

Crohn's and Colitis Foundation of America: September 18, 2011 Symposium
In the Pipeline: New Advances in IBD
Symposium for Patients and their Families

Breakout Session:

MANAGING ILLNESS IN THE WORKPLACE

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MANAGING ILLNESS IN THE WORKPLACE Handouts

- Key Support Resources – p.3
- Disability Discrimination in the Workplace – Overview of ADA –p. 4
- Reducing Problems at Work Relating to Your Medical Condition –p. 6
- Examples of Accommodations – p. 10
- Preparing for Interviewing – p. 11

MANAGING ILLNESS IN THE WORKPLACE
KEY SUPPORT RESOURCES

1. Americans with Disabilities Act (ADA)

www.ada.org

2. The Legal Aid Society – Employment Law Center

www.las-elc.org – articles online include:

- [Paid Family Leave](#)
- [Family/Medical Leave: Your Own Serious Health Condition](#)
- [Family/Medical Leave: Caring for a Family Member](#)
- [State Disability Insurance: An Overview](#)

3. Department of Labor (DOL)

If you require filing for formal disability insurance – www.dol.org

4. Job Accommodation Network

www.askjan.org

Good information about job accommodations

5. YourWorkHealth.com

www.yourworkhealth.com

Employee: Your Rights: Being off work – articles online include:

- [Phased return to work](#)
- [Should your job be kept open if you are off sick?](#)
- [Can my employer terminate my contract on medical grounds?](#)

6. How to Find Work While Dealing with a Long-Term Medical Condition

<http://www.wikihow.com/Find-Work-While-Dealing-With-a-Long-Term-Medical-Condition>

Good article / guide to finding work with a medical condition

7. Counselors/Psychotherapists

- Locate a counselor in your insurance plan: Mental Health Benefits through your insurance and/or Employee Assistance Program (EAP)
- CCFA Hotline – Information Resource Center – 888-694-8872
- Goodtherapy.org – online therapy directory
- Psychologytoday.org – online therapy directory

8. CCFA support groups

<http://www.cfa.org/chapters/services/>

- General – 1st Tuesday of every month “1st Tuesday Support Group” (New York City)
- Parents – starting October 19, 2011 (New York City)

MANAGING ILLNESS IN THE WORKPLACE
ADA ARTICLE

Disability Discrimination in the Workplace: An Overview of the ADA

online link to article: <http://www.nolo.com/legal-encyclopedia/disability-discrimination-workplace-overview-of-30123.html>

The Americans with Disabilities Act (ADA) protects employees from discrimination based on a disability.

The Americans with Disabilities Act (ADA) prohibits employers from [discriminating](#) against [employees](#) or applicants with disabilities in all aspects of employment including hiring, pay, promotion, firing, and more. It also protects employees from retaliation when they enforce their rights under the law. (To learn more about ADA rules for the hiring process, read Nolo's article [Getting Hired With a Disability](#).)

Private employers with at least 15 employees must follow the ADA. Many states have similar laws, which may apply to smaller employers too.

Employers subject to the ADA cannot discriminate against a "qualified worker with a disability." Furthermore, the employer must provide a reasonable accommodation for a worker with a disability as long as the accommodation won't cause the employer undue hardship. The ADA specifies what counts as a disability, which workers are protected by the law, when accommodations are required, and what constitutes an undue hardship.

Covered Employees

The ADA protects the following employees:

- **An employee who has a disability.** If an employee has a physical or mental impairment that substantially limits a major life activity, he or she is protected.
- **An employee with a history of impairment.** An employer can't discriminate against an employee based on his or her previous disability.
- **An employee who the employer regards as disabled.** This is true even if the employer is wrong, and the employee is not actually disabled. If the employer discriminates against an employee based on its incorrect belief that the employee has a disability, the employee is protected by the ADA.

