

**H
I
V**

and
Discrimination

YOUR LEGAL RIGHTS

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This is one in a series of booklets published by the AIDS LEGAL COUNCIL OF CHICAGO. All are designed to help you understand **YOUR LEGAL RIGHTS** in Illinois. The booklets in this series are:

HIV and Confidentiality

HIV and Discrimination

HIV and Insurance

HIV and Public Benefits

HIV and Undocumented Immigrants

HIV in the Workplace

HIV: Issues for Families with Children

HIV: Issues for Youth and Young Adults

HIV: Returning to Work

HIV: Wills and Powers of Attorney

All of these booklets are free and available at:

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This guide is intended as an overview of HIV-related Illinois and federal law. As with any legal matter, it is always a good idea to consult an attorney concerning the particular circumstances of your case.

HIV AND DISCRIMINATION

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INTRODUCTION

It's easy to think of AIDS as a medical problem. But AIDS is also a social problem. Since the epidemic was first identified in 1981, many people have used AIDS as an excuse to discriminate. People with HIV have been fired from their jobs, kicked out of their apartments, denied health care and abandoned by their families. Discrimination has always been a symptom of AIDS.

The best defense against discrimination is knowledge. This booklet is designed to inform you of your legal rights as an HIV positive person in Illinois. If you have questions after reading this book, you can call the AIDS LEGAL COUNCIL OF CHICAGO at (312) 427.8990. Someone there will be happy to speak with you.

Chapter One

YOUR RIGHTS IN THE WORKPLACE

- 1) I don't think anyone will hire me because I'm HIV positive. Why should I bother to apply for a job?

Many people with HIV or AIDS have good jobs, and contribute to society in important ways. People may have told you that because you're HIV positive no one will hire you. This is not true. If you have the right skills and experience, you have as much right to a job as anyone else.

There is one important thing to remember:

DISCRIMINATION AGAINST PEOPLE WITH HIV IS ILLEGAL.

This means that an employer cannot fire you, demote you, or refuse to hire you just because you're HIV positive. Your rights are protected by federal and state laws. Certain cities and counties in Illinois (like Chicago and Cook County) also have laws which make discrimination against people with HIV illegal.

- 2) If I apply for a job, can the person interviewing me ask if I have HIV?

No. An employer cannot ask you if you have a disability or a medical condition. **You do not have to tell the person you're interviewing with that you are HIV positive.** The interviewer *may* ask about your ability to perform certain job-related duties. For example, if you are applying for a job as a stock clerk, and the job requires you to lift heavy boxes, the interviewer is allowed to ask you if you are able to lift heavy things.

3) Are there jobs I am not allowed to have because I'm HIV positive?

The only job you would not be allowed to have is one in which you would pose a *direct threat* of infecting someone else. For example, a hospital could probably refuse to hire someone as a surgeon if she is HIV positive. However, to refuse you a job an employer must show that you would pose a direct threat *carrying out routine job duties*. For example, if you were applying for a job as a secretary, an employer could not say that you might accidentally cut yourself and therefore pose a threat to others. Cutting yourself accidentally is not part of a secretary's routine job duties.

4) Can an employer ask me to take an HIV test?

Under certain circumstances, an employer may require a person applying for a job to have a medical examination. *But an employer can require this exam only if he has already offered you a job, and if everyone applying for the job has to take the exam also.* As part of that exam, the employer could legally require you to take an HIV test. However, the employer cannot refuse to hire you based on the result of that HIV test, unless being HIV positive would prevent you from doing the job. Most employers do not test applicants for HIV because their HIV status is irrelevant to most jobs.

5) Is it ever a good idea to tell my boss I'm HIV positive?

The decision to tell your boss you are HIV positive is a very personal one. Most people who disclose their HIV status at work do so for one of two reasons:

- ◆ to ask for an accommodation at work, like more flexible hours;
- ◆ to protect their rights, so that an employer who is discriminating cannot say he didn't know the employee was HIV positive.

If you need some sort of accommodation to be able to do your job, you may have a right to that accommodation, according to a federal law called the **Americans With Disabilities Act (ADA)**. Some people with HIV need accommodations

like flexible hours, time off to visit the doctor, or permission to work at home one day a week. If you need an accommodation like these, you might be able to avoid disclosing your HIV status by instead disclosing the condition that you have (for example, fatigue). It would be important to get a doctor's note verifying your condition.

If you feel that your boss is discriminating against you because he suspects you are HIV positive, it might be a good idea to disclose your HIV status to protect your rights. However, this is a very complicated situation. We recommend that you discuss it with someone from the AIDS Legal Council or another legal organization before doing anything.

6) If I tell my boss I'm HIV positive, does she have to keep that information confidential?

Yes. The **Illinois AIDS Confidentiality Act** says that it is illegal for any person to disclose your HIV status without your permission. Likewise, under the **Americans With Disabilities Act**, an employer must maintain strict confidentiality regarding all medical information. If you tell your boss you are HIV positive, and the next week everyone in the office knows, your boss has probably violated the law.

