Employment, Health Insurance, & Government Benefits

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Overview of the CLRC

- Founded in 1997 as a joint program of DRLC & LLS
- Provides information & resources on cancer-related legal issues to cancer patients, families, caregivers, health care professionals, and other coping with cancer
- Education model – not a litigation model
- Panel of volunteer attorneys & professionals
- Telephone Assistance Line
  - 5,035 callers in 2008
  - 3,924 callers in 2007
  - 3,377 callers in 2006
- Over 200 seminars & cancer community events per year
What is legal about cancer?

- Laws can:
  - protect people from discrimination
  - require companies to provide health insurance coverage
  - create government benefits
  - provide funding for screening, treatment, and research

- 2 ways to improve the law:
  - write a new one
  - amend the old one
What does the CLRC do?

We provide information and resources on cancer-related legal issues:

- Health Insurance
- Employment
- Disability Insurance
- Life Insurance
- Government Benefits
- Estate Planning
- Landlord/Tenant
- Financial Resources
- Custody/Guardianship of Minor Children
- Real Estate
- Family Law
- Immigration
- Toxic Torts
- Genetic Testing
- Medical Malpractice
Workplace Protections

- ADA (Nondiscrimination)
- FEHA (Nondiscrimination)
- FMLA (Time off)
Americans with Disabilities Act

- Applies to all phases of employment
- Applies to employers with 15+ employees
- Steps to use the ADA’s protections
  - Must be a “qualified individual”
    - An individual who can perform the essential functions of the job with or without reasonable accommodations
  - Must have a disability [definition on next slide]
Definition of a Disability

- Physical or mental impairment that **substantially** impacts a major life activity
  
  Ex: walking, talking, breathing, caring for oneself, working, tasks of daily living

  New: sleeping, concentrating, thinking, communicating, operation of major bodily functions

- Cancer can be a disability under the ADA

- As of 1/1/09, no longer look at disability in corrected or mitigated state

- Caregivers: “association with” a person with a disability
3 ways to use the ADA

1. Have a physical or mental impairment that **substantially limits** a major life activity

2. Have a **history** of a physical or mental impairment that **substantially limits** a major life activity

3. Be **regarded** as having an impairment
   - Except minor and transitory impairments = actual or expected duration of less than six months
Reasonable Accommodations

- Employer has to provide as long as not an undue hardship
- Only applies to employees with an actual impairment
  - Not “regarded as” or “history”
- Reasonable accommodations can include:
  - Reassignment to vacant position, light duty, flexible hours, **possibly** an extended period of leave time
- Employee generally has to initiate request for a reasonable accommodation
- All requests to be kept confidential
- Employer may request reasonable medical documentation that shows:
  - The accommodation is needed or
  - The employee has the present ability to perform the job safely
- Caregiver does not get reasonable accommodations
Looking for a new job?
Disclosure & Medical Exams

- Don’t need to disclose medical condition unless asking for reasonable accommodation
- Employer can’t ask about your medical condition
  - Employer can only ask if employee can perform the essential functions of the job with or without a reasonable accommodation
- Employer can make a job offer conditional upon passing a medical exam only if required of all employees entering that position
  - Employer can’t rescind the job offer unless there is something in the medical exam results that indicates the employee can’t perform the essential functions of the job
California Fair Employment & Housing Act

FEHA is broader than the ADA in 3 ways:

1. Employers with 5+ employees

2. Definition of disability broader
   - Any limitation in a major life activity - Does not need to be substantial

3. “Medical Condition” includes any health impairment related to or associated with a diagnosis of cancer or a record of a history of cancer
Family and Medical Leave Act (FMLA)

- 12 weeks of unpaid (but job & benefit protected) medical leave in a year to care for a seriously ill spouse, parent, child, or for employee’s serious medical condition
  - Leave time can be taken all at once or at intervals

- Requirements:
  - 50+ employees within 75 miles of that work site
  - Worded 1 year & minimum of 1,250 hours in that year

- May be eligible for 12 weeks under FMLA & additional leave:
  - As a reasonable accommodation under the ADA or FEHA
  - As part of an employer’s leave policy
Disability Insurance Benefits

- SDI (CA)
- FTDI (CA)
- SSDI (Federal)
- SSI (Federal)
Disability Insurance & Paid Family Leave

