

# **EMPLOYMENT RIGHTS**

## **INTRODUCTION:**

There are over 11.7 million cancer survivors in the United States.<sup>1</sup> And according to a recent study, approximately 70-80% of working adult survivors return to their jobs after a cancer diagnosis.<sup>2</sup> Still, cancer survivors face many misperceptions about their ability to work during and after cancer treatment. As a result, their employers may treat them unfairly.

This section is designed to help employees with cancer and caregivers understand their rights, learn how to advocate for any job accommodations they may need during treatment or recovery, and how to effectively enforce their employment rights. It is important to understand that the federal law explained below is the bare *minimum* of what employers need to provide. While states must adhere to federal laws, an individual state can provide additional protections to its citizens through state laws. In addition to federal and state laws, employers may provide additional benefits to their employees. So, it is important for employees to review their employee manual or talk with their human resources representative to learn about additional employee benefits provided by employers. Finally, if an employee is a member of a union the employee should review the union contract or speak with a union representative to determine if there are additional employee benefits and protections available.

## **I. THE AMERICANS WITH DISABILITIES ACT OF 1990**

- A. **Statute:** The Americans with Disabilities Act (ADA) prohibits discrimination in all employment practices against qualified employees with disabilities who can perform the essential functions of their job, with or without reasonable accommodations.<sup>3</sup>
- 1) **Employers Covered by the ADA:**<sup>4</sup>
    - (i) Private employers with 15 or more employees
    - (ii) State and local governments, regardless of size
  - 2) **Employment Practices Covered by the ADA:**<sup>5</sup>
    - (i) Job advertisements, applications, and recruiting
    - (ii) Hiring and firing
    - (iii) Leave and lay-offs
    - (iv) Reinstatement and reassignment
    - (v) Tenure and promotion
    - (vi) Testing and training
    - (vii) Compensation and benefits
  - 3) The Equal Employment Opportunity Commission (EEOC) is the federal agency that enforces the employment provisions of the ADA.<sup>6</sup>

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<sup>1</sup> Center for Disease Control and Prevention. "Basic Information about Cancer Survivorship."  
[www.cdc.gov/cancer/survivorship/basic\\_info](http://www.cdc.gov/cancer/survivorship/basic_info)

<sup>2</sup> Angela de Boer, PhD, Taina Taskila, PhD, Aneeli Ojajarvi, PhD, Frank J. H. van Dijk, PhD, MD, Jos H. A. M. Verbeek, PhD, MD, "Cancer Survivors and Unemployment: A Meta-analysis and Meta-regression." Journal of American Medical Association, Vol. 301, Number 7, February 18, 2009.

<sup>3</sup> Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*

<sup>4</sup> 42 U.S.C. §12111(5)(A)

<sup>5</sup> 42 U.S.C. §12112(a)

<sup>6</sup> 42 U.S.C. §12117(a)

- 4) In 2008, the Americans with Disabilities Act Amendments Act (ADAAA) was signed into law and amended the original ADA.<sup>7</sup> The ADAAA has been in effect since January 1, 2009. In several ways, the ADAAA made it easier for someone with cancer to use the ADA's protections. See below.

## B. Key Requirements for Protection Under the ADA:

- 1) **Who is a Qualified Individual?:** An applicant or employee with a disability who is able to perform the essential functions of the job, with or without reasonable accommodations.<sup>8</sup> To be "qualified" an individual must satisfy two requirements:
- (i) Meet the skill, education, experience, and other job-related qualification standards required for the position; and
  - (ii) Be able to perform those tasks that are essential to the position, with or without reasonable accommodations.<sup>9</sup>
    - Example: A surgeon must be able to work as a surgeon, which requires work be done in a hospital. A surgeon cannot telecommute and conduct surgeries at home, thus being at work (in the hospital) is an essential function of the job.
    - *Note:* The ADA does not interfere with an employer's right to hire or promote the best-qualified person. While the ADA prohibits discrimination on the basis of disability, it does not impose any affirmative action obligation on an employer.
- 2) **What are Essential Functions?:** The essential functions of a job are the basic key job duties an employee must be able to perform, with or without reasonable accommodations.<sup>10</sup>
- (i) **Factors to Consider if a Job Function is Essential:**
    - The function is the reason the job exists
    - The number of employees available to perform the function or among whom it can be distributed
    - The degree and skill required to perform that function
  - (ii) **Sources to Consider if a Job Function is Essential:**
    - The written job description prepared for advertising or interviewing
    - The work experience of present or past employees in the same position
    - The time spent performing the function
    - The consequences of not requiring the employee to perform the function
  - (iii) **Examples of Essential Job Functions:**
    - An essential function of an administrative assistant may be typing, but may not include refilling the water cooler.

