



• Barbara Hoffman, JD •

# WORKING IT OUT

*Your Employment Rights As A Cancer Survivor*

## Employment Challenges and Cancer Survivors



How to Avoid Job Discrimination



How Employment Discrimination Laws  
Protect Cancer Survivors



Know Your Legal Rights



Talk It Out Before You Sue

*A publication of the*



NATIONAL COALITION  
FOR CANCER SURVIVORSHIP

*The power of survivorship. The promise of quality care.*

## **Legal Disclaimer**

This publication has been created by the National Coalition for Cancer Survivorship (NCCS) to provide cancer survivors and their loved ones with general information about their legal rights relating to employment. This publication represents the author's opinions and is not designed to provide individual legal advice nor to substitute for professional counsel.

This book describes federal and state laws in effect in 2007. Your legal rights may change with passage of new laws and court decisions.

### **Eighth Edition**

Copyright © 2008 by the National Coalition for Cancer Survivorship (NCCS). All rights reserved. This publication may not be reproduced, in whole or in part, in any form, without prior written consent from the National Coalition for Cancer Survivorship.

## ABOUT THE NATIONAL COALITION FOR CANCER SURVIVORSHIP

The National Coalition for Cancer Survivorship (NCCS) is the oldest survivor-led advocacy organization working on behalf of this country's nearly 10 million cancer survivors and the millions more touched by this disease. NCCS's mission is *to advocate for quality cancer care for all Americans*. NCCS's focus is on advancing public policy issues that affect cancer survivors on the federal level and providing tools and educational materials to individuals in order to help them become advocates for themselves or someone else.

NCCS provides information on employment and insurance issues, referrals to sources of additional information and support, and publications on survivorship and advocacy issues. NCCS has also initiated Cancer Advocacy Now!<sup>TM</sup> (*CAN!*), a grassroots legislative advocacy network. *CAN!* works to ensure that the voice of cancer survivors is heard in national healthcare policy forums. To learn more about NCCS or join the *CAN!* network, please visit [www.canceradvocacy.org](http://www.canceradvocacy.org).

## ABOUT THE AUTHOR

Barbara Hoffman, JD, a cancer survivor, is founding chair of the National Coalition for Cancer Survivorship (NCCS). She is the editor of *A Cancer Survivor's Almanac: Charting Your Journey*, and the author of numerous articles on the employment rights of cancer survivors. She is a member of the Legal Research and Writing Faculty of the Rutgers University School of Law—Newark, New Jersey.



# TABLE OF CONTENTS

<b>INTRODUCTION</b> .....	1
<b>HOW EMPLOYMENT DISCRIMINATION LAWS PROTECT CANCER SURVIVORS</b> .....	2
Is it illegal for an employer to discriminate against me because I have or have had cancer?.....	2
Which federal laws prohibit cancer-based job discrimination? .....	2
Does every employer have to obey the Americans with Disabilities Act? .....	3
Does every employer have to obey the Federal Rehabilitation Act? .....	3
Which state laws prohibit cancer-based job discrimination? .....	3
May a prospective employer ask me if I have ever had cancer?.....	3
What if I need extra time or help to do my job? .....	4
Even though I do not consider myself “disabled,” I am treated differently because of my cancer history. Do federal and state laws protect me?.....	4
May an employer establish specific attendance and leave policies? .....	5
May I take extra medical leave without risking my job?.....	6
May an employer discriminate against me because a family member has cancer? .....	7
What types of job-related activities are covered by the law? .....	7
May an employer discriminate against me by failing to provide health insurance? .....	7
<b>WHAT CAN I DO TO AVOID DISCRIMINATION?</b> .....	8
Are lawsuits the only way to fight employment discrimination against cancer survivors?.....	8

When seeking employment, what can I do to lessen  
the chance I will face discrimination because of my  
cancer history? . . . . . 8

**WHAT CAN I DO TO ENFORCE**

**MY LEGAL RIGHTS?** . . . . . 11

What alternatives do I have to taking legal action? . . . . . 11

What should I do to protect my right to sue,  
if informal solutions fail? . . . . . 12

