

Employment and Disability Issues

A Presentation to the Employment Advocacy Team

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Civic Center Inn, Augusta

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Disability Rights
Center

www.drcme.org

Your Role As Advocates

- Organizers
- Problem Solvers
- Educators and Communicators
- Leaders
- Supporters

What Role Can You Play in Assisting Implementation of Anti-Discrimination Laws?

- Be aware of ADA protections
- Disseminate critical information about the ADA
- Issue spot with people who need help
- Direct individuals to legal resources

Steps to combat disability discrimination

If someone is a victim of ADA covered discrimination, they should:

- Keep written record of incidents, including description of discrimination, what was said, time and place and witnesses
- Check with others in the workplace who might also be victims
- Contact an attorney

Roadmap for ADA Training

- Overview, of ADA Amendments Act and the Maine Human Rights Act
- Who is Covered?
- Prohibited Conduct and Employer Obligations
- Reasonable Accommodation
- Leave Laws
- Enforcement
- Resources

Americans with Disabilities Act (ADA)

Promises equal opportunity for qualified individuals with disabilities in employment, state and local government services, public accommodations, transportation and telecommunications

Passage of the Americans with Disabilities Act, 1990

- In 1990, the ADA was said to “take a sledgehammer to [a] wall, one which has for too many generations separated Americans with disabilities from the freedom they could glimpse, but not grasp. Once again, we rejoice as this barrier falls for claiming together we will not accept, we will not excuse, we will not tolerate discrimination in America.”
- President George H. W. Bush

Original ADA, as interpreted by the courts

- By 2006, 95-97% of plaintiffs lost ADA employment discrimination cases
- ADA clearly failed in its objective of providing a “clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”

Examples of conditions found not to be disabilities under the old, pre-1/1/09 ADA

- Vision in only one eye
- Post traumatic stress disorder
- Heart disease
- Depression
- HIV infection
- Asthma
- Asbestosis
- Epilepsy
- Diabetes
- Bipolar disorder
- Amputee
- Multiple sclerosis
- Muscular dystrophy
- Hard of hearing

Passage of the ADA Amendments Act

- Signed into law September 26, 2008
- Effective January 1, 2009

Findings of Congress

- People with disabilities are frequently excluded because of prejudice, antiquated attitudes, or failure to remove societal and institutional barriers
- Supreme Court holdings and EEOC regulations narrowed the broad scope of protection intended by Congress

Purpose of the ADAAA

- Mandate to end discrimination
- Rejects strict US Supreme Court precedent
- Directs courts to focus on violators, not victims of discrimination

ADAAA: Who is covered?

- Qualified individuals with covered disabilities have a “physical or mental impairment that substantially limits a major life activity”
- Individuals who are regarded as disabled
- Individuals who have a record of disability

Mitigating Measures

Disability is evaluated without regard to mitigating measures, excluding ordinary glasses and contact lenses

Examples of Mitigating Measures (non-exhaustive list)

- Prosthetics
- Medication
- Hearing aids or cochlear implants
- Mobility devices
- Reasonable accommodations
- Learned behavioral or neurological adaptations

Case Example: Mitigating Measures

- Pharmacist manages his with diabetes well with insulin and diet. He was fired after requesting an uninterrupted break to manage his diabetes.
- Pharmacist is a covered individual with a disability and can challenge his termination.

Case Example: Episodic Impairment

- Factory machine worker with epilepsy was denied accommodations to avoid changing shifts. She had seizures 1-2x/week, interference with sleep and memory loss.
- Factory worker is a person with a disability because during seizures she was substantially limited in major life activities

Case Example: Condition in Remission

- Nurse with stage III breast cancer underwent mastectomy, chemotherapy and radiation and her cancer was in remission. When she came back to work, the hospital terminated her.
- Breast cancer in remission is an impairment which must be assessed in its active, unmitigated state
- Nurse has a covered disability

Major Life Activities include Major Bodily Functions

- ADAAA includes immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, reproductive functions
- EEOC Regulations also include hemic, lymphatic, musculoskeletal; EEOC Guidance includes genitourinary system, cardiovascular functions, functions of the skin and special sense organs.

