

Employment Law: What Ovarian Cancer Survivors Need to Know

Minnesota Ovarian Cancer Alliance
February 28, 2015

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CANCER LEGAL LINE



Cancer Legal Line: Who are we?

- ❖ Cancer Legal Line is a non-profit organization providing assistance with cancer-related legal issues to all Minnesotans affected by cancer.
- ❖ Staff of two lawyers, board of 9 (five lawyers, three doctors, and one very brave social worker...), over 60 volunteer lawyers, all of whom
 - ❖ have a personal connection to cancer, and
 - ❖ *realize people need legal care to be well.*
- ❖ Cancer Legal Line services are open to anyone in need regardless of type of cancer, county of residence, gender, or age.
- ❖ Cancer Legal Line is the only organization providing this assistance in the Upper Midwest.
- ❖ Cancer Legal Line services are free of charge and completely confidential.
- ❖ Funded entirely by private donations, events, and foundation grants.

Cancer Legal Line: What do we do?

- ❖ OnCALL: Legal Triage for Cancer Survivors™ programs:
 - ❖ **For all cancer patients/survivors:**
 - ❖ Legal Care Consultations
 - ❖ Group Presentations
 - ❖ **Additional services for specific populations:**
 - ❖ Breast Cancer Legal Program
 - ❖ DDS OnCALL
 - ❖ Medical-Legal Partnership with the University of Minnesota's Blood and Marrow Transplant Unit
 - ❖ Legacy of Love

Cancer Legal Line: Why do we do what we do?

- ❖ Over half of 1,000 cancer survivors polled by the LIVESTRONG Foundation reported that the practical consequences of dealing with cancer were harder than the medical issues they faced.
- ❖ Support exists for medical and emotional aspects of cancer diagnosis, but survivors had no easy way to get help for their legal needs.
 - ❖ Fear of cost/inability to pay/don't know where to start
 - ❖ Legal Aid is not designed to deal with the types of issues most often faced by survivors & very low income cut off that would preclude many survivors from qualifying
- ❖ A tremendous number of people need help with these issues

What legal issues do people living with cancer face?

I- Insurance

- ❖ Insurance Coverage Denials
- ❖ Private Disability Benefits --Short Term Disability (STD)Long Term Disability (LTD)

H- Housing and Financial

- ❖ Issues with creditors/ Bankruptcy
- ❖ Foreclosure and Landlord/Tenant issues
- ❖ 2009 Harvard Study:
 - ❖ 62.1% of all bankruptcies in 2007 were due in part to medical debt; 75% of those filers had health insurance.

E- Employment

- ❖ Fear of Discrimination
 - ❖ Americans with Disabilities Act (ADA/ADAAA)
 - ❖ Minnesota Human Rights Act (MHRA)
- ❖ Time off from work
 - ❖ Family Medical Leave Act (FMLA)
- ❖ Returning to work/Interviewing after cancer

L- Legal Planning

- ❖ Powers of Attorney
- ❖ Health Care Directives
- ❖ Advance Funeral Directives
- ❖ Wills
- ❖ Guardianship provisions for minor children

P- Public Benefits

- ❖ SSDI (Soc. Security Disability Insurance)
- ❖ SSI (Supplemental Security Income)

Employment

Can they really do that?

3 Big Questions for Tonight:

1. *Can I be fired?*

2. *Does my employer have to hold my job for me until I am ready to return to work?*

3. *Can I legally be asked about my health history in my interview?*


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I have cancer.

1. *Can I be fired?*

❖ **Yes**

- ❖ Minnesota is an “at will” state; absent a contract, a person’s employment can be terminated at any time, for any NON-DISCRIMINATORY reason.
- ❖ Having cancer does not protect you from losing your job

❖ ***BUT***

- ❖ *...it is illegal to fire someone **BECAUSE** they have cancer*

What do the ADA/ADAAA/MHRA/FMLA do to protect cancer survivors in the workplace?

AKA “The Alphabet Soup” Question

1. American with Disabilities Act (ADA) and its recent Amendments Act (ADAAA)—Federal laws applying to all 50 states

1. Minnesota Human Rights Act (MHRA)—State law which adds to the protections of the federal laws

2. Family Medical Leave Act (FMLA)—Federal law, no Minnesota state law counterpart.

ADA/ADAAA/MHRA & FMLA Comparison Basics

ADA/ADAAA/MHRA

- ❖ GOAL: To keep you on the job
- ❖ GOAL: To provide protections against discrimination based on disability
- ❖ GOAL: To require employers to provide reasonable accommodations to employees with disabilities
- ❖ ELIGIBILITY: From the point of application forward (interviewing, hiring, promotion, termination, etc.)