If an informal solution does not work,  
how else can I enforce my rights? . . . . . 14

If I have rights under both state and federal law,  
how do I know which law will provide the best remedy? . . . . 16

If I decide I would like a lawyer or other professional  
to help me, how can I find one? . . . . . 16

I tried to enforce my legal rights, but did not get  
a satisfactory result. Now what? . . . . . 18

**PUBLICATIONS ON EMPLOYMENT RIGHTS**

**AND OTHER SURVIVORSHIP ISSUES** . . . . . 19

*The National Coalition for Cancer Survivorship defines “cancer survivor” as anyone with a history of cancer from the point of diagnosis and for the remainder of life, whether that is for months, years, or decades.*

## **INTRODUCTION**

The employment concerns of cancer survivors have changed notably during the past generation. In the 1970s, less than one-half of those diagnosed with cancer survived more than five years. Treatment options were few, often disabling, and commonly ineffective. Myths about cancer prevailed. Consequently, many survivors experienced substantial problems obtaining and retaining employment.

Significant medical, social, and legal progress has extended and enhanced the lives of millions of cancer survivors. Advances in cancer treatment fostered changes in attitudes about cancer, which in turn have led to a considerable expansion of the legal rights of cancer survivors in the workplace.

A 2006 national survey of cancer survivors (Breakaway from Cancer, 2006) found that most employers appear to be highly sensitive and accommodating to the needs of employees who have cancer or who are caregivers for cancer survivors. Three out of five survivors reported receiving co-worker support, such as help with work or random acts of kindness. Survivors and caregivers reported very low incidences of negative reactions from their employers and co-workers. The most common negative reaction, reported by one in five survivors, was that an employer gave a survivor less work. Other consequences, such as being fired or laid off (6%), denied a raise or promotion (7%), and denied health insurance benefits (4%), were far less common. Employees who worked in an office environment faced fewer cancer-related problems than did employees who worked in retail, restaurant, or factory settings.

Although the attitudes of cancer survivors and their co-workers have changed, one factor has remained constant over the past generation—most cancer survivors want to, and in fact, are able to perform their jobs and return to work after diagnosis. Whether a survivor continues to work during treatment or returns to work after treatment, and if so, whether that survivor’s diagnosis or treatment will result in working limitations, depends on many factors. They include the survivor’s age, stage at diagnosis, financial status,

education, and access to health insurance and transportation, as well as the physical demands of the job and the presence of any other chronic health conditions. Medical treatment decisions that consider quality of life and the shift towards providing cancer treatment in outpatient settings have contributed to the increasing number of survivors who can work during their treatment.

This publication describes your legal rights relating to employment. It suggests ways to avoid cancer-related employment problems and describes steps to consider if you feel you have been treated differently because of your cancer experience.

## **HOW EMPLOYMENT DISCRIMINATION LAWS PROTECT CANCER SURVIVORS**

### **Is it illegal for an employer to discriminate against me because I have or have had cancer?**

**Yes.** Under federal law and many state laws, an employer cannot treat you differently from other workers in job-related activities because of your cancer history as long as you are qualified for the job. You may be protected by these laws only if:

- 1) you are qualified for the job (you have the necessary skills, experience and education) *and* you can do the essential duties of the job in question; *and*
- 2) your employer treated you differently from other workers in job-related activities because of your cancer treatment or history.

### **Which federal laws prohibit cancer-based job discrimination?**

The Americans with Disabilities Act (also known as the “ADA”) and the Federal Rehabilitation Act prohibit some types of job discrimination by employers, employment agencies, and labor unions against people who have or have had cancer. Employees of state and local governments, federal agencies and Congress are also covered.



## Does every employer have to obey the Americans with Disabilities Act?

**No.** The Americans with Disabilities Act covers private employers with 15 or more employees, state and local governments, employment agencies and labor unions.

## Does every employer have to obey the Federal Rehabilitation Act?

**No.** The Federal Rehabilitation Act covers employers of any size that receive money, equipment or contracts from the federal government. These types of employers include schools, hospitals, defense contractors and state and local governments. The military does not have to obey either the ADA or the Federal Rehabilitation Act, although retired military personnel and civilian employees of the Department of Defense are protected.

