

Cancer as a Disability: Your Rights in the Workplace

will begin at 2 pm ET

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About Your Hosts...

- TransCen, Inc.
 - Mission Statement: Improving lives of people with disabilities through meaningful work and community inclusion
- Mid-Atlantic ADA Center, a project of TransCen, Inc.
 - Funded by National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR), Administration for Community Living, U.S. Department of Health and Human Services



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• In the webinar platform:

- You may type and submit questions in the CHAT area text box or press Control-M and enter text in the CHAT area; your questions and comments will only be visible by session moderators
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- Questions may also be emailed to:
ADAtaining@transcen.org

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Customizing Your View

- Resize the whiteboard where the presentation slides are shown to make it smaller or larger by choosing from the drop down menu located above and to the left of the whiteboard; the default is “fit page”



Customize Your View continued

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Technical Assistance

- If you experience technical difficulties
- Use the CHAT panel to let us know
 - E-mail ADAtraining@transcen.org
 - Call 301-217-0124

Archive

- This webinar is being recorded and can be accessed within a few weeks
- You will receive an email with information on accessing the archive

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Requests for Certificate of Participation

- Please consult the reminder email you received about this session for instructions on obtaining a certificate of participation for this webinar.
- **You will need to listen for the continuing education code which will be announced at the conclusion of this session.**
- Requests for certificate of participation must be received no later than **5 PM ET on Wednesday February, 21th.**

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Cancer as a Disability: Your Rights in the Workplace



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Our mission: To champion the rights of people with disabilities through education, advocacy, and litigation.

www.drlcenter.org



Free Information and Assistance for Patients and Families Nationwide:

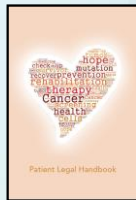
www.clrcintake.org

1. Online Intake Form
2. Those who need to can leave a message at **866-THE-CLRC**





- Patient Legal Handbook
- Legal Information Related to: Employment, Health Insurance, Estate Planning, etc.
- In-person Workshops/ Webinars



www.CancerLegalResourceCenter.org



Employment Rights for People with Cancer



- Nondiscrimination (ADA, State Laws)
- Medical leave (FMLA)

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Employment protections from Other Sources:



- Employee Manual
- Human Resources
- Employee or Union Contract
- Unions

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Americans with Disabilities Act (ADA): 42 U.S.C. § 121101 et seq.



To protect from discrimination at **all** phases of employment

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WORKPLACE DISCRIMINATION:

APPLIES TO ALL PHASES OF EMPLOYMENT

- Job advertisements, applications, recruiting
- Hiring, firing
- Leave, lay-offs
- Reinstatement, reassignment
- Tenure, promotion
- Testing, training
- Compensation, benefits
- All other terms and conditions of employment



<https://www.eeoc.gov/facts/ada17.html>

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Covered Employers:

ADA:

- Private employers with 15 or more employees
- State and local government, regardless of size
- Note: Federal employees covered by other federal law



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ADA Protects People Who:

1. have a **disability**
2. have a **history of a disability**
3. are **regarded as having disability**
4. **have a relationship/are associated with someone with a disability**



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Employees:



- Must also be **"qualified"** (can **perform the essential functions of the job** with or without accommodations)

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The Americans with Disabilities Act: Important Definitions



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"Disability" under ADA



- Physical or mental **impairment**
- that **substantially limits**
- a **major life activity**

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“Major Life Activity”

- Walking, Talking, Breathing, Eating
- Caring for oneself
- Activities of daily living
- Working (maybe)



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“Substantial Limitation”

- Unable to perform a major life activity the same way as an average person in society



- **Factors:**
 - nature and severity;
 - expected or actual duration; and
 - impact of the disability on life.

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“Reasonable Accommodations” Definition/overview

“**Change or adjustment** in the work environment **that enables** an individual with a disability to enjoy **equal benefit and employment opportunity**”

- Only available to those with a current impairment or history of impairment

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Reasonable Accommodations



Employers **required** to make them, unless it causes them an **“undue hardship”**

EMPLOYERS ARE **NOT** REQUIRED TO:

- Eliminate essential functions or redefine the position
- Create a new position
- Move another employee from his / her position

ACCOMMODATIONS MUST BE REASONABLE

- Accommodation **must be effective**
 - Necessary to perform the essential functions
 - Individualized

https://www.eeoc.gov/eeoc/internal/reasonable_accommodation.cfm#D

Reasonable Accommodation Examples:

- Modification of physical work environment
- Job restructuring
- **Possibly** an extended period of leave time



ASKING FOR TIME OFF AS REASONABLE ACCOMMODATION

Asking for a short amount of time off = **generally ok**
Asking for a short extension of leave = **generally ok**
Asking for an indefinite leave = **generally not ok**



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Reasonable Accommodation:

- **Employee** initiates "interactive process"
 - No magic words necessary
 - Written request not required, but recommended



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Interactive Process Steps:



1. **Define** the situation
2. **Perform** needs assessment
3. **Explore** alternative placement options
4. **Redefine** the situation
5. **Monitor** accommodations

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DOCUMENTATION OF DISABILITY

- Employer may request documentation of a disability if there is a request for accommodation
- Employer must keep documentation confidential
- **Employee does not need to specify cancer diagnosis**

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Reasonable Accommodation Case Study 1:

- Sylvia is a 43 year old woman
- Works at a major chain retail store as a cashier
- She is going through chemotherapy to treat her breast cancer
- Side effects of her treatment include fatigue, and more frequent trips to the bathroom

What kinds of accommodations might be reasonable for Sylvia?

