

**HIV**

# **Returning *to* Work**

**YOUR LEGAL RIGHTS**

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***published by:***



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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: RETURNING TO WORK**

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## **INTRODUCTION**

Once upon a time, an AIDS diagnosis was considered an automatic death sentence. Today, with new medical treatments, this is no longer the case. Many people with HIV who were once disabled now feel healthy enough to return to work. If you are considering going back to work, this booklet is for you.

This booklet will answer many important questions you may have. If you have more questions after you're done reading, you can call the AIDS LEGAL COUNCIL OF CHICAGO at (312) 427.8990. Someone there will be happy to speak with you.

## **Chapter One**

### **INTERVIEWING FOR A JOB**

#### **1) I don't think anyone will hire me because I'm HIV positive. Why should I bother to consider getting a job?**

Many people with HIV or AIDS work 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. **And 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 *by carrying out the 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 that a job applicant take 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 the job.

**5) I am returning to work after a long absence due to illness. How do I explain the gap in my résumé?**

This can be a very difficult question to answer. Sometimes you can avoid this question by preparing a résumé which highlights your experience and skills without outlining exactly when you held each job. In any case, the most important thing is: prepare an answer for this question, in case it comes up in the interview. Possible answers might be:

- ♦ "I took a leave for personal reasons, and it helped me realize exactly what kind of work I want to do."
- ♦ "It was time for a break, and now it's time to get back to work."

Did you do something interesting during your break from work? Did you travel, or take a class, or learn a new skill? You can focus on those things. Show the interviewer your strong points, not your weaknesses. If you have to explain a long absence, it's best to explain it quickly and then move on to the positive points on your résumé. Remember, your goal in an interview is to show the employer you are the right person for the job.

## ***Chapter Two***

### **WHAT HAPPENS TO MY SOCIAL SECURITY AND MEDICAID?**

#### **1) If I go back to work while receiving either SSDI or SSI benefits, do I have to tell Social Security?**

Yes. You should always report your earnings to Social Security. Social Security rules say you should report any changes in your income within 10 days. Talk to a claims representative before you start working, so you will know what and when you have to report.

#### **2) I am on SSDI. If I go back to work, will I lose all of my SSDI benefits?**

No. Or at least not right away. Social Security gives people on SSDI a "trial work period" of nine months. You can receive your entire SSDI check during your trial work period. For 2008, any month you earn **more than \$670 gross** will be counted as one of the nine months of your trial work period. This amount increases a little each year.

The nine months don't have to be all at the same time. Your trial work period can be any nine months you work during a five-year period.

#### **3) Will I lose my SSDI benefits at the end of my trial work period?**

You will be able to keep your SSDI benefits for three more months after your trial work period ends. But after that, if you continue working and you make **more than \$940** a month (for 2008), your SSDI check will stop. However, if you make

less than \$940 a month and you are still disabled, your SSDI will continue. The amount you can earn without losing SSDI increases a little each year.

## 4) Will Social Security count all of my earnings, or are there some deductions?

Social Security counts the gross monthly wages you earn (your pay *before* taxes) **minus** the expenses you have to pay to keep your job. Here are the expenses that SSA will subtract from your gross wages:

- ◆ **Subsidies:** If your employer pays you and you are not really doing the work that would be required of someone else doing your job, (because your employer wants to be nice to you) your "earnings" could be considered as a subsidy and the money would not be counted as income.
- ◆ **Business related expenses:** People who are self-employed can deduct the reasonable cost of business-related expenses from monthly gross earnings.
- ◆ **Impairment Related Work Expenses (IRWEs):** These are expenses that are necessary to go to work and stay on the job. These include most drugs and medical services. IRWEs can also include items such as personal attendant care, modifications to your home and special transportation (such as cab fare). All IRWEs can be deducted from your gross monthly earnings. Social Security must approve any IRWE deductions.

