Working Through Treatment: Practical & Legal Issues

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AVON Foundation for Women

SPEAKERS

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WORKING THROUGH TREATMENT

Key Topics:

- What and who to tell
- ADA, including reasonable accommodations
- Maintaining focus
- Family and Medical Leave Act (FMLA) and intermittent leave

RESEARCH: WORKING THROUGH TREATMENT

- Top three reasons to continue working after a diagnosis:
  - Feeling well enough (69%)
  - Wanting to keep things as normal as possible (48%)
  - Wanting to feel productive (38%)
- 45% of surveyed cancer survivors took no time off following their diagnosis
- 79% of surveyed cancer survivors said that cancer recovery is aided by the routine nature of work

(Cancer and Careers/Harris Interactive Survey 2012)

RESEARCH: ACCOMMODATIONS

- Workplace Accommodations: Low Cost, High Impact – JAN study (updated 9/1/12)
  - Cost of accommodations:
    - 57% cost absolutely nothing
    - 37% experienced a one-time cost, typically $500
  - 83% of employers who called JAN for info or help were doing so to retain or promote a current employee
  - Accommodation benefits include:
    - retaining a qualified employee
    - increasing the employee's productivity, and
    - avoiding the costs of training a new employee

CASE STUDY: AMBER

- After Amber was diagnosed with cancer of the tonsils and larynx, she decided to work through her treatment. Amber works as a cashier at a large supermarket chain.
- She hasn't told anyone at work about her medical condition. She took 2 weeks of vacation time for her surgery and recovery.
- She is now in the third week of her chemotherapy treatment and she is having trouble with fatigue and is limited in how long she can stand at a time. She also has to constantly drink water because of the affect of treatment on her salivary glands. As a result of the large volume of water she consumes, she has to urinate frequently.
- The supermarket does not allow employees to have beverages at the checkout stand and she is only allowed bathroom breaks every 4 hours. *Amber doesn't know what to do.*

SHARING A DIAGNOSIS AT WORK

Control the Message

- Should you tell?
- Who should you tell?
- When should you tell?
- How much should you share?
- How should you share it?

TREATMENT SIDE EFFECTS IN THE WORKPLACE

- Pain
- Hair Loss
- "Chemo Brain"
- Fatigue
- Weight Changes
- Skin Changes

ON-THE-JOB STRATEGIES

- Maintaining focus
- Identify a point person
- The Swivel
- Know your limits and set boundaries

WHAT ARE REASONABLE ACCOMMODATIONS?

"An accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities"

MODIFYING WORK SPACE

- Identify Challenges
- Manipulate Work Space
  - Printer, phone, fax, files within easy reach
  - Switching offices
  - Special furniture requests

MODIFYING SCHEDULE

Manipulate Work Schedule

- Working from home
- Part or full-time
- Flexible schedule
- Schedule breaks
- Extended leave

OTHER OPTIONS

- Use of Technology
  - Ex: smartphone or tablet
- Change in Policy
  - Ex: valet using restroom at the front of hotel
- Shift Job Responsibilities
  - Ex: water cooler
- Change Job
  - Ex: move to a vacant position

REASONABLE ACCOMMODATION TIPS

- When do you ask?
- How do you ask?
- Who do you ask?
- Is your request confidential?
- Do caregivers get accommodations?
- What is the interactive process?
  - Job Accommodation Network: www.AskJan.org

REASONABLE ACCOMMODATIONS

1. Define the situation
   - Essential functions of the job?
2. Perform needs assessment
   - Modify job, policy, facility, equipment?
3. Explore alternative placement options
   - Reassignment to vacant position?
4. Redefine the situation
5. Monitor accommodations

EMPLOYER POLICIES

- Employee Benefits
  - Health/dental/vision insurance
  - Short-term and/or long-term disability insurance
  - Life and/or accidental death insurance
- Other Benefits
  - Sick time
  - Vacation time or paid time off (PTO)
  - Pool of donated hours
  - Flex time
  - Telecommuting
- Medical Leave Process
- Reasonable Accommodation Process

FAMILY & MEDICAL LEAVE ACT (FMLA)

Eligibility

- Federal law for:
  - Employees with a serious medical condition
  - Employees with a spouse, parent, or child with a serious medical condition
- Employee: 1250 hours, 12 months (can be nonconsecutive)
- Employer: private employers with 50+ employees (75 mile radius) and all government employers (federal, state, local)

FAMILY & MEDICAL LEAVE ACT (FMLA)

Protections

- Up to 12 weeks leave, per year
- Unpaid leave
- Job protected
- Health insurance protected

FMLA TIPS

- Deciding the year period
- Asking for FMLA & giving notice
  - Foreseeable v. unforeseeable
- Can work with the ADA
- Employers can require use of PTO, vacation, & sick leave
- Employees can request use of PTO, vacation, & sick leave
- FMLA protects job where sick leave/STD/LTD don't

INTERMITTENT FMLA LEAVE

- Can be used in segments
- Using FMLA leave for:
  - Follow-up appointments
  - Days not feeling well
- Smallest increment of time
  - Ex: airline pilot v. receptionist

