Cancer and Employment Issues as Related to the ADAAA

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Ten regional centers that provide information, guidance and training on the Americans with Disabilities Act (ADA).
The regional ADA Centers are funded by the National Institute on Disability and Rehabilitation Research (NIDRR) since 1991.
Our Mission

• Facilitate **voluntary compliance** with the ADA.

• Conduct **research** to reduce and eliminate barriers to employment and economic self-sufficiency and to increase the civic and social participation of Americans with disabilities.
Background

• In the U.S. in 2014 alone, an estimated 1.6 million people will be diagnosed with some type of cancer; on average, 68% will survive (American Cancer Society, 2014).

• Rates of cancer patients’ eventual return-to-work range from 56% - 89% (Amir & Brocky 2009; Villaverde, et al. 2008)

• Greater awareness of the job-related and workplace issues that cancer survivors face can lead to more comprehensive rehabilitation plans and recovery, reducing time out of work (Center for Disease Control [CDC], 2011; Nathan, Haynes-Lattin, Sisler, & Hudson, 2011).
What are key findings about concerns?

• Survivors’ employment outcomes relate to factors in several domains: who they are as individuals; the effects of treatment; and aspects of work environments (Mehnert, de Boer & Feuerstein, 2013)

• Analysis of EEOC claims filed under the Americans with Disabilities Act (ADA) shows that survivors more often have issues with job termination and terms of employment than employees with other impairments (Feuerstein, Luff, Harrington, & Olsen, 2007).
What about addressing issues?

• Multi-pronged approaches that incorporate information or educational training, counselling or coping skills sessions, and physical exercise are most effective in helping employed patients with cancer return-to-work (De Boer et al., 2011; Fong et al. in press).

• Work environment traits that can influence survivors' work outcomes are "work conditions, work demands, employer accommodation, work climate, [and] flexibility” (Mehnert et al., 2013, p. 2154).

• The role of line managers can be especially significant (Amir et al., 2010).
What is the Americans with Disabilities Act?

Title I of the ADA prohibits discrimination in all employment practices against qualified employees with disabilities who can perform the essential functions of their job, with or without reasonable accommodations.

- EMPLOYMENT PRACTICES COVERED BY THE ADA:
  - Job advertisements, applications, and recruiting
  - Hiring and firing
  - Leave and lay-offs
  - Reinstatement and reassignment
  - Tenure and promotion
  - Testing and training
  - Compensation and benefits
What is a ‘disability’ under the ADA?

1) Mental or physical impairment that substantially limits a major life activity.
2) Record of such impairment
3) Regarded as having such impairment

Most litigated issue before the ADA Amendments Act
Protected Federal Categories

- Race
- National Origin
- Color
- Genetic Information
- Religion
- Sex
- Age 40+
ADA Amendments Act of 2008

- Updated the definition of disability to include impairments that substantially limit major bodily functions
  - “Normal cell growth”

- Focus should be on whether people are complying with the ADA rather than whether some condition is a disability.
What is a ‘reasonable accommodation” under the ADA?

A **reasonable accommodation** is any change or adjustment in the work environment that enables an individual with a disability to enjoy equal benefit and employment opportunities. An employer is required to take reasonable steps to accommodate a person with a disability, unless it would cause the employer an **undue hardship**.

**Reasonable accommodations for employees with cancer:**

- Making facilities accessible
- Acquiring equipment or devices that assist devices
- Allowance for telecommuting
- Modified schedule or part time work
- Job restructuring
- Extended leave time
- Permission to use a phone to call doctor
## Leave: FMLA or ADA?

<table>
<thead>
<tr>
<th>Family Medical Leave Act</th>
<th>ADA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serious medical condition</td>
<td>Disability</td>
</tr>
<tr>
<td>50 employees</td>
<td>15 employees</td>
</tr>
<tr>
<td>12 month tenure / 1250 hours</td>
<td>No tenure needed</td>
</tr>
<tr>
<td>12 weeks leave</td>
<td>Definite length leave until it becomes undue hardship to employer.</td>
</tr>
</tbody>
</table>
How reasonable accommodations are determined

Appropriate accommodations:
• Case-by-case basis
• Primary consideration to employee’s choice, but
• Employer may choose the less expensive or burdensome accommodation.

