

CALIFORNIA WOMEN'S
CWLC LAW CENTER



SURVIVING THE LEGAL CHALLENGES

A RESOURCE GUIDE
FOR WOMEN WITH
BREAST CANCER

The California Women’s Law Center (CWLC) works to ensure, through systemic change, that life opportunities for women and girls are free from unjust social, economic and political constraints. CWLC focuses its efforts on six main priority issue areas: Women’s Health, Violence Against Women, Women’s Economic Security, Sex Discrimination, Race and Gender, and Exploitation of Women. CWLC believes that lasting change is only possible when women and girls are empowered to be their own best advocates.

This guide is intended to provide background information on the laws protecting women with breast cancer in California. Receiving and/or reading this booklet does not make you a client of the California Women’s Law Center. It is not intended to be, nor should it be relied upon, as legal advice.

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SURVIVING THE LEGAL CHALLENGES:

A RESOURCE GUIDE FOR WOMEN WITH BREAST CANCER

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Above all, we thank the hundreds of women who have used the first edition of the Resource Guide and the thousands who will utilize this revised edition. Their courage, energy, spirit and determination inspire us to continue working to improve the lives of women.

CWLC Staff
February 2003

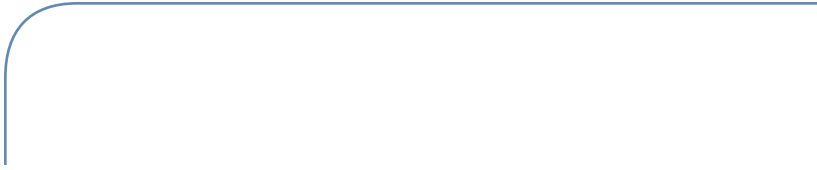
INTRODUCTION

SURVIVING THE LEGAL CHALLENGES:

A LEGAL RESOURCE GUIDE FOR WOMEN WITH BREAST CANCER

The overwhelming physical and emotional costs exacted by breast cancer touch countless lives. Yet, the resources available to those confronting breast cancer remain woefully inadequate. Diagnosis of breast cancer raises life and death choices that must be confronted even while those with the disease are physically and emotionally exhausted by treatment. Many of these choices present overwhelming legal challenges that can bring devastating medical, economic and personal consequences.

On the job, women are harassed, denied promotions, transfers or other benefits because of their history of breast cancer. Many women engage in protracted struggles with their insurance companies for coverage of certain treatments. Others strive to find treatment options from private insurers or through government programs. While still undergoing treatment, women are deluged with mounds of billing paperwork from medical providers, insurers and other creditors. Most women do not have adequate resources to meet the many challenges that accompany a breast cancer diagnosis.



This Legal Resource Guide is designed to provide information about the law and the role it can play in meeting these challenges. It is meant to educate and empower women to know the law, demand their rights and be their own best advocates.

In 1995, the California Women's Law Center established the Breast Cancer Legal Project, the first state-wide provider of free education, outreach, materials and technical assistance to women with breast cancer and their advocates. The Project works with organizations, breast cancer survivor and advocacy groups, and legal and medical professionals to allow women with breast cancer to focus their energy on recovery. BCLP focuses its outreach, education and advocacy primarily on low-income women and women of color, target populations that are both the most in need of legal services and the most underserved throughout the state.

I. EMPLOYMENT RIGHTS

EMPLOYMENT DISCRIMINATION

Federal and state civil rights laws protect women with breast cancer in California against job discrimination. The Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973 are federal laws. The California Fair Employment and Housing Act (FEHA) is a state

You have law.

rights in the workplace For federal employees, the ADA covers people who work for Congress and other entities in the legislative branch of the federal government. The Rehabilitation Act of 1973 protects employees of federal contractors or other programs receiving federal funds as well as employees of any federal executive agency and the United States Postal Service against disability discrimination.

Am I protected?

If you are a woman who has breast cancer or a woman who has previously been treated for breast cancer, you are a person with a disability protected under the disability discrimination laws. The law protects people:

- who have a disability;
- who have a record of a disability; or
- who are regarded as having a disability.

A disability is defined by the federal law as a physical or mental impairment that substantially limits one or more of your major life activities, such as working or caring for yourself.

The law protects “qualified persons with a disability” from job discrimination. You are considered to be **qualified** for a particular job if:

- you have the needed work experience, training, skills, and education; and
- you can perform the essential functions of the job so long as you are given a certain type of assistance, called a **“reasonable accommodation.”**

Employers must make a **“reasonable accommodation,”** both within the requirements of the job and in the work environment, which allows you to effectively apply for a job and do your job. Reasonable accommodations are discussed in greater detail later in this booklet.

Which employers are covered?

These employers of **15 or more employees** are covered by the federal ADA:

- *state and local government entities and agencies;*
- *private employers;*
- *employment agencies;*
- *labor unions; and*

-
- *joint labor-management committees.*

These employers, **regardless of the number of employees**, are also covered by the provisions of the ADA and/or Rehabilitation Act:

- *the federal government;*
- *federal contractors and subcontractors; and*
- *federally-funded employers.*

The employers of **5 or more employees** are covered by California's FEHA:

- *private employers;*
- *state or municipal government entities and agencies;*
- *labor organizations; and*
- *employment agencies.*

State law also prohibits discrimination against disabled persons by agencies and employers who receive funds from the State of California, regardless of the number of employees.

Employers with 15 employees or more are covered by both state and federal law.

