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Cancer and the Law – What You Need to Know

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Overview of the CLRC

- Founded in 1997 as a joint program of DRLC & LLS
- Provides information & education on cancer-related legal issues to cancer patients, families, caregivers, health care professionals, and other coping with cancer
- Education model – not a litigation model
- Telephone Assistance Line
 - 3,377 calls in 2004
 - 3,225 calls in 2005
- 80-100 Outreach Programs per year
- Pro Bono Panel of volunteer attorneys & professionals



What does the CLRC do?

- We provide information and education on cancer-related legal issues:
 - Landlord/Tenant
 - Real Estate
 - Family Law
 - Immigration
 - Toxic Torts
 - Financial Resources
 - Genetic Testing
 - Medical Malpractice
 - Health Insurance
 - Employment
 - Disability Insurance
 - Life Insurance
 - Government Benefits
 - Estate Planning
 - Custody/Guardianship of Minor Children

Americans with Disabilities Act

- Applies to all phases of employment process
- Applies to employers with 15+ employees
- Must be a “qualified individual”
 - **an individual who can perform the essential functions of the job with or without a reasonable accommodation**
- Must be disabled [defined on next slide]

Definition of a Disability

- Physical or mental impairment that substantially impacts a major life function
 - walking, talking, breathing, caring for oneself, working, tasks of daily living
- A history of an impairment
- Being regarded as having an impairment
- Look at disability in corrected [mitigated] state

Reasonable Accommodations

- Employer has to provide as long as it is not an undue hardship to the employer
- Reasonable accommodations can include:
 - reassignment to a vacant position, light duty, flexible hours, **possibly** an extended period of leave time.
- Employee generally has to initiate request for a reasonable accommodation
- All requests to be kept confidential
- Caregiver does not get reasonable accommodations

California Fair Employment & Housing Act



- Employers with 5+ employees
- Definition of disability broader than ADA
 - Need any limitation in a major life function - Does **not** need to be substantial
- Mitigating Measures not considered unless the mitigating measure itself limits a major life activity
- “Medical Condition” means any health impairment related to or associated with a diagnosis of cancer or a record of a history of cancer.

Family and Medical Leave Act

- **12 weeks of unpaid (but job & benefit protected) medical leave in a year to care for a seriously ill spouse, parent, child, or for employee's serious medical condition**
 - Leave time can be taken all at once or at intervals

Requirements:

- 50+ employees within 75 miles of that site
- Worked 1 year & minimum of 1,250 hours

Note: May be eligible for 12 weeks under FMLA & additional leave as a reasonable accommodation under the ADA or FEHA or as part of an employer's leave policy

COBRA

- A way to keep group health insurance coverage when you would normally lose it
- Applies to employers with 20+ employees
- Generally lasts for 18 months
- Cost can be up to 102% of applicable employee rate

Cal-COBRA

- Similar to COBRA
- Applies to employers with 2-19 employees
- Generally lasts for 18 months
- Cost can be up to 110% of applicable employee rate



Health Insurance Premium Payment Program (HIPP)

- If you have health insurance coverage
- Can't afford the premiums
- Are eligible for Medi-Cal
- HIPP pays your insurance premiums to keep your private health insurance
- (800) 952-5294 (option #1, then #5) or (866) 298-8443

Health Insurance Portability & Accountability Act (HIPAA)

Prohibits discrimination against individuals based on pre-existing medical conditions

Note: Only when going from **group to group** OR from **group to a HIPAA individual plan** without going through medical underwriting

- Guarantee Issue Plan
- Receive credit for the time you have had health insurance
 - “Creditable coverage” goes with you from one employer’s group health insurance to another
- Pre-existing condition exclusion
 - 12 months max, but usually 6 months



UnitedHealth Group™

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HIPAA Guarantee Issue Plan

- A.K.A.: Federally Insured Plan or HIPAA Plan

You have to:

- Exhaust COBRA or Cal-COBRA
 - Be ineligible for Medi-Cal or Medicare
 - Not be eligible for other group coverage
 - Apply no later than 63 days after the loss of coverage
- There are limits to premium amount, but expensive

HIPAA & Creditable Coverage

Example:

You had creditable coverage of 4 months while you were at your previous job. Now you are changing jobs and the new employer group health plan is imposing a preexisting condition exclusion (PCE) period of 6 months.

4 months of creditable coverage

|_____|

|_____|

6 month PCE imposed by group health plan

|_____|

New 2 month PCE

Therefore, you will only have 2 months left of a pre-existing exclusion period.

Major Risk Medical Insurance Plan (MRMIP)

- Offers limited health insurance to CA residents who are unable to get individual health insurance
- Ineligible for COBRA, Cal-COBRA, & HIPAA
- 3 plans to choose: Blue Cross, Blue Shield, Kaiser
- Qualified participants pay part of the premium, which depends on the plan chose, where you live and your age
- Coverage limited to 36 months, then people can move to HIPAA's guarantee issue plan

Women's Health & Cancer Rights Act [WHCRA]



- **Group health plans, insurance companies, and HMO's offering mastectomy coverage must also provide coverage for reconstructive surgery, including:**
 - Reconstruction on the breast on which the mastectomy was performed
 - Surgery/reconstruction of other breast to achieve symmetrical appearance
 - Prostheses & treatment of physical complications at all stages of the mastectomy, including lymphedemas

California Health Care Legislation

Greater protections for consumers

- **Coverage for routine costs of cancer clinical trials**
- **Health plans must provide a 2nd medical opinion**
 - If none is available, a doctor outside network is called in at the plan's expense. Patient responsible only for applicable co-payments
- **External review for ALL decisions to deny, modify or delay treatment based on lack of medical necessity**
 - Enrollee's must exhaust plan's internal grievance process, then enrollee can pursue outside review through Dept. of Managed Health Care [DMHC]

California Dept. of Managed Health Care (DMHC)

- Oversees HMOs and all Blue Cross & Blue Shield plans
- Assists consumers with complaints
- Provides independent medical review
- www.hmohelp.ca.gov; 888.HMO.2219

California's **HMO Guide for Seniors**

- **California Department of Insurance**
 - oversees other health plans
 - 800.927.4357; www.insurance.ca.gov

Disability Rights Legal Center

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