*Example: You earn \$850 a month before taxes. Because of your disability, you must take a cab to and from your job. This expense costs you \$300 a month. Social Security will subtract that \$300 from your monthly wages of \$850, meaning that they will only count \$550 a month of your wages. Since this amount is less than \$940 per month, your SSDI benefits will continue.*

\$850	(gross monthly earnings)
- \$300	(cab fare)
\$550	(countable wages)

**5) Can I get back on SSDI if I lose my job after the trial work period?**

The rules on how easily you can get back on Social Security after your trial work period is over depend on how long you've been working and whether Social Security thinks you are still disabled. See question 6 for a discussion of how Social Security decides whether you are still disabled.

For the first 39 months after your trial work period is over, you will have what is called an "extended period of eligibility." During this period, as long as you are still disabled, you can get your SSDI check back any month when you make under \$940 (for 2008). It doesn't matter why you make less than \$940. It can be because you got sick, or because you quit for some other reason, or just because your work hours got reduced.

Also, for the five years after your trial work period ends, you can ask to get your benefits reinstated if you get sick again. It's called "Expedited Reinstatement." Social Security will give you "provisional benefits" for up to six months while they review your case to see if you are still disabled. If you are still disabled, you will get your benefits back.

**6) If I go back to work, how will Social Security decide if I am still disabled?**

To decide if you are still medically disabled, Social Security does something called a Continuing Disability Review, or CDR. Sometimes you get a CDR even if you don't go back to work; Social Security will review your case every five to seven years no matter what. Since 2002, Social Security no longer does a special CDR just because you go back to work. The exception is if you have been receiving Social Security benefits for less than two years, in which case Social Security may still do a CDR if you return to work.

During a CDR, Social Security will look at your medical records to decide if you are still disabled. Some people with HIV will clearly still be disabled. You may still have CMV or peripheral neuropathy or one of the other conditions that Social Security always considers severely disabling. But other people with HIV may have a harder

time proving that they are still disabled. If you originally got benefits because of severe fatigue, night sweats and sinusitis, for example, and those conditions have improved so that you really are functioning a lot better, then Social Security might conclude that you are no longer disabled under their rules.

### **7) I receive SSI instead of SSDI. Do I get a nine month trial work period?**

No. The trial work period only applies to people who get SSDI. Your SSI check will be affected as soon as you go back to work. But you may still be able to keep some of your SSI check, even if you work more than nine months. Questions 8 and 9 discuss this topic in more detail.

### **8) What will happen to my SSI check if I go back to work?**

As your income goes up, your SSI check goes down. If you earn too much money, your SSI check ends completely. But Social Security wants people on SSI to work, so they don't count some of the money you earn when they are calculating how big your SSI check will be. Social Security subtracts the income you earn from your regular SSI amount. However, they don't subtract every dollar you make. Social Security does not count the first \$85 you make each month. After disregarding the first \$85, Social Security only counts half of all the other money you earn in a month. This is called the **earned income disregard**.

Here is an example of how Social Security will calculate your SSI check:

*Example: You receive \$637 from SSI. You go back to work and earn \$600 a month in gross wages. How much will your SSI check be now?*

First, let's see how much of your \$600 Social Security will count. Social Security will subtract the first \$85 of your \$600 to get \$515.

$$\begin{array}{r}
 \$600.00 \\
 - \$85.00 \\
 \hline
 \$515.00
 \end{array}$$

Then Social Security counts only half of the remaining amount: \$515 divided by two is \$257.50. **Even though you make \$600 a month, SSA will only count your income as \$257.50 each month.**

So, if Social Security only counts \$257.50 of your income each month, how much will your SSI check be? To calculate your SSI amount, Social Security subtracts this \$257.50 from your \$637 SSI benefit to get **\$379.50**.

$$\begin{array}{r} \$637.00 \\ - \$257.50 \\ \hline \$379.50 \end{array}$$

This is how much your SSI check will be – \$379.50. So you will get \$600 from your employment, and \$379.50 from SSI, for a total monthly income of \$979.50. Your monthly income has increased from \$637 to \$979.50 since you went back to work.

