

EMPLOYMENT and Living with HIV/AIDS:

A RESOURCE GUIDE

Employment is an essential part of leading an independent, self-directed life for all people, including people living with HIV/AIDS. If you are a person living with HIV/AIDS and are interested in seeking employment or considering changing your employment situation, the questions and answers in this document may help you get started.

Topics include:

- Legal rights and protections
- Resources and strategies for getting a job
- Financial impacts and tax incentives

This information introduces many programs and tools that can help widen the door to healthy employment.



1. Can I work with HIV/AIDS?

Yes! With proper care and treatment, many people with HIV/AIDS lead normal, healthy lives, and this can include having a job. Most people with HIV/AIDS can continue working at their current jobs or look for a new job in their chosen field. Your overall well-being and your financial health can be more stable with a paying job.

2. Does the law protect me from discrimination on the job or in a job search?

Yes. It is a civil right to live free from discrimination based on HIV/AIDS status.

There are many laws that protect the rights of people living with HIV/AIDS to find, keep and advance in employment, free from discrimination. Becoming aware of these laws may increase your confidence and power on the job and in the job search. Though not all individuals with HIV/AIDS may think of themselves or identify as an individual with a disability, HIV/AIDS is covered by laws that prohibit discrimination and provide other protections based on disability status in the workplace. Those laws include the following:

- **Americans with Disabilities Act, as amended (ADA, also known as the ADAAAA)**
 - Makes it illegal for a private employer (applies to employers with 15 or more employees) or a state or local government employer to discriminate on the basis of disability (note: some state laws extend disability-related discrimination protections to employees of companies with fewer than 15 employees); and
 - Makes it illegal to retaliate against a person because the person complained about discrimination.
 - Equal Employment Opportunity Commission (EEOC) ADA Fact Sheet www.eeoc.gov/facts/ada18.html
 - EEOC ADA webpage www.eeoc.gov/laws/statutes/adaaaa_info.cfm
 - U.S. Department of Justice (DOJ) HIV/AIDS webpage www.ada.gov/aids/index.htm

- **Rehabilitation Act of 1973**
 - Section 501 of the Rehabilitation Act of 1973 – Makes it illegal for a federal agency to discriminate on the basis of disability and requires affirmative action to hire, retain and promote qualified people with disabilities in Federal Government employment.
 - EEOC Rehabilitation Act webpage www.eeoc.gov/federal/directives/md715.cfm
 - Section 503 of the Rehabilitation Act of 1973 – Makes it illegal for covered federal contractors and subcontractors to discriminate on the basis of disability and requires them to take affirmative action to hire, retain and promote qualified people with disabilities.
 - U.S. Department of Labor (DOL) Office of Federal Contract Compliance Programs (OFCCP) Section 503 webpage www.dol.gov/agencies/ofccp/section-503
 - Section 504 of the Rehabilitation Act of 1973 – Makes it illegal to discriminate on the basis of disability in programs and activities that receive federal financial assistance.

This includes applicants and employees with disabilities, as well as discrimination in the services and activities provided by federal agencies to the public. Each federal agency has its own set of regulations and is responsible for enforcing its own regulations.

- DOJ Guide to Disability Rights Laws
www.ada.gov/cguide.htm#anchor65610

Workforce Investment and Opportunity Act of 2014 (WIOA) – Makes it illegal to discriminate on the basis of disability in employment or in provision of services by organizations or entities that receive federal financial assistance under WIOA, and by any program or activity that is provided as part of the nation’s American Job Center (AJC) system by an AJC partner. Under WIOA, people with disabilities, including HIV/AIDS, can expect to participate equally and fully in WIOA-funded job training and employment services.

- DOL WIOA webpage
www.dol.gov/agencies/eta/wioa

Family and Medical Leave Act (FMLA) – Provides eligible employees up to 12 weeks of unpaid, job-protected leave for a range of health reasons, with continuation of group healthcare coverage under the same terms and conditions as if the employee had not taken leave.

