

# WORKING WITH HIV / AIDS

**Know your rights when it comes to finding, applying, and keeping a job.**



**H . A . R . P .**

HIV / AIDS Reach Program

"... a light when you're in a dark place."

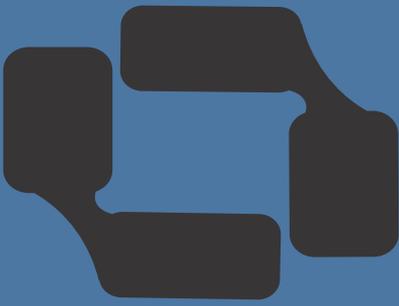
The image features a white lighthouse with a red door and a red AIDS awareness ribbon. The lighthouse is set against a blue background. The text 'H . A . R . P .' is written in large, bold, black letters. Below it, 'HIV / AIDS Reach Program' is written in a smaller, black font. At the bottom, the quote '"... a light when you're in a dark place."' is written in a small, black font.

## **What is the Americans with Disabilities Act (ADA)?**

The Americans with Disabilities Act is a federal law that makes discrimination against people with disabilities, like HIV, illegal. People who are discriminated against because they are believed to be HIV-positive or because they have a relationship or association with someone who is HIV-positive are also protected by the law. The ADA prevents employers with 15 or more employees from firing, demoting, refusing to hire, or otherwise discriminating against people because they have a disability like HIV.

## **If I get a job interview, can the person interviewing me ask if I have HIV?**

No. An interviewer cannot ask you if you have a disability or a medical condition. Generally, you do not have to disclose your HIV status to an employer. But, according to the ADA, an employer may ask you about your ability to perform certain job-related duties. For example, if you are applying for a job that requires you to lift heavy boxes, the employer can ask you if you are able to lift heavy items.



## **Can an employer require me to take an HIV test?**

Yes. Under certain circumstances, an employer may require that a person applying for a job take a medical examination. Your employer has to offer you the job before requiring you to take the medical exam; also, the employer must require everyone applying for the job to take the exam too. As part of the exam, the employer can require you to take an HIV test. But, the employer cannot refuse to hire you based on the result of that HIV test, unless your being positive would pose a direct threat to the health and safety of others. In the majority of situations, your HIV status should be irrelevant to most jobs because HIV typically does not pose a direct threat to others.



## **Once I am hired, am I entitled to a “reasonable accommodation”?**

The ADA also provides you with the right to a “reasonable accommodation” at work so that you can keep doing your job. A reasonable accommodation is a change in your workplace or work routine that helps you to keep doing your job. For example, a flexible work schedule is a common reasonable accommodation. Some examples of flexible work schedules include:

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 per week

There is no such thing as a “standard” reasonable accommodation. Each accommodation is created on a case-by-case basis designed for the specific requirement of the person who needs it. Also, whether a particular accommodation is reasonable depends on many factors, including the size of your company and the nature of your job duties.

## **Who is entitled to a reasonable accommodation?**

The ADA states that a person with a disability is entitled to a reasonable accommodation if that person can perform the “essential job functions.” Basically, if you have the abilities to fulfill the job requirements (i.e., experience, skills, or education) and if the accommodation will make you able to do all of your essential job functions, you are entitled to that accommodation.

## **How do I get a reasonable accommodation?**

You have to ask your employer for it. An employer does not have to offer you an accommodation unless you ask for one. You should meet with your boss, as well as anyone else you think you need to talk to (like the head of human resources) and explain to them that you are requesting a reasonable accommodation under the ADA. Also, you should always put your request in writing.

**Do I have to tell my employer about my HIV status to request a reasonable accommodation?**

The employer can ask for medical documentation to verify the existence and nature of the employee's disability when an employee asks for a reasonable accommodation. This is usually a letter from your doctor. To avoid disclosing your HIV status when requesting an accommodation, you could first try disclosing the actual disabling condition (e.g., fatigue or lymphoma). For an employee who is HIV positive and in good health, but who wants an accommodation to take time off to see the doctor regularly, it may be impossible to avoid disclosing his or her HIV status. Regardless, if you must disclose your HIV status, make sure you stress to your employer that your HIV status must be kept confidential.