Remember, if you have a subsidy, business related expenses, or Impairment Related Work Expenses (IRWEs) you would deduct them from your \$600. That would give you an even larger SSI benefit.

### **9) Does this mean I can earn as much as I want and still receive SSI?**

No. Once your earned income is roughly twice the monthly SSI benefit rate, you will no longer be eligible for SSI. In 2008, this figure is \$1,359` per month – or higher if you have business-related expenses or Impairment Related Work Expenses (IRWEs).

### **10) I'm working and my SSI has stopped because I make too much money. If I quit or lose my job, how soon can my SSI benefits start again?**

If you quit or lose your job less than 12 months after your SSI benefits stopped, your SSI benefits will start again immediately – so long as you are still disabled. You won't have to fill out a new application. If you have worked longer than 12 months since your SSI benefits stopped, you may need to reapply for SSI.

**11) What is a PASS plan, and why would I want one?**

A PASS plan stands for a **P**lan for **A**chieving **S**elf **S**upport. It allows some people to receive SSI even if they make too much money to qualify for SSI. But you have to be pursuing a work goal. With a PASS plan, you can subtract from your monthly income the money you have to spend to pursue your work goal.

For example, let's say your work goal is to become a computer operator, so you sign up to take some computer courses. It will cost you money to do this. You'll have to buy books, pay for tuition, maybe pay for transportation. All those expenses can be subtracted from the amount of your monthly income Social Security will use to determine your eligibility for SSI. If you are interested in pursuing a PASS plan, you must submit an application to your local Social Security office (there is an application form that is not mandatory to submit, but you are advised to use it). The PASS must be approved by Social Security. You should have someone familiar with PASS help you with your application. It requires a lot of discipline to stick to a PASS plan, but it can help keep you eligible for SSI and Medicaid even if you go back to work.

**12) I receive both SSDI and SSI benefits. Which work incentives apply to me?**

Both programs have different rules, and both apply to you. This might get confusing. For example, you will have a nine month trial work period for SSDI, and if you are earning over \$940 a month after 12 months, you will lose your SSDI benefits. But you could have some SSI benefits after the nine months if your earnings are low enough. It is more likely that you will lose your SSI benefits first, though, since your SSI benefits probably do not amount to much of your total benefits.

See, we told you it was confusing! If you'd like some help getting your particular situation cleared up, get in touch with a legal organization like the AIDS Legal Council that does lots of Social Security work.

## **Chapter Three**

### **CONFIDENTIALITY ON THE JOB**

#### **1) If I go back to work, do I have to tell my boss I'm HIV positive?**

No. You do not have to tell your employer you are HIV positive. Some people choose to tell their boss that they are HIV positive because they believe that their employer will be supportive. Some people choose not to tell because they don't want anyone in their company to know. The choice is yours.

#### **2) 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 if they are afraid their employer has guessed their status, 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)**. Many people with HIV ask for 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, you could try to avoid disclosing your HIV status by instead disclosing the condition that you have (for example, lymphoma). It would be important to get a doctor's note verifying your condition. (See Chapter Five for more information on workplace accommodations.)

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, and you might want to discuss it with someone from the AIDS Legal Council or another legal organization before doing anything.

### **3) If I tell my boss I'm HIV positive, will my co-workers have to be told?**

No. The **Illinois AIDS Confidentiality Act** says that it is illegal for any person to disclose someone's HIV status without permission from that person. If you told 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.

### **4) 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.

## **Chapter Four**

### **INSURANCE**

#### **1) Will I be able to get health insurance at work if I'm already HIV positive?**

Generally, yes. If you get a job with a company and are eligible for the company's group health insurance plan, then you cannot be denied coverage. However, in many companies only full-time employees are eligible for health insurance. If you work only part time, then you may not be entitled to join your company's group insurance plan.

