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## **Cancer and Workplace Discrimination** [1]

This section has been reviewed and approved by the [Cancer.Net Editorial Board](#) [2], 10/2012

 [Listen to the Cancer.Net Podcast: Cancer and the Workplace](#)[3], adapted from this content.

### **Key Messages:**

- Whether you can work through treatment or return to work after treatment depends on the nature of your work and how quickly you recover.
- Laws are in place to protect your employment if you are unfairly treated because of a cancer diagnosis or cancer treatment.
- Take steps to avoid or prevent workplace discrimination while living with cancer.

Many people are able to continue working during cancer treatment, or they return to their jobs after active cancer treatment ends. Others have physically challenging jobs that are difficult to perform while undergoing treatment, or they have limitations that prevent them from returning to work after treatment. Your decisions about work during and after cancer treatment will likely depend on your financial resources, the type of work you do, and the nature of your recovery.

People who work during treatment or return to work after treatment may encounter obvious or subtle discrimination in the workplace. For example, some employers and colleagues may assume that a person's productivity will decrease or that performance will fall below the company's expectations. Other types of discrimination may include receiving a demotion for no clear reason, having an earned job promotion withheld, being overlooked for consideration in a new position, and finding a lack of flexibility in response to requests for time off for medical appointments.

Some people are fortunate to have an understanding workplace and respectful colleagues and supervisors. However, it is important to understand the ways that you and your employment are protected if you feel you are unfairly treated as a result of a cancer diagnosis or treatment.

### **The Americans With Disabilities Act**

The [Americans With Disabilities Act](#) [4] (ADA), enforced by the Equal Employment Opportunities

Commission (EEOC), prohibits all discrimination related to a disability, a perceived disability, and a history of disability. It requires employers to make reasonable accommodations in the workplace for qualified individuals with a disability and protects employees from being asked personal questions other than job-related medical questions. Under the ADA, employers are also prohibited from discriminating against a person whose family member has a disability, and they are required to treat all employees fairly and equally.

The [Job Accommodation Network](#) [5] (JAN) is a free consulting service that provides information about job accommodations, the ADA, and the employability of people with disabilities.

### **The Family Medical Leave Act of 1993**

The [Family Medical Leave Act](#) [6] (FMLA) of 1993 provides protection during medical leave (leave taken when an employee is ill) and family leave (leave taken when an employee is caring for a spouse, child, or parent who is ill). It includes the following provisions:

- A total of 12 weeks unpaid leave for serious illness
- Continued benefits during medical or family leave
- The option to use accrued vacation and sick leave during medical or family leave

The FMLA can only be enforced when certain requirements are met. For example, the employer must have more than 50 employees. In addition, an employer is not required to hold the position open if a person uses more than 12 weeks of leave in a year. Because states and districts operate differently, consider contacting your local attorney general's office or an employment lawyer for more information.

### **The Genetic Information Nondiscrimination Act of 2008**

The [Genetic Information Nondiscrimination Act](#) [7] (GINA) is another law designed to protect you from medical-related discrimination. It prohibits employers from hiring, firing, or making changes to a person's job duties based on that person's genetic information. It also prohibits employers from requesting or obtaining a person's genetic information or genetic information about the person's family. In addition, it prohibits insurers from requesting a person's genetic information and using it to determine eligibility or costs.

Learn more about [genetics](#) [8] and [genetic testing](#) [9].

### **Telling your employer about your cancer diagnosis**

To receive job protection under these acts, most people will need to inform their employers about a cancer diagnosis. But people who are self-employed do not need to tell current or potential clients about a cancer diagnosis or treatment. Of course, disclosure is always a personal decision.

### **Handling an incident of workplace discrimination**

You have the option to file a legal claim in all cases of workplace discrimination. However, consider taking the following steps before taking legal action:

- Discuss the situation with your employer, the human resources department, or an employee assistance coordinator. Ask what types of reasonable accommodations can be made for your job, based on your situation. These accommodations may include flexible or reduced work hours, physical adjustments to your workspace or office, or modifications to your job responsibilities.
- Get advice from a legal expert to identify whether the incident can be classified as an act of discrimination.
- Seek help from a local cancer [support group](#) [10] and from your doctor. Other people in the community may have faced similar issues, and it may help to talk with them.
- Keep a detailed, descriptive record of all occurrences of discrimination, including dates, times, locations, people involved, and actions taken.

If you believe an act of discrimination has occurred, the law requires you to send a report of the complaint to a local EEOC office within 180 days of the incident. This is called a statute of limitations or the deadline for filing a complaint. However, if the act of discrimination is a reduction in pay because of sex, race, national origin, age, religion, or disability, this statute of limitations may be based on actions other than the original incident. The [Lily Ledbetter Fair Pay Act of 2009](#) [11] states that each time a person is affected by a discriminatory pay decision or action—including the time when the decision is made or action begins and each time the payment occurs—it counts as an act of discrimination. Contact an attorney or the EEOC for specific legal information based on the circumstances of your complaint.

## **Preventing workplace discrimination**

Consider taking the following steps to prevent workplace discrimination when you reenter the workplace after cancer treatment:

- Catch up on new projects or developments that occurred while you were gone.
- Refresh job skills, if necessary, by reviewing past work assignments or attending classes or workshops.
- Seek [counseling](#) [12] from a professional about making the transition back to work, or get advice and tips from other cancer survivors through a [support group](#) [10].
- Ask your doctor to draft a letter stating your ability to return to work.

If you are seeking employment and submitting a resume, consider organizing your accomplishments by category (such as project management) rather than by dates of employment, which takes the focus off of an employment gap. In response to questions about an employment gap, have a short, positive answer prepared. For example, you may say, "I wasn't working for health reasons. But that is behind me, and I am ready to work." You are not required to talk about your cancer diagnosis or treatment in a job interview.

As you feel more comfortable about your experience with cancer, you may want to serve as an [advocate](#) [13], talking with employers about the challenges and opportunities facing cancer survivors. This may reduce the likelihood of workplace discrimination for others.

## **More Information**

[Going Back to Work After Cancer](#) [14]

[Cancer in Young Adults: Returning to Work After Cancer](#) [15]

[Finding a Job After Cancer](#) [16]

## **Additional Resources**

[Cancer and Careers](#) [17]

[Cancer Legal Resource Center](#) [18]

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### **Links:**

- [1] <http://www.cancer.net/survivorship/life-after-cancer/cancer-and-workplace-discrimination>
- [2] <http://www.cancer.net/about-us>
- [3] [http://www.cancer.net/patient/Multimedia/Podcasts/Files/Cancer\\_and\\_the\\_Workplace.mp3](http://www.cancer.net/patient/Multimedia/Podcasts/Files/Cancer_and_the_Workplace.mp3)
- [4] <http://www.ada.gov/>
- [5] <http://www.jan.wvu.edu/>
- [6] <http://www.dol.gov/whd/fmla/index.htm>
- [7] <http://www.genome.gov/10002328>
- [8] <http://www.cancer.net/node/24864>
- [9] <http://www.cancer.net/node/24895>
- [10] <http://www.cancer.net/node/25383>
- [11] [http://www.eeoc.gov/laws/statutes/epa\\_ledbetter.cfm](http://www.eeoc.gov/laws/statutes/epa_ledbetter.cfm)
- [12] <http://www.cancer.net/node/24699>
- [13] <http://www.cancer.net/node/24403>
- [14] <http://www.cancer.net/node/24549>
- [15] <http://www.cancer.net/node/25216>
- [16] <http://www.cancer.net/node/24524>
- [17] <http://www.cancer.net/node/24457>
- [18] <http://www.cancer.net/node/24700>