- DOL FLMA webpage
www.dol.gov/whd/fmla
- DOL FMLA fact sheet
www.dol.gov/whd/regs/compliance/whdfs28.htm
- DOL FMLA elaws Advisor
<https://webapps.dol.gov/elaws/fmla.htm>

For an overview of disability discrimination and legal protections in the workplace, see also www.eeoc.gov/laws/types/disability.cfm and the Working with HIV page of AIDS.gov at www.hiv.gov/hiv-basics/living-well-with-hiv/taking-care-of-yourself/employment-and-health.

3. I would like to get a job/return to work. Where should I start?

There are several ways to get a job or return to work.

Before starting, it is important to remember that working will affect a lot of your life: your medical status, your finances, your frame of mind and social life, perhaps your housing, and the way you spend your time. Before taking action on a job or program designed to help you obtain employment, you may want to get information and perspectives from:

- Your HIV/AIDS case manager or counselor, if you have one
- Benefits counselors at an AIDS service organization or other community organization
- Social Security Administration’s (SSA) Work Incentives Planning and Assistance Program(WIPA) (See [Question 5](#))
- Other people living with HIV/AIDS who are working, or have returned to work
- Providers of any of your housing, medical or financial benefits
- Public and non-profit employment and training service providers (See [Question 12](#))

Here are some questions to talk about with them:

- What are my goals for employment?
- What kind of work do I want to do?
- What are the resources that can help me set and achieve a new career goal?
- Are there state or local laws that further strengthen anti-discrimination protections in the ADA?
- How do I access training or education that will help me achieve my goals?
- How can I plan to take care of my health if I go to work?
- How will my going to work impact the benefits I am receiving?

4. I'm receiving Supplemental Security Income/Social Security Disability Insurance (SSI/SSDI), but would like to go to work. Are there specific programs for SSI/SSDI beneficiaries who would like to go to work?

If you are on SSI and/or SSDI and are between the ages of 18 and 64, you qualify for the Ticket to Work Program. Under this program, you may get vocational rehabilitation and employment services from Employment Networks. The Social Security Administration (SSA) approves organizations, individuals, and public and private groups to provide these services. All state Vocational Rehabilitation agencies and many American Job Centers are Employment Networks. To learn more about the Ticket to Work Program, go to www.choosework.ssa.gov/about/how-it-works/index.html.

5. I'm receiving SSI/SSDI benefits. I am worried that if I get a job or return to work, I will lose my benefits or not be able to get back on benefits if I need them.

There is great opportunity for most people to try out working without risking their eligibility for SSI/SSDI benefits. Understanding the different rules for SSI and SSDI and other programs is an important first step.

There are "work incentives" built into the SSI and SSDI, Medicare and Medicaid programs that allow you to transition more easily to employment if you choose to do so.

- Many people have used these work incentives to work while continuing to receive benefits.
- Others have used them to leave the benefits system for a time and then go back when they needed to do so.
- Others have used work incentives to transition off benefits completely.

It is wise to get the help you need to understand your options. Not being informed can cause you to miss opportunities or risk your benefits unknowingly. For example:

- Your SSI/SSDI benefit check may change or end when you try out working.
- You may still qualify for full or partial benefits if you stop work or your earnings decrease.
- SSI and SSDI have different timelines for allowing you to reactivate benefits.
- Continuing health care benefits will vary from state to state.

There are safeguards that help you to return quickly to benefits if at some point you cannot work. You can find information about these safeguards in the Social Security Administration's (SSA) Red Book at www.ssa.gov/redbook. The Red Book is the definitive collection of rules for SSI and SSDI.

People who understand how these benefits work can make better, more informed decisions. Having the right information can help you manage the risk of changing your employment situation and improve your quality of life.

To understand how the rules will apply to your situation, it is best to talk with a professional benefits planner. Your HIV/AIDS service provider may offer access, directly or by referral, to benefits planning and assistance. The SSA's Work Incentives Planning and Assistance Program (WIPA) offers benefits planning and assistance services to all SSA beneficiaries with disabilities who are over the age of 18. To find a WIPA provider in your area, go to www.ssa.gov/work/WIPA.html.