WHAT ARE MY EMPLOYMENT RIGHTS AS A WOMAN WITH BREAST CANCER?

To answer this question, we can look at different situations that can lead to discrimination.

The hiring process: applications, interviews, hiring, and med-



ical exams

While you are employed “on the job”: requests for reasonable accommodation, job training, promotions, demotions or transfers, pay, compensation and job benefits, confidentiality of records, requests for medical leave, and caregiver’s rights under the ADA, Family Medical Leave Act (FMLA) or Calif. Family Rights Act CFRA).

THE HIRING PROCESS

What are my rights during the hiring process?

Do I have to tell my prospective employer that I had cancer?

The fact that you have or had cancer is your own personal business and you do **not** have to tell a prospective employer. An employer cannot refuse to hire you because you have or have had breast cancer as long as you are qualified to do the job. An employer cannot discriminate in listing new jobs.

An employer **may** ask about an applicant’s ability to perform specific job-related functions and may ask questions that are not disability-related. An employer may require job-related, non-medical examinations, such as general skills tests, a computer or math test, or a test that demonstrates a specific skill that is required for the job. For example, your prospective employer may ask you to lift a 50 lb. sack if the job requires heavy lifting and all applicants are required to take this test.

Job Applications and Interviews

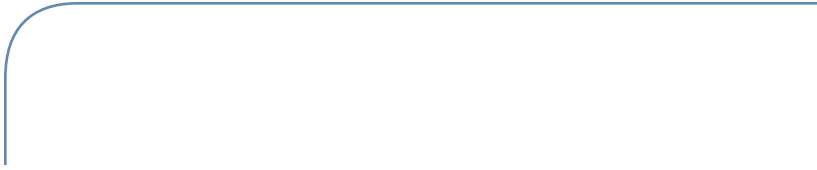
An employer **cannot** ask you about the existence, nature or severity of your medical condition during the hiring process. This applies to both written job applications and interviews. If there are gaps in your work history due to periods of disability, you may write down on the application, “unemployed due to medical reasons” or “unemployed for personal reasons.”

An application or an interviewer **cannot** ask you about:

- *the severity of your breast cancer;*
- *what caused your breast cancer;*
- *what is the prognosis regarding your breast cancer;*
- *whether you will need treatment or special leave because of your breast cancer;*
- *how many sick days you used last year;*
- *whether you had been hospitalized; or*
- *whether you filed a worker’s compensation claim.*

Interviewing for a job

An employer **may ask**: “Can you perform the essential functions of this job with or without reasonable accommodation?” This means, “If you are given a reasonable accommodation, can you do the job?” The employer may also ask you to describe or demonstrate how you would perform these functions. The employer **may** ask if you can meet the attendance requirements of the job, but **cannot** ask how many sick days you used at your last job.



If you have a disability that is physically obvious and relates to the job, the employer may ask if you can perform specific job functions with or without reasonable accommodations, but cannot ask questions about your condition. However, because in most cases breast cancer is not a physically obvious disability, employers usually cannot ask you about your disability or whether it will affect your ability to perform the job tasks.

For example, if you appear physically weak or have a noticeable loss of hair after undergoing chemotherapy, and you apply for a job which requires you to be on your feet for long periods of time, the prospective employer **may** ask if you can stand for three hours at a time without a break, and may ask if you need special assistance, that is, a reasonable accommodation, to do the job.

On the other hand, if it is not physically apparent that you have breast cancer or any other disability, then the employer is forbidden from asking you whether you need an accommodation. The employer can tell you that the job requires standing for long periods of time, and ask if you are able to do that. At this point, you have the right to say, “Yes, I can do that, but I need a stool to sit on or else I need a five minute break every half hour during the three hours.”

If your disability is obvious, the employer should ask you if you need special assistance. Otherwise, **you must** tell the prospective employer that you have a disability and request a reason-

able accommodation to perform the essential functions of the job. You must also tell a potential employer that you need special assistance during the interview.

Remember: employers' questions must focus on your ability to do the job, not on your disability.

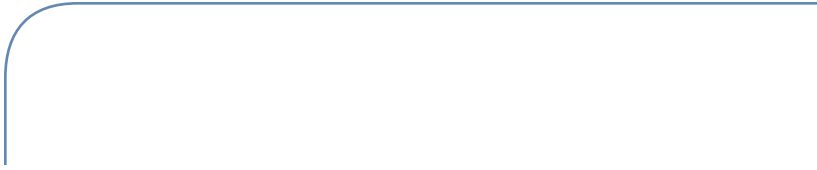
Requesting Medical Exams

An employer who has 15 or more employees **cannot** require a pre-employment medical examination until after a job offer has been made. After the employer makes a job offer, the job offer may depend on the applicant's passing the examination. However, an applicant can

**The focus
is on your
ability to do
the job**

only be asked to take this medical exam if it is required of **all** new employees in the same job category. The medical exam or inquiry may ask any medical questions, even those not related to the job.

The results of this medical exam cannot be used to discriminate against you if you are currently able to perform the job. An employer cannot refuse to hire you because s/he thinks that there will be future risks in hiring you, such as higher insurance costs or more days missed from work. Thus, if an employer has conditioned your job offer on taking a medical exam, s/he can only use the results of the exam to revoke



your job offer if:

- *your disability poses a threat to the health or safety of other employees or yourself; or*
- *no reasonable accommodation can be made which would allow you to perform the essential tasks of the job.*

If your employer provides health insurance, you may be asked to take a medical exam as part of the insurance application. The information obtained from this examination may be used only for insurance purposes.