Defining "Disability"

A disability for purposes of the ADA is a physical or mental impairment that substantially limits a major life activity. What constitutes a major life activity is broadly defined to include basic tasks (like walking, reading, bending, and communicating), as well as major bodily functions (such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions).

Crohn's and Colitis Foundation of America: September 18, 2011 Symposium

If an impairment doesn't significantly limit a person's ability to perform a major life activity, it isn't a disability protected by the ADA. Temporary ailments also don't count as disabilities. For more information on whether specific ailments are considered disabilities, visit the Equal Employment Opportunity Commission's (EEOC) website at www.eeoc.gov.

Who is a Qualified Worker With a Disability?

Only qualified workers with disabilities are protected by the ADA. A qualified worker with a disability is someone capable of performing the essential duties of the job, with or without a reasonable accommodation by the employer.

The essential duties of the job are those tasks that are fundamental to the position. Ancillary duties don't count. For example, a call center's customer service representatives may answer phones, draft correspondence to dissatisfied customers, and resolve customer complaints. If business is slow, the employees may also file or restock office supplies. The customer service tasks are probably essential duties of the job, while the "filler" tasks probably aren't.

Reasonable Accommodation

If needed, an employer must provide a reasonable accommodation -- an adjustment or modification that allows the employee to do the job -- to a qualified employee with a disability. The employer isn't required to guess whether a reasonable accommodation is needed, though once an employer knows of the need for an accommodation, it must meet that need. Also, the employer isn't required to provide the particular accommodation an employee requests if another accommodation will do. But the employer must engage in the "interactive process," a dialogue with the employee about accommodations that will meet that person's needs.

Undue Hardship

The employer doesn't have to provide a reasonable accommodation if doing so would create an undue hardship. An undue hardship means significant difficulty or expense to the business. These factors determine whether an accommodation creates an undue hardship:

- the nature and cost of the accommodation
- the financial resources of the employer (a larger, more successful business can usually afford to do more than a smaller one)
- the nature of the business, including size, composition, and structure, and
- accommodation costs already incurred in the workplace.

If the cost of an accommodation threatens the financial viability of the organization --whether because the company is so small or the cost is so large -- it's probably an undue hardship, and not required. However, according to the EEOC, the majority of accommodations cost less than \$500. For most employers, that makes them reasonable and easy to implement.

To learn more about laws that protect against job discrimination, get [*Your Rights in the Workplace*](#), by Barbara Kate Repa (Nolo). by: [Lisa Guerin, J.D.](#)

MANAGING ILLNESS IN THE WORKPLACE
EMPLOYEE TIPS: REDUCING PROBLEMS AT WORK RELATING TO YOUR MEDICAL CONDITION

April 24, 2008 · 5:27 am

online link to article: <http://employeeightswisconsin.com/2008/04/24/employee-tip-reducing-problems-at-work-relating-to-your-medical-condition/>

Employee Tip: Reducing Problems at Work Relating to Your Medical Condition

People with medical conditions often have unique requirements or problems arise at work. You should consider doing the following things to reduce the risk of problems.

(1) Learn your employer's applicable policies, and follow them.

You should review the employer's policies that relate to medical issues. These policies usually include:

- Attendance and sick leave policies;
- Family and Medical Leave Act (FMLA) policies;-
- Short term disability (STD) and long term disability (LTD) policies; and
- Discrimination and complaint policies.

For example, if you want to take medical leave for surgery, you may qualify for FMLA leave. Your employer will likely have an FMLA policy, and preferred FMLA formwork. You should use the employer's forms, and follow its policies.

If you have problems with another employee because of your medical condition, you should check if the employer has a policy concerning discrimination or employee complaints. For instance, your employer may have a disability discrimination policy that tells you what to do if someone is harassing you because of your medical condition. The policy may tell you a specific department and phone number to call.

If you decide to take a particular action (e.g. request medical leave or make an internal complaint), it is important you follow the employer's policies. Even if you think following a policy will not help you, it can help you later to show you took all the steps your employer's policy said you should take.

