

# Ovarian Cancer & Employment Law

Presentation to COCA

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# Goals of Presentation

- Provide you - women with ovarian cancer and their caregivers
  - with an understanding of the legal landscape related to navigating a diagnosis, treatment, potential recurrence, and having a history of cancer
- Help you recognize red flags

# Americans with Disabilities Act (ADA)

Colorado Anti-Discrimination Act (CADA) [<15 employees]

Rehabilitation Act (Rehab Act) [federal employees]

- Protects employees from discrimination based on their disability (including having a record of a disability or being regarded as having a disability)
- Requires employers to offer reasonable accommodations to qualified employees
- See the Job Accommodation Network, [www.askjan.org](http://www.askjan.org)

# ADA: Definitions

- ***“Disability”*** = a physical or mental impairment that substantially limits one or more major life activities
  - E.g., Caring for oneself, hearing, sleeping, walking, lifting, major bodily functions like normal cell growth and reproductive functions
- ***“Qualified person with a disability”*** = you can perform the essential functions of your job with or without accommodations
- ***“Essential functions”*** = the central aspects of your job
  - Considering the job description, the amount of time spent performing functions, work experience of people who have previously held the job, employer’s judgment
- ***“Reasonable Accommodations”***= What will help you do your job that does not impose an undue hardship on your employer
  - E.g., Job restructuring, modified work schedule, devices & equipment, leave

# Diagnosis

Should I tell my employer?

# Post-Diagnosis

- Do you need an accommodation?
- If so:
  - Step 1: Get your doctor on board
    - See JAN brochure *Practical Guidance for Medical Professionals: Providing Sufficient Documentation in Support of a Patient's Accommodation Request*
  - Step 2: Start the “**interactive process**” = communication with your employer regarding reasonable accommodations
    - Always respond promptly, fully, & truthfully
    - Is there a company policy? (See your employee handbook)

# Post-Diagnosis: Interactive Process

Dear [supervisor, HR representative, other appropriate person]:

I was recently diagnosed with ovarian cancer. As a result, I am a person with a disability as defined by the ADA/CADA/Rehab Act. I would like to meet with you or another appropriate member of the company to discuss possible reasonable accommodations that would allow me to perform the essential functions of my job. Accommodations could include [examples like a two-week leave of absence for surgery and recovery, intermittent time off upon returning to work to attend doctor's appointments and undergo chemo, and work from home the day after receiving chemo]. I am open to discussing any reasonable accommodation that the company is willing to offer subject to my doctor's review and the demand of any particular accommodation. I look forward to hearing from you by [date].

See JAN brochure *How to Request an Accommodation: Accommodation Form Letter*

# Post-Diagnosis: Accommodations

## REASONABLE

- Job restructuring
- Part-time or modified work schedule
- Acquisition or modification of equipment or devices
- Adjustment or modifications of examinations, training materials, or policies
- Reassignment to a vacant position
- Readers or interpreters
- Medical leave for a determined period of time

## UNREASONABLE

- Changing objective criteria or decreasing quotas or sales expectations
- Indefinite leave of absence
- Eliminating an essential function
- Excusing or overlooking misconduct (even if caused by disability)
- Allowing medical marijuana use if this violates an employer's substance abuse policy
- Reassignment that is a promotion or violates union seniority rules
- Anything that poses an undue hardship
- Retaining employee who poses a direct threat to health/safety of herself or others



# Post-Diagnosis (cont.)

- What information can my employer ask about my health condition?
- YES:
  - Asking about your well-being.
  - Asking for documentation to substantiate that you have a disability and need the reasonable accommodations requested
    - May include a note or completed paperwork from your doctor
  - If documentation is insufficient, employer must tell you why & give you a chance to provide additional documentation
- NO:
  - Asking for specifics, like what medications you are taking, your prognosis, etc.
  - Asking for carte blanche access to your medical records, esp. for non-disability related treatment

## Post-Diagnosis: Red Flags

- Comments about your ability to do your job based on assumptions/stereotypes, benevolent or not
- Different reactions to male and female medical conditions and requests for accommodation
- Requesting excessive amounts of information about your condition, including asking you to sign a blanket release to review all medical records
  - A limited release and/or a specific form for requesting accommodations are probably fine

## Post-Diagnosis: Red Flags (cont.)

- Pushing back on your doctor's recommendation, including insisting that you see a physician of the company's choosing
- Refusing to provide you with reasonable accommodations even though they do not pose an *“undue hardship”* to the company
  - *“Undue hardship”* = significant difficulty or expense considering cost of accommodation, company's finances, impact of accommodation on operations, etc.
  - Note that your employer can offer you alternative accommodations.