Employers may require new applicants to take a test for illegal drug use because under state and federal law, this kind of test is not considered a “medical examination.” Drug testing has special requirements depending on the employment setting.

After you start work, your employer can only request a medical exam if it is “job related.”

Smaller employers not subject to federal law (those with 5 - 14 employees) are allowed to require medical examinations prior to making a job offer, although the Department of Fair Employment and Housing discourages this practice. These examinations must be directly related or pertinent to the position for which the applicant is applying, or directly related to a determination of whether the hiring of the applicant would endanger her health or safety or the health or safety of others.

To ensure that medical exams cannot be used to discriminate,

the following **three** requirements must be met:

- (1) *all entering employees in similar positions must be given the same examination;*
- (2) *if the exam results in disqualification, an applicant or employee may submit independent medical opinions for consideration; and*
- (3) *the results of such exams must be kept separately as confidential medical records.*

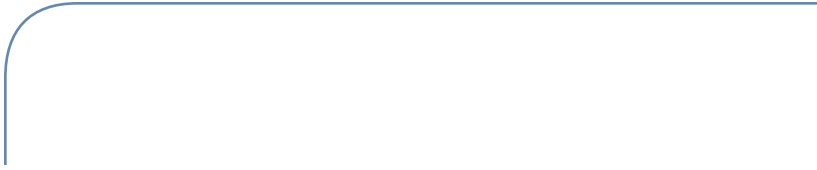
ON THE JOB

What are my rights on the job as a woman with breast cancer?

You have employment rights as a woman with breast cancer, including the right to be free from discrimination in the terms and conditions of your employment. This includes the right to have the workplace made more suitable for you as a result of your breast cancer and may include a reasonable accommodation or medical leave.

When should I tell my employer that I have a disability?

If you need help or special treatment to perform the essential functions of your job because you have breast cancer, you must tell the employer that you have a disability and request a reasonable accommodation. You should do this even if you need special assistance during an interview or for a promotion or transfer.



The employer is only required to accommodate a “known” disability of a qualified applicant or employee. If you do not ask for an accommodation, the employer is not required to provide one except where the disability is obvious or already known to the employer.

What is a “Reasonable Accommodation”?

Reasonable accommodations are ways of changing the job environment so that a disabled person can perform at the same level as the average employee who does not have a disability. Reasonable accommodations can range from relocating furniture to modifying a work schedule.

**Reasonable
Accommodation**

Your employer must provide you with a “reasonable accommodation” necessary to allow you to perform the job that you have, or are seeking, unless it imposes an undue hardship on the employer. Your employer is not required to provide an accommodation that:

- *is unreasonably difficult or unreasonably expensive;*
- *interferes with normal operations of the business; or*
- *endangers you or your co-workers.*

Reasonable accommodations may include:

- *giving someone else the tasks of your job which are not essential to the principal function of the job;*

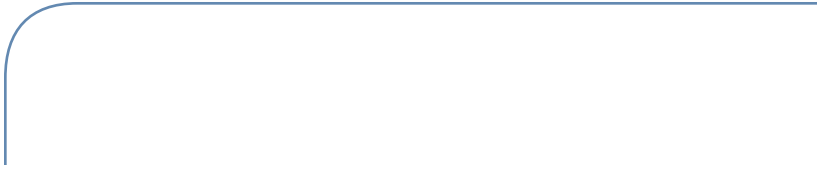
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- *changing your work schedule or work shift;*
 - *allowing flexible leave for necessary treatment (see the “Family Medical Leave Act”) or other leaves of absence;*
 - *reassigning you to a vacant position, if the position is comparable to your former position or reassigning you to “light duty”;*
 - *appropriate adjustment to training materials or policies; or*
 - *purchasing or providing special equipment or devices.*

Reasonable accommodations do not include:

- *requesting reassignment to a department in a warmer climate because it would be better for your health;*
- *purchasing very costly devices; or*
- *reorganizing the work flow of the entire business to accommodate your needs.*

Allowing you to change your work schedule in order to attend weekly chemotherapy appointments is another example of a reasonable accommodation. Working on the weekends or overtime might allow you to attend the appointments and make up the missed hours without causing an undue burden on your employer. Similarly, you might also begin work earlier or later or take a shorter lunch so you can have more frequent breaks throughout the day. But, if your request would disrupt an entire production line, or your work could not be performed during the evenings or on weekends, then the employer can deny your request because it is unduly burdensome or interferes with the normal operation of the business.

Each request must be considered on a case by case basis, and both you and your employer must be willing to consider alter-



native solutions. An accommodation may be made that is different from that which you initially requested and may still be “reasonable.” **The law only guarantees you a reasonable accommodation, not the reasonable accommodation of your choice.**

The law requires employers to make reasonable accommodations only to your **known** limitations, so it is up to you to make your needs known. There are organizations that will help you and your employer come up with functional accommodations.

Finding alternative solutions

Job Training

Your employer cannot refuse to select you for a training program or fire you from a job or training program because of your disability or medical condition. Further, your employer cannot consider your past or present disability with regard to providing financial support for job training, including apprenticeships or professional meetings.

Promotions, Demotions, or Transfers

Your employer cannot demote, transfer, lay off, deny the right of return, refuse to rehire you, or fail to promote you or offer you tenure based solely on your currently having or having had breast cancer. These decisions must be based on an objective

evaluation of your performance and abilities and must be unrelated to your breast cancer.

