

ACQUIRED DISABILITY AND RETURNING TO WORK: TOWARDS A STAKEHOLDER APPROACH

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ABSTRACT

This article examines the potential application of stakeholder theory to the case of a disabled worker returning to work. A gated notion combining both the instrumental and ethical views of stakeholder theory is explored as a way to understand how to determine who may be classified as a stakeholder. This nuanced application of stakeholding to the process of returning to work lends itself to the consideration of mediation techniques as mechanisms of conflict avoidance rather than exclusively as dispute resolution techniques. Implications in terms of the study of the return to work process, disability, and the further potential for practical application are discussed.

INTRODUCTION

Disability among Canadian adults who are considered part of the labor force (defined as being between the ages of 15 and 65) is a situation that affects just under 2 million individuals or approximately 9.9% of the working-age population (Cossette & Duclos, 2002). While there appears to be an increasing interest in ill and injured employees returning to work as early as possible (James, Cunningham, & Dribben, 2006), nevertheless the impact of an acquired disability upon an individual's future employment prospects seems bleak at best (Clauret, 2003). The impact that involuntary job loss has upon those with disabilities (Bradley, Boath, Chambers, Monkman, Luck, & Bould, 2004) is by no means limited to the person with a disability; indeed, the individual's family members are also

substantially affected (Strunin & Boden, 2004). When a person acquires a disability and loses employment, the impact is felt by the broader community.

Are there current perspectives in the human resources or management literature that could benefit both our understanding and the situation of the disabled worker attempting to return to the workplace? In this article I explore the potential applicability of one particular alternative; a stakeholder approach. I go on to suggest the broad contours of a proactive application of the stakeholder approach, which would avoid some of the negative aspects of the current, litigation-based process. My concluding comments highlight some implications and areas for future research.

DISABILITY AND RETURNING TO WORK

Why is the loss of work so profound an issue, and why are some disabled individuals motivated to return to work, despite the variety of challenges they may face along the way back to employment? The empirical literature has largely focused upon modeling the determinants of an individual's successful return to the workplace and has incorporated factors such as socioeconomic status, type of disability, age, sex, and duration of unemployment. In one sense this seems to replicate the ways in which insurance company-based actuarial processes analyze data to allow for effective risk assessment. A problem with this approach is that it fundamentally ignores the choices and the nuanced context of the disabled worker, and instead deterministically attempts to predict the person's behaviors based upon presupposed intrinsic characteristics or an index of the individual's situation. This approach is even more problematic if we take into account the broader context of the disabled individual, in which we find many different and often competing agendas that affect the return to work effort. If we instead recognize that a worker's desire to return to work is likely based upon a multitude of economic, psychological, and social factors, we find ourselves asking very different questions about the return to work process, with implications for the worker's rights.

Beyond Economic Rationales

The meaning of work to an individual clearly varies from person to person. Individuals likely do work for economic benefits, but this presupposition may trivialize the other types of motivations or rewards that characterize their decision to work. In their research designed to develop a measure of motivation to change for musculoskeletal pain patients, Gard, Rivano, and Grahn (2005) found that in motivation for change in the work situation there were a number of factors beyond economic gain; namely, co-worker support, supervisory support, challenges in work, job control, interaction, and job satisfaction. These findings mirror Siegert and Taylor's (2004) review of social psychology perspectives on rehabilitation

and goal setting, particularly the concepts of autonomy, competence, and interpersonal relatedness. The social contact that work affords, as well as the satisfaction and sense of accomplishment that accompanies some tasks, seems as important as, yet not exclusionary to, economic well-being. Nevertheless, it is interesting that so little empirical work has been done on the reasons why a worker with an acquired disability would wish to return to work. This situation would seem to offer an opportunity for real insight into motivation and work, yet there seem to be assumptions that the rationale for employment is largely an economic requirement and that the motivation is the same as that of the worker without a disability.

Regardless of the individual's motivations that are at play in the desire to return to work, and instead of simply labeling the individual as likely or unlikely to return to work, we must regard the question of the process by which an individual with an acquired disability returns to work as far more nuanced, pertinent, and interesting, with implications for the fundamental human rights of such a worker.

