



Your Employees and Cancer – Working Together

What is Cancer?

Cancer is a disease that knows no boundaries. It strikes at every age and every demographic area. There are few people whose lives have not been touched by cancer, either because they have had cancer or because a family member, friend, co-worker, or acquaintance has had it.¹

The word “cancer” refers to a group of diseases that are characterized by the uncontrolled growth or spread of abnormal cells. Scientists do not know for sure exactly how a particular type of cancer is caused, but believe it is caused by a combination of external and internal factors. If not treated, cancer can cause death.

How is Cancer Treated?

Cancer is generally treated using a variety of methods, including surgery, radiation, chemotherapy, hormones and immunotherapy. Many of these treatments require substantial recovery time and may have significant side effects.

1 Cancer Facts and Figures 2009, page 1, American Cancer Society, Inc. 2009, available at <http://www.cancer.org/downloads/STT/500809web.pdf> (retrieved 4/14/2010).

Who Gets Cancer?

No one is immune from cancer. There are almost 12 million cancer survivors in the United States. According to the American Cancer Society, about 1,479,350 new cancer cases were expected to be diagnosed in 2009. However, the five-year survival rate for all cancers combined is 66%. This five-year survival rate represents individuals who are alive five years after diagnosis, although they may be disease-free, in remission, or undergoing treatment. It is also important to recognize that these survival rates are based upon patients who were diagnosed up to 14 years ago and, therefore, do not reflect advances in treatment. Hence, survival rates may be increasing, but the statistics are not yet available to analyze the current rates of survival.²

What Issues Arise for a Person with Cancer in the Workplace ?

Approximately forty percent of people diagnosed with cancer, each year, are working age adults.³ For many people with cancer, being able to remain employed is of paramount importance. For many of us, going to work is one of the ways in which we define ourselves. Besides providing a source of income, going to work also helps cancer patients focus upon things other than disease while going through treatment and co-workers can provide a valuable network of support.

With the advent of some types of treatments that may minimize negative side effects, cancer patients are more often able to continue

2 Estimated Number of Cancer Survivors in the United States, page 1, National Cancer Institute, available at <http://www.cancer.gov/aboutnci/servingpeople/WhyItsImportant/Slide3>.

3 Questions and Answers About Cancer in the Workplace and the Americans with Disabilities Act (ADA), page 1, Equal Employment Opportunity Commission, available at http://www.eeoc.gov/facts/cancer.html#_ftnref4.

working while undergoing treatment. Other patients will need to take time off for treatment, but may be able to return to work once treatment is over.

How Does the ADA Apply to Employees with Cancer?

The Americans with Disabilities Act

In 1990, Congress passed the Americans with Disabilities Act (ADA). The ADA prohibits discrimination in all areas of the employment process, including the application process, testing, hiring, assignments, medical exams, promotions, layoffs, compensation, benefits, and leave time. As a civil rights law, it was designed to level the playing field in the employment arena – so that people would not be denied jobs, or the benefits thereof, on the basis of a disability.

To Whom Does the ADA Apply?

- **Employers** --The ADA applies to private employers with 15 or more employees. It also applies to employment agencies, labor organizations, and to local and county governments.
- **Applicants/Employees** -- The ADA provides protection to a “qualified individual with a disability.” This is a two-pronged test. *An individual must be both disabled and qualified.*

An individual with a disability under the ADA is an individual with a physical or mental impairment that substantially limits a major life activity. The major life activity can be, among other things, caring for oneself, walking, talking, communicating, thinking, sleeping, breathing, concentrating, or working. In addition, a major life activity includes the operation of a major bodily function, such as normal cell growth. A person may also have a disability if she has a record of an impairment or

if others regard her as having an impairment. Thus, someone with a history of a cancer diagnosis may be protected under the ADA.

If the impairment is episodic or in remission, it nevertheless constitutes a disability if it would substantially impact a major life activity when active. In determining whether an impairment is substantially limiting, mitigating measures such as the use of medications to alleviate or eliminate symptoms are not taken into account.

To be entitled to protection, the individual must also be “qualified.” This means the individual must be able to perform the essential functions of the job with or without a reasonable accommodation. For example, if a receptionist is unable to speak on the telephone because of a disability and no adaptive equipment is available, this person might not be able to perform the essential functions of the job. If a truck driver’s disability prevents him or her from moving heavy materials from a loading dock to a truck, that person may not be a qualified individual unless a reasonable accommodation is available, because moving the heavy materials may be an essential function of the job.

But, suppose the employee with cancer is in a sales position and can handle the telephone contacts, the individual appointments, all the paperwork and the computer work. However, this salesperson cannot move boxes of sales materials from her office to her car. This employee may still be a qualified individual with a disability. Another person could help move the boxes to her car as a reasonable accommodation under the ADA, or moving the boxes may be a marginal function of the job. The employer should identify both the essential and marginal functions of a job so that one may determine whether an individual with a disability is qualified to perform those functions deemed essential.

How Can Reasonable Accommodations Work for Both the Employer and the Employee?

If a person is a qualified individual with a disability, s/he is entitled to a reasonable accommodation, unless it would be an undue hardship for the employer. Some examples of reasonable accommodations include a flexible schedule, a light duty position, an extended period of leave time, or reassignment to a vacant position. Under some court interpretations of the ADA, attendance at a job can be an essential function of the job; other courts have held, however, that an extended period of paid or unpaid leave time may be a reasonable accommodation. Each situation must be assessed on an individualized basis, including whether the accommodation would impose an undue hardship upon the employer.