Your employer is also prohibited from discriminating against you with regard to job assignments, job classifications, employee advancement or office rank. Your employer cannot give your assignments to another employee because the employer **thinks** that your breast cancer will make you unable to perform job tasks.

Pay, Compensation, and Job Benefits

An employer cannot discriminate against you in terms of your wages, work conditions or employee benefits because of your breast cancer. Your employer cannot change your rate of pay or any other form of compensation or deny you any extra benefits such as paid training or social and recreational activities. Your employer is also prohibited from charging you individually if there are any increased health insurance costs incurred due to your breast cancer. (See Insurance section).

Keeping your Medical information Confidential

State statutory and constitutional laws require employers to maintain the privacy and confidentiality of their employees' medical and personnel records. These laws are strictly enforced.

Employers must keep information from any medical exams or inquiries separate from the general personnel files. Your med-

ical information can only be requested by certain persons, including supervisors and managers, and then only for the limited purpose of finding out if you are restricted from doing a particular kind of work or determining what kind of “reasonable accommodation” you need. However, insurance companies can request medical information from your employer in order to administer your health care plan. This information may not be disclosed to others, and may not be used to deny you an employment benefit.

**Medical
information
must be kept
confidential**

Caregivers’ Rights Under the ADA

Caregivers are protected by federal law under the ADA. Therefore, if your caregiver, (that is, your spouse, a friend or any other person who takes care of you) works for an employer with 15 or more employees, s/he is also protected against employment discrimination in hiring, firing and access to benefits. Your caregiver cannot be fired or denied a promotion because s/he lives with someone who has cancer and participates in your care. In addition, an employer cannot refuse to hire your caregiver because certain treatments for breast cancer are expensive, but available, through the employer’s health insurance plan.

A caregiver is not, however, entitled to “reasonable accommodation” because s/he is taking care of a disabled individual. For

example, federal law does not entitle your spouse to reasonable accommodation by his employer such as modifying his work duties because of your disability.

Instead, your qualified spouse, child or parent may be able to request up to 12 weeks of unpaid leave, which can be broken up into smaller increments, to care for you under the Family Medical Leave Act.

There are no similar protections against job discrimination for caregivers under state law, which covers smaller employers with 5-14 employees. However, state law also entitles caregivers to take unpaid family leave under the California Family Rights Act. Additionally, starting July 1, 2004, employees can also take paid family leave under a new program for caregivers. (See “SDI” in Government Benefits section).

**Caregivers
are
protected**

FAMILY AND MEDICAL LEAVE

There are federal and state laws that permit you, if you qualify, to retain your job and health insurance while you take time off from work due to a **serious health condition**. (The law also covers time off for the birth or adoption of a child.) Under the federal law, Family Medical Leave Act (“FMLA”) and the state law, California Family Rights Act (“CFRA”), you can take up to

12 weeks of **unpaid** leave with **continued health coverage** from your job if you have a serious health condition. This would include time for treatment and recuperation from breast cancer. Under these same laws your spouse, parent or adult child may also be eligible for leave in order to take care of you.

FMLA and CFRA

Both the FMLA and the CFRA are minimum standards. Employers can offer more generous leave policies in addition to FMLA and CFRA leave. Collective bargaining agreements can also offer more generous leave policies.

If you do not qualify for FMLA/CFRA leave, your employer may still choose to provide leave to you under the employer's own leave policy.

Am I protected by the Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA)?

Whether you qualify for medical leave under the FMLA and the CFRA depends on the number of employees working for your private employer, where these employees are located, and how long you have been working for your employer. All public employers are covered by the FMLA and CFRA, but employees must meet the eligibility requirements below in order to take leave under FMLA/CFRA.

-
- *You are covered if your private employer has 50 or more employees during at least 20 weeks of the current or previous calendar year, or if you work for a public employer, federal, state, or local, regardless of the number of employees; **and***
 - *The 50 employees work within 75 miles of your worksite, even if they work at different worksites; **and***
 - *You have worked for this employer for at least 12 months and worked a minimum of 1,250 hours during the immediate 12 months before taking leave. This includes part-time workers.*

The provisions of FMLA and CFRA are virtually identical except in the area of pregnancy leave and insurance benefits. Eligibility for protection is the same under both Acts. In some areas, California law is more generous than the Federal protections and offers additional benefits to California employees.

How is the 12-month period calculated?

An employer may choose one of four methods for computing the 12-month period and must apply it consistently and uniformly to all employees. The **four** methods are:

- (1) *The calendar year;*
- (2) *Any fixed 12-month period;*
- (3) *A 12-month period measured forward from the date when an employee first takes FMLA leave; and*

- (4) *A “rolling” 12-month period measured backward from the date an employee uses any FMLA leave.*

What is a “serious health condition”?

In general, an illness, injury, or physical or mental impairment that involves the following is a “serious health condition” for purposes of the FMLA or CFRA:

- *inpatient care, that is, an overnight stay in a hospital, hospice or residential care facility; or*
- *continuing treatment by a health care provider, which includes a period of incapacity of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves continuing treatment.*

How do I ask for medical leave?

There is no required format to request leave and you do not have to mention the words FMLA or CFRA. You must state the reason leave is needed, for example, for medical treatment. Your employer may have a request form for you to complete.

You must give your employer reasonable advance notice that you want to take leave, usually 30 days, if possible. You cannot be denied leave because you did not give adequate notice due to the unforeseeability of the illness or an emergency.

