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Understanding Your Rights and Responsibilities in the Workplace in the US

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You can do a lot to prevent [HIV discrimination](#) 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 workplace.

Frequent Workplace Questions

How do I request a reasonable accommodation?

If [side effects](#) 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 (feeling sick to the stomach) 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 accommodation." 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 (e.g., 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 healthcare 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 healthcare 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 (see Additional Resources below). It is important to document and keep track of all your conversations, written communications, 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. It is a good idea 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 healthcare 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 (see Additional Resources below)
- 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. Within a couple of weeks, you should receive a letter telling you that you can choose to sign up for COBRA coverage. 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 or all of the health insurance premiums for active employees covered by the group plan. However, COBRA participants must pay all of the premium themselves. These premiums can be quite high and may not be an option for everyone.
- 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 against the sharing of a person's information without their consent 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**. Some states now require paid family leave under certain circumstances.
 - You can take FMLA leave a few hours at a time, if necessary, for example, to keep up with doctor and laboratory appointments.
 - 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. Your healthcare provider needs to certify your need for FMLA leave.
- The FMLA form asks you to identify the reason for the leave. If you want to protect your confidentiality, you do not have to supply a diagnosis on the form. However, some healthcare providers report that leave has been denied if no diagnosis was provided.

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](#) 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!

Additional Resources

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

- [US Equal Employment Opportunity Commission \(EEOC\)](#)
- [Facts About the Americans with Disabilities Act \(US Equal Employment Opportunit...](#)
- [Job Accommodation Network](#)
- [What About My Rights? \(WorkPositive, Inc., via TheBody\)](#)
- [HIV, Employment Discrimination, and the Law \(HIV.gov\)](#)
- [Working with HIV \(HIV.gov\)](#)
- [Fighting Discrimination Against People with HIV/AIDS \(US Department of Justice\)](#)
- [HIPAA for Individuals \(US Department of Health & Human Services\)](#)
- [Family and Medical Leave Act \(FMLA\) \(US Department of Labor\)](#)
- [An Employee's Guide to Health Benefits Under COBRA \(US Department of Labor, PDF\)](#)
- [Guidance for Employees with HIV and Their Coworkers \(US Centers for Disease Con...](#)
- [Living with HIV Infection: Your Legal Rights in the Workplace Under the ADA \(US...](#)
- [HIV Discrimination in the Workplace \(Lambda Legal\)](#)
- [Employment Support for People with HIV \(TargetHIV\)](#)
- [HIV & AIDS and Employment Discrimination \(Human Rights Campaign\)](#)
- [Questions and Answers: The Americans with Disabilities Act and Persons with HIV...](#)
- [Discrimination and HIV/AIDS \(US National Association of Social Workers\)](#)
- [Employment Rights for People Living with HIV/AIDS \(Legal Action Center; PDF\)](#)
- [Employment and Living with HIV/AIDS: A Resource Guide \(US Department of Labor: ...](#)