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<sup>7</sup> ADA Amendments Act of 2008, PL 110-325, September 25, 2008

<sup>8</sup> 42 U.S.C. §12111(8)

<sup>9</sup> U.S. Equal Employment Opportunity Commission, The ADA: Your Responsibilities as an Employer. [www.eeoc.gov/facts/ada17.html](http://www.eeoc.gov/facts/ada17.html)

<sup>10</sup> 42 U.S.C. §12111(8)

- As essential function of a factory employee may be lifting and carrying 50 pounds; however, there may be reasonable accommodations, such as the use of a dolly, that helps an individual to meet this function.
- 3) **What is a Disability?:** Under the ADA, a “disability” is “a physical or mental impairment that substantially limits one or more of the major life activities of an individual.”<sup>11</sup>
- (i) **What is a Major Life Activity?:** A basic activity that the average person in the general population can perform with little or no difficulty,<sup>12</sup> such as:
- Caring for oneself
  - Speaking
  - Seeing
  - Hearing
  - Breathing
  - Walking
  - Working
  - Sleeping (new under ADAAA)
  - Concentrating (new under ADAAA)
  - Thinking (new under ADAAA)
  - Communicating (new under ADAAA)
  - Operation of major bodily functions (new under ADAAA)
  - Example: A person with cancer, undergoing chemotherapy treatment, who is having difficulty concentrating, thinking, sleeping or whose digestive system is being substantially limited, may qualify as having a disability under the ADA’s revised definition.
  - Note: These additional major life activities have made it easier for individuals with cancer to qualify as an individual with a disability under the ADA.
- (ii) **Mitigating or Corrective Measures are No Longer Taken into Account:** Corrective measures are anything that allows an individual to control, compensate for, mitigate, or alleviate a physical or mental impairment or the side effects of treatment for that impairment (e.g., medications, medical supplies, equipment, etc.). Under the ADAAA, corrective or mitigating measures are no longer taken into account when determining if someone has a disability under the ADA.<sup>13</sup>
- Example: If an individual going through cancer chemotherapy has significant nausea, but is able to take medication to control the nausea, this medication will not be looked at when determining whether an individual’s cancer and treatment substantially limits a major life activity,
- (iii) **What is a Substantial Limitation on a Major Life Activity?:** To determine if the limitation on a major life activity is substantial, the individual is compared to an average person in the general population. Specifically, the individual must be

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<sup>11</sup> 42 U.S.C. §12102(1)(A)

<sup>12</sup> 42 U.S.C. §12102(2)

<sup>13</sup> 42 U.S.C. §12102(4)(E)(i)

unable to perform a major life activity that the average person in the general population can perform.<sup>14</sup> Factors used to determine a substantial limitation include:

- The nature and severity of the disability;
  - The duration or expected duration of the disability; and
  - The permanent or long-term impact of the disability.
- Note: It is important to remember that a substantial limitation could be caused by the medical condition itself or it may be caused by the side effects of treatment of the medical condition.<sup>15</sup>
- ⇒ Example: A patient who is undergoing chemotherapy treatment may experience “chemo-brain.” In this situation, the cancer diagnosis itself may not limit the patient’s ability to concentrate (a major life activity), but the side effects of the chemotherapy does substantially limit the patient’s ability to concentrate and think.
  - ⇒ Example: Even when the cancer itself does not substantially limit any major life activity (such as when it is diagnosed and treated early), it can lead to the occurrence of other impairments that may qualify someone as have a disability. For example, sometimes depression may develop as a result of the cancer diagnosis, treatment, or both. When the condition lasts long enough (i.e., for more than a few months) and substantially limits a major life activity, such as interacting with others, sleeping, or eating, it may be a disability under the ADA.<sup>16</sup>

