessary to fulfil the six per cent employment quota, while only 181,200 severely disabled persons were registered unemployed (in all Germany) (Bundesregierung, 1997, p.70). For the Old Länder, the relation was 408,000 vacancies to 157,200 unemployed severely disabled persons (iwd 21/97, p.6).

There are three more statistical aspects which the employers refer to in criticizing the quota as a yardstick to raise the compensatory levy:

- 1) The calculation of the quota does not take into account all the severely disabled people whom companies employ beyond their quota obligations; in 1994, this was true for 87,000 people (according to IWD, only 80,000 people according to ANBA).
- 2) The same applies to severely disabled people who are employed by companies which are not obliged to do so; in 1994, this was true for 129,700 people. (It is not really clear, though, which companies this statement refers to; the Federal Employment Office, at least, does take into account the group of disabled people who are employed in companies with less than 16 workplaces in its calculation of missing vacancies).
- 3) The quota is calculated in percentages; thus, it will rise if the total number of workplaces it refers to, i.e. the denominator, decreases. This happened, for example, in 1993/94 when the German railway was privatized which led to a loss of around half a million jobs. As a consequence, the employment quota was raised from 5.6 per cent to 6.4 per cent even though the number of severely disabled employees was reduced from 73,000 to 56,000 (iwd 2/96, p.3; ANBA, 1996a, p.116).

In its fourth report on the situation of disabled people and the development of rehabilitation, the federal government also deals with the calls for modifying the quota system which usually aim at lowering the quota and simultaneously increasing the compensatory levy (Bundesregierung, 1997, p.69). The government rejects these calls, arguing that such modifications would definitely give the wrong signal, given the background of the highest level of the rate of unemployment among severely disabled people on the one hand, and the lowest level of the actual employment quota (3.9 per cent in October 1996) on the other. In addition, the amount of DM 200 is considered sufficient to fulfil the compensation function of the compensatory levy, which is to siphon off the unjustified cost advantages of employers who do not fulfil their employment obligation. As regards the incentive function of the compensatory levy, the government implicitly admits that DM 200 might not be enough; however, it prefers to extend the range of alternative instruments and provisions for the integration of severely disabled people (for example, through specialized integration services). The point which is likely to be the most decisive for the government's rejection of any change to the quota system - but which is not mentioned - is the concern about an expected decrease in compensatory levy revenue as a result of the suggested modifications. This concern might reflect a well-known dilemma of fiscal policy: On the one hand, the overall function of the levy is actually to make itself superfluous; on the other hand, its revenue is used to fund institutions which usually need a long-term basis for calculation and planning. If - according to the levy's function - employers' recruitment behaviour is directed effectively, there would be no employer in the long run who does not fulfil the employment obligation (taking the ideal case). On the other hand, a considerable number of institutions have been established for the integration of severely disabled persons which are funded by the revenue from the compensatory levy. Politically, it seems quite difficult to confront these institutions with volatile levy revenue. As a consequence, there is some risk that institutions are funded which are actually no longer necessary or whose services could be provided less expensively in an alternative institutional setting.

The role of disabled persons' representatives

Disabled persons' representatives and works councils have to be informed and heard by an employer before the latter makes an application for the dismissal of a disabled person ('25 subsection 2 of the Act). (This is

discussed further in I.3.1.)

Obligation to examine vacant positions

The general guideline for employers to promote the employment of disabled people (according to section 14 of the Act) also includes an obligation to examine every vacant position for its potential for a severely disabled person. According to a ruling by the Federal Labour Court, the employer has to consider any additional (mainly social) criteria for recruiting people when applicants have equal qualification. These criteria include disability (SchwbG; Arlitt, 1996, p.289).

Conclusions

Altogether there are some significant obstacles to the retention of disabled employees as far as the legal framework is concerned. High general unemployment is a particular problem. However, compared to the (re-)integration of unemployed disabled people into stable employment, the retention of disabled employees seems to be a lesser problem (Burger and Schröder, 1994, p.9). Moreover, Frick and Frick come to the conclusion that the employment of - for the most part internally recruited (i.e. retained) - disabled people does not really seem to be 'the result of a legally enforced 'moral pressure', but primarily serves the 'reciprocity expectations' of all employees' (Frick and Frick, 1994, p.220).

I.2.2 Voluntary policies to persuade and encourage enterprises to retain disabled workers in general

In the public sector, almost every larger authority at the federal and the Länder level (not so much on the municipal level) issues decrees on the treatment of disabled employees. These ordinances are to provide more detailed guidance on legal requirements. Extra regulations may restrict or expand some aspects of the Severely Disabled Persons Act. As an example, section 26 of the Severely Disabled Persons Act says that disabled employees' representatives have to be released from work in order to take part in special training concerning their tasks as representatives. Such training could well enhance their knowledge about legal provisions and retention strategies, and thereby increase their ability to successfully contribute to job retention. In some authorities, however, a decree may set a maximum limit (e.g. three days a year) for such activities. On the other hand, decrees in public authorities may also improve the situation of disabled people by introducing additional regulations beyond the one already laid down by law (such as extra breaks during work).

Some private enterprises also have such decrees or ordinances, but they are usually not as long and detailed. Large companies, in particular, have formalized proceedings or policies aiming at the retention of disabled workers. One of them is to keep a kind of reserve of vacancies for redeployment in case of rationalization. Some firms draw up a list to systematically capture all of their vacancies which are or would be adequate for employees with lower productivity. This measure is usually accompanied by a (sometimes only implicit) enterprise-level agreement to fill these vacancies only with employees whose productivity is restricted and who can be internally recruited. Conflicts might occur between the works council and the disabled person's representatives concerning the refilling of such vacancies because some of the employees with restricted productivity who are considered for these vacancies do not have official recognition as severely disabled persons.

Most companies do not have any strategies to maintain a certain proportion of vacancies adequate for disabled employees. Redeployments are carried out *ad hoc* and may concern non-disabled workers as well, so that resistance may occur. A different kind of organization of workplaces within the company would probably reveal greater potential for the employment of disabled persons. One reason for these shortcomings is seen in the merely reactive behaviour of disabled persons' representatives, who confine themselves to counselling disabled employees about questions of provision and their status. They are usually not involved in the wider planning processes of the enterprise (i.e. organization of workplaces).

Codes of practice exist in many firms, however, although they usually take the form of internal, non-codified standards. They determine the extent to which the company will support disabled employees. The length of tenure and sometimes the reason for the disability (if it occurs during the tenure) are important factors in this context. The management often distinguishes between a disability which is connected with the job (industrial accident, for instance) and a disability of which the origin lies outside the realms of the company. (Semlinger, 1985, p. 94 ff., 132 f.).

I.2.3 Financial incentives which encourage enterprises to retain disabled workers in general

There are a number of different financial mechanisms available to employers which aim at the retention or (re-)employment of disabled people. They are granted either by the Employment Offices, the Hauptfürsorgestellen, or by rehabilitation funds. It is not always possible to clearly separate mechanisms aimed at the retention of disabled employees from those destined to promote (re-)employment. Subsidies for the creation of new jobs for severely disabled people, for example, may serve both aims at the same time, since they may also apply to people already working for the firm who are supposed to be redeployed. This may concern newly disabled people or employees whose disability has worsened, who are threatened by dismissal. In that case, job creation subsidies serve the retention of disabled workers as well. So, even if subsidies explicitly aim at the creation of new jobs for (severely) disabled workers, it cannot be said whether these new jobs are connected with the same (previous) employee or not, i.e. whether they have to be assigned to 'job retention' or to 'return to work' efforts.

The most important kinds of financial incentives which encourage the retention of disabled employees are as follows. (The regulations only apply to severely disabled persons as they are defined in the Act.)

Wage-cost subsidies

Subsidies are paid for the employment of severely disabled persons. They are paid by the employment offices from the Compensatory Levy Fund on a sliding scale (up to 80 per cent of the gross wage during first year, 70 per cent second year, 60 per cent third year according to " 1, 5 of the Severely Disabled Persons Compensatory Levy Regulation; ' 33 Subsection 2 of the Act; ZB Info 1/97, p.II). Legislation at Länder level may offer an increase of these subsidies up to 100 per cent. Employment must continue after the subsidy ceases, at least for one more year, otherwise the subsidies have to be repaid. The underlying rationale is to cover any extra costs to the employer which originate from employing disabled people, such as the entitlement to an extra five days leave, in order to assist disabled people who are endangered by unemployment (Thornton and Lunt, 1997, p.130; ZB Info 1/97, p.II). Besides, the Hauptfürsorgestellen provide a special kind of subsidy which is paid without a general time limit. It applies to above-average expenses or other extraordinary financial difficulties caused by the employment of severely disabled people, including particularly restricted performance because of disability (' 27 of the Regulation; cf. Huber/Ochs 94, p.164). The level and duration of payment depend on the individual case (up to DM 600 according to Frehe, 1995, p.80; up to DM 800 according to Thornton and Lunt 1997, p.130. It is subsidiary to all other kinds of assistance (as in the following paragraphs).

Financial support for workplace adaptation and creation

With finance from the Compensatory Levy Fund, the Hauptfürsorgestellen support employers in adapting or creating workplaces according to the needs of disabled people by granting loans or subsidies (up to 100 per cent of costs) (" 15, 26 of the Regulation). The underlying rationale is to prevent dismissals which would be undertaken otherwise, and to make possible the permanent employment of severely disabled people (ZB Info 1/97, p.III; Huber/Ochs, 1994, p.164). Beyond the employers' obligation according to ' 14 subsection 3 of the Act (cf. I.2.1), the employment offices pay subsidies up to 100 per cent for assistance in the workplace (ZB Info 1/97, p.II).

Financial support for training and vocational rehabilitation

The employment offices provide several kinds of allowances for measures of (re-)training and vocational rehabilitation of disabled employees. In exceptional cases, they pay up to 100 per cent of the payments for the trainees (ZB Info 1/97, p.II, III). Note that the provisions by the employment offices are not confined to *severely* disabled people only, so that a lower degree of disability might suffice to claim financial support. Besides, " 15, 26 of the Regulation also apply to the creation of training vacancies.

Effectiveness and trends

Financial subsidies to promote the employment of disabled people are only taken up relatively rarely. Lack of information, on the part of small enterprises in particular, is seen as one of the major obstacles, so that more counselling and technical assistance by the providing institutions may be required (Semlinger, 1985, p.98; Thornton and Lunt, 1997, p.131). Besides, bureaucratized procedures of awarding financial support discourage many employers who would be eligible to actually apply for these provisions and take them up (Oyen 1989, 519). On the other hand, the adaptation of workplaces may be extensive in individual cases, but most disabled employees are able to do without any major adaptation (Semlinger, 1985, pp.82, 132). Besides, many enterprises are not very inclined to contact the provider institutions since they fear that - similar to the factory inspectorates - they will not then be able to 'get rid of' those institutions any more (Semlinger, 1985, p.99). The reservedness towards the Hauptfürsorgestellen can be explained by their 'double' character. On the one hand, they are bureaucratic institutions with sovereign authority; on the other, they increasingly try to establish themselves as providers of special services and related financial support as well as being consultants. In addition, the obsolete term 'Fürsorgestelle' (or 'welfare agency') stemming from the period of the end of World War I often suggests an enterprise's good deeds and a sense of social justice, which are not compatible with business rationality, particularly since for many employers the employment of disabled people is a matter of merely peripheral importance (AGDHFS, 1995, p.5).

Wage subsidies have some considerable advantages as an instrument for influencing employers' behaviour: their efficiency (subsidies are taken up by employers to which a change in behaviour is easiest to realise), voluntary nature, and the flexibility in designing them. Yet, they are regarded as a difficult matter in general, since it is always problematic to keep the balance between insufficient take-up and abuse in the sense that employers are in receipt of subsidies although they would have employed disabled people anyway (so that the subsidy does not achieve its purpose to promote additional employment, that is, it has a 'dead weight' effect). Controlling for that by tightening the rules of allocation and the use of the subsidies respectively does restrict the features of flexibility and the intensity of the incentive but thereby creates a dilemma. Subsidies which represent more a compensation for extra costs due to the employment of disabled people face the problem of the low level of take-up mentioned above. So, wage subsidies often appear necessary, but not sufficient, to make firms employ disabled people. The extension of accompanying specialized services might be required. Finally, a high level of general unemployment reduces the incentive effect of wage subsidies since a large reserve of unemployed people usually ensures the relatively riskless recruitment of qualified workers. For Germany, too, a lack of evaluation efforts has to be diagnosed (information about appropriate control groups, for example) (Semlinger, 1995, pp. 81, 150; Delsen, 1996, p.534 f.).

It is a quite commonly held view that financial incentives rarely act as a direct stimulus to the recruitment and maintenance in employment of disabled people; rather, they merely reinforce an already existing latent willingness to do so (Oyen, 1989, p.519).

I.3 POLICIES AND PROGRAMMES TO SUPPORT DISABLED EMPLOYEES AT RISK TO RETAIN

THEIR EMPLOYMENT

I.3.1 Mechanisms to support the rights of employees whose continued employment is at risk because of disability

The Severely Disabled Persons Act establishes two sets of institutions which are given the task of supporting the rights of employees whose continued employment is at risk because of disability: the Hauptfürsorgestellen on the one hand, and the disabled person's representatives and works councils on the other (Huber/Ochs, 1994, p.167 ff.):

The *Hauptfürsorgestellen* are the focal point in the procedure of dismissal of disabled employees since the employer is obliged to obtain the approval of this administrative authority. The Hauptfürsorgestellen themselves have to obtain written position statements about the individual cases from the disabled persons representatives, the works councils and the labour offices. Further, the Act obliges them to work towards an amicable agreement (' 17 subsection 2, 3; Semlinger, 1985, p.100). There are four different options for the settlement of the dismissal procedure:

1) The employer withdraws the application for dismissal (in 1993 more than 73 per cent of all cases in which the retention of the disabled employee was achieved could be traced to such withdrawals; the share was 76.7 per cent in the category of ordinary terminations). The Hauptfürsorgestellen absolutely favour this way of settlement of the negotiations with enterprises and try to push them towards a voluntary withdrawal by offering 'supplementary assistance in the working and professional environment' which might include both financial subsidies and advisory services (see I.5.1) (AGDHFS, 1994, p.81 f.).

2) The severely disabled person relinquishes the continuation of employment in connection with a rescinding contract, i.e. terminating a contract of employment by mutual agreement or in connection with early retirement. In 1995, this happened in more than 18 per cent of all cases which the Hauptfürsorgestellen took notice of (AGDHFS, 1996, p.29). However, the Hauptfürsorgestellen are often not involved in those agreements.

3) If no agreement emerges among the involved parties during the dismissal negotiations guided by the Hauptfürsorgestellen, the latter take a discretionary decision. In doing so, they have to consider the interests of both the disabled employee and the employer, the reason for dismissal, the labour law, and particular circumstances of the individual case (for further details such as periods of notice see ' 18 of the Act). They still seek as much approval as possible.

4) The Act lays down some special cases in which the discretionary scope of the Hauptfürsorgestelle is restricted, i.e. the decision is largely pre-determined. The authority *has to* approve the employer's application for dismissal if the enterprise closes down. In all other of these special cases, it *should* approve the application, for example if the employer still fulfils the employment quota after the dismissals, or if there are alternative employment opportunities available for the disabled employee (' 19 of the Act). If dismissals are legitimized by the economic situation of the company, the Hauptfürsorgestellen are supposed to approve them; however, sometimes they cannot really check the validity of employers' statements about the business situation (Semlinger, 1985, p.101). In 1995, more than two-thirds (67.5 per cent) of applications for ordinary termination to the Hauptfürsorgestellen, and 61.6 per cent of all applications for ordinary and extraordinary termination were legitimized by the economic situation of the company (as opposed to being related to personal characteristics of an employee) (AGDHFS, 1996, p.27; ZENTRAS, 1997, tab. 72).

While the Hauptfürsorgestellen investigate the facts of the case during the dismissal procedure, they are supposed to demonstrate possible ways of retaining disabled employees, particularly

by using technical aids, by reorganising the workplace, or by taking up financial subsidies. In doing so, the Hauptfürsorgestellen can enlist experts' help (technical service, medics, psychosocial service).

The disabled persons representatives and the works council have to be informed and heard by the employer before the latter makes the application for the dismissal to the Hauptfürsorgestelle (' 25 Subsection 2 of the Act). Thereby it is implicitly taken into account that these institutions usually have a better knowledge about the enterprise and the specific possibilities to retain disabled employees. That is why the representatives and the council can considerably influence the decision of the Hauptfürsorgestelle by their position statement (the latter does not have the personnel to gather sufficient information - for example by regular visits - about the specific circumstances in individual enterprises). However, the obligation to inform these institutions early on, actually aims at preventing the dismissal of a disabled employee without setting in motion the official dismissal procedure laid down in the Act, i.e. just by involving persons belonging to the enterprise. Besides, the representatives and the council are supposed to look after and counsel disabled employees during the dismissal procedure. To fulfil this task adequately, representatives and personnel committees are offered training. The Hauptfürsorgestellen are responsible for its provision, which is financed by means of the compensatory levy. The employers have to bear the cost for travel and accommodation as well as the loss of working hours. In addition, the unions offer (and fully pay for) a more detailed training, but exclusively for their members. Only a minority of the disabled employee's' representatives are union members; however, many members of the works councils belong to a union and participate in such training events, too. They often have to take over the disabled employee's representatives' duties (see I.6.1) (source: personal communication/Aktion 16).

Effects

There are two main reasons why it is hard to estimate the effects of the mechanisms and institutions which aim at supporting the rights of employees whose continued employment is at risk because of disability. As mentioned above, many settlements between disabled employees and their employers concerning the termination of tenure are not captured since the Hauptfürsorgestellen are not involved (cf. Semlinger, 1985, p.99 f.). Secondly, it cannot be estimated how many dismissals have been prevented merely by having applied the special dismissal procedure in the Severely Disabled Persons Act (Semlinger, 1985, pp.41, 43, 103 f.). However, it is suggested that the positive effect on the chances for the retention of disabled employees in danger of dismissal mainly results from the behaviour of the group representatives during the statutory dismissal procedure. The position statements of the employees' or personnel committees, and - although to a lesser extent - disabled people's representatives, do have a decisive influence on the final result of the dismissal procedure (Sadowski/Frick, 1992, p.15).

For the documentation of their activities concerning the special protection against dismissal the Association of the German Hauptfürsorgestellen distinguishes between disputable and indisputable procedures (AGDHFS 1994, p.78). The first group comprises two outcomes which lead to the retention of severely disabled employees (withdrawal of the application for dismissal by the employer, and disapproval of the application for dismissal by the Hauptfürsorgestelle), and one outcome which leads to job loss (approval of the application for dismissal by the Hauptfürsorgestelle without the agreement of the severely disabled employee). Indisputable procedures can have three different kinds of outcomes, which all lead to job loss: approval of the application for dismissal by the Hauptfürsorgestelle with the agreement of the severely disabled employee, agreement upon a rescinding contract (cancellation or termination of contract by mutual agreement or by exercise of one party of one of her/his remedies, with or without the involvement of the Hauptfürsorgestellen), and other reasons of an indisputable job loss (special pension payments, severance pay, or alteration of contract). In 1995 (and within the category of ordinary termination), the factual outcomes of the dismissal negotiations and procedures respectively showed a distribution among the different groups of outcomes as follows:

Disputable Procedures

Job Retention

Withdrawal of application by employer and Rejection of application by
Hauptfürsorgestelle 15.5 %

Job Loss

Approval of application by Hauptfürsorgestelle without agreement of the disabled
person 19.5 %

Indisputable Procedures

Job Loss

Approval of application by Hauptfürsorgestelle with agreement of the disabled
person 46.9 %

Rescinding contract and other reasons (pensions etc.)
18.1 %

From all the applications the Hauptfürsorgestellen dealt with in 1995, only 19.8 per cent (in all categories of termination), and 15.5 per cent (ordinary termination), ended with the retention of the disabled employee. That means that the clear majority of applications resulted in job loss, but in only 19.5 per cent of the ordinary terminations did the disabled employees not agree with the result (AGDHFS, 1995, p.29 f.). The special protection against dismissal thus does not mean that disabled employees are not able to be dismissed (as opposed to a widespread view among employers which leads to a reduced willingness to recruit disabled people from the external labour market). The special protection merely lays down a procedure which makes dismissals more difficult and which encourages the involved parties to look more intensively for opportunities to prevent dismissals (Huber/Ochs, 1994, p.169). Nevertheless, the special protection against dismissal is considered to be the most important feature of the Severely Disabled Persons Act. Surveys show that disabled employees believe that it makes their position more secure (Oyen, 1989, p.519). That the employer's effort to find further employment for disabled employees is higher than for able-bodied employees does confirm this view (ibid). Semlinger states that employers usually are very receptive to the public provision of support measures: they are really willing to drop their intention to dismiss disabled employees as soon as a serious solution to the underlying problem is offered during the dismissal procedure (Semlinger, 1985, p.133). Finally, it has to be noted that the number of applications for dismissals of disabled employees is also considerably influenced by the general economic situation, i.e. the business cycle and the general labour market situation (Semlinger, 1985, p.41). The special job security legislation for disabled employees tends to lose its protective effect as the general economic situation worsens and enterprises feel forced to reduce staff.

Trends

In 1995, the number of new applications for dismissal increased slightly. The preceding year had experienced a decrease, though, dropping from a very high initial level in the three years before. In West Germany, the number of new applications is still double that of 1990, which was the year with least number. In addition, the numbers show very distinct fluctuations among the different regions (Länder) in Germany. The Association of German Hauptfürsorgestellen attributes the slightly worsening situation to the shortage of personnel which makes a sustainable work in the field of preventive accompanying support almost impossible, especially at

times when continued employment is at higher risk to the entire work force (AGDHFS, 1996, p.25).

I.3.2 Financial incentives directed at employees whose continued employment is at risk because of disability

Wage-cost subsidies, which are provided to employers, have been described in the context of financial incentives to enterprises in section I.2.3. In terms of job retention, they are the most prevalent subsidy.

In addition, employment offices generally promote and financially support vocational rehabilitation measures and efforts to obtain or retain a job. The respective provisions cover, among other things, the reimbursement of costs resulting from job applications, travelling expenses, getting self-employed, running and maintaining of a motor vehicle, or purchasing necessary technical working aids (ZB Info, 1997, p.IV). These provisions are available to every employee in need including those who are severely disabled and persons of equal status. They are not exclusively directed at disabled employees or at job retention; however, it is quite possible that they concern both.

Another group of financial incentives that is directed at employees whose continued employment is at risk because of disability is the share of supplementary assistance in the working and professional environment which is particularly directed at employees. This kind of assistance is implemented by the Hauptfürsorgestellen or on their behalf by local funds (local Fürsorgestellen) in close cooperation with the Federal Employment Office (BMA, 1996, p.143). Similar problems of categorizing arise, however, only with respect to the goal of job retention since the target group is clearly confined to disabled employees. The financial incentives provided by both the employment offices and the Hauptfürsorgestellen, their characterization in terms of job retention and return to work as well as the take-up of these provisions will be discussed in more detail in section I.5.1, which includes information about the overall extent of payments made. Vocational rehabilitation is also discussed in Part III.

I.3.3 Programmes which support a move to another employer or to self-employment

The Hauptfürsorgestellen provide financial support for disabled people who plan to establish their own business (in 1995: 3.7 million DM; see I.5.1). On certain conditions (' 21 Subsection 1 of the Regulation) they can receive small business loans or subsidies for the payment of interest on bank loans. In addition, disabled persons who have become unemployed can use general provisions from labour offices to promote setting-up as self-employed (' 55a of the Labour Promotion Act).

The Labour Promotion Act also provides a multitude of financial aids to promote the taking up of work. The labour offices grant financial support to compensate for application costs, travelling expenses, removal costs, and expenses for journeys home to the family, for example (cf. " 6-15). The Hauptfürsorgestellen and rehabilitation funds pay subsidies for the purchase of motor vehicles (' 20 of the Regulation), the necessary modifications of their fittings, and for getting a driving licence. These subsidies are intended to increase disabled people's mobility and thus job opportunities (and the move to another employer respectively).

I.4 BENEFICIARIES

I.4.1 Impact of definitions of disability and eligibility criteria on access to and coverage of policies

Definition of disability

There is no universally applicable definition of disability. Particularly as regards the access to the assistance by the different institutions the 'required standards' vary significantly among them. However, a three-tiered definition, based on the proposals of the World Health Organisation (WHO), is becoming increasingly established. It says, that 'disabled persons are all persons who suffer from the consequences of the effects of a

physical, mental or psychological condition which is not typical for the respective age, and where the consequences are not merely of a temporary nature. The 'not typical condition' is defined as the loss or impairment of normally existing physical, psychological or mental structures'. The definition thus includes all the three (English) terms 'handicap', 'disability', and 'impairment'. 'This definition is to be found in Section 3 of the Severely Disabled Persons Act, and also in those cases where a more differentiated definition of the terms is additionally required for the application of specific regulations' (BMA, 1996, p.11).

As was mentioned in the introduction to this Part, the Severely Disabled Persons Act define its target group as people with a disability of at least 50 per cent, or 30 to 50 per cent in the case of people who are unable to find or hold down a job because of disability. However, problems arise because of the complexity of the whole phenomenon of disability and a lack of clarity about people entitled to assistance and legal benefits. The German expression '*Behinderung*' does not distinguish between the three related aspects: 'impairment', 'disability', and 'handicap'. The formal acknowledgement of disability and registration results from medical diagnosis. This can, at the most, state an impairment of physical, psychological or mental structures and the resulting disabilities, the latter meaning limitations of functions. These limitations, in turn, reduce personal performance in certain areas of life. Such consequences of disability might differ significantly even among people with exactly the same limitations of functions, i.e. the same disability can lead to very varying degrees of handicap among those suffering from it. For example, 'the loss of the left middle finger would hardly prevent civil servants from exercising their occupations, however, it is of very serious consequence in the case of a violinist' (BMA, 1996, pp.11, 13). The degree of disability thus does not say much about the handicaps involved, and about the reduction in a person's fitness for work respectively (ZB Info 3/96, p.13).

That is why the term 'reduced earning capacity' was replaced by 'degree of disability' in the amendment of the Severely Disabled Persons Act in 1986. Thereby, a false connection between specific impairments and disabilities on the one hand, and a general limitation in working life should be avoided (Thornton and Lunt, 1997, p.117). However, the Severely Disabled Persons Act provides for promoting and protecting measures which are directly related to working life (see above). Consequently, these measures might not be necessary since, in many cases, integration in working life is largely possible without any special provisions of the law. Considering the negative effects of special protection on the recruitment decisions of employers (special protection against dismissal, extra five days leave, obligation to adapt workplaces) and the stigmatizing effects of the disability status which work against integration, the partial mismatch of the provisions of the Severely Disabled Persons Act and its eligibility requirement (degree of disability) is a shortcoming in the design of the law. The mere change in terminology by the amendment of 1986 has not removed the fundamental problem.

On the other hand, this problem might be defused by the fact that registration is voluntary. That grants at least some scope for flexibility. Employees whose disability does not limit their working productivity, for example, might be better off without a formal acknowledgement of their disability (cf. Isenberg, 1996, p.45). On the other hand, they would then forego other benefits, such as the free conveyance of severely disabled persons by local public transport or concessions given with regard to postal and telecommunications services. That there is significant scope to subordinate the decision about registration to one's own preferences (resulting from the mismatch between the degree of disability as the eligibility criterion and the provisions of the Act relating to employment), is shown by the occurrence of so-called registration campaigns (cf. I.1.2).

Outside the realm of the Severely Disabled Persons Act and its provisions, different understandings of disability are applied. The Labour Promotion Act and the labour offices as the implementing institutions offer many kinds of assistance and aids irrespective of a person's official disability status. With regard to eligibility, it is sufficient that some kind of disability permanently reduces the opportunities of being integrated in working life (Semlinger, 1985, p.27 f.). Access to measures of vocational rehabilitation financed by the labour offices does not require the registration as a severely disabled person either (BMA, 1997a, p.11). However, if disabled people with a degree of disability of 30 to 50 per cent are unable to find or retain suitable employment because of their disability, the employment offices can accord them equal status with

severely disabled people upon application (Thornton and Lunt, 1997, p.117). Against the background of the worse financial situation, a new Labour Promotion Reform Act which came into force in January 1997 substituted discretionary decisions taken by the employment offices for the legal entitlement to paid measures of vocational rehabilitation. As a consequence of the strong protest against this, the legal entitlement was for the most part restored (from 1 April 1997). However, this entitlement remains tied to the budget of the responsible employment office (BMA, 1997a, p.10 ff.; personal communication/Aktion 16).

Other funders of medical and vocational rehabilitation, such as the Statutory Accident Insurance, have different eligibility criteria relating to disability. As regards the extent of the inclusion and coverage of their programmes, they usually act on their own discretion. In doing so, they refer both to medical aspects and often additionally to the labour market situation (availability of vacancies) (Semlinger, 1985, p.3).

Benefits 'are also available in many cases to persons who are in danger of becoming disabled in accordance with individual requirements. Therefore, in the case of medical and employment promotion benefits for rehabilitation, persons who are in danger of becoming disabled receive the same treatment as those whose disability has already manifested itself' (BMA, 1996, p.13).

I.4.2 Disabled workers who benefit and those who miss out

The preceding section has shown that the group of disabled workers which benefits from job retention policies in general is quite heterogeneous and certainly not confined to those people who meet the eligibility criteria of the Severely Disabled Persons Act. However, this Act contains the most explicit forms of retention policies aiming at disabled people. Besides, the concerned group of disabled people is statistically documented relatively well since all the provisions of the Act can be assigned to a clearly defined group of disabled people (according to the legal definition in the Act).

At the end of 1995, almost 6.5 million people in Germany were severely disabled according to the definition of the Act (i.e. eight per cent of the total population) (ZENTRAS, 1997, 1), of which the degree of disability) was as follows (ZENTRAS, 1997, 6):

Table I.1: Degree of disability

<i>Degree of disability</i>	<i>Per cent</i>
50 - 60	28.4
60 - 70	16.2
70 - 80	12.1
80 - 90	13.8
90 - 100	5.6
100	23.9

The majority of severely disabled people are more than 60 years old (63.6 per cent); 34 per cent are between

18 and 60 years old (ZENTRAS, 1997, 6).

Job retention policies, though, only apply to the sub-group of severely disabled employees. In 1995, this sub-group included 927,410 persons (ZENTRAS 1997, 27). Only taking into account severely disabled persons whose employer has at least 16 employees altogether (that is 737,134 persons), the distribution among economic sectors in 1995 was as follows:

Table I.2: Distribution among economic sectors, 1995

	<i>Per cent</i>
manufacturing	31.1
regional administrative bodies, national insurance services	22.5
trade	18.1
transportation and communication	7.7
building and construction	7.1
banking, insurance	3.8
non-profit organizations (incl. private households)	3.7
energy, water-supply, mining	2.8
agriculture, forestry, fisheries	2.6
	0.5

A large number of disabled people benefit from job retention policies independently of registration as a severely disabled person. The national employment offices, in particular, promote the job retention of people with disabilities in general, as long as they are considerably handicapped by these at work. They do not require a certain degree of disability to be determined in a formal procedure.

The position of women

In 1995, 3,042,627 of the total of 6,496,533 severely disabled persons (in terms of the legal provisions of the Severely Disabled Persons Act) were female, a share of more than 46.8 per cent (ZENTRAS, 1997, 4). However, there is a larger share of women in the New Länder who have received official acknowledgement of the status of being severely disabled (about 50 per cent of all severely disabled persons). These gender proportions have not changed much over the past years (Henninges, 1997, p.4).

According to the *Mikrozensus* statistical survey in 1995, there were about 930,600 severely disabled people in employment, of whom 331,200 (or nearly 35.6 per cent) were women (source: personal communication from IAB). Of this group of women:

- 34.4 per cent were wage earners (see II.1.5 for discussion of classification) - compared with 48.3 per cent of severely disabled employed men;
- 52.2 per cent were salaried employees (men: 33.9 per cent);
- 5.5 per cent were self-employed (men: 9.2 per cent);
- 46.0 per cent were in relatively low positions in the job hierarchy: that is non-skilled workers, office workers and typists (men: 32.5 per cent) (although about half of all employed severely disabled persons are trained in some way);
- only 64.4 per cent work full-time (men: 91.0 per cent);
- 33.3 per cent were employed in public administration (men: 23.9 per cent).

As compared with men, women are only employed within a relatively narrow range of jobs like office work/ typing (28.3 per cent), counselling (17.8 per cent), catering/ accommodation/cleaning/packaging (17.2 per cent) (Henninges, 1997, p.10, table 11).

In 1995, there were 3,611,921 people who were registered unemployed in Germany. 176,118 of them were severely disabled (4.9 per cent), of whom 60,134 (34 per cent) were women. Since 1992, the number of disabled persons who are registered unemployed has increased. Women have been relatively more affected by that than men (Henninges, 1997, p.11).

Whilst severely disabled men who are unemployed are at least trained as well as unemployed non-disabled men (54 per cent have completed some kind of formally acknowledged training compared to only 44 per cent of non-disabled unemployed men), unemployed severely disabled women are - on average - less trained both than unemployed men and non-disabled women. Forty-eight per cent of them have not completed any kind of training (Henninges, 1997, p.15).

The average duration of unemployment was (in 1996) 12.5 months for severely disabled women compared to 13.2 months for severely disabled men. For both groups this was not only much longer but also reversed with regard to gender compared to non-disabled people (women: 7.1 months, men: 5.8 months) (Henninges, 1997, p.17).

The group of severely disabled women is characterised by lower rates of return to work compared to the respective group of men. Both groups have been affected by the worsening labour market situation. In 1990, for 33.2 per cent of the unemployed severely disabled women the period of redundancy was concluded by return to work (men: 42.3 per cent); this share was only 17.4 per cent in 1996 (men: 21.0 per cent) (Henninges, 1997, p.18, tab. 21, 22). A share of unemployed severely disabled people undergo medical assessment to find out the extent to which their labour productivity is restricted because of disability. The analysis of the results shows that severely disabled women are - and this is true for all age categories - more restricted than the respective group of men ('considerably restricted': women 29.3 per cent, men 26.2 per cent in 1995). This result corresponds to a different distribution of disabilities among women and men. For both groups, considerable restrictions correlate with age (Henninges, 1997, pp.37, 39).

The statistics on occupational rehabilitation benefits granted by the Federal Employment Office allows a gender-related distinction among the group of beneficiaries. According to these, the integration assistance paid out in 1996 (totalling almost DM 55.5 million) went to 1,261 women (or 29.2 per cent of all beneficiaries, compared to 3,062 men). In the same year, 2,946 cases of granting benefits for the recruitment and employment of severely disabled persons (according to paragraph 33 section 2 of the Severely Disabled Persons Act) were women (a share of 32.4 per cent of all cases, compared to 6,155 men). Referring to the 73,164 cases where benefits of this programme were received between July 1986 and February 1997, the

gender proportion was 32 per cent (women) compared to 68 per cent (men) (Statistisches Bundesamt, 1997a, ST 37 and ST 36).

With regards to completed vocational training measures, the share of women was as follows:

Table I.3: Vocational training measures

Year	<i>Federal Employment Office</i>		<i>Statutory Pension Insu</i>	
	Total	Women (in %)	Total	W
1994	37,233	34.0	23,661	
1995	37,420	34.1	31,619	
1996	39,338	33.9	46,186	

Among the training measures provided in special retraining centres, the share of women was on average 20.2 per cent (25.3 per cent in the New Länder). However, the share varies considerably with regard to the different employment sectors (for example: 47.6 per cent in health services, 35.7 per cent in administration, 7.5 per cent in electronic data processing, 2.7 per cent in electrical engineering, 2.1 per cent in metal processing) (Bundesregierung, 1997, p.62 f.).

The effects of enterprise size

As noted in I.2.1, the obligation to employ a minimum of six per cent disabled workers only applies to employers with a workforce of 16 or more.

The most recent calculation of workplace numbers within the economy as a whole was conducted in 1987 and only applied to West Germany. The categories that were used only distinguish between enterprise sizes of 1-9, 10-19, 20-499 and 500 and more employees. The table below shows the proportions of the total number of employees in different economic sectors in the first two categories:

Table I.4: Proportions of enterprises with less than 20 workplaces, in different sectors

<i>Sector</i>	<i>Total people employed</i>	<i>1-9 employees (in %)</i>	<i>10-19 employees (in %)</i>

Manufacturing	8,581,947	10.2	6.8
Services	4,474,212	48.7	11.9
Trade	3,878,928	37.6	11.3
Building and construction	1,864,592	28.2	19.4
Transportation and communication	1,513,583	12.7	5.9
Banking, insurance	979,435	14.1	2.1
All sectors	21,915,838	24.8	9.4

Source: Statistisches Bundesamt 1997b, p.132.

The data show that the largest proportions of employees in enterprises with less than 20 workplaces were found in the service sector (excluding banking and insurance); in this sector, 60 per cent of employees were in smaller firms and most of those employees would not be affected by the legal provisions of the Severely Disabled Persons Act. The employment situation is quite similar in the trade and building/construction sectors, where enterprises with less than 20 workplaces employed 48.9 per cent and 47.6 per cent respectively of all employees in these sectors. Across the economy as a whole, 34.2 per cent of all employees were employed in enterprises with less than 20 workplaces.

The number of people who meet the definition of disability under the Severely Disabled Persons Act who work in small firms with less than 16 workplaces is ascertained only about every five years, most recently in 1994. At that point, this number was 107,500, which was 12.7 per cent of all employed severely disabled people compared to 112,600 in 1990 (12.7 per cent, too) and 69,500 in 1985 (7.7 per cent) (ANBA, 1996a, p.117). In the New Länder, there was an additional number of 22,700 severely disabled persons employed in firms with less than 16 workplaces (1994), so that for all Germany the respective number is 130,200 (Henninges, 1997, Appendix tab. 15A/15B).

On the other hand, the total number of severely disabled people who are employed by enterprises which are *not obliged to do so* according to the Severely Disabled Persons Act, and as it is used in the political discussion, is much higher than that (even though the underlying calculation is not completely correct). The reason is that the number includes all severely disabled persons who are employed by enterprises beyond their actual obligation. The *Institut der deutschen Wirtschaft* estimated this number to be 87,000 (iwd, 1996, p.3). However, the head of the Association of German Hauptfürsorgestellen estimates the number of severely disabled persons who are employed by employers without an obligation to do so at 215,000 (which includes

the number of severely disabled persons employed in enterprises with less than 16 workplaces - cf. preceding paragraph) (ZB Info 4/97, pp.12-13).

In their analysis of the effects of the Severely Disabled Persons Act, Sadowski *et al.* (1992) compare the actual employment quota of enterprises where the employment obligation applies to those where this is not the case. According to 1989 data issued by the Association of German Hauptfürsorgestellen and to some surveys, there was no big difference between enterprises with less than 16 workplaces and those with 16 to 29 workplaces. This result is interpreted as an indication that the legal provisions (employment quota and compensatory levy) are not very effective in fostering the labour market integration of severely disabled people. Instead, anticipated costs and revenues of the employment of disabled workers are considered to be much more relevant for the decision to actually employ severely disabled persons.

In the same study (Sadowski *et al.*) the relation between enterprise size and recruitment of disabled workers is analysed. According to that, enterprise size is positively correlated with the quota of internal recruitment. This might be traced to the fact that big companies have - on average - more opportunities to retain and internally redeploy employees who become disabled. However, the fact that the quota of internal recruitment increases with company size is mainly due to worker participation, which is usually stronger in bigger enterprises, and also depends on the respective branch (higher in manufacturing compared to services) (Sadowski *et al.* 1992, p.64 ff.). As regards external recruitment (from the general labour market), the situation is complementary. Enterprises with less than 100 workplaces are characterised by a relatively higher quota of external recruitment than larger firms. The latter tend much more to establish internal company labour markets, so that the potential of workplaces that are suitable for workers whose work capacity is restricted because of disability is mainly designated for internally recruited people. Besides, larger firms often pay their workers efficiency wages. The difference from the average wages paid can hardly be compensated by the wage subsidies offered by employment offices to promote the employment of severely disabled persons (Sadowski *et al.* 1992, p.74 ff.).

