Quick Guide to Returning to Work

When returning to work, you may be returning to a previous employer after extended time off, or you may be starting a new job. The rights and benefits you may be entitled to depend on your situation and your employer. As a starting point, it is helpful to check your employer's policies, as many employers provide benefits beyond what the law requires.

1. Rights when returning to your existing job

If you are returning to work after a period of time off, it is helpful to understand the laws and resources that can benefit you.

Are you returning from Family and Medical Leave Act (FMLA) leave?

If you took leave under the FMLA, then the law requires that you be reinstated to the same or an "equivalent" position as the one you had before you took the time off. An "equivalent" position is one with equivalent pay, benefits, responsibilities, and other conditions of employment. There are some exceptions when an employer will not be required to reinstate an employee:

- If you have previously notified the employer that you didn't plan to return to work
- If your position was eliminated while you were on leave (e.g., a reduction in force)
- If you would have been terminated for a legitimate reason (e.g., misconduct)
- If you were a highly paid key employee and the leave would cause substantial economic injury to the business
- If you were unable to return to work after exhausting your FMLA leave
    - But your employer must look to see if other laws might apply, such as a duty to accommodate an eligible employee under the Americans with Disabilities Act (ADA)

Are you returning from ADA leave?

If you took leave under the ADA as a reasonable accommodation, then the law requires reinstatement to the ***same*** job, unless reinstatement to the same job is an undue hardship for the employer. If so, the employer may have to reinstate you to any available vacant position you are qualified to perform.

Are you eligible for Vocational Rehabilitation?

Vocational Rehabilitation provides a variety of services to persons with disabilities, with the ultimate goal to prepare for, enter into, or retain employment. Vocational Rehabilitation is run by your state's Department of Rehabilitation (DOR) and provides different services, including things like peer support, skill development, systems advocacy, referrals, assistive technology services, transition services, housing assistance, and personal assistance services. To find your state's DOR, visit TriageCancer.org/StateResources.

2. Rights when back at work (existing or new job)

Reasonable accommodations

Even if you are no longer in active treatment, you may be experiencing long- or late-term side effects that may impact you at work. Under the ADA, eligible employees are entitled to reasonable accommodations.

A reasonable accommodation is “any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.” Reasonable accommodations are a key way employees can get help to perform their job responsibilities and manage any side effects from treatment that you find are challenging or interfering with your work performance.

Some practical examples of reasonable accommodations include:

- Changing a work schedule (e.g., flexible schedule, additional rest breaks)
- Using technology (e.g., smartphone, tablet, or speak/type software)
- Changing a physical work environment (e.g., telecommuting, moving your work location closer to the elevator or restroom, adding hand controls to your work vehicle)
- Changing a workplace policy (e.g., allowing additional rest periods or the ability to wear a head covering due to hair loss)
- Shifting nonessential job responsibilities
- Changing a job position and/or duties (e.g., moving to a vacant position)

Accommodations do need to be reasonable based on your job responsibilities. For example, mail carriers probably won’t be able to telecommute to their job. One accommodation might not address all of the challenges you are facing, so you can request more than one accommodation. Reasonable accommodations can change over time.

- When do you ask? As soon as you need one.
- How do you ask? Look at your employer’s policies for the process. Even if not required, consider asking in writing so you have a record of the request.
- Who do you ask? If your employer’s policy does not tell you, decide among your supervisor or Human Resources representative. Remember your current supervisor may not always be your supervisor.

Short-term or intermittent leave

As you return to work, you may still be in treatment or dealing with side effects. Under the FMLA, you can also take smaller periods of leave as needed. You may also be able to take time off intermittently. For example, if you need to take a day off because you are not feeling well, you can take that as FMLA leave.

- You can use the smallest increment of time that your employer normally allows someone to take for sick or vacation time (e.g., 1 hour, 4 hours, 8 hours)
- Employers cannot require employees to exhaust PTO, vacation, & sick leave before using FMLA
- Employers can require use of PTO, vacation, & sick leave concurrently with FMLA
- Employees can request use of PTO, vacation, & sick leave concurrently with FMLA
- FMLA leave can work with the ADA in that it can provide additional time off as a reasonable accommodation, or the ADA can be used instead of the FMLA to take time off

3. Rights when searching for a new job

Accommodations during the job application process

When you are searching for a new job, generally, you do not need to disclose that you have a medical condition or a need for a reasonable accommodation. However, if you need an accommodation for the interview itself or for pre-employment testing, you will need to disclose enough information about your medical condition to explain why you need a specific accommodation.