#### 4) Who is Protected?:<sup>17</sup>

##### (i) ADA Prohibits Discrimination Against Applicants or Employees Who Either:

- Have an impairment;
  - ⇒ Example: currently have cancer and the diagnosis or treatment is creating a substantial limitation on a major life activity
- Have a history of an impairment; or
  - ⇒ Example: childhood cancer survivor
- Are regarded as having an impairment.
  - ⇒ Example: currently have cancer, but without substantial limitations. However, the employer perceives the employee as being impaired y the cancer

##### (ii) The ADA’s protection also extends to people who “associate with” a person who has a disability.<sup>18</sup>

- ⇒ Example: caregivers are protected against discrimination in the workplace, because of their “association with” a person with a disability, such as cancer.
- ⇒ Note: caregivers are not protected if the association is interfering with their work

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<sup>14</sup> 42 U.S.C. §12102(4)

<sup>15</sup> U.S. Equal Employment Opportunity Commission, Questions and Answers on the Notice of Proposed Rulemaking for the ADA Amendments Act of 2008. [www.eeoc.gov/policy/docs/qanda\\_adaa\\_npm.html](http://www.eeoc.gov/policy/docs/qanda_adaa_npm.html)

<sup>16</sup> *Id.*

<sup>17</sup> 42 U.S.C. §12102(1)

<sup>18</sup> 42 U.S.C. §12112(b)(4)

- (iii) The ADA also prohibits retaliation against individuals with disabilities who assert their rights or individuals who assist people with known disabilities to assert their rights.<sup>19</sup>

**C. Reasonable Accommodations:**

- 1) **Definition:** A reasonable accommodation is any change or adjustment in the work environment, or to the way things are customarily done, that enables an individual with a disability to enjoy equal benefit and employment opportunities.<sup>20</sup> An employer is required to take reasonable steps to accommodate a person with a disability, unless it would cause the employer an undue hardship.<sup>21</sup>

(i) **Reasonable accommodations for people with cancer may include:**

- Making facilities accessible by changing physical space or acquiring or modifying equipment or devices;  
⇒ Example: Providing an employee who works at a check-out counter and stands for extended periods of time with a stool to sit or lean on in order to reduce physical exertion and relieve strain on the body.
- Flexible work hours so an employee can keep medical appointments or get treatment;
- Telecommuting;
- Modified or part-time work schedule;
- Additional breaks or rest periods during the day;  
⇒ Example: Providing an employee who is fatigued due to chemotherapy treatments with a modified lunch break from one hour to 30 minutes, in order to accommodate two additional 15-minute rest periods during the day.
- Job restructuring to a vacant position or allocating marginal tasks to another employee;
- Permission to use a phone to call a doctor; or
- Extended leave time.

- 2) **Test to Determine What is Reasonable (case-by-case analysis):** An accommodation is reasonable if it is effective. This means that the accommodation must meet the individual's needs in that circumstance. The employer should give the employee's choice of a reasonable accommodation primary consideration, but if more than one effective accommodation is available, the employer may choose the less expensive or burdensome accommodation.

(i) **An Employer Need Not Provide Accommodations that:**

- Eliminate essential functions or redefine the position
- Bump other employees from their positions
- Create a new position
- Lower production standards, qualitatively or quantitatively
- Are an undue hardship on the employer (see below)

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<sup>19</sup> 42 U.S.C. §12203(a)

<sup>20</sup> 42 U.S.C. §12111(a)

<sup>21</sup> 42 U.S.C. §12112(B)(5)(a)

