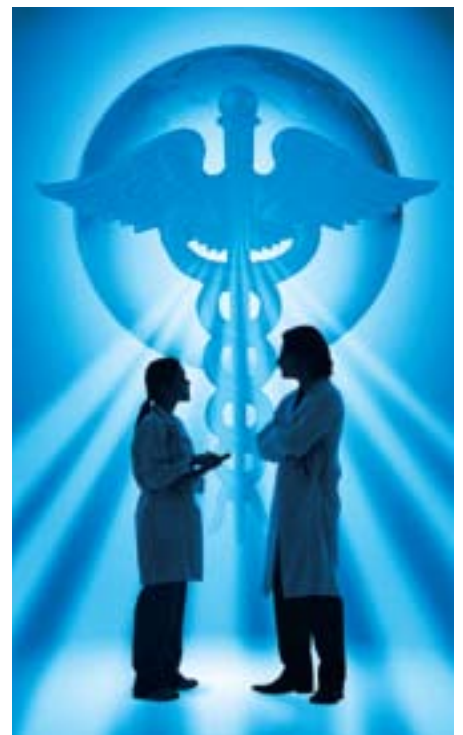




# Accommodating Employees with Cancer: It's the Law

Millions of workers are cancer survivors. It's vital to understand their needs and avoid discriminating against them.

By King Kam & Brian H. Kleiner



Cancer isn't the death sentence it once was. More than 8 million Americans are cancer survivors. For many, coming back to work as soon as possible is a way to return stability to their lives. Research shows that 80% of people with cancer return to work and that they're as productive on the job as other workers.<sup>1</sup> Yet that same research shows that one in four cancer survivors experiences some sort of employment discrimination.

## Cancer = Disabled?

The Americans with Disabilities Act (ADA) bans discrimination against qualified workers with disabilities or histories of disability. According to the Act, a qualified person with a disability is a person who meets a job's requirements and can perform its essential functions with or without reasonable accommodation. Although the ADA defines the term disability, it doesn't include a list of conditions that are always considered disabilities. Instead, each case is considered on an individual basis.

According to the Equal Employment Opportunity Commission (EEOC), cancer isn't always considered a disability. To be deemed

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a disability, it must be substantially limiting. But according to the University of Pennsylvania Cancer Center's interpretation of the ADA, anyone who has had cancer is considered disabled—and even those who are caring for someone with cancer may be covered by the ADA.

The ADA requires an employer with 15 or more employees to provide reasonable accommodation for people with disabilities, unless doing so would cause undue hardship. An employer may need to make three types of changes to satisfy the "reasonable accommodation" law:

- **Change the job application process** so that people with disabilities can participate.
- **Modify the work environment or the way a job is usually done** so that people with disabilities can perform the essential functions of their jobs.
- **Make changes to assure** that people with disabilities have rights equal to those of other employees.

## How Should You Accommodate?

What's the best way to accommodate an employee? The answer depends on the facts of each case. The steps are usually as follows:

- **The worker tells the employer** that a change is needed because of a medical condition.
- **The worker and employer use an informal process** to clarify what the worker needs.
- **The employer decides if accommodations can be made** or if doing so would cause undue hardship to the organization. Undue hardship is defined as a significant difficulty, such as the unavailability of someone to design a unique product, or an expense that would be a financial burden on the organization.
- **Unless the employer can prove undue hardship**, the accommodations are made. Whenever possible, the accommodation method preferred by the worker should be used.

## Expensive to Accommodate?

The employer is obligated to accommodate cancer survivors unless doing so will require undue difficulty or expense. But not all people with cancer need accommodations, and many need only a few accommodations. Job accommodations are usually not high-priced and may be as simple as rearranging equip-

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ment. According to the Job Accommodation Network, 20% of accommodations involve no expense, and 48% cost under \$500. At the same time, most employers report benefits which amount to over \$5,000.<sup>2</sup> Here are some sample accommodations:

- **A nonprofit employee had to undergo treatment for cancer** during working hours. She was offered a flexible schedule so that she could attend therapy while continuing to work full-time.
- **A teacher with cancer was having trouble grading students' papers.** The school provided a closed-circuit TV system, which let him magnify the print on the papers.
- **A worker whose job involved delivering supplies** was exhausted from cancer treatment. The organization bought him a three-wheeled scooter to reduce walking.
- **A psychiatric nurse with cancer** had problems dealing with job-related stress. He was granted a temporary transfer and referred to the employee assistance program for emotional support and stress management tools.