Legal Factors

In addition to the multitude of trying physical and psychological issues that potentially accompany a disabled person's desire to return to work (see, e.g., Vowles, Gross, & Sorrell, 2004; Weiner, Rudy, Kim, & Golla, 2004), there are also structural aspects of the legal and social welfare systems that the disabled worker must contend with. In fact, when considering evidence from the United States (Kruse & Hale, 2003; Kruse & Schur, 2003; Lee, 2003; Schwochau & Blanck, 2003) it is clear that the legal protections afforded via the Americans with Disabilities Act (ADA) and its accompanying mandatory accommodation policies are uneven. In the case of litigation based upon the ADA, Lee (2003) reports a substantial inequality in lawsuit success rates, with employers showing an 80%–96% success rate over disabled employees who seek legal recourse in navigating their return to the workplace. This situation highlights the likely power imbalance present in such litigation (including access to resources to pay for legal advice) and the fact that legal protection for the rights of the disabled employee is required.

While it is difficult to broadly characterize the return to work process for an employee with an acquired disability, it is useful to briefly describe how the process could unfold in such a way that litigation actually becomes necessary. Typically, when an individual acquires a disability, the question of whether or not it has been caused by an accident related to the workplace is crucial. The implications of this relate to insurance coverage for the employee as well as accident investigations. While it is beyond the scope of this article, it is possible to see that the relative pressures upon an organization to accommodate a disabled worker who returns to the workplace where he or she was initially injured are probably great. Nevertheless, the rehabilitation process, which requires detailed

documentation along the way, is the source of much expert opinion from medical professionals' reports (e.g., reports from doctors, physiotherapists) as they, often under the watchful gaze of an insurance company disability case manager, chart how the individual will eventually return to work. This return to work may or may not be to the same organization, to the same profession, or in the same capacity (i.e., regarding part-time versus full-time employment). There are many opportunities for medical complications and relapses. In short, there is motivation to get the worker back to work to remove financial liabilities (especially on the part of insurers), while there is a simultaneous perception of real productivity risks and potential associated costs for an organization employing a person with a disability. This in part explains why legal protection for working individuals with disabilities is crucial.

Definitional Challenges

A further challenge both for those with disabilities and within the legal system itself relates to definitional issues. Categorization of a diverse population using a simple term such as "disabled" is problematic, and part of the agenda of the disability rights movement has been to reframe disability as an environmental mismatch, rather than as an attribute of an individual (Kruse & Hale, 2003). The definition of disability and thus impairment is pivotal in most ADA cases, and in the United States the courts are often left to determine the extent of rights and responsibilities relating to accommodation at work for the disabled employee. In Canada, the accommodation of individuals with a disability is mandated under the Canadian Human Rights Act (Catano, Cronshaw, Wiesner, Hackett, & Methot, 2005) and has been refined as a result of subsequent court cases (Kelloway, Francis, Catano, Cameron, & Day, 2004). Despite legislative differences between Canada and the United States, Canadians with disabilities requiring accommodation and forced to seek it through litigation face similar hurdles in reaching a tenable resolution.

The assumptions regarding what constitutes work, its potentially contingent nature, and the ways in which those with disabilities actively construct their working lives in adaptation to their specific needs are complex (Schur, 2003). The economic benefits acquired as a person with a disability (e.g., disability insurance or social welfare system benefits) may implicitly preclude the undertaking of volunteer work, as insurance and social assistance economic benefits are, for the most part, contingent upon the disabled worker being essentially unemployed if not unemployable. Thus, the economic viability of the return to work effort may be an important factor affecting labor market participation by those with acquired disabilities, particularly if the return to work may entail modified work hours or part-time versus full-time status. It appears that the control and flexibility that would permit individually determined and appropriate participation in the workplace are lacking. This common "all or nothing" approach

effectively polarizes the individual workers' choices and threatens their right to resume participation as employed members of their society.

