



National
Multiple Sclerosis
Society

**MS Learn Online
Feature Presentation
Career Crossroads: The Law's on Your Side**

Tom>> Welcome back to MS Learn Online I'm Tom Kimball

Tracey>> and I'm Tracey Kimball and this is the second of six episodes from the National MS Society's Career Crossroads program.

Tom>> This program walks us through common scenarios that people with MS may find while employed, and the different strategies and resources they can use to stay on the job.

Tracey>> Let's watch

VANESSA

So how did you're meeting with your boss go?

CLAIRE

Well, I still have a job ... for now.

On the one hand, Dave was very complimentary about the work I've been doing ...

DAVE

Claire, you're absolutely the best. You're our rising star around here. You've been with us for seven years, that's why we gave you this project.

CLAIRE

But then he turned around and was real quick to point out how I've just been messing up all the time ...

DAVE

But in that meeting, I've got to tell you I'm just as concerned as the customer is.

VANESSA

Did you tell him about your MS?

CLAIRE

No, but believe me, I was tempted. But I didn't say anything. I just came up with some lame explanation for my behavior...

I've had a lot going on and I can understand your concern. But I guarantee I will have it done, and it will look spectacular. You know me, I work really well under pressure.

VANESSA

Did your promotion come up?

CLAIRE

It didn't. But he did make some offhand remarks ..

DAVE

I'm still concerned. But let's focus on the Vegas convention. When we get back, we have some other things we still need to discuss.

VANESSA

Claire, you need to deal with this before things get out of hand. I've been doing some research your legal rights as a person with a disability.

CLAIRE

Vanessa, the last things I need to deal with now are lawyers and litigation!

VANESSA

I don't blame you. And most likely, you won't have to. But you *do* need to know about the laws that are out there to protect your rights. The biggie is the "Americans with Disabilities Act." I'm sure you've heard of it.

CLAIRE

Sure ... The ADA. That's the law that says buildings and public transportation have to be accessible to people with disabilities.

VANESSA

Yeah, that's part of it. Actually the ADA has five sections, or "Titles". Title One deals with employment issues. Essentially, the ADA protects people who have a qualified disability and are able to perform the essential functions of their job.

Phillip Rumrill

Under the ADA qualified individual means that you possess the educational and or experiential requirements of the job that you seek or hold.

WENDY RICHARD

A person with a disability is defined under the ADA as someone who has a mental or physical impairment that substantially limits one or more of their major life activities.

Phillip Rumrill

It also means that you can perform all the essential functions of that job either with or without reasonable accommodations if required.

CLAIRE

Hold on now ... Vanessa, you're getting into legal jargon here.

"... a physical or mental disability that limits one or more major life activities?" What's that supposed to mean?

VANESSA

Well Claire, you're no longer able to get around as easily as you used to. And the memory problems that you've been describing to me. Those things are limiting your "major life activities."

CLAIRE

Yeah, that's true. I definitely have been having more trouble focusing in the afternoon.

VANESSA

That's right. With MS, your symptoms may be visible or invisible to others.

CLAIRE

What exactly is an "essential function" of my job?

VANESSA

The ADA defines “essential functions” as those requirements that are at the core of your duties .. whatever is critical for you to do in order to perform the essential requirements of your job.

CLAIRE

OK, so for example, an essential function would be meeting with my clients, or creating concepts and designs for their exhibits. But actually carrying those designed panels that I created across the convention center in Las Vegas, that would not be considered an essential function.

VANESSA

Exactly! Now here’s the catch. In order to be covered by the ADA, your employer needs to know that you have a disability, and it’s your responsibility to tell him.

CLAIRE

So that’s where the disclosure comes in.

VANESSA

Right!

Charles Goldman

An employer can’t guess that you need something. Employers can’t say Chucks’ falling asleep or Chuck can’t get to work on time for some reason or another. An employer has to know that my condition is affecting me and I have to tell them, I have to make disclosure.

WENDY RICHARD

An employer cannot ask you if you have a disability, and the nature of that disability. That is not allowed and is illegal under the Americans With Disabilities Act.