6. Do I need to tell my employer I have HIV/AIDS?

No, unless you require an adjustment or change at work for a reason related to a medical condition (see [Question 7](#)). An employee's medical diagnosis is not part of what an employer needs to know. Your medical information is private. Although many people do not realize it, there is generally no legal reason to disclose.

Disclosing your HIV/AIDS status or other disabilities to your employer is a big decision and a personal decision, and it is important to think it through. When you weigh the considerations, you may choose to handle the information about your status differently from how you handle it in other areas of your life. The following information may help you in your decision:

- Benefits of disclosing at work
 - People who disclose their diagnosis may feel unburdened. They no longer feel as though they are hiding something.
 - Some people who have disclosed at work find their employer and/or co-workers supportive and helpful, especially when they get ill.
 - Once you have disclosed, no one can "out" you at work.
 - When employees are open about their HIV/AIDS or disability status in the workplace, this can contribute to an inclusive work culture and potentially reduce stigma against people with HIV/AIDS.
- Risks of disclosing at work
 - Once you disclose to your employer, it may be hard not to see every workplace decision as a reflection of this knowledge.
 - Even today, some employees report HIV/AIDS-related discrimination. Sometimes it can be difficult to prove that discrimination results directly from your disclosure.
 - Disclosure to an employer can be an unnecessary complication in your life. Dealing with job stress and legal issues can affect your health and well-being negatively.

Should you disclose to co-workers? Long experience tells us this:

- If you disclose to one co-worker, it may become the case that you have disclosed to all. Human nature and the common temptation to gossip may allow sensitive, confidential information to escape from many people at different times. Unfortunately, there is no reliable way to ensure that someone will keep your information confidential.
- By law, managers and supervisors must keep your medical information confidential. But legal protections and remedies around privacy and confidentiality do not apply to co-workers in the same way they do to supervisors and managers.

For a more detailed discussion around disclosure (centered around youth, but also applicable to adults), see www.ncwd-youth.info/publications/the-411-on-disability-disclosure-a-workbook-for-youth-with-disabilities.

7. What is a reasonable accommodation? Do I have the right to request a reasonable accommodation? What is the best way to make that request?

What is a reasonable accommodation?

Under the Americans with Disabilities Act (ADA), an accommodation is considered any modification or adjustment to a job or work environment that enables a qualified person with a disability to apply for or perform a job. An accommodation may be tangible (for example, a certain type of chair) or non-tangible (for example, a modified work schedule for someone with a medical condition requiring regular appointments with a health care provider). Qualified individuals with disabilities, including people with HIV/AIDS, have the right to request reasonable accommodations. You are “qualified” if you are able to perform the essential functions of the job, with or without a reasonable accommodation.

What is the best way to make that request?

Your own supervisor may not be trained in reasonable accommodations or know how to negotiate them. For that reason, often it’s best to go directly to the person responsible for human resources at your employer, even if that person works in a different location. In a small business, that person may well be the owner.

When you request an accommodation, state clearly what you need (for example, time off for a clinic visit every third Tuesday of the month, a certain type of chair, or a change in your work hours) and be ready to supply a doctor’s note supporting your request. The initial note need not contain your diagnosis, but it should verify that you are under that doctor’s care and that he/she believes you need the accommodation to maintain your health or be able to fulfill essential functions of your job.

Many people do not want to give a lot of detail about their disability. If you prefer not to do so, you may want to limit the medical information you initially give to your employer. When the disability or need for an accommodation is not obvious, an employer may require that the employee provide medical documentation to establish that the employee has a disability as defined by the ADA, to show that the employee needs the requested accommodation, and to help determine effective accommodation options. This can, but often does not, include disclosing your specific medical condition.

What to disclose if you need an accommodation

Again, it may be necessary to disclose that you have a disability when requesting an accommodation. Informed employers know that persons with disabilities are protected under the ADA as well as other federal laws. While you may need to disclose that you have a disability as defined by the ADA to obtain an accommodation, you may *not* have to disclose the *specific* disability.