(2) Assist your doctor with employment requirements.

Often, it is necessary that your doctor will have to complete formwork, write letters, or fulfill other requirements for your employer.

It is important you inform your doctor of all such requirements, and give as much advance notice as possible.

Also, if you can assist your doctor with any employment requirements, you should offer to do so. For example, you may be able to complete non-medical information on a form-such as name, address, etc.- and save your doctor time by completing this information yourself. If you assist in ways like this, your doctor may be able to complete requirements more quickly and efficiently.

Crohn's and Colitis Foundation of America: September 18, 2011 Symposium

However, you should never replace your doctor's opinion with your own, or submit medical formwork that your doctor has not reviewed. The objective is to make yourself available to help your doctor, and reduce your doctor's burdens if possible.

(3) If your doctor writes a letter to your employer, consider including the types of information below.

Often, it becomes necessary for a doctor to write an employer about a patient's medical condition, and the need for "accommodations" such as medical leave and/or work restrictions. If your doctor writes a letter to your employer, there are important things your doctor and you should consider including in the letter. These things include:

a. Your diagnosis/medical condition.

If you are comfortable informing your employer what your medical condition is, that information can be helpful in getting the employer to understand your need for accommodations. For example, if an employer is informed an employee has a herniated disk, then the employer is more likely to understand why medical leave for surgery is needed.

b. How your diagnosis limits your major life activities.

If your condition limits major life activities, the letter could briefly describe that to the employer. For example, a letter may state "Because of Ms. Smith's back condition and pain, she is unable to walk long distances, cannot garden, and cannot lift many objects in her home or do many routine house tasks.

c. How your condition affects your work.

If your medical condition affects your work, the letter can tell the employer how. For example, a letter may state "Mr. Jones' diabetes affects his work because it increases the number of breaks he must take, and reduces the amount of time he can work while standing up."

d. What restrictions/accommodations you need for work.

If your medical condition requires work restrictions/accommodations, the letter should describe exactly what accommodations are required. For example, a letter may state "Because of Ms. Smith's back condition and pain, for two weeks she must be restricted from lifting objects over 10 pounds at work."

e. The date you will begin medical leave, and the date you are returning to work (if possible).

If your doctor is requesting you take medical leave, it is important to give dates for the medical leave, if possible. If you and your doctor cannot give precise dates, the letter should give the most detailed description possible.

For example, a letter may state, "Mr. Jones will need leave from work beginning December 12, 2008 (a day before his surgery), and ending on approximately December 26, 2008. It is possible his leave will be longer. If that is the case, I will notify you as soon as possible. Leaves for surgery of this type usually last between one and four weeks."

If you and your doctor are not certain what date you will return to work, then the letter should state the date you will next be evaluated. For example, a letter may state, "Mr. Jones will need leave from work beginning December 12, 2008 (a day before his surgery). It is not yet known when his leave may end. His next appointment will be on December 21, 2008. At that time, his possible return-to-work date will be evaluated, and I will contact you shortly after the appointment with an update."

As these examples show, it is important the letter gives as much detail about leave as possible. If the letter is too indefinite or open-ended, then the employer may make the wrong conclusions, such as thinking you will be on leave or have restrictions for much longer than your doctor actually anticipates.

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Crohn's and Colitis Foundation of America: September 18, 2011 Symposium

f. You are willing to discuss any concerns or requests.

It is important the letter indicates that you and your doctor are willing to communicate with the employer about any concerns or requests. If a letter from your doctor includes the types of information above, it will help reduce the risk of employment problems down the road. However, sometimes problems still occur, despite your best efforts.

4. If problems arise with your employer, do not react with angry or righteous behavior.

Sometimes, a problem will arise that appears related to your medical condition. For example, an employee may have years of good performance reviews, have surgery, and then receive a negative review (her first) just after the surgery. It is natural for an employee in this circumstance to suspect her medical condition was the real reason for the negative review, and to be hurt and upset about this.