What medical documentation needs to be provided to my employer?

Before your request for leave is approved, your employer may ask for written communication from the health care provider caring for you or your family member. You may be asked to certify the date on which the serious health condition commenced, the probable duration of the condition if it is your own health condition, and/or an estimate of the time required to care for a family member. The employer may not require identification of the serious health condition. **In other words the employer can ask how long you will be out but cannot ask for your diagnosis.**

If the leave is for your own serious health condition, the certification must contain a statement that you are unable to perform one or more of the essential functions of your job. If the leave is requested to care for a family member, the statement must certify that the participation of a family member is necessary. The identity of the condition or diagnosis is not required. The employer must comply with all applicable laws regarding the confidentiality of medical information.

State law provides greater protection for an employee's privacy rights than the federal law. Under CFRA, if an employee requests to use her paid vacation or other paid time off to which she is entitled and chooses not to reveal to her employer the reason for the leave, an employer generally may not ask if there is a medical reason for the request. If, however, the employer refuses

the request, and the employee then provides information that the requested time off is for a CFRA-qualifying purpose, the employer may ask for more detailed information.

What rights to I have while I am on medical leave?

Remember, although the leave is **unpaid**, your employer is still obligated to maintain your existing health coverage under any group health plan while you are on CFRA or FMLA leave including family member coverage, dental coverage or mental health coverage. **This means that your employer must continue to pay your health insurance premiums while you are**

**FMLA
protects
your
health
insurance**

on leave. For example, if an employer normally pays 80% of your medical and dental insurance premiums, the employer must continue to pay 80% of these premiums while you are on medical leave.

Under FMLA, your employer is not required to pay for non-health benefits of employees on FMLA leave. Under CFRA, an employee is entitled to slightly greater protection. Therefore, if an employer in California pays for non-health benefits for employees on other unpaid leaves (for example, life insurance, disability insurance, or pensions), then the employer must continue to pay for those benefits while the employee is on CFRA

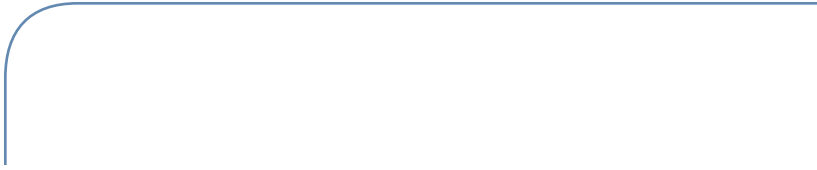
leave.

Under FMLA or CFRA, when you return from your medical leave, you are entitled to return to your previous job or to an equivalent job with the same pay, benefits and other conditions. You are not entitled to any greater reinstatement rights when you return. For example, if your job was eliminated in a lay off, your employer does not have to provide you with another job just because you are returning from medical leave. With regard to seniority, you are entitled to the same level of seniority when you return to work as you had when you went on leave. You are not entitled to accrue additional benefits or seniority during unpaid FMLA leave.

Do I have to take my leave at one time?

No. You can split up the 12 weeks into shorter time periods. Leave may be taken intermittently, or on a reduced work schedule when medically necessary for treat-

You can take your leave in small blocks of time ment of a serious health condition, for recovery from treatment for a serious health condition, or to provide care or psychological comfort to an immediate family member with a serious health condition. Instead of taking the 12 weeks all at once you can take it in smaller blocks of time, such as two hours for a medical exam one week, and two weeks to recover from chemotherapy another week.



How do the ADA and FMLA work together?

The FMLA requires an employer to grant leave to an eligible employee who is unable to perform the essential functions of her job due to a serious health condition. If you use up all of your FMLA leave and need additional leave due to a disability, you may be entitled to it under the ADA unless your employer shows it would create an undue hardship for the company. There is no undue hardship defense under the FMLA.

A note about genetic discrimination:

Through genetic research, we now know that BRAC1 and BRAC2 genes may indicate an increased risk for developing breast cancer. Having one of these genes does not necessarily mean you will ever get breast cancer. It is not a guaranteed prediction. While there are some state and federal protections that prohibit genetic discrimination and protect genetic privacy, the future consequences of having a genetic test done now are still uncertain.

FILING A CLAIM

WHAT CAN I DO IF I THINK MY RIGHTS UNDER THE DISCRIMINATION LAWS OR THE MEDICAL LEAVE ACTS HAVE BEEN VIOLATED?

Filing a Complaint to Investigate Your Claim

The Equal Employment Opportunity Commission (EEOC), a federal agency, and the California Department of Fair Employment and Housing (DFEH), a state agency, investigate complaints of violations of the ADA, FEHA, FMLA and CFRA, and have the authority to resolve complaints. You should consult with an attorney knowledgeable about discrimination or disability law prior to filing a complaint with one of these agencies in order to protect your rights.

Under federal law, charges of discrimination can be filed, free of cost, against employers with 15 or more employees, and under state law, against employers with five or more employees, or less if there is a harassment or retaliation charge.