### 3) Requests for Reasonable Accommodations:<sup>22</sup>

- (i) **When to Request a Reasonable Accommodation:** It is important to tell an employer of a need for a reasonable accommodation before a performance issue arises, as performance issues may lead to disciplinary action or potential termination. It is best to tell an employer as soon as the employee realizes there is a need for an adjustment in the work environment or time schedule. An employer may need advance notice to arrange for the reasonable accommodation.
- (ii) **How to Request a Reasonable Accommodation:** A request for a reasonable accommodation may be made to the employee's supervisor or to a human resources representative. Although a request for accommodation can be verbal, it is advisable to submit it in writing, so both sides have a record of the request. Written requests may be made via email, memo or letter. The request can be in plain language and does not have to mention reasonable accommodations or refer to the ADA. Always keep a copy of all correspondence sent to or received from an employer regarding requests for reasonable accommodations. The employer may request that the employee fill out a form after an informal request has been made.
- Although employees are not required to tell an employer about their medical conditions, if employees need a reasonable accommodation, employees will need to provide certification of their medical condition.
  - Similarly, an employer may terminate an employee based on performance issues that may have been related to the employee's medical condition, if the employer was not informed of the medical condition or the need for an accommodation.
  - See **APPENDIX E1** for an example of what can be included in a letter requesting a job accommodation.
- (iii) **Who May Request a Reasonable Accommodation:** A request for a reasonable accommodation may be made by the employee, a caregiver, a health care professional, or any other person acting on behalf of the employee.
- **Note:** Employers can offer an accommodation to an employee if the employer has reason to believe an accommodation is needed. Meaning, that an employee does not have to be the one to initiate the request for a reasonable accommodation. An employer can ask an employee if an accommodation is needed.
- (iv) **Who is Not Eligible for a Reasonable Accommodation?:<sup>23</sup>**
- Employees regarded as having a physical or mental impairment
  - Caregivers

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<sup>22</sup> U.S. Equal Employment Opportunity Commission, Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (available at: <http://www.eeoc.gov/policy/docs/accommodation.html>)

<sup>23</sup> Individuals with a relationship or association with a person with a disability are not entitled to receive reasonable accommodations, see *Den Hartog v. Wasatch Academy*, 129 F.3d 1076, 1084, 7AD Cas. (BNA) 764, 772 (10<sup>th</sup> Cir. 1997).

- Note: Only employees who currently have a physical or mental impairment that substantially limits a major life activity or those with a history of such impairment are entitled to a reasonable accommodation.
  - Example: Individuals who are in remission for cancer may need accommodations based on their history of a cancer diagnosis, in order to have a flexible work schedule to attend follow up medical appointments.
- (v) **Both Employer & Employee Have a Duty to Engage in an *Interactive Process*.**<sup>24</sup> Once a request for a reasonable accommodation is made, both the employer and the employee must engage in good faith negotiations to explore, choose, and implement the most effective accommodation for the employee.
- **Employer’s obligations in the interactive process:**
    - ⇒ Respond in a timely manner to requests for reasonable accommodations;
    - ⇒ Ask relevant questions about the disability and functional limitations;
    - ⇒ Explore feasibility of suggested reasonable accommodations with the employee;
    - ⇒ Consult outside resources if not familiar with appropriate reasonable accommodations;
    - ⇒ Implement effective accommodations in a timely manner; and
    - ⇒ Maintain confidentiality about the accommodation, the medical condition, and the process.
  - **Employee’s obligations in the interactive process:**
    - ⇒ Explain the disability and why accommodations are needed;
    - ⇒ Provide medical documentation, but only information relating to the “essential job functions;” and
    - ⇒ Accept the effective accommodation offered, even if it is not the preferred accommodation.
  - For more information on the interactive process visit the Job Accommodation Network at [www.askjan.org/media/interactiveprocessfact.doc](http://www.askjan.org/media/interactiveprocessfact.doc).
- (vi) **When Does the Interactive Process End?:** Employers must continue the interactive process until an effective reasonable accommodation is found or is no longer needed. For people with cancer, the interactive process may be an ongoing process as accommodation needs may change as treatment begins, progresses, or ends. Sometimes, the most effective accommodation may only be determined through trial and error. If that is the case, the parties need to continue negotiations until they arrive at the most effective solution. Parties are also obligated to assess the effectiveness of accommodations on an ongoing basis.

#### 4) **Medical Certification for Reasonable Accommodations**

##### (i) **When Is Medical Certification of a Disability Required?**

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<sup>24</sup> 20 C.F.R. §1630.2(o)(3) (1997); 29 C.F.R. pt. 1630 app §§ 1630.2(o); 1630.9 (1997)

- Employers may request medical certification of a disability when an employee requests a reasonable accommodation and the disability or need for accommodation is not known or obvious.<sup>25</sup>

(ii) **What Documentation May an Employer Require?**

- An employer may require an employee to provide sufficient documentation to substantiate that the employee has a disability under the ADA and needs the requested accommodation.
  - ⇒ The documentation is sufficient if it describes:
    1. the nature, severity, and duration of the employee's impairment;
    2. the activity or activities the impairment limits;
    3. the extent to which the impairment limits the employee's ability to perform the activity or activities; and
    4. why a reasonable accommodation is needed.<sup>26</sup>

