

# Cancer as a Protected Disability

[The Am Law Daily reports](#) that the former CFO of Proskauer Rose is claiming that the international law firm violated the Americans with Disabilities Act by terminating her after a three-month leave of absence for breast cancer. Earlier this month, the [EEOC published an updated Q&A discussing the treatment of cancer in the workplace under the ADA](#). As the EEOC notes, there is little doubt that the ADA protects cancer as a disability:

As a result of changes made by the ADAAA, people who currently have cancer, or have cancer that is in remission, should easily be found to have a disability within the meaning of the first part of the ADA's definition of disability because they are substantially limited in the major life activity of normal cell growth or would be so limited if cancer currently in remission was to recur. Similarly, individuals with a history of cancer will be covered under the second part of the definition of disability because they will have a record of an impairment that substantially limited a major life activity in the past. Finally, an individual is covered under the third ("regarded as") prong of the definition of disability if an employer takes a prohibited action (for example, refuses to hire or terminates the individual) because of cancer or because the employer believes the individual has cancer.

The newly published Q&A answers the following four questions:

- **When can an employer ask an applicant or employee questions about his cancer and how should it treat voluntary disclosures?** The ADA prohibits employers from requesting or compiling *any* medical information during the hiring process. Once a conditional job offer is made, an employer can require a medical examination, as long as it does the same for all employees in the same job classification. An employer may also require an employee returning from a medical leave of absence to certify his or her ability to adequately and safely perform the essential functions of the job. As with any medical information, the ADA obligates an employer to keep information about an employee's cancer confidential.
- **What types of reasonable accommodations may employees with cancer need?** Some exemplar accommodations include time off for doctors' appointments, periodic breaks during the workday to rest or take medications, modified work schedules or shift changes, permission to telecommute, permission to use a work telephone to contact doctors, and redistribution of marginal and non-essential work tasks to other employees.
- **How should an employer handle safety concerns about applicants and employees with cancer?** An employer may only exclude an individual with cancer from a job for safety reasons when the individual poses a "direct threat." A direct threat is an objective determination of a "significant risk of substantial harm to the individual or others that cannot be eliminated or reduced through reasonable accommodation."
- **How can an employer ensure that no employee is harassed because of cancer or any other disability?** The ADA prohibits disability-related harassment. The best means to prevent or eliminate this misconduct from the workplace is via written policies or handbook provisions, coupled with education and training. Also, employers should take seriously all complaints of harassment of any kind (including harassment related to an employee's disability), investigate all complaints, and take prompt remedial action to ensure that it stops and does not repeat.

The EEOC's [Q&A on cancer](#) is chock-full of useful information, including practical examples of how to handle many situations that could arise. Of course, if you have any doubt at all about how to handle an employee with cancer or a history of cancer, consult your employment counsel to ensure that you do not make a costly mistake.