Regarding the combined effects of both internal and external recruitment, the overall correlation between enterprise size and the employment of severely disabled persons is positive. That means that the share of severely disabled persons among all employees is higher the more workers a firm employs (this is proven by the data for the average actual employment quota for the period of 1984 to 1993, except the enterprise size of 10,000 to 50,000 workers, for which the actual employment quota shows a slight decline). This result is supported by focusing on the group of non-complying employers: of the 54,215 employers who were obliged to fulfil the employment quota but did not employ any severely disabled person in 1992, 61.4 per cent belonged to the enterprise size of 16 to 30 workers, 36 per cent to 30 to 100 workers, and only 2.6 per cent to the size of more than 100 workers. That an increasing employment quota coincides with rising enterprise size can be traced to a lower average burden that larger firms have to bear in employing severely disabled people. Larger companies usually have a wider range of employment opportunities and types of workplaces, so that employees with health limitations can be retained relatively easily without a considerable decline in total work productivity. Since the fulfilment of the six per cent employment quota means that larger enterprises have to employ more severely disabled persons in absolute terms than smaller firms, the former can benefit much more from economies of scale in connection with the adaptation of workplaces and the work environment to meet disabled persons specific needs. Finally, larger firms are usually less affected by business cycles and - as mentioned above - much more inclined to establish internal company labour markets. Both aspects are generally associated with greater opportunities to retain workers (Schröder, 1997, p.145 ff.).

In his study of the compliance costs which arise from legal provisions concerning the employment of disabled persons, Schröder (1997) argues, on the grounds of statistically significant differences in the average actual employment quota among different classes of enterprise size, that legislation would have to distinguish between at least four different enterprise sizes (instead of only two) in terms of employed people: 0 to 30, 31 to 100, 101 to 500, and 500 and more. High values of standard deviation, though, indicate that the derived extent of necessary differentiation is only a rough approximation to the actual need for differentiation.

Besides, Schröder emphasizes that the extent of differentiation derived in his study only refers to (locally separated) production sites, because a large company consisting of several, locally separated production sites has relatively less opportunities to benefit from economies of scale in the adaptation of workplaces and the work environment. Moreover, they cannot offer such a wide range of different types of workplaces, nor such well established internal company labour markets compared to companies with the same number of workers, yet united at one production site (Schröder, 1997, p.149 ff.). Schröder sees a general need for additional differentiation in legislation in relation to the different possibilities of enterprises to employ disabled people (with regard to size, branch, type of workplaces, firm age) and the different work productivities of severely disabled persons (Schröder, 1997, p.139 ff., 237 ff.).

Groups not covered

The following groups do not benefit from the job retention policies stipulated by the Severely Disabled Persons Act:

- unemployed severely disabled persons. In 1996 these totalled 181,250, with 67 per cent in West Germany being male (ZENTRAS, 1997, 40, 43, 51). In September 1995, around 63 per cent of unemployed severely disabled persons who were officially registered at employment offices in West Germany were aged over 50 (ZENTRAS, 1997, 50);
- severely disabled persons who do not belong to the labour force. In 1995, around 5.39 million severely disabled people were neither employed nor registered as unemployed. At the end of 1995, they accounted for 83 per cent of all severely disabled people;
- severely disabled people who have been assigned a disability degree of less than 50 per cent, and all disabled persons who have not applied for registration. Their number has not been statistically ascertained (cf. Bundesregierung: Behindertenbericht, 1994, p.2 f.).

I.5 JOB RETENTION POLICIES IN CONTEXT

I.5.1 The salience of policies for job retention within the overall context of national policy to promote the employment of disabled people

Since 'job retention' and 'access to work' are not used as main criteria to distinguish the different measures of policies to promote employment of disabled persons, the weighting of the available statistical data with regard to these two policy aims is not always easy. The aids and benefits which are documented in pecuniary terms, and therefore clearly quantifiable, can often be assigned to both policy fields (see I.2.3). Put differently, the available data do not always reach a level of being sufficiently disaggregated to make a clear distinction between the two purposes of job retention and access to work. Secondly, many efforts resulting from policy for disabled people are not clearly quantifiable in pecuniary terms which would make a direct comparison possible (like the special dismissal procedure). Their relative importance in the overall context of national policy thus has to be estimated by referring to different elements of documentation.

It is difficult to talk about an overall design of national policy to promote the employment of disabled people in general, especially with regard to job retention. Since the responsibility for the promotion of disabled persons is assigned to various funds and institutions, the orientation of policies and provisions differs according on the respective constitutional principles. In addition to the funds, the different Acts which affect disabled people (Severely Disabled Persons Act, Rehabilitation Harmonization Act, Labour Promotion Act) all have their own characteristic bias in dealing with this target group. For the area of rehabilitation services, the differences in the relative priority accorded to job retention (as compared with return to work or first time entry to employment) are discussed in detail in III.1.2.

In this section, the welfare agencies of the Länder (Hauptfürsorgestellen) will be used as an example to illustrate the difficulty of assessing the importance of job retention compared to other goals (such as access to work) within the overall range of provision. The Hauptfürsorgestellen are the most important institution in promoting the employment of disabled people. Other major funds, such as the Federal Employment Office or statutory pension insurance, assist disabled people to retain their jobs or return to employment; however, disabled people represent only a fraction of all their clients.

In 1995, the Hauptfürsorgestellen spent more than 716 million DM in all. The highest share (more than 50 per cent) is apportioned to the so-called supplementary assistance in the working and professional environment. The intentions are to ensure that the social status of severely disabled persons does not decline, that they are employed in jobs in which they are able to fully use and develop their skills and knowledge, and that they are able to assert themselves at work and in competition with non-disabled persons (BMA, 1996, p.143). More than two-thirds of this share are payments to employers. Job retention can be said to occupy the central position among these subsidies (see table).

Table I.5: Payments by the Hauptfürsorgestellen in 1995 (million DM/percentage of total expenditure)

Altogether	716.24 (100%)
Including: supplementary assistance	359.72 (50.2%)
Including: to employer	247.80 (34.6%)
Including benefits for:	
creation of jobs and training places	95.00 (13.3%)
adaptation of work and training places	74.26 (10.4%)
minimising extraordinary difficulties arising from the employment of particularly severely disabled persons	78.63 (11.0%)

Whilst the item relating to creation of workplaces and training places is supposed to aim at the creation of 'new', i.e. additional, vacancies, the next one ('adaptation of workplaces and training places') is pointed at the modification of existing work and training places (AGDHFS, 1994, p.58). Thus, only the second can clearly be assigned to job retention (payments belonging to this category are also ascribed a preventive function; AGDHFS, 1994, p.59). Nevertheless, the creation of a new workplace adequate for the needs of a disabled person might be related to the redeployment of a newly disabled employee whose employment relationship would be at risk otherwise. Payments for this purpose may therefore serve both access to work and job retention. (See also I.2.3 in relation to financial mechanisms and V.4.1 concerning the quality of jobs for people who are redeployed within the same workplace.)

The third item ('compensation of extraordinary burden') basically stands for wage subsidies. They are paid in the longer term since they are determined to compensate for reduced productivity and a particular necessity of looking after employees because of disability which cannot be compensated by technical working aids or other kinds of support and which would lead to job loss otherwise (AGDHFS, 1994, pp.58, 60). The payments of supplementary assistance to employers are combined with advisory services by the Hauptfürsorgestellen about the available support measures and about technical issues concerning, for example, the modification of workplaces. Employers often show some reservations in taking up such advice

services (see also I.2.3).

More or less the same emphasis is put on payments to disabled employees and to non-profit organizations in relation to category of supplementary assistance (in 1995).

Table I.6: Supplementary assistance

Including:	
to non-profit organisation	54.10 (7.6%)
to severely disabled people	51.00 (7.1%)
Including assistance for:	
technical working aids	11.36 (1.6%)
reaching the place of work	6.20 (0.9%)
promoting economic independence	3.67 (0.5%)
equipping the home to meet the needs of the disabled person	23.96 (3.4%)
maintaining employment	0.12 (0.02%)
vocational training	3.53 (0.5%)
special requirements resulting from disability	2.16 (0.3%)
Other measures	6.82 (1.0%)

The non-profit organizations (independent funds) provide additional psychological and social care as part of a supplementary assistance programme in the working environment. They represent external services under the instructions of the Hauptfürsorgestellen. Their work can be clearly assigned to job retention.

Almost 42 per cent of the payments of accompanying support to severely disabled people (21.21m DM, or about three per cent of total expenditure) is directly aimed at job retention (technical working aids, transportation, maintaining work productivity, vocational training). This does not mean that the remaining payments are directed towards access to work. The highest amount is spent on subsidies for housing that is equipped to accommodate disabled persons. The Hauptfürsorgestellen take charge of this only because there is no other institution to ensure sufficient support in this field of rehabilitation (AGDHFS, 1994, p.54). The amount spent on technical working aids seems to be quite insignificant at first glance, but it has to be considered that money for working aids is only granted to disabled employees in exceptional cases. The incentive to retain disabled workers is considered to be generally higher if these subsidies are granted to the employers (AGDHFS, 1994, p.53 and 1996, p.17).

The remaining categories of financial support given by the Hauptfürsorgestellen, and the payments made for

them in 1995, are shown in the following table:

Table I.7:

Special programmes to promote the recruitment of disabled people	78.60 (11.0%)
Promotion of institutions for the integration of disabled people	258.90 (36.2%)
Training and public relations	7.70 (1.1%)
Support of research and experimental projects	11.32 (1.6%)

The special programmes are related to particular regions. According to ' 33 subsection 3 of the Severely Disabled Persons Act, the Hauptfürsorgestellen finance these programmes and the Federal Labour Office carries them out. The subsidies are intended to reduce the rate of unemployment among disabled people through the creation of additional employment opportunities and promoting access to work. The Labour Offices use the money to increase employers' incentive to hire disabled persons. These programmes have increasingly gained importance since 1993, which means that the Hauptfürsorgestellen have allocated more money to financing the activities of the labour offices. The Hauptfürsorgestellen thus try to prevent the labour offices from reducing their efforts for the integration of disabled people into the labour market at times of high general unemployment and reductions in measures of general labour promotion (under the Labour Promotion Act) (AGDHFS, 1994, p.58 and 1996, p.20).

More than a third of the total expenditure of the Hauptfürsorgestellen is assigned to the promotion of institutions for the integration of disabled people, above all for sheltered workshops (1995: 140.27 million DM, i.e. 54.2 per cent of all the payments within this category) and for special residential areas for disabled people (1995: 87.62 million DM, i.e. 33.8 per cent of all payments within this category). Besides, the Hauptfürsorgestellen subsidize institutions within and outside enterprises which are related to vocational training (1995: 23.03 million DM) (AGDHFS, 1996, p.24). However, this kind of support is not directly related to job retention. As far as sheltered workshops are concerned, it is not even compatible with the goal of retention, since these institutions do not belong to the regular labour market and they hardly facilitate the transition to a regular employment relationship.

' 14 of the Compensatory Levy Regulation determines how the different kinds of support should be weighted. According to this, promoting the creation of training vacancies and supplementary assistance in the working and professional environment must be given priority. Against this background, the relatively high share of payments to external institutions, as described above, seems to be in conflict with the legal stipulation since they appear to shift responsibility and duties onto others. The Association of the German Hauptfürsorgestellen is aware of this problem. In its annual report of 1993, it refers to the time it takes between approval and balancing/reckoning up. A higher number of staff would enable the Hauptfürsorgestellen in the future to primarily grant subsidies to employers and disabled persons themselves, which simultaneously means reducing payments to other institutions and thus to better comply with their priority task (AGDHFS, 1994, p.66). However, the volume of payments to other institutions has risen from 187.61 million DM in 1993 to 258.90 million DM in 1995. The annual report of 1996 states that the conflict of aims, relating to ' 14 of the Regulation (i.e. the 'wrong' setting of priorities) was easier to solve in times when the revenue exceeded expenditure (AGDHFS, 1996, p.23).

The actual problem still seems to be a shortage of personnel, which forces the Hauptfürsorgestellen to restrict

their own activities and to finance those of other institutions. As a consequence, job retention and the creation of additional vacancies in regular enterprises for disabled people cannot be pursued as intensely since they are not primary goals of the subsidized institutions (like the sheltered workshops). The shortage of personnel, on the other hand, results from the way the Hauptfürsorgestellen finance their activities: the money for all the payments and subsidies they make stems from the revenue from the compensatory levy, while the entire administration and the personnel respectively is financed by the Bundesland they belong to. At times of high public debt and an increasing pressure to take austerity measures, the Bundesländer strive to particularly economize on personnel because this is considered to be a main cost centre. That is also why the staffing and thus the working conditions are different for the Hauptfürsorgestellen among the individual Bundesländer (AGDHFS, 1995, p.5).

The expenditure for training measures can be assigned to the scope of job retention efforts. The training events seek to inform the disabled employees' representatives (both elected ones and those appointed by employers) and the works councils about the legal provisions, in particular about the Severely Disabled Persons Act. In addition, these events are supposed to foster the exchange of experiences and to give participants the opportunity to acquire communicational and social skills which they might need to fulfill their tasks in the enterprises. There are also special events about specific topics like the adaptation of workplaces, social security etc., or for specific groups (for example events only for employers or for deaf employees) (AGDHFS, 1994, p.96). In 1995, the Hauptfürsorgestellen were involved in 1,372 training measures from which they carried out 654 entirely on their own. That this number has increased considerably compared to the preceding two years has to be traced to the election of the new disabled employees' representatives at the end of 1994, so that there was a need of acquiring basic knowledge for their new task (AGDHFS, 1996, p.31).

Conclusion

From all the payments the Hauptfürsorgestellen made in 1995, only around a fifth can be directly assigned to the goal of job retention: that is, payments for the adaptation of workplaces, training vacancies, psycho-social assistance by non-profit organizations, payments to severely disabled employees for technical working aids, transportation, maintaining work productivity and vocational training, and payments for the training of works' councils. However, around another 25 per cent of the entire expenditure might potentially serve the goal of job retention as well, that is payments for the creation of workplaces and training vacancies and for the compensation of extraordinary burden (wage subsidies). Moreover, there are two reasons which suggest that job retention is given the relatively highest priority in the work of the Hauptfürsorgestellen:

- Even though the share of expenditures directly assigned to job retention seems to be relatively small, one cannot draw the conclusion that all other payments are devoted to the promotion of access to work. This is only the case for 11 per cent of the entire expenditure (payments for special programmes to promote the recruitment of disabled people). Around another 25 per cent are at least partially intended to promote access to work (the same categories as above: creation of workplaces and training vacancies and compensation of extraordinary burden, i.e. wage subsidies);
- The activities of the Hauptfürsorgestellen are - by far - not confined to payments. Instead, being the crucial authority in the dismissal procedure concerning disabled employees clearly stands out as the main function. (The performance of the Hauptfürsorgestellen in this respect is documented under I.3.1.) The related activities belong to the scope of job retention, but they cannot be quantified in pecuniar terms and a direct comparison with the volume of payments to work out their relative importance is not possible. In addition, the sources of financing are different: while the money for the payments granted by the Hauptfürsorgestellen stems from the revenue of the compensatory levy, the personnel who are involved in dismissal procedures are paid by the Bundesländer. The latter payments can much less be related to a certain output.

The same applies to all the enterprise visits (in 1993 there were more than 35,000/AGDHFS, 1994, p.56; more up-to-date data are not available) and the counselling of severely disabled persons by the Hauptfürsorgestellen. It is a commonly held opinion that the scope of services and the establishing of close contacts with enterprises will be of increasing importance in the future. This requires a more active role by the Hauptfürsorgestellen, compared with the relatively 'passive' confinement to just approving payments (see, for example, AGDHFS, 1996, p.9).

I.5.2 The most prominent job retention policies

Of the job retention policies listed under I.2, legal obligations (see I.2.1) play the most important role. The higher importance of legal provisions, as compared with financial incentives and voluntary policies, corresponds with general traits of regulative systems in Germany. The culture of the national system - if something like this exists at all - is commonly said to be characterised by putting more emphasis on compulsion and regulation than on encouragement and persuasion. Another feature in this context is that regulations often refer to a very disaggregated level (even relatively minor details are subject to legislation and administrative activities), so that the whole body of regulation in a given area becomes very complex. One might speculate whether the complex body of regulations concerning the integration of disabled people is necessary because the social situation of this group would otherwise deteriorate considerably, or whether the multitude of regulations and legal obligations chokes initiative of one's own, and of private enterprises in particular. An international comparison of different regulative systems might help to clarify this question. Studying enterprise strategies (in Part V) might also give information about how far the legal framework leaves space for activities in favour of disabled employees at the level of individual enterprises. A lack of well-documented, formalized enterprise strategies does not mean that efforts for the integration of disabled employees are insufficient. Nor is it a 'bad' sign if no standards in the treatment of disabled employees evolve at enterprise level so that only individual strategies can be reported in case studies.

The groups of disabled people covered by policies concerned with integration into work, at both a legislative and an enterprise level, are highly heterogeneous. In principle, decentralized activities have a much better chance of corresponding to a heterogeneity of phenomena - which is a point in favour of individual and varied enterprise policies concerning disabled employees. However, it can be questioned whether there is enough incentive for employers to chance employing disabled people. A legal framework, though, which does not confine itself to the stipulation of certain procedures but which also lays down specific outcomes, and which also claims to do justice to the entire group of disabled people, necessarily has to be very complex.

There are at least two more reasons why retention policies in Germany are more biased towards legal obligations and state regulations than towards exclusively setting incentives for enterprises:

- The present shape of integration policies and their related institutions is deeply rooted in German history. It is founded on a relatively long tradition which - of course - was first confined to people disabled by war or industrial accident. Yet, when the protected group of people was extended to include all severely disabled persons irrespective of the nature or cause of their disability in 1974 (under the principle of finality; BMA 1996, p.179), legislation included the already existing - and highly differentiated - institutions for the integration of disabled persons. The high complexity is thus also a reflection of long tradition;

- As described under I.2.3, financial incentives like wage subsidies involve some general problems so that it is commonly held that they can just be an additional instrument to foster the employment of disabled people. Moreover, they must be combined with concrete legal obligations since it is doubted that there is a sufficient genuine incentive to take them up.

The legislation does not really distinguish between newly or already disabled people. The relevant criterion is

just the status of being a severely disabled person according to ' 1 of the Act. The Social Code (Book I, ' 10) also includes people who are at risk of becoming disabled (see I.4.1).

With respect to the policy attention given to the retention of newly disabled workers on the one hand and already disabled workers on the other, it seems that this is not the decisive criterion in policy. Rather, it obviously does make a difference to employers' behaviour whether the disability occurred during an existing employment relationship or not. Enterprise policies set different measures in treating disabled persons depending on tenure (internal vs. external recruitment) and cause of disability (whether it relates to work) (cf. I.1.2).

I.6 IMPLEMENTATION OF JOB RETENTION POLICIES

I.6.1 The effectiveness of institutional arrangements for monitoring and enforcement

As mentioned in I.2.1, the effectiveness of the provisions of the Severely Disabled Persons Act is partially limited since in many respects it turns out to be primarily a law of good will. This feature also sheds some light on the effectiveness of institutional arrangements for the monitoring and enforcement of the job retention obligations resulting from the legal framework.

Some legal obligations are of such a general character that their fulfilment cannot be easily monitored. This applies, for example, to: the general obligation for employers to promote the employment of disabled persons which is laid down in ' 14 of the Act and the related provision of adequate workplaces for disabled employees; the 'social right' to assistance (Section 10 of Book 1 of the Social Code); the examination of every vacant position for its potential for being filled with a severely disabled person; and the amendment to Article 3 of the constitution (cf. I.2.1).

On the other hand, the employment quota is much more concrete, and above all quantifiable. Its fulfilment is monitored by the Federal Employment Office, which ascertains the numbers of compulsory places, severely disabled persons and persons of equal status in employment (BMA, 1996, p.137). Employers are supposed to pay the compensatory levy to the Hauptfürsorgestellen of their own accord in the case of under-fulfilment. The levy has to be paid on an annual and backdated basis. Employers calculate the amount they have to pay because of under-fulfilment themselves, taking into account possible contracts to sheltered workshops for disabled people which they had awarded during the preceding 12 months and which they can count towards the compensatory levy. The Hauptfürsorgestellen are officially responsible for the raising of the compensatory levy (they are assigned most of the revenue, too; cf. I.2.1). For that reason, they receive data about the actual employment quota from the respective employment offices, by which they can check up on whether the payments by the companies of their district for not fulfilling the quota are reasonable. However, it seems realistic to assume that the Hauptfürsorgestellen must confine their monitoring to spot checks (source: personal communication/Aktion 16). It can be said that the actually realised employment quota both in the corporate and state sector is widely ascertainable. However, one has to consider the way the number of obligatory workplaces for severely disabled people is determined and the possibilities for counting existing employment relationships towards the quota (see " 7-10 of the Act) on the one hand, and the potential for many employers to internally recruit disabled employees on the other hand. The two combined may result in an increase of the fulfilment of the quota although the employment situation of disabled people has actually not changed much. Thus, even if monitoring and enforcement are relatively easy in practice, it may not be sufficient to actually reach the legal goals if these goals (relating to the improvement of disabled people's employment situation) are not adequately operationalized.

A much better realisation of legal obligations is possible in relation to procedural provisions such as the election of disabled employees' representatives and special protection against dismissal. Monitoring adherence to procedures is significantly easier than with outcomes which have to be operationalized. However, as outlined in I.2.1, the procedural provisions within the scope of retaining jobs for disabled

employees are difficult to enforce because of insufficient possibilities of sanctions. Besides, employment offices, from which action against enterprises not observing the procedural provisions can be demanded, find themselves confronted with a conflict of interests, i.e. a dilemma between fining enterprises and cooperating with them to achieve more access to work for disabled people.

It is one of the major tasks of the Hauptfürsorgestellen to monitor and enforce the special protection against dismissal. As has been shown in I.3.1, job loss still occurs in the majority of cases. Nevertheless, dismissals are made more difficult by the involvement of the Hauptfürsorgestellen by which the involved parties should be encouraged to more intensely look for opportunities to prevent dismissals. Measured against this more modest goal, the institutional arrangement to give special authorities (Hauptfürsorgestellen) the task of monitoring appears to be one of the more successful in contributing to the effectiveness of the enforcement of job retention obligations. It has to be added, though, that most of the approvals of applications for dismissal which the Hauptfürsorgestellen have to make are legitimized by the economic situation of the enterprise, and this is not always completely ascertained by outsiders.

The elected disabled employees' representatives (in enterprises with at least five permanent disabled employees) and works councils have to monitor that all legal provisions relating to severely disabled employees are observed. Compared with the employment quota and the special protection against dismissal, there is no additional legal authority for monitoring the election of disabled employees' representatives. The legal obligation to have such representatives is merely a right which can be claimed by the disabled employees. That disabled employees' representatives are actually not elected can often be traced to a - sometimes only alleged - lack of candidates who are willing to take on this honorary post. The duties which are connected with this post are then shifted onto the works council (if it exists). The latter is, indeed, responsible for effectively looking after the interests of severely disabled employees (section 80, subsection 1, clause 4 of the Works Councils Act), also taking into account that works councils usually have better opportunities to check whether all regulations relating to disabled employees are actually observed by the company. Yet, the particular status of a disabled employee's representative was introduced in 1986 because it was held necessary to complement the activities of the works council with respect to disabled employees and the related body of regulations. There are two more shortcomings in this context. First, as has been mentioned, not all severely disabled people try to get registered. As a consequence, the legal obligation to have a representative elected does not apply even though there may be some need for it. Secondly, in the case of many representatives, it is too much to expect that they should monitor the observation of all legal provisions. Both a lack of knowledge and time constraints often limit the scope of the representatives' activities.

I.6.2 Factors which affect the adoption of voluntary job retention measures and take-up of financial incentives by enterprises

The preceding description has made clear the perceived dominance of state-initiated job retention policies for disabled people in Germany, which manifests itself in the fact that the bulk of literature related to this topic confines itself to the effects of legislation and regulation on enterprises rather than dealing with corporate strategies to retain disabled workers. However, there are some interesting approaches to this in individual companies which will be examined in Part V. At this point, the enterprise perspective and the question of private initiative as regards job retention policies for disabled people focus more on the reactions of the corporate sector to state policies, in particular to those which grant enterprises some scope for decision making (in, for example, the take-up of financial incentives).

For this purpose, some aspects of the preceding points should be stressed once again. Although the elements of the quota, compensatory levy and dismissal procedure have an obligatory character, they leave some scope for employers concerning the fundamental orientation of their retention policy. Basically, they have two options. If they decide to play only a passive role in the efforts for job retention, they will only take the most necessary measures, i.e. they will support job retention measures as long as these contribute to the extent to

which the fulfilment of the employment quota is considered to be adequate from the employer's perspective. Since there are often plenty of opportunities to internally recruit disabled employees - especially in bigger companies and among older workers - the retention of somebody whose disability would require essential adaptations of the workplace for example might not appear to be worthwhile from a perspective which merely considers cost in strictly pecuniary terms.

Employers who want to contribute to job retention more actively tend to see the employment quota just as a kind of additional measure of their own efforts. They align themselves much more with the genuine intention of the goal of job retention. They do not see it just as a means of reaching a certain quota level, and of avoiding compensatory levy payment. Rather, they consider job retention policies to be an important variable which influences the social climate in the enterprise. This may, in turn, influence variables such as work productivity. So job retention policies and their effects on the social climate in the company may also be perceived as being highly relevant in pecuniary terms and for the firm's revenue. Against this background, employers may tend to adopt a broader job retention policy which goes beyond an orientation towards a narrow quota-levy payment calculation. The incentives for doing so then derive from a different approach to the calculation of corporate costs and revenues, which themselves underpin personnel policies (see Frick).

Such considerations help to explain the relatively low level of take-up of the financial incentives offered by state institutions (the employment offices and the Hauptfürsorgestellen in particular). The 'actively retaining' employers do not need them since their retention measures result from their own economic behaviour. Taking up this financial assistance would just lead to 'dead weight' effects. The necessary gathering of information and application process, as well as the involvement of external state institutions in corporate affairs, all of which are necessary to benefit from these mechanisms, are usually reason enough not to apply for financial assistance. For the 'passively retaining' employers the same reasons apply, although this financial assistance would make more sense in the light of their calculation of the 'profitability' of job retention. Their narrow understanding of cost, however, particularly diminishes their willingness to look more closely at the apparently confusing complexity of all the measures promoting job retention. As has been explained in I.2.3, there is a general reserve with regard to contacting supporting institutions. These institutions, in turn, neither have the personnel nor a credible reputation to present themselves as providers of services aiming at informing and counselling interested companies about available support and thus to overcome the reservations of the latter.

Finally, bridging the gap between supporting institutions and private enterprises through the work of disabled employees' representatives often fails because it tends to demand too much from a single person to do justice to all the tasks related to this position.

I.7 INTERACTIONS BETWEEN EMPLOYMENT POLICIES AND PROGRAMMES

I.7.1 Ways in which the employment policies complement or contradict one another

As discussed in I.4.1, the partial mismatch between the provisions of the Severely Disabled Persons Act and its eligibility requirement (degree of disability) has been presented as a shortcoming in the design of the law. The mere change in terminology by the amendment of 1986 has highlighted the underlying problem but has not removed it. Consequently, some disabled people benefit from protective and supportive measures related to working life even though they could do without. On the one hand, this causes scope for dead weight effects and dilutes the promotion of job retention. Resources may thus be misallocated. On the other hand, the social climate in the enterprise may be disturbed since obtaining the official status of being severely disabled is in many cases seen as something which can - to some extent - be influenced by the employees themselves. If this is true (and the registered employee could have continued a job easily without this registration), non-disabled employees will perceive the special protection against dismissal as well as the extra five days leave as unjustified protection which makes them relatively worse off themselves. This is, in fact, another aspect contributing to the negative stigmatization which is associated with disability status, and which

discredits job retention policies in general.

1.7.2 Impact of the distribution of responsibility for employment policy

The institutional arrangement of complementing the obligatory legal provisions such as the quota and the dismissal procedure by offering support services to facilitate the observation of these stipulations appears quite reasonable. However, as has been shown, problems arise from delegating both the monitoring of the legal provisions and the support services to the same body of institutions which, in addition, do not have sufficient personnel to overcome this problem by establishing well-founded cooperative relations.

With regards to financial support for the job retention of disabled employees by either adapting workplaces adequately or by more or less permanently compensating for diminished productivity resulting from disability, there is a considerable overlap between the employment offices and the Hauptfürsorgestellen. As the eligibility criteria for sources of financial support are not always clearly determined and thus not separable from one another (cf. 1.2.3), this situation causes a further reduction of transparency in the entire support system. This, in turn, increases the need for information and consultancy services from the provider institutions which encounter a general reserve on the part of enterprises for the reasons described above.

1.8 LINKS TO LABOUR MARKET FACTORS

1.8.1 Elements in labour market policies which influence the effects of job retention measures

The high level of general unemployment in Germany causes a continuous shift of focus in labour market policies away from the promotion of specific groups like disabled people. More and more, they become part of a target group which includes various groups of people who face particular problems in the labour market (such as young, unqualified or older people, and women). This development is to be seen less in the context of concepts of normalization (in order to prevent the dysfunctional and stigmatizing effects of a specific promotion), and more in the context of a restructuring of institutional arrangements as a reaction to austerities in the public sector. On the other hand, it can definitely not be said to what extent this reorganisation means a relative cut in financially supporting job retention policies. The revenue from the compensatory levy still is a relatively stable funding base. The described shift in focus might therefore refer more to special programmes for generally disadvantaged workers (i.e. existing alongside the levy-funded activities) which disabled people may also benefit from.

However, disabled people have been directly affected by austerities which have had consequences for the Federal Employment Office. Changes in the Labour Promotion Act which had been initiated by a new law to foster economic growth (*Wachstums- und Beschäftigungsförderungsgesetz WFG*) caused cuts in the support of vocational rehabilitation measures in 1997 by turning the legal claim of disabled people for these measures into discretionary decisions taken by the employment offices. The expenditures of the Federal Employment Office were supposed to be cut by 500 million DM per year. Since retraining which might be necessary to retain a newly disabled employee is part of vocational rehabilitation, job retention policies may be negatively affected by the new regulation. However, there are exceptions to it, above all for severely disabled people (BMA, 1997a, p.10 ff.; Sozialverband Reichsbund, 1997, p.13 f.).

Referring to the possible negative effects of the special protection against dismissal which may lead to discriminatory recruitment behaviour on the part of employers, an amendment to the Severely Disabled Persons Act in 1986 stipulated that this special protection only applies after an employment duration of six months (previously it was three months). By the same amendment, the additional holidays for severely disabled persons were reduced from six to five days. In 1996, the general protection against dismissal was significantly restricted. Especially in cases of a severe deterioration of a firm's economic situation (as they are described in ' 19 of the Act), employers are no longer obliged to particularly consider (even severely) disabled people in their selection of the employees they are going to dismiss (Sozialverband Reichsbund,

1997, p.16 f.). These modifications also have to be seen against the background of general deregulation efforts in this period.

I.8.2 Changes in labour market demand and the structure of the labour market

The special protection against dismissal, in particular, shows how the effectiveness of job retention policies is dependent on the general situation of the economy and the business cycle. At times when employers extensively use dismissals to restructure their company and to face increasing competitive pressures, the group of disabled employees is not exempted. In Germany, where labour costs are relatively high, demands on employees tend to rise permanently. Labour demand shrinks relatively in quantitative terms, but simultaneously rises in qualitative terms. For disabled workers, that means that their qualification has to make up for disability-related diminished productivity and all the extra costs related to their protected position in working life. Put differently, their qualification has to be above average to get equal opportunities.

However, the increasingly intense efforts to establish flexible working time regulations to make it possible for companies to react to varying product demand may create more opportunities for disabled employees to meet job requirements - even in manufacturing - although their disability makes it difficult for them to work steadily. More part-time jobs will emerge from more flexible working time regulations, too.

It is commonly held that, in the long run, a decrease of unemployment in Germany can only be achieved by the extension of the service sector, either because the related production processes are more labour-intensive or because related new jobs are created in sectors with a high growth potential (such as information services). For disabled people in particular, different working conditions in many service professions such as working with computers (homeworking and teleworking) open up new job opportunities. Yet, as the figures under I.4.2 show, there is still a sizeable group of disabled employees who are not employed in the service sector. It has to be assumed that these jobs will increasingly disappear in the future, as more efficiency measures are taken. As is the case with unemployed people in general, inflexible wage structures and levels prevent a rapid absorption of redundant workers from the manufacturing sector into the service sector in Germany.

Early retirement policies have been quite popular in Germany since the 1980s as a means of reducing unemployment. The law allows severely disabled people to retire early at the age of 60 (*Gesetz zur Herabsetzung der flexiblen Altersgrenze in der GRV für Schwb*). Frick/Frick (1994) have studied the early retirement behaviour with regard to disabled employees emphasizing the demand side of the labour market. They found that, contrary to most available studies, the decision to retire early is not primarily the result of disincentive effects caused by transfer payments and moral hazard, but 'a joint result of personal preferences, institutional options and enterprise policies'. In periods of rising unemployment or slack demand, firms use the early retirement regulations to 'restructure their respective workforces in a way that minimizes the damage to labour relations and plant-level industrial peace that would otherwise occur' whilst concentrating workforce reductions on older employees (cit. Frick/Frick, 1994, p.235).

Legislation grants firms 'an opportunity to demonstrate benevolence towards their staff and at the same time to end employment relationships with long-term employees in a way that is both legitimate and socially acceptable to the workforce' (Frick/Frick, 1994, p.218). The employment of - for the most part internally recruited - disabled people does not really seem to be 'the result of a legally enforced 'moral pressure', but primarily serves the 'reciprocity expectations' of all employees': The employees are confident that 'the utilization of labour in the firm does not endanger the lifetime protection of the capacity for work' because they expect the firm to 'reward them with special benefits if their performance capacity should diminish some day'. In return, employees feel more inclined 'to furnish the firm with an investment, based on their continuous performance, their willingness to accept responsibility, their reliability, etc. - i.e. especially the non-contractual elements of their work'. The user cost of labour can thus be decreased significantly (cit. Frick/Frick, 1994, p.220 f.).

On the other hand, disabled employees, and internally recruited ones in particular, are on average relatively old and usually have very long tenure. As a consequence, their average income is higher since workers' earnings tend to rise with job seniority. Taking further into account the additional holidays as well as longer average sickness spells, the labour costs of disabled employees are pushed up compared with those of non-disabled workers (Frick/Frick, 1994, p.222 f.). Because of the increasing effects on labour costs, enterprises are usually interested in either reducing disabled workers' wages or making them leave the firm. However, collective agreements and reciprocity expectations obstruct the reduction of wages and salaries. In this situation, social security law gives a disabled worker the opportunity to retire early, thereby partially relieving the firm of increasing labour costs. Among the employees early exit is popular, too, as long as it is both financially and socially acceptable. Thus, premature retirement is in the interest of both parties. However, as the authors point out, the common interest is not without cost: early retirement behaviour will result in higher social security contributions and probably lower wages. 'From a microeconomic point of view, it is therefore rational to use the options provided by the state. From a macroeconomic point of view, however, these regulations will be increasingly difficult to finance' (Frick/Frick, 1994, p.226 f., cit. p.227).

A new draft for a Pension Reform Act which is due to come into force in 1999 includes changes affecting disabled employees who plan to retire early. This will be discussed in the context of pensions, on account of reduced earnings capacity (see II.2.1).

II. BENEFIT AND COMPENSATION PROGRAMMES

The purpose of this Part of the report is to examine how social benefit and compensation programmes affect possibilities for disabled workers to retain or rapidly resume their employment. The main focus is on the application of benefit programmes in employment; that is, opportunities to combine earnings with income from disability benefits, workers' compensation or other employment-related reparations. The obstacles presented by systems for out-of-work benefits are also examined. The theme covers cash benefits and payouts and, where significant, allowances against taxable income. Programmes may be funded from tax revenues, or from earmarked or general insurance funds to which employers and/or employees contribute.

The first section presents information about workers and other compensation programmes. This is followed by a discussion of arrangements for combining benefits and earnings from work. Provision is then considered for income support out of work, and its effects on work resumption. The final section examines interactions between disability benefit programmes and employment policies.

II.1 COMPENSATION PROGRAMMES FOR WORK-RELATED INJURY OR ILLNESS

II.1.1 Principal compensation programmes for work-related injury or illness

In Germany, accidents at work, occupational illness and job-related health hazards are covered by the statutory occupational accident insurance. People who are employed, undergoing training or travelling to or from work are automatically covered regardless of fault and of how much they earn. The insurance coverage includes more than 50 million people, mainly salaried employees but also agricultural workers, children attending pre-school or school, students, people helping at the scene of an accident, civil defence and emergency rescue workers as well as blood and organ donors. Businesspeople and self-employed people can obtain insurance coverage on a voluntary basis. The objectives of the statutory accident insurance are to:

1. guard against accidents at work and work-related illnesses (prevention) through 'all appropriate means';
2. make up for, or at least minimise, the medical, professional and social consequences of industrial accidents and work-related illnesses by means of comprehensive rehabilitation;

3. provide financial compensation, usually in the form of a pension, for lasting consequences which restrict an individual's capacity to earn in the long term, or financially support surviving dependants.

(BMA, 1997 Internet ch.11, p.1 f.; HVBG, 1997a, p.5)

In the case of a work-related accident or illness the insured can claim medical treatment (for an unlimited period), injury benefit (80 per cent of the gross wages having been lost as a result of the accident for a maximum of 78 weeks), occupational assistance (see below), social rehabilitation and supplementary benefits (see below), and - if necessary - injury pension (if an accident at work or an occupational illness has reduced earning capacity by at least 20 per cent or for a minimum of 26 weeks). The benefits of the statutory occupational accident insurance are financed exclusively by the employer's contribution. Employees, children in school, students, etc. do not pay contributions even though they are covered by the insurance (BMA, 1995, p.392 ff.; BMA, 1997 Internet ch.11, pp.2, 4).

Compensation for work-related injury or illness is based on a broader understanding of this term than just a focus on pecuniary aspects such as cash benefits, payouts and allowances. The programmes and provisions of the statutory accident insurance are very comprehensive and inter-related. The available data allow, though, for a separation of the area of pensions from rehabilitation. In fact, the main association of the industrial employer's liability insurance funds publishes a well-documented report on the rehabilitation measures provided by statutory accident insurance (HVBG, 1995, 1997a). On the other hand, rehabilitation measures usually include pecuniary benefits, too. So, for example, the biggest item in the area of vocational rehabilitation is pecuniary benefits paid towards living expenses for the insured and their families, while rehabilitation (like training) takes place (HVBG, 1997, p.29). It is not always possible here to split up the material on rehabilitation measures into pecuniary income-related provisions and pure services (dealt with in more detail in Part III).

It should be noted that the statutory occupational accident insurance scheme includes an accident prevention requirement in line with industrial health and safety standards. The payment of compensation benefits depends on whether those standards have been complied with.

II.1.2 Features of the compensation process which affect job retention and return to work

One of the professed goals within the area of responsibility of the statutory occupational accident insurance is, besides accident prevention and the limitation of negative consequences of work-related accidents and illnesses, to re-integrate injured people into their former profession and company, as far as this is possible (BMA, 1995, p.391; cf. Social Code, Book I, '22).