- Some states have short-term disability insurance plans
  - Ex: CA, NY, NJ, RI, HI, and Puerto Rico

- Some states have paid family leave for people with serious illness and for caregivers of people with serious illness
  - Ex: CA has Family Temporary Disability Insurance

- Some employers offer private short and long term disability policies (Ex: AFLAC)

- Some people buy their own private short and long term disability policies
CA State Disability Insurance (SDI)

- Short-term disability income that lasts up to 1 year (55% of wages)
- Requirements:
  - Be unable to perform regular/customary work & have a loss of wages
  - Be unable to work at least 8 calendar days
  - File claim within 49 days of disability date
  - Be employed or actively seeking employment when disability begins
  - Have earned at least $300 from which SDI taxes were withheld during previous 12-months
- Does not provide:
  - Job protection during leave, OR
  - Continuation of health benefits
- FMLA & SDI must be taken concurrently
- Exception: Employers who opt out, i.e., teachers
CA Family Temporary Disability Insurance (FTDI)

- Provides 6 weeks of wage replacement benefits to employees who take time off to care for seriously ill child, spouse, parent, domestic partner
- Same requirements as SDI (8/49, $300, 55%)
- Only 6 weeks of leave per any 12 months
- Employer may require employee to take up to 2 weeks of unused vacation prior to receipt of FTDI
- Does not provide:
  - Job protection during leave, OR
  - Continuation of health benefits
- FMLA & FTDI must be taken concurrently if you qualify for both
Social Security Disability Benefits

- Social Security Disability Insurance (SSDI) & Supplemental Security Income (SSI)
- Apply at Social Security Administration (SSA)
- Provide long-term (1 year+) disability benefits
- SSA definition of disability
  - You have a qualifying disability if:
  - You cannot work (“substantial gainful activity”)
  - Due to a severe medical condition (one that significantly limits your ability to do basic work activities)
  - That is expected to last at least 1 year or result in death
Social Security Disability Insurance (SSDI)

- Based on prior work history & inability to continue working
- Must be qualified as disabled by SSA and have paid into Social Security System
- Benefits not paid until 6th full month after the date your disability began
- Eligible for Medicare after 2 years on SSDI
Supplemental Security Income (SSI)

- Similar to SSDI, but.....
- Based on assets and income, not work history
- Usually also eligible for Medi-Cal
- Benefits not paid until 1st full month after the claim is filed, or, if later, then date on which he/she becomes eligible for SSI
Health Insurance Options & Legislation

- COBRA/Cal-COBRA
- HIPP
- HIPAA
- MRMIP
- WHCRA & Cancer Screening
- Medicare & Medi-Cal
- Additional Insurance Protections
- Navigating Managed Care
COBRA

- A way to keep group health insurance coverage when you would normally lose it
- Applies to employers with 20+ employees
- Generally lasts for 18 months
- Cost can be up to 102% of applicable employee rate
- Pros: keep same insurance policy through employer, can keep same providers, prescription drug coverage, etc.
- Cons: Expensive
Cal-COBRA

- Similar to COBRA
- Applies to employers with 2-19 employees
- Lasts for 36 months and extends COBRA to 36 months in CA only
- Doesn’t apply to self-insured employers
- Cost can be up to 110% of applicable employee rate

See pg. 12 in your HMO Guide.
## COBRA & Cal-COBRIC Qualifying Events

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American Recovery & Reinvestment Act of 2009

- 65% subsidy for COBRA premiums
  - Must be involuntarily terminated between 9/1/08 to 12/31/09
  - Lasts 9 months – 3/1/09 to 12/31/09
  - Subsidy ends if become eligible for group health plan or Medicare
  - Individuals must earn less than $125,000/year or couples must earn less than $250,000/year
  - Individuals who earn more will be required to pay a portion of the subsidy as part of their federal tax bill

- Workers who were involuntarily terminated between 9/1/08 and 2/17/09, but didn’t elect COBRA, get an additional 60 days to elect COBRA and receive the subsidy
Health Insurance Premium Payment Program (HIPP)

- If you have health insurance coverage (ex: COBRA)
- Can’t afford the premiums
- Are eligible for Medi-Cal
- HIPP pays your insurance premiums to keep your private health insurance
- (800) 952-5294, press 1, then press 5
- Or (866) 298-8448