## Which state laws prohibit cancer-based job discrimination?

Every state has a law that regulates, to some extent, disability-based employment discrimination. Some laws clearly prohibit cancer-based discrimination, while others have never been applied to cancer-based discrimination. State laws also vary as to which employers—public or private, large or small—must obey the law.

## May a prospective employer ask me if I have ever had cancer?

**In most cases, no.** Under federal law and most state laws, an employer has the right to know only if you are able to do the job at the time you apply for it. A prospective employer may not ask you about your health history unless you have a visible disability and the employer could reasonably believe that it affects your current ability to perform that job. An employer may ask you detailed questions about your health only after you have been offered a job.

The ADA and many state laws prohibit discrimination based on genetic information relating to diseases such as cancer. For example,

an employer may not ask you for the results of a genetic test or treat you differently because of your genetic history.

### **What if I need extra time or help to do my job?**

Federal law and most state laws require an employer to provide you a “reasonable accommodation.” An “accommodation” is a change, such as in work hours or duties, to help you do your job during or after cancer treatment. For example, if you need to take time off for treatment, your employer may “accommodate” you by letting you work flexible hours until you finish treatment.

An employer does not have to make changes that would be an “undue hardship” on the business or other workers. “Undue hardship” refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business. For example, if you have to miss a substantial amount of work time and your work cannot be performed by a temporary employee, your employer may be able to replace you. In most circumstances, an employer does not have to provide an accommodation that would violate an established seniority system.

The key to obtaining a reasonable accommodation is to ask your employer for a specific accommodation. Employers provide most survivors the accommodations they request. (Breakaway from Cancer, 2006). Time-related accommodations, such as flex-time and time off for doctors appointments, are the most desired accommodations.

### **Even though I do not consider myself “disabled,” I am treated differently because of my cancer history. Do federal and state laws protect me?**

***In most cases, yes.*** Federal law and most state laws prohibit job discrimination against persons who:

- have a disability; or
- have a record of a disability; or
- are regarded by others as having a disability.

A “disability” or “handicap” is a major health problem that substantially limits your ability to do everyday activities, such as drive a car or breathe clearly. You may be covered by one of these three

parts if:

- Your cancer currently substantially limits your ability to do everyday activities (for example, you cannot climb stairs).  
A temporary, nonchronic impairment, such as a broken bone, is usually not considered a disability; or
- At one time your cancer substantially limited your ability to do everyday activities, but no longer does (for example, during your treatment, you could not climb stairs, but you can now).  
A record of hospitalization is often sufficient to prove that you have a “record” of a disability; or
- Your employer believes that your cancer substantially limits your ability to work, even if you feel it does not.

Although most state laws cover cancer survivors from the time of diagnosis, some state laws do not cover survivors who are cancer-free because they protect only people with serious physical disabilities. Contact your state “civil rights,” “human rights” or “human relations council” to learn more about your state law. (See p. 17 for more information about how to locate your state agency.)

Different state and federal laws define “disability” in a variety of ways. For example, you may have a “disability” under the ADA, yet not have a “disability” as defined by the Social Security Act. The application for or receipt of Social Security Disability Income benefits does not automatically bar an employee from making a claim under the ADA.

## **May an employer establish specific attendance and leave policies?**

**Yes.** The Americans with Disabilities Act allows employers to establish attendance and leave policies that are uniformly applied to all employees, regardless of disability. Employers must grant leave to cancer survivors if other employees would be granted similar leave. Employers may be required to change leave policies as a reasonable accommodation. Employers are not obligated to provide additional paid leave, but accommodations may include leave flexibility and unpaid leave.

## May I take extra medical leave without risking my job?

***In some cases, yes.*** The Family and Medical Leave Act requires employers with 50 or more employees to provide up to 12 weeks of *unpaid*, job-protected leave for family members who need time off to address their own serious illness or to care for a seriously ill child, parent, spouse, or a healthy newborn or newly adopted child. An employee must have worked at least 25 hours per week for one year to be covered. The law allows companies to exempt their highest paid workers. Employees may enforce their rights by filing a lawsuit within two years of any alleged discrimination.