Charles Goldman

You may have a diagnosis of MS for 5 years and never tell an employer. Title 1 doesn’t require that, but until you do tell the employer you don’t get the protection of the law.

CLAIRE

So essentially, I don’t have to tell my boss anything about my MS. But if I need some help with doing my job ...

VANESSA

... an “accommodation” ...

CLAIRE

... then I need to disclose.

VANESSA

Right! I found out a little bit about making disclosures and accommodations, but we’ll get into that later.

CLAIRE

But I work for a small company. Do they have to comply to the ADA?

VANESSA

Generally speaking, any company that has more than 15 employees is required to comply with the requirements under the ADA. Now some companies can claim “undue hardship”, but those are rarely granted, and they’re only seen on a case-by-case basis.

Now if you find yourself looking for a new job, the ADA has this list of things that employers can and can’t ask you. And they can only ask you questions that deal with the essential functions of you being able to perform your job.

Charles Goldman

What an employee can be asked is can you do these things on the job, can you lift 10 pounds, can you stand on your feet for 8 hours because that’s what this job requires at the local store.

WENDY RICHARD

If your disability is visible and perhaps you utilize a wheelchair or a scooter, an employer can only ask you a question – ‘would you still be able to have the stamina to make it through an 8 hour day even though I see that you require the use of a wheelchair?’ That is something that is an appropriate question because he is assessing, he or she is assessing your ability to be able to maintain whatever type of energy that would enable you to perform the job task.

Charles Goldman

An employee or a person with MS has a right to be in the work place, be in the society and not be treated differently because they have MS. They have a right to work, to earnings, to promotions to be hired to work have work assignments based on their abilities, not their disabilities.

WENDY RICHARD

It is very understandable that Claire will feel a little bit apprehensive about maybe starting to enter down this road of learning about the Americans With Disabilities Act and what that means to her. What I would tell Claire though is that this law is not about being adversarial. It's about providing someone just like her who is a great, capable, intelligent employee some benefits in order to be able to stay on the job and maximize her experience there. And not only is that something beneficial for Claire but it's beneficial for her employer also.

CLAIRE

Well, it's good to know that the ADA will protect my personal interests, but truthfully, I'm worried about how my boss is going to react. Don't get me wrong, he's a great guy, and I'm sure he'll be very sympathetic, but the bottom line is, he's gonna do what's best for the business.

VANESSA

Let me tell you, there are people out there whose disabilities are far greater than yours, and their employers have no problems making accommodations for them.

For example, Joel Kahn is an engineer who has worked for Proctor and Gamble for over 25 years. When he first was diagnosed with MS, he was worried about losing his job.

Joel Kahn

And the first thing my neurologist told me was don't tell anybody at work, because I'll get fired. And so I was thinking of employment issues the minute I was diagnosed. And it took me five years to tell the people at work that I was . . . a person with MS because I was afraid I would be fired.

Joe Lovato

Joel Kahn and I have known each other since 1986 and at that time Joel was much less limited than he is today.

JOEL

(On telephone) Let me check my calendar ...

Joe Lovato

Joel has a skill set that's very valuable and so as his MS has progressed over time it hasn't been a matter of what do we do about Joel's employment with Proctor and Gamble, it's been a matter of what we do to help Joel to continue to be as productive as he is and use his skills.

Joel Kahn

One of the positive things was, in 1980 I went into a 3 wheeled scooter and right after that I was promoted for the first time and that gave me confidence that I could talk the issue with my manager and in 1981 or 82 I told him I had MS and in 1983 I was promoted again.

Joel

(To computer) Press enter key ...

Joe Lovato

He has software that helps him,

Joel

(To computer) I will send it to you later. Period.

(To telephone) Well, I'll cancel the Friday meeting ...

Joe Lovato

He has a telephone system that helps him . . .and so with somebody like Joel it's not looking at the person with a disability, it's looking at a person with capability and then how do you take that capability and keep it functioning at its' peak.