Disclosure & privacy rights

Deciding whether or not to share information about your medical condition with an employer is a personal decision. The law protects the privacy of your medical condition, in different ways, and different stages of the employment process:

- During the application and interview process, before a job offer is made, an employer may not ask about your health, the nature of the disability, or ask you to take a medical exam. Employers cannot ask questions that may indicate you have a medical condition, such as how much sick leave you have taken in the past or if you have ever taken FMLA leave. Employers are only allowed to ask if you are able to perform the essential functions of the job and how you will perform the essential functions of the job.
- Once you have been offered a job, an employer does have the right to make the offer conditional upon the results of a medical exam, only if every other employee in the same job category is also required to take the same exam.
- Once you are working for an employer, you can only be asked to complete a medical exam or answer questions about your health, when it is "job-related and consistent with business necessity" or if there is a "direct threat" (e.g., requiring an eye exam for a school bus driver).

4. Rights when transitioning off SSI or SSDI benefits

If you are receiving disability benefits because of a cancer diagnosis, you may be considering going back to work. However, you may be concerned about trying to return to work, but being unable to work at the same capacity you could prior to a cancer diagnosis, and how that might affect your disability and health insurance benefits.

The Social Security Administration (SSA) has a Work Incentives program to assist you in your return to work. The programs available vary depending on whether you receive SSI or SSDI benefits. The Ticket to Work Program (TWP) is a free and voluntary program available to individuals receiving either SSI or SSDI. Once enrolled in the TWP, you may have access to a network or agency that provides training, career counseling, vocational rehabilitation, and job placement, to help you reenter the workforce.

During the TWP, you can test your ability to work and still receive benefits. There is also a nine-month trial return to work period, and if you do complete the trial and successfully return to work, your Social Security disability benefits will be quickly reinstated if you must stop working again due to your disability.

Participants in the TWP will maintain Medicare coverage for at least eight and a half years after returning to work if they still have a disability. Individuals may also be able to maintain Medicaid coverage, depending on the state and their earnings.

Learn more about the TWP and other Work Incentives at ssa.gov/work/home.html.

Returning to work when receiving SSI benefits

The SSA has programs that will not count certain income earned while an individual who is receiving SSI attempts to return to work:

- Earned Income Exclusion: The first $65 an individual earns in a month, plus one-half of the remaining earnings will not be counted when determining the benefit amount. Therefore, SSA takes into account less than one-half of earned income when determining SSI eligibility or benefit amounts.

- Student Earned Income Exclusion: If an individual is under the age of 22 and is regularly attending school, the SSA will disregard up to $2,500 a month (but not more than $10,080 in calendar year 2027) of earned income when calculating eligibility or the amount of the SSI benefit.
- Property Essential to Self-Support: When determining eligibility, the SSA will disregard certain resources if they are deemed to be essential to an individual's means of self-support. For example, the SSA will not consider up to $6,000 of the equity value of a non-business rental property, if that property has an annual rate of return of at least 6 percent.
- Plan to Achieve Self Support: You may be able to use your own income or assets to achieve a work goal. For example, money could be set aside to pay for school tuition, receive specialized training for a job, or to start a business.
- Section 1619 - Special SSI Payments for People Who Work: You may still be able to work a limited amount and be eligible for SSI and Medicaid while working. To remain eligible for SSI, your earnings must be less than the state's threshold amount, while you are not offered employer-sponsored insurance, and continue to have a disability. Even if your income is more than the allowed amount for SSI, you can maintain Medicaid coverage.
- Reinstating SSI benefits without a new application: If you lose eligibility for SSI because of your work situation, you may be able to restart SSI benefits again at any time within five years, without a new application. If you were deemed ineligible for SSI and/or Medicaid for any reason other than work or medical recovery, you may be able to restart SSI cash payment and/or Medicaid coverage within 12 months without a new application.

Returning to work when receiving SSDI benefits

In addition to TWP, SSA has another program to help those who are receiving SSDI to return to work:

- Extended Period of Eligibility. After working nine months of a trial work period, you enter a 36-month "extended period of eligibility." The SSA will pay SSDI benefits for any month when you earn less than the annual SGA amount. If you complete the TWP and the extended period of eligibility, and are earning more than the SGA amount, you will no longer be eligible to receive SSDI benefits. However, when dealing with a cancer diagnosis, you may need the ability to return to your benefits without having to restart the application process. The SSA allows for expedited reinstatement, where SSDI benefits are reinstated when you have the same medical condition but had benefits terminated within the past five years due to an increase in earnings. You will receive six months of temporary benefits while your case undergoes medical review. If the SSA does not find you eligible for full reinstatement, there is no obligation to repay any temporary benefits.

For more information about these topics and more:

- CancerFinances.org
- Work and cancer: TriageCancer.org/Employment
- Disability insurance: TriageCancer.org/DisabilityInsurance
- Health insurance options when returning to work: TriageCancer.org/HealthInsurance
- Disclosure decisions: Quick Guide to Disclosure, Privacy, & Medical Certification Forms - TriageCancer.org/QuickGuide-Disclosure

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