



Employment Rights for People Living with HIV/AIDS

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Who is your trainer?

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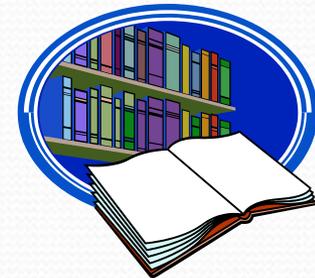


About the Legal Action Center

- **Nonprofit law & policy work:**
HIV, substance use, criminal justice
- **Website** has many resources! www.lac.org
 - Free publications, free webinars and more
- **Free legal services:** privacy, discrimination (HIV/AIDS, substance use, criminal record)
(212) 243-1313. lac.org/what-we-do/hivaids/

This training is about. . .

Employment rights of people living with HIV/AIDS



1. Freedom from discrimination
2. Right to reasonable accommodations
3. Privacy protections

A little discussion of: protections for people with substance use disorders

What Is Discrimination?

Treating a person less favorably/differently
because of his/her **STATUS**

when the law does not permit it (e.g., race, religion,
gender, disability).

BUT DISCRIMINATION IS NOT...

treating a person less favorably/differently
because of his/her **CONDUCT**.

What Is Discrimination?

Case study

- John has AIDS. Works in an office.
- John regularly misses work without calling in, in violation of company rules. Other employees who do this have been fired.
- Employer fires John for repeated absences without calling in.

Discrimination?

What Is Discrimination?

Case study

- **Yes.** John was fired for his conduct: not calling in when absent. He was not fired because of his status (HIV).

THE LAWS – DISABILITY DISCRIMINATION

- **Americans with Disabilities Act**
 - Employers with 15+ employees
 - **Rehabilitation Act of 1973**
- Federally funded/assisted programs
- **NYS & NYC Human Rights Laws**
 - Employers with 4+ employees

WHO IS PROTECTED?

- Person with a “**DISABILITY**”
 - current, past, or perceived
- Generally includes:
 - ◆ HIV/AIDS
 - ◆ Alcoholism and drug addiction (*unless* discrimination is due to “current” illegal use of drugs)

RIGHTS Under These Laws

- **No EMPLOYER shall discriminate against a “qualified individual with a disability.”**



RIGHTS Under These Laws

What does “qualified” mean?

- Meets qualification standards for job, such as requisite skill, experience, education
- Able to perform essential job duties with or without a “*reasonable accommodation*”



RIGHTS Under These Laws(cont.)

Reasonable accommodation:

- Change(s) to work setting, hours or workplace rules made so that a disabled person can perform job duties
- Must not cause employer undue hardship – e.g. significant cost, need to make fundamental change to way company operates

RIGHTS Under These Laws (cont.)

- **Examples of reasonable accommodations:**
 - Permitting cashier with HIV, who is easily fatigued:
 - to sit on a stool at his register instead of stand, and/or
 - to take short breaks.
 - Permitting supermarket stock person with HIV to transfer from position in a refrigerated room to a warmer place; doctor states he cannot work in cold temperatures because of his disability.

RIGHTS Under These Laws (cont.)

Reasonable accommodation:

- And individual with disability generally must **request** the accommodation
- Employer has right to request **medical documentation** confirming the disability; may deny accommodation if not provided.
- Employer must maintain **confidentiality** of the medical information.
- Doctors providing the documentation should **get written consent** from patient.

Medical Questions/Exams Before Job Offer

- **no** questions about disability (current or past)
- **no** requirement that applicant take HIV test
- **no** questions about alcohol or drug addiction or treatment (current or past)

BUT drug tests are permitted at any stage. HIV meds and methadone may show up in test. Get letter from doctor verifying medication prescription if it triggers “positive” test.

Medical Questions/Exams *After* Job Offer – Before Start

Case study

Mary applies for a job as a medical assistant. She is offered the job, contingent on passing a medical exam. Medical questionnaire asks: “Do you have “HIV/AIDS”?”

Legal?

Medical Questions/Exams After Job Offer – Before Start

Case study

Yes. *After* offer, employers may require medical exam as long as everyone offered the position is required to take and pass the same exam.

Not being truthful can result in job denial (that's legal).
But remember: that question is illegal *before* the job offer.

Medical Questions/Exams *After* Job Offer – Before Start



Make sure to read medical questions carefully!

Must be filled out truthfully, but questions do not always require disclosure of HIV status. Read LAC's blog post, "To Disclose or Not to Disclose: 7 Things to Know about Medical Forms & HIV," available at

<http://lac.org/category/blog/>

What about medical questions/exams after starting work (for *current employees*)?



- Employers may require medical exams and ask questions about disabilities of current employees **ONLY IF** the exam/question is “*job-related and consistent with business necessity.*”
- **Self disclosures: think twice** before self-disclose HIV status. Likely not entitled to confidentiality protections unless per employer-mandated medical exam. Generally better to have health care provider disclose with your written consent than to self-disclose.

How will employment affect government benefits?

Learn all about this by taking a webinar:

“Returning to Work with HIV: Effect on Government Benefits.”

November 12th, 12:30 to 2:30 p.m.

Registration will be at:

<http://www.hivtrainingny.org/>

Want more information?



Call Legal Action Center, 212-243-1313 or
Visit <http://lac.org/resources/hivaids-resources/>