Also, employers are not required to offer health insurance to their employees. So if your employer chooses not to offer insurance to anyone, you cannot force him to do so.

For more information, see our booklet *HIV and Insurance*.

#### **2) What should I look for in a work health insurance plan?**

Here are questions you need to ask when you look over a health insurance plan:

- ◆ Will I need a referral every time I need to see an HIV doctor? (An HMO may make you work with a primary care physician who does not specialize in people with HIV.)
- ◆ Will it let me go to my current HIV doctor? (You may have to ask your doctor what health insurance plans he or she works with.)
- ◆ Will it cover my HIV medications? (Some plans have no prescription drug coverage, or very limited coverage.)
- ◆ Can I afford it? (How much of the premium do you have to pay? How large are the deductibles and co-payments? Watch out for high co-payments for brand-name drugs.)

### **3) Where are jobs with good health insurance?**

In general, the larger the employer, the better the health insurance. This is not always true, of course, but bigger companies may be able to afford better coverage. Large employers may also be more likely to offer several plans so you don't have to be in an HMO. Most full-time government jobs have good health insurance. Most unionized employers and many not-for-profits offer good health insurance. But there are also many small companies that offer good health insurance plans, and many large ones that only offer a bare-bones HMO plan.

### **4) If I'm interviewing for a job, how do I find out what kind of insurance the job offers?**

You probably won't make a good impression in an interview if you spend a lot of time asking about health insurance. But it's all right to ask about fringe benefits generally and when you actually get an offer, by all means ask for a detailed description of the salary and benefit package.

### **5) If I get health insurance through work, won't my HIV be considered a "pre-existing condition?"**

Exclusions for pre-existing conditions can be a serious problem for people with HIV who go back to work. However, not all health insurance policies exclude benefits for pre-existing conditions. Many HMO's, for example, will pay claims for any health condition no matter when you were first diagnosed with it.

A federal law called the **Health Insurance Portability and Accountability Act** of 1996 ("HIPAA") makes things easier for people with pre-existing conditions who get insurance through work. Because of this law, it is harder for group health insurance policies to refuse to cover pre-existing conditions. The HIPAA rules apply to any employer that has at least two employees in its group plan.

HIPAA says that if you already had health insurance for at least 12 consecutive months when you get your new insurance, then your new health insurance has to

cover your pre-existing condition right away. (If you're joining the new insurance late, then you have to have been insured for at least 18 months). In other words, you'll move from your old policy to the new group policy without a break in coverage. Even people who have been on Medicaid or Medicare are protected under HIPAA. However, HIPAA doesn't apply to you if you have had a gap in your insurance coverage for longer than 63 days.

If you go back to work and your new insurance company says it won't pay for your pre-existing condition, check with an attorney to find out if HIPAA can help you.

If your insurance policy refuses to pay for pre-existing conditions and HIPAA does not apply to you, the policy can only refuse to pay HIV-related claims for one year. After that, the policy must pay for HIV-related claims.

**6) I'm applying for insurance through work, and the application asks if I'm HIV positive. If I say yes, will I still get the insurance?**

If you are eligible for group coverage through work, then you should not be denied the insurance, even if you disclose your HIV status. The most important thing is: *it is never wise to lie on your insurance application.* If you do and the insurance company finds out later, the company may have the right to cancel your policy.

**7) If I have to disclose my HIV status on my insurance application, how can I prevent my employer from seeing it?**

This can be difficult, because employers will often ask you to turn your insurance application in to the human resources department, which will then send the application to the insurance company. You might try asking the human resources department if you could send your application in directly to the insurance company yourself. You could explain that you would prefer not to give your confidential health information to your employer. If you can't send it directly to the insurance company, you might want to attach a note saying that it contains confidential information. The AIDS Legal Council can help you write this note.

**8) Can my new employer refuse to offer me health insurance because he thinks I'll cost him too much money?**

No. If you are eligible for group insurance on your job, then it must be offered to you.