The ADA does not specifically provide a list of reasonable accommodations— it is meant to be a dialogue between the individual and employer based upon the specific type of job and the nature, size, and resources of the company involved. Additionally, accommodations are only required for known disabilities of the individual—the employer must first be aware that an individual is seeking a reasonable accommodation under the ADA. It is also generally up to the individual needing the accommodation to make suggestions to the employer about the type of reasonable accommodations s/he is requesting.

Some sample accommodations that might be made for a person with cancer are:

- leave for doctors' appointments and/or to seek or recuperate from treatment
- periodic breaks or a private area to rest or to take medication
- adjustments to a work schedule
- permission to work at home
- modification of office temperature

- permission to use work telephone to call doctors
- reallocation or redistribution of marginal tasks to another employee
- reassignment to another job

What Else Does the ADA Govern?

If a prospective employee is applying for a new job, s/he does not need to disclose her medical condition. S/he can ask for the reasonable accommodation after s/he gets the job. If a person has a visible impairment, the prospective employer can only ask the potential employee how s/he would perform the essential job functions, with or without a reasonable accommodation, and ask for a demonstration.

If a person receives a conditional job offer based upon undergoing a medical examination, such an examination must be required of all employees in the same job category. The offer cannot be rescinded unless the medical examination indicates that the person cannot perform the essential functions of the job with or without a reasonable accommodation.

Finally, any requests for reasonable accommodations under the ADA are to be kept confidential. The request and any information obtained from the individual in support of the request should be kept in a file that is kept separate and apart from an individual's personnel file.

What Other Laws May Apply in the Workplace?

The ADA works hand in hand with the Family and Medical Leave Act.⁴ The FMLA provides for a person to take up to 12 weeks of unpaid medical leave to care for a seriously ill spouse, parent or child, and up to 26 weeks if that fam-

ily member is a service member who is recovering from a serious injury of illness incurred while on active duty. It also allows for up to 12 weeks of unpaid leave for a serious medical condition of the employee. Although unpaid (unless the employer requires use of or the employee opts to use available paid time off or sick leave), this is job-protected leave, which means the employee returns to the same or an equivalent position. This law also requires the employer to keep an employee's benefits intact and may not require the employee use COBRA to continue their benefits coverage.

The FMLA applies to employers with 50 or more employees. Covered employees must have been employed at least a year and have worked a minimum of 1,250 hours in that year, though the 12 months do not have to be consecutive. Sometimes, a person will need leave for a period of time longer than that provided by the FMLA. In that case, a person may be able to take an extended period of leave as a reasonable accommodation under the ADA.

Additionally, state laws may provide protections equal to or greater than those under the ADA or FMLA. Each employer should review the applicable state laws to determine the employer and employee's rights and responsibilities under these laws.

Working Together

Cancer can be a life-altering experience, for the person with cancer and also for family, friends, employers, and co-workers. By communicating with each other and working together, employers and employees can successfully work toward employees maintaining their employment status, while employers continue to enjoy positive business results.

⁴ 29 U.S.C.A §§2601-2615 (2001).

Resources

ADA Disability and Business Technical
Assistance Center Hotline –
800.949.4232 (voice/TTY)

American Cancer Society
(800) ACS-2345 (800.227.2345)
<http://www.cancer.org/>

Cancer and Careers
<http://www.cancerandcareers.org/>
Website resource for working women with
cancer. Includes information for employers,
coworkers, healthcare professionals and the
woman with cancer.

Cancer Legal Resource Center
Disability Rights Legal Center
Phone: 866.843.2572
Email: CLRC@LLS.edu
Fax: 213.736.1428
TTY: 213.736.8310
<http://www.cancerlegalresourcecenter.org/>

Job Accommodation Network (JAN)
800.526.7234 (voice)
877.781.9403 (TTY) or visit <http://askjan.org>
Employers can speak with Human Factors
Consultants about an individual with a dis-
ability.

Equal Employment Opportunity Commission
131 M Street, NE, Washington, DC 20507
Technical Assistance: 800.669.4000 (voice);
800.669.6820 (TTY)
Publications: 800.669.3362 (voice);
800.669.3302 (TTY)
For online information: www.eeoc.gov

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The U.S. Equal Employment Opportunity Commission has reviewed it for accuracy. However, opinions about the Americans with Disabilities Act (ADA) expressed in this material are those of the author, and do not necessarily reflect the viewpoint of the Commission or the publisher. EEOC interpretations of the ADA are reflected in its ADA regulations (29 CFR Part 1630), Technical Assistance Manual for Title I of the Act, and Enforcement Guidance.

Cornell University is authorized by NIDRR to provide information, materials, and technical assistance to individuals and entities that are covered by the Americans with Disabilities Act (ADA). You should be aware that NIDRR is not responsible for enforcement of the ADA. The information, materials, and/or technical assistance are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the Act, nor binding on any agency with enforcement responsibility under the ADA.

The Equal Employment Opportunity Commission has issued enforcement guidance which provides additional clarification of various elements of the Title I provisions under the ADA. Copies of the guidance documents are available for viewing and downloading from the EEOC web site at:
<http://www.eeoc.gov>

About this Brochure

This brochure is one of a series on human resources practices and workplace accommodations for persons with disabilities edited by Susanne M. Bruyère, Ph.D., CRC, SPHR, Director, Employment and Disability Institute, Cornell University ILR School.

It was written in August 2001 by Barbara Ullman Schwerin, Esq., Director, Cancer Legal Resource Center, a joint program of the Western Law Center for Disability Rights and Loyola Law School, Los Angeles, CA. Research assistance was provided by Daniel Chang, Loyola Law School. It was updated in 2009 by Joanna Morales, Director, Cancer Legal Resource Center.

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The full text of this brochure, and others in this series, can be found at www.hrtps.org.

More information on accessibility and accommodation is available from the ADA National Network at 800.949.4232 (voice/ TTY), www.adata.org.

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