“Substantially Limits” under ADA Amendments

- Impairment can be substantially limiting even if lasts less than six months
- Analysis should focus on effect of impairment on individual, not what individual has achieved despite impairment
- Episodic impairment and impairment in remission are disabilities if substantially limiting when active.
- Asthma and diabetes more likely to be covered

What is a disability?

- Impairment substantially limits individual in a major life activity as compared to most people in the population
- Must be more than a temporary, non-chronic impairment with little or no residual effects

Impairments that will consistently meet definition of disability (EEOC)

- Deafness
 - Blindness
 - Intellectual Disability
 - Partially or completely missing limbs
 - Mobility impairments requiring a wheelchair
 - Autism
 - Cancer
 - Cerebral Palsy
 - Diabetes
 - Epilepsy
 - HIV/AIDS
 - Multiple sclerosis
 - Muscular dystrophy
 - Major depression
 - Bipolar Disorder
 - PTSD
 - Obsessive compulsive disorder
 - Schizophrenia
- (non-exhaustive list)

Impairments, substantially limiting for some (EEOC)

- Asthma
- Hypertension
- Learning Disability
- Back or leg impairment
- Psychiatric impairment (e.g., panic disorder, anxiety disorder, some forms of depression)
- Carpel tunnel syndrome
- Hyperthyrodism
(non-exhaustive list)

Not a disability (EEOC)

- Temporary, non-chronic impairments of short duration with little or no residual effects usually will not be considered disabilities.
- Examples include broken leg expected to heal normally, seasonal influenza, common cold

Maine Human Rights Act (MHRA)

- MHRA Amendments effective June 21, 2007, 1 ½ years before passage and enactment of ADA
- Congress used the MHRA as a model when considering language for the ADA

MHRA Definition of Disability

- Substantial Limitation on a Major Life Activity
- Significantly Impairs Physical or Mental Health
- Requires Special Education, Vocational Rehabilitation, or related services
- Appears on Per Se List of Disabilities
- Regarded Having or Likely to Develop a Disability
- Record of Disability

Maine Human Rights Act Per Se List of Disabilities

- Brain Injury
- Absent limbs
- Alcoholism
- ALS
- Bipolar Disorder
- Blindness
- Cancer
- Cerebral Palsy
- COPD
- Crohn's disease
- Cystic Fibrosis
- Deafness
- Diabetes
- Substantial disfigurement
- Epilepsy

Maine Human Rights Act Per Se List of Disabilities

- Heart disease
- HIV or AIDS
- Kidney or renal disease
- Lupus
- Major Depressive Disorder
- Mastectomy
- Mental Retardation
- Multiple Sclerosis
- Muscular Dystrophy
- Paralysis
- Parkinson's Disease
- Pervasive Developmental Disorders
- Rheumatoid Arthritis
- Schizophrenia

Not A Disability (MHRA)

A condition that does not have an actual or expected duration of more than six months is not a disability, eg, broken leg expected to heal normally

Transitory and minor conditions are not disabilities

Bottom Line

- It's more likely than ever that a person has a qualifying disability under one of the many ways to prove disability under state and federal law
- Just because a condition isn't on a per se list of disabilities does not mean that it's not covered!
- Every case must be analyzed individually

Prohibited Conduct and Employer Obligations



Prohibited Conduct & Employer Obligations

- General Rules of Nondiscrimination and Reasonable Accommodation
- Disability-Related Inquiries and Medical Examinations
- Harassment
- Retaliation

General Rule

“No [employer] shall discriminate against a qualified individual **on the basis of disability** in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.”

“Qualified Individual with a Disability”

- **“qualified individual” means an individual** who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

Discrimination Includes

“limiting, segregating, or classifying [an] ... employee in a way that adversely affects the opportunities or status of such ... employee because of the disability of such ... employee.”

Reasonable Accommodations

discrimination includes “not making **reasonable accommodations** to the known physical or mental limitations of” an employee with a disability

Examples

- Failure to hire
- Termination because of disability
- Denial of reasonable accommodation

Failure to hire

“Your disability may be a problem for you and us during our crazy opening process.... Call back in December after the dust has settled.”