Towards a Nuanced Approach

Beyond medical factors and interventions such as ergonomic assessments, pain management, mobility aids, and time management, there are a number of psychosocial factors identified in the literature that could compound the efforts of disabled workers in their return to work. Typical intervention processes to prevent long-term loss of employment due to disability have been categorized as medical models, physical rehabilitation models, job-match models, and managed care models (Pransky, Shaw, Franche, & Clarke, 2004). A critical success factor for the return to work effort is effective communication between the multitudes of parties who are involved in these simultaneous models of intervention (Pransky et al., 2004). Sadly, Pransky et al. (2004) also find little evidence of effective communication in the return to employment situation. This lack of effective communication may show up as a variety of "roadblocks" to a successful return to work. For instance, the literature reports that a "backlash" might result from other employees' perceptions of unfair accommodation practices (Colella, 2001) or that stigmatization of those returning to work may provide additional psychological burdens to the disabled employee (Kelloway et al., 2004). Goal setting and motivation have been linked to a successful return to work for the disabled individual (Siegert & Taylor, 2004), as has respectful and open communication (Roberts-Yates, 2003), yet despite these suggestions for ways to improve the likelihood of an individual successfully returning to work, disability models that incorporate physical, psychological, and workplace factors have been able to explain less than 25% of variance in disability and work outcomes (Pransky et al., 2004). Pransky et al. believe this suggests that other important factors may remain unmeasured. This opens up the possibility that the current models employed in rehabilitation and return to work issues may simply be myopic in identifying the key individuals and groups involved in the process. Perhaps a sort of range restriction resulting from a model specification that excludes key elements of the concerned population is at work in this case. In short, maybe the present focus upon a deterministic viewpoint regarding an individual's likelihood of returning to work has reached its limit and a more contextualized and process-based understanding of the situation would be useful.

It is clear that despite many hurdles, some workers with acquired disabilities desire and subsequently attempt to return to work. The problems with the current approaches relate to how such a situation is managed and/or resolved. There is an inherent power imbalance between the worker and the workplace and the insurance and medical complexes that she relies upon for advice and intervention. This power imbalance reflects the underlying assumption that economic gain is the primary reason for a return to work. As a result of the focus upon economic

gain or loss to the exclusion of other factors, the voices of the disabled worker and other stakeholders stand to become silenced. This potentially gives rise to a situation in which costly legal action is invoked. The comparative simplicity of assuming only economic rationality in terms of return to work motivation is therefore likely to be costly, exclusionary, confrontational, and personally as well as socially damaging. The situation needs some context beyond the economic motivation assumption.

A contextualized approach to the disabled worker returning to work is likely to involve many different persons and organizations and a variety of intersecting or competing interests. It is this myriad of involved people and entities that makes stakeholder theory seem potentially useful and appropriate for discussion. Insofar as stakeholders are seen as having legitimate rights of involvement in decision-making processes, stakeholder theory may offer a framework whereby many of the difficulties in the present situation of a disabled worker returning to work can be mitigated. I next survey stakeholder theory in an effort to illustrate the intersections of this theory and the disabled worker's situation.

STAKEHOLDER THEORY

Many people are affected when an individual with a disability makes efforts to return to work. Disagreements are likely as firms, insurance companies, government, nongovernmental organizations, and medical professionals engage in responding to the disabled worker's needs. At the same time, each group that is involved on behalf of the worker is also engaged in fulfilling its own unique mandates. The sometimes overlapping and competing agendas of these groups further complicate the situation, as both the overall number and the interconnectedness of the various organizations evolve over what may well be a multi-year rehabilitative process for the disabled worker. The interconnectedness of stakeholders issue has much more in common with the perspective offered by Reynolds, Wagner, and Harder (2006), and yet these authors' examination of more physician-centered models of disability management seems to largely replicate the placement of the disabled worker on the periphery of the process. It seems clear that the requirement to balance the needs of the disabled individual with those of others has elements in common with the literature exploring stakeholder theory. To explore the potential application of stakeholder theory to return to work issues, I first examine the theory itself and then examine its potential applicability to the situation of the disabled worker. Based upon these discussions, I can then identify some aspects of a potential intervention that makes use of the theory.

What Is Stakeholder Theory?

R. Edward Freeman (1984) identifies the origin of the term "stakeholder" as being a product of the work of the Stanford Research Institute (SRI) in 1963.

Stakeholders were originally conceived by the SRI as “those groups without whose support the organization would cease to exist” (Freeman, 1984: 31). Freeman further illustrates the dispersion of the term, highlighting the definitional and application changes wrought upon it through influences from the corporate planning, systems theory, corporate social responsibility, and organizational theory literatures. He then reconsolidates the various aspects of stakeholder theory contained in these literatures under the guise of strategic management processes in *Strategic management: A stakeholder approach* (Freeman, 1984).