That is the reason why the statutory occupational accident insurance does not provide only for medical but also for vocational rehabilitation measures and for payments while taking these measures. The administration of each insurance fund employs full-time assistants (*Berufshelfer*) who start looking after the injured people with regard to vocational rehabilitation during initial medical treatment. The insurance gives primacy to rehabilitation services according to the principle of 'rehabilitation before payment of pension' (BMA, 1995, p.399). Assistance provided by the insurance relate both to job retention and to access or return to work. Depending on how far the insured's productivity can be restored, re-integration into work is to be aligned with the person's capacities, inclinations and former professional activities. Permanent re-integration should be achieved (BMA, 1995, p.401).

The support provided within the scope of vocational rehabilitation is diverse. It may contain financial assistance to job search, encouragement to take up a job, payments to employers as integration assistance, financial support for retraining and further vocational training, and work trials, as well as supporting the procurement of technical working aids. Occupational assistance also includes transitional allowances while

undergoing training (provided that no wages are received). Beyond that, the insurance provides benefits for related measures (belonging to the category of 'social rehabilitation and supplementary benefits'). These include financial assistance to modifying motor vehicles or homes according to the particular needs of the disabled person, domestic help, psychosocial counselling, and rehabilitative sport (BMA, 1995, p.402 f.; BMA, 1997 Internet ch.11, p.2; HVBG, 1997a, p.28 ff.).

However, the most important kind of compensation benefit (in terms of volume) which is granted by the statutory occupational accident insurance is still the pension payment. However, in comparison with pension payments in general, there is an interesting feature about the benefits provided by statutory occupational accident insurance with regard to job retention and return to work. Besides the function to compensate for an impairment of the capacity for employment, these payments are also supposed to take the place of damages and to partially compensate for the non-material burden injured people have to bear. That might be the reason why income from work is not counted towards the income from pension payments provided by the statutory occupational accident insurance (BMA, 1995, p.403). This regulation promotes efforts of job retention and return to work. However, the available statistics about pension recipients does not allow a distinction between those who could retain their job or return to work and those who cannot, since such a distinction does not seem to be relevant to the accident insurance funds (source: personal communication with HVBG).

As the statutory occupational accident insurance also has an obligation to prevent the (re-) emergence or aggravation of work-related illnesses, it may prevent job retention. However, this will only be the case if the threat of work-related illness cannot be removed in another way. The insurance will then provide so-called transitional benefits which are provided for at most five years and are not affected by pension payments (BMA, 1995, p.406 f.).

The main eligibility criterion for the provision of all the measures and benefits described above is the occurrence of accidents and illnesses which result from insured events. The latter are activities which serve the goals of the company. Accidents which happen on the way to work or as a result of negligent behaviour or actions taken against orders (but not intentionally) are insured, too. Work-related illnesses are defined as such by legal orders so that there is hardly any discretionary scope in the acknowledgement process. Benefits by the statutory occupational accident insurance are officially ascertained, an application by the insured persons is thus not necessary. Employers are obliged to report any significant accident in their companies (BMA, 1995, p.397 f.; HVBG, 1997, p.26).

II.1.3 Influences of key actors involved in the process

Statutory occupational accident insurance is provided by industrial, agricultural and public sector employers' liability insurance funds. Among these main categories, there is a great variety of different individual insurance funds, the most important of which are the professional and trade associations, agricultural associations, accident insurance associations of the railway, municipalities, the Federal Government, and the Länder. These associations are all public corporations with the right to self-government (BMA, 1995, p.410 f.; BMA, 1997 Internet ch.11, p.1, 4).

Since the insurance funds relate to different branches in the economy with varying hazard levels (i.e. probabilities, frequencies, and seriousness of accidents), there are quite distinct differences in contribution rates. That is why a redistribution of income between the different associations is made possible by law.

An interesting tool which the insurance funds are supposed to use is extra charges or reductions on the contribution rates. Thereby, they can set incentives to take effective measures against occupational accidents and work-related illnesses. Additionally, they can grant graduated premiums according to the effectiveness of accident prevention measures (BMA, 1995, p.414 f.; HVBG, 1997, p.46).

II.1.4 The effects of compensation on job retention and return to work

The report on rehabilitation measures provided through statutory accident insurance also gives detailed documentation about their outcomes, i.e. the extent to which rehabilitation measures have been successful (this will be dealt with in III.6.3). Since the documented outcomes refer to rehabilitation efforts as a whole, statements about the particular role of the pecuniary compensation elements as part of the rehabilitation process cannot be made. Furthermore, 'success' is measured as 'integration into working life', which does not allow a distinction to be drawn between job retention and return to work (the description of the provisions within the scope of vocational rehabilitation contains both job retention and return to work as general objectives; beyond that, however, these two aspects are not dealt with separately any more in the report, except with respect to vocational training, see II.1.5).

II.1.5 Characteristics of disabled workers who do or not retain their employment or return to work following benefit claims

The rehabilitation report published by the main association of the industrial employers' liability insurance funds gives information on some characteristics of people who could be successfully integrated into working life after going through vocational rehabilitation provided by statutory accident insurance. As has been pointed out before, however, it has to be noted that the statistical data neither distinguish sufficiently between job retention and return to work, nor do they refer exclusively to pecuniary and income-related elements of compensation.

The statistical data list numbers of cases using the following categories: successful integration into working life; successful integration into working life only after additional measures of vocational rehabilitation; integration impossible because of death, severe damage to health, a lack of adequate vacancies or personal reasons for not accepting a vacancy (such as motherhood or maternity, or illness unrelated to occupational accident), and age at the time the occupational accident happened. The latest available data for these categories refer to 1993 (source: HVBG 1995, p.198):

Table II.1: Vocational rehabilitation (numbers of cases, 1993)

<i>Age</i>	<i>Total</i>	<i>Successful integration</i>	<i>Additional measures</i>	<i>No integration</i>
Below 20	1,371	1,069	91	211
20 - 24	2,991	2,242	215	534
25 - 29	2,421	1,883	169	369
30 - 34	1,734	1,374	115	245
35 - 39	1,472	1,161	97	214

40 and older	6,356	4 431	446	1,479
Total	16,395	12,200	1,136	3,059

Vocational training measures represent a subgroup of the vocational rehabilitation measures. Vocational training comprises those vocational rehabilitation measures by which the integration into working life should be achieved not only by financial assistance paid to the employer or by technical working aids and the adaptation of workplaces, but also by training or retraining of the insured person. The rehabilitation report lists particular statistics for this group, using the same outcome categories as above. Besides age, it also distinguishes outcomes with regard to gender and the insured person's previous position in working life (source: HVBG, 1995, p.198 f.)

Table II.2: Vocational training within vocational rehabilitation

<i>Age</i>	<i>Total</i>	<i>Successful integration</i>	<i>Additional measures</i>	<i>No integrati</i>
Below 20	572	425	35	112
20 - 24	1,452	1,030	91	331
25 - 29	759	525	57	177
30 - 34	281	187	20	74
35 - 39	136	79	11	46
40 and older	123	72	10	41

Total	3,336	2,327	224	785
Previous position and gender				
Children/students				
<i>male</i>	19	14	-	5
<i>female</i>	6	5	-	1
Other non-working				
<i>male</i>	5	2	1	2
<i>female</i>	8	6	-	2
<i>Age</i>	<i>Total</i>	<i>Successful integration</i>	<i>Additional measures</i>	<i>No integrati</i>
In ordinary vocational training				
<i>male</i>	97	56	11	30
<i>female</i>	201	156	3	42
Wage earners				
<i>male</i>	1,690	1,122	178	390
<i>female</i>	694	541	19	134
Salaried employees				
<i>male</i>	70	46	6	18
<i>female</i>	448	308	3	137

Self-employed				
<i>male</i>	17	10	1	6
<i>female</i>	7	5	-	2
Farmers				
<i>male</i>	16	15	-	1
<i>female</i>	1	1	-	-
Other working people				
<i>male</i>	30	19	1	10
<i>female</i>	27	21	1	5
Total				
<i>male</i>	1,944	1,284	198	462
<i>female</i>	1,392	1,043	26	323

The figures show that the integration quota after vocational training is almost the same among men (66.4 per cent among wage earners, 65.7 per cent among salaried employees). It is striking that a larger proportion of women than men was able to return to work within six months of completing vocational training (74.9 per cent versus 66 per cent). This applies to female wage earners in particular (almost 78 per cent) (HVBG, 1995, p.180 f.).

The statistical information on the outcomes of vocational training measures within the area of vocational rehabilitation allows a more exact classification in terms of job retention and return to work. The accident insurers consider job retention (in the sense of returning to both the same employer and the same job) as a failure, since they only provide measures of vocational (re)training if the possibility of returning to the previous job has been effectively excluded. They also assume that re-employment in the former job after having gone through vocational (re)training would result in damage to the insured person's health or being paid less (HVBG, 1995, p.179 f. 181).

Statistics show that, of 3,233 people in vocational training in 1993 (not including the agricultural sector), 2,072 could successfully be integrated in a new occupation corresponding to the qualification which was obtained by the training measures; this is a 64 per cent share (HVBG, 1995, p.208 f., table 5.12). The remaining cases could not be considered successes since they represented people who returned to their previous occupation (25), who returned to work not corresponding to their new qualification (142), who have not been integrated yet (430), or about whom a statement was not possible since the evaluation of vocational training requires a waiting period of six months after the training has ended (564).

II.1.6 Effects on job retention and return to work resulting from the interaction between compensation programmes and out-of-work benefit programmes

The legislation regulates how to proceed if a disabled person claims benefits from both accident insurance and pension insurance (see BMA, 1995, p.257, f.). However, since this provision only relates to compensation in the form of wage replacement benefits, it has no relevance for job retention or return to work.

However, by providing transitional allowances during the process of vocational rehabilitation and related training (cf. I.1.2), the statutory occupational accident insurance does grant temporary out-of-work benefits. In the end, their function is to make job retention or return to work possible; without these benefits, many people could not participate in measures to regain capacity for employment following the onset of work-related disability.

II.2 OPPORTUNITIES TO COMBINE WORK AND BENEFIT

II.2.1 Provision for combining income from work and from disability-related social security benefits

Against a background of increasing financial pressure on the social security system in Germany, efforts have been intensified to curtail the payment of benefits. Consequently, new regulations often aim at the restriction of both claims and benefits. The idea of combining different kinds of benefits with income from work to maintain incentives to take up a job (such as a negative income tax), which would also result in uniting some of the responsible institutions, has been discussed in Germany. However, such concepts have not been generally accepted or even found their way into legislation yet.

Pensions based on reduced earnings capacity are currently the most important provision in Germany for combining income from work and disability-related social security benefits. They are paid through statutory pension insurance unless the disability is due to an occupational accident or work-related disease, in which case the statutory occupational accident insurance scheme is responsible. There are two types of pensions based on reduced earnings capacity: an invalidity pension and an occupational disability pension.

Invalidity pensions apply to disabled people whose 'earnings capacity is reduced as a result of poor health to the point that' they 'can no longer work regularly or at best can only earn a marginal income (1/7th of the monthly reference income, which in 1997 is DM 610 in western Germany and DM 520 in eastern Germany)'. Accordingly, the remaining income earnings capacity is considered to be very low. The pension is thus supposed to provide a full substitute for income from work. That is why it is calculated on the basis of retirement pensions, i.e. 'equal in amount to an old-age pension'. The granting of the pension for general invalidity requires having 'paid compulsory contributions for at least three of the preceding five years (including child-raising and other credited periods)', and having 'completed a five-year qualifying period before the loss in earnings capacity'. Thereby, the function of being a substitute for income from work which is subject to the national insurance is stressed. 'The pension is paid until your 65th birthday. Afterwards, the standard old-age pension can be claimed in at least the same amount'. Persons who were invalided before completing the five-year qualifying period and have been invalided since - for example persons who have been disabled since birth - still can claim invalidity pensions although the 'event of damage' happened before commencing the insurance. However, they are required to have completed a qualifying period of 20 years. It is also possible to make up this pension entitlement with voluntary contributions (BMA, 1997 Internet ch.12, p.4; BMA, 1995, p.239).

In spite of invalidity pension being seen as a full substitute for income from work, supplementary income is still allowed. However, the legal limits are quite strict. According to the eligibility criterion for invalidity pensions, they amount to DM 610 per month (west) and DM 520 per month (east) in 1997 (BMA, 1997, Internet ch.12, p.6). 'Supplementary income limits were introduced for invalidity pensions on 1 January 1996.

Under a transitional arrangement, they do not apply until January 2001 for people who were already able to claim an invalidity pension on 31 December 1995' (BMA, 1997, Internet ch.12, p.4).

Occupational disability pension is paid if earnings capacity is reduced to the point that a person can only earn less than half as much as a comparable non-disabled person in their usual occupation or in one that they may reasonably be expected to pursue. The occupational disability pension is at most only two-thirds of the old-age pension or invalidity pension respectively because the remaining general earnings capacity of occupationally disabled persons is considered to be significantly higher than in the case of invalidity. Consequently, the supplementary earnings limits are set higher. Additionally, these limits depend on whether the occupational disability pension is paid at the maximum possible amount or not.

Table II.3:

<i>Kind of pension</i>	<i>Supplementary earnings limits (1997)</i>
Invalidity pension	DM 610 per month (west) DM 520 per month (east)
Occupational disability pension	
maximum amount ($\frac{2}{3}$ of old age benefit)	DM 1225.09 per month (west) DM 1007.48 per month (east)
$\frac{2}{3}$ pension ($\frac{4}{9}$ of old age pension)	DM 1633.45 per month (west) DM 1343.30 per month (east)
$\frac{1}{3}$ pension ($\frac{4}{27}$ of old age pension)	DM 2041.81 per month (west) DM 1679.13 per month (east)

Besides these general limits, there are also personal limits that depend on income in the last year for which contributions were paid, so they may easily exceed the general ones (BMA, 1997 Internet ch.12, p.6). Any compulsory contributions on supplementary earnings increase the later invalidity pension or old-age pension (BMA, 1997 Internet ch.12, p.4). The supplementary earnings limits for occupational disability pensions were only introduced in 1996 by an amendment to the Social Code (Book VI, '96 a) (Sozialverband Reichsbund,

1997, p.7).

The occupational disability pension has caused some problems for legislators. In the first place, it is seen as an unjustified privilege for highly qualified people in the labour market. The key question is as follows. If someone's disability prevents her/him from retaining their current occupation or employment relationship, but if they still dispose of some general earnings capacity, what kind of alternative job can they reasonably be expected to do instead, to which they should thus be referred? The basis of the occupational disability pension is the distinction whether alternative occupations as substitutes for a previous job which can no longer be done because of disability, should be approached only from an earnings-capacity-related point of view, or also from a social point of view. The latter means that the respective jobs correspond to the previous occupation or to one that may reasonably be expected to be pursued. In the case that newly disabled people can, because of their disability, only be referred to alternative jobs which they cannot be socially expected to take, they are entitled to receive occupational disability pension - plus they have the opportunity to take such a job of 'lower' standards and thereby to get supplementary income within the limits listed above. Thus, the occupational disability pension seems to be a quite generous arrangement, given that supplementary payments are provided even though the recipients still have some general capacity for employment. As a consequence of the deteriorating financial position of statutory pension insurance, this provision should be raised for discussion.

Current legislation also involves a lot of problems for legal and administrative staff, in particularly in deciding which alternative occupations newly disabled persons can be referred to in individual cases. The Federal Social Court has developed a classification scheme consisting of four different groups of occupations. According to this, occupationally disabled people are to be referred only to alternative employments of the same class or at most one level below. However, this scheme only applies to wage earners; decisions concerning salaried employees have to take into account the specific circumstances of individual cases (BMA, 1995, p.237).

The privilege for highly qualified people is now seen in the fact that unqualified workers can - according to this regulation - be referred to any job (since there are no occupations of a 'lower' standard from their point of view which they could socially not be reasonably expected to take), so that occupational disability pensions are virtually unavailable to them. Thus, only better qualified people are in a position to combine income from work with disability-related social security benefits (beyond the level which is still compatible with invalidity pension, i.e. DM 610 per month). It can be assumed that there is considerable discretionary scope in deciding which income from which alternative employment for salaried employees is still compatible with receiving occupational disability pension.

A second major shortcoming in the design of current legislation is in the extent to which the labour market situation is taken into account. If disabled persons can still work in another job, but not full-time, the decision on ascertaining invalidity or occupational disability also has to consider whether the labour market offers sufficient part-time jobs. Only if disabled persons can still work full-time is the current labour market situation not taken into account. Instead, only the person's state of health is used to ascertain remaining earnings capacity. A sufficient number of vacancies are taken for granted; the risk that an adequate vacancy is not available in the individual case must then be borne by the statutory unemployment insurance (BMA, 1995, p.237 f.).

Experience has shown that insured people who are only able to work less than half shifts (or who are older than 60 years) are immediately given the status of being invalided. If they still have a capacity for part-time employment of more than half shifts the acknowledgement of either invalidity or occupational disability is granted (backdated) after a one-year waiting period in which neither the employment office nor the statutory pension insurance is able to offer an adequate job to the disabled person who has applied for a pension. However, as there are not enough part-time jobs for disabled people, the majority of those who cannot work full-time end up with invalidity status as long as they do not actually have part-time employment (BMA,

1995, p.238).

A new *Pension Reform Act* which is being discussed also includes a reorganization of pensions on account of reduced earnings capacity. It is supposed to overcome the shortcomings described above. According to the draft version, the juxtaposition of the invalidity and the occupational disability pensions is to be abolished. The legislation will thus recognize that administrative expenses no longer bear any relation to the reduced amount of occupational disability pensions (cp. 2.4). Apart from that, better qualified people should no longer be privileged, i.e. the insured should have equal opportunities to claim benefits from the pension insurance according to their contributions (SU 24/97, p.7 f.). There should not be a situation in which the general labour market is decisive in ascertaining eligibility for the large majority of insured people, whilst for a certain group of insured people it is only a specific section of the general labour market which corresponds to particular job outlines and minimum incomes (BMA, 1997b, p.9). However, the argument of equal treatment also has to be seen in the context of financial pressures on pension insurance.

The new Act which is supposed to come into force in 1999 provides for only one kind of invalidity pension. Based on the principle of equality, eligibility and the ascertainment of remaining earnings capacity will be linked to the general labour market prospects of disabled workers, irrespective of their professional and occupational background. That means that all insured people who become disabled will be subject to the same graduated scheme, as follows (SU 30/97, p.21):

- insured people who are not able to work more than three hours a day in a job in the general labour market receive full invalidity pension;
- insured people who are only able to work between three and six hours a day in a job in the general labour market receive 2 invalidity pension;
- insured people who are able to work more than six hours in a job in the general labour market do not receive any invalidity pension.

This regulation would contain a different assignment of risks between the statutory pension and unemployment insurance, that is in the second category, where only 2 invalidity pension will be paid even if the insured is not able to find an adequate part-time job to complement the pension by supplementary income from work. Statutory unemployment insurance then has to fill the gap by unemployment benefits or assistance. It should be stressed, though, that statutory pension insurance is merely responsible for making up for the loss of income due to the disability-related reduction in earnings capacity, but not to factors which prevent disabled people from earning income in the general labour market (BMA, 1997b, p.7 f.). The new Act will also include regulations limiting benefits from the two insurances in order to maintain incentives to obtain income from work (SU 24/97, p.8). The third category explicitly reflects the abolition of the occupational disability pension. If an insured person, after becoming disabled, is still able to do a job for more than six hours a day, she/he will not get any invalidity pension irrespective of the kind of employment which is available to her/him in the general labour market. Thereby, the considerable scope for combining disability-related social security benefits with income from work, as currently exists in connection with the occupational disability pension, would disappear.

To prevent an increasing switch to relatively more attractive old-age pensions for severely disabled people as a reaction to this planned provision, the age limit for this kind of pension is to be raised gradually from 60 years up to 63 years (until the year 2000); receiving pension payments prior to that will still be possible, but only if deductions are accepted. In addition, the required disability degree will also be raised from 50 to 60 per cent. In all other cases, the new form of invalidity pension will apply (SU 24/1997, p.9 f.).

Job retention may be considerably affected if these new regulations come into force. The combination of less generosity in granting pensions on account of reduced earnings capacity with more difficult access to early

retirement because of disability will probably put more pressure on employers to think about ways of how to retain their employees with health or disability problems. This particularly applies to higher qualified employees for whom it is no longer possible to claim benefits because of occupational disability as long as they still have a certain degree of remaining general working capacity.

Social assistance also provides disability-related social security benefits. Social assistance generally applies to all people who find themselves in situations where they cannot manage without help so that disabled persons represent just one of a number of target groups. There are various forms of social assistance: personal assistance, cash benefits or benefits in kind. It refers to either 'assistance towards living expenses' or 'assistance in special circumstances' such as disability. The benefits of the latter cover, among other things, integration assistance for people with significant physical, mental or psychological disabilities, plus medical treatment and care, and measures to integrate people into society and the working world (BMA, 1997, p.80 f.; BMA, 1994, p.81 f.; Krüger *et al.*, 1995, p.13 f.). The underlying concept of rehabilitation is relatively comprehensive and also includes less disabled people (as opposed to the provisions of the Severely Disabled Persons Act) (BMA, 1995, p.635). The wealth of different assistance for disabled people reflects the fact that social assistance provides the most varied support among all the rehabilitation funders (Krüger *et al.*, 1995, p.14). In 1992, about 22 per cent of total benefits (DM 42.6 billion) served the integration of disabled people (BMA, 1995, p.625 f.).

Social assistance is subsidiary to claims for benefits from other welfare funds. Thus, it takes on the character of being a form of 'last resort' within the social security system. Put differently, social assistance is intended to fill the gaps left by other social security institutions. That is why the welfare office which decides on granting social assistance will also carry out asset and income tests as well as check whether and to which extent social assistance can be recovered from first-degree relatives and spouses. The second main principle of social assistance is the individualization of support, i.e. the kind and the extent of assistance are aligned to the specifics of individual cases. Social assistance is not a charitable donation, but recipients are legally entitled to it. Finally, it is meant not only to help people to lead a decent life, but also to help restore the recipient's independence. Assistance for disabled people, for example, will only be provided as long as there is a realistic chance that its purpose can be fulfilled, i.e. the disabled person can be made largely independent of care and eventually be integrated into working life. If this is not possible, the person may receive 'assistance to persons in need of long-term care' instead (BMA, 1995, p.623 f.; BMA, 1994, p.81; Krüger *et al.*, 1995, p.14).

It is quite commonly held that the current regulations with regard to combining social assistance benefits with income from work cause disincentives for working even though social assistance is supposed to be a tool for helping recipients regain their independence. Recipients of assistance towards living expenses are generally obliged to use their entire income to cover these expenses. The Federal Minister of Health plans to modify the provisions so that less income from work will be counted towards social assistance (FAZ 25.8.97, p.13). In the case of assistance in special circumstances, however, any income up to a certain level is usually disregarded. Disabled recipients are thus required to make use of only a reasonable amount of their income (BMA, 1997, p.81). The legislation is intended to support people in special circumstances - listed in the law (*Bundessozialhilfegesetz BSHG*, see Krüger *et al.*, 1995, p.10 ff.) - even if they are able to cover their actual cost of living themselves. Property and assets, however, have to be taken into account in granting assistance in the same way as in 'assistance towards living expenses' (Krüger *et al.*, 1995, p.9 f.). There are general and specific supplementary income limits up to which income does not have to be offset against social assistance payments for special circumstances. To give an example: in 1994, for a couple with two children, paying a rent of DM 750 per month, the general supplementary income limit would have been DM 2,991 per month in the western Länder. If income from work is below these limits, assistance will still usually be fully provided in special circumstances. The limits are adjusted to changes in average old-age pensions paid out of statutory pension insurance (BMA, 1995, p.640).

There are no special *allowances against taxable income* with regard to disabled people. Deductions from

taxes, however, are possible, and can thus be claimed by disabled employees, too, under the general Income Tax Act (Section 33). This applies where circumstances (such as disability) put a particular financial burden on persons in their everyday lives or where gaining income from work is connected with inevitable expenses beyond a certain amount which is considered to be reasonable. The limits of reasonableness are determined individually and aligned with family circumstances and the level of income. They are calculated as a percentage of income. Possible deductions can be claimed from the tax office by means of the tax declaration.

II.2.2 Effects on numbers retaining and numbers returning to work

No specific information is available about the effects of disability-related benefits on the numbers of disabled people retaining jobs or returning to employment. However, some comments can be made on the basis of the way disability-related social security benefits are designed. Both types of pension dealing with reduced earnings capacity require qualifying periods during which contributions have to have been made. This requirement presupposes that the claiming persons had a job providing an income of an amount which made contributions to the statutory pension insurance possible. Since the supplementary income limits for recipients of invalidity pension are set so low that contributions are not compulsory, the scope for both job retention and return to work is considerably restricted.

The discussion of occupational disability in relation to statutory pension insurance regulations already indicates that job retention is not compatible with receiving occupational disability pension. Claiming this benefit just requires that the previous occupation or a comparable one cannot be practised any more (BMA, 1995, p.237). On the other hand, the relatively generous supplementary income regulations in the case of occupational disability tend to increase both opportunities and efforts to return to work.

No detailed information could be found about the characteristics of disabled people receiving social assistance, and thus the extent to which benefits contribute to efforts of job retention and return to work. The answer to this question is also made difficult by the very comprehensive understanding of rehabilitation which underlies the granting of benefits. Social and vocational integration are, in fact, the eventual goals of social assistance for disabled people, but the varied purposes which payments of social assistance serve are not always directly related to these generic goals. This means that some people retaining their jobs or returning to work could be assigned to social assistance benefits. Some of these benefits are supposed to improve just the general living situation of disabled people instead of particularly aiming at their job situation.

II.2.3 Impact of definitions of disability or capacity for work on access to and coverage of benefit programmes

The eligibility criteria for invalidity or occupational disability pensions are discussed in II.2.1. The latter pension, in particular, was presented as granting considerable scope for combining income from work and disability-related social security benefits. However, both types of pension refer to a situation in which the previous job has to be given up because of disability. So, they are not compatible with job retention.

The underlying definition of disability in the case of social assistance is much more comprehensive. According to that, all persons who are permanently disabled in physical, mental or psychological respects (including also less than severely disabled persons) can claim assistance. The same applies to persons who are at risk of becoming disabled (BMA, 1995, p.635). As was shown in II.2.1, social assistance is hardly compatible with job retention, because of restrictive rules for offsetting income from work against social assistance. However, the supplementary income limits which apply to 'assistance in special circumstances' (and thereby to disabled people) might promote job retention.

II.2.4 Effects of claiming and assessment procedures on take-up of in-work benefits

The benefits described above - pensions on account of reduced earnings capacity and social assistance - cannot really be called in-work benefits since this would not adequately reflect the intended design of these provisions. The emphasis is more on the reverse perspective, so that income from work is seen as a supplement to the disability-related social security benefits (which is revealed by the term '*supplementary earnings limits*'). However, it has been shown that the eligibility criteria of the respective benefits make various combinations with income from work possible. That is why they should be dealt with as in-work benefits in this context. Yet, this - in turn - does not apply to invalidity pension since its supplementary earnings limits are set so low that they are far from being compatible with the concept of in-work benefits.

The effects of claiming and assessment procedures on the take-up of occupational disability pensions have already been discussed in II.2.1. Different factors have to be taken into account. As a quite generous arrangement for highly qualified workers and employees in particular, the take-up could be expected to be at a relatively high level and to increase over time. However, the assessment of occupational disability and its consequences has turned out to be a very problematic matter for legal and administrative staff, especially concerning the question about the alternative occupations that newly disabled people can be referred to, both in relation to ability and in a socially justifiable manner. These problems, combined with the additional influence of the way in which the labour market situation is taken into account when deciding on pensions, have meant that the share of pensions represented by occupational disability pensions among all pensions related to reduced earnings capacity, has declined from more than 40 per cent in 1958, to less than 14 per cent in 1995 (BMA, 1995, p.238).

To understand this phenomenon, it is necessary to consider two groups of occupationally disabled people who cannot claim occupational disability pension:

- 1) People who can still work full-time and for whom there are occupations which they can reasonably be expected to take as substitutes for their previous job. For them, a sufficient number of vacancies are taken for granted. If there are in fact no jobs available within the respective occupations, benefits must be claimed from the statutory unemployment insurance. Lower-qualified workers, in particular, belong to this group; office work, for example, can often still be carried out in spite of health limitations.

- 2) People who are no longer able to work full-time and thus have to rely on part-time jobs. The shortage of adequate part-time jobs in the general labour market has to be considered in assessing the reduction in earnings capacity. Since the number of actually required part-time jobs is permanently not available, this group of people is immediately given the status of invalidity - which means that they cannot claim occupational disability pensions. The transition to consideration of part-time opportunities during the 1970s was the most important factor which caused the share of occupational disability pensions to decrease so significantly among the pensions related to reduced earnings capacity (source: personal communication with Federal Department of Labour and Social Affairs).

The group of skilled workers was thus virtually the only one to really profit from the privileges associated with the occupational disability pension. The protection of previous professional standing also applies to highly qualified employees such as those with a university education; however, those people are often self-employed and are, as such, not members of the statutory pension insurance funds. Besides, whenever persons with a university education cannot practise their previous professions any more (which is generally a form of office work), it may reasonably be assumed that the causal disability leads straight to invalidity pensions (source: personal communication with Federal Department of Labour and Social Affairs).

The take-up of social assistance, and of integration assistance to persons with disabilities in particular, is sufficiently documented in the available statistics. However, there is no specific information on the extent to which the related payments serve as a form of in-work benefit. As was pointed out in II.2.1 and II.2.3, the

legal guidelines for assessing disability with regard to eligibility for social assistance are relatively generous compared to others (for example in the Severely Disabled Persons Act). The regulations also allow disabled recipients to have higher supplementary incomes from work than people receiving social assistance to cover living expenses. No data have been published by any federal authority about the extent to which disabled recipients of social assistance actually supplement their benefits by means of income from work (confirmed by personal communication with the Federal Department of Health which is responsible for social assistance).

Another important issue is the question of how claiming procedures affect the take-up of social assistance. It is commonly held that stigmatizing effects cause take-up to be lower than the number of people who are entitled to receive social assistance. This is particularly documented for recipients of 'assistance towards living expenses'. Yet, such effects probably do not apply so much in the case of people who receive benefits as assistance in special circumstances, and in particular in the case of disabled people. The available data show a continuous (absolute and relative) increase in take-up since 1976 as regards both the number of recipients and expenditure (note: the decline in the number of recipients between 1993 and 1994 is caused by a change in statistical recording and also by missing data from some smaller Bundesländer) (Statistisches Bundesamt, 1996, p.470; Datenreport, 1997, p.218, 221; Neuhäuser, 1997, p.332 f.; Krüger *et al.*, 1995, p.26; personal communication with Federal Statistics Office).

Table II.4: Social assistance in Germany

	1992	1993	1994
Expenditure (billion DM)			
Social assistance (total gross)	42.6	48.9	49.7
including:			
assistance in special circumstances	26.9	30.9	32.8
including:			
integration assistance to disabled persons	9.3	11.2	12.4
Recipients (million persons)			
Social assistance	4.72	5.02	-
including:			
assistance in special circumstances	1.87	1.92	1.31
including:			
integration assistance to disabled persons	0.35	0.38	0.36

The figures show that the recipients of assistance in special circumstances take up a more than proportionate share of the entire benefits: they represent about a third of all recipients and take up almost two thirds of the

entire benefits. This is even more clearly the case with disabled recipients of integration assistance: they represent only about seven per cent of all recipients and take up more than 25 per cent of all benefits.

II.2.5 Interactions between in-work benefits and other in-work income support programmes

Opportunities to combine income from work with disability-related social security benefits are determined by the supplementary earnings limits as described in II.2.1. Whenever supplementary earnings actually occur, these benefits virtually become in-work benefits. The question now relates to the way in which the different kinds of in-work benefits relate to each other, i.e. whether there are any special provisions with regard to the accumulation of benefits.

Granting pensions on account of reduced earnings capacity is based on the contributions paid to the statutory pension insurance funds. From this point of view, it is not relevant whether recipients also get social assistance benefits as long as they can fulfil the qualifying requirements which apply to the statutory insurance. On the other hand, claims to social assistance benefits have to be weighed up against actually granted invalidity or occupational disability pensions since social assistance is subsidiary to all claims to benefits from other welfare funds (cf. II.2.1). However, within the scope of assistance in special circumstances and the integration of assistance to disabled persons in particular, it is in fact conceivable that the respective benefits are compatible with receiving disability-related pensions at the same time because the legislation is intended to support people in special circumstances even beyond the actual cost of living. Since only personal property and assets have to be taken into account in granting assistance, income from disability-related pensions will not be affected.

II.2.6 Disabled workers who benefit and those who miss out

Sections II.2.1, 2.3 and 2.4 consider the role of occupational qualification for receiving pensions on account of reduced earnings capacity, and also the definition and the degree of disability underlying the ascertainment of eligibility. The Federal Statistics Office publishes more detailed information on integration assistance to disabled persons, but this only concerns the different types of measures which are financed by it. It does not contain any additional information about characteristics of recipients (source: personal communication with Federal Department of Health).

II.3 TRANSITION BETWEEN BENEFITS AND WORK

II.3.1 The effects of the disability benefit system on return to work

The preceding discussion has made it clear that there is, in brief, no 'national disability benefit system', but that disability-related benefits are provided by traditional institutions of the social security system, in particular the statutory occupational health insurance, the statutory pension insurance, and the social services offices (*Sozialämter, Versorgungsämter*) which all have very specific regulations concerning objectives, eligibility, and the calculation of benefits.

II.3.2 Provisions for financial support to disabled workers for transition between benefits and work

There is an interesting arrangement of gradual re-integration or return to work that is based on payments relating to medical rehabilitation but which might also apply to disabled employees. The statutory health insurance funds provide sickness benefits (up to half a year) which can be used as a full wage-substitute during the period in which a sick or disabled employee has not been restored to a 'sufficient' working capacity. According to this, the employee might be re-integrated into her/his company by just working a few hours per day. The employer then does not have to pay any wage during this phase of diminished performance because the disabled employee is able to cover her/his cost of living merely through sick pay. The disabled employee gradually increases working hours along with the improvement of her/his health

status. The point at which the employer has to start paying wages again, and to what extent (combinations of wages and sick pay are possible), is decided by an agreement between the employer and the works council (source: personal communication/aktion 16).

Income-related financial support, directed at disabled persons to promote the transition from benefits to income from work, is also provided by all the other rehabilitation funders, in addition to the statutory health insurance funds. They grant transitional allowances to financially safeguard disabled persons while they are participating in measures of medical and vocational rehabilitation, i.e. to make their participation and the carrying out of the measures possible. These provisions represent a separate fourth group of rehabilitation provision, called supplementary benefits, which complements the respective provisions of medical, vocational, and social rehabilitation (cf. Burger, 1996, p.20, 22).

'During the course of vocational assistance measures for rehabilitation, the fund responsible usually provides cash benefits (training allowance for initial training, temporary allowance to assure subsistence, in particular in the case of retraining), provided that conditions for eligibility of that particular fund are satisfied, and also pays social security contributions (Section 12 Nos. 1 and 2 of the Rehabilitation Harmonization Act and relevant provisions in the individual benefits legislation). The temporary allowance amounts - in most funds - to 70 per cent of previous net earnings, rising to 80 per cent if there is a child entitled to maintenance in the household or if the disabled persons or their spouses are in need of care and the spouses are therefore unable to obtain gainful employment; only the Federal Employment Office gives only 75 respectively 68 per cent of last net earnings. Added to this are a number of extra supplementary benefits such as payment of:

- course expenses;
- examination fees;
- expenses for study aids, working clothes and working equipment;
- travelling expenses; and, for trainees accommodated away from home, expenses for journeys home;
- assistance in the home where it is impossible to maintain a household which includes a child because of participation in rehabilitation.

(Sections 12, 19 and 20 of the Rehabilitation Harmonization Act)' (cit.: BMA, 1996, p.113, 115).

To facilitate the taking up of employment, the relevant provisions in Section 11 of the Rehabilitation Harmonization Act provide for benefits to the disabled person or to the employer. Forms of assistance available to the disabled person include costs linked with applications and removal, assistance with daily travelling expenses between home and place of work (for a maximum of two years), retraining allowances, and technical aids at the workplace and accommodation expenses. The Federal Employment Office is bound by the details in Sections 37 ff. of the directive of its governing board concerning employment of and vocational assistance for disabled persons (Rehabilitation Directive). A '1993 Agreement' governs the regulations applicable to pension and accident insurance funds. Details regarding assistance for equipment suitable for use by disabled persons and, where the disabled person's own income is insufficient, for the acquisition of a motor vehicle which is necessary for employment and has been appropriately adapted for the disabled person, as well as for acquisition of a driving licence, are specified in the Motor Vehicle Assistance Regulations (BMA, 1996, pp.117, 119).

The supplementary benefits listed above which are not directly income-related can also be assigned to the financial incentives described under I.3.2.

II.3.3 Effect of entitlement to benefits in kind on return to work

No information on benefits in kind is available. However, there are many payments provided to both the employer and the employee by different rehabilitation funds (such as statutory occupational accident insurance) and by the Hauptfürsorgestellen, of which the use is tied to technical aids to facilitate return to work. Since these aids are not directly provided by the assisting institutions but have to be acquired by the employer or employee who then, in turn, can claim reimbursement of cost, one cannot really speak of 'benefits in kind'.

II.3.4 Co-ordination between agencies in assessment for benefits eligibility

As far as can be ascertained, there is no co-ordination between agencies specifically with regard to benefits. However, the 1974 Rehabilitation Harmonization Act (*Rehabilitationsangleichungsgesetz*) aims at co-ordinating rehabilitation efforts provided by the different funds. This Act was designed to prevent disabled people from being disadvantaged by responsibility for rehabilitation being split - as a result of tradition - among numerous institutions of the social security system. The underlying rationale is the insight that rehabilitation measures have to be taken as early as possible to be successful. Section 5 subsection 6 of this Act states that rehabilitation measures should be provided in the same way by the different rehabilitation funds. This also applies to benefits, as will be discussed in more detail in sections III.1.1 and III.6.1 (in relation to links between agencies responsible for employment support, rehabilitation and benefit policies).

III. EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

This Part examines the integration of personal support and rehabilitation services within the workplace. It deals with the external support services available to individual workers and their employers where continued employment is at risk because of disability. (Internal services, initiated and managed by enterprises, will be covered in Part V.) The discussion also includes services for early return to work once employment has been lost.

The main focus is on service interventions which support job retention by employees who become injured, ill or disabled and also their return to employment during the process of recovery. It concerns active rehabilitation services that help disabled people to recover capacities and skills, as well as services that support their re-adjustment to work. (Services involving adaptations to the work environment and to working arrangements will be discussed in Part IV.)

More specifically, sections III.1 to III.5 will cover policy about employment-related personal support and rehabilitation services, provide details of services and their providers, and describe the service beneficiaries. The remaining sections will examine the factors influencing the effectiveness of support services for job retention and early return to work. They include a discussion of relationships between the various employment support and rehabilitation services, their relationship to the employment sector, and their interaction with employment policies and compensation and benefit programmes.