Termination because of disability

Steve, a veteran of the war in Afghanistan, is hired as an accountant in January. On February 1, he informs his supervisor that he has post traumatic stress disorder as a result of his service. On February 2, his employer terminates his position, saying that there is no longer enough work for him.

Denial of Reasonable Accommodation

George, who is blind, works on the phone as a customer service representative. Every morning, his employer posts messages on the office wall with important information for the day. George asks that these messages be read to him when he arrives at work so that he can get the information. His employer refuses to read the messages to him.

Disability-Related Inquiries and Medical Exams of Employees

- The ADA limits an employer's ability to make disability-related inquiries or require medical examinations

3 Stages of Employment

- Pre-Offer
- Post-Offer
- During Employment

Pre-Offer

- At the first stage (prior to an offer of employment), the ADA prohibits all disability-related inquiries and medical examinations, even if they are related to the job.

Post-Offer

- At the second stage (after an applicant is given a conditional job offer, but before s/he starts work), an employer may make disability-related inquiries and conduct medical examinations, regardless of whether they are related to the job, as long as it does so for all entering employees in the same job category.

During Employment

- At the third stage (after employment begins), an employer may make disability-related inquiries and require medical examinations only if they are job-related and consistent with business necessity.

Confidentiality

- The ADA requires employers to treat any medical information obtained from a disability-related inquiry or medical examination (including medical information from voluntary health or wellness programs), as well as any medical information voluntarily disclosed by an employee, as a **confidential medical record**. Employers may share such information only in limited circumstances with supervisors, managers, first aid and safety personnel, and government officials investigating compliance with the ADA.

During Employment

- “[An employer] shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature and severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.”

What is an employer prohibited from asking?

- Three Questions:
 - Is it a disability-related inquiry?
 - Is it a medical examination?
 - Is it “job-related and consistent with business necessity” or otherwise permissible?

What is a "disability-related inquiry" ?

- A "disability-related inquiry" is a question (or series of questions) that is likely to elicit information about a disability.

Examples of disability-related inquiries

- asking an employee whether s/he has (or ever had) a disability or how s/he became disabled or inquiring about the nature or severity of an employee's disability;
- asking an employee to provide medical documentation regarding his/her disability;
- asking an employee's co-worker, family member, doctor, or another person about an employee's disability;
- asking about an employee's prior workers' compensation history;

Examples of non-disability-related inquiries

- asking generally about an employee's well being (e.g., How are you?), asking an employee who looks tired or ill if s/he is feeling okay, asking an employee who is sneezing or coughing whether s/he has a cold or allergies, or asking how an employee is doing following the death of a loved one or the end of a marriage/relationship;
- asking an employee about nondisability-related impairments (e.g., How did you break your leg?)

What is a "medical examination"?

- A "medical examination" is a procedure or test that seeks information about an individual's physical or mental impairments or health.

Examples of medical examinations

- vision tests conducted and analyzed by an ophthalmologist or optometrist;
- blood, urine, and breath analyses to check for alcohol use;
- diagnostic procedures such as x-rays, computerized axial tomography (CAT) scans, and magnetic resonance imaging (MRI)
- blood pressure screening and cholesterol testing;

Examples of things that are not medical examinations

- tests to determine the current illegal use of drugs;
- physical agility tests, which measure an employee's ability to perform actual or simulated job tasks, and physical fitness tests, which measure an employee's performance of physical tasks, such as running or lifting, as long as these tests do not include examinations that could be considered medical (e.g., measuring heart rate or blood pressure);
- polygraph examinations

Permissible disability inquiries and medical exams

- Even if an employer's request constitutes a disability-related inquiry or a medical examination, it may be permissible if it is **“job related and consistent with business necessity.”**
- Say what?

Job-Related and Consistent with Business Necessity (JR & CBN?)

- A disability-related inquiry or medical examination of an employee is "**job-related and consistent with business necessity**" when an employer "has a reasonable belief, based on objective evidence, that: (1) an employee's ability to perform essential job functions will be impaired by a medical condition; or (2) an employee will pose a direct threat due to a medical condition."