However, when an employer does something negative, it is important you do not react negatively. Some employees who have been wronged will react with angry or righteous behavior, and say or do something that makes things worse. In whatever way you choose to respond to an employer's negative conduct- by making a complaint, looking for a new job, or trying to work with the employer and improve in criticized areas- it is important you remain positive. You should look to effectively solve problems rather than dwell on how you have been wronged.

5. If you wish to contact or complain to your employer about problems at work, you should first consider several factors.

Before you decide to notify your employer they did something wrong, you should carefully consider several factors.

- **Consider whether the employer may retaliate.** There are laws that prohibit retaliation, but that does not mean the employer will not retaliate. You should consider the temperament of the employer personnel involved with your situation. If those persons are usually fair-minded, then the chances are better they will respond to a complaint fairly and open-mindedly. If those persons typically react angrily to employee concerns, then the risk of retaliation is higher, and you should take that into account when considering the pros and cons of complaining.

- **Seek advice from a knowledgeable source.** You could speak to a union representative, an attorney, and/or a trusted former employee who has successfully responded to similar situations. Take their advice into account, and consider the pros and cons of different options, before you act.

- **As mentioned above, check the employer's policies, to see if they identify people to talk to, and proper procedures to follow.** If you decide to make an internal complaint, make sure you contact the people the policy designates, and follow the appropriate procedures.

- **Do not discuss your problems with employees you do not need to communicate with.** Unless an employee is someone who needs to know about your medical issues (e.g. an HR rep you need to contact to appeal a medical leave denial), there is no reason to discuss your concerns with that employee. Even coworkers who are friends can inadvertently spread your information in a harmful way. People will talk more than you think: be careful.

- **When you communicate with the employer (i.e. with the appropriate representative), use language that is factual and positive.** If you communicate with any employer personnel about your concerns, you should talk to them politely, stick to the facts, and communicate with them in a positive and professional manner (even if they do not do these things). Think about who your audience is, and how they may react. If the employer representative acts angrily toward you, do not take the bait. Do not "tell off" that person, or raise your voice:

Crohn's and Colitis Foundation of America: September 18, 2011 Symposium

doing this may lose your job, no matter how right you are. The way you communicate is just as important, or more so, than the content of what you communicate.

- Be sure you communicate your concerns in writing (in addition to any spoken complaints). If you decide to inform your employer about problems at work, it is important you do so in writing.

It is fine to communicate concerns in person or over the phone. However, it is important your concerns also be stated in writing. You may later need proof that you communicated your concerns to your employer. The employer's recollections of spoken conversations may be very different than your recollections. For this reason and others, it is important that your major concerns are not just spoken, but are also communicated in writing.

Once you have decided on the appropriate information to write, you should send the employer an email or other document (e.g. fax, certified letter). The document should be sent to the appropriate person(s) named in the employer's policies, to your immediate supervisor, and to an HR rep.

Your written/mailed communications should be as natural as possible. For example, if you typically email your supervisor about issues in the office, then it may be best to email the supervisor (rather than sending a certified letter) about work problems relating to your medical condition.

6. Document, and save documentation.

Be sure to document all interactions and problems you have at work that relate to your medical condition. You should keep a journal with dates, descriptions of the issues that occurred (including negative actions or statements made against you), and the names of the employees involved.

Also, you should keep copies of all documents that relate to your medical condition and problems at work. For example, you should keep copies of doctor's letters and forms, employer's letters, performance reviews, disciplinary documents, and emails that concern your medical condition or problems at work.

Conclusion

Hopefully, you will never experience problems with your employer, and the employer will reasonably work through medical issues with you. An ideal employment relationship involves trust and good faith on both sides. One way you can enhance the employment relationship is to follow the employer's policies, and communicate your needs in a reasonable and positive manner.

