



HUMAN  
RIGHTS  
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# **HIV & AIDS:** **Legal Landscape for Employers**

Employees living with HIV or AIDS are protected from employment discrimination under two pieces of Federal legislation: the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990. State and local laws may provide additional protections. Additionally, the Affordable Care Act of 2010 provides important protections in health insurance plans.

**Americans with Disabilities Act of 1990 (ADA)** prohibits private and public employers (with more than 15 employees) from discriminating against individuals on the basis of their HIV or AIDS status. This protection covers all employment stages including recruitment, firing, hiring, training, job assignments, promotions, pay, benefits, leave, and all other employment-related activities.

**Rehabilitation Act of 1973** prohibits federal contractors, agencies, and employers receiving federal funding from discriminating against individuals with HIV or AIDS. Like the ADA, this law applies to employment decisions at all stages.

**State or local employment anti-discrimination statutes** vary and may provide coverage not available under federal law such as HIV and AIDS accountability in healthcare, accommodations, etc.

**Affordable Care Act of 2010 (ACA)** set into place an effort that will help ensure Americans have secure, stable, affordable health insurance. Historically, people living with HIV and AIDS have had a difficult time obtaining private health insurance and have been particularly vulnerable to insurance industry abuses. The Affordable Care Act makes considerable strides in addressing these concerns by ensuring people with pre-existing conditions including HIV and AIDS are able to get insurance coverage, limiting lifetime caps on coverage, and addressing prescription drug costs in Medicare Part D plans. In addition, the ACA's Section 1557 Non-discrimination provision creates important protections for people with disabilities including those living with HIV and AIDS.



# LAWS IN ACTION:

## Practical Implications for the Workplace

Legal protections for individuals living with HIV or AIDs extend beyond what we typically associate with discrimination to impact day-to-day employer/employee expectations.

**Requesting and providing reasonable accommodations** – Employers are required to provide reasonable accommodations to individuals living with HIV or AIDS so as to facilitate their participation in the job application process, their performance of the essential functions of a job, or their access to the benefits and privileges of employment. As long as it does not constitute an undue hardship to the employer, requested accommodations must be granted.

**Qualified = ability to perform ‘essential functions’** – As stated above, there is legislation in place which protects qualified individuals living with HIV or AIDS from discrimination on the basis of this status. However, to ensure full enforcement of this law, it is necessary for employers to recognize the distinction between the essential and marginal functions of a job. Essential functions refer to the duties that constitute the position. Marginal functions are non-essential or incidental job functions. For example, the essential function of a typist is the ability to type. A marginal feature would be the ability to move large boxes of files. In this way, while there may be certain incidental job functions an employee with HIV or AIDS may not be able to perform, as long as it does not impede his or her ability to perform the core duties of that job, the individual is still classified as qualified.

**Communicate and examine benefits programs** – Despite the progress made in protecting individuals living with HIV or AIDS, not all employers provide workplace benefits specifically for HIV or AIDS related healthcare. Therefore, it is important for employers to communicate existing benefits which can serve employees or their dependents living with HIV and AIDS. For example, the Family Medical Leave Act of 1993 (FMLA) allows eligible employees to take leave for serious medical conditions or to provide care for an immediate family member with a serious medical condition, including HIV and AIDS, for up to 12 weeks of job-protected leave.

