

Cancer, the Workplace, and the ADA

The Equal Employment Opportunity Commission (EEOC) has recently issued its *Questions and Answers About Cancer in the Workplace and the Americans with Disabilities Act (ADA)*, which is available at www.eeoc.gov/facts/cancer.html. This is the fourth in a series of question-and-answer guides that have previously dealt with diabetes, epilepsy, and intellectual disabilities in the workplace. The guide explains when cancer is a disability under the ADA, when an employer may ask an applicant or employee questions about his or her cancer and how it should treat voluntary disclosures, what types of reasonable accommodations employees with cancer may need, and how employers can ensure that they do not discriminate against applicants and employees with cancer.

The guide points out that cancer is a disability and therefore covered under the ADA if it or its side effects substantially limit one or more of a person's major life activities. Those side effects can include the results of treatment, such as nausea and fatigue resulting from radiation treatments. Similarly, cancer can lead to conditions such as depression, which itself can be classified as a disability if it lasts long enough and substantially limits a major life activity such as interacting with others, sleeping, or eating. The guide cautions that, prior to making a conditional job offer, an employer cannot ask the applicant questions regarding whether he/she has or ever had cancer or whether he/she is undergoing chemotherapy or radiation or is taking medication used to treat cancer. Questions relating to a past condition or treatment are also off-limits. If an applicant voluntarily discloses he or she has had cancer, the employer may, if the employer reasonably believes an accommodation will be required to perform the job, ask whether an accommodation will be needed and, if so, what type. No further questions regarding the disclosure may be asked during the application stage.

In addition, the guide reminds employers that, with limited exceptions, they must keep confidential any medical information they learn about an applicant or employee who has cancer. In this regard, an employer, even though well-intentioned, is not allowed to explain to other employees that their co-worker is receiving special treatment, such as being allowed to work at home or take periodic rest due to a cancer condition. Likewise, an employer is not permitted to explain to co-workers that an employee's loss of weight or constant fatigue is due to cancer. The guide states that reasonable accommodations for those with cancer may include leave for doctors' appointments and recuperation, periodic breaks to rest or take medication, adjustments to the work schedule, permission to work at home, modification of office temperatures, permission to use the work telephone to call doctors, and reallocation or redistribution of marginal tasks to other workers.

Those with questions concerning the ADA as it applies to cancer or other disabilities should contact Human Resources or this office.