



American
Brain Tumor
Association®

Providing and pursuing answers™

8550 W. Bryn Mawr Ave. | Ste. 550 | Chicago, IL 60631 | 800-886-ABTA (2282) | email: abtacares@abta.org | www.abta.org

Employment Resources

Whether you are young or old, male or female, being employed is likely part of your lifestyle. You may work to be productive, earn a living, support a family, fulfill your passions, and contribute to society. Working can serve as a source of support, through positive relationships with co-workers, and also as a source of enrichment, through learning and applying knowledge while on the job.

You, like many other brain tumor survivors, may want to participate in the same activities that you did prior to receiving a brain tumor diagnosis and treatment. Often times, this means returning to the workforce.

Some brain tumor survivors may work in an environment with supportive co-workers and managers that promote job growth. On the other hand, some survivors may feel like they are being treated unfairly or unjustly in the workplace. Some may have even been denied a job or career advancement due to a brain tumor diagnosis, causing them to feel hurt, angry, and confused. In response to this need, this resource sheet was developed to help educate you about your legal rights as an employee.

There are four key places in the law where you can look for information about your employment rights: the Americans with Disabilities Act, state fair employment laws, the Family and Medical Leave Act, and state leave laws. However, many employers go beyond the minimum requirements of the law, so make sure to review your employer or union contract and policies.

Protection from Discrimination

The Americans with Disabilities Act (ADA) is a federal law that prohibits discrimination against qualified employees with disabilities.

In order to use the ADA's protections you must be a qualified individual, which means that you can perform the essential functions of the job with or without a reasonable accommodation.

You must also work for a private employer with 15 or more employees (or a state or local government of any size) and you have a disability, as defined by the ADA. Federal employees are covered by the Rehabilitation Act of 1973.

Under the ADA, a disability is a *physical or mental impairment that substantially limits a major life activity*. When deciding if someone with a brain tumor has a disability under the ADA, often it is not the brain tumor itself that creates the disability, but rather the side effects of treatment (e.g., nausea, cognitive difficulties, fatigue, neuropathy, depression, etc.).

A major life activity is anything that the *average person in the general population can perform with little or no difficulty*. For example, walking, talking, breathing, eating, sleeping, thinking, communicating, and operations of major bodily functions, are all considered major life activities.

The ADA applies to all phases of employment including: hiring, firing, applications, leave, reinstatement, promotions, testing and trainings, compensation, and benefits. This means that job applicants are protected, as well as employees.

Once you have determined that you are protected under the ADA, there are four ways to use those protections.

- First, if you currently have a physical or mental impairment that substantially limits a major life activity. For example, you are currently going through treatment and are suffering from extreme nausea that makes getting through a work day without vomiting impossible.
- Second, you have a history of having a disability. For example, you are a brain tumor survivor with no current limitations, but a potential employer is refusing to hire you she is afraid you will have a recurrence.
- Third, you are regarded as having a disability. For example, you are going through treatment but are not experiencing any substantially limiting side effects, but your employer is treating you differently at work because he perceives you to have a disability.
- Fourth, you have an “association with” a person with a disability. For example, you are the primary caregiver to your mother who is battling a brain tumor and your employer is refusing to promote you because of your caregiver role.

In all of these circumstances the ADA can protect you against discrimination in the workplace.

Reasonable Accommodations

If you currently have a disability under the ADA, or have a history of having a disability, in addition to being protected from discrimination you are also entitled to a reasonable accommodation. A reasonable accommodation is “any change in the work environment

or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.” Some practical examples of reasonable accommodations include:

- Changing your work schedule (e.g., working from home, part or full-time, flexible schedule, schedule breaks, extended leave)
- Using technology (e.g., tape recorder or smartphone)
- Changing your physical work environment (e.g., moving desk location close to elevator)
- Changing workplace policy (e.g., allowing additional rest periods)
- Shifting job responsibilities
- Changing your job (e.g., moving to a vacant position)

Reasonable accommodations will depend on your disability and your job. If you are unsure of what reasonable accommodations may work for your situation, you can contact the Job Accommodation Network (JAN) (www.askJAN.org). JAN is a program of the U.S. Department of Labor. JAN has a Searchable Online Accommodation Resource (SOAR) system that allows both employers and employees to explore various accommodation options for people with different types of medical conditions in different workplace settings.