CASE STUDY: ALEX

- Alex's daughter has cancer. He works at a large company and would like to take time off work, but his employer said this is a "bad time."
- When Alex asked about the FMLA, the employer gave him a large stack of paperwork to fill out. Included in the stack of papers was a document that asked Alex to provide the contact information for his daughter's physician and a release form to allow the employer to get a copy of his daughter's medical record.
- Alex is not only a private person and has not shared what his family is going through at work, but his daughter has a hereditary cancer and Alex is concerned about sharing her diagnosis with his employer.
- *What are Alex's options?*

MEDICAL CERTIFICATION

- Employers entitled to medical certification for RA's & FMLA
  - But diagnosis may not be required
  - Patients should talk to their healthcare team
- Be careful of employer forms and state laws
- ADA v. FMLA
- Employers CANNOT:
  - Ask for copies of medical records
  - Contact the health care provider for additional info
    - FMLA: Only to "authenticate" and "clarify"
    - ADA: Maybe not w/o employee's permission
  - Put your medical information in your employee file

WHAT CAN AN EMPLOYER ASK FOR FMLA vs. ADA

- Name, address, phone #, and fax # of health care provider
- Healthcare provider's type of practice/specialization
- Approximate date health condition began and how long it will probably last
- Description of serious health condition sufficient to support the need for FMLA leave
  - E.g., symptoms, diagnosis, doctor visits, medications, continuing treatment, etc.

- "Sufficient documentation" to substantiate that employee has a disability under the ADA and needs the requested accommodation
- "Sufficient" = Describes:
  - nature, severity, and duration of impairment,
  - activity the impairment limits,
  - extent to which the impairment limits ability to perform the activity or activities, and
  - why a reasonable accommodation is needed

CASE STUDY: AMBER

- After Amber was diagnosed with cancer of the tonsils and larynx, she decided to work through her treatment. Amber works as a cashier at a large supermarket chain.
- She hasn't told anyone at work about her medical condition. She took 2 weeks of vacation time for her surgery and recovery. **Disclosure**
- She is now in the third week of her chemotherapy treatment and she is having trouble with fatigue and is limited in how long she can stand at a time. She also has to constantly drink water because of the affect of treatment on her salivary glands. As a result of the large volume of water she consumes, she has to urinate frequently.
- The supermarket does not allow employees to have beverages at the checkout stand and she is only allowed bathroom breaks every 4 hours. **Reasonable Accommodations under ADA, State Law**

CASE STUDY: ALEX

- Alex's daughter has cancer. He works at a large company and would like to take time off work, but his employer said this is a "bad time."
- When Alex asked about the FMLA, the employer gave him a large stack of paperwork to fill out. Included in the stack of papers was a document that asked Alex to provide the contact information for his daughter's physician and a release form to allow the employer to get a copy of his daughter's medical record. **Medical Certification (other HCP vs. oncologist)**
- Alex is not only a private person and has not shared what his family is going through at work, but his daughter has a hereditary cancer and Alex is concerned about sharing her diagnosis with his employer. **Disclosure, FMLA, ADA, State Law**

TOP TAKE AWAYS

1. Patients should gather information about their needs in the workplace, and legal protections that might help
2. Patients should think about who to tell and how to share the news at work
3. Reasonable accommodations can help make working through treatment easier
4. Family and Medical Leave Act can be used intermittently to protect your job and health insurance

LAST SESSION OF SPRING SERIES

Thursday, May 15th Noon ET/9 AM PT

Returning to Work: Practical & Legal Issues

- Easing back into the routine
- Job Search
- Pre-Existing Conditions and Health Insurance

More information & Registration:
http://www.cancerandcareers.org/en/community/events/healthcare-professionals

NATIONAL CONFERENCE ON WORK & CANCER

Friday, June 13, 2014, New York City

- Agenda, Registration and More Information: www.cancerandcareers.org/en/community/events/conference

ADDITIONAL EVENTS

Ask the Experts: Legal & Career Advice

- Wednesday, May 7th – 6:30pm ET/3:30pm PT

  More information & Registration:

  www.cancerandcareers.org/en/community/events/ask-the-experts

Job Search Calls: Tips, Tricks and Tools

- Thursday, June 26th, 2014 - 3pm ET/Noon PT

  More information & Registration:

  www.cancerandcareers.org/en/community/events/job-search-calls

The Affordable Care Act: Cancer & Employment Webinar

- Wednesday, September 17th – Noon ET/9 AM PT

  More information & Registration:

  www.cancerandcareers.org/en/community/events/affordable-care-act-teleconference

ADDITIONAL RESOURCES

Legal Assistance:

- National Cancer Legal Services Network www.NCLSN.org
- LawHelp www.lawhelp.org

Employment Rights:

- Equal Employment Opportunity Commission www.EEOC.gov
- Job Accommodation Network www.AskJan.org
- U.S. Department of Labor (COBRA) www.dol.gov/EBSA
- U.S. Department of Labor (FMLA) www.DOL.gov/WHD

Disability Insurance Options:

- Social Security Administration: www.SSA.gov

Health Insurance Options:

- www.HealthCare.gov

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