

Cancer at Work: Patient and Caregiver Rights

If you have been diagnosed with cancer or if you are a caregiver for someone with cancer, you may need to figure out how to continue working, take time off, return to work, or even retire.

Americans with Disabilities Act (ADA)
Family and Medical Leave Act (FMLA)



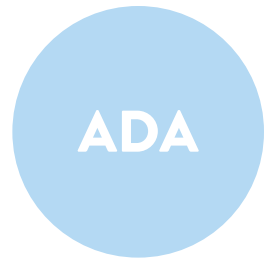
Understanding employment laws may help you navigate these options and make decisions.

You will need to learn what federal, state, and local laws may apply to you and your employer, as well as what benefits and policies exist in your workplace. The ways that relevant laws, benefits, and policies work together are similar to puzzle pieces fitting together, however, each person's puzzle looks different, depending on the specifics of their situation. This guide provides a brief overview of employee rights under the Americans with Disabilities Act and the Family and Medical Leave Act.





Americans with Disabilities Act (ADA)

The ADA is a federal law that protects eligible individuals from discrimination. Title 1 of the ADA provides protection in the workplace and gives those who have or had a disability access to reasonable accommodations.



How Does the ADA Define Disability?

-  A physical or mental impairment that substantially limits a major life activity. Major life activities include breathing, eating, walking, talking, thinking, sleeping, and the operation of major bodily functions.
-  You are protected by the ADA if you currently have a disability; have a history of having a disability; your employer regards you as having a disability; or you have a family, business, social, or other relationship with a person with a disability (e.g., you are a caregiver).



Which Employers Are Covered Under the ADA?

Private employers with 15 or more employees; employment agencies, labor organizations, and joint labor-management committees; state and local governments; and federal legislative branch employees. Your state may also have a fair employment law similar to the ADA, which covers smaller employers. For information, visit [TriageCancer.org/StateLaws](https://www.triagecancer.org/state-laws).



When Are You Protected by the ADA?

At all phases of employment, including the application process, and when all employment-related decisions are being made (e.g., hiring, firing, promotions, etc.).





What is the Process for Requesting an Accommodation?

There is no requirement for how to ask, but check your employee handbook to see if they have a process they want you to use. It does not have to be in writing, but doing it in writing and keeping a copy will help you keep a record of your request. You should ask for a reasonable accommodation as soon as you realize you need one to effectively complete your job responsibilities.



Must an Employer Provide an Accommodation?

An employer must provide a reasonable accommodation, unless the accommodation would be an undue hardship or would pose a direct threat. When you request an accommodation, it starts the “interactive process” with your employer, which involves negotiating and agreeing on an accommodation that is effective for you.



What Are Reasonable Accommodations?

Anything that can help you continue to do your job, return to work, or take time off, such as:

- **Changing work schedule** (e.g., flex time, additional breaks, extended leave)
- **Changing workspace** (e.g., telecommuting, ergonomic chair, hand controls on cars, different location)
- **Using technology** (e.g., tablet, smartphone, screen reading software, speak-type software)
- **Changing workplace policies** (e.g., allowing an employee with a scar to wear a scarf or hat, allowing more breaks)
- **Shifting non-essential job duties** to another employee
- **Moving to a vacant position**, if one is available




Family and Medical Leave Act (FMLA)

The FMLA is a federal law that allows eligible employees to take up to a total of 12 weeks of unpaid, job and health insurance protected leave, per year, for their own serious medical condition or as a caregiver of a parent, child, or spouse with a serious medical condition.



Which Employers Are Covered Under the FMLA?

-  Public employers including local, state, and federal agencies; public and private elementary and secondary schools; private employers with 50 or more employees who work within 75 miles of employee's worksite.



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Who is Eligible to Take FMLA leave?

Employees who work for a qualifying employer, have worked there for at least 12 months during the last seven years, and worked at least 1250 hours during the 12 months immediately before taking an FMLA leave.



How Can Employees Use FMLA leave?

FMLA can be taken as a 12-week block of time, or in smaller segments of time. You can also take FMLA leave on days when you are not feeling well. You can also reduce the number of hours you work during the week, or the number of hours you work per day.





When Can a Caregiver Use FMLA leave?

When they need to take time off to care for a family member who has a serious medical condition. This may include helping with daily living activities like providing basic medical, hygienic, nutritional or safety needs; transportation to and from medical appointments; providing psychological comfort; assisting with housework or paperwork; organizing prescription medication or grocery shopping; and assisting in household chores.



When Should an Employee Request FMLA leave?

Generally, employees should request FMLA leave as soon as they know they need time off work. Check your employee handbook to see if your employer has a process for requesting FMLA leave.



What Can You Expect When Returning to Work From FMLA Leave?

When you return from FMLA leave, your employer must reinstate you to the same or an “equivalent” job. An equivalent job is one with the same responsibilities, pay, and benefits as your original job. Your employer can require a medical certification that you are able to return to work, so long as that requirement would be applied to any employee in a similar situation. If at the end of 12 weeks of FMLA leave you are not ready to return to work, you may be able to ask for additional time off as a reasonable accommodation under the ADA.





Disclosure, Privacy, & Medical Certification Forms

Choosing to disclose your cancer diagnosis at work is a personal decision. But, should be made only after thoughtful consideration of your privacy rights. Some individuals feel comfortable sharing their diagnosis at work. Others have concerns for a variety of reasons. There is no “one size fits all” answer to disclosure. You have privacy rights relating to your medical information, while your employer has the right to some information when you ask to use protections under the ADA or FMLA. If you want to keep your diagnosis confidential, work with your provider to ensure they fill out any medical certification form appropriately. For information about disclosures, visit [TriageCancer.org/QuickGuide-Disclosure](https://www.triagecancer.org/QuickGuide-Disclosure).

For more information about your rights at work, visit [→ TriageCancer.org/Employment](https://www.triagecancer.org/Employment)
and [→ TriageCancer.org/Caregiving](https://www.triagecancer.org/Caregiving)



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