

CANCER SURVIVORS AND EMPLOYMENT

Work fulfills many needs: financial security, health insurance, self-worth. Despite their numbers, some survivors still face job discrimination due to fears about cancer and its treatment. Cancer survivors' right to work is better protected than ever before by federal and state laws that protect employment rights. However, a cancer history can still create barriers to finding, keeping, or changing jobs.

INTERVIEWS

Careful preparation for job applications and interviews can help you avoid job discrimination. Make an honest assessment of your skills and job history when deciding what job to apply for. Working with a job counselor can help you prepare your resume and practice interviewing skills. Apply only for jobs that you are able to do, as employers have the right to reject you if you are not qualified for the job. If you have a choice, choose to work for an employer with a large workforce as they are less likely to discriminate, and it will be easier to get life and health insurance, as this survivor notes:

I didn't mention my cancer history in my interview. But, of course, I had to during the physical after they offered me the job. I was petrified I'd lose the job, but I didn't. They didn't say anything about my cancer history, and I got good health insurance with the job. All that worry for naught. In a smaller company, I might not have been that fortunate because one ill employee can skew the whole plan.

Unless you have specific mental or physical limitations that affect the type of work you are applying for, your cancer history should have no bearing on your qualifications for the job. An employer cannot refuse to hire you simply because you are a cancer survivor. Knowing your rights and preparing strategies for your job interview can make the difference between being hired and being rejected. The following are some suggestions on how to conduct yourself during a job interview.

- Do not volunteer information about your cancer history. Employers only have the right to determine if you are capable of performing the job. They do not have the right to ask about personal or confidential information during an interview.

- Under the Americans with Disabilities Act, employers cannot ask about medical history, require you to take a medical exam, or ask for medical records unless they have made a job offer.
- Do not lie on a job application or during an interview. You can be fired later if your dishonesty is uncovered. Instead, answer only the specific questions asked. Try to steer the conversation towards your current ability to do the job rather than explain your past.
- Do not ask about health insurance until you have been offered a job. Before accepting the job, get the benefits information and review it thoroughly.
- If your medical history becomes an issue after the job offer, get a letter from your physician that briefly outlines your treatment and stresses your current good health and ability to do the job. Ask the doctor to let you review the letter prior to giving it to your potential employer. Some survivors who write well prepare these letters themselves and give them to their doctors for a signature.
- Even if you have no disabilities, laws protecting disabled persons apply to all survivors of cancer. These laws grant you certain rights whether you consider yourself disabled or not.

This survivor reveals a medical history that includes cancer very cautiously:

I've had some problems getting jobs due to my cancer history. I applied for several jobs in the aircraft industry for which I was well qualified. They were enthusiastic until they did a complete medical; then they didn't hire me. It's a form of discrimination. But, I didn't want to fight over it so I got another job. After that, I just didn't put it down on the application. If I was directly asked if I had ever had cancer, I said "Yes, but I was only nine months old."

DISCRIMINATION

Job discrimination can spell economic catastrophe for cancer survivors because most health insurance is obtained from employment. Under federal law and many state laws, an employer cannot treat a survivor differently from other employees because of a history of cancer except in certain circumstances involving health, life, and disability insurance.

What appears to be a safe environment isn't always that way, as this survivor discovered:

Discrimination can take many forms, often appearing in subtle remarks or practices rather than the anticipated overt forms which most often come to mind when we think of the issue. In my case, I found myself in a seemingly "safe" situation--a supervisor with an M.D., no need to mention my history, etc. Yet things began to change after I revealed my history of cancer during a brief illness related to my postsplenectomy status. Since then, I have frequently been called at

home or transferred to her line upon calling in sick for close questioning about my symptoms, conversations with my hematologist, tests run or not run, medications, and other personal matters which I feel extremely uncomfortable discussing with someone whom I consider a business colleague.

Despite fantastic performance evaluations and award nominations, since a longer absence for a more severe infection a few months ago and decreased willingness to answer her questions, I have been increasingly criticized, often for seemingly irrelevant matters. Because of the increasingly hostile environment, I'm currently seeking other employment.

I would highly recommend to other survivors that they document everything-- details of interview processes, comments about performance, exact hours worked, etc., as the documentation I've had has helped me in this nightmarish situation. In my next job, I don't plan to reveal my history unless absolutely forced to do so, and then, I plan to back the discussion with some solid positive evidence on how irrelevant it is to my work.

AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act (ADA) prohibits many types of job discrimination by employers, employment agencies, state and local governments, and labor unions. In addition, most states have laws that prohibit discrimination based on disabilities, although what these laws cover varies widely.

The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination based on actual disability, perceived disability, or history of a disability. Any employer with 15 or more workers is covered by the ADA.