(iii) **Does the employee have to disclose a specific diagnosis?**

- No, so long as documentation establishes the employee has a disability under the ADA and needs a reasonable accommodation.<sup>27</sup>

(iv) **What type of health care professional can provide certification?**

- Doctors, psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals<sup>28</sup>

5) **Employer Defenses:**<sup>29</sup> The employer is not required to provide a reasonable accommodation if the reasonable accommodation poses an "undue hardship," or the employee poses a "direct threat" to himself/herself or other employees and the threat cannot be eliminated through reasonable accommodations.<sup>30</sup>

(i) The required action poses an "undue hardship" for the employer if it:

- Requires significant difficulty or expense;
- Is unduly costly, extensive, substantial or disruptive considering the entire operation of the business; or
- Would fundamentally alter the nature of the operation.

(ii) An "undue hardship" is determined by assessing the nature and the cost of the accommodation against the nature, the size, and resources of the employer, the impact of the required accommodation on the facility, and the number of employees.

<sup>25</sup> Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA) (available at: <http://eeoc.gov/policy/docs/guidance-inquiries.html>); hereinafter, *ADA Enforcement Guidance*. 29 C.F.R. pt. 1630 app. § 1630.9 (1997).

<sup>26</sup> *ADA Enforcement Guidance* at 6.

<sup>27</sup> *ADA Enforcement Guidance* at 6.

<sup>28</sup> *ADA Enforcement Guidance* at 6.

<sup>29</sup> See 42 U.S.C. § 12112 (b)(5)(A) (1994) (it is a form of discrimination to fail to provide a reasonable accommodation "unless such covered entity can demonstrate that the accommodation would impose an undue hardship . . ."); see also 42 U.S.C. § 12111(10) (1994) (defining "undue hardship" based on factors assessing cost and difficulty).

<sup>30</sup> 42 U.S.C. §12111(3); 42 USC §12111(10)

However, even if the most effective accommodation would pose an undue hardship, the employer must still:

- Look for another effective accommodation;
- Consider funding from outside sources; and
- Give the employee an opportunity to pay for it.

#### D. ADA Protections During the Job Application Process:

1) **Disclosure of a Medical Condition and Medical Exams:**<sup>31</sup> An employee does not have to disclose a medical condition or a need for reasonable accommodations on an application form or in an interview, unless the accommodation is required for the application or interviewing process. Determining the best moment to tell a potential employer about the need for reasonable accommodations is a personal decision. Often applicants do not realize that they may need accommodations until they know more about the job and the work environment, which may only arise after working there for some period of time. Some choose to inform the employer during the application process, after they understand the job requirements. If the employee chooses to reveal their cancer diagnosis or other disability, then the employer may ask if the employee will need an accommodation. **If, however, an employee chooses not to disclose this information about their medical condition, then they may not be able to get a reasonable accommodation under the ADA, or state fair employment laws.**

(i) **Pre-Offer:** During the application process, and before a job offer is made, an employer may not ask if the applicant has a disability or about the nature or the severity of a disability (even if the applicant has a visible disability). Additionally, the employer cannot require the applicant to take a physical exam.

- Employers may, however, ask about the applicant's ability to perform job-related functions if the questions are not designed to elicit disability-related information.
  - ⇒ Example: A potential employer may not ask an applicant if they took FMLA leave or sick time at a previous job, or how much time they took off.
  - ⇒ Note: Recently, the EEOC has recognized consistent work attendance as an essential job function.<sup>32</sup>
- Employers may also ask applicants to demonstrate/describe how they will perform the essential functions of the job, with or without reasonable accommodations.

(ii) **Post Offer:** Once an employer has made a job offer, and before the employee starts work, the employer may ask the applicant to take a medical exam (but only if everyone else in the same job category must also take the exam). The employer may condition the job offer on the results of the medical exam. However, if an employee is not hired because of the medical exam results, the employer must show that:

- The reason for rescinding the offer was job related and necessary for the conduct of business; and
- There was no reasonable accommodation available to make performance of the essential job functions possible.