Employers often do best when a situation is predictable. If you can tell your employer what you need, you can open a dialogue about making the arrangement work. Be businesslike in the conversation: "These are the facts, and this is the solution I propose."

Be aware that not all people with HIV/AIDS will need accommodations to perform their jobs, and people who do may only need a few or simple accommodations.

For further information about accommodations for people living with HIV/AIDS, see www.askjan.org/disabilities/Human-Immunodeficiency-Virus-HIV.cfm.

For more information about obtaining accommodations, see the "Employees' Practical Guide to Negotiating and Requesting Reasonable Accommodations under the Americans with Disabilities Act (ADA)" at www.askjan.org/publications/individuals/employee-guide.cfm. Also see www.eeoc.gov/eeoc/newsroom/release/6-8-11b.cfm for a discussion of leaves of absence as a form of reasonable accommodation.

8. How do I ask my employer for time away from work to see doctors or visit the clinic? Will my employer understand that I might need other plans to support me in the workplace?

When you need to plan with your employer for time away from work for a medical appointment, let the appropriate person know that you take care of your health by meeting regularly (for example, once every three months) with your doctor to keep you at your healthiest. Many employers support employees' self-care needs related to health (including doctor or dentist visits).

If your employer questions your need to keep medical appointments, or if you need other alterations in order to do your job, you may be able to request leave as a reasonable accommodation under the Americans with Disabilities Act (ADA). Taking leave under the Family and Medical Leave Act (FMLA) is also a way to arrange time away from work to keep medical appointments if you have exhausted sick time or vacation time (See [Question 7](#)).

9. Are there any jobs I am prevented from doing or getting training for, such as barbering, massage therapy or health care assistance?

In almost every case, the answer to this question is no.

The Americans with Disabilities Act (ADA) prohibits discrimination against people with HIV/AIDS by state licensing groups and occupational training schools for occupations such as barbering, massage therapy and home health care assistance. You may be excluded from the activities or services of a

public or private entity because of a health concern only if you pose a significant risk to the health or safety of others, known as a “direct threat.” Direct threat is a rare circumstance because HIV is blood borne, not airborne. Generally, the only jobs that HIV might disqualify a person from holding due to direct threat are health care jobs that involve invasive procedures (See “How is HIV or AIDS transmitted?” at www.askjan.org/disabilities/Human-Immunodeficiency-Virus-HIV.cfm).

If you want training or employment as a health care professional, check with the hospital board in your community. Local hospital boards make policy about exclusion of persons with certain diagnoses. For more information, see “Questions and Answers: The ADA and the Rights of Persons with HIV/AIDS to Obtain Occupational Training and State Licensing” at www.ada.gov/qahivaids_license.htm.

For other relevant information, see “Fighting Discrimination against People with HIV/AIDS” at www.ada.gov/aids/index.htm and “Guidelines for HIV-Positive Health Care Workers” at www.hivlawandpolicy.org/resources/guidelines-hiv-positive-health-care-workers-center-hiv-law-policy-2008.

10. Will my insurance company report my HIV/AIDS status to my employer?

First of all, your diagnosis and treatment is confidential information. For more information about your privacy rights, see the Civil Rights section of AIDS.gov at www.hiv.gov/hiv-basics/living-well-with-hiv/your-legal-rights/civil-rights.

However, you should also know that insurance companies provide usage reports to employers. These reports contain charts and tables of information about how much care employees are using. The information is not attached to names. The insurance company can report claims history to employers, including types of conditions, without revealing individual identities. Thus, for a small employer, it may be possible to figure out whose claims are related to HIV/AIDS. However, employers subject to the Americans with Disabilities Act (ADA) employment nondiscrimination requirements (i.e., those with 15 or more employees) have confidentiality obligations regarding that medical information. They also are prohibited from discriminating on that basis. Employers with less than 15 employees may also be subject to state laws with similar prohibitions.