The ADA requires that:

- The employer may not make medical inquiries of an applicant, unless:
- The applicant has a visible disability, e.g., amputation, or
- The applicant has voluntarily disclosed his cancer history.
- Such questions must be limited to asking the applicant to describe or demonstrate how she would perform essential job functions. Medical inquiries are allowed after a job offer has been made, or during a pre-employment medical exam.
- The employer must provide “reasonable accommodations” unless it causes undue hardship. An accommodation is a change in duties or work hours to help employees during or after cancer treatment. An employer does not have to make these changes if they would be very costly, disruptive, or unsafe.
- The employer may not discriminate because of family illness. For instance, if an employee has a child who has cancer, they cannot treat the employee differently because they think the employee will miss work or file expensive health insurance claims.

- The employer is not required to provide health insurance, but if they do give health insurance, they must do so fairly to all employees.

The Equal Employment Opportunity Commission (EEOC) enforces Title I (employment) of the ADA. Call (800) 669-4000 for enforcement information and (800) 669-3362 for enforcement publications. Other sections are enforced by, or have their enforcement coordinated by, the US Department of Justice (Civil Rights Division, Public Access Section). The Justice Department's ADA web site is www.usdoj.gov/crt/ada/adahom1.htm.

If you feel that you have been discriminated against due to your disability or a relative's disability, contact the EEOC promptly. In the US, a charge of discrimination generally must be filed within 180 days of when you learned of the discriminatory act. Although you do not need an attorney to file a complaint, an attorney experienced in job discrimination can help you draft the complaint to make it more likely to be successful.

This survivor feels that the strain of hiding a health history that has included cancer is not worth the margin of safety it provides:

Despite two episodes of discrimination, I have gone through life sort of blithely telling people about my history because it is so much a part of who I am. I can't separate out the person I am now from the life events that have shaped me. And battling and surviving Hodgkin's disease was in many ways a major influencing factor in my adult life. So for better or worse, I don't hide the fact from people and, overall, I would say most have been very accepting and kind. A few have gone out of their way to help me, finding me (much to my amazement) courageous and strong, and only a few have stood in my way, fearful of my history and past.

THE FEDERAL REHABILITATION ACT

The Federal Rehabilitation Act bans public employers and private employers that receive public funds from discriminating on the basis of disability. The following employees are not covered by the ADA but are by the Rehabilitation Act:

- Employees of the executive branch of the federal government (Section 501 of the Rehabilitation Act)
- Employees of employers who receive federal contracts and have fewer than 15 workers (Section 503 of the Rehabilitation Act)
- Employees of employers who receive federal financial assistance and have fewer than 15 workers (Section 504 of the Rehabilitation Act)

The Federal Rehabilitation Act is enforced by the Civil Rights Division of the Department of Justice, (202) 514-4609.

If you are a federal employee (Section 501), you must file a claim of the job action against you within 30 days. If you are an employee whose employer has a federal contract (Section 504), you must file a complaint within 180 days with your local Office of the US Department of Labor, Office of Federal Contract Compliance Programs. If your employer receives federal funds (Section 504), you have up to 180 days to file a complaint with the federal agency that provided funds to your employer, or you can file a lawsuit in a federal court.

FAMILY AND MEDICAL LEAVE ACT

In 1993, the Family and Medical Leave Act (FMLA) became federal law. FMLA protects the job security of workers in large companies who must take a leave of absence to care for a seriously ill child or who must take medical leave because the employee is unable to work because of his or her own medical condition or for the birth or placement of a child for adoption or foster care. An employee must have worked 25 hours per week for one year to be covered. The Family and Medical Leave Act:

- Applies to employers with 50+ employees within a 75-mile radius.
- Provides 12 weeks of unpaid leave during any 12-month period to care for seriously ill self, spouse, child, or parent. In certain instances, the employee may take intermittent leave, such as reducing his or her normal work schedule's hours.
- Requires the employer to continue to provide benefits, including health insurance, during the leave period.
- Allows leave when a health condition renders the employee unable to perform the functions of the position.
- Requires the employee to make reasonable efforts to schedule leave so it will not disrupt the workplace.
- Requires the employer to return the employee to the same or equivalent position upon return from the leave. Some benefits, such as seniority, need not accrue during periods of unpaid FMLA leave.
- Requires the employee to give 30-day notice of the need to take FMLA leave when the need is foreseeable.

FMLA is enforced by complaints to the Employment Standards Administration, Wage and Hour Division, US Department of Labor, or by private lawsuit. The nearest office of the Wage and Hour Division may be located by looking in the US Government pages of your telephone directory. You have up to two years to file an FMLA complaint or a lawsuit.

The District of Columbia and all states except Alabama and Mississippi have laws banning discrimination against people with disabilities. The type of protection varies from state to state. For information on your state laws,

contact the state agency that enforces employment rights, the local bar association, the National Coalition for Cancer Survivorship, or your state chapter of the American Cancer Society. To file a complaint under state law, contact your state division on civil rights or human rights division, or call the EEOC Public Information System at (800) 669-4000.

For more detailed information on laws governing insurance and jobs, read *A Cancer Survivor's Almanac*, Barbara Hoffman, JD, ed., or contact the National Coalition for Cancer Survivorship at www.canceradvocacy.org.

This fact sheet is excerpted from the Onconurse.com Fact Sheet, "Childhood Cancer Survivors and Employment" available at www.onconurse.com/index.html