You Are Not Alone
Diagnosis: A Very Difficult Time
Concerns About Ability to Continue to Perform Job

- After addressing key health-related questions and choosing a plan that is best for your health, consider how your condition and treatment may affect your work.
- Consider providing your doctor your job description.
- Might need to ask your doctor for documentation to request accommodation from your employer.

→ Note: First you need to decide if you are going to tell your employer about your diagnosis.
Whether To Tell Your Employer That You Have (Or A Family Member Has) Cancer

• Factors to Consider:
  o The type of workplace: friendly and close-knit or formal and business-focused?
  o How has the employer handled other employees’ diagnoses?
  o Nature of prognosis – will you need to take leave for treatment?

• Keep a journal of all conversations/copies of emails with employer about your condition and requests for accommodation.

→ Note: Even if you decide to tell your employer, you get to decide whether and how to tell co-workers.
# Pros And Cons Of Telling Your Employer About Diagnosis

<table>
<thead>
<tr>
<th>Pros</th>
<th>Cons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facilitates discussion about accommodations.</td>
<td>Fear of retaliation.</td>
</tr>
<tr>
<td>Leave (paid or unpaid) or flex-time.</td>
<td>Fear of isolation.</td>
</tr>
<tr>
<td>Employer can’t use disability-related</td>
<td>If employer doesn’t know about condition and work suffers due to</td>
</tr>
<tr>
<td>performance issues as basis for poor review.</td>
<td>condition, may be used as basis for poor review.</td>
</tr>
<tr>
<td>Employer can offer information about benefits.</td>
<td></td>
</tr>
<tr>
<td>Support from professional community.</td>
<td></td>
</tr>
</tbody>
</table>
### Applicable Leave Laws

<table>
<thead>
<tr>
<th>Law</th>
<th>Employers Subject to Law</th>
<th>Leave Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADA</td>
<td>15+ employees</td>
<td>No Limit – leave as a “reasonable accommodation”</td>
</tr>
<tr>
<td>WLAD</td>
<td>8+ employees</td>
<td>No Limit – leave as a “reasonable accommodation”</td>
</tr>
<tr>
<td>FMLA and WFLA</td>
<td>50+ employees</td>
<td>12 weeks</td>
</tr>
<tr>
<td>WA Sick and Safe Leave</td>
<td>1+ employee (exemptions apply)</td>
<td>1 hour for every 40 hours worked</td>
</tr>
</tbody>
</table>
The Interactive Process

• Legal term for the discussion between employer and employee that must take place when employee identifies potential need for accommodation.

• Good faith discussion between employer and employee about possible accommodations that will allow employee to perform the essential functions of her job.

 Note: No special language required. Plain language request triggers the employer’s responsibility to engage.
Reasonable Accommodation – What’s Covered?

- An employer must provide a reasonable accommodation that is needed because of:
  - The limitations caused by cancer itself
  - The side effects of medication or treatment for the cancer
Reasonable Accommodation – What’s Available?

- Examples of accommodations:
  - Time off (continuing or intermittent) for treatment
  - Working from home
  - Physical restrictions – lifting restrictions or periodic breaks to rest or take medication
  - Reassignment to vacant position when no longer able to perform current job
  - Accommodations for side effects of treatment (chemo brain; depression related to diagnosis or prognosis)

→ Note: Employer can request documentation to support need for accommodation.
The Interactive Process – Employee’s Responsibility

• Employee must actively participate in interactive process.
• Failure to provide employer with requested documentation may result in accommodation not being provided or in some cases, termination.
• Interactive process is an ongoing obligation – failure of an attempted accommodation does not excuse employer from further participation in process.

→ Note: Employer doesn’t have to provide the accommodation requested by employee if another will be sufficient to allow her to perform essential functions.
Performance Problems After Diagnosis – What Can Employers Ask?

- Employer may ask disability-related questions or require an employee to have medical exam when:
  - Employer knows about employee’s medical condition,
  - Has observed performance problems, and
  - Reasonably believes that the problems are related to medical condition.

- Employer may also ask for medical information when it has observed symptoms or received reliable information from someone else, indicating that the employee may have a medical condition that is causing performance problems.
Employers Must Keep Medical Information Confidential

- Can employer tell co-workers about employee's condition in response to questions about "special treatment?" No.
- If employee's appearance changes and employer receives questions from co-workers about employee, can employer explain that she has cancer? No.
Applying for a Job After Cancer

- Can employer ask you whether you’ve had cancer? No.
- Do you have to disclose that you’ve had cancer before accepting a job? No.
- Can employer ask follow-up questions if you voluntarily reveal you’ve had cancer? Not unless employer reasonably believes you will require an accommodation to perform the job.
- Can employer require you to undergo medical exam before taking job? Only when all applicants are required to undergo exam.
- Can employer exclude you from a job for safety reasons? Only when you a “significant risk of substantial harm” to yourself or others, and that risk cannot be eliminated or reduced through reasonable accommodation.
What About Pot?

- State and federal courts have held that employer can terminate or refuse to hire employee who tests positive for THC (also, federal law requires a drug-free workplace for federal contractors).
- This includes medical marijuana because it is a Schedule I drug.

→ **Note:** Marinol is a Schedule III synthetic THC drug (and therefore shows up on a drug test like marijuana), but can be prescribed by physician, and therefore not subject to zero-tolerance policies.
When Things Go Poorly

• Harassment, discrimination, and retaliation based on an individual having cancer, having had cancer, or being perceived to have or have had cancer is illegal.

• Employees should report this conduct to their supervisor or Human Resources.

• Employees and applicants may file a charge with the Washington State Human Rights Commission or the Equal Employment Opportunity Commission, who will investigate the claim and may work to resolve it.
Questions & Answers about Cancer in the Workplace and the ADA
https://www.eeoc.gov/laws/types/cancer.cfm

Washington Human Rights Commission -
https://www.hum.wa.gov/

Seattle Human Rights Commission -
https://www.seattle.gov/humanrights

Labor and Industry –
https://www.seattle.gov/humanrights

klipscomb@trueblue.com