*The Family and Medical Leave Act affects cancer survivors in the following ways:*

- provides 12 weeks of unpaid leave during any 12 month period;
- requires employers to continue to provide benefits—including health insurance—during the leave period;
- requires employers to restore employees to the same or equivalent position at the end of the leave period;
- allows leave to care for a spouse, child, or parent who has a “serious health condition”;
- allows leave because a serious health condition renders the employee “unable to perform the functions of the position”;
- allows intermittent or reduced work schedule when “medically necessary” (under some circumstances, an employer may transfer the employee to a position with equivalent pay and benefits to accommodate the new work schedule);
- requires employees to make reasonable efforts to schedule foreseeable medical care so as to not unduly disrupt the workplace;
- requires employees to give employers 30 days notice of foreseeable medical leave or as much notice as is practicable;
- allows employers to require employees to provide certification of medical needs and allows employers to seek a second opinion (at employer’s expense) to corroborate medical need;

- permits employers to provide leave provisions more generous than those required by the Family and Medical Leave Act; and
- allows employees to “stack” leave under the Family and Medical Leave Act with leave allowable under state medical leave law.

## **May an employer discriminate against me because a family member has cancer?**

**No.** The Americans with Disabilities Act prohibits discrimination based on relationship or association with a “disabled” person. Employers may not assume that your job performance would be affected by your need to care for a family member who has cancer. For example, employers may not treat you differently because they assume that you would use excessive leave to care for your spouse who has cancer. Additionally, employers who provide health insurance benefits to their employees for their dependents may not decrease benefits to an employee solely because that employee has a dependent who has cancer. Most state laws, however, do not protect you if an employer treats you differently because a family member has cancer.

## **What types of job-related activities are covered by the law?**

Federal law and most state laws prohibit discrimination in almost all job-related activities, including, but not limited to:

- 1) not hiring an applicant for a job or training program;
- 2) firing a worker;
- 3) providing unequal pay, working conditions, and benefits such as pension, vacation time, and health insurance;
- 4) punishing an employee for filing a discrimination complaint; or
- 5) screening out disabled employees.

## **May an employer discriminate against me by failing to provide health insurance?**

***Under some circumstances, yes.*** Employers are not required to

provide health insurance, but when they choose to provide health insurance, they must do so fairly. For example, if your employer provides health insurance to all employees with jobs similar to yours, but does not provide you health insurance, then the employer's refusal may be considered discrimination under the Americans with Disabilities Act. The employer must prove that the failure to provide health insurance is based on legitimate actuarial data (statistics) or that the insurance plan would go broke or suffer a drastic increase in premiums, co-payments, or deductibles. For example, if your employer is a small business that can prove it is unable to obtain an insurance policy that will cover you, the employer may not have to provide you the same health benefits provided to your co-workers.

Every state has laws that regulate the insurance industry. For example, some states forbid insurance companies from considering your cancer history when issuing a new policy. Contact your state insurance commissioner regarding your state law rights. Additionally, if you have health insurance through a group plan at work, one federal law—ERISA—prohibits your employer from firing you to prevent you from collecting your benefits.

## **WHAT CAN I DO TO AVOID DISCRIMINATION?**

### **Are lawsuits the only way to fight employment discrimination against cancer survivors?**

**No.** State and federal anti-discrimination laws help cancer survivors in two ways. First, they discourage discrimination. Second, they offer remedies when discrimination does occur. These laws, however, should be used as a *last resort* because they can be costly, time consuming, and not necessarily result in a fair solution. The first step is to try to avoid discrimination. If that fails, the next step is to attempt a reasonable settlement with the employer. If informal efforts fail, however, a lawsuit may be the most effective response.

### **When seeking employment, what can I do to lessen the chance I will face discrimination because of my cancer history?**

- *Do not volunteer that you have or have had cancer unless it directly affects*

*your qualifications for the job.* An employer has the right—under accepted business practices and most state and federal laws—to know only if you can perform the essential duties of the job.

