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Representing Employers in  
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## WORKING IT OUT: YOUR EMPLOYMENT RIGHTS AS A CANCER SURVIVOR

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## **DISCUSSION TOPICS**

- **Medical Privacy**
- **Medical Examinations**
- **Medical Records**
- **Leave of Absence Rights**

## **DISCUSSION TOPICS (cont'd)**

- **Discrimination Against Cancer Survivors**
- **Health Insurance Continuation**

# MEDICAL PRIVACY

## Prospective employers may *not* ask:

- Do you have any disabilities?
- How is your health?
- Have you ever had any major illnesses?
- How many days of work did you miss last year due to illness?
- Do you anticipate missing any work due to illness?
- Are you taking any prescription medication?

## **MEDICAL PRIVACY (cont'd)**

### **Prospective employers *may* ask:**

- **How was your attendance in your last job?**
- **These are the attendance standards of the job; can you meet them?**
- **A requirement of this job is \_\_\_\_\_. Can you do this? Please describe how you would do it.**

# MEDICAL EXAMINATIONS

- **Pre-Offer**: No medical examinations may be required.
- **Post-Offer**: Medical examinations or physicals may be required, if required of everyone in the job category.
  - Offer may be conditioned on passing a physical, if job related.

# MEDICAL RECORDS

## Health Insurance Portability and Accountability Act (HIPAA)

- **Provider cannot release health care information without individual's authorization.**
  - **Few exceptions**
    - **If insured without “significant break in coverage” and change insurance, no waiting period and/or reduction in waiting period for pre-existing conditions.**

## **MEDICAL RECORDS (cont'd)**

### **Americans with Disabilities Act (ADA)/Family Medical Leave Act (FMLA)**

- **Medical records must be maintained in a separate file.**
- **Medical records must be kept confidential except:**
  - **as required for accommodation**
  - **as required by government officials investigating ADA compliance**
  - **as needed by emergency personnel for first aid**
- **FMLA leave records must be treated as medical records.**

## LEAVE OF ABSENCE RIGHTS

**FMLA requires employers to provide up to 12 weeks of unpaid, job-protected leave every 12 months to “eligible” employees for certain family and medical reasons.**

## **LEAVE OF ABSENCE RIGHTS (cont'd)**

### **Reasons For Taking Leave (FMLA)**

- **To care for your child at birth or placement for adoption or foster care.**
- **To care for your spouse, son, daughter or parent who has a serious health condition.**
- **To care for yourself if you have a serious health condition that makes you unable to perform the essential function of your job.**

## **LEAVE OF ABSENCE RIGHTS (cont'd)**

### **Eligible Employer Defined (FMLA)**

- **Employs 50 or more employees**
- **Any public agency.**

## **LEAVE OF ABSENCE RIGHTS (cont'd)**

### **ELIGIBLE EMPLOYEE DEFINED (FMLA)**

- **Employed by employer for minimum of 12 months on the date leave commences;**

**AND**

- **Employed with employer for minimum of 1,250 hours during previous 12 months;**

**AND**

- **Employed at worksite with minimum of 50 employees OR where total employees within 75 miles is more than 50.**

## **LEAVE OF ABSENCE RIGHTS (cont'd)**

### **Serious Health Condition Defined (FMLA)**

- **Illness, injury, impairment, physical or mental condition involving:**
  - **Hospital Care**
  - **Absence with treatment**
  - **Pregnancy**
  - **Chronic condition requirement treatment(s)**
  - **Permanent/long-term condition requiring supervision**
  - **Non-chronic condition with multiple treatments.**

## **LEAVE OF ABSENCE RIGHTS (cont'd)**

### **Intermittent or Reduced Leave (FMLA)**

- **Employee may take intermittent leave or work a reduced work schedule to reduce usual number of hours worked per day and/or workweek.**
- **Intermittent or reduced leave schedules are subject to employee approval unless medically necessary.**