- *Complaints against **employers with 15 or more employees** must be filed with the EEOC within 180 days after the discriminatory act.*
- *Complaints against **employers with 5 or more employees** must be filed with the DFEH within 1 year of the discriminatory act.*
- *Employees can file their complaints with both the state and federal agency by requesting that one agency “cross-file” with the other agency on either the EEOC or DFEH application. These complaints must be filed within 300 days of the last discriminatory act.*

The EEOC or DFEH will investigate your claim of discrimination or violation of FMLA or CFRA laws. If, after conducting their investigation, the EEOC or DFEH determines there is a legitimate claim of discrimination under federal and/or state law,

you will have two options:

- *authorizing the federal EEOC or California's DFEH to work out a settlement with your employer; or*
- *filing a private lawsuit against your employer.*

Right to Sue Letter

If the EEOC or DFEH are unable to resolve your complaint, they will issue a “right to sue” letter. Once either the EEOC or the DFEH has issued a “right to sue” letter, an employee may proceed to file a private lawsuit against the employer. **There are very strict deadlines for filing a lawsuit.**

Employees have 90 days after they receive the “right to sue” letter to file a federal lawsuit, and one year to file a state lawsuit. Remedies for successful claims include, but are not limited to, hiring, reinstatement, and back pay.

**EEOC
and
DFEH**

See the Resource Section for a list of the EEOC and DFEH offices throughout California and a list of statewide agencies who offer legal services and can assist you in filing a claim against an employer for violating discrimination or medical leave laws.

Filing Claims Against Other Federal Employers

The Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, investigates complaints for violations of section 504 of the Rehabilitation Act of 1973.

Complaints of discrimination against federal contractors or subcontractors with a contract of \$10,000 or more, or federally-funded employers must be filed with the Office of Federal Contract Compliance Programs within 180 days of the discriminatory act. If the OFCCP determines that there is a valid claim, it will investigate and then try to resolve the problem via negotiation. If negotiations don't work, a "right to sue" letter (see above) will be issued. Remedies for successful claims include hiring, reinstatement, and back pay.

Please see the Appendix for your local OFCCP.

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II. HEALTH INSURANCE

It may be very difficult for a woman with breast cancer to obtain new health insurance. Current state and federal laws offer greater protection for group plans and insurance obtained through large employers. If you are seeking insurance on your own, and not as part of an employer or organization group plan, you may face outright denials, limitations on important treatment you may need, and/or very expensive premiums with limited insurance coverage.

If you have health insurance, you may be concerned that your insurance will not be renewed or that your coverage will change because of your diagnosis of breast cancer. You may want to change jobs or not work for a time during your treatment, or your marriage may end. You may be worried about how this change will affect your health insurance, whether you should select COBRA coverage as an option, or what options you have from government programs if you cannot afford insurance premiums. These are all legitimate concerns that can have serious consequences to your health and well-being.

If I have insurance, can my policy be canceled or my premium be increased if I am diagnosed with breast cancer?

State and federal laws guarantee renewable health insurance coverage. If you are covered under an existing health insurance policy, either an individual or a group policy, your policy cannot be changed or canceled due to your diagnosis and treatment of breast cancer, unless:

- *you fail to pay your premium;*
- *you obtained your insurance through fraud; or*
- *any change in the terms and conditions applies to all insured under the same coverage, not just you.*

What are my rights regarding health insurance from my employer or under a group plan?

Employers are not required to offer or pay for health insurance for employees or for family coverage of employee spouses or dependents. Most large employers offer health insurance as an employee benefit. As a woman who has or had breast cancer, obtaining health insurance coverage from an employer group plan or another group plan offers you the best options.

Group Insurance Benefits

If your employer does offer group insurance benefits, your employer must follow all federal and state laws and rules in this area. An employer may not limit your coverage, charge you with extra premiums, or treat you differently from other employees with regard to your health insurance or other benefit plans such as life insurance, disability or pension plans.

- *You must be given the same insurance and employee benefits that the employer provides to all other employees.*
- *Your employer may not subject you to different terms or conditions of insurance, such as different premiums, different illness exclusions, or different waiting periods from those offered to other employees.*
- *Your employer cannot reduce the level of benefits to which you are entitled, even if such benefits would result in increased health insurance costs for your employer. Your employer may, however, make decisions about the type of insurance offered in the benefit package so long as all employees are treated alike.*
- *Your employer may offer insurance plans that limit coverage for certain procedures or treatments, even if these restrictions only affect women with breast cancer, as long as these restrictions are similarly applied to everyone.*
- *Your employer may offer a health insurance plan that limits reimbursements for certain types of drugs or procedures, even if these restrictions adversely affect*

a woman with breast cancer, as long as the restrictions are applied to all employees.

DENIALS OF COVERAGE, PRE-EXISTING CONDITIONS AND EXCLUSIONS

What is a denial?

A health insurer may legally refuse to provide you with a new individual health insurance plan based on your diagnosis of breast cancer. There is no general legal requirement that any particular health insurer provide you with a new individual health insurance policy, although there are many situations in which you may be eligible for health insurance.

What is a pre-existing condition?

A pre-existing condition is a medical condition for which you previously received medical advice, diagnosis, care or treatment.

What is an exclusionary period?

Insurance plans can restrict coverage of treatment for pre-existing conditions for limited time periods due to your medical history. This is called an “exclusionary period.” The plan must cover any **unrelated** covered services or conditions that arise once coverage has begun.

If you are enrolling in a group plan, the insurer can exclude coverage for pre-existing medical conditions for up to **6 months**.