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Reasonable Accommodation Case Study 2:

- José is a 51 year old man
- Works as an office manager at a mid-size company
- He is going through treatment for his colon cancer, including surgery
- Side effects of his treatment include fatigue, difficulty concentrating, lifting restrictions, etc.

What kinds of accommodations might be reasonable for José?

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You can still be terminated for performance-related reasons!



Employees should request accommodations **before** work performance is affected

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Reasonable Accommodation Help:



- Provides practical solutions for employees and employers
- (800) 526-7234 or www.jan.wvu.edu
- **Quick Facts:** 56% cost nothing; the rest typically cost < \$500

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State Fair Employment Laws

- Most provide protections similar to ADA
- Some have a broader definition of disability
- Some specifically list cancer as a disability
- Many provide coverage for employers with fewer than 15 employees

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State Disability Discrimination Employment Laws: # of employees

- AK - 1
- AR - 9
- CA - 5
- CO - 1
- CT - 3
- HI - 1
- ID - 5
- IL - 1
- IA - 4
- KS - 4
- KY - 8
- ME - 1
- MA - 6
- MI - 1
- MN - 1
- MO - 6
- MT - 1
- NH - 6
- NJ - 1
- NM - 4
- NY - 4
- ND - 1
- OH - 4
- OR - 6
- PA - 4
- RI - 4
- SD - 1
- TN - 1
- VT - 1
- VA - 1
- WA - 8
- WV - 12
- WI - 1
- WY - 2

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Looking for a new job? Disclosure of Condition



Do **NOT** have to disclose medical condition ...

unless asking for reasonable accommodation.

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What Can An Employer Ask?

- Can you perform the essential functions of the job?
- How will you perform essential functions of the job?



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What Is An Employer Prohibited From Asking?

- Do you have a disability?
- Do you or have you had cancer?
- Are you going through treatment?
- Have you ever taken sick leave or FMLA leave? How much?

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Job Applicants: Medical Exams

Employer can make offer **conditional on passing medical exam ONLY** if required of all employees in that type of position

CANNOT rescind offer unless exam shows employee cannot perform essential functions of the job



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Taking Time Off From Work



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Family and Medical Leave Act (FMLA) 29 U.S.C. 2601 et seq.

12 weeks of **UNPAID** job & health benefit protected leave per year to:



- 1) take care of self
or
- 2) covered family member

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“Covered Individual”

Yourself or **Covered Family Member**:

1. Parent
2. Child
3. Spouse



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“Covered EMPLOYEE”

Employee must have worked for:

A) **12+ months**

AND

B) **1,250+ hours** in last year



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“Covered EMPLOYER”



ALL Public Employers
(Local/State/Federal)

SOME Large Private Employers
(Have 50+ employees in 75 mile radius)

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“12 weeks”

Can be taken **intermittently**

OR



can be taken **all at once.**

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Medical Certification

- ✓ Employees do not have to disclose diagnosis
- ✓ Employees can be denied leave for not providing certification
- ✓ Re-certification no more than every 30 days

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Substitution of Paid Leave

While on FMLA...



employee can choose,
OR
employer can require,

use of **vacation** or **sick leave**

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Not Enough Time Off? Not Qualified for FMLA?



- 1) Check **employer's policy**
- 2) Request time off as an **accommodation under the ADA** or state law

Note: employers do not have to hold a position open indefinitely.

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Disability Discrimination complaints:

- Start with your employer/HR
- Speak with an employment attorney, who may advise you to file a complaint with either the EEOC or your state's fair employment agency
- Pay attention to deadlines

www.eeoc.gov

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FMLA interference complaints:

- Start with your employer/HR
- Speak with an employment attorney
- Can file a complaint with the Secretary of Labor
- Alternatively, can file a private lawsuit

<https://www.dol.gov/whd/fmla/>



Useful Resources

- US DOJ Information and Technical Assistance on the ADA: www.ada.gov
- Equal Employment Opportunity Commission (EEOC) : <https://www.eeoc.gov/laws/types/disability.cfm>
- Job Accommodation Network (JAN) : <http://www.jan.wvu.edu>
- US Department of Labor: www.dol.gov/whd/fmla





Thank you!

For more information:

www.cancerlegalresourcecenter.org

1-866-THE-CLRC
CLRCINTAKE.ORG



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Thank You!

Mid-Atlantic ADA Center

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