Terminology

A note about terminology is necessary in relation to the situation in Germany. 'Employment support' is not a standard term in German legislation and translating this into action depends on the interpretation of individual providers. The term 'rehabilitation', on the other hand, is well-established in law. Moreover, 'rehabilitation' denotes a very wide and general conception including all kinds of 'assistance to the integration of disabled persons or persons who are in danger of becoming disabled in working life and in society as a whole' or, put differently, 'all procedures, benefits and means for structuring living circumstances which correspond to the

objectives outlined in Section 10 of the Book 1 of the Social Code' (BMA, 1996, p.19). These objectives are 'to avert, eliminate, alleviate the disability, prevent its worsening or reduce its effects, and in order to secure [disabled people] a place within the community, in particular in working life, in accordance with their inclinations and abilities' (BMA, 1996, p.7). Given this comprehensive understanding, it is not surprising that 'employment support' is often considered as merely a part of the broader concept of rehabilitation.

'Rehabilitation' itself is subdivided into medical, occupational and social rehabilitation, and supplementary assistance (Burger, 1996, p.19 ff.). The clear majority of rehabilitation measures provided by funds are medical (in 1994: 73.3 per cent of all completed measures). As opposed to medical treatment which refers to acute illness, measures for medical rehabilitation aim at the prevention or at least the best possible compensation for any remaining limitations and the disabilities resulting from illness or accident. Measures for social rehabilitation (above all educational measures and early assistance, but also assistance for participation in life in the community including sport for disabled people and support of leisure activities and holidays) do not directly concern working life (HVBG, 1995, p.211 ff.) and only take up the smallest share of all the measures (in 1994: 4.8 per cent of all completed measures). Supplementary assistance mainly consists of financial benefits to assure subsistence while disabled people undergo rehabilitation. This component of rehabilitation provision has been dealt with in preceding sections (I.3.2 and II.3.2).

The area of rehabilitation of most direct concern to this Part of the report concerns occupational rehabilitation. 'According to Section 11 of the Rehabilitation Harmonization Act, vocational assistance benefits for rehabilitation should include all forms of assistance necessary to sustain, enhance, generate or restore the earning power of disabled persons in accordance with their capability, thereby assuring their professional integration for as long as possible' (BMA, 1996, p.97). In other words, occupational rehabilitation contains all kinds of vocational promotion measures which directly contribute to retaining and obtaining a job or a training vacancy (ANBA, 1996, p.5). Eligibility requires that a sick person's prospects of securing and retaining a job would be permanently and considerably limited without the provision of particular occupational rehabilitation measures (Burger, 1996, p.22). In 1994, 21.9 per cent of all completed rehabilitation measures were occupational ones (Statistisches Bundesamt, 1996a, p.3). The German concept of rehabilitation also distinguishes between rehabilitation for employees who are to be re-integrated into employment from that for people who are to be integrated into working life for the first time (ANBA, 1996, p.6).

However, the concept of occupational rehabilitation for re-integration into working life is a broad one. As a consequence, it is not always possible to merely examine those services which are directly directed at disabled people since data and statistics on occupational rehabilitation measures usually refer to these measures as a whole, including funding or negotiations between funding and providing institutions. Funds providing occupational rehabilitation measures usually offer employment support services as well (see II.1.2 on full-time assistants (*Berufshelfer*) employed through statutory occupational accident insurance). Such services are often included in the general statistics on occupational rehabilitation, rather than being separately listed. Moreover, employment support services are - as a rule - confined to the transitional period of return to work, rather than being provided at any point of need.

In the sections which follow, therefore, we will refer to occupational rehabilitation services as 'support services for return to work' (cf. III.4) even though they may include 'support services for job retention' (cf. III.2) as well. Occupational rehabilitation measures for people who are to be re-integrated into employment mainly consist of vocational retraining which is made necessary by (newly) occurring disabilities. Vocational training measures thus form the core of occupational rehabilitation services (BMA, 1996, p.101). The resulting, newly acquired qualification and occupational capabilities may not be compatible with job retention, i.e. staying with the same employer. However, as was pointed out earlier, changing an occupation as a result of disability-related retraining may still be compatible with maintaining an employment relationship with the previous employer, where the latter is able to redeploy the disabled person in an alternative and adequate workplace within the same enterprise.

The term 'support services for job retention' will refer to services that do not require the disabled person to be absent from work for a long period. This would thus exclude any special occupational rehabilitation, such as vocational retraining, which prevents disabled people from carrying out their previous work. However, it does include measures which provide support *on the job*, as provided in the context of supplementary assistance in the working environment: most occupational rehabilitation in fact occurs within the workplace (and absence from the enterprise would not represent a suitable category for classification). Workplace-based rehabilitation is generally carried out by or on behalf of the Hauptfürsorgestellen: policy responsibilities for support services of this category will be discussed in III.2.2.

III.1 POLICY AND RESPONSIBILITY FOR POLICY AND PROVISION

III.1.1 The main bodies responsible for employment support and rehabilitation policy

In line with the historically based variations in the German social benefit system, it is the responsibility of individual funds to shape their own employment support and rehabilitation policy. The division of rehabilitation into different areas of responsibility and their assignment to different funds correspond to the fund's particular objectives. The underlying rationale is that responsibility for a person's rehabilitation should always be assigned to the fund which will bear the financial risk for the possible failure of rehabilitation measures provided for the individual. Who bears the financial risk, in turn, depends on how the person is insured and on the type and cause of disability. The various funds do, therefore, refer to the particular characteristics of their 'clients' in shaping their rehabilitation policy (as described in III.4.1.)

Rehabilitation policy has also been considerably influenced by federal legislation, specifically the 1974 Rehabilitation Harmonization Act. Through this Act, assistance in kind for medical and vocational rehabilitation, and the wage-compensation benefits payable whilst rehabilitation measures are taking place, have been largely standardised and further developed in relation to all the social insurance funds, war victims welfare funds and the Federal Employment Office. In addition, a set of underlying principles was established for all social assistance sectors and funds with the objective of achieving the lasting and effective integration of disabled people and those who are in danger of becoming disabled, as far as possible. Finally, sickness insurance has been incorporated into the category of rehabilitation funds. The law stipulates that rehabilitation funds must work closely with each other in the interests of rapid and lasting integration. Where appropriate, they have to draw up a 'general plan' for rehabilitation: this applies where several measures are required or several funds or offices are involved (Section 5 of the Act) (BMA, 1996, p.27, 179, 181). The Rehabilitation Harmonization Act does not really codify all the legal provisions concerning the rehabilitation of disabled people, but it generates a comprehensive framework for the historically differentiated German system of rehabilitation funds. Its main objective, though, is to harmonize the variety of rehabilitation benefits provided by the different funds (Burger, 1996, p.19).

III.1.2 The relative priority accorded to support for retention, return to work and first time entry to employment

In 1994, the majority of completed rehabilitation measures were provided through *statutory pension insurance* (51.2 per cent). However, most of these measures related to medical rehabilitation (92.3 per cent of all measures provided through pension insurance, and 64.5 per cent of completed medical rehabilitation measures provided through all funds). All the other rehabilitation measures provided through pension insurance were occupational ones (18.1 per cent of completed occupational rehabilitation measures provided by the totality of funds). In spite of the predominance of medical rehabilitation, pension insurance has the clear goal of restoring disabled people to working capacity as much as possible. This objective is based on the principle of 'rehabilitation before payment of pension' (section 7 of the Rehabilitation Harmonization Act). The underlying rationale is a financial one: from the point of view of the pension insurance it is cheaper for disabled people to receive income from work instead of from invalidity pensions. On the other hand, this does also imply that pension insurance is indifferent to the question whether disabled persons - after having

undergone rehabilitation - retain their previous jobs or whether their return to work is connected with changing employer. Thus, it is feasible to assume that there is no particular emphasis within rehabilitation policy in this respect. However, it can be said that first time entry to employment plays hardly any role in the rehabilitation policy of pension insurance. This results from the fact that receiving benefits from statutory pension insurance requires compulsory contributions and the completion of qualifying periods (II.2.1). As a consequence, people who are currently gainfully employed represent the largest proportion of people undergoing rehabilitation measures provided by statutory pension insurance (in 1993: 81.6 per cent). For most of the others it can be assumed that they had had gainful employment at some previous point (exceptions are only possible by making up for compulsory contributions during credited periods such as child-rearing) (Hein, 1995, p.907 ff; Statistisches Bundesamt, 1996a).

Statutory health insurance provides exclusively medical rehabilitation. Nevertheless, only inpatient treatment in special rehabilitation centres is statistically captured since treatment in general hospitals can often not clearly be classified as rehabilitation measures. As the various funds are not supposed to compete with each other for 'clients' but to complement one another, statutory health insurance almost exclusively covers people who are not gainfully employed (in 1993: 93.2 per cent of all people undergoing rehabilitation measures provided by statutory health insurance). However, rehabilitation in this context explicitly refers to general health: restoring working capacity is not a professed objective. For this reason, rehabilitation measures provided by statutory health insurance will not be considered any further at this point.

The policy focus of *statutory occupational accident insurance* is similar to that of statutory pension insurance since the principle 'rehabilitation before payment of pension' applies here, too. The assignment of responsibility between the two insurances depends on the cause of disability: accident insurance will only provide rehabilitation measures if disability is caused by an occupational accident or work-related illnesses (cf. II.1.1). In 1994, 5.6 per cent of all rehabilitation measures and 4.8 per cent of all occupational rehabilitation measures were paid for by accident insurance. As regards the relative priority accorded to job retention and return to work, the same problems of adequately assigning available statistical data apply as in relation to pension insurance. Again, however, it can be said that first time entry to employment is only of minor importance - resulting from the defined scope of responsibility. Thus, in 1993 almost 86 per cent of all people undergoing rehabilitation measures provided through statutory accident insurance were gainfully employed at the time (the remainder consisted of children attending school or students - these are also covered by the insurance even though no contribution is paid for them; cf. II.1.1).

The *Federal Employment Office* establishes its priorities differently since it is its task to provide occupational rehabilitation measures for all those who are not subject to the responsibility of another fund, in particular the statutory insurances. As a result, the federal employment office is responsible for the occupational rehabilitation of almost all school-leavers, people whose disability is not caused by occupational accident or work-related illness, and people who have been gainfully employed only for a relatively short period of time (and thus have not completed the required qualifying periods). The complementary nature of the exclusively occupational rehabilitation measures provided by the Federal Employment Office is reflected in the fact that more than a quarter of people undergoing occupational rehabilitation measures provided by the Federal Employment Office were under the age of 25 (in 1993). It is reasonable to assume that people can increasingly claim rehabilitation measures from pension insurance with increasing age (Hein, 1995, p.912). As a consequence of the structural characteristics of its clients, the Federal Employment Office has to put more emphasis on first time entry to employment (which represents, in contrast to the other funds, a separate category in its published data). Altogether, the Federal Employment Office is the main provider of occupational rehabilitation measures; in 1994, it accounted for 76.8 per cent.

A policy change has resulted from an amendment to the Labour Promotion Act. According to this, statutory pension insurance has also been responsible for the occupational rehabilitation of younger insured people from January 1993; this applies under certain circumstances, for instance if invalidity pensions would otherwise have to be provided, instead of rehabilitation measures. The result is a slightly increasing share of

occupational rehabilitation measures, compared to medical ones, provided by the statutory pension insurance. Thereby, the financial burden of the Federal Employment Office could be eased correspondingly. Furthermore, the amendment lays down a preference for the general promotion of employment over more specific measures to integrate disabled people into working life. The resulting shift implies not only a reduction in stigmatizing effects but, more importantly, an orientation of support that takes account of the current situation and developments in the labour market as well as the disabled person's own aptitude, inclinations and earlier occupation. The Federal Employment Office does not disguise the fact that these policy changes represent a reduction in its promotion of support for disabled people (cf. Hein, 1995, p.908 f.; ANBA, 1996, p.5).

The *war victims' welfare funds* will not be considered here because they focus mainly on measures for social rehabilitation. Moreover, they mainly cover elderly people and people who are not gainfully employed.

The *supplementary assistance in the working environment* which is provided by the Hauptfürsorgestellen is counted as part of occupational rehabilitation measures. About 3.4 per cent of all occupational rehabilitation measures were provided by the Hauptfürsorgestellen in 1994. The latter become responsible when additional measures, over and above those provided by other funds, are considered to be necessary to adequately and permanently integrate disabled people into working life. The supplementary assistance is exclusively provided to people who are currently gainfully employed (Hein, 1995, p.913), so that first time entry to employment does not represent an objective of rehabilitation policy of the Hauptfürsorgestellen. Their measures aim at both job retention and return to work; the problems concerning assigning measures to these two objectives have already been addressed in I.4.1.

In principle, *social assistance* can include the provision of rehabilitation measures of all three kinds (cf. II.2.1). However, its focus is essentially on social rehabilitation and on very young people (such as educational measures for children). Often it refers to persons who have been disabled since birth. Thus, in 1993 the group of non-gainfully employed took a share of 89.3 per cent of all people being provided rehabilitation measures through social assistance (Hein, 1995, p.913). It will, therefore, not be further discussed in this section.

The remainder of this Part of the report will consider just the employment support and rehabilitation measures provided through: statutory pension insurance, statutory occupational accident insurance, the Federal Employment Office, and the Hauptfürsorgestellen.

III.1.3 The weight given to employment support and rehabilitation policies for disabled people in the national system

Within the German 'national system', more emphasis is put on (re-)integrating disabled people into working life, and on the associated employment support and rehabilitation policies, than on passive, compensatory measures. The principles of 'rehabilitation before payment of pension' and 'rehabilitation before care', which underpin the German social security system, reflect this emphasis.

There are several reasons why active rehabilitation policies are given priority:

- First of all, it is widely acknowledged that the best possible way of integrating disabled people in society is through enabling them to become employed, most preferably in regular employment in the general labour market. Passive compensation measures would not suffice for this purpose. Finding permanent employment on the open labour market is often perceived as evidence of people 'coming to grips' with their disabilities (Montada, 1997, p.4).
- From the point of view of the funds it is in their own interests to foster occupational rehabilitation efforts: restoring or increasing disabled people's earnings capacity, at least to

some extent, will usually end up less costly than paying compensatory benefits (such as invalidity pension) to cover living expenses. This financial calculation underlies the guiding principle of 'rehabilitation before payment of pension'.

- Vocational training is an integral part of occupational rehabilitation and is commonly seen as the key to the problem of unemployment with regard to any disadvantaged group. This emphasis on (re-)training also applies to disabled people. 'Vocational training cannot guarantee permanent integration into the working environment; it is nevertheless indispensable, since disabled persons can only survive competition in a working environment with non-disabled persons if they have the best possible vocational qualifications. A primary task in combining educational and social policy for the integration of disabled persons is, therefore, despite problems on the labour market, to provide comprehensive training opportunities for disabled persons in order to give them the greatest possible degree of equality of opportunity when competing with non-disabled persons for permanent employment' (BMA, 1996, p.97).

- Very few disabled people have been disabled from birth. Most become disabled with increasing age, very often during their working life (in 1995, only 8.1 per cent of all severely disabled people in Germany were under 35 years of age and 84.2 per cent of all severe disabilities were caused by general diseases; ZENTRAS, 1997, tab. 6, 14). In the case of newly disabled employees, it is likely to be generally beneficial for them to resume their previous employment. It would be tantamount to a waste of human resources to ignore the capabilities and qualifications of people who become disabled and who have acquired considerable expertise over a period of many years.

III.2 SUPPORT SERVICES FOR JOB RETENTION

As outlined in the introduction, this section will consider support services which are provided within the workplace to disabled people in permanent employment. Services which aim at job retention but which involve rehabilitation outside the workplace (and which prevent disabled people from carrying out their previous employment for set periods of time) will be dealt with in III.4.

III.2.1 The main funders and providers of services to support job retention

The *Hauptfürsorgestellen* can clearly be identified as main funders of support services for job retention provided on the job. Section 31 of the Severely Disabled Persons Act represents the legal basis which requires the *Hauptfürsorgestellen* to provide supplementary assistance in the working environment (cf. I.4.1). During the past decade, the *Hauptfürsorgestellen* have increasingly been shifting their focus from monitoring special protection against dismissal to providing supplementary assistance in the working environment, thereby also reflecting the view that an economically profitable workplace appears to be the best protection against dismissal. This shift also alters the character of the *Hauptfürsorgestellen*: instead of being perceived as monitoring authorities, they increasingly try to act as service providers (Heuser, 1993, p.114 f.). The intention is that the goal of securing existing employment relationships with disabled people should be achieved through a service strategy rather than by monitoring activities. What remains the same is the way in which this goal is to manifest itself: a reduction of employers' applications for approval of the dismissal of disabled employees by the *Hauptfürsorgestellen*. However, the *Hauptfürsorgestellen* have recognized that preventive measures are eventually more important than special protection against the dismissal of severely disabled persons (Heuser, 1987, p.105), since the latter applies only when conflict has already occurred and thus might involve irreversible damage to the relationship between the employer and the employee.

As it has been emphasized already, the supplementary assistance provided by the *Hauptfürsorgestellen* is not confined to job retention: it also comprises assistance towards return to work and first time entry to

employment (Dobbe, 1995, p.85). Job retention, however, represents the main focus. A comprehensive and differentiated social benefit system like the German one is inevitably characterised by overlapping responsibilities. A guideline for the activities of the Hauptfürsorgestellen is, though, to provide additional services and benefits which appear necessary beyond the ones already provided by other funds. Support services for return to work are generally provided also by the statutory social insurances in their role as funders of occupational rehabilitation measures (as will be shown in III.4). Placing disabled people on the general labour market, i.e. first time entry to employment, mainly belongs to the realm of the employment offices. Delegation of responsibility for services supporting job retention to the Hauptfürsorgestellen thus has to be understood in terms of complementing these efforts (Ernst, 1995, p.101; III.6.1). In 1993, about 70 per cent of the disabled people benefiting from psychological and social care as part of the supplementary assistance programme in the working environment were in permanent employment (Dobbe, 1995, p.86).

In general, all services directed at job retention which are incorporated in supplementary assistance for the working environment, or related to the procedure of dismissal of disabled employees, are funded and provided by the Hauptfürsorgestellen (for the funding of the latter see I.2.1). Before 1986, these services only played a minor role since supplementary assistance mainly consisted of financial support for employers (such as benefits for the adaptation of work and training places) and for severely disabled employees (e.g. assistance for technical working aids or reaching the place of work) (cf. I.4.1). Services such as counselling were often related to these benefits but were usually perceived more as complementing them.

In 1986, the Severely Disabled Persons Act was revised. Psychological and social care was legally acknowledged as part of the supplementary assistance in the work environment. This was laid down in Section 31 subsection 2 clause 3 of the Severely Disabled Persons Act. Thereby, services came explicitly to the fore among the provisions by the Hauptfürsorgestelle for the first time. Moreover, Section 28 of the Compensatory Levy Regulation states that the Hauptfürsorgestellen can involve independent non-profit-making funds in psychological and social care. This recognized that the Hauptfürsorgestellen often lack sufficient expertise to provide this kind of care themselves. However, the law states that contracted services have to be provided by independent and non-profit-making funds. In this case, the Hauptfürsorgestellen nonetheless retain overall responsibility for the services provided (under section 28 of the Compensatory Levy Regulation) (Heuser, 1991, p.3 f.).

Since the new law has been in force, there have been numerous experimental projects with special services to provide psychological and social care for disabled people, and particularly for disabled employees (70 per cent of whom have been beneficiaries - see paragraph 2 of this section). So far, no standardized supply of these services has emerged. Instead, various specialised services exist. The most important is the 'psychological and social service' (*Psychosozialer Dienst*, or *PSD*). In addition, there are separate specialized services for deaf people, people with hearing impairments, visually impaired people, and people with learning difficulties. These services are either directly affiliated to the Hauptfürsorgestellen or are provided by independent non-profit-making funds. In 1993, the independent funds provided about 315 specialized services (1991: 150, 1992: 250) and spent DM 38.2 million on psychological and social services. More than 80 per cent of their employees were social workers, social education workers or psychologists (Dobbe, 1995, p.85). During the year 1995/96, the Association of the German Hauptfürsorgestellen estimated the number of external specialized services at about 340 (AGDHFS, 1996, p.21); coverage has been achieved for almost the whole of Germany (AGDHFS, 1994, p.61). Which services in particular are actually provided and by which organisation differs regionally. In Bavaria, for example, support services for job retention are provided by so-called work assistants rather than PSDs; Ernst, 1995, p.102); they are affiliated to other services and to institutions of occupational rehabilitation. (For a survey see Dobbe, 1995, p.86.)

Support services for job retention are also provided by the services just listed above and by other specialized services (such as special integration services or 'work assistance' in Hamburg) in connection with securing the placement of disabled people in open employment (Ernst, 1995, p.102). The services are then intended as a kind of 'after-care'. As they relate to the category of 'first time entry to employment' (ZB Info 3/96a, p.6),

they will not be discussed further at this point.

III.2.2 Relationships between the providers of services and bodies with policy responsibilities

Section III.1 has already discussed policy responsibilities for rehabilitation services and indicated that employment support services form just one part of rehabilitation measures as a whole. Policy responsibility for support services for job retention as part of the 'supplementary assistance in the working environment' is largely left to the Hauptfürsorgestellen, which also bear the main responsibility for its provision. This is derived from the fact that the Severely Disabled Persons Act lays down that the Hauptfürsorgestellen have to provide supplementary assistance but does not say anything about *how* this assistance should be provided. The legislation thereby recognizes the complexity and diversity of the possible relations between working life and the individual disabled person (Heuser, 1991, p.2). Consequently, it is within the discretionary scope of the Hauptfürsorgestellen to shape their policy of employment support services (Heuser, 1987, p.104). Thus, the individualization of support becomes possible.

Although the Hauptfürsorgestellen retain overall responsibility for the provision of support services for job retention, it is the specialised services within independent non-profit-making funds which possess the detailed expertise relating, for instance, to mental health problems or physical disabilities requiring very specific support services. Those specialized services are also used to working without being monitored or controlled by any authority. The asymmetric distribution of expertise thus creates a considerable potential of conflict between the Hauptfürsorgestellen and the independent funds as contracted service providers. From the point of view of the Hauptfürsorgestellen it is crucial to acquire at least a minimum of knowledge about the specialized services in order to be able to evaluate and coordinate their work. Above all, this is very important in terms of funding. According to section 28 subsection 3 of the Compensatory Levy Regulation, the Hauptfürsorgestellen are supposed to fully reimburse the respective providers of the contracted specialized services (i.e. agreeing to pay for 100 per cent of their expenses). All kinds of details have to be settled in individual mutual agreements (clause 2). The Hauptfürsorgestellen must therefore be able to check whether the provision of specialized services is (still) appropriate within the framework of supplementary assistance in the working environment. Besides, sufficient knowledge on both sides facilitates putting up a united front in dealing with employers (Heuser, 1991, p.4 f.; Hartmann, 1991, p.12).

There is no formal or official accreditation of the independent funds which provide specialized services on behalf of the Hauptfürsorgestellen. The latter are free to choose among potential providers. In Germany, many of those providers are very well established and look back on a long tradition involving a reputation which, to some extent, replaces a formal accreditation procedure.

III.2.3 The range and types of services provided

Within the framework of the 'supplementary assistance in the work environment', the Hauptfürsorgestellen make payments to employers, disabled employees and non-profit-making funds (cf. I.4.1). However, supplementary assistance also comprises support services which may contribute to job retention. In practice, the following types of services have gained central importance (Heuser, 1991, p.2; Hartmann, 1991, p.11):

- information: the Hauptfürsorgestellen provide detailed information for employers as well as for disabled employees and their representatives on possible support and aids, on the Severely Disabled Persons Act and related regulations;
- counselling and mediating: it is part of the everyday activities of the Hauptfürsorgestellen to have contacts with employers, disabled employees and their representatives, and to act as a go-between to settle conflicts that are connected with the employment of disabled people (crisis management);

- instruction: according to section 31 subsection 2 clause 4, the Hauptfürsorgestellen have to instruct disabled employees' representatives, the employers' representatives for the disabled employees' concerns, and the works councils in dealing with problems arising from the employment of disabled people and the associated legal provisions.

Providing information and counselling are often integral parts of the dismissal procedure as soon as the Hauptfürsorgestellen have to be involved, especially with regard to the primary goal of reaching an amicable agreement among the parties concerned (see I.3.1). Establishing good relationships with employers and companies is widely considered to be crucial for the success of support services for job retention: regular company visits are of particular significance in this respect.

The types of services that have been listed also occupy central positions among the services for psychological and social care as a subgroup of the supplementary assistance in the working environment. Characterising these services further is difficult because the establishment of any universally applicable exact features would conflict with the principle of individualization of assistance. Moreover, the borderline between psychological and social care on the one hand, and psychological therapy or treatment on the other, is often not clear-cut. To nonetheless obtain a rough idea of what these services might be like, some very general features can be described as follows (Heuser, 1991, p.4):

- promoting the willingness of other employees to actively take part in the psychological and social care of disabled employees;
- providing assistance with practising certain skills which are required at the workplace, such as planning and organizing work with regard to time allocation and coordination, concentration and attention-span;
- assistance with realistic self-assessment, setting realistic goals, and changing disabled people's attitudes towards themselves and towards other employees;
- involving the disabled employee's family if this is necessary to solve work-related problems;
- psychological and social care should always aim at restoring and/or increasing the disabled employee's capacity for self-help.

As was mentioned before, the range of services differs regionally, along with the different concepts about provision. In the case of the Bavarian work assistants, for example, additional emphasis is put on the search for alternative workplaces and possibilities for redeployment. They are also supposed to encourage enterprises to provide more vacancies for disabled people, and to counsel, prepare and assist disabled employees to participate in measures for occupational rehabilitation (Hartmann, 1991, p.8, 11).

Another interesting concept of services for psychological and social care was introduced and experimented with in Bavaria. The Hauptfürsorgestellen and work assistants encouraged enterprises to employ internal work assistants: they provided full or partial funding of the assistant's salaries and training and instructions if necessary. The internal assistant's task is to support disabled employees in coping with the demands of working life, showing discipline, handling conflicts, and performing adequately. At the same time, they try to increase co-workers' and superiors' understanding of the disabled employee's particular situation, above all by giving them some information about the disability and its implications without revealing too many personal details (given the requirement of confidentiality). In addition, the internal assistants should gain an insight into the various sections within an enterprise in order to acquire some knowledge about the potential of particular workplaces for disabled people and the possible redeployment of disabled employees.

Promoting internal company services for the psychological and social care of disabled employees is not

confined to Bavaria. The Hauptfürsorgestellen can generally subsidize such services under section 27 of the Compensatory Levy Regulation. Where the running of internal company services for disabled employees represents an 'extraordinary difficulty arising from the employment of particularly severely disabled persons, the Hauptfürsorgestellen are permitted to use parts of the revenue from the compensatory levy for subsidizing these services. The provision of internal company services is generally found among relatively big companies which can afford to establish them. It is within the discretionary scope of the Hauptfürsorgestellen to decide whether the provision of internal company services is to be regarded as an 'extraordinary difficulty' or whether - maybe because of the size of a particular enterprise - maintaining such services should be standard practice (Heuser, 1991, p.6).

(NB: These examples illustrate various themes in this report: the strategies are initiated by external service providers (the Hauptfürsorgestellen and external work assistants), involve financial incentives to encourage the establishment of internal assistants' positions or internal company services (cf. I.2.3), and reflect internal enterprise strategies (cf. Part V).)

III.2.4 Characteristics of enterprises using external support services for job retention

The Hauptfürsorgestellen, which have the main responsibility for the provision of external support services for job retention, report the total number of clients but do not publish any data on the characteristics of enterprises using these services. The number of employees receiving psychological and social care is as follows (AGDHFS, 1996, p.21):

Table III.1 Current and completed cases

1991:	6,736
1992:	8,186
1993:	12,816
1994:	13,120
1995:	14,643

However, these figures present a distorted picture of the actual use of external support services for job retention by enterprises. It is well known that, along with the economic recession in 1992/93, the willingness to use these external services decreased considerably because employers often regarded them as an obstacle to their ambitious plans of personnel cuts which they felt increasingly forced to undertake during that period (Dobbe, 1995, p.87). That the numbers of clients still increase constantly is certainly connected with the simultaneous extension in supply and availability of external support services since the amendment of the Severely Disabled Persons Act in 1986 (and the building up of such services in the former GDR since 1990). If there are such profound changes in the conditions of supply, clear statements about the demand side will appear problematic. In II.2.1 it was shown that the supply side is still evolving and is characterised by many different approaches which are still at the experimental stage.

With respect to the internal work assistants in Bavaria, more detailed statements about the enterprises using this means of supporting job retention are nonetheless possible. During the first phase when internal assistants had just been introduced as an experimental project, it turned out that medium-sized enterprises were most inclined to hire a new employee for this job from outside. They preferred social education workers for this. Medium-sized firms are small enough to keep a general overview which allows them to establish the necessary personal contacts. Smaller companies usually employ too few workers to keep an internal assistant fully occupied. Big companies, on the other hand, have often established their own specialized services for

social care so that they tend to recruit assistants internally. One major advantage of this is the knowledge about the particular circumstances in the company which is already held by the assistant. Another important factor which is apparent in this context is that, in the case of an enterprise which is at least medium-sized, the display of social responsibility provides an opportunity for promoting the enterprise. The potential effects of publicising a social commitment within personnel policy thus represents an important incentive to make provision for disabled employees, and to provide internal support services for job retention in particular. Finally, technical and organizational constraints relating to the range of possible workplaces and possibilities to redeploy disabled employees also determine the enterprise's willingness to use services for job retention (Hartmann, 1991, p.9 f.).

III.2.5 The prevalence of externally provided support services

The shift in the role of Hauptfürsorgestellen from monitoring special protection against dismissal towards the provision support services has been discussed in III.2.1. Section III.2.1. also considered the structure and development of specialized services (supply side). The use of external services by enterprises (demand side) was discussed in III.2.4.

III.2.6 Arrangements for external providers to organise support in the workplace

As compared with the special protection against dismissal, the external support services for job retention provided by the Hauptfürsorgestellen or by affiliated specialized services are not subject to any legal arrangement concerning use or access. Legislation is confined just to *potential* supply and there is no quantified goal concerning the services actually provided. The providers of support services for job retention thus have to establish cooperative relations with enterprises to effectively reach their clients. The support service's access to disabled employees in companies, and the opportunities to involve their superiors and the enterprise management in the process of assistance, very much depends on the service's ability to create an atmosphere of cooperation and mutual trust in relation to the firms. Regular company visits are the main tool to establish relations of this quality. Besides, the behaviour of the Hauptfürsorgestellen during the dismissal procedure can be taken as evidence of their seriousness in trying to establish cooperative relations. Critics point at the high number of approved dismissals (cf. I.3.1). They argue that the efforts of the Hauptfürsorgestellen to show a sufficient understanding of enterprises' needs in order to effectively promote their own services and thus to increase employers' engagement for disabled people would eventually undermine the effectiveness of the special protection against dismissal.

However, the major obstacle to the success of establishing co-operative relations and convincingly adopting the character of a service provider still consists in the fact that the Hauptfürsorgestellen simultaneously have the task of monitoring the dismissal behaviour of firms as far as disabled employees are concerned and - in doing so - to act as a bureaucratic authority. As it is the case with the take-up of financial incentives (cf. I.2.3), companies often show a certain reserve in contacting the Hauptfürsorgestellen, which is definitely caused by being afraid of 'waking up' an additional monitoring force interfering in enterprise policies. In a highly regulated country like Germany, it is not surprising that such latent fears eventually outweigh the obvious efforts by the Hauptfürsorgestellen to push their service provision to the fore. The latter thus have to fight against a lack of credibility. However, this does not apply equally to all kinds of enterprises but mainly to smaller ones which also lack information about the available provision, as compared with larger companies. The latter, in fact, are often much less reserved in maintaining contact with the Hauptfürsorgestellen or the affiliated service providers. Because of their wider range of workplaces that would possibly be adequate for disabled employees, and since bigger companies can profit relatively more from the signals towards non-disabled personnel and the public which result from an active commitment to disabled employees, they are more inclined to contact the Hauptfürsorgestellen and stay in touch with them (Hartmann, 1991, p.10). As they usually employ more disabled people, it is also more worthwhile for them to take detailed account of the Hauptfürsorgestellen's services. Finally, they have recognized that the legally established special protection against dismissal is not tantamount to a ban on dismissal (cf. I.3.1) since they

have more often experienced dismissal procedures involving the Hauptfürsorgestellen as a result of their higher number of disabled employees.

III.2.7 The extent to which services support job retention

The Association of German Hauptfürsorgestellen has reported on the results of the provision of services for psychological and social care. The separate categories that are used help to identify the extent to which services contributed to job retention and return to work. The following data were published in the latest annual report (AGDHFS, 1996, p.23):

Table III.2: Results of the provision of services for psychological and social care 1992-1995 (as percentages of all completed cases)

	1992	1993	1994
	(N 2,182)	(N 3,763)	(N 4,546)
Previous job retained	23.46	17.59	18.76
Employment relationship retained	9.07	7.79	6.58
Return to work with new employer	11.55	10.90	9.02
Termination of employment relationship	22.91	3.28	22.02
Arranging another kind of care	16.41	15.87	12.96
Breaking off by client	16.09	14.67	13.90
Inpatient long-term treatment	4.49	5.93	3.85
Death	1.01	0.85	0.84
Other results	20.26	14.22	16.48

(NB: The figures for 1994 and 1995 exclude specialized integration services. Multiple responses were allowed.)

According to these data, the continued employment of employees using external services for psychological and social care was achieved in more than 40 per cent of all completed cases (rows one to three) in 1995. Compared to the preceding year, this number increased by about six percentage points, which is exclusively due to better performance with regard to job retention (rows one and two); efforts to promote a return to work, but with a different employer, were not as successful as the previous year. The seemingly better performance in 1992 has to be seen against the background of the considerably lower total number of cases. The relatively high number of cases in which the employment relationship has been terminated should not obscure the fact that the reasons and circumstances of the termination are varied. In 1995, about five per cent of the cases of psychological and social care in which the employment relationship was terminated were due

to the disabled employees themselves handing in their notice; 25 per cent can be traced to mutual agreements; and almost 45 per cent were connected with pension payments from the statutory pension insurance funds (occupational disability or invalidity pension).

To assess the effectiveness of the available support services for job retention, these data definitely do not suffice since they merely represent the 'benefits' of the services without considering the cost-side. Meaningful cost-benefit analyses for the totality of services are - to our knowledge - not available, although some may have been carried out within case studies. Aside from quantifiable measures, there are some fundamental considerations with regard to the assessment of support services for job retention, in particular referring to the structure of the supply side. There is some controversy about the extent to which it is advantageous to delegate the provision of specialized services for psychological and social care to independent funds instead of leaving it to the Hauptfürsorgestellen as the responsible authorities. It can be said for independent service providers that they have more possibilities to specialize and to correspondingly employ qualified people like social education workers and psychologists. Usually they can also organize their working hours much more flexibly and thus give more attention to the specific needs of people with mental distress in particular. Finally, many disabled people are reluctant to contact and reveal their situation to the authorities. The independence of funds may facilitate claiming assistance. The Hauptfürsorgestellen, on the other hand, have their strong points with regard to administration, labour and social law, training and instruction, as well as the adaptation of workplaces to the needs of disabled employees (Heuser, 1987, p.105 and 1991, p.3).

Some commentators emphasize the fact that the final responsibility for the provision of services for psychological and social care remains with the Hauptfürsorgestellen, even if independent funds are involved (Beule, 1990, p.146; AGDHFS, 1994, p.17). This responsibility is a reason for not completely delegating the services to independent providers. Rather, psychological and social care should primarily be included in the total range of provisions by the Hauptfürsorgestellen, particularly because in many cases different types of assistance and subsidies have to be combined (for example counselling and financial incentives). So there is a good case for the provision of a complete range of assistance and services by one institution (Beule 1990, p.152). The following additional reasons have been put forward for leaving the bulk of service activities to the Hauptfürsorgestellen (or directly affiliated services) (Beule, 1990, p.146, 152 f.; AGDHFS, 1994, p.15 ff.):

- The Hauptfürsorgestellen do not appear as biased as independent services towards their disabled clients since they are always obliged to take the employers' interests into their consideration as well. So cooperation with and access to enterprises may be easier. On the other hand, the specialized knowledge of independent providers with regard to psychological and social care will probably be associated with a corresponding lack fundamental knowledge about enterprises' needs (Dobbe, 1995, p.87). Since independent providers often have specialized staff (such as social education workers or psychologists), there may be a tendency to align the services too much to the professional background of the personnel (*'psychiatrisation of working life'*). That means, for example, that problems may be approached too much from a purely psychological point of view while other important aspects may not be sufficiently considered. Since problems which are related to working life are often of a very complex nature, and concern numerous aspects like the disabled employee's personality as well as the social and physical environment, and technical issues and interactions between these, a narrow focus may be dysfunctional. Employers are thus usually more inclined to cooperate with the Hauptfürsorgestellen, also because there is often some long-term experience in dealing with each other which both parties can build on.

- Employers are also obliged to share relevant information on internal company affairs with the Hauptfürsorgestellen and to cooperate with them (Section 13 subsections 3 and 4 of the Severely Disabled Persons Act). This not the case in relation to independent providers.

- The disabled employee's representatives are released from their pledge of confidentiality only in relation to the Hauptfürsorgestellen, but not with independent providers.
- Severely disabled employees are obliged to reveal their personal and economic situation to the Hauptfürsorgestellen if the latter consider this to be necessary for providing assistance. There is no such obligation with regard to independent providers.

With reference to these aspects, it seems understandable that representatives of the Hauptfürsorgestellen call for a different assignment of responsibilities. According to this, independent providers would only be involved whenever additional services for psychological and social care are required *outside the company*, and insofar as *unemployed* people with mental distress are concerned; care and counselling services *within the company* should then be left to the Hauptfürsorgestellen (Beule, 1990, p.152).

Finally, the following issues have to be considered in assessing the extent to which the services described are effective in supporting job retention:

- Since independent providers were allowed to work on behalf of the Hauptfürsorgestellen from 1986, and thus to be funded by the revenue of the compensatory levy, the 'supply side' of services for psychological and social care has become increasingly differentiated. Different forms of provision are being tested, and no real standard has emerged yet (III.2.1). For the users of these services it is increasingly difficult to become accustomed to an increasingly sophisticated system of assistance; this is particularly important given the key role played by personal relations between service providers and users in determining the effectiveness of assistance. Being referred to numerous responsible contacts tends to hinder disabled persons and their employers from establishing close personal relationships with their assistants. At this point it becomes clear, once again, that the fragmentary character of the 'national system' in Germany, and its lack of transparency, are both central themes and fundamental drawbacks, as they considerably increase the cost of information gathering (Beule, 1990, p.151; Ernst, 1995, p.102).
- Although the Hauptfürsorgestellen generally have more knowledge about the peculiarities and needs of enterprises, they are never as familiar with the conditions in a company as the internal representatives for severely disabled people (including the works councils). So the success of externally provided services also crucially depends on their efforts to fully exploit the potential for cooperation with internal company representatives (Heuser, 1993, p.115).
- Employers tend to associate the term 'psychological and social services' with an agency whose objective is to criticise poor conditions within enterprises and employers' failure to demonstrate social responsibility. This association may be attributed to the terms 'psychological' and 'social' being seen as unrelated to the primary concerns of business management. As a result, enterprises may not see such services as real partners in solving problems (Dobbe, 1995, p.88). 'Psychological and social services' may thus be an unfortunate choice of phrase. Many Hauptfürsorgestellen have accordingly changed the term to '*Berufsbegleitende Dienste*' (services provided within an employment context) (AGDHFS, 1996, p.21).
- Co-operative relations between service providers and enterprises have already been stressed as an important factor for the provision of support services in the workplace (III.2.6). It has also been mentioned that the Hauptfürsorgestellen are sometimes criticized for showing too much understanding for companies' concerns in order to achieve a co-operative attitude. Another argument suggests that the Hauptfürsorgestellen do not really have a choice, because there is an imbalance with regard to the potential of sanctions. It might be argued that the

threat of refusal to recruit disabled people outweighs the threat of approval not being granted to dismiss disabled employees. As a consequence, the relationship between employers and the Hauptfürsorgestelle may turn out to be relatively one-sided in favour of the employers, which manifests itself in the high proportion of job losses eventually resulting from negotiations about dismissals (see I.3.1).