- *Do not lie on a job or insurance application.* If you are hired and your employer later learns that you lied, you may be fired for your dishonesty. Insurance companies may refuse to pay benefits or cancel your coverage. Federal and state laws that prohibit employment discrimination do not guarantee that all employers will refrain from illegally asking survivors about their cancer histories or gaps in education or employment. If you are asked a question that you think is illegal, give an honest (and perhaps indirect) answer that emphasizes your current abilities to do the job.
- Keep in mind your legal rights. For example, under the Americans with Disabilities Act, an employer may not ask about your medical history, require you to take a medical examination, or request medical records from your doctor before making a conditional job offer. Once an employer has made a conditional job offer, the employer can require you to submit to a medical examination only if it is required of all other applicants for the job. The medical examination may consider only your ability to perform safely the essential duties of that job.
- Keep the focus on your *current* ability to do the job in question. Employers may not ask how often you were absent from past jobs, but they can ask if you can meet the employers' current attendance requirements.

If a job questionnaire asks “have you ever had cancer” or “have you had surgery in the past five years, if so, for what?,” answer truthfully and then explain your current health and prognosis. Write in the margins if there are no blank lines. Some suggestions are:

“I am presently fit to perform the duties of the job for which I am applying.”

“I currently have no medical condition that would interfere with my ability to perform the duties of the job for which I am applying.”

“I have not had cancer for xx years and have a normal life expectancy.”

Instead of using the word “cancer,” you may consider using the specific type of cancer you have or had (such as “adenocarcinoma” or “lymphoma”) in the hope that the employer will not associate the term with cancer.

- Apply only for jobs that you are able to do. It is not illegal for an employer to reject you for a job if you are not qualified for it, regardless of your medical history.
- If you have to explain a long period of unemployment during cancer treatment, if possible, explain it in a way that shows your illness is past, and that you are in good health and are expected to remain healthy. One way to de-emphasize a gap in your school or work history because of cancer treatment is to organize your resume by experience and skills, instead of by date.
- Offer your employer a letter from your doctor that explains your current health status, prognosis and ability to work. Be prepared to educate the interviewer about your cancer and why cancer often does not result in death or disability.
- Seek help from a job counselor with resume preparation and job interviewing skills. Practice answers to expected questions such as “why did you miss a year of work” or “why did you leave your last job?” Answers to these questions must be honest, but should stress your current qualifications for the job and not past problems, if any, resulting from your cancer experience.
- If you are interviewing for a job, do not ask about health insurance until after you have been given a job offer. Then ask to see the “benefits package.” Prior to accepting the job, review it to make sure it meets your needs. For more information on how to choose an insurance plan, see *What Cancer Survivors Need to Know About Health Insurance*, published by the National Coalition for Cancer Survivorship.
- If possible, look for jobs with large employers because they are less likely than small employers to discriminate.



- Do not discriminate against yourself by assuming you have a disability. Although cancer treatment leaves some survivors with real physical or mental disabilities, many survivors are capable of performing the same duties and activities as they did prior to diagnosis. With the help of your medical team, make an honest assessment of your abilities compared with the mental and physical demands of the job.

## **WHAT CAN I DO TO ENFORCE MY LEGAL RIGHTS?**

### **What alternatives do I have to taking legal action?**

If you suspect that you are being treated differently at work because of your cancer history, consider an informal solution before leaping into a lawsuit. You want to stand up for your legal rights without casting yourself as a troublemaker.

If you face discrimination, consider the following suggestions:

- Consider using your employer's policies and procedures for resolving employment issues informally. All state and local governments are required to have a grievance procedure and designated compliance officer for civil rights violations of employees with disabilities.
- First, let your employer know that you are aware of your legal rights and would rather resolve the issues openly and honestly rather than file a lawsuit. Be careful of what you say during discussions so that something you say will not be used to hurt your claim should your discussions fail to resolve the problem. An example of an informal solution is:
  - You need to receive chemotherapy one day a week. Your doctor has agreed to give you Friday afternoon appointments. You inform your boss who says, "I'm sorry, but I'll have to let you go because your job demands that you work at least forty hours per week."