An employer is NOT required to:
• Eliminate essential functions or redefining position
• Bump other employees from their positions
• Create a new position
• Lower production standards, quantitatively or qualitatively
• Accommodate if it is an undue hardship on employer
Reasonable Accommodation

- Individual must request an accommodation from the employer, unless the need for one is readily apparent.
- No magic words needed
  - May use "plain English" and need not mention the ADA or the phrase "reasonable accommodation."
  - Does not need to be in writing, though an employer may choose to write a memorandum or letter confirming the request.
Only the Information Needed!

- An employer may request reasonable documentation where a disability or the need for reasonable accommodation is not obvious.

- An employer, however, is entitled only to documentation sufficient to establish that the employee's cancer is a disability and that explains why an accommodation is needed.

- A request for an employee's entire medical record, for example, would be inappropriate, as it likely would include information about conditions other than the employee's cancer.
What about confidentiality?

The employer must keep the results of any medical inquiry or examination confidential, including information related to reasonable accommodation requests.

Note: This does not include voluntary disclosure outside of seeking an accommodation.
ADA Rapid Evidence Review finding:

Finding from a rapid evidence review conducted by the National ADA Knowledge Translation Center (in preparation for its ADA systematic review):

“Knowledge of the ADA facilitates the decision to disclose one’s disability status.”

(Parker Harris et al., 2014, p. 3)
Findings from Southwest ADA Center Survey of Cancer Survivors

• National online survey conducted in Fall 2012
• N=166 adults who self-reported having had cancer
• *What does data tell us about knowledge of ADA and decision to disclose?*
Low awareness of their eligibility for ADA protection

Are you aware that the Americans with Disabilities Act covers people with cancer?

<table>
<thead>
<tr>
<th></th>
<th>Count</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>No/not sure</td>
<td>96</td>
<td>57.8</td>
</tr>
<tr>
<td>Yes</td>
<td>69</td>
<td>41.6</td>
</tr>
</tbody>
</table>
Most respondents comfortable disclosing to employer

5-point Likert scale: Strongly Disagree to Strongly Agree

Mean = 3.95
Std. Dev. = 1.218
N = 139
Traits of those more comfortable disclosing cancer to employer

- Longer tenure in job
- Working for a larger employer
- Having employer-provided healthcare
- Being married/living with a partner
- Being White or Asian
- Having a higher household income
## Potential risks of disclosing (N=132 who disclosed)

<table>
<thead>
<tr>
<th>Consequence</th>
<th>Count</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Passed up for promotions or projects</td>
<td>45</td>
<td>27.1</td>
</tr>
<tr>
<td>Treated as incompetent</td>
<td>31</td>
<td>18.6</td>
</tr>
<tr>
<td>Subtle pressures to stop working</td>
<td>25</td>
<td>15</td>
</tr>
<tr>
<td>Stigmatized at work</td>
<td>24</td>
<td>14.4</td>
</tr>
<tr>
<td>Lost a promotion</td>
<td>19</td>
<td>11.4</td>
</tr>
<tr>
<td>Negative performance review after taking time off due to cancer</td>
<td>19</td>
<td>11.4</td>
</tr>
<tr>
<td>Asked to resign</td>
<td>10</td>
<td>8.3</td>
</tr>
<tr>
<td>Fired</td>
<td>12</td>
<td>7.2</td>
</tr>
</tbody>
</table>
Study Limitations

Respondents to this survey more likely to experience better workplace outcomes due to:

• higher than average household incomes
• low proportion of racial/ethnic minorities, and
• most in white collar jobs.
What is the ADA complaint process?

Employees who believe they have been discriminated against in the workplace must exhaust the administrative complaint procedures available through the EEOC before they can file an ADA lawsuit in federal court.