- Last but not least, some results of the internal work assistant's activities in Bavaria have been presented. Even though this approach of placing support services in the workplace is not very widespread in Germany, and even though the results mainly stem from the late 1980s, the internal work assistants represent a unique concept which may provide a model for other regions, too.

Although the participating companies were initially very sceptical towards the employment of internal work assistants, the project turned out to be successful, as shown in three ways (Hartmann, 1991, p.10 ff.):

- the working hours lost through absenteeism of those employees who have benefited from services by the internal assistants have decreased in the long run;
- all employees felt that the working atmosphere improved after internal assistants had been introduced;
- whenever people with mental distress were newly recruited by companies taking part in the project, they were accepted by both superiors and co-workers.

Lower-level managers, in particular, felt considerably relieved by the employment of internal work assistants. These take some of the load off the superiors, especially with regard to settling conflicts among staff and dealing with irregularities in working performance. In so doing, the assistants help to prevent minor problems from becoming major ones by not being dealt with at an early stage. This spares all employees a lot of stress and additionally saves the superior's time they would otherwise have to devote to their staff. On the whole, the early involvement of internal work assistants makes the total number of internal company conflicts decrease in those sections where disabled people are employed.

III.3 USERS OF SUPPORT SERVICES FOR JOB RETENTION

III.3.1 Eligibility criteria and procedures for identifying users (disabled workers and their employers)

Severely disabled people and persons of equal status with a particular need for care in work (according to Sections 1 and 2 of the Severely Disabled Persons Act) form the target group of the specialized support services provided by the Hauptfürsorgestellen and their affiliated providers. Above all, this group includes people with mental health problems and learning difficulties, but also some physically disabled persons who suffer from emotional problems which affect their working performance (Ernst, 1995, p.102). Since the Hauptfürsorgestellen are responsible for the implementation of the Severely Disabled Persons Act, their services must be directed at persons who are classified as severely disabled by the *Versorgungsamt* on the basis of the 'Points of reference for medical reports within social compensation legislation and according to the Severely Disabled Persons Act' published by the Federal Ministry for Employment and Social Affairs (BMA, 1996, p.133; cf. I.5.1). In addition, the Hauptfürsorgestellen are also obliged to provide their support services to persons whose status of being severely disabled has not yet been ascertained, but who have applied for it to the *Versorgungsamt* (Heuser, 1991, p.4).

Delimiting eligibility for support services on the job thus does not seem to be a problem from the legislative point of view. However, identifying users is made difficult by the vagueness of the term 'psychological and social care' which is not really defined in law. Only the working environment represents a definite point of

reference from which a target for the provision of services can be derived. As regards content, though, there is no clarification. On the other hand, this 'missing part' reflects the fact that the legislation has taken account of the potential complex interactions between all the different areas of life which might be relevant for the effective provision of support services. So the principle of the individualization of assistance means it is not possible to specify the contents of support services in more detail (cf. Beule, 1990, p.145).

Resulting from these points, the legal framework permits varied forms of support services at work. At the same time, it causes a considerable lack of standardization on the provider's side which, in turn, results in fragmentation and insufficient transparency from the user's point of view (see III.2.7). On the other hand, the provision of support services at work has only recently been recognized as a useful and necessary additional form of assistance (1986 amendment of the Severely Disabled Persons Act). A transitional period is therefore needed in order to experiment with different forms of services, particularly in the light of the multiplicity of types of disability-related problems at work.

There are various possible 'channels' through which the provision of support services can be initiated and users can be identified, including disabled persons themselves, the Hauptfürsorgestellen, and employers. The majority of service provision is initiated by disabled employees themselves or their relatives. In 1993, this was true for 26.8 per cent of all the 6,532 current cases. The fact that this share has increased (from 21.6 per cent in 1991) might be traced to improved public relations work by providers, but also to the worse work situation of disabled employees. 22.6 per cent of current cases in 1993 were initiated by physicians or hospitals, 14.7 per cent by the Hauptfürsorgestellen, 13.7 per cent by other institutions for psychological and social care, and 3.2 per cent by employment offices. 14.4 per cent were initiated by the enterprises employing disabled persons, and by disabled employees' representatives in particular, reflecting a significant decrease from 19.0 per cent in 1991. However, this development must be seen against the background of a period of economic recession in 1992/93 (cf. III.2.4) (Dobbe, 1995, p.87).

As regards the internal work assistants in Bavarian companies, some particular conditions have to be observed to ensure employees sufficient access to internal support services. The internal assistants should, for instance, have separate rooms and phones as well as consulting times so that employees can see them unnoticed by their colleagues. Everybody in the company should become familiar with the internal assistants, and the assistants should try to become well known among the employees through their regular presence. In addition, it appears important not to incorporate the assistants into the company's personnel department because they might then be regarded as just the extension of the head of this department. Instead, the assistants could be assigned to the company's internal welfare service (if something like this exists). To increase acceptance in the company, the assistants should avoid declaring themselves as only being responsible for particular groups of disabled employees. Rather, they should emphasize that all employees in need of support services can consult them. Thereby, they can prevent the users of their services from being seen in an unwelcome and possibly stigmatizing special light (Hartmann, 1991, p.10).

III.3.2 Disabled workers who benefit and those who miss out

The initial concept of support services on the job does not contain any specialization related to particular groups of disabled persons. This is consistent with the law (section 31 of the Severely Disabled Persons Act and section 28 of the Compensatory Levy Regulation) which grants all severely disabled people access, in principle, to services for psychological and social care within the context of supplementary assistance in the working and professional environment (Beule, 1990, p.147). Specialized support services for people with hearing impairments are an exception, since the provision of assistance for this group of people requires very specific knowledge and skills (sign language, for example) (Dobbe, 1995, p.85).

In spite of this legal framework, services for psychological and social care have mainly been directed towards people with mental health problems since the amendment of 1986 came into force. This bias in favour of a particular group of disabled people can be explained by the fact that the system for assisting disabled people

in general is not yet sufficiently developed in dealing with the sorts of employment problems that are particularly evident in the case of people with mental health problems. The Hauptfürsorgestellen have changed their outlook correspondingly; for them, the specific problems of people with mental health problems have not been an issue for some time (Heuser, 1991, p.1).

However, the focus has recently shifted towards the inclusion of people with disabilities other than mental health problems since it has also been recognized that all kinds of disability might easily involve the need for psychological and social care (Heuser, 1991, p.7). On the one hand, this shift will eventually lead to an orientation of support services which is more consistent with the letter of the law and its actual intention. On the other hand, ascertaining a severe mental health disability in accordance with the officially used guidelines for medical expert examination under the Severely Disabled Persons Act often turns out to be problematic. Many mental health problems do not really become evident; in other cases, receiving the official status of being severely disabled may just make matters worse for people with mental health problems (AGDHFS, 1996, p.21).

The majority of clients benefiting from services for psychological and social care still belong to the group of people with mental health problems. In 1993, they had a share of 57.2 per cent among all clients (though this was tending to decrease: in the two preceding years, this share was more than 61 per cent). In the same year, 12.6 per cent of the clients had sensory disabilities, 11.3 per cent physical, 7.2 per cent neurological, and 7.1 per cent learning difficulties. By the end of 1993, 30.3 per cent of current cases and 33.4 per cent of completed ones did not have the official status of being severely disabled; 4.7 per cent had recently applied for being classified as severely disabled (Dobbe, 1995, p.85). The share of clients with mental health problems without the official status of severe disability shrank from 29.8 per cent to 23.8 per cent in 1995 (AGDHFS, 1996, p.21). The figures show that the Hauptfürsorgestellen have some discretionary scope to also provide support services at work for severely disabled people who do not have the official status as such; this reflects the problems connected with ascertaining particular types of disability. In so doing, they refer to substitute criteria which are provided by their umbrella organization, the Association of German Hauptfürsorgestellen (cf. Beule, 1990, p.150).

The internal work assistants in Bavarian companies are even less restrictive in the selection of clients. In fact, they are not bound by the official status of severe disability at all. This way of proceeding again reflects the insight that officially ascertaining a status of disability might easily have a negative effect on people with mental health problems in particular. Most of them do not suffer from any limitation of their individual intellect, and they are afraid of the prejudices and possible stigmatizing effects which are associated with such official status. On the other hand, they will thus not benefit from the provisions of the Severely Disabled Persons Act and the special protection against dismissal in particular. This makes it particularly important to grant this group of employees unfettered access to support services irrespective of any official status. Since the Hauptfürsorgestellen are more bound to the latter, the concept of internal work assistants may be a useful arrangement to respond to these problems. To prevent the possible stigmatizing effects associated with delimiting a group of possible clients, employees can consult the internal assistants, for example, as soon as they have particular problems in relation to other people. The internal assistants have to deal with a lot of problems which are not directly related to employment, too (Hartmann, 1991, p.9 f.).

III.4 SUPPORT SERVICES FOR RETURN TO WORK

The primary focus of this section is on occupational rehabilitation in general, and vocational re-training or further training measures in particular. Changing either a job or employer is more likely to occur on completing rehabilitation, as compared with support services on the job such as the 'supplementary assistance in the working environment' provided by the Hauptfürsorgestellen, which are much more explicitly aimed at job retention, i.e. staying with the same employer. However, further vocational training, or even vocational retraining, could be combined with job retention as well, especially within big companies where disabled employees can be more easily redeployed. For this reason, job retention will still be dealt with in this section

as a possible result of rehabilitation services.

Before dealing with the main services in detail, it has to be stressed once again that services of further vocational training or vocational retraining belong to the broader category of occupational rehabilitation, and are thus embedded in supporting measures which do not simply consist of services. In fact, they may be complemented by benefits for technical equipment for the workplace, aids to make equipment suitable for use by disabled persons, or acquisition of a motor vehicle, (re-)training subsidies, cash benefits to disabled persons (temporary allowance to assure subsistence in the case of retraining), employment and integration allowances to employers, and other supplementary benefits as listed in II.3.2 (see, too, ANBA, 1996, p.5). In addition to services of vocational retraining or further training, the initial training of disabled persons forms an integral part of vocational assistance benefits. These services will not be considered in this context since the objectives of 'job retention' and 'return to work' presuppose that the disabled persons concerned have been employed at some point before. 'First time entry to employment' is not an object of this study. So, examining the available data on occupational rehabilitation in relation to just services which aim at job retention or return to work is problematic.

Finally, in dealing with data on occupational rehabilitation, one has to keep in mind that 'a disabled person' is not synonymous with 'a person undergoing rehabilitation'. Measures for rehabilitation are, on principle, not initiated by an existing or newly occurring disability, but by sickness which may result in disability if appropriate measures are not taken. The preventive nature of rehabilitation legislation distinguishes it from the legislation in respect of severely disabled persons. The latter mainly contains provisions which represent a reaction to existing disabilities, while most of the persons undergoing rehabilitation have not yet become disabled or severely disabled (Burger, 1996, p.28) References to 'disabled people undergoing rehabilitation' thus reflects a broader understanding of disability compared to the one underlying the Severely Disabled Persons Act.

III.4.1 The main services for return to work

The Federal Employment Office

In section III.1.2, the Federal Employment Office (FEO) was identified as the main provider of occupational rehabilitation measures. This has to be traced to the fact that, of all the funds responsible for occupational rehabilitation, it is almost exclusively responsible for the initial integration of disabled people into the work environment and it bears the greatest responsibility for reintegration in the event of subsequent disabilities. '... although benefits paid by accident and pension insurance, and in accordance with the law of social compensation, take precedence over benefits under the Employment Promotion Act (section 57 of the Employment Promotion Act). The reason for this is that the accident insurance and social compensation funds have obligations to assist a clearly defined group of persons (see III.1.2) (BMA, 1996, p.121). The FEO is thus responsible for the re-integration of younger disabled people who do not satisfy the necessary prerequisites for claiming occupational rehabilitation measures from the statutory insurances. Moreover, disabled persons are entitled to the same benefits provided on the grounds of the Employment Promotion Act as are non-disabled persons. So, for example, a disabled person's retraining for a different occupation can generally be claimed according to the Employment Promotion Act, so the same criteria of eligibility apply. It is only if retraining is needed for vocational rehabilitation *as a result of disability* that special, more favourable, eligibility regulations apply and the range of benefits differs (Thornton and Lunt, 1997, p.119).

Most of the time, the FEO is the fund which arranges measures for occupational rehabilitation or, at least, is involved in arranging them. One major reason for this is that section 6, subsection 2 of the Rehabilitation Harmonization Act obliges the FEO to provide provisional benefits, especially in cases where the question of responsibility has not been clarified. In 1995, 80 per cent of all cases of occupational rehabilitation with the objective of re-integration into employment were arranged by the FEO. However, this share has shrunk after the Labour Promotion Act was amended in 1993 (cf. III.1.2; in 1992, 88 per cent had still been arranged by

the FEO) (ANBA, 1996, p.12). Furthermore, the FEO also has the special task of having to be consulted by the other funds involved in rehabilitation prior to the arrangement of vocational assistance measures (section 5, subsection 4 of the Rehabilitation Harmonization Act). This applies across the whole area of occupational rehabilitation, over and above its function as one of the funds responsible for rehabilitation. As part of an integration proposal in accordance with section 57 of the Employment Promotion Act, where another fund is responsible, the FEO must submit a proposal to that fund regarding the necessary vocational assistance measures. In addition, employees will usually contact the employment offices first in matters of occupational rehabilitation, even if other funds are responsible (ANBA, 1996, p. 5; BMA, 1996, p.129).

One of the most important services provided by the employment offices is, in fact, counselling about careers (sections 25 ff. of the Labour Promotion Act, and section 33, subsection 1 of the Severely Disabled Persons Act). They usually have two different divisions (or specialist careers counselling centres for disabled persons), one counselling on first time entry, and one on re-integration into employment (ANBA, 1996, p.6). The counselling services provide advice and information on questions of career choice or change of occupation, individual advice on help for vocational training, the procurement of vocational training places, and information about financial benefits for vocational integration available to disabled persons. 'Trained careers counsellors for disabled persons may consult the specialist medical and psychological services of the employment offices in order to assess the aptitude and inclinations of the young person concerned and to obtain an indication of possible future vocational assistance requirements' (Thornton and Lunt 1997, p.120). 'Over the last few years, the number of disabled persons seeking advice from the careers counselling centres at employment offices has increased steadily. In 1993-94 in the old Länder, 155,500 disabled persons visited careers counselling centres seeking advice; accounting for 11.3 per cent of the total number of people seeking advice. In the new Länder in 1993-94, the careers counselling centres registered 51,400 visits of disabled persons: 11,300 more than in the preceding year and 11.1 per cent of the total number of people seeking advice there' (BMA, 1996, p.91, 93). In the year 1995-96, the numbers increased still further: 173,300 disabled persons sought advice in the old Länder, 70,800 in the new Länder. More than 60 per cent of the total number had just left special schools for persons with learning difficulties (BMA Internet 1997a). So, the numbers include a greater proportion of disabled people seeking first-time entry to employment.

In quantitative terms, re-integration into employment plays a more important role with regard to occupational rehabilitation in general. Among the 265,021 persons who were *newly admitted* to rehabilitation measures provided by the FEO in 1995, 76.5 per cent were involved in re-integration into employment (and 95.0 per cent of them had been employed before), with only 23.5 per cent involved in first-time entry to employment. In 1996, the number of persons undergoing occupational rehabilitation with the aim of re-integration to employment rose by 4.4 per cent up to 211,600. This increase was mainly due to developments in the new Länder. 43.4 per cent of the total (91,900) had notified the employment office of being unemployed before. For 81.5 per cent (172,400), the FEO arranged the rehabilitation measures (BMA Internet 1997b). The proportions of people *currently undergoing* occupational rehabilitation at the end of the year 1995 was 38.8 per cent aiming at first-time entry, and 61.2 per cent at re-integration, out of a total of 511,164 persons (1994: 485,594). The reintegration of disabled adults is, in fact, becoming increasingly important (ANBA, 1996, p.8, 10).

As regards vocational assistance training measures (as a subgroup of vocational promotion), first-time entry is more crucial. At the end of 1995, 129,953 persons were receiving such measures (1994: 122,815); for them, occupational integration could be achieved by general promotional measures under the Labour Promotion Act to which non-disabled persons are also entitled (ANBA, 1996, p.6, 67; 1995, p.65). The FEO assigned more than 65 per cent of all persons receiving vocational assistance training measures at the end of 1995 (85,006) to first-time entry to employment, and only 35 per cent (44,947) to re-integration (ANBA, 1996, p.8, 10). The latter number dropped marginally to 44,200 in 1996 (BMA Internet, 1997b). A slightly different picture results from looking at the numbers of people *newly admitted* to vocational assistance training measures. In 1995, 53.9 per cent of the total of 115,928 were listed under first-time entry, and 46.1 per cent (53,397) under

re-integration (among whom 93.0 per cent had been employed before). However, in West Germany re-integration played a more important role compared to first-time entry (46,976 vs. 42,085 persons in 1995) (ANBA, 1996, p.36 f.). In 1996, the number of persons for whom vocational assistance training measures were arranged for re-integration rose by 8.9 per cent up to 58,100 (BMA Internet, 1997b).

Some training measures may serve both objectives. This applies to arrangements which give disabled people undergoing occupational rehabilitation the opportunity to experience working life by temporary visits to companies, and thereby to find out about their own inclinations and to come to realistic self-assessments. Such measures are called 'finding an occupation' and 'work experience'; they also help in setting goals for individual rehabilitation processes (BMA, 1996a, p.10; ANBA, 1996, p.19). This type of measure was used more by persons aiming at re-integration (in 1996: 11,800), compared to persons aiming at first-time entry (in 1996: 3,500). In addition, basic training for blind people is provided both with respect to first-time entry and re-integration into working life (ANBA, 1996, p.38). Particularly aimed at re-integration into employment are measures of further vocational training and retraining. The latter still take the largest share among the various measures for occupational rehabilitation aimed at re-integration (in 1995, 18,156 persons were newly admitted to vocational retraining funded by the FEO; in 1996, this number dropped slightly to 17,800). However, further vocational training is taking an increasing share (10,750 persons newly admitted in 1995, and 13,000 in 1996). Among the persons taking part in retraining measures, more than two thirds prepared for jobs in the service sector; among those receiving further vocational training this share was 30 per cent (since the majority of persons undergoing rehabilitation are already qualified in manufacturing). Most of the measures were industry-wide, i.e. carried out outside the company. As a rule, retraining of disabled adults is limited to two years at most. More than half the people participating in retraining measures attend special preparation courses first (in 1996: 10,300 out of 17,800 newly admitted) (ANBA, 1996, p.19, 38; BMA Internet, 1997b)

One common feature of all the measures just listed, and the related services (counselling, training), is that they are funded by the FEO. In 1996, the FEO spent DM 2.14 billion on rehabilitation measures for re-integration into employment, including the funding of the 'non-service components' of occupational rehabilitation such as temporary allowances, integration assistance to employers after the successful completion of some form of vocational training (in 1996: DM 55.6 million), and motor vehicle assistance (in 1996: DM 21 million) (BMA Internet, 1997b). The funding of services (mainly course expenses, subsidies to institutions for occupational rehabilitation - see below under 'institutional promotion') does not mean that the FEO provides them itself or via the numerous affiliated employment offices. Rather, actual provision is largely confined to counselling (particularly concerning integration plans) and careers advice, for which the employment offices have separate and specialized divisions (see above). Retraining and further training, though, should be provided for disabled people inside companies and administrations alongside non-disabled persons, whenever appropriate conditions exist (on-the-job training can be made possible by providing training subsidies to employers). Only where required because of the nature or severity of the disability or in order to guarantee the success of rehabilitation, does vocational training take place in special centres for vocational rehabilitation which provide industry-wide training (section 11, subsection 2a of the Rehabilitation Harmonization Act) (BMA, 1996, p.106, 109). However, at the end of 1995 only 16.3 per cent of all persons participating in training measures provided by the FEO within the framework of vocational promotion received training inside companies, including industry-wide sections; the total number dropped from 22,380 at the end of 1994 to 21,200 one year later (ANBA, 1995, p.65; 1996, p.67). So, initial training, retraining, and further training in special centres are not the exception but - on the contrary - the rule.

A preference exists in principle concerning the content of training measures. The eventual aim is 'to ensure that disabled people meet laid down job requirements, notably qualifications, through training in an officially recognised trainee occupation under the Vocational Training Act or the Handicrafts Regulation Act'. 'For young people who cannot be trained in officially recognised trainee occupations, despite extra assistance and the possibility of waiving training regulations, because of the nature or severity of their disability, the

regional funds may create regulations on training outside officially recognised trainee occupations. The special training courses are intended to lead to a final qualification which guarantees access to officially recognised trainee occupations'. For adults, it is possible to be retrained in occupations other than the officially recognised trainee occupations (Thornton and Lunt, 1997, p.120 f.).

The non-profit-making vocational retraining centres (*Berufsförderungswerke*) can be regarded as one of the most important providers of retraining and further training for disabled adults which aim at return to work. Their clients already have work experience and need vocational reorientation because of accident, injury or disability. There are 28 vocational retraining centres in Germany, offering more than 14,500 training vacancies. In 1995, 21,241 persons were newly admitted to take part in measures provided by the retraining centres (ANBA, 1996, p.64). They are equipped with the necessary specialist (medical, psychological, educational and social) services. In the case of these industry-wide measures, the FEO (or any other responsible rehabilitation fund) accepts all expenses related to the measure, including accommodation and subsistence. The centres themselves are financed and administered by a range of organisations, including federal government, trade associations, insurance bodies, charities and churches. The vocational retraining centres are obliged to tailor training programmes to the changing demands of the labour market, at the same time taking account of the inclinations and abilities of persons undergoing rehabilitation, and to adapt their training programmes to current developments in technology. Disabled persons have access to these centres irrespective of the cause of their disability. The centres also support disabled persons in the development of social skills (BMA, 1996, p.109, 111; BMA, 1996a, p.7 ff.; Thornton and Lunt 1997, p.121).

The FEO additionally funds training measures in workshops for disabled persons, and considers subsequent employment in those workshops as successful re-integration into working life where there is no other option. In July 1997, there were 635 sheltered workshops providing about 155,000 workplaces for persons undergoing rehabilitation (Bundesregierung, 1997, p.77). 'To prepare for employment in the workshop, benefits are awarded in accordance with section 11, subsection 3 of the Rehabilitation Harmonization Act and with the corresponding rules for the individual funds responsible for occupational rehabilitation, to promote participation in measures in the entry procedure and in the employment training offered by officially recognized workshops for disabled people, for up to a total of two years, with the vast majority of benefits being awarded through the FEO. It is the task of the workshops to assist disabled persons in such a way that, by the time they have completed their employment training, they are in a position to deliver a minimum amount of economically useful work. Beyond this primary aim, the workshop's task is to assist and encourage the individuals in attaining their full potential' (BMA, 1996, p.155). In 1995, almost 12,000 people were newly admitted to participate in training measures in workshops for disabled persons, about 28 per cent of them aiming at re-integration into employment. Most of the latter had mental health problems. (People with learning difficulties usually enter the workshops at a younger age without having been employed somewhere else before - ANBA, 1996, p.19, 64.) In 1996, the FEO spent DM 424.5 million on measures for the entry procedure and in the employment training section (Bundesregierung, 1997, p.77).

Finally, vocational assistance and training may be provided in one of the 20 medical and occupational rehabilitation centres (with some 1,000 places in the occupational division). In these centres, initial steps of vocational assistance (such as career identification and work experience, or preparatory measures directed at resuming employment or retraining) are arranged in the course of medical rehabilitation, in the case of certain neurological illnesses (Thornton and Lunt 1997, p.121). While most employment support services for return to work are delegated to one of the listed special centres or workshops, the FEO also subsidizes institutions offering services for occupational rehabilitation in relation to construction and equipment, called 'institutional promotion'. In 1995, the FEO spent DM 210 million on that purpose (1994: almost DM 141 million), of which DM 124 million was assigned to vocational (re-)training centres (1994: DM 61 million) and DM 86 million to sheltered workshops for disabled persons (1994: DM 80 million). The considerable increase in subsidies is mainly due to the need to catch up on these institutions in the new Länder (ANBA, 1996, p.29). Since this is a temporary process, it is not surprising that the numbers decreased. In 1996, the FEO spent DM

188.2 million on 'institutional promotion', including DM 111.8 million to vocational (re-)training centres, and DM 76.4 million to sheltered workshops for disabled persons (BMA Internet, 1997b).

Statutory pension insurance

What has been said about the discrepancy between funding support services for return to work and actually providing them, also applies to the second largest funders of occupational rehabilitation, the statutory pension insurance funds. However, this is only true for vocational assistance training measures where the pension insurance's contribution to services is largely confined to funding the related measures which will actually be provided by either the companies themselves or, in most cases, by special retraining centres outside the companies. On the other hand, the statutory pension insurance funds are directly involved in support services for obtaining or keeping a job as part of occupational rehabilitation. It employs full-time specialist advisers on rehabilitation issues who work outside the office most of the time (comparable to vocational assistants in relation to accident insurance, as described below). These people visit companies, provide counselling services - mainly for employers on the adaptation of workplaces - and give information on available benefits to finance the required adaptations. In addition, they co-operate with employment offices (source: personal communication from VDR).

As has been pointed out before, measures for occupational rehabilitation include more than merely services. The pension insurance funds also provide a number of benefits and subsidies for employers or the disabled persons themselves to assist in obtaining or keeping a job (see 'supporting measures' above, and II.3.2). Since the pension insurance funds fall back upon the same providers of training services for occupational rehabilitation as the FEO, it is not surprising that it funds the same types of training services, too. In this respect, a standardization of rehabilitation benefits has been achieved. Thus, the pension insurance funds also pay for courses for the preparation of retraining and further training, basic training for blind people, and re-training and further training in enterprises and in centres outside the companies (VDR, 1996, p.295 f.). 'Occupational adaptation/ integration' is a measure particularly directed at job retention. In the statistics it is assigned to vocational training measures. However, it in fact combines services (training, counselling) and non-service components (benefits in kind). The typical characteristic of this measure is that it is provided in cases where occupational rehabilitation does not require much input, as compared to cases where qualifications have to be adapted fundamentally, or be newly acquired, by means of further training and retraining to achieve a disabled person's integration into working life. So, the threshold from a continued employment relationship into non-employed status does not have to be crossed; instead, measures of 'occupational adaptation/integration' are characterised by the fact that the employer, and the company respectively, remains the same after the measure has been completed (personal communication from VDR).

The vocational assistance measures funded by the pension insurance funds and completed in 1995 were of the following kinds (VDR 1996, p.7, 228):

Table III.3:

<i>Total</i>	<i>86,331</i>	<i>100 per cent</i>
'Finding an occupation' and 'work experience'	7,046	8.2
Benefits for temporary work trials	322	0.4
Retaining/obtaining a job	47,066	54.5

including:		
redeployment in previous company	7,507	8.7
placement in another company	34,880	40.4
Preparatory courses	7,005	8.1
Vocational training	13,137	15.2
including:		
initial training	1,038	1.2
further training	1,394	1.6
retraining	5,822	6.7
occupational adaptation/integration	4,883	5.7
benefits for training inside companies	14	0.0
Measures in sheltered workshops	4,431	5.1

In terms of average duration of the various measures it turns out that retraining is the most costly (taking 450 days on average), followed by initial training (335 days), further training (257 days), and 'occupational adaptation/integration' (195 days). Benefits for training inside companies are, on average, granted for a duration of 193 days. Measures for 'finding an occupation' and 'work experience' typically take only a short time (16 days on average) (VDR, 1996, p.232 f.).

The total of 86,331 vocational assistance measures was spread among a total of 79,170 persons undergoing occupational rehabilitation provided by the insurance funds (VDR, 1996, p.225). 64,307 of these measures were completed in the old Länder - compared to 59,908 in 1994 and 46,803 in 1993 (VDR, 1996, p.275); the considerable increase reflects the consequences of the amendment to the Labour Promotion Act (see III.1.2). In 1995, the pension insurance funds spent DM 1,286.4 million on vocational assistance measures (VDR, 1996, p.26). The figures listed above reveal that the assignment of rehabilitation services provided by the pension insurance funds to 'support services for return to work' appears appropriate since the types of measures directly aimed at job retention (redeployment in previous company and occupational adaptation/integration) are only of minor importance compared with the measures directly aimed at return to work (placement in another company, initial/further/re-training) within the corresponding category. However, the salience of measures for retaining or obtaining a job which aimed at placement in another company (34,880) compared to vocational training measures (13,137) also shows that the main emphasis among vocational assistance measures in general is on the qualifications that the pension insurance's clients already possess instead of imparting additional qualifications to them by training measures. This bias is related to the fact that the pension insurance funds are mainly responsible for older people who are or have already been integrated into the labour market. These people often have the opportunity to obtain a workplace corresponding to their current qualification level, either with their previous employer or in another company

(Bundesregierung, 1997, p.60).

Statutory occupational accident insurance

In addition to the prevention of occupational accidents and work-related illnesses, the statutory occupational accident insurance funds support the restoration of fitness for work by vocational assistance measures whenever prevention fails. Re-integration into employment, both job retention and return to work, is the aim of the assistance measures except in the case of children attending school or students (see III.1.2); in the latter case, measures will be provided to make first-time entry to employment possible. As has been pointed out before (III.1.2), it is difficult to determine the relative priority accorded to job retention on the one hand, and return to work on the other. However, the provision of vocational assistance from the accident insurance funds generally requires people to discontinue any work which is likely to cause work-related illnesses (HVBG 1995, p.40). So, in relation to illness, at least, the accident insurance funds promote 'return to work' in the sense of changing workplace or occupation. Job retention, on the other hand, is stressed as being an objective of rehabilitation measures insofar as the accident insurance funds explicitly state the principle that any promising measure for medical rehabilitation must be taken prior to occupational rehabilitation (HVBG, 1995, p.40). If measures for medical rehabilitation make occupational rehabilitation unnecessary, it can be concluded that the persons concerned will be restored to their full occupational potential, so that changing the job will be unnecessary, too.

The occupational accident insurance funds provide support services as well. Aside from general information and counselling services which every social insurance fund is obliged to provide in order to assist all persons concerned to cope with the complexity of the social benefit system, the accident insurance funds employ vocational assistants (see II.1.2). Most of the time, they work outside the office. As soon as it becomes obvious that measures for occupational rehabilitation will be necessary in addition to medical ones for successful re-integration into employment, the vocational assistants start preparing these while the injured persons are still undergoing medical rehabilitation. To guarantee successful transition from medical to occupational rehabilitation measures, the vocational assistants are supposed to be knowledgeable about both areas. Their main task is to identify possible means and objectives for occupational re-integration. In so doing, they have to take into consideration both the inclinations and desires of the persons undergoing rehabilitation, and the interests of the insurance fund that is allocating resources economically. The vocational assistants negotiate with all parties involved (physicians, enterprises, vocational retraining centres). In addition, the Rehabilitation Harmonization Act stipulates co-operation between accident insurance funds and employment offices in providing vocational assistance. In particular, the specialized services of the employment offices may be involved. The vocational assistants themselves undergo further training and instruction on a regular basis, so that they are up-dated on legislative issues and improvements in methods and practices of psychological and social care (HVBG, 1995, p.40 f.).

The accident insurance funds are aware of the fact that the catalogue of individual provision for vocational assistance according to the state insurance regulation (*Reichsversicherungsordnung - RVO*) is characterised by confusion (HVBG, 1995, p.42). However, the diversity of forms of assistance for occupational rehabilitation should provide sufficient flexibility to adapt to the requirements of the individual case (HVBG, 1997, p.28). The following main groups of measures can be distinguished (HVBG, 1995, p.42 f., 179 f.):

- measures for re-integration other than vocational training measures: these consist of financial assistance, for example for technical aids in the workplace or help in obtaining and keeping a job. Financial support is also available for self-employed persons to either establish their own business or to maintain it.
- measures for (re-)integration through vocational training measures. These include further vocational training, initial training, and vocational retraining. Here, the accident insurance funds fall back on enterprises or vocational (re-)training centres outside enterprises as the

providers of training services. The insurance funds also pay for the latter within the framework of 'institutional promotion' (see above). Vocational training measures apply whenever financial or technical aids do not suffice to obtain or retain a job. Then, the insured persons are themselves obliged to contribute to the success of occupational rehabilitation by acquiring additional qualifications.

- preparatory measures, including basic training or acquiring school qualifications.

- supplementary benefits, as described in II.3.2.

In 1993, the accident insurance funds spent DM 549.7 million on vocational assistance, or 9.71 per cent of their total spending. This figure has increased immensely over the past decade; in 1980, vocational assistance absorbed only DM 5.6 million, or 0.26 per cent of total spending. This can be partially explained by examining the development of individual measures (see below). The greatest share in 1993 was assigned to benefits in kind (DM 189.9 million, or 34.5 per cent). Since these include all expenses for vocational training measures such as, for example, accommodation expenses, textbooks and equipment, they represent services indirectly provided by the accident insurance funds. The same applies to payments for technical aids or integration assistance paid to employers: since they are assigned to the same category of expense, i.e. vocational assistance or occupational rehabilitation measures provided by the accident insurance funds, they also implicitly represent measures of on-the-job-training inside enterprises. The remaining payments are assigned to non-service components of occupational rehabilitation such as temporary allowances to ensure subsistence whilst undertaking rehabilitation measures (DM 155.9 million), temporary allowances to compensate for a loss in income resulting from work-related illness (DM 78.2 million), paying social security contributions (DM 77.8 million), and travelling expenses (DM 24.5 million) (HVBG, 1995, p.169 f.).

The accident insurance funds funded 20,691 measures for occupational rehabilitation in 1993. Almost two thirds of them (13,264) were measures of assistance in obtaining or keeping a job. This group of measures is defined as activities of vocational assistance (mainly counselling services) which do not exclusively refer to internal administration. The vocational assistant's work has to be assigned to this area. Vocational retraining represented the second largest group of measures (2,819). These measures are of increasing importance since their number rose by 47.7 per cent between 1985 and 1990, and again by 25.7 per cent up to 1993. An even larger proportionate increase - but involving smaller numbers - was reported for measures of further vocational training: 109 in 1985 and 230 in 1993. Only 320 measures were assigned to initial training, and 540 on 'finding an occupation' and 'work experience'. 946 measures were provided for 'vocational preparation', above all to obtain knowledge usually acquired at school. The increasing importance of particular vocational training reflects changes in the labour market. In more and more cases of occupational accidents and work-related illnesses, simple occupational adaptation or superficially acquired knowledge do not suffice to enable the persons concerned to retain their jobs or return to work. Instead, measures of retraining or further training are necessary. These are expensive and often take a lot of time - which partially explains the extraordinary increase in spending on vocational assistance. That is why assistance for self-employed persons to either establish their own business or to maintain it is considered to be a good substitute for training measures; however, only 41 measures were assigned to this in 1993, although this did at least increase from 26 in 1990 (HVBG, 1995, p.170 ff.).

The brief report on rehabilitation for 1995 states that assistance for occupational rehabilitation provided by the accident insurance funds increased by more than 14 per cent compared to 1993, in terms of both cases (1995: 18,757) and measures (1995: 23,719). 12,522 measures were due to occupational accidents inside the companies, more than 3,400 to road traffic accidents on the way to or from work, and 7,100 measures to (the risk of) work-related illnesses. In 1995, funders of statutory accident insurance spent DM 619.1 million on measures for occupational rehabilitation. Compared to 1993, this was an increase of 12.6 per cent. The largest proportion of total expenditure represented benefits towards the subsistence of persons undergoing rehabilitation and their families. Added to payments based on social security contributions and other cash

benefits, these provisions amounted to DM 271 million. In addition, DM 87 million was paid for transitional allowances. Expenditure on benefits in kind amounted to DM 212 million, and DM 26.5 million of travelling expenses were reimbursed. In 1995, the number of cases of participation in vocational training rose by about 14 per cent compared to 1993, that is up to 3,801. Retraining, initial training and further training were still the most expensive forms of measures for occupational rehabilitation. That they were increasingly provided is seen as an indicator of the difficult situation in the general labour market (HVBG, 1997, p.29).

The following data show the distribution of the different types of measures for occupational rehabilitation provided in 1995 (HVBG, 1997, p.30 f.):

• assistance in obtaining or keeping a job	15,390
• integration assistance, technical aids (as benefits in kind)	1,382
• motor vehicle assistance	697
• accommodation assistance	138
• redeployment to different workplace	419
• vocational preparation	1,213
• occupational adaptation	230
• initial training	353
• retraining	3,150
• further vocational training	316
• other measures	431
• total number of measures	23,719

The figures show that vocational training measures have continued to gain importance: retraining measures rose by 11.7 per cent, further vocational training measures by 37.4 per cent, and vocational preparation measures by 28.2 per cent.

The Hauptfürsorgestellen

The Hauptfürsorgestellen provided 14,602 measures for occupational rehabilitation for 14,441 persons in 1994. These measures are provided within the framework of supplementary assistance in the work environment. However, the vast majority of measures (12,942, or 88.6 per cent) were assigned to 'assistance in obtaining or keeping a job'. The individual provisions belonging to this category have been discussed in detail in I.4.1. They mainly consist of financial aids to either employers or disabled employees; thus, services are not to the fore in this context. The provision of technical working aids or benefits for the creation of jobs and training places include services, particularly the provision of information and counselling; however, these cannot be documented separately as in the case of accident insurance (vocational assistants) or the Federal Employment Office (specialist careers counselling centres). For the year 1993, the Association of German Hauptfürsorgestellen did provide numbers on counselling services and company visits. According to this, disabled persons had been counselled at home 2,670 times, 35,111 company visits took place (including unrequested ones) and the Hauptfürsorgestellen participated in meetings of the disabled persons representatives on 956 occasions (AGDHFS, 1994, p.56). Nevertheless, the share of services directly related to job retention (employment support on the job) or return to work (here equivalent to vocational retraining) cannot be clearly determined.

Training measures themselves also occur among the provisions by the Hauptfürsorgestellen. The statistics list 271 measures, which is less than two per cent, under the category 'further vocational training'. However, the design of these training measures does not correspond with the criterion for delimitation that was introduced at the beginning of this Part of the report. Compared with the other training measures which have been presented so far, the Hauptfürsorgestellen fund further training provided on the job, and it would be appropriate to assign these measures to 'support services for job retention'.

The main target group consists of people with sensory disabilities (blind or deaf persons). The training measures provided are supposed to maintain or improve their vocational skills, and to introduce them to the use of modern technologies in the workplace. The providers of training services are not explicitly documented. The established training centres which have been described before would not be able to fulfil the on-the-job-requirement. In 1993, the Association of German Hauptfürsorgestellen stated that further vocational training on the job has to be more systematized (AGDHFS, 1994, p.55). Developments in subsequent years show, at least, an increase in spending from DM 1.02 million in 1991 to DM 3.53 million in 1995. Besides these training measures, the Hauptfürsorgestellen also financially support independent training centres according to section 30, subsection 1, numbers 1-3 of the Compensatory Levy Regulation within the framework of 'institutional promotion' (in 1995: DM 23.03 million; AGDHFS, 1996, p.24).