Your legal protections include those detailed in the Health Insurance Portability and Accountability Act (HIPAA) (see [Question 11](#)).

11. Can I be denied insurance coverage based on my HIV/AIDS status?

No. The Patient Protection and Affordable Care Act of 2010 established more protections for people with health conditions, including that adults and children cannot be denied insurance based on pre-existing conditions. Learn more about this at www.hiv.gov/federal-response/policies-issues/the-affordable-care-act-and-hiv-aids.

Regardless of your health status, it's important to understand your health insurance so that, if you get sick, you know what to expect. Inform yourself about insurance options available to you through your state, as well as your current coverage. You may be able to retain your benefits-related insurance coverage for years beyond your employment start date.

12. How do I find employment services? Are there job-training programs I might qualify for?

Yes, there are public, private and not-for-profit job training programs available to you. Check first with your local HIV/AIDS service providers to learn if there are HIV-specific job training and employment services in your community. It's a good idea to begin with employment services, and then seek job-training services, if you need and want them, when you have developed a plan with your vocational or employment services counselor.

If you are receiving disability benefits, you are eligible for the Ticket to Work program. You are also presumed eligible for state vocational rehabilitation (VR) services, but you do not have to be receiving disability benefits to be determined eligible for state VR services.

Public programs include:

- American Job Centers – The U.S. Department of Labor (DOL) funds approximately 3,000 American Job Centers (AJC) across the country to give job seekers, with or without disabilities, training referrals, career counseling, job listings and similar employment-related services. These AJCs (which may be called different things in different communities) are intended to be central referral sources. You can locate your closest AJC at www.servicelocator.org.
- Vocational Rehabilitation (VR) Agencies – Funded through the U.S. Department of Education, state VR agencies provide employment-related help for people with disabilities, including counseling, medical and psychological services, job training and other individualized services. They also accept Tickets under the Ticket to Work program. Find your state VR agencies at www.askjan.org/concerns/State-Vocational-Rehabilitation-Agencies.cfm.
- Ticket to Work Program – Through the Social Security Administration (SSA) Ticket to Work program, Employment Networks (ENs) contract with SSA to accept Tickets and provide employment and training services to people with disabilities. Find an EN in your area at www.choosework.ssa.gov/about/how-it-works/index.html.
- Job Corps – Job Corps is a free education, training and employment program run by DOL for low-income young people at least 16 years of age, with or without disabilities. Find local Job Corps locations at www.jobcorps.gov.
- Apprenticeship – DOL's Registered Apprenticeship program offers hands-on career training for people, with and without disabilities, by linking them with businesses that can train them to perform specific jobs. Find registered program sponsors in your area at www.dol.gov/agencies/eta/apprenticeship.
- Workforce Recruitment Program (WRP) – The WRP is an employment program for college students and recent graduates with disabilities. It is co-sponsored by DOL and the U.S. Department of Defense (DoD). Learn more at www.wrp.gov.

- YouthBuild – YouthBuild is a DOL-funded program through which low-income young people ages 16 to 24 work full-time for six to 24 months toward their GEDs or high school diplomas while learning job skills by building affordable housing in their communities. Find information about over 200 YouthBuild sites at www.youthbuild.org.

Community colleges are a primary location of job training programs (as well as GED and English as a Second Language (ESL) programs) in many communities. Often they have been created in conjunction with local employers. Directly contact your local community colleges to find out about the job training programs they offer or ask your service providers to help you.

Non-profit/social service organizations:

- There are non-profit organizations that offer employment and training, serving both general and high-risk populations.
- Some HIV/AIDS service organizations and providers offer employment and training services. A list of several such organizations is available at <http://www.dol.gov/odep/pdf/HIVAIDSServiceOrganizationsETA.pdf>.
- Information about and referral to your local community-based non-profit organizations providing employment services may be available from American Job Centers, VR agencies and other public programs.