Examples of JR & CBN

- Sally, a tax auditor, has done a third fewer audits than the average employee in her unit also has made numerous mistakes. When questioned about her poor performance, Sally tells her supervisor that the medication she takes for her lupus makes her lethargic and unable to concentrate.

Examples of JR & CBN

- A crane operator works at construction sites hoisting concrete panels weighing several tons. During a break, the crane operator appears to become light-headed, has to sit down abruptly, and seems to have some difficulty catching his breath. In response to a question from his supervisor about whether he is feeling all right, the crane operator says that this has happened to him a few times during the past several months, but he does not know why.

Examples of JR & CBN

- Six months ago, a supervisor heard a secretary tell her co-worker that she discovered a lump in her breast and is afraid that she may have breast cancer. Since that conversation, the secretary still comes to work every day and performs her duties in her normal efficient manner.
- Not JR & CBN!

Disability Inquiries & Reasonable Accommodations

- An employer may require an employee to provide documentation that is **sufficient** to substantiate that s/he has an ADA disability and needs the reasonable accommodation requested, but cannot ask for unrelated documentation.

Other Acceptable Inquiries and Exams

- An **Employee Assistance Program (EAP) counselor** may ask an employee seeking help for personal problems about any physical or mental condition(s) s/he may have is the counselor (1) does not act for or on behalf of the employer; (2) is obligated to shield any information the employee reveals from decision makers; and, (3) has no power to affect employment decisions.
- Disability inquiries and exams that are part of a **voluntary wellness program** are also permissible.

Disability-Based Harassment



Harassment

- The ADA's prohibition against discrimination in the terms and conditions of employment encompasses an affirmative duty on the part of employers to maintain workplaces free of harassment.

Harassment

- Harassment is illegal when it is so frequent or severe that it creates a **hostile or offensive work environment** or when it results in an **adverse employment decision** (such as the victim being fired or demoted).
- The conduct must be sufficiently **severe or pervasive** to alter a term, condition, or privilege of employment in order to be actionable.

Employer Liability for Harassment

- An employer is always liable for harassment by a supervisor if the harassment results in tangible employment actions, such as the employee being fired.
- If harassment does not result in tangible employment action, an employer may avoid liability if it exercised **reasonable care to prevent and correct promptly the harassing behavior**, and the employee **unreasonably failed to take advantage of any preventive or corrective opportunities** provided by the employer or to avoid harm otherwise.

Examples of Disability-Based Harassment

- Sandra was ostracized when her employers discovered she had HIV. Her employers and fellow employees stopped going to lunch with her, refused to shake her hand, subjected her to constant drug tests and eventually fired her.

Examples of Disability-Based Harassment

- Robert worked for General Motors in different jobs for many years. He sustained back injuries and, upon his return to work, had light-duty work restrictions. Robert's foreman verbally abused him and other workers with disabilities, calling them "handicapped people," "hospital people," "handicapped MFs," and "911 hospital people." The foreman instructed other employees not to speak to those with disabilities, encouraging them to ostracize workers with disabilities.

Retaliation



Retaliation

- The ADA prohibits retaliation against employees who oppose discrimination prohibited by the ADA or who make charges or otherwise participate in proceedings under the act. These are generally categorized as two separate protected activity: **opposition** and **participation**.

Opposition

- The anti-retaliation provisions make it unlawful to discriminate against an individual because s/he has **opposed any practice** made unlawful under the employment discrimination statutes. This protection applies if an individual explicitly or implicitly communicates to his or her employer or other covered entity a belief that its activity constitutes a form of employment discrimination that is covered by any of the statutes enforced by the EEOC.

Opposition

- The manner of opposition must be reasonable (unlawful activities and threats of violence are not protected)
- The opposition need only be based on a reasonable and good faith belief

Examples of Opposition

- Threatening to file a charge or other formal complaint alleging discrimination
- Complaining to anyone (including a union official) about alleged discrimination against oneself or others
- Refusing to obey an order because of a reasonable belief that it is discriminatory

Examples of Opposition

- Cynthia, an employee with a disability, tells her manager that if he fails to raise her salary to that of a non-disabled coworker who performs the same job, she will file a lawsuit under the ADA or the Maine Human Rights Act.