An employer is required to provide reasonable accommodations for a person with a disability, unless it would cause the employer an undue hardship. To be considered an undue hardship on the employer, the accommodation must require significant difficulty or expense for the employer.

Requesting a Reasonable Accommodation

You may ask your supervisor, another superior, or a human resources representative for a reasonable accommodation. You do not have to specifically mention the ADA or use the words “reasonable accommodation.” Additionally, the request does not need to be in writing, but it is a good idea to document any agreed upon reasonable accommodations in writing.

State Fair Employment Laws

All states have some version of a state fair employment law. Many are very similar to the ADA, however, some have expanded the definition of a disability and some cover employers with fewer than 15 employees. For more information about your state’s law, contact your state’s fair employment agency. The contact information for each agency can be found on the “State Resources” section at www.TriageCancer.org/Resources.

Taking Time Off from Work

The FMLA is a federal law that may provide you with the right to take a total of 12 weeks of unpaid leave, per year, to deal with your own serious medical condition or to take care of a child, parent, or spouse with a serious medical condition. When you are taking FMLA leave, your job is protected, and your health insurance benefits are protected if you receive them through your employer. This means that an employer can not put you on COBRA when on FMLA leave.

In order to be eligible to take FMLA leave, you must work for a public employer of any size (e.g., federal, state, and local governments) or a private employer with 50 or more employees, who work within a 75 mile radius of your work site.

In addition to working for a large enough employer, you must have worked for your employer long enough. The FMLA requires that you work for your employer for at least 12 months, and that you have worked 1,250 hours (about 32 hours a week) during the last 12 months you worked for the employer. The 12 months do not need to be consecutive, only cumulative. The FMLA allows you to go back seven years to determine your work history.

Leave may be taken all at once, or in shorter periods of time (i.e., intermittent leave) if it is medically necessary. For example, you are able to take 12 weeks off in a row to recover from surgery or you may want to take every Friday morning off for medical appointments.

If you would like more information about the FMLA, contact the [U.S. Department of Labor's Wage and Hour Division](#).

For whatever reason, some brain tumor survivors may not return to their prior place of employment. You may think to yourself, "What do I do now?" Therefore, we have also included some resources that can help you identify employment goals and help to structure job retraining options to meet your specific needs.

This resource sheet contains information on where and how to access assistance, advocacy and resources that provide information about employment rights and job retraining, to successfully guide you back into the workforce. Please contact the American Brain Tumor Association's CareLine at 800-886-ABTA (2282) if you have questions or are in need of further assistance.

Legal and Advocacy Resources

American Association of People with Disabilities (AAPD)

800-840-8844

www.aapd-dc.org

AAPD offers a comprehensive website for disability-related news and information.

Americans with Disabilities Act (ADA) Homepage

800-514-0301

800-514-0383 (TTY)

www.ada.gov

The ADA website provides general ADA information and technical assistance materials. Publications can be downloaded through their website.

Cancer Legal Resource Center (CLRC)

866-843-2572

213-736-1455

www.cancerlegalresourcecenter.org

The Cancer Legal Resource Center is a joint program of the Disability Rights Legal Center and

the Loyola Law School. The center offers a toll-free national telephone assistance line which

provides free and confidential information on cancer-related legal issues.

Department of Labor Employee Benefits Security Administration (EBSA)

866 -444-3272

www.dol.gov/ebsa

Federal agency that enforces the Consolidated Omnibus Budget Reconciliation Act (COBRA).

Complaints can be filed online at www.askebsa.dol.gov/WebIntake.

Department of Labor Wage & Hour Division (WHD)

866- 4US-WAGE (487-9243)

www.dol.gov/whd

[Federal agency that enforces the Family and Medical Leave Act \(FMLA\). Complaints can be filed online or at one of their](#) 200 offices throughout the country.

Equal Employment Opportunity Commission (EEOC)

800-669-4000

www.eeoc.gov

Federal agency that enforces federal laws that prohibit job discrimination (i.e., ADA).