Contemporary stakeholder theory is fragmented at best (Jones & Wicks, 1999), is difficult to define, and as a label does little justice to the multitude of perspectives and controversies surrounding the field (Donaldson, 1999; Freeman, 1999; Gioia, 1999; Jones & Wicks, 1999). Some authors have even argued that there is no such thing as a stakeholder theory, only a stakeholder research tradition (Trevino & Weaver, 1999). Freeman (1984), widely regarded as having revived the notion of the strategic use of stakeholder management, refers to the concept as a “stakeholder approach” as opposed to a theory. Underlying all stakeholder theories, traditions, or perspectives is the conception that an organization is affected by (and in turn affects) a variety of individuals or groups (i.e., the “stakeholders”). A key concept of stakeholder theory maintains that these stakeholders have an interest in how the organization operates and thus must be respected, considered, and consulted in pertinent matters. This integration of stakeholders does not require pure altruism; it is undertaken for strategic purposes as well. Because of this intersection of both ethics and instrumental ends, disagreement within the broad family of stakeholder perspectives relates to the identification, legitimacy, and equality of consideration of an organization’s constituent stakeholders. Opinions have largely been divided along the lines either of a presupposition of the moral imperative to identify all affected stakeholders (e.g., Zsolnai, 2006, regarding discussions of the earth and future generations as stakeholders) or along the lines of managerial-based evaluations of stakeholder salience based on factors such as power, legitimacy, and urgency (e.g., Page, 2002). Thus, for my purposes, the underlying typology of stakeholder theories carries important considerations for potential applicability to the disabled worker.

There are three commonly identified typologies of stakeholder theorizing: normative, descriptive, and instrumental. I agree with the argument that for a “Kantian capitalism” to exist (i.e., a values-based economic system), the normative nature of stakeholder theory (typically identified as an underlying assumption of ethical responsibilities to stakeholders) is an intrinsic aspect of stakeholder theory, not simply one alternative typology (Donaldson & Preston, 1995; Kaler, 2003). Simply put, we cannot ignore the potential ethical legitimacy of stakeholders who might not be directly impacted by the organization in question. On the other hand, an exclusively normative stakeholder approach is problematic. Normative stakeholder theories categorize firms in terms of stakeholding (and

therefore compliance with an ethical imperative) but embody little or no attempt to hypothesize, measure, or predict outcomes regarding this stakeholder orientation. While normative ideas concerning stakeholders seem pivotal to the very concept of stakeholding, at the same time it seems that there are practical issues in terms of situations where there is also a requirement for a measurable outcome. For the purposes of examining the return to work context, it seems important to respect the underlying ethical premises of stakeholder theorizing, emphasizing equal consideration of legitimate stakeholding parties, and at the same time to deal with measurable and salient outcomes.

This leaves us to examine the remaining two typologies of stakeholder theory available for the purposes of this article: descriptive theories that explain the firm and its embedded stakeholder network, and instrumental theories that “explore the relationship between causes (the management of stakeholders) and effects (organizational performance)” (Pesqueux & Damak-Ayadi, 2005: 10). It seems that to move forward with a practical application of stakeholding theory within the context of the disabled worker returning to work, an instrumental approach, which maintains a presupposition of the normative (or ethical) stakeholder rights, is imperative. A fused instrumental/normative approach to stakeholder theory holds most promise with respect to any application to the case of the disabled worker who returns to work.

Of course, a definition of a generalized typology of the perspective I choose to employ is not in and of itself a description of a theory. In essence, this parallels the weaknesses of stakeholder theory as reviewed in the literature. Despite discussion of the appropriateness of the theory and the qualities it might have, there is remarkably little in terms of specific theories and propositions that could evolve into *testable* hypotheses, let alone practical application for the practitioner. Indeed, one of the few recent works that contains potentially testable propositions actually relates to the idea of stakeholder multiplicity and interactions between stakeholders (Neville & Menguc, 2006). Having broadly surveyed stakeholder theorizing, I now turn to the potential application of a stakeholder approach to the situation of work and acquired disability.

Is Stakeholder Theory Applicable to Return to Work Issues?

In many respects, the situation faced by the disabled worker returning to work mirrors that of the corporation at the center of a stakeholder analysis. Presupposing the ethical aspects of stakeholding, there is an opportunity to make use of a simple input/output-based perspective for identifying stakeholders. This resource-based perspective also offers considerable opportunity (beyond the scope of this article) in terms of situation analysis using other common operations or marketing-based theoretical models. For example, Michael Porter’s Five Forces analysis (see Porter, 1980) could be used as a diagnostic of the relative bargaining power of the various stakeholders.