Examples of Opposition

- David, an employee who does not have a disability, complains to his co-workers about harassment by a supervisor of another employee who is deaf.

Participation

- The anti-retaliation provisions make it unlawful to discriminate against any individual because s/he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, hearing, or litigation under the ADA.
- Participation is protected regardless of whether the allegations in the original charge were valid or reasonable

Example of Participation

- Peter, a co-worker with Tina, testifies on her behalf at a Maine Human Rights Commission hearing. Tina filed a charge alleging that her employer denied her a reasonable accommodation for her disability. The employer may not retaliate against Peter for testifying.

Reasonable Accommodation



Reasonable Accommodation

- Any modification or adjustment to a job, the work environment, or the way things are done that enables a qualified individual with a disability to enjoy equal employment opportunity
- Removes barriers for people with disabilities in the workplace

Some examples of “reasonable” accommodations

Sara, who is deaf, applies for a job as a telemarketer. She proposes that she use a TTY to call a relay service operator who can then place the telephone call and relay the conversation between the parties. This is reasonable because a TTY is a common device used to facilitate communication between parties.

Some examples of “reasonable” accommodations

Joan has difficulty with balance and standing for prolonged periods because of multiple sclerosis, making it difficult to get through her shift. The hotel has a policy that front desk clerks stand while on duty. She requests the use of a stool because sitting reduces the fatigue. This request is reasonable.

Some examples of “reasonable” accommodations

John, who has a psychiatric disability, is on the cleaning staff at a state office building. His disability makes it difficult to adjust to alterations in his daily routine. He asks for accommodation and proposes staying on one floor for two months and then rotating. This accommodation is a feasible solution to the employee’s problem with dealing with change to his routine.

Some examples of accommodations that are not considered reasonable

Tom is an employee of a package delivery company in which lifting up to 75 pounds is required. Tom sustains injury to his back and requests accommodation to lift up to 25 pounds. Removing or eliminating an essential function from a job is not required, therefore, Tom's request is not reasonable.

Some examples of accommodations that are not reasonable

Nathaniel, diagnosed with anxiety, is a data entry clerk for a payroll company. Nathaniel experiences exacerbation of his symptoms and requests lowering of production standards. While the employer should work with Nathaniel to consider possible ways to enable him to meet standards, lowering standards is not considered reasonable.

Reasonable Accommodation

- Is the accommodation reasonable on its face?
- Feasible? Plausible?
- Common sense analysis

How must an employee request reasonable accommodation?

- Employee, or representative, must inform employer that she needs an adjustment or change at work for a reason related to a medical condition
- Example: I'm having trouble getting to work at my scheduled time because of chemotherapy treatment I'm receiving.

Requesting Reasonable Accommodation

- Can use “plain English”
- Do not have to mention ADA
- Do not have to state “reasonable accommodation”
- Does not have to be in writing
- Another person can ask on behalf of individual
- No magic words required

Not a valid reasonable accommodation request

- Jim tells his supervisor that he would like a new chair because his present one is uncomfortable. Jim has not put his employer on notice that he is requesting a reasonable accommodation

When may an employee request reasonable accommodation?

- Anytime
- During application process
- During probationary period
- During employment

When should an employee request reasonable accommodation?

- When there is a workplace barrier preventing him from competing for a job, performing a job, or gaining equal access to a job benefit (e.g., lunchroom or parking lot)
- Important to ask before job performance suffers

Important to request before job performance suffers

- Susan, a proofreader, takes medication for mental illness that makes her drowsy and unable to report to work on time. She does not inform her employer of her disability and need for accommodation. She is terminated for being late. Employer has no obligation to provide reasonable accommodation after the fact.

What must employer do after request for reasonable accommodation is made?

- Employer is required to engage in an informal process to (1) clarify the individual's needs, if necessary and (2) identify appropriate reasonable accommodations
- But if disability and need for reasonable accommodation are obvious, little or no need to ask questions concerning disability and limitations

May employer request documentation?