Has a 24 hour automated system with answers to frequently asked questions and provides publications in English, Spanish, Arabic, Chinese, Haitian Creole, Korean, Russian, Vietnamese and Braille. Publications can be downloaded or printed directly from the website and/or can be ordered through their toll-free number.

Job Accommodation Network (JAN)

800-526-7234

www.askjan.org

A service of the Office of Disability Employment Policy of the U.S. Department of Labor. JAN provides free consulting, assistance with reasonable accommodations, and other services to increase the employability of individuals with disabilities.

LawHelp

www.LawHelp.org

Provides referrals to local legal aid and public interest law offices, basic information about legal rights, court forms, self-help information, court information, links to social service agencies, and more.

National Cancer Legal Services Network

www.nclsn.org

A network of private law firms, non-profit legal aid organizations, medical-legal partnerships, bar associations, cancer support organizations, individual attorneys, social workers, and patient navigator programs. The NCLSN advocates for the provision of comprehensive cancer legal services to help individuals resolve nonmedical issues so that they may focus on their health and well-being.

Patient Advocate Foundation (PAF)

800-532-5274

www.patientadvocate.org

The Patient Advocate Foundation is a national non-profit organization which provides case

management services, publications on job discrimination and disability. A comprehensive

section of their website is dedicated to employment related information.

Triage Cancer

www.TriageCancer.org

Triage Cancer provides education and resources addressing the continuum of cancer survivorship issues to survivors, caregivers, and health care professionals. The website and blog have national and state-specific information and resources on employment and insurance issues.

State Fair Employment Agencies

Each state has a fair employment agency that enforces state fair employment laws. To find the contact information for your state agency visit the "State Resources" section at

www.TriageCancer.org/Resources.

Job Search & Retraining Resources

Cancer and Careers

www.cancerandcareers.org

This website provides working women and men with cancer, employers, co-workers, caregivers and health care providers with information on legal rights, job searching tools, how to talk with coworkers/managers and how to balance work and cancer. The website is also available in Spanish.

Career One Stop

877-348-0502

www.acinet.org

Career One Stop provides information on employment and job retraining programs. It also includes interactive tools for career development as well as online job coaches.

Disabilityinfo.gov

www.disabilityinfo.gov

A website run by the federal government that provides links for employees and job-seekers with disabilities, information on the ADA, job accommodations and vocational rehabilitation.

Easter Seals Disability Services

312 -726-6200

www.easterseals.com

Assists children and adults with disabilities with job-training.

FlexJobs

www.FlexJobs.com

A job searching resource specializing in telecommuting, part-time, and flexible jobs.

Marriot Foundation for People with Disabilities

301-380-7771

www.marriottfoundation.org

The Marriot Foundation's "Bridges: From School to Work" program provides employment opportunities for young people with disabilities through the program.

National Coalition for Cancer Survivorship

301-650-9127

www.canceradvocacy.org

The National Coalition for Cancer Survivorship (NCCS) is a survivor-led cancer advocacy organization. The website provides information and resources on employment rights.
NCCS

publishes, "Working it Out: Your Employment Rights as a Cancer Survivor." This publication can be downloaded through the website or it is available through Amazon.com Kindle.

National Center on Workforce and Disability/Adult (NCWD)

www.onestops.info

Provides information on job retraining, technical assistance and legal rights.

The Work Site: Ticket to Work

(800) 772-1213 www.ssa.gov/work

The Ticket to Work program is for people receiving Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) who would like to return to work, by helping them obtain employment services, rehabilitation services or other support services to achieve a vocational goal.

State Departments of Rehabilitation

Each state has a State Vocational Rehabilitation Agency that coordinates and provides counseling, evaluation, and job placement services for people with disabilities.

This information is not intended as a substitute for professional legal or medical advice and does not provide advice on treatments or conditions for individual patients. All health and treatment decisions must be made in consultation with your physician (s), utilizing your specific medical information. The American Brain Tumor Association does not endorse any of the organizations listed or guarantee that individuals will qualify for the services they provide. Please contact each organization for their specific guidelines.

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Updated July 2013 by Monica Fawzy Bryant, Esq., Chief Operating Officer, Triage Cancer