- One way to respond is, “My doctor and I believe I am able to continue working. Because I can stay at work until 1:00 p.m. on Fridays, I would be pleased to work an extra hour or two Monday through Thursdays to make up the missed time. My doctor anticipates that I will need chemotherapy only for xx weeks, so I should be back to my regular schedule by \_\_\_\_\_.” I understand that the state human rights law protects my right to work if I am able to continue to perform my job despite my illness.”
- If you need some kind of accommodation to help you work, such as flexible working hours to accommodate doctor’s appointments, suggest several alternatives to your employer. If your employer offers you accommodations, do not turn them down lightly. Such an offer may help the employer’s position if the case ends up before a judge. The Job Accommodation Network, a free service of the President’s Committee on Employment of People with Disabilities, helps employers fashion accommodations for disabled employees. Call 1-800-ADA-WORK for more information.
- Educate employers and co-workers who might believe that people cannot survive cancer and remain productive workers. For example, you could give your employer a letter from your doctor explaining the type of cancer you have or have had, and why you are able to work. More than 10,000,000 Americans are cancer survivors, so there is a good chance that some of your co-workers have had cancer and are now valued employees.
- Ask a member of your health care team to write or call your employer to offer to mediate the conflict and suggest ways for your employer to accommodate you.
- Consider seeking support from your co-workers. They have an interest in protecting themselves from future discrimination.

### **What should I do to protect my right to sue, if informal solutions fail?**

- *Keep carefully written records of all job actions, both good and bad.* Good

actions, such as positive performance evaluations, may help in a lawsuit to show that you were qualified for the job. Bad actions, such as being moved from a job that has much public interaction to a job that has little interaction with the public after you have had a mastectomy, may be used against your employer to show illegal acts. Keep complete notes of telephone calls and meetings (including dates, times and attendees), letters, and the names and addresses of witnesses. Make written notes as events occur instead of trying to recall the events weeks or months later.

- *Pause before you sue.* Carefully evaluate your goals. For example, do you want your job back, a change in working conditions, certain benefits, a written apology, or something else? Consider the positive and negative aspects of a lawsuit. Potential positive aspects include getting a job and monetary damages, protecting your rights, and tearing down barriers for other survivors. Potential negative aspects include long court battles with no guarantee of victory (some cases drag on for five years or more), legal fees and expenses, stress, a hostile relationship between you and the people you sue, and a reputation in your field as a troublemaker.
- *Consider an informal settlement of your complaint.* Someone such as a union representative, human resources or personnel officer of your company, or social worker may be able to assist as a mediator. Your state or federal representative or local media may help persuade your employer to treat you fairly. Keep in mind that the first step most government agencies and companies take when they receive a complaint is to try to resolve the dispute without a costly trial.
- *Be aware of filing deadlines so you do not lose your option to file a complaint under state or federal law.* You have 180 days from the date of the action against you to file a complaint with the United States Equal Employment Opportunity Commission. If you work for the federal government, you have only 45 days to begin counseling with an equal employment opportunity counselor. Under most state laws, you have 180 days to file a complaint with the state agency. If you file a lawsuit and later change your mind, you can drop it at any time.

## **If an informal solution does not work, how else can I enforce my rights?**

- **Under the Americans with Disabilities Act?**

If you believe you have been treated differently by an employer covered by the Americans with Disabilities Act because of your cancer history, you must file a complaint with the Equal Employment Opportunity Commission (EEOC) to enforce your rights. The EEOC will attempt to settle the dispute. If no settlement is reached, the EEOC may appoint an investigator to evaluate your claim. If the EEOC determines that your rights may have been violated, the EEOC may sue on your behalf or may grant you the right to file your own lawsuit in federal court.

Your complaint should be filed with the closest regional EEOC office. To obtain the location of your regional EEOC office, call the EEOC Public Information System in Washington, DC at 1-800-669-4000. You can obtain publications from the EEOC that explain the Americans with Disabilities Act and how to enforce your rights under the law by calling 1-800-669-EEOC or by visiting the EEOC web site at [www.eeoc.gov](http://www.eeoc.gov).