FMLA

- ❖ GOAL: To provide you time away from work to care for yourself/family member's health
- ❖ GOAL: To protect your job and continue providing benefits while away from the workplace
- ❖ ELIGIBILITY:
 - ❖ At least 12 months of employment
 - ❖ 1,250 hours actually worked during the 12 months immediately preceding the leave
 - ❖ 49+ co-workers w/in 75 miles of worksite (each working day for 20 or more calendar weeks)

How do the ADA/ADAAA/MHRA protect cancer survivors in the workplace?

- ❖ Prohibit discrimination based on disability
 - ❖ Federal --15 or more employees
 - ❖ Minnesota--1 or more employees
- ❖ Require an employer to “REASONABLY ACCOMMODATE” a qualified individual with a disability who can perform the “essential functions” of the position with or without a reasonable accommodation.
 - ❖ 15 or more employees under both Federal and Minnesota laws

(Relatively...) Recent changes to the law with ADA AAA

- ❖ Disability is now much easier to establish than before:
 - ❖ A lower standard is used for the definition of a “**substantial limitation**” of a “**major life activity**”,
 - ❖ “major life activity” includes the operation of major bodily functions, including “normal cell growth”
 - ❖ An impairment that substantially limits one major life activity **need not limit others** in order to be found disabling, and
 - ❖ An impairment that is episodic or **in remission** is a disability if it would substantially limit a major life activity when active.
 - ❖ Cases are just now starting to interpret this new law. Very new territory.

What is reasonable when asking for a reasonable accommodation?

- ❖ Subjective standard
- ❖ Viewed from the EMPLOYER'S standpoint, not the employee's
 - ❖ Job restructuring
 - ❖ Providing assistive devices
 - ❖ Granting additional unpaid leave (after FMLA expires)
- ❖ Half of all accommodations cost between \$1-\$500; 1/5 cost nothing at all
- ❖ It is reasonable until it is unreasonable

Reasonable accommodations must be arrived at by an “Interactive Process”

- ❖ Employee and employer need to engage in an “interactive process”.
- ❖ This is a two way street, a sharing of ideas and options for making it work.
- ❖ Can't expect employer to craft a perfect solution for employee.
- ❖ Think like a lawyer: How would a third-party view, evaluate and judge the “reasonableness” of what side each has proposed?

2. *Does my employer have to hold my job for me until I am ready to return to work?*

- ❖ What you need to know about the FMLA:
 - ❖ Can't be denied if both the employee and employer meet the requirements
 - ❖ Benefits continue as if actively working
 - ❖ 12 weeks in a 12 month period—not calendar year
 - ❖ Leave may be taken all at once or intermittently
 - ❖ Leave is **UNPAID**. Employer *may* require that employee take available paid leave to *run concurrently* with FMLA leave.
 - ❖ Employer must allow employee to return to work to their previous position OR an equivalent position.
 - ❖ A strong argument may likely be made that a *reasonable accommodation* under the ADA/MHRA would be *additional unpaid leave*

I am interviewing for a job after cancer.

3. *Can I legally be asked about my health history in my interview?*

❖ NO!

❖ Under both the ADA and the MHRA an employer is *prohibited from asking medical questions unless and until a conditional job offer is made.*

Comparison of Questions

Permissible

In this job, employees are required to lift between 10-20 pounds several times during the day.

Are you able to do this with or without a reasonable accommodation?

Impermissible

In this job, employees are required to lift between 10-20 pounds several times during the day.

Have you ever injured your back?

What *is* permissible to ask?

- ❖ If you meet the qualifications for the tasks of a particular job.
- ❖ If you are able to perform specific job functions with or without a reasonable accommodations.
- ❖ BUT ONLY if they are *asked of all people who are applying for the particular position*, not just those who are thought to have a disability.

After a conditional job offer is made, what is permissible?

Under the ADA/ADAAA

- ❖ The federal law allows for **medical history questions or examinations of any variety**
- ❖ Permissible even if the questions or exams have nothing to do with the tasks or requirements of the particular job, so long as all prospective employees are subject to the same questions/exam

EXTRA protections provided by the MHRA

- ❖ All medical history questions or examinations **must be specifically related to the individual's ability to do the job.**
- ❖ Customer service vs. Longshoreman
- ❖ “Have you ever” or “Has anyone in your family ever” types of questions are NOT permitted.

Where can turn to get help with
these issues?

Cancer Legal Line

.....of course!

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