## **LEAVE OF ABSENCE RIGHTS (cont'd)**

### **Health Benefits Requirements (FMLA)**

- **Employer must maintain coverage under group plan during leave under same conditions as if working.**
- **Employer's obligation ends if/when employee:**
  - **fails to make required premium payments within 30 days of due date;**
  - **announces s/he will not return and/or fails to return; *or***
  - **exhausts FMLA leave.**

# **LEAVE OF ABSENCE RIGHTS (cont'd)**

## **Health Benefits Requirements (FMLA)** **(cont'd)**

- **Employee who chooses not to retain coverage during leave is entitled to reinstatement upon return with no qualifying period or physical exam.**
- **Employer may recover premiums paid for employee who does not return to work for at least 30 days, unless due to continued health problems or “beyond employee’s control.”**

# LEAVE OF ABSENCE RIGHTS (cont'd)

## Medical Certification (FMLA)

- **Employer may require employee to provide certification from health care provider to support leave request.**
  - **Within 15 days of request from employer, if practicable.**
- **Employer must advise employee of request in writing when employee requests leave.**

## **LEAVE OF ABSENCE RIGHTS (cont'd)**

### **Note to Caregivers (Washington Family Care Act) (“WFCA”)**

- **WFCA requires *all* employers who provide paid leave to allow employees to use accrued leave for:**
  - **A minor or disabled child that has a health condition requiring treatment and/or supervision.**
  - **A parent, spouse, parent-in-law or grandparent with a serious or emergency health condition.**

# LEAVE OF ABSENCE RIGHTS (cont'd)

## Suggested Approach to Requesting Leave

- **Speak with healthcare provider.**
- **Review company policies, etc.**
- **Give verbal *and* written notice.**
- **Fill out any employer required forms/provide medical certification.**
- **Understand benefits rights/requirements.**
- **If using paid leave under FMLA, comply with leave procedures.**

# LEAVE OF ABSENCE RIGHTS (cont'd)

## Suggested Actions During Leave

- **Stay in touch/provide updates as much as possible.**
- **Notify employer of changes in status that may affect leave and/or return.**
- **Pay any insurance premium when due.**
- **Give advance notice of scheduled return date and discuss any accommodations.**

# DISCRIMINATION AGAINST CANCER SURVIVORS

## ADA

- Prohibits discrimination against qualified individuals with disabilities *and* requires reasonable accommodation.

## Washington Law Against Discrimination (WLAD)

- Essentially the same, but broader definition of disability.

# DISCRIMINATION AGAINST CANCER SURVIVORS (cont'd)

## Definitions

- **Qualified Individual**: One who is able to perform the essential functions of the job, with or without reasonable accommodation.
- **Disability (ADA)**: Significant impairment that interferes with major life activity; generally long term.
- **Disability (WLAD)**: illness/injury with substantially limiting effect on individual's ability to perform his/her job.

# **DISCRIMINATION AGAINST CANCER SURVIVORS**

## **(cont'd)**

### **Protections for Cancer Survivors**

- **Cannot be discriminated against (fired, disciplined, not hired, etc.) because you are disabled, perceived as disabled, or have a history of being disabled.**
- **Entitled to reasonable accommodation to enable you to perform the essential functions of your job.**

# **DISCRIMINATION AGAINST CANCER SURVIVORS**

## **(cont'd)**

### **Reasonable Accommodation**

- **What is reasonable?**
  - **Depends on my factors, including length of time, size of employer, cost, disruption of business, etc.**
- **May include a variety of accommodations.**

## **DISCRIMINATION AGAINST CANCER SURVIVORS (cont'd)**

### **Suggested Approach to Requesting Accommodation**

- **Talk to healthcare provider.**
- **Review company policies, etc.**
- **Give verbal and written notice.**
- **Fill out required forms.**
- **Explore creative solutions.**
- **Understand benefits rights/requirements.**

# HEALTH INSURANCE CONTINUATION

## COBRA

- **Requires employers with more than 20 employees to offer benefits continuation at employee's costs.**
- **Employer required to give notice of COBRA rights.**