If you can prove that you are qualified for a job but were treated differently because of your cancer history, you may be entitled to back pay and benefits, injunctive relief such as reinstatement, equitable monetary damages, and attorney's fees. State governments, however, are not required to pay monetary damages. The Americans with Disabilities Act allows an award for compensatory or punitive damages up to \$300,000 for intentional discrimination. Intentional discrimination, however, is difficult to prove and these damages are not available against state or local governments or against a private employer who made a "good faith" effort to accommodate you.

- **Under the Federal Rehabilitation Act?**

You have up to 180 days from the action against you to file a complaint with the federal government. If you work for the federal government, you have only 30 days.

You must file a complaint with the federal agency that provided federal funds to your employer. If you do not know

the name of that agency or would like more information, contact:

Coordination and Review Section  
Civil Rights Division  
Department of Justice  
P.O. Box 66118  
Washington, DC 20530

Remedies under the Federal Rehabilitation Act include, but are not limited to, back pay, reinstatement, and attorney's fees, but do not include punitive damages.

- **Under the Family and Medical Leave Act?**

You may choose between filing a lawsuit in court or filing a complaint with the Employment Standards Administration, Wage and Hour Division of the United States Department of Labor. Check your local telephone book under "United States Government" for your regional office of the Wage and Hour Division. Most complaints filed with the Wage and Hour Division are resolved informally.

- **Under state law?**

Most states have a state agency that enforces the state fair employment practices law. Some states permit you to file a lawsuit in state court to enforce your rights. Under most state laws, you have up to 180 days from the action against you to file a complaint with your state enforcement agency.

For more information about the laws in your state, contact your state division on civil rights or human rights commission, or an attorney who is experienced in job discrimination cases. The EEOC Public Information System at 1-800-669-4000 can help you locate the appropriate state enforcement agency. Also check your local telephone book under "state government."

## **If I have rights under both state and federal law, how do I know which law will provide the best remedy?**

In some situations, a single act may support a claim of discrimination under more than one law. For example, a cancer survivor who is denied a job by an employer in New York City may have a claim under the New York Human Rights Law (state), the New York City Law on Human Rights (city), and the Americans with Disabilities Act (federal).

If you have a choice of remedies, you may file a complaint with each relevant enforcement agency. One agency may “stay” (not act on) your claim until another agency issues a decision. You may always drop a complaint at any time once you determine which agency is most responsive to your claim. Factors to consider when choosing a resource include the types of remedies available, how quickly the agency responds to complaints (ask them how long the process usually takes), and which office is most convenient to you.

## **If I decide I would like a lawyer or other professional to help me, how can I find one?**

You do not have to have a lawyer to represent you before an enforcement agency or court. However, someone who is represented by a lawyer experienced in job discrimination is more likely to meet with success.

You can find a lawyer by contacting:

- *Your local bar association.* Most county and state bar associations have a lawyer referral service that provides the names of lawyers in your area who have experience in job discrimination. Many also can refer you to a local public interest law center. Look in the telephone book under “State” and “County” listings, as well as under “Lawyer Referral Services,” “Legal Services,” “Attorneys,” and “Lawyers.” Search the Lawyer Referral Directory of the American Bar Association, [www.abanet.org](http://www.abanet.org).
- Contact the National Employment Lawyers Association, which is a specialty bar association for attorneys who exclusively or primarily represent workers in employment disputes. The

website, [www.nela.org](http://www.nela.org), provides a lawyer referral directory. To obtain a printed listing of attorneys in your area, send a self-addressed stamped envelope to:

Attorney Listing  
NELA  
600 Harrison Street, Suite 535  
San Francisco, CA 94107

Send only the city and state for which you request a listing; do not send any other documents.