**9) Will I be able to keep my Medicare coverage if I go back to work?**

If you have Medicare, you will probably be able to keep your Medicare coverage after you return to work. You will keep your Medicare for at least the first 12 months you work. Then, if you are still considered disabled, you will be able to keep your Medicare for as long as you wish.

For the first nine and a half years after you return to work, your Part A (hospitalization) coverage will be free. You'll only pay for the Part B and Part D coverage which is probably now being deducted from your Social Security check. After nine and a half years, you can continue to buy Medicare coverage if you are still disabled, although then you would have to pay the Part A, Part B and Part D premiums.

**10) What if I get a job with insurance, but the insurance doesn't cover prescriptions? How can I get my HIV drugs?**

The Illinois Department of Public Health operates a program called the **AIDS Drug Assistance Program** ("ADAP"). This program pays for many HIV drugs. However, ADAP is only available to people with HIV with an income that is less than 400% of the federal poverty level (for 2008, that figure is \$41,616 a year for a household of one person). So if you go back to work in a job that doesn't have good health insurance, and you earn less than \$41,616, you can still participate in ADAP. But if you make more than that amount, you'll lose ADAP.

**11) Can I keep my Medicaid benefits if I go back to work?**

If you get SSI now, you probably also have a Medicaid card which you use at the doctor's office, for hospitalizations, and to buy your prescriptions. It's very hard to keep your Medicaid when you return to work, because the income limits for Medicaid in Illinois are so low.

There are two groups of people who now get SSI and who can keep Medicaid when they go back to work. If you earn over \$940 per month, but under \$1,359 per month, you should still get a small SSI check every month after Social Security makes adjustments for your earnings. People who work and make over \$940 per month and still get an SSI check can continue their Medicaid under a special program called 1619(a).

It works this way: when you earn over \$940 a month, and report it, SSA will automatically put you in the 1619 program, although you should contact SSA to confirm this. SSA will notify the Department of Public Aid that you are on the 1619 program. The Department of Public Aid should continue your Medicaid eligibility without a spenddown.

The 1619(a) program is an important benefit for low-income workers. If you are working and getting an SSI check, be sure that your local Medicaid office is continuing your benefits.

There are also a few people who can make up to \$31,200 (in 2008) and keep their Medicaid. If you have been on SSI and Medicaid, and are still seriously disabled even though you're working, Social Security can put you on a special list that will let you keep your Medicaid benefits without a spenddown. This program is called 1619(b). To be eligible for continued Medicaid coverage under 1619(b) you must meet the following conditions:

- ◆ have been eligible for an SSI payment for at least one month prior to starting work;
- ◆ continue to be disabled;
- ◆ need Medicaid coverage to work;
- ◆ earn less than \$31,200 (for 2008);
- ◆ continue to meet the SSI rules on how much you can have in assets.

If you think you might be eligible, tell the Social Security worker to evaluate you for “1619(b)” benefits.

If you get SSDI, you may also be able to keep Medicaid under a new “Health Benefits for Workers with Disabilities” (HBWD) program. If you return to work and make under 200% of the federal poverty level (\$20,808 per year in 2008) will be able to pay a small premium to keep the Medicaid benefits. For more information about the HBWD program, contact the AIDS Legal Council or another legal services program.

## **Chapter Five**

### **ACCOMMODATIONS AT WORK**

#### **1) 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 with disabilities. In fact, the ADA makes it illegal for an employer to discriminate in all employment practices, including:

- recruitment
- training
- promotion
- pay
- lay-off
- leave
- job assignments
- benefits

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.

#### **2) 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.
- ◆ Additional breaks to take medications.
- ◆ Reassigning a worker to a less demanding position, if it's available.

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

### **3) 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 times that 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. If an accommodation is too costly, extensive or disruptive to the employer, then the employer does not have to provide it. 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.