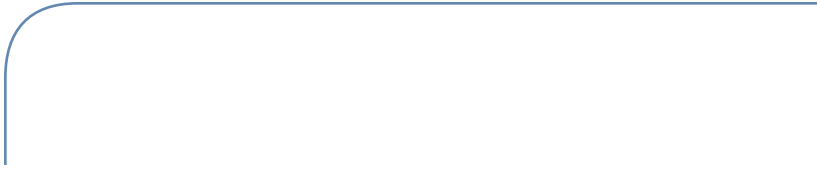
If you are enrolling in an individual plan (unless it is subject to HIPPA), the insurer can exclude coverage for pre-existing conditions for up to **12 months**.

This exclusionary period is decreased by the amount of time you have had “**creditable coverage**.” Creditable coverage is the continuous health insurance you may have had through any previous plan.

Example: Let’s say you had insurance for 8 months and then decided to join a new group plan. Even if this new plan has a 6 month exclusionary period, your new insurance carrier **cannot** refuse to treat your pre-existing condition. Why not? Because you had creditable coverage for at least 6 months before joining this new group plan.

**Try to
prevent
gaps in
coverage**

The law requires your insurance company or plan administrator to give you a certificate of creditable coverage within a reasonable time after you request it. You can show this certificate to your new insurer to prove you had creditable coverage and reduce or eliminate any exclusionary period. Other ways to show that you have had insurance coverage are: pay



stubs that show a premium deduction, explanation of benefits forms, benefit termination notice from Medicare or Medicaid, or verification by a doctor or your former health care provider that you had prior health coverage.

How far back in time can I go to show the insurance company I have 6 months of creditable coverage?

Counting your creditable coverage depends on the reason your health insurance coverage ended.

- **180 days gap in coverage**

If your previous plan ended due to job loss (but not if you were fired for misconduct) or because your employer stopped providing health insurance, and you are getting new coverage through an employer or other group plan, you can count creditable coverage from your previous plan, as far back as 180 days prior to the effective date of your new plan.

- **Not more than 62 days gap in coverage**

If the way in which your last health insurance plan ended was **not** due to loss of your employment or your employer's support of a plan as discussed above, the gap in coverage between your last and your current plan must not be more than 62 days.

Depending on your situation, if you have more than a 180 day gap in coverage or more than a 62 day gap in coverage, you will not get the benefit of creditable coverage during an exclu-

sionary period.

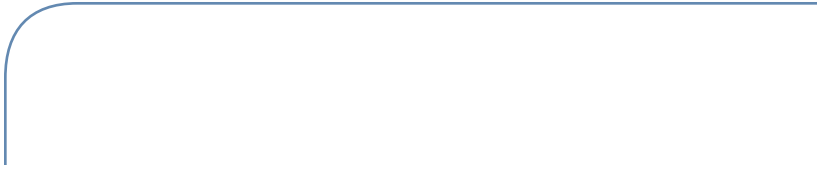
Do these rules apply to all insurance plans?

Generally, yes, with slight variations.

- **Plans that cover 1 or 2 persons:** If you are enrolling in a plan that covers 1 or 2 persons, all of the above apply. You can be required to have 6 months of creditable coverage in order to avoid the exclusionary period. Moreover, a pre-existing condition may be defined as one **identified** 12 months preceding the effective date of your new coverage even if you did not receive any treatment.
- **HMO plans:** If your new plan is through an HMO, it may require a waiting period. Under that circumstance, the HMO cannot also impose an exclusionary period.

Women’s Health and Cancer Rights Act (WHCRA)

WHCRA benefits women with breast cancer who require reconstructive surgery following mastectomies. Its purpose is to require insurance plans to cover the costs of breast reconstruction surgeries and to ban “drive-through mastectomies” (when women are not given enough time to recuperate in the hospital following a mastectomy). WHCRA protects the rights of breast cancer patients by leaving medical decision-making to doctors and their patients, rather than to the insurance companies.



Specifically, WHCRA requires group health plans and health insurance issuers, including insurance companies and HMOs, which provide benefits for mastectomies to provide coverage for:

- *all stages of reconstruction of the breast on which the mastectomy has been performed;*
- *surgery and reconstruction of the **other** breast to produce a symmetrical appearance; and*
- *prostheses and medical care for physical complications of all stages of mastectomy, including lymphedemas.*

Clinical Trials

A clinical trial is a medical research study that tests new drugs or treatments before they become widely available. These studies are used to ensure that new drugs and treatments are safe and effective for patient use. California law requires every disability insurer that provides hospital, medical, or surgical coverage in the state to also cover routine patient care costs for breast cancer treatment through a clinical trial if two conditions are met. These conditions are that the patient's doctor believes participating in the trial will be more beneficial than standard treatments and also recommends the patient join a trial.

What Happens To My Insurance Coverage that I Have from Work If I Change Employers or I Lose My Job?

If your employer qualifies, you will be able to continue your health insurance for a period of time under COBRA or Cal-COBRA, laws which are designed to extend your insurance coverage to give you time to find new coverage. Unless you have new insurance through a new job, your spouse, or a government program such as Medicare that does not have any exclusionary period due to a pre-existing condition, you **should** sign up for COBRA insurance coverage. For some guaranteed issue private insurance, you must sign up and exhaust your COBRA coverage before you can obtain a new policy.

COBRA AND CAL-COBRA

COBRA (Consolidated Omnibus Budget Reconciliation Act) applies to employers with 20 or more employees, and **Cal-COBRA** applies to employers in California with 2 to 19 employees. COBRA and Cal-COBRA entitle an employee and her qualified beneficiaries (spouse and dependents) to continue her **group** health insurance with the same benefits so long as she pays the premiums, even though she is no longer working for the same employer.