### Which Rules to Follow?

Here are things you as an employer can do to assure that you aren't

breaking any discrimination laws:

- **Treat employees with cancer as disabled**, and follow the requirements of the Americans with Disabilities Act.
- **Do research** into cancer and ways to accommodate people with the disease.
- **Design your pre-employment exams** so they don't screen out people with disabilities such as histories of cancer. You may ask medical questions only after you offer someone employment and only if the questions relate specifically to the job.
- **Keep in mind** that the turnover rate, absenteeism, and work performance of people with a cancer history are much the same as unaffected workers. Inform others in your organization about these facts.
- **Learn more** about ways to accommodate people with cancer. You will find that adjustments are typically low-cost and easy to implement.
- **Let people with cancer know** whether your organization's insurance plan covers cancer treatment. Remember that a good insurance plan is an excellent incentive to attract and retain good employees.
- **Put an anti-discrimination policy in place**, and enforce it.

Twenty percent of accommodations involve no expense.

- **Educate employees** with a booklet that gives information about cancer and how to deal with co-workers with cancer.
- **Tell people with cancer** where they can turn for emotional and financial help. Examples of such resources include:
  - American Cancer Society
  - Job Accommodation Network
  - American Institute for Cancer Research
  - Cancer Care, Inc.
  - Cancer Information Service
  - National Cancer Institute
  - National Coalition for Cancer Survivorship
- **Do all you can** to reduce tension for employees and provide training and resources they can use to alleviate their own stress (see "Help Cancer Survivors Adapt to the Workplace" on page 23).

### What Are the Benefits?

There are many reasons to accommodate employees with cancer or histories of cancer. Here are a few:

- **Job accommodations can reduce worker's compensation** and other insurance costs, because insurance companies will see less injury risk if the employer provides a safer environment for those with disabilities.
- **A tax credit is available** to help smaller organizations make accommodations required by the ADA. A tax deduction is also available for the expense of fixing barriers, such as steps or inaccessible parking spaces.<sup>3</sup>
- **Making accommodations increases the pool of qualified employees** and creates opportunities for people with functional limitations.
- **Being as accommodating as possible will reduce the chances** of being sued for discrimination.
- **Employees will notice** that your organization cares about their



health and provides an excellent working environment. Productivity, morale, and loyalty to the organization will increase. ■

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#### FOOTNOTES

<sup>1</sup> See "Earning a Living" online at <http://cancernet.nci.nih.gov>.

<sup>2</sup> See "Discover the Facts about Job Accommodations" at <http://jan.wvu.edu/english/accfacts.html> and "Accommodating People with Cancer" at <http://www.jan.wvu.edu/media/cancer.html>.

<sup>3</sup> See "Tax Incentives" at [www.jan.wvu.edu/media/tax.html](http://www.jan.wvu.edu/media/tax.html).

You may ask medical questions only after you offer someone employment.



#### Help Cancer Survivors Adapt to the Workplace

For more on accommodating employees with cancer and avoiding employee lawsuits, see these *Nonprofit World* articles at [www.snpo.org/members](http://www.snpo.org/members):

- **Nonprofits and the Americans with Disabilities Act** (Vol. 11, No. 2)
- **How to Reduce Employee Stress** (Vol. 24, No. 3)
- **Employee Assistance Programs** (Vol. 4, No. 5)
- **Do Your Job Descriptions Comply with ADA?** (Vol. 11, No. 3)
- **The Need for Anti-Bias Policies** (Vol. 22, No. 5)
- **Protect Yourself Against Employee Lawsuits** (Vol. 15, No. 2)
- **How to Accommodate Disabilities under ADA** (Vol. 18, No. 5)
- **A Three-Step Approach to Managing Workplace Stress** (Vol. 22, No. 1)

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If you have any questions, contact Jason Chmura at [jchmura@snpo.org](mailto:jchmura@snpo.org).