### **4) 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. In fact, employers are prohibited from asking an

employee if they need an accommodation, even if they are trying to help the employee. You should meet with your boss, 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.

### **5) 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. 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 (for example, 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 HIV status. In any event, if you have to disclose your HIV status make sure you stress to your employer that your HIV status should be kept confidential.

### **6) 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 Six**

### **OTHER FINANCIAL ISSUES**

#### **1) I get long term disability benefits from my company. Will I lose them if I go back to work?**

Every long term disability policy is different. With some policies, all of your benefits end if you go back to work. If your policy says that, you should be very sure of yourself and your ability to work before you give up those benefits. But many policies encourage you to go back to work. Some allow you to work part-time without losing your benefits. Some keep your eligibility status active, so that you have a period to "try out" work before you lose your benefits. Some give you benefits for any month when your income drops below a certain level.

The only way to know what your plan allows is to read it carefully. If you are at all uncertain about what your plan says, be sure to consult with an attorney or someone at the disability company before you make a change that may cause you to lose these benefits.

#### **2) Will I have to return my viatical settlement?**

No. Your viatical settlement was a valid sale based on the information everyone had at that time. There's no way anyone can undo the sale now.

#### **3) I got behind on my bills when I had to quit work. Will I have to start paying on all of those old debts again?**

People who are very ill with HIV often have large debts. You may owe money for uncovered medical expenses, school loans, car loans, credit cards, utility bills, health club memberships, or any other expense. When you were ill, and your

only income was Social Security, you may have been advised that you were "judgment proof" and may have written to your creditors telling them that you could not pay. Or you may have already been declared bankrupt so that your debts were wiped out.

If you go back to work, you will no longer be judgment proof. If your creditors go to court and get a judgment against you they can garnish your paycheck or your bank account. There are laws limiting how much money a creditor can take out of your paycheck. If you make less than \$247.50 a week after taxes, then your creditors cannot garnish your paycheck. If you make more than that, however, they can take up to 15% of every paycheck. So if you make \$300 per week after taxes, your creditors can garnish \$45 every week, or about \$180 per month.

If going back to work means that you will suddenly be faced with lots of old bills you cannot pay, then this might be a good time to consider filing for bankruptcy. There are two forms of bankruptcy: **Chapter 7**, which wipes out all of your old debts, and **Chapter 13**, which creates a plan for paying off some or all of your old debts. If you are considering filing for bankruptcy you will have to see an attorney to help decide which form is right for you and to represent you in bankruptcy court.

If you have already filed for bankruptcy, then you probably know that you can't file a second Chapter 7 bankruptcy for six years. If there are now other people you owe money to, then returning to work means that you have to be prepared to pay those bills.

Chapter 13 bankruptcy is still available to people who have filed either Chapter 7 or Chapter 13 bankruptcy in the past.



## RESOURCES

AIDS Legal Council of Chicago	312-427-8990	Legal assistance on issues related to your HIV status, including any of the topics discussed in this booklet, or for speakers on Return to Work or other legal issues affecting people with HIV
AIDS Foundation of Chicago	312-922-2322	To get a case manager or to learn about and discuss AIDS advocacy issues
Illinois Department of Human Services	Contact local office or 800-720-4166	Processes Medicaid applications, income reporting, and appeals
Illinois AIDS Drug Assistance Program (ADAP)	800-825-3518	
Illinois Department of Public Health	800-825-3518	AIDS Activity Section, to get help paying COBRA premiums
Illinois Comprehensive Health Insurance Plan (I-CHIP)	800-367-6410	For people with no other way to buy insurance
Legal Assistance Foundation of Metropolitan Chicago	312-347-8309	HIV/AIDS Project; legal assistance for low-income Cook County residents with HIV
Social Security Administration	Contact closest office or 800-772-1213	Application, appeals, reporting work
SSI Coalition	312-223-9600	To discuss SSI policy issues or to get speakers on SSI or Return to Work issues