Just as the theoretical “rational firm” seeks to maximize benefits and manage externalities that affect it, I propose that the rational disabled worker would seek similar outcomes. To this extent, the perspective of the corporation as an entity seeking to maximize the utility of relationships might be applied to a disabled worker at the center of a group of instrumental stakeholders. Most important is that with the underlying acceptance of the ethical foundation of stakeholder theory, an instrumental resource-based view with which to qualify prospective stakeholders becomes pertinent. After this initial finding of legitimacy, I suggest that stakeholders be treated as equals. This nuance is what separates a simple resource-based view of the situation from the viewpoint expressed in this article.

There are aspects of stakeholder theory that promise to be useful to the disabled worker returning to work. The stakeholders other than the disabled worker also accrue benefits from this application of a stakeholding approach. In particular, the avoidance of legal costs, the time saved through an amicable resolution of the situation, and the mutual retention of control over the process (quite unlike the relinquishing of control associated with court actions) are all appealing features of a conflict avoidance application of stakeholding. In this respect, an application of stakeholder theory to the situation faced by the person with an acquired disability returning to work addresses many of the factors I earlier identified as problems with the present processes. The loss of voice, the power imbalances found during the management of the return to work process and in any subsequent requirement for litigation, and the need for effective, contextualized communication are all potentially dealt with through a stakeholder approach. Most importantly, the individuals who are making substantial efforts to contribute to an organization and community, as well as to themselves and their families, are placed in a reasonably central position in the discussions, action plans, and interventions. Finally, all of these potential changes in the process can be carried out with economic rationality as part of the mixture in a stakeholder perspective scenario.

The palatable quality of accepting an underlying ethical stance and at the same time having tangible outcomes that are rationally driven seems quite suitable for application to the return to work situation. Furthermore, the ability to demonstrate outcomes that satisfy both the ethical and the social imperatives while also being informed by the economic stake of the stakeholders means that an empirical assessment of the outcomes can be made. In short, we might be able to rationally discuss the cost and benefits (economic and otherwise) of the resolution of the situation without having to resort to a discussion that involves legal action, threats, and little or no place for the individual who has acquired the disability.

The requirements of this argument now lead to a discussion of the mechanisms for identifying the stakeholders, followed by some ideas about what a practical application of this approach might entail.

Who Are the Stakeholders? A Rationale for a Particular Instrumentality

A successful application of elements of stakeholder theory to the return to work issue will have to address or avoid any underlying theoretical paradigmatic contradictions (Gioia, 1999) that are identified in the literature. So while discussions regarding the most appropriate definition and the way to unify the disparate elements of the theory are not especially critical to our application, theory and pragmatism are. It seems clear that in the case of a disabled worker and a return to work, the legal and economic ramifications alone will indicate that an initial instrumental approach is required. This somewhat narrower application of stakeholder theory is important; it not only avoids the mire of the ongoing arguments regarding the consolidation of multiple aspects of stakeholder theory but also allows for empirical testing of any ensuing application of stakeholder theory to the unique situation of the disabled worker. Furthermore, an instrumental approach is consistent with the findings of the limited available literature (Berman, Wicks, Kotha, & Jones, 1999) that explicitly identifies whether an instrumental or more of a normative categorization approach has been taken. In this way, our application of stakeholder theory can be quantified, offering the potential of adding to the literature on the financial effects of the theory in the practitioner milieu.

Taking an instrumental approach offers a decision criterion for identifying pertinent stakeholders (this being the evidence of an economic relationship). Only those stakeholders who have an observable economic stake would be considered. Furthermore, this concept of “relationship” is important, for it allows the conception of a situation of mutual economic gain among stakeholders. This provides the possibility of an outcome that need not represent a zero-sum game in which one stakeholder must win at the expense of another (Donaldson & Preston, 1995), not unlike the basic tenets of principle-centered negotiation (see, e.g., Fisher, Ury, & Patton, 1994).

What might a network of instrumental stakeholders for the disabled worker consist of? The list of possible parties with some vested economic interest is long and varied. Some possibilities include insurance companies, the workplace firm, co-workers, governmental and social welfare organizations, nongovernmental organizations, and the family of the person with a disability. In situations where litigation is possible or likely, various legal stakeholders (such as lawyers working on a contingency basis) may be part of the mix of stakeholders with an economic interest in how a person returns to work. In many cases, the mandate and/or the contractual obligation of the disabled worker and the various other stakeholders could be the decision criteria for initially identifying stakeholder legitimacy.

