

# EMPLOYMENT AND HIV

## 7 RIGHTS YOU HAVE IN NEW YORK

Are you concerned about

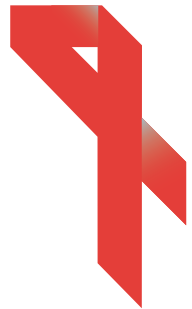
**Managing your health while  
working?**

**Disclosing your status to  
employers and co-workers?**

**Losing your benefits?**

Read on to learn your rights!

New Yorkers living with HIV/AIDS  
also may call the Legal Action Center  
(LAC) for help at (212) 243 1313.





## 1. Employers may not deny you a job because of your HIV status.

HIV/AIDS is considered a “disability” under anti-discrimination laws that protect people with disabilities. If you meet the requirements of the job, it is illegal for employers to discriminate against you because you have HIV/AIDS, just like other disabilities. This is true for most health care jobs too.

## 2. It is illegal for employers to ask your HIV status before offering you a job, but it is sometimes allowed afterward.

**BEFORE A JOB OFFER**, it is illegal to ask about any disability, including HIV/AIDS. Employers also may not ask your medications because that could reveal your HIV status. But it is legal for employers to ask whether you have a physical or mental condition that might make you unable to do the job. It is also legal for an employer to require a drug test.

**AFTER A JOB OFFER** conditioned on passing a medical exam or filling out a medical form, employers may legally require you to pass a medical exam. But an employer may only do this if everyone offered the same position is required to take a medical exam. During this exam, it is legal to ask about your HIV status and HIV medications.

**ONCE YOU START WORK**, an employer may require a medical exam or ask for medical information only if the exam or questions are “job-related and consistent with business necessity.” This generally happens when an employee has work performance problems, which the employer reasonably believes may be caused by a medical problem.



### **3. You do not have the legal right to lie in response to legal questions about HIV.**

It is legal for employers to fire or not hire you if you lie in response to a legal question on a medical form. On the other hand, if you tell the truth and an employer rejects or fires you because you have HIV/AIDS, you can challenge this as illegal job discrimination. Withholding information also can be self-defeating for a very practical reason. Your employer could easily learn your HIV status through a medical exam or a drug test.

### **4. Medical forms do not always seek HIV information. Read them carefully!**

Medical forms for work (and things like school) sometimes require disclosure of HIV/AIDS information and sometimes do not. For more information about how to fill out these forms, read “To Disclose or Not to Disclose: Seven Things to Know About Medical Forms and HIV,” available at [lac.org/resources/hivaids-resources](http://lac.org/resources/hivaids-resources).

### **5. HIV information is sometimes protected at work, but not always!**

Employers are required to maintain the confidentiality of HIV (and other medical) information received during required medical exams and voluntary health programs on the work site. They also must keep the confidentiality of HIV information that your health or social service provider disclosed with your written consent. But if you or your co-workers tell your employer about your HIV status in any other way, the employer may not need to keep the information confidential. For example, if you tell your boss you are upset because you just found out you have HIV, your boss may not have to keep that information confidential. It is a good idea to talk to the Legal Action Center or another attorney before disclosing your status at work.



## **6. You may request a “reasonable accommodation” necessary to perform your job.**

If you have HIV/AIDS or another disability, employers must give you a “reasonable accommodation,” such as a change in your work schedule or job duties necessary to do your job. The only reason your boss could say “no” is if it would be too much cost or burden. But you usually need to ask for the accommodation and may need to provide written proof from your doctor. Reasonable accommodations can help you avoid choosing between your health and your job.

## **7. You might not lose HASA and Medicaid benefits if you work, depending on income.**

If you work, you will remain eligible for HASA services, such as case management. But your cash assistance and rental subsidy will go down (and possibly disappear) if you earn above a certain income. HASA has “income disregards” that might help you keep benefits. Whether you can keep Medicaid also depends on your income. To find out how employment will affect your benefits, call the Legal Action Center. We can connect you to a benefits expert.

## **STILL HAVE QUESTIONS?**

Read “Are You Somebody with HIV/AIDS?...” and other LAC resources at [lac.org/resources/hivaids-resources](http://lac.org/resources/hivaids-resources). New Yorkers living with HIV/AIDS may call the Legal Action Center at 212-243-1313 for free legal services.