III.4.2 Integrating return to work services into work environments

This section will focus on the location of training measures. As was pointed out in III.4.1, section 11, subsection 2a of the Rehabilitation Harmonization Act stipulates that vocational training (including further training and retraining) for disabled persons in separate, industry-wide training centres should be the exception, applying only when required by the nature or severity of the disability or if there is no other way of guaranteeing the success of rehabilitation. Consequently, vocational training measures should primarily take place within companies alongside non-disabled persons. That is why the provisions of vocational promotion listed in section 11, subsection 2 of the Rehabilitation Harmonization Act also state that expenses for accommodation and subsistence are payable to accommodate people away from their own or the parental home if training measures carried out within companies make it necessary because of the nature or severity of the disability (BMA, 1996, p.109). 'Experience shows that such training programmes offer particularly good opportunities for lasting vocational integration since they enable the trainees to grow accustomed to the conditions and demands of everyday working life, and trainees are normally taken into employment afterwards' (BMA, 1996, p.107).

These advantages of vocational training provided within companies seem to apply more to disabled persons who seek first-time entry to employment. In III.4.1, it has already been said that - in spite of giving preference to companies as the location for vocational training - the proportion of people who received training within companies at the end of 1995 (21,200 people) was only 16.3 per cent of all people participating in training measures assisted by the Federal Employment Office. Among this group, about 70 per cent (14,848 persons) received initial training, but only 4,324 persons (or 20.4 per cent) were given retraining or further training (ANBA, 1996, p.67).

The accident insurance funds also give clear preference to companies as the location for vocational training. Since the costs of accommodation are usually avoided, training inside companies is more economical. In addition, there is a higher chance for the disabled trainee to find an adequate job in the same company after completion of vocational training. Altogether, these effects compensate for the longer duration of this kind of training compared to the one provided in separate centres. The provision of vocational training in vocational training centres should be the last choice, and only considered if accommodation in a boarding college and the supplementary assistance services are considered to be inevitable. As opposed to measures funded by the Federal Employment Office, training measures assisted by the accident insurance funds more often take place within companies. In 1993, 27.9 per cent of the total of 3,233 of these measures, i.e. 902, were carried out there, compared to 26.6 per cent carried out in vocational training centres and 35 per cent in other separate centres. Almost 76 per cent (685) of the measures within companies represented retraining (674) or further training (11); initial training was much less important (183). This shows that the advantages of training carried out within companies also apply to retraining and further training, and thus to job retention, albeit only in the sense of staying with the same employer; returning to the previous occupation happens in only very few cases, and the accident insurance funds consider this to be a negative result of vocational training (HVBG, 1995, p.181, 208 f., see also III.6.3).

No data are available about the location of vocational training provided as a part of 'supplementary assistance in the work environment' (i.e. Hauptfürsorgestellen) nor with regard to training measures provided by the pension insurance funds.

III.4.3 The types of enterprise providing return to work opportunities in co-operation with employment support and vocational rehabilitation services

The only funders which provide information about the relationship between types of enterprise and occupational rehabilitation services are the statutory occupational accident insurance funds. In their documentation on rehabilitation, it is shown how the individual measures for occupational rehabilitation are spread among different industries. The fact that only the accident insurance funds are interested in ascertaining additional information of this kind, can be explained by the differences in contribution rates in different branches of industry with varying hazard levels (see II.1.3).

The statistics show that in 1995 more than a quarter (27.1 per cent) of the total of 23,719 measures for occupational rehabilitation were provided to workers in the building and construction industry. Contrasting developments in numbers of measures can be ascertained across enterprises as a whole. Between 1990 and 1993, both sharp declines and distinct increases were observed. There was an increase of 51.5 per cent (to 1,836 cases) in food and allied industries, and a decline to 1,702 cases (from 2,657 cases in 1990) in the metal processing industry. Less pronounced increases were identified for the areas of industry relating to mining, chemicals, wood, paper, printing, textiles, leather, construction, transportation/traffic, agriculture and public administration. Declines were identified for the health service sector, for the sector concerned with building materials, gas and water, precision and electrical engineering, trade, and administration/management (HVBG, 1995, p.174).

More relevant with regard to rehabilitation services is the distribution of vocational assistance training measures. It is noticeable that in 1995 more than half of them were provided in the food and allied industries and the health service sector. 1,057 (33.6 per cent) of the total of 3,150 retraining measures assisted by the accident insurance funds took place in the food and allied industries, while 54.7 per cent of initial vocational training measures (193 out of 353) took place in the health service sector. The latter is to be traced to the widespread skin diseases in this area which often force the persons concerned to change occupation during their initial training. Motor vehicle assistance as part of the benefits for occupational rehabilitation was most often granted to workers in the metal-processing industry, the building and construction industry, and the agricultural sector, in which there are a lot of serious accidents which lead to considerably restricted physical mobility (HVBG, 1995, p.174, 186 f.; HVBG, 1997, p.30 f.).

However, these data do not say anything in detail about return to work opportunities or cooperation with rehabilitation services, but only show in which branches there is potential for this. A possible way of co-operating is to keep jobs open to persons undergoing rehabilitation measures. There is no official agreement or arrangement for this, but employers can be encouraged to do so by integration assistance benefits or as a result of efforts to mediate on the part of the vocational assistants. The salience of measures of assistance in obtaining or keeping a job, primarily consisting of counselling services (see III.4.1), show that considerable efforts are being made to induce employers to either keep jobs open or offer vacancies to people who have had an occupational accident or who have a work-related illness. Since the number of measures of assistance to obtain or keep a job generally approaches the total number of cases of occupational rehabilitation for most of the areas included in the report, it can be concluded that the accident insurance funds give priority to finding jobs for their clients within the area they had previously been employed in, and support employers' willingness to accommodate them in doing so. However, there are some exceptions. In the food and allied industries, the relatively high number of retraining measures (see above) corresponds to a relatively small number of measures of assistance to obtain or keep a job in the same sector. This is also true for the health service sector. Moreover, the food and allied industries had the highest number of measures which aim at occupational rehabilitation through redeployment in different workplaces within the same

company (111 out of a total of 372). The latter thus have to be assigned to 'job retention' according to the criterion 'staying with the same employer'. On the other hand, these measures do not fulfil the stricter criterion that we have been using for the purpose of delimitation, which relates to support services provided *on the job* (see III.1.1) (figures: HVBG, 1995, p.186 f.).

III.5 USERS OF SUPPORT SERVICES FOR RETURN TO WORK

III.5.1 Mechanisms for identifying and accepting users who have left their employment

Under the statutory pension insurance and particularly the statutory occupational accident insurance funds (i.e. the funds responsible for occupational rehabilitation services), eligible users can be identified in the course of the preceding medical rehabilitation measures for which the funds are also responsible. The advantage of this multiple responsibility is self-evident: the need for additional measures of occupational rehabilitation subsequent to medical ones can be ascertained, and the respective measures introduced, at a relatively early stage - thus saving both time and money. Moreover, this is in accord with the 'principle of intervention at the earliest possible stage in order to minimise the degree and effects of disability and to compensate as far as possible for unavoidable effects, derived from the 'social right' according to section 10 of Book 1 of the Social Code (BMA, 1996, p.9). The Federal Employment Office is faced with a different situation since it does not provide measures for medical rehabilitation. On the other hand, observing the principle of intervention at the earliest possible stage is facilitated for this fund since it is the Federal Employment Office which is usually contacted first in matters of occupational rehabilitation (see III.1.1). As providers of occupational rehabilitation within the framework of 'supplementary assistance in the working and professional environment', the Hauptfürsorgestellen identify eligible users on the criterion that measures provided by all other funds are insufficient to adequately and permanently integrate disabled people into working life (see III.1.1). In addition, their responsibility is confined to severely disabled persons (see III.3.1).

There are legal provisions with regard to accepting users. Until 1996, all disabled people had a legal claim to occupational rehabilitation benefits. These included both assistance in obtaining and keeping a job and vocational training measures. Formal acknowledgement of disability according to the Severely Disabled Persons Act had not been required in order to receive occupational rehabilitation measures. In fact, only about ten per cent of participants have been severely disabled persons. However, this legal right was abandoned with the introduction in January 1997 of the Growth and Employment Act. Only those already registered as severely disabled retained legal entitlement. All other cases were dealt with on a discretionary basis (Thornton and Lunt, 1997, p.119). As a reaction to sharp protest against these new provisions, the law was changed soon afterwards by an amendment to the Labour Promotion Act, in force since April 1997. Henceforth, disabled people have, again, a legal claim to vocational rehabilitation benefits whenever the nature or severity of their disability, or their need for special provision to secure the success of integration. The formal acknowledgement of disability according to the Severely Disabled Persons Act was waived again primarily in order to restore the claim to vocational promotion benefits for persons with learning disabilities in particular, since they are usually not accorded the status of severe disability. For persons suffering from disabilities which do not explicitly require specific measures of promotion to secure integration, decisions will still be taken on a discretionary basis (BMA, 1997a, p.11 f.).

However, the legal claim described represents a very basic right. Which measures in particular and which amounts of financial benefits will actually be granted generally remain within the discretionary scope of the responsible fund (HVBG, 1995, p.43). The financial situation of the fund in question will play a crucial role for its 'generosity' in taking these decisions. The sole exception is the statutory pension insurance funds, whose rehabilitation benefits are subject to discretion on principle. They provide discretionary vocational assistance benefits for rehabilitation, especially where the earning capacity of an insured person, after 15 years of paying contributions, is substantially threatened due to a disability (BMA, 1996, p.99, 121).

Finally, examining the mechanisms for identifying and accepting users also includes the issue of the distribution of responsibility among the various funds. In III.1.2, we outlined some criteria according to which the users of rehabilitation services can be - at least roughly - shared out between the different funds. At this point, one further point should be added. While rehabilitation, in its objective, is to be orientated to the principle of finality which says that the necessary assistance must be offered to every disabled person or person who is in danger of becoming disabled, regardless of the cause of disability (BMA, 1996, p.7), the cause of disability does *de facto* determine the responsible fund, and thus the respective regulation which has to be applied (Burger, 1996, p.26). Since the Rehabilitation Harmonization Act does not completely standardize the rehabilitation benefits of the various funds, the cause of disability does influence the provision of assistance.

III.5.2 Arrangements for user choice and user control of service packages

According to section 4, subsection 1 of the Rehabilitation Harmonization Act, the introduction of measures for rehabilitation requires the consent of the disabled persons, they must become involved in their implementation and reasonable requests must be catered for as far as possible in deciding them. Since personal development is much more difficult for disabled persons in many instances, it is a question of strengthening and supporting their own initiatives and self-determination and thus their ability to help themselves wherever possible (BMA, 1996, p.33).

III.5.3 Disabled workers who benefit and those who miss out

All the major funds which assist persons through occupational rehabilitation provide data on the personal characteristics of their clients. It has to be stressed once again, however, that the term 'person undertaking rehabilitation' is not synonymous with 'disabled person', as defined in the Severely Disabled Persons Act (see III.4.1).

Federal Employment Office

Table III.4: Personal characteristics of persons newly admitted to occupational rehabilitation (OR) and to vocational assistance training measures (VATM) in 1995, aiming at re-integration

	<i>OR</i>	<i>VATM</i>
Total number of persons	202,685	53,397
Proportion of women	35.4 %	32.0 %
Proportion of foreigners	6.5 %	4.9 %
Age:		

under 25	11.2 %	19.0 %
25 - under 35	30.2 %	60.0 %
35 - under 45	24.7 %	17.1 %
45 - under 60	33.3 %	3.9 %
Education:		
without qualification from secondary school	9.6 %	8.0 %
qualification from secondary school	60.8 %	57.5 %
middle level education	24.6 %	28.3 %
A-level (<i>Abitur</i>) / academic standard required for entrance to university or to university for applied science	5.1 %	6.2 %
Training for an occupation:		
no completed qualification	25.6 %	21.6 %
company-related occupational qualification	68.9 %	74.4 %
training college / technical college	2.4 %	3.2 %

university / university for applied science	1.9 %	0.1 %
Gainful employment:		
employed (at some point) before	95.0 %	93.0 %
unemployed immediately prior to rehabilitation	42.3 %	47.8 %
Share of severely disabled persons and persons of equal status	14.2 %	7.6 %

NB: percentages are of the total (source: ANBA, 1996, p.33, 37)

The following aspects should be highlighted. About three-quarters of persons undergoing occupational rehabilitation, and vocational assistance training measures in particular, have completed some occupational qualification, and almost all of them (about 90 per cent) have a qualification from school. Vocational assistance training measures are provided more for younger people than is the case with measures for occupational rehabilitation in general. Persons with higher (school or occupational) qualifications show a slightly greater willingness to enter training measures. For older people, other funds are more likely to be responsible because of preceding periods of employment (like pension insurance). In addition, other types of measures than vocational training are often more appropriate for them. The relatively high proportion of unemployed people undertaking occupational rehabilitation is related to the worsening situation within the general labour market (ANBA, 1996, p.19).

In addition to the figures listed in the above table, the following information has to be added. Almost half (49 per cent) of the people newly admitted to occupational rehabilitation aiming at re-integration and assisted by the Federal Employment Office in 1995 used to have an occupation in manufacturing, particularly in the metal-processing sector or the building and construction sector. About 40 per cent used to be employed in the service sector. As regards the type of disability, almost 60 per cent of the persons beginning occupational rehabilitation aiming at re-integration had skeletal, muscular or connective-tissue-related disorders, 6.1 per cent had sexual or nervous problems, 5.1 per cent heart conditions or circulatory disorders, 4.4 per cent skin diseases, 3.6 per cent disorders of the respiratory organs, and about eight per cent psychoses or neuroses, the latter being particularly among younger people (ANBA, 1996, p.11 f., 34).

Finally, the figures listed show that the proportion of women among the persons beginning occupational rehabilitation assisted by the Federal Employment Office only amounted to 35.4 per cent, and less than a third in the case of vocational assistance training measures. There are grounds to assume that women are especially under-represented in occupational rehabilitation, and in vocational assistance training measures in particular, although the available data do not suffice to prove it definitely (Niehaus, 1996, p.63). The proportion of women participants in training measures in the years 1984 to 1995 was between 31.4 per cent in 1984 (the lowest) and 34.5 per cent in 1995 (the highest). In its third report on the situation of disabled people and the development of rehabilitation, the Federal Government refers to the fact that, up until 1992, the proportion of women participants did not change much, although the absolute number of female participants doubled since

1984 (from 21,749 to 43,930). There are two comments that should be added. First, the subsequent development of rehabilitation was characterised by a sharp decline in absolute numbers between 1992 (43,930) and 1993 (37,479), probably due to the economic recession. The increase which was ascertained in 1995 (39,980 female participants) was not large enough to reach the previously highest level. Secondly, the data used refer to vocational training assistance measures aimed at both first-time entry and re-integration. The proportion of women participants in training measures for re-integration only has been considerably lower (1992: 31.2 per cent; 1993: 30.9 per cent; 1994: 30.4 per cent), and the absolute numbers show that the sharp decline between 1992 and 1993 was primarily experienced in the Western Länder for this type of measure, so that even after the general increase in 1995, the number still is considerably lower than it used to be (1992: 20,644; 1993: 16,228; 1994: 13,890; 1995: 14,381) (Bundesregierung, 1994, p.51; ANBA, 1995, p.34 f.; 1996, p.36 f.).

There has been some discussion about the reasons which cause women's under-representation among persons benefiting from occupational rehabilitation, and vocational assistance training measures in particular. In its report, the Federal Government identifies a fundamental conflict between family duties and the woman's vocational promotion as the main problem underlying the phenomenon of being under-represented. This problem is aggravated by the fact that many women, because of the nature or severity of their disability, are dependent on training measures which cannot be provided locally so, to be able to participate, other accommodation must be made available. In addition, the majority of women undertaking rehabilitation are relatively young and are more often responsible for tasks related to their children's education and care. A parallel can be drawn with the status of severe disability. The traditional division of labour between men and women with regard to family duties, together with - on average - lower qualifications among women, make them more inclined to refrain from applying for formal acknowledgement of their disabilities, so that they are also under-represented in the official statistics on the labour market situation of disabled women. Another reason for under-representation is that women tend to receive only low levels of temporary allowances for occupational rehabilitation because the calculation is based on previous net earnings (sections 13 and 14 of the Rehabilitation Harmonization Act). However, because of family duties and bringing up children, women's employment records are often characterised by discontinuities which tend to restrict financial claims for vocational assistance (Bundesregierung, 1994, p.51; Niehaus, 1996, p.59, 64, 67).

There are several starting-points to improve the women's situation. The Federal Government listed in its report some measures that have already been taken; however, it admitted that they have not changed the situation much. Those measures include, for example, better access to temporary allowances and granting double the number of journeys home in the case of accommodation in boarding centres during rehabilitation measures. For people assisted by the statutory pension insurance, permission was also introduced in 1992 for women to take one child with them whilst participating in rehabilitation measures away from home (Bundesregierung, 1994, p.51). Beyond that, a suggestion has been made to replace the temporary allowance by a basic amount which ensures subsistence and is paid irrespective of previous employment. A model of decentralized vocational (re-)training centres which are closer to people's homes, but which can guarantee training standards comparable to non-local centres, allow for more flexible times of participation, and offer training for a wider range of occupations, is being tested in the New Länder (Niehaus, 1996, p.68).

Pension insurance

In 1995, 72.7 per cent of all persons undergoing occupational rehabilitation assisted by the statutory pension insurance funds were men, and only 27.3 per cent were women. 7.9 per cent of the persons assisted were not German nationals. The following data on the structural characteristics of the beneficiaries refer to percentages of the total number of occupational rehabilitation measures completed in 1995.

Table III.5:

	<i>OR</i>	
Total (absolute number of measures)	86,331	
Personal characteristics of beneficiaries		
Women	26.7 %	
Age:		
under 25	2.4 %	
25 - under 35	15.7 %	
35 - under 45	32.0 %	
45 - under 60	49.0 %	
Previous occupation		
building and construction industry	24.1 %	
metal processing industry	17.3 %	
trade and transportation	14.0 %	
administration and organisation	5.5 %	

food and allied industries	4.2 %	
other services	5.3 %	
health service sector	2.0 %	
Type of disability		
skeletal, muscular or connective-tissue-related disorders	56.0 %	
mental/psychologically determined illness	9.2 %	
circulatory disorders	7.5 %	
sexual or nervous disorders	4.8 %	

NB: OR ‘ measures for occupational rehabilitation. VATM ‘ vocational assistance training measures (as part of OR). Source: VDR 1996, p.225 ff.

Most of the beneficiaries of measures for occupational rehabilitation in general and vocational assistance training measures which were provided for persons who had previously been employed in the health or other service sectors were women (80.3 per cent and 78.5 per cent respectively for OR, 79.0 per cent and 72.0 per cent respectively for VATM) (VDR, 1996, p.242, 256). Among the 13,137 vocational assistance training measures provided in 1995, 39.2 per cent were apportioned to skilled workers, 37.0 per cent to unskilled workers, and 10.0 per cent to salaried employees. 32.5 per cent of these measures were provided to people who had been unemployed immediately beforehand; only about half of the measures (50.7 per cent) were for people who had been fully employed before (VDR, 1996, p.248, 250).

Occupational accident insurance

The 20,691 measures for occupational rehabilitation provided through the accident insurance funds in 1993 were spread among 16,395 persons assisted. The prime cause of occupational rehabilitation were accidents at work; almost 60 per cent of all persons undergoing occupational rehabilitation in 1993 (9,803 cases) received measures because of such accidents, 26 per cent (4,260 cases) because of work-related illnesses, and 14 per cent (2,332 cases) because of accidents which happened on the way to or from work. 14,473 measures were apportioned to 12,135 cases of occupational accidents, 6,218 measures to 4,260 cases of work-related illnesses. Thus, occupational rehabilitation appears more costly for work-related illnesses (1.46 measures per

case) than for accidents (1.19 measures per case) (HVBG, 1995, p.174 ff.).

With regards to people's previous position in working life and gender, the beneficiaries of measures for occupational rehabilitation 1993 show the following characteristics (HVBG, 1995, p.190):

Table III.6:

	<i>Cases</i>	<i>Percentage</i>
Children, students		
male	68	0.4
female	42	0.3
Others not gainfully employed		
male	166	1.0
female	61	0.4
Undergoing vocational training		
male	353	2.2
female	317	1.9
Wage earners		
male	10,849	66.2

female	1,775	10.8
Salaried employees		
male	701	4.3
female	1,125	6.9
Self-employed		
male	352	2.1
female	55	0.3
Farmers		
male	246	1.5
female	80	0.5
Others		
male	110	0.7
female	95	0.6
Total	16,395	100.0

male	12,845	78.3
female	3,550	21.7

The following figures show the distribution of different types of measures for occupational rehabilitation in relation to previous position in working life and gender (HVBG, 1995, p.190 f.):

- 1) assistance in obtaining or keeping a job
- 2) integration assistance, technical aids (as benefits in kind)
- 3) motor vehicle assistance
- 4) 'finding an occupation' and 'work experience'
- 5) vocational preparation
- 6) occupational adaptation
- 7) initial training
- 8) retraining
- 9) further vocational training
- 10) total number of measures (does not equal the sum of the respective lines since the categories 'accommodation assistance' and 'others' have been left out)

Table III.7:

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Children, students									
male	42	13	9	-	6	-	8	8	
female	15	14	10	-	2	-	2	3	
Others not gainfully employed									
male	126	7	29	2	5	-	1	4	
female	51	7	2	-	2	-	1	6	
Undergoing vocational Training									
male	271	29	19	5	40	5	33	61	
female	175	14	2	4	29	1	155	49	

Wage earners									
male	9,353	661	452	234	577	106	48	1,508	1
female	1,201	97	37	42	165	18	32	640	:
Salaried employees									
male	600	54	82	17	14	1	3	61	
female	796	45	20	64	73	2	27	398	:
Self-employed									
male	310	18	26	3	8	-	-	17	
female	38	4	-	1	3	-	-	7	
Farmers									
male	97	112	19	-	-	-	-	15	
female	30	42	1	-	-	-	-	1	
Others									
male	84	13	15	-	14	2	3	24	
female	75	3	2	-	8	4	7	17	
Total	13,264	1,133	725	372	946	139	320	2,819	2
male	10,883	907	651	261	664	114	96	1,698	1
female	2,381	226	74	111	282	25	224	1,121	:

The majority of persons undergoing occupational rehabilitation assisted by the accident insurance funds were male wage earners (66.2 per cent of all cases). They received 13,565 or 65.6 per cent of all measures provided in 1993. Female wage earners represent the second largest group of participants (10.8 per cent of all cases, and 11.2 per cent of all measures provided), female salaried employees the third largest group (6.9 per cent of all cases, and 7.2 per cent of all measures provided). Looking at the distribution of individual types of measures, it turns out that 76.3 per cent of all measures for 'occupational adaptation', 62.3 per cent of all motor vehicle assistance, and 61 per cent of all vocational preparation, but only 53.5 per cent of all retraining measures were allocated to male wage earners. Female wage earners, whose proportion was only 10.8 per cent of all cases, on the other hand, received 22.7 per cent of all retraining measures, 17.4 per cent of measures for vocational preparation, 12.9 per cent of measures for occupational adaptation, but only 5.1 per cent of the total of motor vehicle assistance. Thus, male wage earners seem to have more injuries resulting in disabilities which seriously limit their walking abilities. The relatively high proportion of women among the participants in vocational training measures suggests that they are more suited for these types of measures because of age and educational background. Male wage earners, on the other hand, are usually more often re-integrated into working life by measures for occupational adaptation. Farmers hardly participate in vocational training measures. Their re-integration is most often achieved by benefits for integration assistance and for technical working aids (HVBG, 1995, p.176).

As regards the type of disabilities covered by the accident insurance funds, it has already been mentioned that most of them, or 74 per cent of all cases, result from occupational accidents. Consequently, persons with injuries of the legs or the pelvis benefit most from motor vehicle assistance. Accommodation assistance (102

measures in 1993) was primarily assigned to persons with paraplegia. 17.7 per cent of all vocational training measures were directed at persons whose hands were injured. Among the 4,260 persons who received measures for occupational rehabilitation in 1993 and who suffered from work-related illnesses, and among the totality of 6,218 measures directed at this group, only two types of illness were of major importance with regard to occupational rehabilitation: skin diseases (59.4 per cent of all cases, and 58.4 per cent of all measures), and impairments of the respiratory tract (33.4 per cent of all cases, and 36.0 per cent of all measures). 99.2 per cent of all retraining measures provided for persons suffering from work-related illnesses in 1993 were assigned to these two types of disability. However, it has to be noted that skin diseases and defects of the respiratory tract will only be formally acknowledged as work-related illnesses if they force the person in question to change their job. That is why retraining is of utmost importance (HVBG, 1995, p.178). As regards occupational background, a considerable proportion of persons participating in vocational training came from the food industry (1,023 cases out of a total of 3,336, i.e. 30.7 per cent). Among them, many had been employed in bakery and were suffering from work-related illnesses such as skin diseases or disorders of the respiratory tracts. Almost 20 per cent (661 cases) came from domestic cleaning services, almost ten per cent had been metalworkers or mechanics, and 6.5 per cent had been employed in the health service sector (HVBG, 1995, p.183, 202 ff.).

The Hauptfürsorgestellen

In 1994, the distribution of measures for occupational rehabilitation provided by the Hauptfürsorgestellen within the framework of 'supplementary assistance in the work environment' were related to the variables 'gender' and 'age' as follows:

Table III.8:

	<i>Assistance in obtaining/ keeping a job</i>	<i>Further vocational training</i>	<i>Other measures</i>	<i>Tot of t</i>
Total number of measures	12,942	271	1,389	
Women	34.4 %	33.2 %	42.3 %	:
Age:				
under 25	5.3 %	4.1 %	6.3 %	
25 - under 35	27.1 %	39.9 %	35.6 %	:
35 - under 45	26.7 %	29.9 %	29.7 %	:
45 - under 61	40.9 %	26.2 %	28.4 %	:

Among the causes of disability, general diseases (including vaccine damage) play an important role (15.9 per cent of all persons benefiting from supplementary assistance in the work environment). 12.1 per cent of this group of persons had disabilities which occurred prior to or at birth. 68.6 per cent of these people had disabilities with other or several causes at the same time. Among the various types of disability, poisoning through drugs etc. is the predominant one (27.9 per cent of all cases), followed by skin diseases (18.3 per cent), eye diseases (including blindness) (11.8 per cent), and epilepsy (8.8 per cent) (Statistisches Bundesamt, 1996a, p.7, 26 f.).

III.6 DESIGN AND DELIVERY OF EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

III.6.1 The effects of the distribution of responsibility for provision of services

In the preceding sections, some important statements have already been made about the effects of the distribution of responsibility for the provision of employment support and rehabilitation services for job retention and for return to work respectively (see III.2.1, III.2.7 referring to support services provided on the job, and II.3.4, III.1.1, III.5.1 referring to rehabilitation services).

We have noted that:

- the provision of services for job retention which are provided on the job (i.e. securing existing employment relationships) can primarily be assigned to the Hauptfürsorgestellen as providers of 'supplementary assistance in the work environment', its affiliated services, or independent funds working on behalf of the Hauptfürsorgestellen;
- the provision of services for return to work can primarily be assigned to the funders of occupational rehabilitation (mainly the Federal Employment Office for younger disabled employees, the pension insurance funds mainly for older disabled employees, and accident insurance in the case of occupational accidents and work-related illnesses);
- the provision of placement services for first-time entry to employment can primarily be assigned to the Federal Employment Office.

In practice, there are a number of problems concerning the boundaries between the different types of services and responsible funds, as well as between the various providers of the same type of service. With regard to the latter, the debate about the delegation of responsibility for support services for job retention by the Hauptfürsorgestellen to independent funds has been considered in detail above (see III.2.7).

The double function of the Federal Employment Office in the areas of 'return to work' and 'first-time entry' makes it the main responsible fund for relatively young disabled persons who are looking for a job, irrespective of whether they have been employed before. Employment offices also offer access to the general mechanisms for promoting employment since not every disabled person needs to rely on specialized, i.e. disability-related, integration services. The statutory social insurance funds, on the other hand, are responsible for the integration of disabled persons into working life (occupational rehabilitation) whenever the latter meet certain eligibility criteria (qualifying periods in the case of pension insurance, disability resulting from

occupational accident or work-related illness in the case of accident insurance). Thus, there is no distinction in principle between job retention, return to work or first-time entry in the case of the statutory insurance funds' responsibility. However, return to work has been identified as their main focus, at least in relation to the provision of services, since vocational training services (representing a major part of measures for occupational rehabilitation) often involve retraining and the acquisition of new qualifications, where the previous job cannot be retained. For other types of services provided by statutory insurance funds, such as support services for obtaining or keeping a job, it was shown that, at least in the case of the pension insurance, placement in another company (return to work) plays a more important role compared to redeployment in the previous company and thus staying with the same employer (job retention) (see III.4.1).

Although the main focus of the support services provided by the Hauptfürsorgestellen (or on their behalf) is on job retention (i.e. securing existing employment relationships), their activities are not exclusively confined to this task. The problem of clearly separating rehabilitation measures from 'supplementary assistance in the work environment' is well-known (Ernst, 1995, p.101). So, the annual statistics on rehabilitation published by the Federal Statistics Office also list the measures for vocational promotion which are provided by the Hauptfürsorgestellen within the framework of 'supplementary assistance'. In addition, the Severely Disabled Persons Act assigns responsibility to the Hauptfürsorgestellen for carrying out measures which are clearly for the benefit of disabled persons *looking for a job*, such as granting benefits to employers for the creation of training vacancies for severely disabled persons (section 15 of the Compensatory Levy Regulation), financial support for special programmes run by the Federal Employment Office to reduce unemployment among severely disabled persons (section 16 of the Compensatory Levy Regulation), subsidizing or fully paying for technical working aids (section 19 of the Compensatory Levy Regulation), or assistance for severely disabled persons who would like to establish or maintain their own business (section 21 of the Compensatory Levy Regulation). Section 18, Subsection 2, number 1 makes clear that 'supplementary assistance' is not confined to securing existing employment relationships, but that it serves the integration of severely disabled persons into working life in general. At the same time, the statutory insurance funds, as purchasers of rehabilitation, often remain responsible even after disabled persons have successfully returned to work (Ernst, 1995, p.101).

One reason for overlapping activities can be found in a conceptual feature of the distribution of responsibility. Responsibilities are assigned to administrative institutions and organizations in the first place, and not in accordance with the categories used in the present study (policies, benefits, services) or with the main objectives of job retention and return to work. Strictly speaking, there are guidelines for the activities of the various funds which provide support services so that an overlap does not have to occur. However, in practice things look different. While the Federal Employment Office merely supports and assists individuals, the Hauptfürsorgestellen also aim to promote the occupational integration of particular groups of severely disabled persons, such as people with mental health problems. As regards their main task, i.e. securing existing employment relationships, the Hauptfürsorgestellen pursue the aim of group-related promotion by the provision of services for psychological and social care (see III.2.1). Beyond that, the Hauptfürsorgestellen increasingly promote projects and experiments which involve the placement of disabled people in the general labour market. Thus, the Hauptfürsorgestellen also engage in finding training vacancies for disabled persons, as does the Federal Employment Office. However, their recent efforts in the placement of disabled persons also, and particularly, includes the continuation of assistance while disabled persons become accustomed to their new job. The Federal Employment Office, on the other hand, breaks off its activities as soon as a long-term employment relationship has been established (i.e. a contract has been signed): its involvement is more concerned with vocational training measures.

It is due to history and tradition that the responsibility for rehabilitation services is split among numerous funds. However, there are some guidelines according to which the responsibility for rehabilitation services can be assigned to the various funds, as was outlined in III.1.2. Responsibilities for rehabilitation assistance can be clearly assigned on the basis of three main principles - the insurance principle, the principle of provision, and the welfare principle (BfA-Mitteilungen 3/97, Blatt 10-11). In individual cases, however,

problems are still very likely to occur in the identification of the responsible fund, and this could violate the principle of introducing measures for rehabilitation as early as possible. This was one of the main reasons for the 1974 Rehabilitation Harmonization Act, which aims to co-ordinate rehabilitation efforts among the various funders (the 'general plan'), standardise assistance and benefits, and establish common principles (see III.1.1).

In earlier sections we pointed out that the Act has not completely achieved its goals since it does not really codify all provisions for rehabilitation; instead it generates more of a comprehensive framework within which the traditionally differentiated system of multiple responsibility is still kept (see III.1.1). That is why the principle of finality cannot be entirely maintained in providing rehabilitation services; the cause of disability determines the responsible fund *de facto*, and thus, since measures are still not provided alike, the extent of assistance received also differs (see III.5.1). Critics say that the Harmonization Act is still full of loopholes and provides for different access to rehabilitation benefits for the various groups of disabled persons (Semlinger 1985, p.24). In addition, from the point of view of disabled persons, confusion still prevails within the legislation on rehabilitation and assistance for severely disabled persons, and the related uncertainty about the individual's legal position (Burger, 1996, p.29). In responding to a parliamentary question in 1995, the Federal Government noted that the split responsibility for rehabilitation services and benefits still causes problems. However, the government took the view that uniform assistance and benefits cannot be achieved among the various funds, even in the long run, 'because of the financial circumstances' and because a connection has to be maintained between rehabilitation and other fundamental tasks of the fund in question (Bundesregierung, 1995, p.6). The argument of 'financial circumstances' probably refers to the different funding principles underlying the various funds (see footnote no.8).

Apart from efforts to standardize rehabilitation assistance, the Rehabilitation Harmonization Act also includes regulations on the introduction of measures for rehabilitation, and cooperation and coordination in providing them. Whenever a rehabilitation funder finds out about a case where measures for rehabilitation are advisable, but where it is not itself responsible for provision, it is still obliged to immediately inform the responsible fund so that adequate measures can be introduced without delay. The application for rehabilitation measures to a fund which is not responsible for these is treated as if it was received by the responsible fund (section 4, subsection 2 of the Rehabilitation Harmonization Act). Moreover, where the responsible fund has not been identified but the need for rehabilitation measures has been ascertained, the Act determines the funds which will have to provide provisional benefits at the latest after a period of six weeks (the Federal Employment Office in cases of occupational rehabilitation, and the statutory pension insurance funds in cases of medical rehabilitation - section 6, subsection 2 of the Rehabilitation Harmonization Act).

With regards to cooperation and coordination, section 5 of the Rehabilitation Harmonization Act stipulates that:

- centres for information and counselling should be run jointly by several funds (subsection 1);
- measures for rehabilitation have to be provided comprehensively (within the scope of the responsibility of the fund in question), so that other funds do not have to be involved (subsection 2);
- if the rehabilitation process comprises several measures, or if various funds have to be involved, a general plan has to be drawn up which covers all the measures to be provided (subsection 3) (see III.1.1);
- the Federal Employment Office has to be consulted by other funds involved in rehabilitation prior to the introduction of measures for vocational assistance, and the Office has to submit an integration proposal (subsections 4 and 5) (see III.4.1).

There is thus a need for co-operation to make joint funding and comprehensive case management possible. This especially applies to new forms of assistance for which there is hardly any experience in allocating and sharing responsibility. However, the current legal position limits the possibilities for co-operation through joint funding (Ernst, 1995, p.101 f., 104 f.).

What has been said about the objective of standardising assistance and benefits also applies to the goals of the early introduction of measures, cooperation and coordination. The effectiveness of legislation and regulation will always be limited if conflicting goals are imposed on organizations or if the 'internal logic' of organizations is neglected. From this point of view, the law does not go much beyond the character of a declaration of intent. All the rehabilitation funders are confronted with increasing financial pressure in dealing with their clients' claims. They are subject to an injunction to allocate their resources economically. There are considerable incentives for the individual fund to shift responsibility for persons who are to undergo rehabilitation onto other funds, so that their own financial burden can be eased. Despite a lack of 'official' evidence, anecdotal evidence indicates that, in many cases, disabled persons become victims of the loopholes which still characterise the law. Many are discouraged by uncertainty about their legal position, and confused by multiple responsibilities and contacts. Especially in situations where people are primarily preoccupied with coping at a personal level with the experience of having become disabled, the complexity of the social benefit system causes additional problems for them.

Drawing up 'general plans' to facilitate the coordination of rehabilitation measures provided by various funds seldom occurs, and cooperation between funds is rarely found. So, for example, a statutory social insurance fund will only be really interested in the introduction of rehabilitation measures without delay, and in the success of those measures, if the person concerned would otherwise be entitled to claim pensions or other benefits from the same fund. However, if these persons can be referred to benefits from another fund (somebody insured by the pension insurance is referred to the unemployment benefit fund, for instance), the incentive to contribute to a successful rehabilitation process tends to decrease. The Federal Government's statement in its response to a parliamentary question in 1995 (see above) may be taken as evidence for the assertion that the Rehabilitation Harmonization Act has not been very effective. The Government admits that problems still exist with regard to the introduction of rehabilitation measures and the assignment of responsibility among the various funds, and states that there is still much to be improved in order that measures should be 'really provided without delay', to 'co-ordinate assistance better', and to 'promote cooperation between the individual funders' (Bundesregierung, 1995, p.6 f.). That is a bad testimonial for rehabilitation policies - considering that these problems have been identified and known about for many years, and the Rehabilitation Harmonization Act has been in force since 1974.

Representatives of the Hauptfürsorgestellen suggest that the problems caused by multiple and overlapping responsibilities should be settled through shifting the main responsibility for all activities at the enterprise level to the Hauptfürsorgestellen. They justify this by pointing to the local presence of their organizations and the resulting proximity to enterprises - which grant better access to enterprises compared with national rehabilitation funds. They argue that this particularly applies to assistance measures provided on the job to secure existing employment relationships (such as the services for psychological and social care; see III.2.1), but also - and increasingly - to placement services for return to work or first-time entry to employment. However, since the Federal Employment Office is still seen as the main fund for vocational training, specialist integration services may alternatively be affiliated to the funders of vocational training measures. Representatives of the Hauptfürsorgestellen acknowledge that there are limits to delegation to the local level, in particular with regard to conceptual issues (target group, eligibility, contents of measures etc.) and a certain degree of standardization and equal opportunity needs to be guaranteed. In addition, responsibility is still assigned to national organizations for the funding of measures (Heuser, 1993, p.114; Ernst, 1995, p.103 f.). In fact, cooperation between the Hauptfürsorgestellen and national rehabilitation funds such as pension insurance funds is a grey area. The only definite criteria for the delineation of responsibility are the different funding arrangements (compensatory levy revenue vs. social insurance contributions), together with the

related eligibility criteria and groups of clients, while the different objectives and contents of services only result indirectly. It is mainly this which explains the overlap in activities (personal communication from VDR).

Results of the 1997 VDR study on the development of occupational rehabilitation

In 1995, the Rehabilitation Commission for Vocational Promotion of the Federation of German Pension Insurance Funds started a study on occupational rehabilitation. The goal of this study was to develop and improve the conceptual framework and contents of occupational rehabilitation services. There were three reasons leading to the initiation of the study (VDR, 1997, p.1):

- The 10th amendment to the Labour Promotion Act in 1993 (see III.1.2) made pension insurance an almost equally important fund for occupational rehabilitation, as compared with the Federal Employment Office (p.60);
- Moves towards a prolonged working life involve increasing challenges for the labour market integration of elderly people whose work productivity has decreased;
- Increasing financial pressures increasingly demand the substitution of successful labour market integration for early retirement pensions, and put even more emphasis on the principle of 'rehabilitation before payment of pension' (pp.1,7).

The study basically deals with three areas: (1) access to benefits and services for occupational rehabilitation, and the related decision-making processes; (2) the type and delivery of benefits and services for occupational rehabilitation; (3) quality and cost management.