If problems arise, you should continue following the employer's policies and acting in a positive manner. However, you should also take the additional precautions above, and work with your doctor and others to protect your best interests. There is no guarantee you can prevent an employer from taking unfair actions against you, but the measures above will help reduce the risk of unfair treatment, and increase your chances of successfully addressing problems.

DISCLAIMER: The information in this blog is NOT legal advice, nor does it establish an attorney-client relationship between you and Employee Rights Attorney Michael Brown or the law firm of Peterson, Berk & Cross. Legal advice often varies between situations. If you want legal advice for your specific circumstances, you must consult with an attorney. For more information about Wisconsin Employee Rights Attorney Michael F. Brown and Peterson, Berk & Cross, S.C., please visit <http://www.pbclaw.com/mb.html>.

MANAGING ILLNESS IN THE WORKPLACE
EXAMPLES OF ACCOMMODATIONS

Taken from: Your Legal Rights: DISABILITIES IN THE WORKPLACE: REASONABLE ACCOMMODATION
 The Legal Aid Society - <http://www.las-elc.org/factsheets/disabilities-accommodations.html>

Modification of facilities	An employee with a mobility impairment caused by their disability may need a ramp or a special chair to accommodate the disability.
Equipment or devices	An employee with CMV or another vision impairment, for example may need a computer with voice recognition or enlarged type.
Part time work schedule	An employee who has fatigue or is unable to stand for 4 or more hours a day may need a part time schedule.
Modified work schedule	An employee who takes a regimen of prescription drugs to treat their disability or a person who has fatigue or trouble breathing may need frequent breaks and access to drinking water, and/or a modified schedule to accommodate the side effects of the medications.
Time away for treatment	Time away from the workplace to attend doctor's appointments may be a reasonable accommodation.
Unpaid leave of absence	An employee with a disability may need an unpaid leave of absence for a limited time to undergo surgery or to recover from an episode of an illness related to the disability such as an epileptic seizure.
Job restructuring	An employee with decreased physical strength due their disability might seek to avoid manual tasks, where such tasks are not core duties of the job.
Training and supervision	An employee with a disability-related condition interfering with concentration or learning may need additional or specialized training or supervision to master new job skills and duties.
Modification of policy	An employee taking medication for a disability who experiences midday grogginess might need a break to lie down in the employee lounge, despite an employer's policy against napping.
Education of other employees	An employee with a disability such as HIV/AIDS who is facing misunderstandings on the job might seek disability education of co-workers and supervisors to raise awareness and dispel fears and stereotypes.
Transfer to a vacant position	An employee who is not able to perform the essential functions of his or her current position may seek a transfer to a vacant position for which he or she is qualified. A transfer may also be appropriate where the employee remains qualified for the current position with accommodation, but both the employee and the employer agree that a transfer is appropriate

MANAGING ILLNESS IN THE WORKPLACE
PREPARING FOR INTERVIEWING

AskJan.org – Job Accommodation Network - Adapted from “Finding a Job that is Right for You: A Practical Approach to Looking for a Job as a Person with a Disability” – Step 3: Are you Prepared for the Job Interview? See online article for full list of questions, this is only a sample from this section- <http://askjan.org/job/Step3.htm>

1. Are there questions an interviewer should not ask?

Questions are the main part of the interview and are one of the main ways the interviewer can know if a candidate is right for the job. You can expect lots of different questions from discussion about your education to your last job. However, there are questions that an interviewer cannot legally ask.

- An employer may not ask or require a job applicant to take a medical examination before making a job offer.
- An interviewer cannot make any pre-employment inquiry about a disability or the nature or severity of a disability. However, during the post-offer, pre-employment stage of the process, an employer can ask medical questions not related to the job as long as everyone going into the position is asked the questions.
- An employer may, however, ask questions about the ability to perform specific job functions and may, with certain limitations, ask an individual with an obvious disability to describe or demonstrate how s/he would perform a specific function. JAN has developed a fact sheet on the [Pre-Offer, Disability-Related Questions: Dos and Don'ts](#) and the Equal Employment Opportunity Commission has an enforcement guidance on [Pre-employment Disability-Related Questions and Medical Examinations](#).

