Understanding Your Rights and Responsibilities in the Workplace in the US [1]

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You can do a lot to prevent HIV discrimination [2] at work by learning about your rights and responsibilities in the workplace. Here are answers to some of the questions most frequently asked by people living with HIV about their work.

Frequent Workplace Questions

How do I request a reasonable accommodation?

If side effects [3] or symptoms interfere with work, you might ask for changes in your working conditions that would allow you to continue doing a good job. Suppose your HIV drugs make you nauseated in the morning. If the nausea means you regularly have to leave your home later than normal, the nausea is called a “functional limitation.” Suppose your job could be done just as well if you came in an hour later and stayed an hour later. A change like that is called a "reasonable
"If you feel you need a reasonable accommodation, asking your employer for one is the next step. There are several bits of information you will need to gather and provide:

- Name the specific functional limitation you want your employer to accommodate (i.e., fatigue, tiredness)
- Be specific about the change you need to address the limitation (e.g., rest breaks every 90 minutes)
- Back up your request with a health care provider’s note that supports the functional limitation – but does not state the diagnosis!
- Make it clear that you understand the purpose of the accommodation: you still have to be able to perform the whole job, even if you have to work longer or different hours
- Give the request to the person who arranges reasonable accommodations for all conditions (the disability program manager) – this person is usually not your supervisor. This person may be the HR (human resources) representative or an officer of the company.
- If you cannot do the whole job even with the accommodation, it is important to consider taking a short-term leave or asking for a job with different requirements that you can meet

How can I get to work on time when I am facing serious diarrhea for two hours after I get up in the morning?

The diarrhea may be an adjustment to new HIV drugs. Other than getting up two hours earlier, you could:

- Ask for an accommodation (i.e., later arrival time) until you and your health care provider can resolve the diarrhea. Back up your request with a note from your provider.
- Offer to change your shift to start and end two hours later. Sometimes this is a benefit to an employer with customers who live in other time zones.
- Tell your supervisor that you have a new medication and will need frequent bathroom breaks while you adjust

If I have been discriminated against, to whom do I complain?

Start with your own supervisor, who is responsible for stopping discriminatory behavior. If that does not get the results you need, or if the discrimination is coming from your supervisor, go to human resources or the person responsible for employee relations. If you still do not get satisfactory results, explain the situation to a company officer in writing. If you are still experiencing discrimination with no company action to resolve the issue, go to the US Equal Employment Opportunity Commission. It is important to document and keep track of all your conversations, writings, and efforts.

What should I tell people if I am bleeding and someone is trying to help me?

Hopefully, by now everyone is using universal precautions. Universal precautions are things people do to protect themselves from contact with other people's bodily fluids – like wearing gloves. People administering first aid can respond to you safely if they use personal protective equipment (such as gloves, goggles, or face shields) and assume that any worker might carry blood-borne diseases. If you know your employer has not provided first aid training for a long time, try to encourage them to provide updated first aid training for the benefit of all workers.

Rights in the Workplace: Know the Law

Note: Laws sometimes change. You may want to check with your labor union, or an organization that handles workplace discrimination or health insurance concerns, before acting on the information below.
Several laws cover your rights as a person living with HIV at work:

- **Americans with Disabilities Act (ADA) of 1990:**
  - If you can do the whole job, you are a qualified individual with a disability.
  - If HIV or a side effect of medication limits you somehow, you have a functional limitation and can request a reasonable accommodation.
  - If you need a change in your job because of the limitation, tell your employer that you have a disability—you do not have to disclose your HIV status. Talk about what you can and cannot do and back it up with a note from your health care provider that suggests a solution but does not state the diagnosis.
  - You pose no threat to other workers' health on the job; being fired because you are living with HIV is illegal in the US.
  - The ADA is a tool that deserves wise, careful use; learn more about it from the Job Accommodation Network.