- File charge within 180 days of the alleged discrimination.
  - 300 days if there is an equivalent state discrimination law.
- Mediation
- Investigation
- EEOC will pursue case or issue right to sue letter
How the ADA National Network can help

Call us at 1-800-949-4232

http://wwwadata.org
Other NCLSN member resources

National Coalition for Cancer Survivorship

http://www.canceradvocacy.org/shop/

*The Cancer Survival Toolbox* (also available in Spanish, both versions are free)

*What Cancer Survivors Need To Know About Health Insurance* ($5.00)

*Working It Out: Your Employment Rights as a Cancer Survivor*

(also available in Spanish, both versions $5.00)

Have several downloadable resources, webinars and teleconferences:

**Cancer and Careers**

www.cancerandcareers.org

**Cancer Legal Resource Center**

http://www.disabilityrightslegalcenter.org/cancer-legal-resource-center

Question to audience: others to add here?
Resources

Questions about the ADA?
U.S. Equal Employment Opportunity Commission
1801 L Street, N.W.
Washington, D.C. 20507
800-669-4000 or 202-663-4494 (TTY)
www.eeoc.gov

Questions about Job Accommodations?
Job Accommodation Network (JAN)
800-526-7234 or 800-ADA-WORK
TTY: 877-781-9403
www.askjan.org
Contact Information

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References


References cont.


References cont.


Appendix – Survey Demographics
Who was included in the cancer survivor survey?

Participants:
- N = 166

Age:
- Range = 19 – 81
- Mean = 44.5

Gender:
- Male = 42 (25%)
- Female = 123 (74%)

State of Residence:
- Texas = 55 (33.1%)
- Other = 107 (64.5%)
- International = 4 (2.4%)
What were their demographics?

Marital status
- **Married**: 49%
- **Living with a partner**: 15%
- **Divorced**: 19%
- **Never-married, and not currently living with a partner**: 13%

Spanish, Hispanic, or Latino/Latina
- **No**: 87%
- **Yes**: 13%

Race
- **White**: 85%
- **Black/African American**: 5%
- **Two or more races**: 3%
- **Other**: 5%
What were their income levels?

**Est’d Out of Pocket Costs**
- Range = $0 – 185,000
- **Mean = $12,400**

**Est’d household income**
*adjusted for outliers
- Range = $0 – 200,000
- **Mean = $69,869**
- Median = $60,000

According to the American Community Survey (ACS), the median household income for the United States in 2012 was $50,371.
What was their employment experience?

**Employment Status**

- Employed, full-time (not self-employed) = 87 (52%)
- Employed, part-time (not self-employed) = 20 (12%)
- Unemployed, and actively looking for work = 15 (9%)
- Self-employed = 13 (8%)

**Current or Most Recent Job Title**

- Trained Professional = 50 (30%)
- Middle Management = 22 (13%)
- Student = 21 (13%)
What was their experience with cancer?

**Months in Remission**
- Range = 0 – 480 (40 years)
- Mean = 41 months

**Cancer Type**
- **Breast** = 54 (32.5%)
- Other = 50 (30%)
- Non-Hodgkin Lymphoma = 13 (7.8%)
- Thyroid = 11 (6.6%)
- Colon and Rectal = 11 (6.6%)
- Prostate = 9 (5.4%)

Examples of “Other”: Ovarian, Testicular, or two or more types of cancer.

**Disability Unrelated to Cancer**
- No = 134 (80.7%)
- Yes = 24 (14.5%)
- Not sure = 8 (4.8%)
Disclaimer and Acknowledgement

This presentation was supported by the Southwest ADA Center. The Center's mission is to promote voluntary compliance with the Americans with Disabilities Act (ADA) by providing three core services — technical assistance, training and materials dissemination. Activities designed to carry out the mission in Texas, Arkansas, New Mexico, Oklahoma and Louisiana are facilitated through the home office in Houston, TX as well as its affiliates.

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