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<sup>31</sup> 42 U.S.C. §12112(c)

<sup>32</sup> U.S. Equal Employment Opportunity Commission, *The Americans With Disabilities Act: Applying Performance And Conduct Standards To Employees With Disabilities* (available at: <http://www.eeoc.gov/facts/performance-conduct.html#issues>)

- 2) **Confidentiality of Medical Records:**<sup>33</sup> Any information about an employee's medical condition or reasonable accommodations and all related documentation and medical records are confidential and must be kept in a separate file from an employee's personnel file. Information from these confidential records may only be shared with the following individuals:
- (i) Managers and supervisors, if the information is necessary to determine restrictions or accommodations for a particular employee;
  - (ii) First aid and safety personnel, if the employee requires emergency treatment or some other assistance at work;
  - (iii) Government officials investigating anti-discrimination compliance; and
  - (iv) Workers' compensation offices and insurance carriers.

E. **Discrimination Complaint Process under the ADA:** The federal agency that enforces the ADA is the Equal Employment Opportunity Commission (EEOC). Employees who believe that they have experienced discrimination in the workplace must exhaust the administrative complaint procedures available through the EEOC, before they can file a disability-related discrimination suit in federal court. For example, employees who believe their employment rights have been violated on the basis of cancer, must first file a "charge of discrimination" with the EEOC.

- 1) **Mediation and Investigation:** Before conducting a formal investigation, the EEOC may refer you to the EEOC's mediation program. Mediation is an informal process whereby a third party, who is impartial to both sides, tries to resolve the issue between the employer and the employee. Both parties must agree to mediation. Participation in mediation is free, voluntary, confidential, and may prevent a time-consuming investigation or lawsuit. If mediation is unsuccessful, the EEOC will then investigate the charge of discrimination to determine if there is "reasonable cause" to believe discrimination has occurred. If reasonable cause is found, the EEOC will then try to resolve the charge with the employer. In some cases, where the charge cannot be resolved, the EEOC will file a court action. If the EEOC finds no discrimination, or if an attempt to resolve the charge fails and the EEOC decides not to file suit, it will issue the employee a "right to sue" letter, which then allows the employee to file a lawsuit in federal court.
- 2) **Deadline for Submitting a Charge of Discrimination:** A charge must be filed with the EEOC within 180 days from the date of the alleged violation. But, if the charge is also covered by a state or local anti-discrimination law, the complaint must be filed with the applicable state entity first, which may also jointly file with the EEOC, and the complaint must be filed within 300 days from the date of the alleged violation, or within 30 days after the employee receives notification from the state agency that the case has been closed, whichever is earlier.
- 3) **Deadline for Filing a Claim in Court:** Once the EEOC issues a "right to sue" letter, the charging party has 90 days to file a court action. A charging party can also request a "right to sue" letter from the EEOC within 180 days after the charge first was filed with the EEOC and may then bring suit within 90 days after receiving notice.

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<sup>33</sup> 42 U.S.C. §12112(c)(3)(B)

## II. THE REHABILITATION ACT OF 1973 (as amended in 1992)

- A. **Statutes:** While the ADA applies to private employers with 15 or more employees and state or local governments, the Rehabilitation Act prohibits discrimination against qualified individuals with disabilities from federal agencies (including the U.S. Postal Service and U.S. Postal Rate Commission), contractors and their subcontractors who receive federal contracts over \$10,000, and recipient of federal financial assistance.<sup>34</sup> For more information, or to find out about the discrimination complaint process under the Rehabilitation Act, please contact the CLRC.
- B. **Disability and Reasonable Accommodations:** The definition of disability, the requirements for reasonable accommodations, and the standards for employment discrimination are the same as under Title I of the ADA outlined above.
- C. **Federal Employees:** Federal employees generally must file complaints through the EEO at their agency. These complaints must be filed within 45 days of the discriminatory act.