- Employer may be entitled to “reasonable documentation” to confirm existence of a disability and necessity of a reasonable accommodation
- “Reasonable documentation” does not mean entire medical file
- If employee does not provide necessary medical information, employer can deny request

Elements of Reasonable Accommodation Letter

- Address to supervisor, manager, or HR
- Identify self as person with disability
- State requesting reasonable accommodation
- Identify problematic job tasks
- Identify reasonable accommodation ideas
- Request employer ideas
- Refer to attached medical documentation

Example, Sufficient Medical Documentation

Elizabeth provides documentation to her employer from Dr. Smart noting her diabetes diagnosis and stating that

- she needs to check blood sugar several times a day or she may suffer adverse consequences (thirst, heavy breathing, drowsiness, possible unconsciousness)
- she needs 3-4 ten minute breaks each day to test blood and take insulin

Employer has choice of reasonable accommodations, as long as effective

An attorney with severe vision disability requests a reader. International Corporate Law Firm provides magnifying glass instead. The magnifying glass is not effective, as attorney can read but with great difficulty. The firm cannot choose an ineffective accommodation. Absent undue hardship, the firm must provide a reader.

Timing of employer response

- Employer required to respond expeditiously
- Delay may constitute denial

Types of Reasonable Accommodation: Job Restructuring

- Reallocate or redistribute marginal job functions that an employee is unable to perform because of a disability
- Employer never has to reallocate essential job functions as a reasonable accommodation, but can do so if it wishes

Types of Reasonable Accommodation: Leave

- Permitting paid leave or unpaid leave is a form of reasonable accommodation when necessitated by employee's disability
- Example: Employee may need leave for obtaining medical treatment (eg, surgery, psychotherapy, substance abuse treatment, dialysis), rehab services, physical or occupational therapy
- Leave request must not be open ended

Types of Reasonable Accommodation: Modified or Part Time Schedule

- Employer must allow an employee with a disability to work a modified or part time schedule as a reasonable accommodation, absent undue hardship
- Examples: Adjusting arrival or departure time, providing periodic breaks, altering when certain functions are performed, allowed accrued paid time or additional unpaid need

Types of Reasonable Accommodation: Modified Workplace Policies

- Employer is required to modify a workplace policy when necessitated by an individual's disability related limitations
- Example: Employer has a policy of no eating & drinking at workstation. Employee with insulin dependent diabetes must occasionally eat a candy bar or drink juice to avoid insulin shock. Employer must grant absent undue hardship.

Types of Reasonable Accommodation: Reassignment

- Reassignment to vacant position may be a reasonable accommodation when an employee can no longer perform her essential job functions, with or without reasonable accommodations, unless employer can show undue hardship
- Employee must be qualified

Disclosure of Reasonable Accommodation

- Employer generally prohibited from disclosing that an employee is receiving a reasonable accommodation due to limits on medical disclosures
- Union also should not disclose if member is receiving a reasonable accommodation for a medical condition

Accommodations not found to be reasonable

- Request to change supervisor (but changing supervisory methods may be)
- Medication monitoring (but providing a break for employee to take on own may be)
- Providing a completely stress free work environment
- Providing indefinite leaves of absence
- Allowing erratic attendance

When can employer refuse to provide reasonable accommodation?

- If a requested accommodation would cause undue hardship to the employer, the employer can refuse to provide it

Undue Hardship

- Involves significant difficulty or expense
- Focuses on resources of particular employer
- Even if requested accommodation poses an undue hardship, employer still has obligation to provide alternative that is reasonable under the ADA

Undue Hardship

In addition, an accommodation constitutes an undue hardship when it is

- Unduly extensive
- Substantial
- Disruptive
- Fundamentally alter the nature or operation of the business

What if Employer Denies the Reasonable Accommodation Request?

- Find out why
- If medical information didn't show disability, seek to provide additional information
- If employer decides the accommodation requested would pose an undue hardship, suggest other options
- Keep track of earliest denial date

What if employer retaliates against steward or individual for requesting an accommodation?