The law says your boss can tell first-aid personnel about your disability if you might require emergency treatment at work. She can also tell your supervisor about any restrictions on your work or accommodations you might need. If you decide to tell your boss about your HIV status, it is a good idea to stress that you know the law requires that information be kept confidential.

7) Can my employer get a copy of my medical records?

No. Those records are confidential. The only way your employer can get them is if you sign a release authorizing your employer to get them.

8) What is the **Americans With Disabilities Act**? Why is it important to me?

The **Americans With Disabilities Act** (ADA) is a powerful federal law that makes discrimination against people with disabilities (like HIV) illegal. The ADA prohibits employers *with 15 or more employees* from firing, demoting, or refusing to hire people solely because they have a disability. The ADA also protects people associated with a person with HIV, or people believed to be HIV positive. If you are gay, for example, and your boss fires you because he thinks you have AIDS, the ADA would protect you.

The ADA is also important because it gives you the right to a "reasonable accommodation" at work, so that you can keep doing your job.

9) What is a reasonable accommodation?

A reasonable accommodation is a change in your workplace or work routine that makes it possible for you to keep doing your job. Here are some examples of reasonable accommodations:

- ◆ Starting work at 9 a.m. instead of 8 a.m.
- ◆ Taking one afternoon off each month to visit the doctor.
- ◆ Taking an hour break in the afternoon to rest.
- ◆ Working at home one day a week.

There is no such thing as a "standard" reasonable accommodation. Each accommodation is created for the specific requirement of the person who needs it.

10) Am I entitled to a reasonable accommodation?

The Americans With Disabilities Act says that a person with a disability is entitled to a reasonable accommodation if that person can perform the "essential job functions." In other words, if you satisfy the job requirements (like

experience, skills, or education) and if the accommodation will make you able to do all of your major job duties, you are entitled to that accommodation.

There are only two situations in which an employer can refuse to grant a reasonable accommodation:

- ♦ The company employs fewer than 15 employees, and is not covered by the ADA.
- ♦ The accommodation causes the company "undue hardship."

"Undue hardship" means the accommodation creates an unfair burden on the employer. For example, a small business might not be able to afford to put in an elevator to help an employee reach its second-floor office. Or a small law firm might not be able to function if the only receptionist took an hour-long nap every afternoon.

11) How do I get a reasonable accommodation?

You have to ask for it. An employer does not have to offer you an accommodation unless you ask for one. You should meet with your supervisor, as well as anyone else you think you need to inform (such as the head of personnel) and explain that you are requesting a reasonable accommodation under the Americans With Disabilities Act. The AIDS Legal Council can help you do this.

Your employer may not have to grant you the exact accommodation that you request. If, for example, you suffer from chronic fatigue and ask to be allowed to come into work any time between 9 and 11 in the morning, your boss may have a right to insist on a more regular schedule. You might compromise and request to be allowed to come into work each day at 10.

12) Do I have to disclose my HIV status to request a reasonable accommodation?

When an employee asks for a reasonable accommodation, the employer can ask for medical documentation to verify the existence and nature of the disability.

Usually that documentation is a letter from your doctor. To avoid disclosing your HIV status when requesting an accommodation, you could first try disclosing the actual disabling condition (for example, fatigue or lymphoma). If you are HIV positive and in good health, but need an accommodation to take time off to see the doctor regularly, it may be impossible to avoid disclosing your HIV status. In any event, if you have to disclose, make sure you stress to your employer that your HIV status should be kept confidential.

13) Should I ask for a reasonable accommodation in writing?

It is probably a good idea to ask for a reasonable accommodation in writing. Here is a sample request:

Dear Employer,

I am writing to inform you that I have a disability under the Americans With Disabilities Act. As you know, this law entitles me to a reasonable accommodation. I am requesting the following accommodation: [describe the accommodation you need here].

I am fully capable of performing the essential duties of my job. I seek this accommodation so that I can be a more productive employee for this company. Please contact me at your earliest convenience so that we can discuss my request.

Make sure that you date your letter. It is also a good idea to make an extra copy of your letter and have it put into your personnel file.

Chapter Two

HEALTH CARE DISCRIMINATION

- 1) I tried to make an appointment with a dentist for some dental work, and he said he's not equipped to treat people with HIV. Is that legal?**

No. The Americans With Disabilities Act makes it illegal for doctors and dentists to discriminate against people with disabilities, like HIV or AIDS. Every dentist should be using universal precautions on every patient. A dentist doesn't need any special protective equipment to work on a patient who is HIV positive.

- 2) Do I have to tell my dentist that I am HIV positive?**

No. You don't have to disclose your HIV status to your dentist. Your dentist should be using universal precautions with all of his patients.