## III. STATE FAIR EMPLOYMENT LAWS

- A. Many states have their own fair employment laws that provide employees with protections similar to the ADA. However, these laws vary from state to state; some have a broader definition of “disability,” while some specifically list cancer as a disability, and some even cover employers with fewer than 15 employees. For more information, please contact your State Fair Employment Agency (See the **STATE APPENDICES**).
- 1) **States Without State Fair Employment Agencies:** Currently there are only two states in the U.S. that do not have state fair employment laws similar to the ADA. Those two states are Alabama and Arkansas. In those states, employment questions should be directed to the EEOC.
- 2) **States that Cover Employers with Fewer than 15 Employees:** Below is a chart that illustrates which state fair employment laws apply to employers with fewer than 15 employees:

State	Number of Employees
Alaska	1
Arkansas	9 (but 15 for reasonable accommodations)
California	5
Colorado	2
Connecticut	3
Hawaii	1
Idaho	5
Illinois	1
Iowa	4
Kansas	4
Kentucky	8
Maine	1
Massachusetts	6
Michigan	1

<sup>34</sup> The Rehabilitation Act of 1973 (as amended in 1992), 29 U.S.C. §501, §503, and §504

Minnesota	1
Missouri	6
Montana	1
New Hampshire	6
New Jersey	1
New Mexico	4
New York	4
North Dakota	1
Ohio	4
Oregon	6
Pennsylvania	4
Rhode Island	4
South Dakota	1
Tennessee	8
Vermont	1
Virginia	1
Washington	8
West Virginia	12
Wisconsin	1
Wyoming	2

3) **States that are Less Broad than the ADA:**

- (i) Louisiana: This state's fair employment law only applies to employers with 20 or more employees.
- (ii) Virginia: Under this state's fair employment law, a reasonable accommodation exceeding \$500 in cost is presumed to impose an undue burden upon any employer with fewer than 50 employees.

4) **States that are Broader than the ADA:** The ADA defines disability as a physical or mental impairment that substantially limits a major life activity. The following states define disability more broadly, so that people with cancer may be more likely to qualify for additional protections in the workplace.

- (i) California: Disability is defined as a "physical or mental impairment with any limitation on a major life activity."
- (ii) Illinois: Disability is defined as a "determinable physical or mental characteristic of a person which may result from disease, injury, congenital condition of birth, or a function of disorder."
- (iii) Iowa: Disability is defined as a mental or physical condition or disorder that "constitutes a substantial disability," or limits a major life activity.
- (iv) New York: Disability is defined as a mental or physical condition or disorder that prevents "the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques."
- (v) Washington: Disability is defined as a sensory, mental, or physical impairment that substantially limits the ability to work generally or work at a particular job.

(vi) Wisconsin: Disability is defined as a mental or physical “impairment which makes achievement unusually difficult or limits the capacity to work.”

- 5) **States that Specifically Identify Cancer as a Covered Medical Condition:** California, Maine, Ohio and Vermont all specifically identify cancer as a covered medical condition, which provides for protection under the state fair employment laws, in addition to protection provided under the ADA.

IV. **RESOURCES**

<p><b>For questions about the ADA:</b>          U.S. Equal Employment Opportunity Commission          1801 L Street, N.W.          Washington, D.C. 20507          (800) 669-4000 or (202) 663-4494 (TTY)  <a href="http://www.eeoc.gov">www.eeoc.gov</a></p>	<p><b>For questions about job accommodations:</b>          Job Accommodation Network (JAN)          (800) 526-7234 or (800) ADA-WORK  <a href="http://www.askjan.org">www.askjan.org</a></p>
<p><b>For questions about §503 of the Rehabilitation Act (federal contractors):</b>          U.S. Department of Labor          Office of Federal Compliance Program          Frances Perkins Building, Room C-3325          200 Constitution Avenue, N.W.          Washington, D.C. 20210          (800) 397-6251 or <a href="http://www.dol.gov/esa/ofccp">www.dol.gov/esa/ofccp</a></p>	<p><b>For questions about §504 the Rehabilitation Act (federal financial assistance):</b>          U.S. Department of Justice          Civil Rights Division Disability Rights Section          950 Pennsylvania Avenue, N.W.          Washington, D.C. 20530          (800) 514-0301 or (800) 614-0383 (TTY)  <a href="http://www.justice.gov/crt/about/drs">www.justice.gov/crt/about/drs</a></p>
<p><b>For questions about the practical aspects of being an employee with cancer:</b>          Cancer and Careers          (212) 685-5955 or <a href="http://www.cancerandcareers.org">www.cancerandcareers.org</a></p>	<p><b>For state specific information:</b>          See the <b>STATE APPENDICES</b> or contact the CLRC.</p>