- Individuals who oppose unlawful employment discrimination, participate in employment discrimination proceedings, assist or otherwise assert rights under state and federal laws are protected against retaliation.

Leave Issues

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Potential Sources for Rights to Leave

- Workers' Compensation Act
- Collective Bargaining Agreement
- FMLA/Maine Medical Leave Act
- ADA/MHRA

Workers' Compensation Act

- On the job illness or injury
- Reinstatement within one year, possibly longer if position is available
- Statutory benefits while on leave

Collective Bargaining Agreement

- Sick Leave
- Unpaid Leave of Absence
- Vacation

State and Federal Leave Laws

- Two Family and Medical Leave laws affect Maine workers - a State law and a federal law. They both give certain workers the right to take time off from work for a serious family illness or the birth or adoption of a child. Neither of these laws requires that you be paid during the leave.

Family Medical Leave Act (federal law)

- Must have worked for employer for 12 months and at least 1250 hours in prior 12 months
- “Serious health condition”
- Care for self, spouse, child, parent
- 12 weeks of leave without pay
- Must give 30 days notice or as soon as possible
- Reinstatement rights at end of leave

Maine Medical Leave Act

- Must have worked for employer for *12 consecutive months* (no minimum hours)
- “Serious health condition”
- Care for self and others including domestic partners
- *10 weeks* without pay in any 2-year period
- Must give 30 days notice or as soon as possible
- Reinstatement rights at end of leave

If you take a leave that is allowed by law, your employer cannot:

- Fire you;
- Refuse to give you back your job when you return (if your position has been filled, you must be given a job like it).
- Deny your leave request; or
- Penalize or harass you for taking a leave.

What if my employer violates my right to leave?

- Talk to a lawyer. Your lawyer can go to court and ask that your employer give you your leave, pay you anything you are owed, pay a fine, and pay for the lawyer's fees and court costs too.
- If you qualify for a leave under the federal law, you can also file a complaint with the U.S. Department of Labor, Wage and Hour Division: (207) 780-3344 or (207) 945-0330.

ADA/MHRA

- Must have a “disability”
- Leave may be a reasonable accommodation
- Typically should be for a set period of time and must be reasonable
- Employer may deny leave if it would cause an undue hardship

Example of Leave Issues

- Holly has been diagnosed with breast cancer and requires a mastectomy. She gives notice to her employer and is approved for Family Medical Leave, which is 12 weeks. After her surgery, she has additional complications related to her cancer, but her 12 weeks of medical leave ends next week. Her doctor recommends that she stay out of work for 3 more weeks. Does she have any options?

Enforcement

- Any person who believes he or she has been subjected to unlawful discrimination may file a charge of discrimination with the Maine Human Rights Commission
- Charge must be filed within 300 days of the date of discrimination
- Failure to file a timely charge results in loss of rights and remedies

Enforcement

- Charges may be filed in person or by filling out a form provided by the Maine Human Rights Commission, 51 SHS, Augusta, ME 04333-0051.
- Charge must be notarized and filed with the Commission
- Assistance from an experienced attorney is recommended but not required

Resources

- Disability Rights Center, 24 Stone Street, Augusta, ME 04330; 207 626 2774, ext. 223, www.drcme.org
- Maine Human Rights Commission, 207 624 6050 (v/tty); <http://www.maine.gov/mhrc/index.shtml>
- State of Maine Bureau of Human Resources, Human Resources Policy and Practices Manual, http://www.maine.gov/bhr/rules_policies/policy_manual/3_2.htm

Resources

- ADA Information Line, U.S. Department of Justice, 800 514 0301 (voice); 800 514 0383 (TTY); <http://www.ada.gov>
- U.S. Equal Employment Opportunity Commission; 800 669 4000 (v), 800 800 3302 (tty); 800 666 EEOC (for publications);
- <http://www.eeoc.gov>

Resources

- U.S. Department of Labor, Job Accommodation Network, 800 526 7234 (voice & TTY); www.jan.wvu.edu
- The New England ADA Center, 800 949 4232 (v/tty); www.NewEnglandADA.org

Thank you!

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Disability Rights Center of Maine, Inc.