By way of an example, consider the situation of a worker with an immediate family. If we imagine a situation in which the disabled worker is a spouse and also has an elder parent for whom she is a primary caregiver, a clear ethical imperative

to consider the family stakeholders is present. There is an economic rationality in these dependents having an interest in the outcome. The disabled worker's spouse in particular is subject to both the impact of any loss of family income and the added need to provide care for the elder parent at home. As the (now) primary economic provider, this spouse is unlikely to be able to provide the elder care required and thus will likely have to contract out this important responsibility, further affecting the family. In this example, the worker's spouse and the elder parent are stakeholders from both an economic and an ethical standpoint, and I am arguing that their interests must also be represented in the process of setting up a return to work strategy that places the disabled worker at the center of the network.

MEDIATION AND A STAKEHOLDER APPROACH

In trying to take an instrumental view of the disabled worker and at the same time remain firm in the accepted underlying ethical foundation of stakeholder theory, it seems useful to consider some of the feminist literature, which examines similarities and differences between the disabled community and feminist causes. In particular, one stream of feminist disability studies demonstrates how notions of care and dependence combined with patriarchal societal aspects are disempowering and exclusionary (Garland-Thomas, 2005). The notions of care, dependence, and exploitation that are part of much current feminist thought share with disability studies the idea of moving towards interdependence rather than towards a care/dependence model (Watson, McKie, Hughes, Hopkins, & Gregory, 2004). The present process for setting up a return to work strategy largely focuses upon experts assessing an individual, conducting a type of "gap analysis," building plans of action and then requiring the individual to comply to the point of either attainment or failure of the objectives. When this process is embedded in a focus upon financial liability (e.g., involving insurance providers), I question the actual opportunity for participation by the disabled worker in her own return to work journey. Can the current adversarial legal and contractual system of rights and responsibilities concerning disabled workers be augmented to combine respect, empowerment of the individual, and acceptable outcomes? One branch of feminist thought on stakeholder theory may offer hints of a solution.

It has been suggested that mediation as a conflict resolution strategy naturally espouses many of the tenets of both feminism and stakeholder theory (Lampe, 2001). Lampe defines mediation as "a non-adversarial method for resolving disputes whereby parties in conflict, with the aid of a neutral, third party mediator, cooperate to resolve differences" (2001: 166). As a dispute resolution mechanism, the use of a fair and mutually agreed upon mediator has much to offer when compared with legal proceedings, including reduced costs, improved communication, a sense of procedural justice, and a reduction of severe power/negotiation imbalances. While some feminist critiques of mediation have stemmed from the embedding of mediation in an adversarial and patriarchal system, I believe that it

may be possible to mitigate some of these problems and offer an alternative. It is plausible that something quite different from the use of mediation as just a dispute resolution process is both possible and useful in regard to the present topic. A proactive use of mediation techniques as a method of coordinating a disabled worker's return to work (as opposed to being used strictly as a dispute resolution method) might form a successful bridge between an instrumentally informed stakeholder approach and the successful return to the workplace of a disabled worker.

The employment of mediation prior to actual conflict (that is, as a component of a broader strategy to aid in a return to work strategy) offers an important variation on the commonplace use of mediation. Conventional mediation is typically used to avoid costly court battles when prior negotiation has failed. In this situation, experts and legal counsel are largely driving the process, with a subsequent silencing, to some extent, of the individual client's voice. An additional complication of such mediation is the potential barrier to resolution when not all parties are present or have sufficient authority to agree on a solution (Picker, 2006). In contrast, a preemptive use of mediation techniques offers the disabled worker some comparative empowerment in the process; this being an often touted but seldom realized benefit of conventional mediation processes. The linkage of such proactive mediation with stakeholding concepts helps make the "unseen" parties visible and may perhaps remove some of the "invisible barriers" (Picker, 2006) to successful resolution. This process would also help address some of the communications shortcomings described by Pransky et al. (2004) in terms of workers, physicians, employers, and insurers, in a way that does not structurally impede hearing the voice and allowing the empowerment of the worker herself.

In being sensitive to the potentially disempowering aspects of a conventional mediation process, which feminist critique has highlighted, it seems that a very different conception emerges of how mediation and stakeholding theory might usefully be utilized in the case of the disabled worker who attempts to return to work. The cooperation and the reduction of power imbalances, the justice perceptions afforded in such a situation, and the much improved fostering of open communication between parties address some of the needs that the broader return to work literature identifies. The use of mediation prior to actual conflict is an empowering prospect when compared with the exploitation that is possible when the process is seen as an "11th hour" response to the threat of litigation. The biggest issue, that of who should be involved in this version of mediation, is where the application of stakeholder theory as earlier described offers some utility.