- *Local organizations that provide cancer survivors support and services.* Some local cancer organizations and hospitals keep a list of lawyers who represent cancer survivors in job discrimination cases.
- *National cancer organizations.*

### **The National Coalition for Cancer Survivorship**

Toll-Free (877) NCCS YES or (877) 622-7937

Provides publications, answers to questions about employment rights, and assistance locating legal resources.  
[www.canceradvocacy.org](http://www.canceradvocacy.org)

### **Cancer Care, Inc.**

(212) 712-8080 or (800) 813-HOPE

Provides assistance by oncology social workers, including answers to questions about employment rights and assistance locating legal resources.  
[www.cancercare.org](http://www.cancercare.org)

### **American Cancer Society**

(800) ACS-2345

Services vary widely from county to county. Some ACS Units may be able to help you find a lawyer in some areas.  
[www.cancer.org](http://www.cancer.org)

### **The Childhood Cancer Ombudsman Program**

(804) 580-2502 (fax) or [gpmnaco@rivnet.net](mailto:gpmnaco@rivnet.net)

Facilitates problem solving for families, patients and adult survivors. Services include analysis of cases involving access and discrimination issues in health care, insurance, employment and education by Ombudsmen volunteers from medicine, genetics, rehabilitation, ethics, education, psychology, social work, and the law.

### **Medical Care Ombudsman Volunteer Program**

(301) 652-1818 or [mcman@mcman.com](mailto:mcman@mcman.com)

Provides expert medical analysis to resolve health care access issues involving insurance, discrimination or underlying employment issues. Reviews, at no charge, as many medical cases as its panel of over 500 medical experts affiliated with over 100 academic medical centers can accommodate when physicians have recommended a high technology or high risk procedure or complicated medical care. To obtain an expert review, you must complete a “request for volunteer assistance.” You can obtain a copy of this form by contacting the number above.

### **I tried to enforce my legal rights, but did not get a satisfactory result. Now what?**

Even if your legal rights were violated, a public agency or court may not provide you a fair remedy. A trained job counselor, social worker, nurse, or member of the clergy may help you deal with the personal issues that result from employment discrimination due to your cancer history.



## **PUBLICATIONS ON EMPLOYMENT RIGHTS AND OTHER SURVIVORSHIP ISSUES**

*A Cancer Survivor's Almanac: Charting Your Journey*, edited by Barbara Hoffman, J.D., John Wiley & Sons (Hoboken, NJ). 2004 Edition. Available from the National Coalition for Cancer Survivorship and bookstores nationwide.

*Cancer Survival Toolbox*<sup>®</sup> developed by NCCS in collaboration with the Oncology Nursing Society, the Association of Oncology Social Work and the National Association of Social Workers, with support from the Amgen Foundation, Bayer Healthcare, the Eli Lilly and Company Foundation, Novartis Oncology, and sanofi-aventis. Available free of charge 877-TOOLS-4-U (877-866-5748) in English and Spanish. Chinese transcript also available. May be downloaded from [www.canceradvocacy.org/toolbox](http://www.canceradvocacy.org/toolbox).

*Facing Forward Series: Life After Cancer Treatment*, (No. 02-2424) and *Ways You Can Make A Difference in Cancer* (No. 02-5088) by the National Cancer Institute (content assistance from NCCS), (2002). Available from Cancer Information Service (1-800-4CANCER); [www.cancer.gov](http://www.cancer.gov).

*Self-Advocacy: A Cancer Survivor's Handbook*, Published by the National Coalition for Cancer Survivorship (2003). Available from NCCS.

*Teamwork: The Cancer Patient's Guide to Talking with Your Doctor*, by Elizabeth J. Clark, Ph.D., Editor. Published by the National Coalition for Cancer Survivorship. Third Edition (2003), 58 pp. Available from NCCS in English and Spanish.

*What Cancer Survivors Need to Know About Health Insurance*, by Kimberly Calder, M.P.S. and Karen Pollitz, M.P.P., National Coalition for Cancer Survivorship. Sixth Edition (2006), 34pp. Available from NCCS in English and Spanish.

*You Have the Right to Be Hopeful*, by Elizabeth J. Clark, Ph.D. Published by the National Coalition for Cancer Survivorship. Fourth Edition (2008), 20 pp. Available from NCCS in English and Spanish.







NATIONAL COALITION  
FOR CANCER SURVIVORSHIP

---

*The power of survivorship. The promise of quality care.*

---

**NATIONAL COALITION FOR CANCER SURVIVORSHIP**

1010 Wayne Avenue, Suite 770

Silver Spring, MD 20910

877.NCCS.YES

[www.canceradvocacy.org](http://www.canceradvocacy.org)