- **Consolidation Omnibus Budget Reconciliation Act (COBRA) of 1986:**
  - COBRA provides certain workers (and their spouses and dependent children) a right to 18 months of health insurance coverage at group rates following certain events that cause people to lose their health insurance coverage.
  - Events that qualify you for COBRA as an employee include: quitting your job, being fired from your job (as long as it was not because of misconduct), or having your hours reduced to below the hours needed for benefits (e.g., group health insurance). As a spouse or dependent child of an employee, you also qualify for COBRA in the event of divorce or legal separation from the covered employee, death of the covered employee, or the covered employee becoming eligible for Medicare.
  - To qualify for COBRA, you must have been enrolled in the employer's group insurance plan while the covered employee worked for the employer.
  - To sign up for COBRA coverage, you need to tell the group health insurance plan administrator within 60 days of the qualifying event (e.g., loss of job). The employer is also supposed to tell the group health insurance plan administrator of the event, and you should receive a letter telling you that you can choose to sign up for COBRA coverage within a couple of weeks. You then have 60 days to decide whether or not you want COBRA coverage. You have 45 days from the date you sign up for COBRA coverage to pay the first premium.
  - It is important to realize that your employer usually pays part of the premium for health insurance for active employees covered by the group plan. However, COBRA coverage is generally more expensive than coverage for active employees because COBRA participants must pay all of the premium themselves.

- **Health Insurance Portability and Affordability Act (HIPAA) of 1996:**
  - HIPAA lets workers transfer their health insurance if they change or lose their jobs; this prevents insurance gaps when you go from one insured situation to another.
  - HIPAA protects against the sharing of confidential health information (and carries stiff fines for disclosing someone's medical information at work or in a medical setting).
  - HIPAA protects the sharing of a person's information without their consent with entities other than insurance companies but allows medical doctors/facilities to share information with insurance companies without consent.

- **Family and Medical Leave Act (FMLA) of 1993:**
  - FMLA provides for up to 12 weeks of unpaid leave in one 12-month period to deal with a family issue or medical problem, either for you or an immediate family member. This law only applies to private-sector employers with over 50 employees.
  - You can take FMLA leave a few hours at a time, if necessary.
  - FMLA leave is separate from short-term disability and is not the same thing as sick days or personal time off (PTO). However, workers may choose to - or their employers may require them to - take paid sick time, vacation days, or PTO to which they are entitled at the same time as FMLA leave.
  - FMLA leave has its own application form.
  - The FMLA form asks you to identify the reason for the leave. The reason is one of six broad categories listed on the form. If you want to protect your confidentiality, you do not have to supply a diagnosis on the form. If you need help filling out the form, ask a...
Taking Care of Yourself at Work

- Keep track of all of your performance reviews. They are a testament to your ability to perform the work required. You may need them if someone learns your HIV status and suddenly begins giving you poor reviews (note: this is discrimination, and it is illegal!).
- It is important that you think carefully before disclosing [5] your HIV status at work. Try to have realistic expectations about the possible outcome.
- Set a respectful tone at work regarding health privacy and refuse to discuss other employees' medical conditions
- Focus on doing a great job!

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Additional Resources

Select the links below for additional material related to understanding your rights and responsibilities in the workplace.

- US Equal Employment Opportunity Commission (EEOC) [18]
- Facts About the Americans with Disabilities Act (EEOC) [19]
- Job Accommodation Network [20]
- HIV and the Workplace (TheBody) [21]
- HIV, Employment Discrimination, and the Law (HIV.gov) [22]
- Working with HIV (HIV.gov) [23]
- HIV and Your Civil Rights in the Workplace (ACLU) [24]
- Fighting Discrimination Against People with HIV/AIDS (US Dept of Justice) [25]
- HIV & the Law: ADA (CDC, via TheBody.com) [26]
- HIPAA for Individuals (HIPAA) [27]
- Family and Medical Leave Act (FMLA) [28]
- Procedures for Providing Reasonable Accommodation for Individuals with Disabilities (EEOC) [29]
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