Among the numerous results and recommendations highlighted in the report, the following should be noted here:

1. Access and proceedings

Access possibilities: In spite of the 10th amendment of the Labour Promotion Act in 1993, the Federal Employment Office is generally the fund which is first contacted when continued employment is at risk because of health problems. In about three-quarters of all cases in which measures of occupational rehabilitation are eventually provided by the pension insurance funds, the initial applications are made to the Federal Employment Office because health problems are often not immediately identified as a cause of unemployment. The initiation of rehabilitation measures is thus delayed. Moreover, being subject to unsuccessful efforts by the employment office to find employment opportunities over a longer period of time may reduce people's willingness to eventually enter into measures for occupational rehabilitation provided through pension insurance. Instead, they may accept a situation of simply receiving an invalidity or early retirement pension (p.70).

An average of 16.4 per cent of cases of occupational rehabilitation funded by the pension insurance follow measures for medical rehabilitation (provided, too, by pension insurance). This kind of access is considered to be advantageous since the necessary measures for occupational rehabilitation and employment promotion can be identified early on, while the process of medical rehabilitation is still continuing. According to the commission's point of view, the smooth transition from medical to occupational rehabilitation, all provided through pension insurance, appears to be very effective since time-consuming and costly changes of fund responsibility are prevented (p.71).

However, the study suggests that more needs to be done in order to guarantee that the rehabilitation clinics run by the pension insurance funds, and their staff, are sufficiently qualified in matters of employability and occupational rehabilitation (p.66 f.). In addition, criticisms may be made that costly medical rehabilitation

might be abused as a means of preparing for occupational rehabilitation (p.71).

Access to rehabilitation measures (funded through pension insurance) via company doctors or the medical services of a company only plays a minor role. Internal company medical staff generally do not know about the possibilities of applying directly to the pension insurance funds for rehabilitation benefits and services.

Proceedings: The fact that the responsibility for occupational rehabilitation is split among three groups of funds (pension insurance funds, the Federal Employment Office and accident insurance funds) reflects the principle of adequate risk assignment: measures for occupational rehabilitation are provided by the fund which also bears the financial risk of their failure (by being confronted with the resulting benefit claims) (see III.1.1). As a consequence of this principle, the Federal Employment Office focuses more on the prevention of unemployment, and pension insurance on the prevention of early retirement (p.72). On the other hand, this way of allocating risk is quite confusing from potential clients' point of view (p.73). That is why the legislation has obliged all funds to cooperate by enacting the Rehabilitation Harmonization Act (see above), and thus to guarantee comprehensive case management.

However, the study emphasizes that the obligation to cooperate also involves some considerable disadvantages. First of all, it takes time and thus creates costs. Fund-related problems, such as a shortage of personnel, tend to have cumulative effects. Finally, shared responsibilities usually delay rehabilitation proceedings. A survey among different funds revealed, that the average time for handling applications (until a final decision is made) was 313 days (pp.74, 77).

Integration proposal and general plan: The integration proposal provided by the employment offices and the general plan illustrate the problems involved in cooperation and possible ways of overcoming them. In practice, the employment office's integration proposal has turned out to be extremely time-consuming. A survey of the pension insurance funds revealed that it takes, on average, 117 days until the employment offices make their proposals after having been requested by a pension insurance fund. That is why the commission recommends an amendment to the law (Section 57 of the Labour Promotion Act, and Section 5, Subsection 4 of the Rehabilitation Harmonization Act respectively), so that the pension insurance funds are no longer obliged to consult the Federal Employment Office or, at least, that the former make their own proposals which then have only to be approved by the latter (pp.35, 86).

The study confirms that drawing up general plans does not play an important role in practice. The reason is that the obligation to draw up a general plan is based on the unrealistic idea that the process and result of rehabilitation can be planned. The commission recommends the use of general plans only as long as these can be handled in a flexible manner. When drawing up general plans turns out to be too formalized and too time-consuming, a more flexible planning of the course of rehabilitation exclusively by one rehabilitation fund is preferable (p.78).

2. *Benefits and services*

It was stated earlier in this section that return to work plays a more important role with regard to rehabilitation services provided through pension insurance than does job retention. However, the commission's report suggests that job retention should be paid more attention as a goal of rehabilitation efforts. Above all, cost considerations lead to the preference of measures which make job retention possible over measures which are provided outside the company and are, therefore, often not compatible with maintaining the employment relationship (p.10). The commission's recommendations that measures for occupational adaptation and further training should have precedence over more expensive initial training and retraining has to be seen against this background.

Measures for occupational adaptation and further training are based on the occupational qualifications that have already been acquired (p.128). Thus, they are not only less costly but also more compatible with job

retention and with being provided inside the company. However, more costly retraining is often considered to be the only secure way of labour market integration. So it is not surprising that it still represents the essential part of vocational training provided through pension insurance. In 1995, the composition of vocational training was as follows (in terms of measures granted - as opposed to measures completed, as in III.4.1):

Table III.9: Measures of vocational training granted in 1995

Occupational adaptation	7,852	29.8 %
Further training	2,833	10.7 %
Initial training	1,526	5.8 %
Retraining	14,275	54.1 %
Total	26,386	100.0 %

Source: VDR 1997, p.128 f.

As a consequence of reduced budgets, the commission recommends:

- checking on opportunities for occupational adaptation and further training more thoroughly before granting retraining services, i.e. to only grant the latter if it is quite clear that the former cannot guarantee long-term integration into the labour market (pp.27, 130);
- strengthening the relations between vocational training and actual practices in companies, either through shifting parts of the rehabilitation process into the company or at least to incorporate traineeships in training measures provided outside companies (in retraining centres, for example) (p.131). Training measures may then be provided on a part-time basis which makes job retention possible, or retraining might mainly be provided inside the company so that the funding party (in this case pension insurance) can confine itself to supplementary assistance (pp.11, 25, 27).

Apart from cost considerations, the alignment of measure design with either job retention or return to work cannot remain independent of the structural characteristics of the group of participants. Here, the different branches of the pension insurance system (separate funds for wage earners and salaried employees) become relevant. It turns out that the health problems of salaried employees can usually be much better compensated by measures compatible with job retention (for example by occupational adaptation), as compared with the disabilities of wage earners which result from greater physical demands, in which case more extensive measures appear necessary, which can only rarely be combined with maintaining the previous employment relationship (p.75).

With regard to the users of vocational training services, the commission suggests that the relatively costly

programmes offered by the vocational retraining centres and funded by the pension insurance should mainly focus on elderly clients. Younger and relatively more capable clients should be directed towards training measures provided inside companies, in order to take account of their higher integration chances (p.28).

The study criticizes the pension insurance's funding of measures for occupational rehabilitation which are provided in sheltered workshops since these measures hardly ever result in integration into the general labour market (p.29).

Finally, the report recommends further consideration of the possibilities offered by private employment agencies. The pension insurance funds may profit from the latter's efforts to support their clients' return to work. The commission also suggests rewarding such efforts by external services in an 'unconventional' manner by means of outcome-related fees (p.32).

3. Quality and cost management

Those of the commission's recommendations which are expected to have early effects on quality and cost put the main emphasis on cost reduction in vocational promotion. Here, the increasing importance of job retention as a goal of occupational rehabilitation measures becomes clear. The report emphasizes that measures for medical rehabilitation should be given precedence over those for occupational rehabilitation if the former are sufficient for people to take up their previous employment (job retention) (p.33). Moreover, it is explicitly stressed that measures which make re-employment in the previous job (i.e. job retention) possible are to be given priority over costly measures of vocational training (p.34).

The increasing importance of job retention may also result from the realization that many people who undergo vocational retraining do not really see their disability as the main reason for the vocational reorientation. In an empirical study in two vocational retraining centres, remarkable differences were discovered in the way that those affected saw the importance of their vocational retraining for their life history. Many people receiving rehabilitation expressed dissatisfaction with their previous occupational development as the reason for undertaking vocational reorientation (Vonderach, 1997).

In relation to long-term considerations about quality and cost management, the commission recommends a more decentralized form of organization according to which the specialist rehabilitation advisers of the pension insurance (local rehabilitation teams) play a key role. Since they take action at a local level, the suggestion is to give them the main responsibility for case management, cost and quality management and cooperation and coordination with the local employment offices (p.182 f.). This recommendation has to be seen against the experience of assistants in the accident insurance funds (see II.1.2) as very good case managers. The success of integration has turned out to be considerably higher in cases where those assistants were involved in the process of transition from rehabilitation measures to the open labour market (Bundesregierung, 1997, p.68).

To control costs, the commission suggests regionally differentiated budgets for each local rehabilitation team (p.184). The control of the overall administration process, including for example the determination of budget sizes, would be centralised (p.35). Quality management requires the installation of comprehensive and, above all, outcome-related information and documentation systems. Finally, cost accounting should be refined so that as many individual cost components as possible can be assigned to individual clients (p.37).

III.6.2 The effect of relationships between services on their effectiveness

The relationships between services have been dealt with in detail in the preceding sections in connection with the delimitation and overlap of responsibilities (especially with regard to the objectives of return to work, job retention and first-time entry to employment), cooperation, vocational training, eligibility, and assessment.

III.6.3 The results of vocational training and rehabilitation

The Federal Employment Office

The Federal Employment Office states that the individual process of rehabilitation is not finished until the person in question has been permanently (re-)integrated into the labour market. As measures of success the FEO refers to:

- a) placement in a permanent employment relationship, usually combined with measures of vocational assistance, including support to find a permanent job (return to work);
- b) placement in the employment section of a sheltered workshop for disabled persons;
- c) job retention (with the same employer) through redeployment inside the company;
- d) job retention (same workplace) through adaptation of the workplace.

The prospects of (re-)integration considerably depend upon the current state of the economy and the situation in the general labour market. How fast (re-)integration can be achieved is also influenced by personal characteristics: The older people are, and the more they show deficits in educational and vocational qualifications, the more the opportunities decrease for successful and fast (re-)integration. From its own point of view, the FEO regards cases of rehabilitation as concluded if:

- e) the person who has completed occupational rehabilitation decides to continue attending her/his previous centre;
- f) the person in question is not suited to rehabilitation measures or
- g) is not willing to participate;
- h) the person undergoing rehabilitation decides to attend a centre for general education, or
- i) a centre for vocational training;
- j) occupational rehabilitation ends up in measures for medical rehabilitation, or
- k) measures for social rehabilitation;
- l) there are other reasons, including an integration proposal from the FEO to the responsible rehabilitation fund.

(ANBA, 1996, p.24, 43)

Taking account of just the people who participated in rehabilitation measures for re-integration (i.e. job retention or return to work) assisted by the FEO, the results for 1995 are as follows (ANBA, 1996, p.43):

Table III.10:

<i>Cases completed, total</i>	242,538	100.0 %
Reintegration into labour market	95,790	39.5 %
a) return to work (placement)	54,367	22.4 %

b) placement in sheltered workshop	3,485	1.4 %
c) job retention through redeployment	915	0.4 %
d) job retention (same workplace)	37,023	15.3 %
Other ways of concluding	146,748	60.5 %
e) continue at previous centre	214	0.1 %
f) not suited	9,882	4.1 %
g) not willing	18,515	7.6 %
h) centre for general education	223	0.1 %
i) centre for vocational training	489	0.2 %
j) medical rehabilitation	5,083	2.1 %
k) social rehabilitation	729	3.0 %
l) other reasons (incl. other funds responsible)	111,613	46.0 %

The outcome of 56.8 per cent of all the completed cases which resulted in reintegration into the labour market was a return to work (i.e. changing employer); only 39.6 per cent ended up with job retention. However, this is not true if one looks at the new Länder separately. Here, the relationship is reversed, with 46.4 per cent of completed cases ending in job retention, and only 44.8 per cent in a return to work. Whenever the job is changed subsequent to rehabilitation measures, the occupational orientation is more directed towards the service sector. In 1995, 43 per cent of all persons who retained their job after occupational rehabilitation were employed in manufacturing, 46 per cent in the service sector. Among those who did not stay with the same employer, only 27 per cent returned to manufacturing jobs while 49 per cent found jobs in the service sector. These relations reflect the contents of retraining and further training which many persons assisted by the FEO took part in. The majority (60.5 per cent) of cases completed and directed at re-integration did not end in reintegration into the labour market. However, unwillingness to participate or a lack of suitability played only minor roles. Most of the cases were subject to the responsibility of other funds. The high number listed under this category shows how much the FEO is involved in occupational rehabilitation assisted by other funds, in particular by making integration proposals (ANBA, 1996, p.25 f.).

Separate data are available on vocational assistance training measures. In 1995, 109,762 cases were concluded, 83,336 (75.9 per cent) successfully. Among the latter, 33,983 (40.8 per cent) were concluded by passing some kind of examination. 26,426 cases (24.1 per cent of all training measures) were not successfully concluded, of which almost 88 per cent dropped out early, 16.8 per cent for health reasons, and 7.5 per cent because of taking up a job (ANBA, 1996, p.66). It has been pointed out above that the vocational retraining centres play a crucial role in providing training services for occupational rehabilitation. The FEO has for many years funded about 70 per cent of all rehabilitation measures delivered by these centres; However, as a result of policy changes (see III.1.2), its share has shrunk and become similar to that of pension insurance, that is about 45 per cent in 1997 (Seyd, 1997, p.256). Good placement results for those who complete the courses at these centres are taken as an evidence for the fact that the work done by the vocational retraining centres is successful: 'according to surveys carried out among former trainees one year after completion of their course, the results have remained about 80 per cent in the average (in a wide range between occupations) over a number of years' (BMA, 1996, p.111). However, this proportion also includes initial training centres. In its response to a parliamentary question, the Federal Government refers to a 1992/93 survey carried out by

the Association of German Vocational Retraining Centres into the long-term success of integration of persons who had received vocational training only in these retraining centres. According to the survey, 84 per cent of former participants were still employed six to ten years after completion. Among the remaining 16 per cent, only 11 per cent were registered as unemployed. The long-term integration proportion is higher than the 72 per cent who were in employment one year after completing vocational training in retraining centres (Bundesregierung, 1995, p.23 f.). The fact that the long-term percentage is higher may reflect the length of time it takes to find employment - depending, for example, on the general labour market situation.

According to the Federal Government, 'the success of vocational integration is due not least to the fact that participants in these measures are continually introduced to modern technologies such as numerically controlled machines, computer-controlled drawing systems, modern data processing equipment and microelectronics and, therefore, have greater opportunities than others for employment in modern industries'. In their report on the situation of disabled persons, the Federal Government attributes the high placement rates to the efforts the rehabilitation institutions have made to co-operate with firms providing training places or practical experience. 'For the future, however, increasing placement difficulties for the participants must be expected so that more transitional care will be necessary'; in fact, the proportion of people still without employment one year after completion of retraining has been increasing (BMA, 1996, p.111; Bundesregierung, 1994, p.44; Thornton and Lunt 1997, p.121 f.).

In spite of impressive placement rates, the vocational retraining centres have been sharply criticized by some experts. The system is accused of 'limiting the rehabilitation of persons with disabilities almost exclusively to these institutions, even though the integration proportion of leavers is permanently dwindling. At the same time, the admission criteria are being raised: more and more these institutions tend only to accept persons with minor health impairments and to reject people with disabilities as not being fit for training. The German institutional rehabilitation system turns out to be a cul-de-sac which cannot easily be opened up due to the money allocated to this system and the political influence of these institutions' (Frehe, 1995, p.73). In addition, not all of the vocational rehabilitation institutions for disabled adults are equipped to train people other than with physical impairments. The problem - that less qualified and older people with especially severe disabilities (i.e. those who are supposed to be difficult to place after completion of the training measures) are under-represented in these measures - has often been termed 'creaming'. Correspondingly, skilled workers and salaried employees are over-represented. Since these effects probably contribute to the good results, the actual labour market success of rehabilitation measures provided in the vocational retraining centres is difficult to assess (Thornton and Lunt, 1997, p.122 f.; Rendenbach, 1990, p.108 ff.).

Statutory pension insurance

The statutory pension insurance funds report the results of measures for occupational rehabilitation only with regard to vocational training. Of a total of 13,137 vocational training measures which were provided in 1995, 7,605 (57.9 per cent) were concluded successfully. 3,390 measures (25.8 per cent) were discontinued early, mainly for health reasons (1,874 measures, or 55.3 per cent of all measures discontinued early). 1,526 measures (11.6 per cent) were not concluded successfully, i.e. the participants did not pass the required examination. As regards the occupational background of the participants, it is striking that, within all the major groups to which the majority of measures were allocated, the proportion that were successfully concluded was above the average of 57.9 per cent. Vocational training measures for persons who have been initially trained for jobs in the health service sector were most successful: 396 measures out of a total of 498, i.e. 79.5 per cent, were successfully concluded in 1995. The respective rates for the other major groups are as follows: 60.4 (metal-processing), 69.5 (construction), 59.5 (engineering), 64.9 (trade and transportation), 61.9 (administration and organisation) (VDR, 1996, p.260).

In its response to a parliamentary question, the Federal Government dealt with the economic benefits of rehabilitation, taking statutory pension insurance as an example. The advantage of carrying out rehabilitation measures may be calculated by comparing the expenditure on rehabilitation with the avoided pension

payments plus the continuing social insurance contributions (including the employer's contributions). Such a calculation has only been made for in-patient medical rehabilitation measures, according to which 'investments' in medical rehabilitation pay off as soon as occupational integration is extended for three to four months. However, this kind of calculation does not take into account the effects on other social insurance funds, nor on the economy as a whole (Bundesregierung, 1995, p.23). The Federal Government is convinced that measures for occupational rehabilitation, too, pay off even from a purely economic point of view (Bundesregierung, 1994, p.44).

Statutory occupational accident insurance

The results of measures for occupational rehabilitation provided by the statutory occupational accident insurance funds have already been presented in II.1.5. Some of that information will be repeated here.

The statistical data on the results of measures for occupational rehabilitation list the numbers of cases using the following categories:

- a) successful integration into working life (there is no further distinction between job retention and return to work; see also III.1.2);
- b) successful integration into working life only after additional measures for occupational rehabilitation;
- c) integration is impossible because of the severity of the consequences of the occupational accident, or because of other health reasons or death;
- d) integration is not achieved because of a lack of adequate vacancies;
- e) integration is not achieved for personal or other reasons.

For the year 1993, the following results are given (HVBG, 1995, p.198):

Table III.11: Numbers of cases

<i>Age</i>	<i>Total</i>	<i>(a) successful</i>	<i>(b) additional measures</i>	<i>(c) impossible</i>	<i>(d) lack of vacancies</i>
Below 20	1,371	1,069	91	44	91
20 - 24	2,991	2,242	215	80	259
25 - 29	2,421	1,883	169	84	162
30 - 34	1,734	1,374	115	73	117
35 - 39	1,472	1,161	97	70	103
40 and above	6,356	4,431	446	530	509
Total	16,395	12,200	1,136	883	1,244

The figures show that 74.4 per cent of all persons completed measures for occupational rehabilitation, assisted by the accident insurance funds, by having been successfully integrated into employment. In 6.9 per cent of cases, successful integration was achieved by means of additional measures, so that the integration quota was 81.3 per cent altogether. Only for 18.7 per cent of all cases (categories (c) to (e), i.e. 3,059 cases) it must be stated that measures for occupational rehabilitation were not successful. However, this share contains

932 cases in which mainly personal reasons (such as motherhood, or health reasons other than accident or work-related ones) led to the failure of occupational rehabilitation. Subtracting these cases, only a proportion of 13 per cent of cases remains: the accident insurance funds attribute these to the fact that the vocational assistants have failed (albeit not in the case of death). Age turns out to be a factor influencing the success of measures for occupational rehabilitation. Considering only people under the age of 40, the total integration quota (including category (b)) amounted to 84.3 per cent, whilst it was only 76.7 per cent for the group of people '40 and above', which represented almost 39 per cent of all persons who completed measures for occupational rehabilitation in 1993. The accident insurance funds also judge the relatively lower proportion of older people to be satisfactory (HVBG, 1995, p.178 f.).

The 1993 rehabilitation report lists separate statistics on the results of vocational training measures as a subgroup of measures for occupational rehabilitation, using the same outcome categories as above. This reflects the official point of view that the accident insurance fund's obligation to assist disabled persons with vocational training does not end until these persons enter a new and adequate employment relationship which takes account of their inclinations, abilities, and former occupation. Successful completion of training measures alone is not regarded as sufficient. To ascertain success, the accident insurance funds check whether people have taken up employment within six months of successfully completing vocational training measures. For 1993, the following results are given (HVBG, 1995, p.198 f.):

Table III.12: Number of cases

<i>Age</i>	<i>Total</i>	<i>(a) successful</i>	<i>(b) additional measures</i>	<i>(c) impossible</i>	<i>(d) lack of vacancies</i>
Below 20	572	425	35	3	53
20 - 24	1,452	1,030	91	6	180
25 - 29	759	525	57	3	102
30 - 34	281	187	20	3	48
35 - 39	136	79	11	1	28
40 and above	123	72	10	4	21
Total	3,336	2,327	224	20	434

The figures show that 69.8 per cent of all persons completed vocational training measures, assisted by the accident insurance funds, by having been successfully integrated into employment. In 6.7 per cent of cases, successful integration was achieved by means of additional measures, so that the integration quota was 76.5 per cent altogether. In 23.5 per cent of all cases (categories (c) to (e), i.e. 785 cases) occupational integration failed. Almost all these cases were due either to a lack of adequate vacancies (13 per cent) or to personal reasons (9.9 per cent). As compared with measures for occupational rehabilitation in general, vocational training measures were directed more at younger people: 83.4 per cent of all cases receiving such measures were below 30. This corresponds to a lower success rate among older participants. So, for the group aged between 35 and 39, the integration quota after having successfully completed vocational training was 66.2 per cent, and only 58.1 per cent without additional measures. (For the correlation between gender and occupational background of participants see II.1.5.) (HVBG, 1995, p.180 f.).

The statistical information on the outcomes of vocational training measures allows a more exact classification in terms of job retention and return to work. Job retention in this context is explicitly considered to be a

failure since it is argued that vocational training is just provided in cases in which the earlier job or occupation cannot be practised any more in a competitive way (see II.1.5). It is assumed that re-employment in the former professional environment after having gone through vocational training, that is mainly retraining, would result in damage to the insured person's health, or would probably be connected with lower wages/salaries compared to what the person was paid before. Thus, ascertaining the success of vocational training requires that the disabled persons have found adequate employment according to the qualifications they have newly acquired through vocational retraining. Taking up employment after completion which is new, but which does not meet this requirement, is also regarded as failure since it implies that retraining measures would not have been necessary (HVBG, 1995, p.181).

The figures (HVBG, 1995, p.208 f.) show that, of 3,233 cases of vocational training in 1993 (excluding the agricultural sector), 2,072 were successfully integrated into new employment corresponding to the qualification which was obtained by vocational training measures; this is a proportion of 64 per cent. The remaining cases could not be considered successful since they represented people who returned to their earlier occupation (25), returned to work not corresponding to their new qualification (142), were not integrated at this point (430), or about whom a statement was not possible since evaluation of vocational training allows for a waiting period of six months after the training has been completed (564). The latter share usually contains successful cases which have not been ascertained at the time of reporting, so that the success rate of 64.1 per cent might be slightly underestimated. That in 430 cases integration had not yet been achieved, was attributed mainly to personal reasons (only 'satisfactory' grades, age, limited mobility, for example) or to the general economic situation (recession) (HVBG, 1995, p.182).

With regard to occupational reorientation, a considerable share of persons participating in vocational training came from the food industry (1,023 cases out of a total of 3,336, i.e. 30.7 per cent), in particular the baking trade (see 5.3). After successful completion of vocational training measures in 1993, by far the largest proportion of participants found employment in office jobs (1,046 cases, i.e. 31.4 per cent). From a medical point of view, these jobs are often safe. Moreover, they correspond to the aptitude and inclinations of many participants. Other important 'target occupations' were engineering (375 cases or 11.2 per cent), marketing (256 cases or 7.7 per cent), and banking/insurance (135 cases or 4.1 per cent) (HVBG, 1995, p.183, 204 f.). The most popular target occupations (office work, engineering, and marketing) related to the vocational training measures with the longest duration. In 2,780 cases out of a total of 3,233 (not including the agricultural sector) vocational training measures were successfully completed - a rate of almost 86 per cent (HVBG, 1995, p.184, 206 f.).

For 1995, the report on rehabilitation released by the accident insurance funds is not as detailed as the one for 1993. In relation to the outcomes of vocational training measures, it only says that the integration quota fell from 76.5 per cent in 1993 to 74.8 per cent in 1995. It emphasizes that the proportion for cases in which additional measures were not necessary for successful integration fell more sharply from 69.8 per cent to only 60.2 per cent within the same period. That means that, in 14 per cent of cases, additional measures were provided to achieve successful integration (HVBG, 1997, p.29).

Most of the data on the outcomes of measures for occupational rehabilitation refer only to 1993. However, the structure of expenditure appears relatively stable in the long run. Ascertaining the success of reintegrating disabled persons assisted by accident insurance is not problem-free. All the numbers presented are based on a preselection of more serious cases, which makes the figures less meaningful: there are many cases in which out-patient treatment is not necessary, so that reintegration is not really a problem. The success rates reported are thus only proxies (personal communication to HVBG).

The Hauptfürsorgestellen

No data were identified on the results of measures for occupational rehabilitation, or vocational training in particular, which were assisted by the Hauptfürsorgestellen within the framework of 'supplementary

assistance in the work environment’.

Failure rates

The relatively high rate of failure in vocational retraining has been identified as a serious problem. Failure refers both to the non-attainment of adequate integration into employment following training measures, and to training measures themselves, i.e. failing required examinations and not acquiring qualifications that the participant was designated for. Both kinds of failure represent costs for the rehabilitation funds and for the economy as a whole.

Of the 109,762 concluded cases of vocational training which were assisted by the Federal Employment Office in 1995, for example, almost a quarter (24.1 per cent) were not successful in terms of acquiring the targeted qualification. 87.8 per cent of them, or 21.1 per cent of the total, represented cases in which training measures were discontinued early (absolute number: 23,199). Among this latter group, health reasons played a major role (4,439 cases or 19.1 per cent of all those discontinued early). Only relatively small proportions were discontinued early because of changing to other training measures (1,445 cases or 6.2 per cent) or taking up a job (1983 cases or 8.6 per cent). 3,227 cases, i.e. almost three per cent of all participants, did not successfully conclude training even though they did not drop out early. It has to be noted, however, that these figures also include initial training aimed at first-time entry to employment. In 1995, in about 46 per cent of all cases newly admitted, vocational training was directed at reintegration into employment (ANBA, 1996, p.66, 36 f.). A 1992 study by the Institute for Research on Labour Market and Occupations (IAB), which is affiliated to the Federal Employment Office, revealed that almost a third of participants in retraining measures had not been integrated into the labour market two years after completion. Moreover, the integration rate was considerably different for men (73 per cent) and women (63 per cent) (Fessler, 1997, p.363).

Among the vocational training measures assisted by the pension insurance funds, 25.8 per cent were discontinued early in 1995 (more than half of them due to health reasons, see above). Of the 3,233 persons participating in vocational training measures assisted by the occupational accident insurance funds in 1993 (not including the agricultural sector), only 14.1 per cent were not listed as having successfully passed vocational training, of whom 237 (7.4 per cent of the total) discontinued early (HVBG, 1995, p.207).

There is a large number of reasons in addition to those already mentioned (especially health reasons) for these relatively high proportions of persons who did not meet the requirements of vocational training measures, or who discontinued them early. So, for example, among the cases in which training measures assisted by the Federal Employment Office were discontinued early in 1995, more than half (12,846) are listed under the category ‘other reasons’. Numerous studies suggest that the reasons for failure also have to be seen in the context of organizational issues. In many cases, the initiation of measures for occupational rehabilitation is delayed, so that there is a considerable amount of time between the occurrence of a disease or disability on the one hand, and the introduction of rehabilitation measures on the other. Such delays are not only due to psychological defence mechanisms, which lead to putting off retraining or further training, even though the person in question knows about their necessity; they are also due to a lack of information about possible vocational assistance measures, to lengthy procedures to ascertain responsibility on the part of the rehabilitation funds, and - from the point of view of the disabled person - to the often confusing, partially inefficient, and at the very least incomprehensible administration of the rehabilitation funds (Fessler, 1997, p.357).

Furthermore, deficits have been identified with regard to the counselling and advice services provided by the rehabilitation funds, in particular concerning questions of career guidance and career choice. According to critics, a lot of empirical studies have shown that counselling on rehabilitation matters does not meet the high standards set down by law, according to which career choices are supposed to be aligned with the disabled persons aptitude, inclinations and health state, and with the current situation in the general labour market; In addition, advice services should provide assistance for self-help. In many cases, the people who had been

advised voiced their discontent with the quality and results of counselling services. This is generally caused by a shortage of time: two or three appointments of about 30 minutes each do not suffice to deal fully with the specific problems of the persons seeking advice and who find themselves in exceptional, emotionally very demanding situations. Because of the time constraints, conversations are usually confined to providing general information on rehabilitation. Nevertheless, surveys have shown that many of the people who received advice services criticized both the amount and the quality of the information. In particular, the criticisms refer to the withholding of important information and to presenting information too positively. People undergoing measures for occupational rehabilitation afterwards are thus not prepared to deal with the problems and stress that occur during participation, and will thus be disappointed. Altogether, the advice services are criticized for making disabled people's decisions for them, being too rigid and too schematic, and tending towards simplistic solutions. One's own initiatives are weakened instead of being promoted (Fessler, 1997, p.358 f.).

Problems continue to occur while the measures for occupational rehabilitation are carried out (most of the time as industry-wide measures in special centres). A recurrent problem is that the schedule which has to be fulfilled asks too much of the participants considering the relatively short period of time the measure is supposed to take (according to the law this should generally be at most two years for retraining - compared to a regular duration of initial training of three years). On top of that, participants are often not used to training any more, they lack adequate learning skills, and they miss out on training for health reasons. Their emotional situation is usually quite difficult; many participants do not really succeed in coping with their new role of being a student or trainee again, especially as they used to have recognized positions in working life. Accommodation in a boarding college, often being away from their families, and alcohol abuse are further issues in this context. However, that mainly applies to the vocational training centres. These have specialized services for medical, psychological and social care; however, on average only one psychologist is responsible for almost 500 participants. Vocational training inside companies or in more local training centres is much less frequently associated with such problems. On the other hand, critics see a tendency for participants to be seen more as (cheap) workers/employees rather than trainees. In addition, participants must then attend general vocational colleges, the schedules of which are not compatible with the shorter duration of rehabilitative retraining as compared with ordinary training (Fessler, 1997, p.360 ff.).

III.6.4 Arrangements for outcome-related funding

Against a background of general financial pressures (discussed in more detail in section III.7), it seems understandable that efforts to monitor the outcomes of assistance provided for occupational rehabilitation have been increased, above all in the form of statistical documentation - as has been presented in the preceding section (for example 'integration balances' according to section 11 of the Labour Promotion Reform Bill). Simultaneously, the methods of New Public Management have been introduced for all kinds of public administration, together with a more outcome-related allocation of resources (cf. Zängle/Trampusch, 1997, p.305 f.).

III.6.5 Funding of Hauptfürsorgestellen personnel

There is a particular feature concerning the funding of 'supplementary assistance in the work environment' provided by the Hauptfürsorgestellen. The related measures are funded through the revenue of the compensatory levy. Taking parts of this revenue to fund personnel of the Hauptfürsorgestellen as the providing institution and its administration activities is not permitted; instead, they are funded through the Länder budgets. This arrangement is considered to be problematic. It is claimed that the successful and purposeful expenditure of the levy revenue also depends on the employment of sufficient personnel for counselling services etc. The fact that administration costs cannot be covered by the levy revenue is said to restrict the Hauptfürsorgestellen's capacity for action (Ritz, 1997, p.468).

III.7 LINKS WITH BENEFITS AND EMPLOYMENT POLICIES

Most rehabilitation services are provided by statutory insurance funds: pension insurance, occupational accident insurance and unemployment insurance (Federal Employment Office). Funding is thus linked to social insurance contributions. The level of contributions, and thus the size of the budgets, is subject to political decisions. The logic of social policy has been characterized by need-related funding for a long time. As a first step, a certain condition in society has been identified which was regarded as being socially not acceptable. This condition must then be taken up by influential pressure groups in order to become a part of the political agenda. The final step is an amendment to the Social Code which establishes new entitlements for a particular group of the population. So, funding social policies and programmes has primarily been a legal question. Economic considerations have not played an important role.

In recent years, which have been characterized by high unemployment, the level of social insurance contributions as a part of wage costs has been increasingly blamed for contributing to unemployment. In addition, the continuous introduction of new entitlements to provisions granted by the statutory insurance funds has brought the latter under increasing financial pressure. The view has grown that the expansion of social provisions has to be stopped, since it seems that otherwise the disadvantages for society as a whole would exceed the benefits for particular groups. As statutory insurance funds, the providers of rehabilitation services are obliged to observe the principles which govern public budgets, in particular an economical allocation of resources. However, legislation which creates an increasingly complex body of claims and entitlements counteracts such efforts. Moreover, inefficiency is likely to occur since the funder is not the recipient of rehabilitation services, which creates a need for, and the problem of, monitoring.

High general unemployment affects the statutory insurances in their role as rehabilitation funds in two ways: while the number of people who pay contributions to social insurance decreases, labour market prospects for people undergoing occupational rehabilitation simultaneously worsen. Rehabilitation funds then have to manage on lower budgets in a more difficult situation. According to expert estimates, 100,000 more unemployed people cause a loss in contributions plus a simultaneous increase in social benefits to be paid out amounting to three to four billion DM. The pension insurance funds additionally have to deal with the unfavourable demographic developments associated with increasing life expectancy. In fact, expenditure on occupational rehabilitation has been cut by all the funds. As a reaction to decreasing revenue, the occupational accident insurance funds stopped their subsidies for 'institutional promotion' (see III.4.1) at the beginning of 1997. On the other hand, the decrease in employment also caused the number of occupational accidents to fall, so that the demand of the accident insurance funds for rehabilitation vacancies has dropped considerably over the past years (Seyd, 1997, p.256).

IV. ADAPTATION OF WORK AND WORKPLACE

Part IV is concerned with practical solutions to adapting the work-station, workplace and job procedures to the needs of workers who become disabled. It focuses on external services available to enterprises to assist them in making adjustments, whether those services are accessed directly in the marketplace or via agencies. External services may provide advice or practical help both in adjusting the demands of the job and in adapting the work environment, temporarily or permanently. They may operate as private consultancies, voluntary bodies, quasi-governmental agencies, or as part of employment services.

The initial sections of this Part consider policy responsibilities, details of providers, funders and users, technical advisory services, sources of technical equipment and advice about accommodating work routines. Later sections focus on the factors which affect the success of adaptation services in promoting job retention and return to work.

IV.1 RESPONSIBILITY FOR POLICY AND PROVISION

IV.1.1 The main bodies responsible for work environment policies and their role in promoting

adaptations for job retention and return to work

Section II.1.1 described the role of the statutory occupational accident insurance funds in relation to work-related injury or illness. In addition, two groups of industry-wide bodies are responsible for the maintenance of industrial health and safety standards: the supervisory bodies of the statutory occupational accident insurance funds, and the state factory inspectorates. The statutory occupational accident insurance funds are obliged to give instructions to enterprises about measures to prevent accidents and work-related illnesses and to give instructions to insured people about accident prevention at work. All the assistance schemes of the various funds which promote the integration of disabled persons into employment contain provisions for the adaptation of work and workplace to meet the needs of disabled employees.

IV.1.2 Comparison of the attention given to policies which promote job retention and those which promote access to work

Institutional work environment policies are primarily aimed at the prevention of occupational accidents and work-related illnesses (and thus the occurrence of disabilities). The respective attention given to job retention and access to work in the provision of workplace-related assistance has to be derived from the overall policy priorities by which the various funds are characterized (as described earlier).

IV.1.3 The main providers of technical and advisory services

The Federal Employment Office, its affiliated employment offices and the Hauptfürsorgestellen provide technical and advisory services by employing full-time advisers. The rehabilitation funds deliver their own advice services; specialist rehabilitation advisers in the case of pension insurance funds, vocational assistants in the case of accident insurance funds. However, whenever specific technical advice is required they fall back on other funds. The employment offices have to be involved in decisions on occupational rehabilitation anyway. The law only establishes very basic guidelines, primarily derived from the employer's obligation to fulfil their quota (see section 14, subsection 3 of Severely Disabled Persons Act). The provider funds are responsible for determining the nature of their own work environment policies.

A considerable proportion of technical and advisory services, though, is provided by the actual suppliers of technical equipment and aids for disabled employees, i.e. private manufacturers and firms. Disabled employees who are in need of technical aids to retain their job or facilitate their work can directly contact the manufacturers (which they may know about from advertisements). Funding, however, depends on the employment offices, Hauptfürsorgestellen, or other funders of occupational rehabilitation (e.g. pension insurance or accident insurance funds). That is why private firms offering technical equipment immediately contact these funds when they become aware of a request for services. They take up the disabled worker's concerns and deal with the correspondence with the rehabilitation funds. They also organise presentations of innovative products for rehabilitation fund advisers.

The full-time advisers within the rehabilitation funds have a double function: whenever they learn about the need for additional technical equipment for disabled employees, they contact private suppliers. On the other hand, they also function as a monitoring body to make sure that their subsidies are only used for equipment provided by 'genuine' firms. Thus, they contact two or three suppliers which make an offer for the equipment for the workplace in question, from which the advisers choose one. This arrangement may be successful in keeping 'black sheep' outside the suppliers; on the other hand, it has an inherent tendency towards forming a cartel, so that new firms face difficulties in entering the market.

IV.1.4 The relationship between providers of technical and advisory services and providers of employment support and rehabilitation services

There is no separation between the providers of technical and advisory services, on the one hand, and

providers of employment support and rehabilitation services on the other.

IV.2 TECHNICAL AND ADVISORY SERVICES FOR MODIFICATIONS TO WORK-STATION AND WORKPLACE

IV.2.1 Technical and advisory services available to enterprises to design, cost and plan the implementation of modifications to the work-station or workplace to accommodate disabled workers

Technical and advisory services are provided by the funds described in earlier sections. The services include the design and planning of workplace adaptations, and an approximate calculation of the cost of implementation. In addition, the services try to give information on possible subsidies from external funds (including their own).

Private manufacturers supplying rehabilitation equipment play an important role for the technical and advisory services. Advisers have to keep in touch to them, or at least keep themselves up-dated about new products which enhance the possibilities of employing disabled people.

The Federal Ministry for Labour and Social Affairs has engaged the *Institut der deutschen Wirtschaft* (Institute for the German Economy) in Cologne to set up a database, called REHADAT, to collect comprehensive information about the integration of disabled persons into working life. This database includes: documentation of examples for successful occupational integration, technical working aids, literature, rehabilitation institutes, legislation and precedents, addresses, and seminars.

Disabled persons themselves, but also all kinds of organizations and institutions which deal with the integration of disabled persons into the labour market, in particular including the technical advisors employed by the Hauptfürsorgestellen and the Federal Employment Office, form the target group of the database. There are several possibilities of data retrieval (CD-ROM, inquiry in writing or over the phone, online access). Since October 1997, REHADAT can also be retrieved on the Internet (<http://www.rehadat.de>). The data is kept up-to-date. As REHADAT is more and more becoming well-known, and against the background of the European integration process, users increasingly tend to urge the providers of REHADAT to complete their documentation, in particular on technical working aids, and to also consider experiences from abroad (Bundesregierung, 1997, p.142).

IV.2.2 Services specifically directed towards job retention

The available data do not allow the identification of services that are specifically directed towards job retention. The work-environment-related provisions within the framework of the 'supplementary assistance in the work environment' (in relation to the Hauptfürsorgestellen), for example, apply both to the creation of jobs and training places, and to equipping and adapting the workplace to meet the needs of disabled employees. Even if these subsidies are directed towards the creation of new workplaces, it cannot be assumed that this is for the sake of access to work rather than job retention. Workplaces may be newly established in order to make redeployment possible within an enterprise, so that employment relationships between disabled employees and employers are not altered in the sense of crossing the threshold from continued employment into non-employed status (the criterion for job retention).

