

**What to do
if you feel you are being discriminated against
because of your HIV or disability status**

1. Prevent It

The best way to deal with potential employment discrimination is to prevent it from happening, if at all possible. Learn your rights under your state and Federal laws and be prepared to use them. Look at <http://www.phoenixrisingreentry.org/Laws.htm> and other web sites to find out about your rights. Federally, the ADA [Americans with Disabilities Act], the Rehabilitation Act of 1973 and the Family and Medical Leave Act of 1993 protect people with disabilities, including HIV/AIDS, against discrimination in every aspect of employment, including: applying and interviewing for a job, hiring, promotion, working conditions, wages, benefits and termination. In California, the Fair Employment and Housing Act [FEHA] protects people with disabilities against discrimination. Each state has a similar law and municipalities and other localities may have anti-discrimination laws also.

There are also laws about health records that mandate that employers keep medical information separate and locked away from general personnel records.

2. Be Aware of What You Say

Often people with HIV who are not working are surrounded with other people who either have HIV or are used to being around the disease. They may be used to speaking freely about themselves, their medical issues, even about intimate body processes. But in the work world, many people are not as familiar with HIV and may not know enough about the disease to be comfortable. People with HIV have to make a conscious decision about how much to reveal about themselves at work, and who is safe to talk to. See <http://www.bkohlenberg.com/disclosure.htm> to read a full discussion of the issues of disclosure so you can decide what you want to say.

Even if you have to reveal your HIV status to ask for accommodations at work, you should do it carefully and remind your co-workers or supervisors that this information is confidential. See http://www.bkohlenberg.com/asking_for_accommodations.htm for a full discussion of how to ask for accommodations safely.

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3. Document It

If you are noticing harassment or discrimination, document everything that is happening. Keep a journal of what is said to you, by whom on what date. Keep copies of all e-mails, letters, memos or faxes containing discriminatory matter. Don't keep the copies on your computer at work – your work computer is not your personal property and may be examined by your employer at will.

Document conversations or supervision sessions by following up with a memo, "As we discussed today, you asked me to..... and I said" If you don't dare send this memo, write it soon after a meeting and put it in your file. Don't keep the file of the copies in your desk, unless you are the only one with access to your desk and it is always locked when you are not there. If there are policies or regulations being violated, make a copy of the regulation and keep it in your file. If others witnessed the harassment, ask them what they saw and if they would write up a factual description of it, such as, "Our supervisor held a team meeting on 11/4/01 and gave everyone a chance to speak except William." "The announcement of training for the new equipment was passed around, but William's name was not on the list of people who needed to see it." Have them write it up and sign it as soon as it occurs, because people move on, pressures change and loyalties shift.

4. Confront It

Don't let the problem build. If you notice something happening, you may be able to stop it just by helping someone understand better. If you are passed up for a training opportunity, ask your supervisor about it. She may say, "I didn't think you'd want to do that, since you need so much time off already for your doctor appointments." You can then let her know that you are very interested in training and would reschedule your appointments to take the seminars. You can also let her know that you feel that this is discriminatory behavior and you are sure she wouldn't want to do that.

If a co-worker is avoiding you or gossiping about you, go to the supervisor and request a meeting to work the problem out. Bring specifics to the meeting – "I've been told by two people that you have been wondering out loud about my medical condition." Try to have two or three clear changes you want to be made. "I want you to stop talking about me to colleagues, I would like a written apology and I would like to bring in someone to talk to the department about AIDS in the workplace." This way, if things don't change, it will be clear that you made the effort.

5. Make Sure You Are Doing Your Best

If you don't tell your employer you have a disability, you are not covered under Federal anti-discrimination law, the ADA. If you are having difficulty performing your work to an adequate level, don't wait for bad evaluations, warnings, letters in your personnel file or other adverse employer actions before you ask for accommodations. If you are late, absent or missing deadlines, tell your employer

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that it is a medical problem before the supervisor forms a negative opinion about your willingness to do a good job. Be realistic about whether you can actually perform the job; if you can't, you are allowed to ask to be transferred to a vacant position, work part-time or on a flexible schedule.

Make sure that what you are seeing is discrimination and not a personality conflict, performance or attendance problem. These are personnel problems and are not protected under anti-discrimination law.

6. Get Help

You may file suits under your state law at the appropriate agency or under the ADA under the Equal Employment Opportunity Commission [EEOC]. See a list of resources at <http://www.bkohlenberg.com/BKadvice.htm#discrimination>. If you need further help, many cities have local departments for Human Rights, many of which offer free services to negotiate with employers for issues such as termination. You can hire an attorney to help put your case together, looking for attorney referrals from the local Bar Association, online or by looking up attorneys who specialize in labor and employment law.