CLAIRE

The other thing that concerns me is sick leave. The last time I had a flare up, I used up almost all my sick leave. If that happens again, and I need to take another week or two off, I could lose my job.

VANESSA

No you won't, because of the Family and Medical Leave Act. With FMLA, you can take up to 12 weeks in a year to deal with a serious medical condition. Now you won't get paid for the time, but the important thing is that it protects your job and your benefits. The other cool thing about the

law is that, if a family member has to take off work to help you, it protects their job.

CLAIRE

Well that's good to know. As I think about the days that I might have to take off, it reminds me of just how important my health benefits are. And if I end up losing my job, there goes my health benefits. And Vanessa, that would be a complete disaster.

VANESSA

That's for sure. But there are two laws out there that deal with health insurance benefits.

One is the Health Insurance Portability and Accountability Act, or HIPAA.

CLAIRE

HIPAA? What would we do without acronyms?

VANESSA

HIPAA is another one of those laws with a bunch of provisions, but the important part for you is the section that deals with the continuity of health insurance benefits. Do you know about insurance policy provisions regarding "pre-existing conditions?"

CLAIRE

Oh yeah ... That means if I lose my health insurance policy, and go to a new carrier, they can disqualify me because of my MS ... or my pre-existing condition. Believe me, it's one of the many things that keep me awake at night!

VANESSA

Well, thanks to HIPAA you can sleep a *little* better. Since you've been on their insurance coverage for over a year, if you leave and go to a new job, they're required to cover you. Ant they cannot penalize you because of your pre-existing condition. But there is one catch ...

Phillip Rumrill

It requires the person however to maintain continuous insurance coverage when changing jobs from one employer to another. But when you go to a new employer the HIPAA requires your new employer to provide health insurance coverage that does not penalize for your pre-existing condition.

CLAIRE

Well that's great if I start a new job immediately after my old one. But chances are, I could go months between jobs. There goes my continuous insurance coverage!

VANESSA

That's where COBRA kicks in!

CLAIRE

COBRA?! As in the snake?

VANESSA

As in another one of those government acronyms. COBRA deals with the continuation of insurance benefits. That means, if you leave your current job, you can continue the group insurance coverage that you had under your benefit package.

CLAIRE

So, what's that catch?

VANESSA

The catch is that you're responsible for the premium ... your share as well as the employer's.

Charles Goldman

An employer may be for example paying \$300 a month for your health insurance and you as the employee are paying \$100. COBRA says when you leave the employment you have the right to that same exact coverage for a period of time, usually 18 months and in rare exceptions 24 months, but you have to pay the full premium.

CLAIRE

So it'll cost me quite a bit more than what I'm paying now. But when I look at what I spend in meds every month, not to mention my doctor bills, I could be getting quite a bargain.

VANESSA

And you'll be maintaining continuous health coverage ...

CLAIRE

Which would allow me to take advantage of HIPAA.

VANESSA

Exactly.

CLAIRE

OK. So I've got all these legal protections:

The ADA will help protect me against discrimination because of my disability ...

The Family Medical Leave Act will allow me to take time off when I need to in order to deal with my MS ...

And HIPAA and COBRA will help me with my insurance issues if I need to change jobs.

VANESSA

Now remember, we just talked about the general provisions of these laws. If you actually get into using any of them, make sure you look into the requirements carefully and read all of the fine print.

CLAIRE

Good advice. But in order for me to take advantage of any of these laws, I need to tell my boss.

VANESSA

You got it! And you gotta do it right! But that's for another session. For right now, you need to get home to Jenny, and me, I gotta go on my date with this cute little lawyer that I met!

CLAIRE

Wait a minute! This is where you're getting all your legal information?

VANESSA

Yes! I can't do all my research in the library. There are other ways to get information ...

CLAIRE

Vanessa!

Tracey>> It's so important for people with MS to understand the law and how indeed it is on our side.

Tom>> That's right and there's so much more to learn on Career Crossroads. Join us for the next episode, when we'll hear about disclosure: how ... and whether ... to tell your employer about your MS. See you then.