13. I'm interested in working for the Federal Government. How do I do that?

You can find out about Federal Government jobs at www.usajobs.com. People living with HIV/AIDS should also be eligible for something called the Schedule A Hiring Authority, which is a special hiring method for people with disabilities in the Federal Government. Learn more about Schedule A and how to qualify at www.opm.gov/policy-data-oversight/disability-employment/hiring/#url=Schedule-A-Hiring-Authority. If you are a college student or recent graduate, you might also want to learn about the Workforce Recruitment Program (WRP) at www.wrp.gov.

14. Are there resources to support employers in hiring and maintaining employees with HIV/AIDS?

Yes. Here are some helpful resources:

- The Job Accommodation Network (JAN), a free service of the U.S. Department of Labor's Office of Disability Employment Policy (ODEP), provides free, expert and confidential consultation to employers on job accommodations, as well as other resources, for people with disabilities, including people living with HIV/AIDS. Learn more at www.AskJAN.org.
 - The Business Responds to AIDS/Labor Responds to AIDS (BRTA/LRTA) program is a public/private partnership, developed by the Centers for Disease Control and Prevention (CDC), that strategically promotes and assists the involvement of business and labor in HIV prevention, awareness and policies in the workplace to promote the development of comprehensive workplace HIV/AIDS programs. Learn more at www.cdc.gov/hiv/workplace/index.html.
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15. Are there any tax or other incentives for me as an employee or for my employer?

Yes. Here are a number of these incentives:

- The Work Opportunity Tax Credit (WOTC) - A federal program designed to encourage employment of people who have a disability, have limited incomes or face other challenges. Employers who hire individuals in one of nine specified target groups may be able to claim a WOTC tax credit, thereby reducing the amount they owe on their federal taxes. Learn more at www.doleta.gov/business/incentives/opptax.
- The Earned Income Tax Credit (EITC) - A federal tax program that reduces the amount of income tax owed by low to moderate-income workers and families. Even people who don't earn enough to owe federal income taxes may get a refund from the IRS if they qualify for an EITC. Learn more at www.irs.gov/individuals/article/0,,id=96406,00.html.
- Businesses accommodating people with disabilities may also qualify for additional tax credits and deductions. Learn more at www.askearn.org/page/federal-government-employer-tax-incentives.

16. Are there any types of programs that might help me save for the future?

Yes. Individual Development Accounts, also known as "IDAs," are savings accounts you can use to pay for a first home, higher education expenses and small business development. Each time you make a deposit, the IDA program contributes a "match" to your account. Generally, your annual income must be within 200 percent of the federal poverty level to qualify, and you must have some form of earned income. Learn more at www.ca.db101.org/ca/programs/work_benefits/ida/program.htm.

You can find a local program providing assistance with development of IDAs at www.idaresources.org/afigrants. For other information about IDAs, see www.cfed.org/programs/idas.

RESOURCES

Job Accommodation Network, HIV
www.askjan.org/disabilities/Human-Immunodeficiency-Virus-HIV.cfm

Center for HIV Law and Policy Materials www.hivlawandpolicy.org/resourceCategories/view/5

Employment Rights of People Living with HIV/AIDS: A Primer, The Center for HIV Law and Policy
www.hivlawandpolicy.org/resources/view/551

State Guidelines for HIV-Positive Health Care Workers, The Center for HIV Law & Policy
www.hivlawandpolicy.org/resources/view/167

U.S. Department of Labor (DOL) Office of Disability Employment Policy topic page on HIV/AIDS
www.dol.gov/agencies/odep/program-areas/hiv-aids

HIV.gov: Working with HIV

www.hiv.gov/hiv-basics/living-well-with-hiv/taking-care-of-yourself/employment-and-health

Centers for Disease Control and Prevention (CDC) Business Responds to AIDS/Labor Responds to AIDS program www.cdc.gov/hiv/workplace/index.html

Department of Housing and Urban Development (HUD) HOPWA Getting to Work Initiative www.vpi.org/TAP/Getting2Work.html

National Working Positive Coalition www.workingpositive.net