# Treatment

Has my need for accommodations  
changed?

# Treatment: Accommodations

- Do you need additional or different accommodations because of your treatment?
  - *Fatigue/Decreased Stamina*: flexible schedule, remote work, rest breaks, temporary part time schedule, additional time to complete assignments, unpaid time off
  - *Concentration/Executive Functioning*: checklists, instructions in writing, white noise machines, speech recognition software, uninterrupted work time
  - *Temperature Sensitivity*: space heaters, fans, vent covers
  - *Receiving Treatment*: additional time off
  - See [www.askjan.org](http://www.askjan.org) for additional ideas
- Continue the interactive process - put your request(s) in writing

# Treatment: Leave of Absence

- Can I still do my job?
- If not, is reassignment to a vacant position possible?
- If not, consider a leave of absence:
  - As an accommodation under the ADA/CADA and/or
  - Under the Family Medical Leave Act (FMLA)
    - Employer must have 50+ employees w/in 75 miles
    - Employed at least 12 mo & worked 1,250 hours
    - Entitles you to 12 weeks of unpaid leave (block or intermittent) and return to former or equivalent position
    - During leave, you still get group health care insurance at the same cost as if you were not on leave
    - [www.dol.gov/whd/fmla](http://www.dol.gov/whd/fmla)

# Treatment: Leave of Absence (cont.)

- Sources of Income During a Leave of Absence
  - Through your employer or private insurance:
    - Short-term (3-6 mo) & long-term disability insurance (>3-6 mo)
    - Require that you cannot do *your* job
    - Typically pays 60% of salary
  - Social Security Disability Insurance (SSDI)
    - Virtually automatic if you have a diagnosis of “Ovarian Cancer – with distant metastases or inoperable or unresectable”
    - Otherwise, apply and wait 3-5 mo for decision
      - Requires that you cannot do *any* job (substantial work) & medical condition expected to last at least 1 year

## Treatment: Red Flags

- All of the above plus:
  - Insisting that you go out on leave when you can work.
  - Pushing back on your doctor's recommendation, especially with respect to when you can return to work with or without restrictions.
  - Expressing irritation with your additional requests for reasonable accommodations



# Having a Record of Cancer &/or Future Recurrence

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- Even if you never have a recurrence, you continue to be protected by the ADA by virtue of the fact that you have a history of a disability and an employer should not treat you differently as a result.
  - E.g., If you apply for a new job, be cautious about disclosing your previous diagnosis.
- If you experience a recurrence, start the interactive process again regardless of whether it is the same employer or a new one.

# Record of Cancer &/or Future Recurrence:

## Red Flags

- All of the above plus:
  - Different treatment with respect to raises, promotions, and growth at the company.
  - Expressing concern that you pose a “liability” to the company because of your condition or record of cancer.

# Caregivers

You have legal rights too!

# Caregivers' Rights

- **FMLA:** you are entitled to leave because of your own serious health condition or to care for a family member with a serious medical condition
  - “Family member” = biological, adopted, or foster child; spouse; parent (but not in-laws)
- **ADA “Association Discrimination”:** your employer cannot discriminate against you because of your association with a person with a disability
  - The person with a disability need not be a family member
  - Note that you do not have a right to reasonable accommodations, e.g., time off for loved one’s doctors’ appointments

# Caregivers' Rights (Cont.)

- **Title VII (Family Responsibilities Discrimination):**  
beware of the application of stubborn stereotypes
  - Women with caregiving responsibilities are less committed to their jobs, less reliable, and less competent than their counterparts
  - Men do need leave to care for family members since women are primary caregivers.

<https://worklifelaw.org/get-help/what-is-frd/>

## Caregivers' Rights: Red Flags

- Comments about your commitment to or ability to do your job based on assumptions/stereotypes, benevolent or not.
- You're treated differently than colleagues
  - E.g., are your requests to leave early to attend a loved one's doctor's appointment denied while other people are allowed to leave early for other reasons?

# Dealing with Red Flags



# If you see one or more **Red Flags**

- Keep documentation
  - Date, time, what was said, to whom, where, witnesses
- Check your employee handbook for procedures re: discrimination/harassment/reasonable accommodations complaints
- Contact JAN
- Contact an attorney
- Contact the U.S. Equal Employment Commission (300 days) or Colorado Civil Rights Division (180 days)

[www.eeoc.gov](http://www.eeoc.gov)

<https://www.colorado.gov/pacific/dora/civil-rights/employment-discrimination>

# Questions?

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