IV.2.3 The availability of technical and advisory services and their use by enterprises

No information has been identified concerning the structural characteristics of enterprises using technical and advisory services. In medium-sized and big companies, though, there is a tendency to carry out workplace adaptations by using internal resources and services. This particularly applies to branches where quite a lot of employees become disabled at work, so that the companies feel in some way obliged to provide such adaptations themselves in the context of an integrated staff policy. They also possess the required expertise

and human resources within the enterprise to be able to undertake technical adaptations on their own. However, against a background of increasing competition and pressure to take efficiency measures, it is reasonable to assume that enterprises' willingness to provide costly workplace adaptation is considerably reduced.

As regards the availability of these services it can be stated, though, that resources are scarce. The Hauptfürsorgestellen, for instance, employ one or two full-time technical advisers for the entire area of Rhineland-Palatinate. The Federal Employment Office employs one full-time technical adviser for each employment office district. However, advisers within the employment offices are also responsible for non-disabled employees. As a consequence, enterprises often have to face a long waiting period before actually using these services (as at 1995, six months was not unusual). Counselling about technical aspects of the work environment is extremely time-consuming, given that the relevant area is large and considerable effort is required to keep up-to-date about technical developments.

The availability of technical and advisory services is also linked to the extent of the related financial subsidies. Until 1995/96, subsidies were paid up to DM 80,000. Since then, they have shrunk to a limit of DM 30,000. Since special equipment for workplaces to meet the needs of disabled employees is very expensive, the number of applications for such provision and related services has decreased considerably. In addition, the general economic situation is characterised by the creation of very few new workplaces. As a consequence, a distinct reduction of the workload of the technical advisers has been ascertained over the past two years. The waiting periods experienced in 1995 hardly occur any more. On the contrary, the technical advice services tend to be no longer fully occupied (source: personal communication to aktion 16).

IV.2.4 Factors which encourage or discourage the use of technical and advisory services

Since the granting of financial subsidies for the adaptation of workplaces and related technical and advisory services largely depends on the responsible funds (as opposed to generally applicable rules and criteria), it has to be assumed that awareness and knowledge of the available provision and application procedures depend - above all - on the relationship between the individual enterprise and the responsible fund. Where there are regular contacts and a tradition of cooperation, technical and advisory services will be used more by enterprises than where an enterprise wants to reduce contact with external institutions as much as possible. Since it can be said that the access of external providers of assistance measures is largely determined by enterprises' willingness or reluctance to cooperate, it has to be concluded that enterprises - to a considerable degree - themselves decide on the level of take-up of provision and use of related services. Correspondingly, the actual level of take-up depends on enterprises' attitude and experiences with regard to co-operating with external providers.

IV.3 DESIGN AND IMPLEMENTATION

IV.3.1 Factors in control, funding, management or staffing which impede or facilitate adaptation services

Section III.6.5 noted the problem of personnel within the Hauptfürsorgestellen being funded by the Länder governments. Their related expenses are not covered by revenue from the compensatory levy. This arrangement also applies to the employment of technical advisers at the Hauptfürsorgestellen and limits the scope for designing work environment policies.

In IV.1.3 it was pointed out that it is crucial for the private suppliers of technical aids and related advisory services to be in touch with the funding institutions and persuade them to subsidize the equipment they supply. Employers do not usually object to such workplace adaptations as long as they do not have to bear the costs, or at least only a small fraction of about ten to 20 per cent. However, the financial situation of the responsible funds has changed recently. The high general unemployment limits the scope for subsidies

particularly directed at disabled employees which are provided by the Federal Employment Office. The Hauptfürsorgestellen have increasingly been involved in new projects (see III.2.1) which account for a considerable amount of their budgets. So, in many cases only a share of about 50 per cent of the expense for technical equipment can be covered by subsidies. Employers are often unwilling to accept to pay for the rest. Combining partial subsidies from different funds is not possible as the Hauptfürsorgestellen are not permitted to play a subsidiary funding role. The problem can sometimes be settled by postponing the measure and waiting for the following year's budget.

V. ENTERPRISE STRATEGIES

This final Part provides information about effective enterprise policies, management systems and programmes to retain workers whose continued employment is at risk because of disability. The focus is on activities which are introduced and managed by enterprises as an integral part of human resource and workplace relations management. It includes both integrated policies for the management of disability and specific practical initiatives in the workplace to promote job retention.

V.1 CORPORATE POLICIES AND PLANS

V.1.1 The development and prevalence of corporate employment policies and plans for the retention of disabled employees

Particularly in big enterprises with a relatively strong representation of employees' interests, some pressure is put on employers to achieve internal agreements on the employment of severely disabled people and people with health problems in general. As indicated in I.2.2, one of the main purposes of such agreements is to lay down concrete measures for the implementation of the goals and guidelines provided by law, especially the Severely Disabled Persons Act, at an enterprise level. Other than in relation to the employment quota, the law includes either only very basic guidelines and requirements or merely procedural regulations (see I.2.1: Severely Disabled Persons Act as a 'law of good will'). Even the fulfilment of the quota, or prevention of having pay the compensatory levy, can be approached in very different ways (such as via internal recruitment or awarding contracts to sheltered workshops). However, as some examples show, internal agreements often do not go beyond a confirmation, on the part of the employers and the enterprise management, of the goals and intentions provided by the law. In many companies it is regarded as a degree of success when the management can be encouraged to explicitly declare itself for these goals.

Both the development and prevalence of corporate policies and plans depend very much on the circumstances applying within individual firms: the type of enterprise (branch or industry, average qualification level of employees, size), and particularly on extent to which there is a tradition of worker participation. In addition, corporate policies and plans specifically directed at disabled employees are most prevalent in branches and industries in which most of the disabilities which occur are due to the nature of the work. This applies, for example, to the coal and steel industries (Kotthoff, 1986, p.40, 44).

V.1.2 Prominent actors and influences in the development of policies and plans for the retention of disabled employees

The driving forces behind the implementation of corporate policies and plans aiming at job retention for disabled employees are the works councils and the disabled person's representatives. The works council is generally considered to be the more influential institution due to its legal basis (the Works Constitution Act), which provides a more effective means of exerting pressure at the enterprise management level. The Severely Disabled Persons Act, which determines the position of the disabled person's representatives, merely lays down some procedural requirements (employers' obligation to inform and involve the representatives); however, it does not provide representatives with any sanctions. Thus, the disabled person's representatives often have to rely on the works council's support in pursuing the interests of disabled employees. Many of

them confine themselves to providing advice for disabled employees with regard to social legislation and leave issues related to the employment of disabled persons in the enterprise completely to the works council (Kotthoff, 1986, p.20, 43 f.).

In enterprises where employees' interests are not represented very well - this is especially true for smaller enterprises or for those with mainly unskilled workers - the unions are more involved in assisting newly disabled employees, particularly in the case of dismissals. Larger companies which provide their own medical services also involve company medical officers in designing corporate policies and plans for disabled employees. The contribution of company medical officers, however, is often no more than of a supplementary kind since they usually lack an adequate knowledge of workplaces and work routines (Kotthoff, 1986, p.44). That is why the works council's commitment to the interests of disabled employees appears indispensable.

The degree and effectiveness of worker representation and participation has already been considered above as being a crucial influence on the development and prevalence of corporate policies and plans for disabled employees. In his 1986 study, Kotthoff showed that a more integrative approach towards disabled and other employees is closely linked to the intensity of worker participation whereas, in enterprises where employees' interests are hardly represented, employers tend to discriminate against disabled workers and try to get rid of them by exerting considerable pressure on them. Such discriminatory behaviour on the part of employers is also more prevalent in areas where unskilled work is predominant.

The development of corporate policies and plans can rarely be traced to the influences of special legislation like the Severely Disabled Persons Act. These legal provisions may only be ascribed a supporting function. Much more important seems the degree to which a company considers the perception of its staff policy outside the company to be important for business success. In particular, firms which are exposed to the public and which are dependent on the recruitment of highly qualified workers will be interested in having a good reputation with regard to the way they treat their staff, especially workers and employees with health problems or disabilities. For such companies, the fulfilment of legal norms becomes kind of a moral obligation, also with regard to their outward reputation. For Daimler Benz AG, for example, to pay a compensatory levy of some half a million DM might not be an issue at all in terms of financial burden. However, such an amount indicates that the employment quota was not fulfilled and that the company was subject to related sanctions, and this would be perceived as an embarrassment.

Frick/Frick (1994) have shown that keeping a newly disabled employee may represent a rational enterprise policy if it elicits a high degree of support and loyalty from non-disabled as well as from disabled employees. 'This will be more likely, if not only the disabled but also the healthy employees can assume that in the case of disability they will not be laid off, but either moved to another less strenuous job or that their workload will be reduced. ... As ... workers' perception of their firm's personnel policy ... has an enduring effect on their productivity. If the employment of the disabled, especially if they were already employed in the firm before the disability occurred, meets the workforce's conceptions of equity and fairness, the user costs of labour can be much lower in a firm with a high percentage of disabled employees than in a comparable one with a low percentage of disabled wage and salary earners' (Frick/Frick, 1994, p.222).

V.2 CO-ORDINATED RESPONSES TO DISABILITY

V.2.1 The development and prevalence of integrated disability management systems

It can reasonably be assumed that only relatively large companies are likely to set up a comprehensive body of internal regulations and institutions which are directed at disabled employees. They are also more likely to use a more comprehensive concept of 'disability'. Most of such systems are rooted in the realms of health and safety at work. Consequently, their primary focus is on the prevention of disabilities caused by work. However, they often also seek to prevent existing disabilities from becoming worse through work. The understanding of disability itself differs from the one underlying the legislation. While the provisions of the

Severely Disabled Persons Act apply to persons for whom certain degrees of disability are ascertained on the basis of medical criteria (see I.4.1), provision for disabled employees within enterprises aims at persons with a limited range of employment opportunities in the company because of health problems. Thus, the occupational point of view is considered more important than the medical one, since health problems which do not restrict the range of possible activities on the job will not be treated as disabilities within internal systems.

V.2.2 The characteristic features of integrated disability management systems

The characteristic features of integrated disability management systems may be illustrated by a case study. We would like to describe the approach taken by Daimler Benz AG. In their case, the integrated disability management system is assigned to the area of internal company health policies and their 'health management system' is, accordingly, run by the medical services of the company. It comprises:

- advice services and involvement in the analysis of working conditions and design of the work environment;
- industrial medicine (check-ups, counselling, documentation, first aid);
- internal company rehabilitation services, the re-integration of employees, and the employment of persons with a limited range of employment opportunities;
- counselling on issues of social medicine (motivation, atmosphere at work, absenteeism, alcohol and drug abuse, designing new forms of work).

The system shows that severely disabled workers definitely benefit. However, the target group is much more comprehensive and does not require an official acknowledgement of disability. The provisions refer both to prevention and to dealing with consequences when damage to health has occurred.

In its 'Principles and guidelines for the employment of employees with a limited range of employment opportunities' of July 1997, Daimler Benz AG laid down a procedure which has to be observed when dealing with employees with a limited range of employment opportunities. It comprises the following steps:

- An employee indicates problems with her/his state of health.
- The internal company health service ascertains limitations with regard to the range of employment opportunities.
- The personnel department registers these limitations.
- The internal company health service checks options of further employment in the following order:
 - 1)Will the person in question be able to stay on at the same workplace?
 - 2)Will the person be able to stay on at the same workplace if additional measures of workplace adaptation or of vocational qualification are taken?
 - 3)Is there another adequate workplace in the same section of the company in which the person in question could be employed?
 - 4)Is there another adequate workplace in the same section of the company in which the person in question could be employed if additional measures of

workplace adaptation or vocational qualification are carried out?

- If none of these options offers a solution to the problem, the issue is assigned to a higher committee.

The procedure reflects the clear preference for job retention in the most narrow sense (keeping the same workplace) over redeployment within the company, in order to leave the employees concerned in their familiar work environment whenever possible.

V.2.3 Prominent actors and influences in the initiation and development of integrated disability management systems

The same partners are influential in the initiation and development of integrated disability management systems as were mentioned in V.1.2 with regard to the development of corporate employment policies and plans for disabled people: works councils, disabled persons representatives, unions and company medical officers. External influences may include providers of support and advisory services (see V.9.1). The influence of the statutory occupational accident insurance scheme, however, is mainly confined to the area of accident prevention rather than the management of disability.

V.3 PRACTICAL PROGRAMMES AND INTERVENTIONS IN THE WORKPLACE

V.3.1 Enterprise programmes targeted at employees potentially absent from work because of disability

No information was identified about special enterprise programmes targeted at employees potentially absent from work because of disability. Nevertheless, absenteeism is a preferred target for company health policy. In Germany, there has recently been a big controversy about a new legal provision which allows employers to cut down on the continued payment of wages in the case of sickness. Many companies try to avoid cutting down on these payments as they expect this to have considerable negative effects on the working atmosphere and thus on productivity. In order to tackle the problem of absenteeism, some enterprises have initiated visiting programmes (in which a company representative visits the sick worker at home) or have introduced obligatory talks with superiors as soon as sick workers return to work. However, these approaches are not specifically directed at disabled workers.

More closely related to the problem of absenteeism among disabled workers is enterprises' intention and willingness to give priority to carrying out measures for occupational rehabilitation within the workplace, in cooperation with the responsible rehabilitation funds. The internal agreement of Daimler Benz AG includes such a declaration of intent.

V.3.2 Enterprise-initiated programmes to adjust the workplace and work-station

In the case of Daimler Benz AG, once again, there is a special section which advises on workplace and work-station design. Its focus is less on adjusting workplaces than on involvement in the initial planning processes. The underlying idea is to avoid costs caused by the inadequate employment situation of workers rather than merely reducing such costs once they have occurred. The prior consideration of ergonomic requirements in setting up new workplaces or work-stations is associated with the much greater potential for cost reduction compared to adjustment of the work environment after the event. However, the services also refer to the adjustment of existing work environments. So, such internal workplace design services have to be seen primarily against the background of general efforts to reduce costs in the production process. This work-environment-related approach is considered to be a continuation of current cost-reduction-programmes focusing on workers' motivation at work (such as working in teams). The internal service uses different tools to design work environments and takes technical and ergonomic requirements into account from the outset,

such as video simulations, special computer programmes or benchmarking.

It is obvious that the internal services described are not specifically directed at disabled employees. In fact, the scope is larger, and the main focus is clearly on the prevention of health problems caused by work (for example, if a badly designed workplace is detrimental to posture). On the other hand, there is an important link between these services and enterprise policies for disabled employees since the new techniques make it possible to take into account the difficulties of disabled employees at work at the time of planning new work-stations. At the annual meeting of the disabled persons representatives of Daimler Benz AG in October 1997, the construction of a new plant was reported in which, as the result of foresight in the planning process, it would be possible to employ 38 workers with a limited range of employment opportunities (out of a total workforce of 90). In addition, in the 'Principles and guidelines for the employment of employees with a limited range of employment opportunities' the costs caused by the inappropriate employment of workers are explicitly referred to.

However, as Daimler Benz AG certainly does not represent the average company, it has to be assumed that such approaches of cost management by adequately designing work environments do not reflect an industry-wide standard. Even the Daimler representatives had to admit that there is still a long way to go to really achieve the implementation of these approaches on a large scale. For a long time, ergonomics have been dismissed as being too expensive to be pursued further.

V.3.3 Evidence of outcomes of practical programmes and interventions in the workplace

The Daimler Benz representatives admitted that the use of new techniques for shaping and designing work environments to facilitate the further employment of disabled workers is still far from being realised on a large scale. At present, it seems particularly important to convince senior management and the board of directors that such new approaches have to be adequately promoted.

V.4 WORK ACCOMMODATIONS

V.4.1 Schemes initiated by enterprises to adapt working hours and work demands

It is important, first of all, to report on a trend which counteracts working conditions which facilitate the retention of newly disabled employees. Due to intense rationalization processes, particularly since the mid-1970s, traditional employment opportunities for disabled persons in regular production have more and more disappeared (Kotthoff, 1986, p.11 ff.):

- Measures of technical rationalization have made it possible to produce the same output with less work. In redistributing the remaining work to workplaces equipped with new techniques, older employees with health problems have been the first to be selected as not being capable of meeting work demands. These new techniques often make work easier in physical terms; however, they are also often linked to more monotonous work and to higher pace, so that the work might be characterized by more strain.

- Rationalization measures directed at the organization of the work are particularly responsible for the vanishing of employment opportunities for disabled persons in regular production. There have been considerable efforts to plan and control work sequences more exactly - linked to more exact calculation and planning with regard to the employment of staff. In their efforts to reduce costs many German companies primarily focus on personnel. Since wages cannot be easily cut, the most common approach is to increase work productivity by the intensification of work, or by reducing slack. A simple form of this approach is to cut back on staff, but to keep the required amount of work constant. Another organizational change which affects employment opportunities for disabled persons has been the increasing flexibility in placing

workers in production processes. Larger product ranges with smaller lines per product have often led to the workers having to change workplace several times a day. The kind of work they have to do in each workplace is usually similar; nevertheless, such an arrangement prevents them from really becoming used to the detailed aspects of any one workplace. In addition, permanent change often requires people to be in good physical condition. Finally, concepts of lean production have been implemented, so that production has become more specialized, with fewer production sequences. This has caused many less physically strenuous workplaces to disappear. Rationalization measures directed at the organization of work have also considerably reduced the scope for the supervisors of individual work-stations to compensate for drops in performance due to workers' health problems. Personnel costings are based on people with no limitations on employment except a certain accepted quota of working hours lost through absenteeism. To fulfil the required production target, supervisors are very much interested in recruiting only fully capable workers for their section. Organizational rationalization has been most prevalent in branches of standardized mass production and unskilled work. However, it increasingly affects skilled work, too.

-A third major kind of rationalization aims at the reduction of overhead costs and hourly rated workplaces. It is precisely in these areas that most employment opportunities for workers with health problems have been found. Typical examples are storekeeping and quality control. Storekeeping has in many cases been automated and older disabled workers often have problems in adapting to new technologies. Hourly rated work of quality control has often been shifted back to the production lines.

This trend of the disappearance of traditional employment opportunities for disabled persons in regular production has to be seen in relation to a rising number of workers and employees whose health situation restricts their employment opportunities. Whether technical changes in production do - in the final analysis

- contribute more to protecting health (by reducing physical strain) or whether they tend, rather, to increase the risk of health damage (by introducing new kinds of strain like stress) is hard to judge. What is true, though, is that increasing work demands, by which organizational rationalization has been particularly characterized, cause health problems to lead more directly to limitations on employment opportunities (Kotthoff, 1986, p.16).

The 1986 study by Kotthoff has revealed typical patterns of how companies treat their newly disabled employees, in particular those whose health condition has deteriorated with increasing age and duration of employment. The study shows several patterns of discrimination and exclusion, with most of the cases in companies characterized by mass production, unskilled labour, relatively weak employees' representation (works councils, disabled persons representatives), and thus a low degree of worker participation. Even though the study is relatively old (1986), we would like to pick out some of the patterns and describe them with particular regard to work accommodations directed at newly disabled employees. At a meeting with the disabled persons' representatives of Daimler Benz AG in 1997, we checked on the main results of Kotthoff's study and found that they still apply.

A pattern of 'un-bureaucratic integration' has been found in mid-sized companies with 300 to 1,000 employees. The main common features of these companies has been, that, first, the management is willing to take on responsibility for employees with health problems; secondly, the works council maintains a strong position; and thirdly, the management and works council maintain a relationship of mutual trust and cooperation. In addition, the employee's health problems are actively noted, and supervisors and works councils are kept informed about individual cases through a close communication network. The concrete measures which have been taken in these companies to employ newly disabled workers are numerous and differ according to individual circumstances and production structures. The most important strategy has been to grant supervisors some organizational scope to retain their workers with health problems. Although there

are no official regulations, the supervisors are directly responsible for providing newly disabled workers with adequate jobs, taking their health state into account. Management, on the other hand, backs the supervisors if observing this responsibility prevents the latter from reaching their production targets. A prevalent practice has been to keep quality control as a typical area for disabled workers instead of assigning this task to workers as unpaid extra work. This has been easier for high quality production in which quality control plays an important role. An alternative strategy is to assign the 'easiest' kinds of task-based work to newly disabled workers, or to engage non-disabled co-workers to assist their disabled colleagues. However, this latter strategy can lead to some resistance on the part of non-disabled workers.

In addition, companies adopting this approach have barely had to reduce employment opportunities in those sections which are assigned to overheads or which are paid by the hour (like storekeeping, product control, workshops, gatemen, guard duties, or packaging). Prior to placing people in such positions, redeployment is carried out in less physically strenuous workplaces in different sections of regular production. However, measures of vocational qualification and related redeployment in higher ranked workplaces are rarely undertaken. The common feature of all these different strategies is that there is no formal or bureaucratic regulation and no codified distribution of responsibility among the various actors in the enterprise. Instead, all the strategies represent *ad hoc* measures. The decisive aspect is, though, that there is somebody to whom workers with health problems can refer. Usually, the works councils take the function of being the main contact. In addition, personnel departments and company medical officers may be involved. The works councils also make it their business to look for alternative employment opportunities. To be successful in that, they need to have good information about workplace conditions in all the different sections of the company, and have to maintain a good relationship with both supervisors and management (Kotthoff, 1986, 27 ff.).

In the *coal and steel industry*, the study by Kotthoff found a developed social system of integration and care. Working in the steel industry, for example, is typically characterised by high physical strain, heavy labour, unfavourable workplace conditions (heat, gas, dust, noise), and a high risk of occupational accident. Although the steel industry has been exposed to extraordinary economic pressure which has involved extensive reductions in staff, especially among older workers, it still employs a considerable share of persons who are not fully capable of working (in 1986: more than 30 per cent). The study traces this phenomenon to the uncontested principle that workers must not be dismissed for health reasons. As opposed to the first pattern described above, there is a status-securing system of generally applicable rules which represents a separate area of responsibility with its own employees who are in charge of applying these rules. The body of rules is regarded as so stable that it will be adhered to even if individual actors change, because claiming its provisions is perceived as being a legitimate right. According to this system, workers aged 45 or over (and a minimum tenure of 15 years) are entitled to less physically strenuous workplaces, together with an adjustment to 90 per cent of their previous wage (from the age of 50: no adjustment to previous wage). An additional internal agreement lays down that workers below 45 can claim the same provision when they have completed 15 or 20 years of heavy work (depending on the amount of heat they have had to work in).

There is an official company procedure to ascertain eligibility: the company medical officers decide upon eligibility and notify the human resources department which, in turn, informs the disabled persons representatives. If workers are considered to be eligible, they are put on a list which grants them a special status and the entitlement to special measures for securing their status. Due to this systematic procedure, there is a high degree of transparency with regard to the health situation of the workforce. However, health problems or disabilities are not discriminated against, but are dealt with in a system of 'institutionalized consideration'. Depending on the nature and degree of the limitations to employability, various options are taken into account:

- Newly disabled workers are kept at their previous work-station. They can either be assigned to less physically strenuous workplaces within the same station (all such workplaces in question being reserved for this group of workers), or they are kept at their previous workplaces by reducing the required performance, while waiting for less physically strenuous

workplaces to become vacant.

-Newly disabled workers are redeployed in other work-stations or departments. These re-deployments are carried out by means of a waiting list following rules governing job seniority. Both the workers concerned and the works councils have to agree on the measure.

-Newly disabled workers are redeployed in sheltered workshops belonging to the company. These workshops are mainly defined by the fact that they are not exposed to the 'pressure exerted by piece rates'. They consist of various employment opportunities which require manual skills and work experience.

-Retraining is primarily provided for workers whose disabilities do not result from a long-term drain on their strength, but who suffer from specific disabilities (like allergies or as a result of occupational accidents) which occur relatively early during their working life. By retraining they should be enabled to establish a new occupational career. The retraining measures are provided either inside the company or by external institutions; in any case, the continuation of the employment relationship (i.e. job retention) is guaranteed. Compared to the other options described above, the number of cases for which retraining has been initiated is relatively low.

In this integrative system, works councils and disabled persons' representatives do not only play a demanding and monitoring role but are actively involved in case management and the search for adequate solutions to problems of employment of disabled workers. On the other hand, it has to be emphasized that this pattern of treating employees with health problems must be traced to the peculiarities of the hierarchy and social structures in the coal and steel industry which are characterized by a long tradition of worker participation (equal representation on the supervisory board, nomination of the personnel manager by the unions and the resulting extension of influence of the works council). That is why the probability of successfully retaining newly disabled workers is much higher in companies of this industry compared to other large enterprises (Kotthoff, 1986, p.31 ff.).

A further example of taking account of the diminished performance of newly disabled employees in the enterprise's cost calculations was reported by Semlinger. This enterprise established a *special cost centre* to which newly disabled employees were assigned. For a certain period they could carry out work of minor performance; their diminished productivity was considered in the calculation of the company's overhead costs. This method served two aims. First, newly disabled employees remained integrated while they waited for an adequate vacancy within the company where they could reach a higher productivity. Secondly, the division or department of the company from which the newly disabled person came did not have to accept overtime work or reduced income (Semlinger, 1985, p.102).

Some *other patterns* will only be mentioned briefly. Kotthoff' noted that, according to other studies, there was a pattern of 'defensive integration' in large companies where the employment of newly disabled persons is exclusively regarded as the management's business. This involves a high need for control of the employee's health situation. The motivation of the management is based more on negative incentives such as screening the company from the unfavourable consequences of work-related disabilities (such as costs, claims, reduced performance, deterioration of working atmosphere with negative impact on productivity). The employment of disabled workers is linked more to discipline, control and monitoring functions. Moreover, it represents a non-participative approach. Finally, the study examined some companies within the service sector. It found that there was a tendency for the consideration of disabled employees to be less clear than in industry. This result is connected to the fact the companies examined had a relatively large share of female employees so that health problems are tackled by means of specific, women-related employment strategies such as part-time work or short-term employment relationships (Kotthoff, 1986, p.35 ff.).

Sheltered workshops represent another form of work accommodation for disabled employees. One example is

the 'Behindertenbetrieb', a subsidiary of BASF in Ludwigshafen. It is an economically independent workshop, but only takes orders from the BASF parent company or its affiliated firms and other subsidiaries. The 'Behindertenbetrieb' was founded in 1945 and represents the main means used by BASF to employ their disabled employees. The target is - in the ideal case - to temporarily absorb newly disabled employees, and to employ them so that they are enabled to return to regular work-stations after an appropriate period of convalescence. Only in cases where this target cannot be achieved should the workshop guarantee secure employment opportunities for disabled workers until retirement. Experience has shown that disabled people who complete some vocational training usually manage to return to work outside the workshop. The concept of the workshop thus not only contributes to the economic activities of the parent company and its affiliated subsidiaries, but also boosts the disabled person's self-esteem.

Among the main groups of disabled persons employed in the BASF workshop are blind or deaf people, people with epilepsy, mobility disabilities (wheelchair users), neurological diseases or learning disabilities, or people injured by occupational accidents. Access to employment in the workshop is based on application or a recommendation by the disabled persons representatives in their individual places of work and is available for severely disabled persons or persons of equal status. Each case is dealt with individually.

There are major differences between the BASF 'Behindertenbetrieb' and the sheltered workshops for disabled people according to the Severely Disabled Persons Act. The BASF workshop, for example, is neither obliged to absorb severely disabled persons from the entire region nor to maintain a minimum capacity of 120 workplaces. It does not need external services of psychological and social care, although such services can be received from internal (BASF) providers. There is no employment training since the disabled persons entering the workshop have usually been employed before.

The management of the BASF workshop recognizes the requirement to closely cooperate with doctors, the Hauptfürsorgestellen, the occupational accident insurance funds, and the disabled person's representatives. The workshop maintains a special service which collects particularly severely disabled persons and drives them to work. The fields of work primarily comprise the sewing of work clothes (about 30 per cent of entire performance), the arrangement of papers and folders (for example for events of further training; about ten per cent of entire performance), dismantling and recycling of bicycles (4 per cent), secondments of staff to other places for particular work (like photocopying), and making brooms and brushes (7 per cent). The last type of work represents the traditional kind of work in sheltered workshops for disabled persons. The workshop is paid either according to the number of items produced (fixed price), quantity, working hours, or it is paid a flat rate (for example for each bicycle dismantled) (BASF, 1995).

Information from the BASF workshop shows that, at the end of 1995, it employed 41 persons. Among these there was hardly anyone with manual or technical skills since these people usually manage to return to work after a relatively short period of time. From its founding in 1945 up to 1994, almost 750 people have been employed there, of whom 44 per cent have been successfully placed in or returned to regular work-stations within the BASF parent company. However, efforts at placement or promoting return to work have become less successful because the number of employment opportunities traditionally appropriate for disabled persons has been decreasing within BASF, too. That the ten per cent level of absenteeism is above average has to be traced to the numerous measures of medical rehabilitation which - according to the concept of the workshop - take place while the disabled persons are employed there. In 1995, just two blind employees managed to cover the entire demand for brooms and brushes at BASF (BASF, 1995).

V.5 'RETURN-TO-WORK' PROGRAMMES

V.5.1 Enterprise-led 'return-to-work' programmes targeted at employees absent from work because of disability

The BASF workshop that was described above as a work accommodation measure can also be regarded as a

'return-to-work' programme. It absorbs workers who cannot stay in their previous workplaces because of disability. The workshop employment is supposed to be temporary. It grants the disabled person a period of convalescence while still being a part of the BASF parent company. The BASF workshop has a 44 per cent success rate in enabling people to return to work.

At the disabled persons representatives meeting at Daimler Benz AG, it was reported that keeping the workplace open for someone who has to undergo measures of medical rehabilitation has become an increasingly rare concession by the employers, so that some representatives hesitate to recommend participation in such measures to their clients.

V.5.2 Enterprise measures to help disabled workers to find suitable employment elsewhere

It seems that most enterprises confine the assistance they provide for disabled employees who have to leave the company to financial assistance, such as severance pay. Thus, they leave measures to help disabled workers to find suitable employment to the employment offices or to the Hauptfürsorgestellen.

V.6 DEFINITION AND ASSESSMENT OF DISABILITY

V.6.1 The effect of perceptions of 'disability' on enterprise job retention programmes

It has been pointed out earlier (see V.2.2) that the target group for enterprise policies concerning disabled people tends to be quite comprehensive and often does not require an official acknowledgement of disability. While the official procedure of acknowledgement of disability is primarily based on merely medical criteria, enterprise policies are much more orientated towards the limitations to employment possibilities, with medical criteria playing only an indirect role. As a consequence, the concept of 'employees with limited employment possibilities' does not automatically overlap with the status of severe disability according to the Severely Disabled Persons Act.

V.6.2 The effect of procedures for identifying disability at work on access to enterprise job retention and 'return-to-work' programmes

Procedures for identifying and assessing disability at work have been described above (Daimler Benz AG: see V.2.2, Kotthoff study: see V.4.1). It is not only the internal company medical services (company medical officers) who play an important role in identification and assessment: enterprises characterized by a more integrative personnel policy also expect all supervisors and managers at all levels to take care of their staff and to make note of employees who are in danger of becoming disabled (see V.4.1).

Access to enterprise programmes usually tends to be more generous the more a disability is related to work, because the employer feels more obliged to take on responsibility.

V.7 INTERNAL RELATIONSHIPS

V.7.1 The relationship between actors within the enterprise impeding or facilitating strategies to promote job retention

Section V.1.2 dealt with the relationship between works councils and disabled persons' representatives. It has been stated that the works council is generally considered to be the more influential institution due to its legal basis. Thus, disabled persons representatives often have to rely on works councils' support in pursuing the interests of disabled employees. At the Daimler Benz meeting, we discussed the possibility of combining the two functions, i.e. to belong to the works council and to be a disabled person's representative at the same time. Many representatives were convinced that by simultaneously belonging to the works council, their work would become more accepted by the enterprise management, which communicates to employees primarily via the works council in any case. However, some representatives also pointed out some disadvantages in

combining the two functions. Particularly in big companies, a single person may not be able to cope with the work of looking after all disabled employees while, at the same time, doing her/his duty as part of the works council. There would also be a tendency for the two mandates to become blurred. In addition, employees often shy away from talking about their disabilities before they have security concerning their future employment prospects. In such a situation, they usually prefer talking to a disabled person's representative who is not a member of the works council. The works council is thus associated with a higher probability of personal information leaking through to management.

The disabled person's representatives of Daimler Benz stressed their claim to be accepted by the works councils even if they do not belong to them. Good cooperation requires regular participation by the representatives in the meetings of the works councils. A division of responsibility according to which works councils only care for 'healthy' workers while all 'sick' workers are left to the disabled person's representatives has to be avoided. Rather, works councils have to be aware of their responsibility towards disabled workers.

V.7.2 Effects of remuneration practices on job retention

On average, disabled workers are relatively old and usually have very long tenure, since the majority of them have been internally recruited. Workers' earnings usually rise with job seniority. This causes the labour cost of disabled employees to be higher than the labour cost of non-disabled workers, particularly if disabilities are associated with reduced performance. Frick has shown that - against this background - using the opportunity of early retirement as provided by social security law matches the interests of both employers and disabled workers (see I.8.2).

V.7.3 Financial obstacles to internal job retention measures

The extension of work environments characterised by work for specific tasks, and a tendency towards teamwork with fixed output requirements (and related remuneration), mean there is little scope to employ people with lower performance levels in the longer term without exposing the team to conflicts (see V.4.1).

V.8 LINKS WITH EMPLOYMENT POLICY OBLIGATIONS, RECOMMENDATIONS AND INCENTIVES

V.8.1 Enterprise compliance with disability employment obligations

Enterprise compliance with disability employment policies has been analysed in detail in Part I (concerning the employment quota, internal recruitment, early retirement, and awarding of contracts to sheltered workshops).

Deficits in compliance may be traced to different underlying motivations. Employment policies enshrined in legislation are supposed to reflect the interests of society (for instance, non-discrimination and the protection of disadvantaged groups). These policies do not completely embrace the interests of enterprises which see their main responsibility almost exclusively towards their own disabled workers, whose disabilities are linked to work and usually to long tenure.

V.8.2 Ways in which employment and labour market policies impede or facilitate enterprise-led work adaptation programmes

High general wage levels in Germany create a need for organizational rationalization, which has consequences for the number of employment opportunities for disabled persons (see V.4.1). That is why the right to free collective bargaining and the resulting pay policy affect employment opportunities for disabled workers at an enterprise level.

V.9 LINKS WITH EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

V.9.1 Enterprise responses to externally funded support and advisory services

Some experts estimate the influence of external organizations on the employment of disabled workers in companies to be almost insignificant (Kotthoff, 1986, p.41). Since external providers very much depend on enterprises' willingness to cooperate, it can be assumed that those enterprises which mainly benefit from their assistance are those which pursue an integrative staff policy anyway, so that the selection of enterprises which benefit is highly biased. On the other hand, those employees who are most in need of externally provided assistance may have hardly any access to it.

At the annual meeting of the disabled person's representatives of Daimler Benz we asked about their relations to externally funded support and advisory services. Their assessment of cooperation with external providers turned out to be quite varied. Relationships were judged very differently, depending on the region from which they came. One representative stressed her good cooperation with external services for psychological and social care (see III.2.1). For her, these services are extremely important because many disabled workers shy away from revealing their problems towards the disabled person's representative; instead, they prefer to talk to someone not belonging to the company. However, it was confirmed that the overall influence of the Hauptfürsorgestellen and the 'psychological and social services' is limited. These services are usually contacted when problems have already occurred, rather than contributing to the prevention of conflicts. The union's representative mentioned that only about a third of all enterprises know whom to contact at the relevant Hauptfürsorgestellen.

A similarly inconsistent range of opinions was ascertained concerning cooperation with the various rehabilitation funds. The Rehabilitation Harmonization Act was sharply criticized for being ineffective. Because of their budget constraints, the various funds still try to shift responsibility to other funds. Eligibility criteria have become more and more restrictive. Disabled workers who have to rely on the provisions of the rehabilitation funds are still confronted with a high degree of insecurity about their legal status and entitlements. However, one disabled person's representative reported that, in his company, representatives of the rehabilitation funds are regularly involved in internal company discussions which aim to find solutions in individual cases of disability.

The statements on cooperation with employment offices were also quite varied. Some representatives pointed out that such cooperation, with regard to disabled workers, is not very important as this would only affect newly recruited disabled people. As a consequence of the continuing disappearance of workplaces appropriate for disabled persons (see V.4.1), the main focus is on retaining newly disabled workers rather than recruiting disabled people from outside the enterprise. Thus, cooperation with employment offices has become less relevant. Other representatives said, though, that they still cooperate closely with the employment office, and that this cooperation also refers to the employment of internally recruited or retained disabled workers. So, it seems that external institutions have some discretionary scope in providing assistance. The distinct regional differences in cooperation with external organizations can also be viewed as a reflection of the recurrent controversy about which fund is actually responsible.

Another important aspect was highlighted in relation to the decreasing number of adequate workplaces for disabled employees, resulting mainly from organizational rationalization. It has already been mentioned that employers' organizations complain about the employment quota being of a wrong standard (see I.2.1). One representative implicitly referred to this critique by stating that, in many enterprises, problems arise in finding severely disabled persons who can actually be employed in the existing workplaces, even though both the works councils and the enterprise management seek to promote their employment. The complaint that there are not enough 'employable' severely disabled persons to fulfil the quota must be seen against the background of highly rationalized work environments which often make it impossible to employ disabled persons. This restricts the potential for cooperation between companies and the external funds which are

involved in placing disabled persons in regular employment.

The disabled persons' representatives of Daimler Benz admitted that they also hold responsibility for good cooperation with external organizations. They thus have to try hard to keep in regular touch with them, and are aware of the fact that it is usually up to them to take the initiative since for the Hauptfürsorgestellen, for instance, it is not really possible to have real access to an enterprise unless they have been previously contacted. On the other hand, the disabled persons' representatives often do not have enough time to think about maintaining good relations with external organizations on top of their internal duties.

It has already been mentioned that unions are particularly involved in assisting newly disabled employees in enterprises where employees' interests are poorly represented (see V.1.2). Another important contribution of the unions that was identified by the disabled persons representatives is the arranging of study-groups where the unions bring together representatives of different companies to encourage them to exchange experiences about employing and retaining disabled workers. These study-groups thus act as a form of benchmarking. It is easier for a disabled person's representative to encourage management to try out new options for the employment of disabled workers if they can refer to other companies where new strategies have been successfully applied. The Hauptfürsorgestellen sometimes organize similar study-groups.

V.9.2 Opportunities and barriers to the effective co-ordination of external support services and enterprise programmes

Section III.2.6 considered some aspects of access to enterprises for external support services. The support service's access to disabled employees in companies, and opportunities to involve supervisors and enterprise management in the process of assistance, very much depend on the service's ability to create an atmosphere of cooperation and mutual trust in relation to the enterprises.

There may be a tendency for enterprises which are engaged in the implementation of internal programmes of employee support or health and safety at work to show some reserve in contacting and involving external organizations. They may want to prove that they are able to take care of problems of disability and health risks at work on their own, and that they do not have to rely on external resources for this. That might also be perceived as a strong indicator of corporate identity towards employees. We asked a representative of the management level of Daimler Benz (from the 'health and safety at work' section), for example, about cooperation with the responsible occupational accident insurance fund. He pointed out that the industrial health and safety standards given by the accident insurance funds merely represent minimum standards for Daimler Benz, and that internal efforts go far beyond these standards.

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