Also available in some other states
Prohibits discrimination against individuals based on pre-existing medical conditions

Note: only when going from group to group OR from group to a HIPAA guarantee issue plan without going through medical underwriting
In order to take advantage of HIPAA protections, you cannot have a break in coverage over 63 days.
Additional HIPAA Protections

1. Guarantee Issue Plan
   - A.K.A.: Federally Insured Plan or HIPAA Plan
   - In each state, every insurance company that writes policies in an individual market, must offer a HIPAA plan
     - Note: some states may have conversion plans instead
   
   - Requirements:
     - Exhaust COBRA or Cal-COBRA
     - Be ineligible for Medi-Cal or Medicare
     - Be ineligible for other group coverage
     - Apply no later than 63 days after the loss of COBRA or Cal-COBRA coverage
HIPAA Plans in California

- Call the DMHC for more information about HIPAA plans or
- Go to the DMHC website:
  www.dmhc.ca.gov/dmhc_consumer/hp/hp_hipaacp.asp
  - Click on “summaries” under “HIPAA and Conversion Plan Benefits and Rates” to get to the list of HIPAA plan providers

- HIPAA plan providers in California
  - Blue Cross of California
  - Blue Shield of California
  - Care 1st Health Plan (Southern CA and Sacramento County)
  - Central Health Plan of California, Inc. (LA County Only)
  - Chinese Community Health Plan (San Francisco)
  - Contra Costa Health Plan (Contra Costa County)
  - Health Net of California, Inc.
  - Kaiser Foundation Health Plan, Inc.
  - PacifiCare of California
2. Pre-existing condition exclusion period (PCEP)

• When moving between employer plans – can’t be denied insurance, but can be subject to a PCEP

• Previously 2 years was the PCEP industry standard

• HIPAA limited PCEP to 12 months max, but employer size determines the length of PCEP:
  • 1-2 employees = up to 12 months allowed
  • 3+ employees = up to 6 months allowed

• Look back = 6 months (PCEP runs concurrently with waiting period)
3. Receive credit for the time you have had health insurance in the past:

- “Creditable coverage” can be almost any type of comprehensive health insurance coverage
  - Except some student health insurance plans

- “Creditable coverage” goes with you from one employer’s group health insurance to another

- Reduces or eliminates any pre-existing condition exclusion period imposed by your new plan

- Cannot have gap in coverage over 63 days
Example:

You had creditable coverage of 4 months while you were at your previous job. Now you are changing jobs and the new employer group health plan is imposing a pre-existing condition exclusion period (PCEP) of 6 months.

6 month PCEP imposed by group health plan -
4 months of prior creditable coverage =
only 2 months left of a PCEP

Therefore, you will only have a 2 month exclusion period.
“Genetic information shall not be treated as a pre-existing condition in the absence of a diagnosis of the condition related to such information.”

Look back period standard: the exclusion must “relate to a condition for which medical advice, diagnosis, care or treatment was recommended or received within the 6-month period ending on the enrollment date.”

Waiting period counts towards any preexisting condition exclusion period

Health Privacy
Major Risk Medical Insurance Plan (MRMIP)

- Limited health insurance for CA residents who are unable to get individual health insurance
- Ineligible for COBRA, Cal-COBRA, Medicare, Medi-Cal & HIPAA
- 3 Plans: Kaiser HMO, Blue Cross PPO, Blue Shield HMO
- Costs: depends on age, plan and where you live
  - Ex: In LA, if you are 30-34, a Kaiser HMO costs $274.78/month
  - If you are 50, the same plan costs $420.11/month
- PPO has PCEP of 3 months, HMO has 3 month waiting period
- Coverage limited to 36 months, then people can move to a MRMIP Graduate Plan (ex: same plans = $302.26/$462.12)
- [http://www.mrmib.ca.gov/MRMIB/MRMIP.html](http://www.mrmib.ca.gov/MRMIB/MRMIP.html)
Medicare vs. Medi-Cal

- **Medicare**
  - Age 65+ and entitled to SS retirement benefits
  - Or under 65 & have received SSDI for 24 months

- **Medi-Cal**
  - Limited income and limited resources
  - “Share of cost”
Questions?
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