**Can I be fired because I am HIV-positive?**

No. The ADA makes it illegal for an employer to fire someone because of his or her HIV status. It would also be illegal for your employer to demote you, reduce your pay, or in any way make your job worse based solely on your HIV status.

## Can my employer refuse to grant me a reasonable accommodation?

Yes. There are two situations in which an employer can refuse to grant an employee a reasonable accommodation: (1) the company employs less than 15 employees and therefore is not covered by the ADA; or (2) the accommodation causes the company “undue hardship.” If the accommodation creates an unfair burden on the employer, it is considered to be an undue hardship. For example, a small doctor’s office might not be able to function if the only receptionist took an hour-long nap every afternoon. But, the potential loss of customers or other employees because an employee has HIV/AIDS does not constitute an undue hardship.

Additionally, 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 a.m. and 11 a.m., your boss may have a right to insist on a more regular schedule. You might compromise and request to be allowed to come to work each day at 10 a.m.



If you or your loved one have been affected by HIV or AIDS, you may qualify for free legal assistance from Legal Services Alabama. Call a H.A.R.P. attorney for a confidential consultation.

## **What is the Family and Medical Leave Act (FMLA)?**

The Family and Medical Leave Act is a federal law that went into effect in 1993. It allows employees to take time off from their jobs in certain circumstances and guarantees their right to return to their job. It might entitle you to up to 12 weeks of unpaid sick leave each year from work. Employees can take FMLA time for their own serious health conditions, or for the serious health conditions of their children, parents or spouse.



## **What is considered a serious health condition?**

According to the FMLA, a serious health condition is either (1) a physical or mental condition that requires you to be hospitalized; or (2) a physical or mental condition that requires you to get continuing treatment from a doctor. Most people with HIV-related symptoms would have a “serious health condition.”

### **Am I eligible for time off under FMLA?**

FMLA applies only to companies that have 50 or more employees. You are eligible for FMLA leave if you have worked at your job for at least 52 weeks, averaging 25 hours of work per week.

### **How do I get FMLA leave?**

If you are eligible, you must request FMLA leave from your employer. The law says that you should ask for FMLA time off at least 30 days in advance, if possible. If you cannot give a 30 day notice, you should request FMLA leave as soon as you know that you are going to need it.

### **Do I have to disclose my HIV status to get FMLA leave?**

When an employee asks for FMLA leave, the employer may ask for a note from a doctor supporting the request for leave. To avoid disclosing your HIV status, you could try just disclosing the actual disabling condition (i.e., fatigue or lymphoma). If you are HIV positive and in good health, but need FMLA time to see your doctor regularly, it may be impossible to avoid disclosing your HIV status. Regardless, if you have to disclose your HIV status, make sure you stress to your employer that your status must be kept confidential.

**Can my employer fire me for taking FMLA leave?**

No. If you are entitled to FMLA leave, then your employer cannot fire you or retaliate against you for taking that time off.

**Am I entitled to get paid during my FMLA leave?**

No. The FMLA does not require an employer to pay you for the time you are not working. But, you may qualify for some pay under your employer's short-term disability plan, if you have this benefit through your employer.

**Do I have to take all of my FMLA leave at one time?**

No. When medically necessary, leave may be taken on an intermittent or reduced schedule basis. This may include periods such as an hour per day to lie down after taking medication or several days per month for doctor visits.

**If I take my FMLA time off on an intermittent basis, does my employer have to keep me in the same job?**

If you take FMLA leave intermittently, your employer may require you to transfer temporarily to an alternative position that better accommodates your recurring periods of absence. The position would have to offer the same pay and benefits.

**Will my health insurance change if I take FMLA leave?**

No. Your health insurance must be continued and your company must continue to pay its share of your health insurance premiums. You will have to pay whatever share of the premium you usually pay.

**Can I take time off under the FMLA to care for my partner who is dying of AIDS?**

Unfortunately, the FMLA only lets you take time off to care for a spouse, a child or a parent.

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Ask for a HARP Attorney

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