DISCUSSION

What might this fused mediation/stakeholder approach look like in practice? While it is difficult to identify a particular systematic approach, perhaps a broad-stroke description of an example would be helpful. Imagine that an individual who

worked in a physically demanding occupation has been injured in a motor vehicle accident. This individual has been through an initial round of physical intervention for her damaged back, yet it seems that her now identified disability will preclude her from doing her previous work. Typically at this point, the discussions center on the fact that the organization may or may not have alternative work for the employee or the requirement for the employee to find new work elsewhere. Disability case managers normally offer resumé writing advice; in extreme cases, they may negotiate retraining. The disabled individual is faced with the decision as to how far to push the requirement of the workplace in accommodating her disability, with the understanding that lawyers will likely be involved. The expense and the difficulty involved in proving that the individual should be accommodated in returning to her workplace are daunting. During this time, the individual will be subject to scrutiny and continual reassessment as to her eligibility for disability insurance, contributing to stress on both the individual who is trying to manage the disability and her dependents, if any.

With the suggestions offered in this article, the order of operations might be very different. At the first hint of a possibility that the individual might not be able to return to his earlier workplace duties, the modified mediation process would be embarked upon. I suggest that if the worker is kept central to the process from the beginning, she in fact should be aware of she right to modified mediation and thus subsequently be in a position to trigger such mediation. The meetings with an impartial mediator would include members of the individual's medical team, her family, insurance providers, and representatives of the workplace, just to name a few. The impact of the acquired disability would be made apparent as all those affected describe the challenges they face in light of a return to work (or not) by the disabled worker. The costs to the organization, but also the potential benefits of a successful return to work, would be discussed. Maybe a trial return to the workplace in a different capacity would be explored, but this would be without the fear of loss of insurance eligibility should the attempt not be successful. The medical team would be aware of the interventions required to support the returning worker prior to the particular effort made.

None of these initiatives would be set in place without direction and an ongoing assessment of their utility by the person with the disability. The organization involved would be aware of the support that the family requires in order to offer familial support to the person making the effort to return to work. The members of the medical community would see more than an injured person to be repaired or maintained; they would be able to see that the ongoing support of the health and well-being of the disabled individual requires a community approach and has implications for the person's family and co-workers.

While the brief and necessarily incomplete description above seems almost utopian in nature, it actually sounds very similar to the current purported role of a disability case manager. Key differences include early intervention, and the

comparatively unbiased role of a mediator (normally a disability case manager is hired by an insurance provider) prior to conflict. Also, note that the family and medical service providers are part of the discussion, as key stakeholders of the return to work effort. While medical advice is conventionally sought in such situations as they are currently managed, it is normally in order to quantify time, treatment, and the economic costs of interventions. In effect, the medical practitioners are acting as experts regarding the disabled individual but without that individual's involvement except as a subject of analysis.

It seems that there are some promising aspects of this effort to link a stakeholder approach with a disabled worker's efforts to return to work. However, the successful application of the theory to this process will require a specific operational use of stakeholder theory. Any subsequent use of the theory will have to incorporate both a measurable economic rationale and the ethical perspective foundation embedded in stakeholding as a legitimate analytical tool. When these tasks are accomplished, the likelihood of the various stakeholders agreeing to use mediation prior to disputes is improved.

Of course, the current adversarial mechanisms used to deal with the disagreements that arise when the disabled return to work do eventually create some sort of resolution of the issues. The negative aspects of the current system lie in both the power-laden outcomes and the process itself. This sort of conflict is expensive and time consuming. It renders the individual with a disability relatively powerless in the dispute resolution mechanism, perhaps causing harm to person attempting to become more independent. A "sense of control over one's life" has been found to be the top psychosocial factor identified by both patients and health care staff for recovery from a workplace accident (Antoniazzi, Celinski, & Alcock, 2002). A process that allows all relevant parties to be involved while allowing the worker herself to feel empowered may be beneficial.