2. How do I explain recent gaps in my work history because of my disability?

One of the questions often asked of candidates is their work history from most recent to first experience. Individuals can be asked to explain gaps in employment history. While there is not a perfect answer, JAN Consultants suggest that the best way to handle difficult questions during the interview is to be prepared for them.

- Make a list of the questions you know you are going to have trouble with and formulate an answer, then practice your delivery of these answers so you will be ready from them." For example, "I see that there is a two year gap in your work history. What have you been doing during this time?" This is an opportunity to talk about what you have been doing, not what you have not been doing. Think about valuable life experiences that you have gained during this time. Have you been taking care of children or a parent, going to school, taking art classes, or volunteering? This question may prompt you to disclose your disability if you have not already done so.
- Be sure to relay your time/history in a way that shows how you have dealt with a difficult situation in a positive manner.
- Remember to keep the past in the past, stating that you are ready to move forward and are qualified and able to do the job you want.
- It is wise to have researched the position for which you have applied as well as the organization's focus, mission, and history. Using the information you found during the research, you can transition the conversation back to why an employer should hire you.

3. Can an employer require medical examinations or ask questions about a disability?

An employer cannot require you to take a medical examination before you are offered a job. If you are applying for a job, an employer cannot ask you if you are disabled or ask about the nature or severity of your disability.

- An employer can ask if you can perform the duties of the job with or without reasonable accommodation. An employer can ask you to describe or to demonstrate how, with or without a reasonable accommodation, you will perform the job duties.
- Following a job offer, an employer can condition the offer on your passing a required medical examination, but only if all entering employees for the job category have to take the examination. However, an employer cannot reject you because of information about your disability revealed by the medical examination, unless the reasons for rejection are job-related and necessary for the conduct of the employer's business. The employer will also have to consider reasonable accommodation, barring an undue hardship, to allow an applicant the ability to perform the essential functions of the job up to the expectations of anyone entering the position.
- The results of all medical examinations must be kept confidential and maintained in separate medical files.

4. At this point, do I tell the employer I may have a disability?

Disclosing a disability is voluntary during the application and interview stages of the employment process. Some individuals decide to disclose to a potential employer at that time. Disclosure during the application or interview stage may be because the disability is not hidden or the individual decides this is the right time. Disclosing a disability requires a lot of thought and planning. Candidates with disabilities should plan how they will disclose and assess the consequences of sharing this intimate information with a prospective employer. Ultimately, the job candidate must decide the time, place, and degree of information to share with others.

- Many, including the U.S. Department of Labor's Office of Disability Employment Policy (ODEP), suggest a positive approach to disclosing before a job offer has been made. This approach would anticipate the concerns of the employer, have innovative accommodation suggestions available, practice demonstrating how you would perform difficult functions, and keep the focus on your abilities. This approach should send a message to the interviewer that you are an innovative individual who can anticipate job changes.
- JAN Consultants suggest "[Disability Disclosure and Interviewing Techniques for Persons with Disabilities](#)," if you need to disclose during an interview "remember to talk about your abilities, not your disabilities. Employers need qualified, capable individuals to fill positions. Find a way to show that you are that person. Sell them on what you can do, not on what you cannot do. Be positive about yourself and be honest."
- Job candidates should be aware that once disclosure of a disability or an accommodation request is made employers may ask the employee about the limitations related to the job and are permitted to make medical inquiries.

Read what the [U.S. Department of Labor's Office of Disability Employment Policy \(ODEP\)](#), [Richard Pimentel](#) from Milt Wright and Associates, and others say, and then decide for yourself when and if to disclose.