

# Legal Protection in the Workplace and in Health Insurance

The Cancer Legal Resource Center (CLRC), a joint program of the Disability Rights Legal Center and Loyola Law School, provides information and resources on cancer-related legal issues to survivors, their families, caregivers and others touched by cancer. The CLRC is often asked what protections there may be in both the workplace and in health insurance for cancer survivors.

**Employment:** The Fair Employment and Housing Act (FEHA), a California state law, and the Americans with Disabilities Act (ADA), a federal law, prohibit discrimination in the workplace based on a person's disability. The FEHA applies to employers with five or more employees. The ADA applies to employers with 15 or more employees. Both laws provide protection to "qualified individuals with disabilities."

While this article will briefly discuss these laws, it is important to remember that not every employee wants to tell their employer that they have cancer. Some employees are concerned that if they tell their employer they have cancer, they will be treated differently and will be discriminated against. This is a personal choice for each person to make. You are not required to tell your employer you have cancer unless you need your employer to make any reasonable accommodations because of your medical condition. But, please keep in mind that if you feel you are discriminated against because you have cancer, you will not be entitled to protection under these laws if your employer does not know of your medical condition. To be entitled to protection, the employee must be both disabled and qualified for the position.

So, what is a "qualified individual with a disability?" Generally, an individual with a disability means an individual who (1) has a physical or mental impairment that substantially limits one or more of the individual's major life activities, (2) has a record of such an impairment (for example, a history of cancer that is now cured); or (3) is regarded as having such an impairment (in other words, is treated by the employer as if she had a disability). Also, under the ADA, the impairment must substantially limit a major life activity. Under the FEHA, the employee is only required to show a limitation (not "substantial") of a major life activity.

For most people, the FEHA will provide more gen-

erous protection to employees than the ADA. As noted above, to be entitled to protection under the ADA, the employee must be "qualified." This means that the employee is able to perform the essential functions of the job with or without a reasonable accommodation. If the employee meets this standard, the employer must provide a reasonable accommodation to the employee, so long as this is not an undue hardship to the employer. The employer must know that the employee is seeking a reasonable accommodation, and the employer and employee should engage in a dialogue to determine what might be an appropriate, reasonable accommodation.

Flex time or part time hours to take time off for chemotherapy or radiation treatments can be considered a reasonable accommodation under the ADA and FEHA. A leave of absence with a certain return-to-work date may also be a reasonable accommodation.

Another law also provides certain protections in the workplace. The Family and Medical Leave Act (FMLA), allows covered employees to take up to 12 weeks of unpaid leave per year under certain conditions. This law applies to employers with 50 or more employees and the employee must meet certain employment requirements. Under this law, the employee is entitled to up to 12 weeks of unpaid leave per year to care for a seriously ill spouse, child, or parent, or for the employee's own serious medical condition. This leave time may be taken all at once, or intermittently throughout the year. An employee's health benefits remain intact during this time period.

**Health Insurance:** Under California law, a person with an HMO is entitled to a second medical opinion upon request. If the HMO has a specialist "within the network," the second opinion will generally be through the network. However, if the HMO does not have a specialist within its network, the health plan has to provide that second opinion "out of network" at the health plan's expense. You also have the right to receive an external, independent medical review of your HMO's decisions for all decisions to deny, modify, or delay treatment based on lack of medical necessity. Independent medical review decisions are based on the medical necessity of the treatment and are binding on the HMO. The independent medical review board must decide within 30 days or 5-9 days if there is an imminent or serious threat to the enrollee's health.

At the CLRC, we can help explain these laws in more depth and explore with you what your different options might be. We can also provide materials and other resources that may be available. By educating yourself about your rights, you not only empower yourself, but pave the way to get your needs met. For more information about the CLRC, please visit [www.disabilityrights-legalcenter.org](http://www.disabilityrights-legalcenter.org), call us at (866) THE-CLRC (866-843-2572) or e-mail us at [CLRC@LLS.edu](mailto:CLRC@LLS.edu). ✱