- 3) I need to have surgery, but my surgeon says he won't perform the operation unless I get an HIV test. Can he do that?**

No. A surgeon cannot refuse to operate on you because you are HIV positive. That would be illegal under the Americans With Disabilities Act. If the surgeon tells you that you have to take an HIV test before he'll operate on you, ask him what difference it would make if you were HIV positive. If he says he would need to take extra precautions, you can tell him that he should be using universal precautions on all of his patients. If he refuses to operate on you because you won't take an HIV test, he is breaking the law.

- 4) I've been seeing a doctor regularly for years. Last month I tested HIV positive. When I told my doctor that I'm HIV positive, he told me that he's not a specialist in HIV and couldn't treat me anymore. Can he do that?

That's a difficult question. Legally, no, he can't do it. But part of the answer is legal, and part of it is practical. Legally speaking, your doctor might be in violation of the Americans With Disabilities Act. If you want to keep going to that doctor, you could use the ADA to make that happen. But on the practical side, do you want to stick with a doctor who admits he doesn't know much about HIV? You might decide to find a new doctor with more experience working with people with HIV.

Chapter Three

INSURANCE DISCRIMINATION

- 1) **I got a new full-time job, and my company offers health insurance to all full-time employees. Can my company deny me coverage because I'm HIV positive?**

No. If you are eligible for coverage in your company's group insurance plan, then you must be accepted into the insurance plan like everyone else.

- 2) **I'm applying for insurance through work, and the application asks if I'm HIV positive. If I say yes, I'm afraid I won't get the coverage. Isn't it better to lie?**

No. From a legal standpoint, it is never a good idea to lie on an insurance application. If you do, and the insurance company finds out, the insurance company may have the right to cancel your policy.

If you are applying for group insurance at work, then you must be accepted onto that policy, whether you are HIV positive or not.

- 3) **I've had insurance at work for a year. My boss told me that the insurance premiums have doubled because of all the claims I made. He said he's going to drop my insurance coverage. Is that legal?**

No. The Americans With Disabilities Act says that a company cannot discriminate against people with disabilities when offering employment benefits. If you're the only person denied insurance because of your HIV status, your employer is breaking the law.

4) If I apply for individual health insurance (not through work), can the insurance company test me for HIV?

Yes. In fact, it is likely that the insurance company will test you for HIV if you apply for an individual policy. It is legal for the insurance company to do so.

5) Can the insurance company deny me an individual policy if my test comes back positive?

Yes. In Illinois it is legal for an insurance company to refuse to provide individual insurance to people with HIV.

6) When I apply for insurance, can the insurance company ask about my sexual orientation?

No. The insurance company can only ask you about things that are relevant to your insurability. Back in the mid 1980's, when AIDS was first identified, many insurance companies found ways to refuse insurance to gay people, for example refusing to issue policies to people who had stereotypically "gay" jobs, like florists or interior designers. Those practices are illegal in Illinois.

Chapter Four

OTHER KINDS OF DISCRIMINATION

- 1) **My landlord found out that I'm HIV positive. Now he says I have to move out. Is that legal?**

No. The **United States Fair Housing Act** and the **Illinois Human Rights Act** say that landlords cannot discriminate against people with disabilities. So if your landlord is trying to evict you just because you're HIV positive, that's illegal.

However, your landlord can still evict you for other legitimate reasons. For example, if you fall behind on your rent, or if you break the terms of your lease, then your landlord can evict you, just as he could evict any other tenant who did those same things. If you get sick, lose your job and fall behind on your rent, your landlord doesn't have to let you stay. Remember, though, the only way your landlord can legally evict you is by going to court. He can't just throw you out.

- 2) **My doctor says that because of my HIV, I need to have an air conditioner in my apartment, but my landlord says I can't have one. What can I do?**

If your air conditioner is medically necessary, your landlord must let you use one. The Fair Housing Act says that a landlord must make certain accommodations for people with disabilities. You will need to get a note from your doctor explaining that the air conditioner is necessary, and you will have to pay for the air conditioner yourself.

Another common accommodation is allowing a live-in health care worker to live in your apartment even if your lease says only you may live in the apartment. Your landlord would have to let that health care worker stay with you.

- 3) I've got bad neuropathy, so I have to use a wheelchair. I want my landlord to build a ramp so I can get in and out of the building easier. Does my landlord have to do that for me?**

Not quite. According to the law, your landlord must allow you to build that ramp, but the landlord does not have to build it or pay for it.

- 4) My Public Aid worker says I have to go down to her office, but I'm not strong enough to leave the house. She says if I don't go to her office, my benefits will stop. Is that legal?**

No. Because of your disability, you have a right to an accommodation from any government program. The Public Aid worker will either have to get the information she needs over the phone or come out to visit you at your home.

- 5) I want to join the military, but I've heard that people with HIV aren't allowed to join. Is that legal?**

Unfortunately, yes. The United States military can legally refuse to admit people with HIV, and can even discharge those already enlisted who test HIV positive.