In searching for cases of a similar application of mediation to conflict avoidance, I have found few examples. Perhaps the closest analogue to what I am proposing is the use of mediation prior to arbitration in other types of workplace conflict situations (both in unionized and in nonunionized situations). There is a growing literature that explores the role of alternative dispute resolution techniques in union and nonunion settings (e.g., Colvin, 2003) and examines both the human resources (HR) and the industrial relations (IR) perspectives (Lewin, 2001) regarding such practices. A fundamental difference between the proposed application of mediation techniques and that offered in the workplace conflict literature is the suggested use of mediation techniques prior to any conflict. To an extent, this concept of conflict avoidance is consistent with the way Lewin (2001) portrays an HR perspective regarding workplace conflict. In contrast, he describes an IR perspective as viewing conflict as normal, inevitable, and potentially healthy. Importantly, this dichotomy illustrates the possibility that the proposed use of preventative mediation might be viewed as encroaching upon the traditional role of the union in a unionized work environment. In such a

case, any application of nonunion dispute resolution techniques in the unionized setting would have to view the union as an important stakeholder.¹

The use of mediation techniques to prevent conflict in the return to work context is novel, and represents a process akin to that purportedly carried out by disability case managers. However, the substantial difference between the proposed mediation model and the use of a disability case manager is the notion of impartiality; most disability case managers are individuals appointed by insurance companies and so they are open to criticism as being exclusionary with regard to other legitimate stakeholders. My proposed preventative mediation process, grounded in the stakeholder approach, is more inclusive and comparatively unbiased, except towards the individual with a disability, who is seen as being central to the entire process. This I regard as both a fundamental right and an appropriate tactic for the process described.

CONCLUSIONS

The rights to meaningful employment and to nondiscriminatory workplace practices are embedded in the United Nations' Universal Declaration of Human Rights. Article 22 of the declaration states that "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality." Furthermore, Article 23, sections 1 and 3 respectively, state that "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment" and that "Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection" (United Nations, 1948). There is no discussion of the relative merits of the business case for such human rights; these rights are seen as fundamental, if not inalienable.

¹ The application of the proposed preventative mediation occurring prior to an actual dispute highlights a fundamental difference between its use and the increasing use of nonunion dispute resolution techniques. Colvin (2003) discusses the use of nonunion dispute resolution as a potential "counter defensive" response to unionization. The link between dispute resolution methods and their use as a response to unionization extends beyond the scope of this article. Critical, however, is the difference between the use of mediation principles prior to an actual dispute and mediation as an alternative dispute resolution tool, whether in unionized or nonunionized workplaces. This distinction, while originating in the nonunion dispute resolution literature, is also critical in the case of the disabled worker returning to work. Mediation as a last-ditch effort to avoid the risks of litigation is not what I am proposing; this practice is already well established.

Despite the extreme difficulty in clearly defining stakeholder theory, this article has argued that there is a role for a stakeholder approach in helping a disabled worker successfully return to work. With so many different individuals and organizations involved in the process, it is paramount that a method to determine stakeholder legitimacy be employed. Through a particular use of an instrumental model of stakeholding, an objective and empirical assessment of this legitimacy can be made while still largely maintaining the ethical foundations of the normative typologies of stakeholder theory. This article has described the idea of a gated notion of stakeholder salience, with inclusion being initially based upon economic instrumental stakeholding, but subsequent mediation involving the equal legitimacy of all economically salient groups. This makes possible objective decisions about the inclusion of stakeholders and potentially offers the means to conduct empirical assessments of the effects of such an application of a stakeholder approach.

A particular branch of feminist thought on the nature of disability, care, and stakeholder mediation offers a perspective that can inform the application of these theories to the disabled worker. In particular, I have proposed the use of mediation techniques to aid in the coordination of a return to work strategy, rather than as an alternative dispute resolution method. This suggestion directly addresses the lack of effective communication between the parties involved with the variety of initiatives related to return to work interventions (Pransky et al., 2004), yet I have found no evidence in the literature regarding the use of these mediation techniques for coordination of efforts rather than as dispute resolution techniques.

Would a group of stakeholders agree to such a process? Clearly, the willingness of the concerned parties to embark on a modified mediation process before being compelled to do so is critical. Presumably, each stakeholder would have to evaluate the utility of such an arrangement against the opportunity cost of delaying/precluding any adversarial legal action in a sort of rational utility versus opportunity cost analysis. While much literature exists concerning dispute resolution in general, little is available regarding this particular use of planned and managed dispute avoidance through mediation embedded in a stakeholder approach. The complex nature of the return to work process and the multitude of concerned individuals and organizations involved suggest that a stakeholder approach has a role to play in managing this complexity. The integration of a preventative mediation process amounts to the application of prevention, rather than to the eventual requirement for an adversarial cure.

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