In this section, "COBRA" will refer to both COBRA and Cal-COBRA.

What makes me eligible for the continuation of insurance coverage under COBRA?

Once a “qualifying event” occurs, certain beneficiaries become eligible for COBRA for a specified amount of time. Find the qualifying event that applies to your situation on the chart below to see who is eligible and for how long.

“Qualifying Event”	Beneficiary Eligible For COBRA/Cal-COBRA	Maximum Coverage Time
<ul style="list-style-type: none"> Termination of Job (for any reason other than being fired for “gross misconduct”) Reduced work hours 	<ul style="list-style-type: none"> Employee Spouse Dependent child 	18 Months (after January 1, 2003, maximum coverage may extend to 36 months)
<ul style="list-style-type: none"> Employee entitled to Medicare Divorce or legal separation Death of covered employee 	<ul style="list-style-type: none"> Spouse Dependent child 	36 Months
<ul style="list-style-type: none"> Loss of “dependent-child” status 	<ul style="list-style-type: none"> Dependent child 	36 Months

As you can see from the chart, COBRA entitles you to up to 18 months of continued coverage on the group plan, and under some circumstances up to 36 months of continued coverage. If

you are determined disabled by Social Security Administration's standards within the first 60 days of COBRA coverage, you are entitled to an additional 11 months of coverage for a total of 29 months. The additional 11 months will

There are deadlines for COBRA

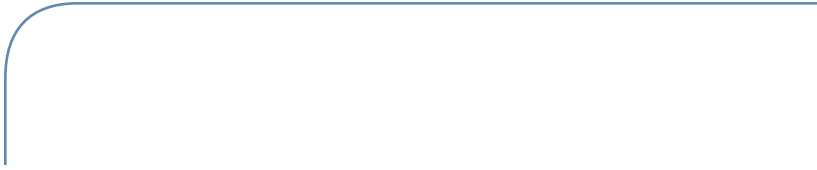
not be available automatically. You must notify your health plan administrator about your Social Security determination in order for the extended term to apply to you.

If you find **comparable coverage** while enrolled in COBRA, your COBRA benefits may end early. If your new insurance coverage has exclusionary periods for pre-existing conditions, then you are entitled to keep your COBRA coverage so that you do not have any gaps in coverage. If another qualifying event happens while you are on COBRA, this can also extend your COBRA coverage from the date of the new qualifying event.

Applying for COBRA

In order to protect your COBRA rights, if any of the "qualifying events" happen, immediately tell your employer and your insurance plan administrator.

The plan administrator must send you notification and information about your eligibility for COBRA, generally within 14 days of eligibility. You have 60 days from the date coverage would have been lost, or the date of receipt of notification,



whichever is later, to elect continuation coverage. **There are strict deadlines for signing up for COBRA and for paying the premiums.** You will not have a second chance to apply for COBRA if you do not sign up on time and pay the premium on time.

During the period of notification and application, your health benefits will continue.

Under COBRA, you will have to pay the full cost of the premium at the same group rate that your employer was paying. The premium includes both your former employer's contribution and your contribution, if any, so you may be paying more out-of-pocket money than you were paying before. The insurance plan is also allowed to charge a small administrative fee.

Senior Cal-COBRA

This is a program for California residents who are 60 or older who worked for at least five years before termination, layoff or retirement for an employer with at least 2 employees and used to have insurance under a group health plan. It provides 18 months of additional coverage for the former employee and his or her spouse once the regular COBRA or Cal-COBRA coverage has been exhausted. You may also be able to get an extension for an additional five years.

What happens to the coverage I have through my spouse if I get divorced?

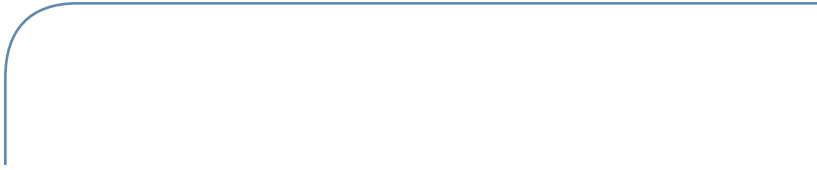
Your marital status may be important if you are receiving health insurance through your spouse (for example, if you are a full time homemaker or work full or part-time without your own employer-based coverage). If you and your spouse become legally separated or divorced, the insurance benefits **automatically end** for you if you had been receiving health insurance coverage through your spouse. Unless you have other comparable coverage in place, it is advisable to continue your coverage through COBRA, which in the case of divorce is available for 36 months. You will at some point have to seek a policy of your own, which could be difficult and costly if you have or had breast cancer.

After a divorce or legal separation, even if you do not have insurance, you can get a court order to require your former spouse to provide health benefits for your children. Dependent children can also be covered through COBRA.

ALTERNATIVE INSURANCE OPTIONS

Are domestic partners covered?

Neither state nor federal law requires insurers to provide health insurance to dependents in a domestic partnership. However,



some cities and private employers provide health insurance benefits to domestic partners of employees and require proof of coverage of domestic partners for city contracts. In general, providing such health coverage remains primarily in the employer's discretion.

If I don't have insurance, which plan is best for me?

**Insurance
Options**

If you have been diagnosed and/or treated for breast cancer, a group plan is your best option for coverage since the law provides more built-in protections and fewer exclusions for you under group plans.

If you are eligible for a certain group plan, you must be treated like others who are already in the group plan. This means you cannot be denied coverage, and any exclusionary periods for certain treatment cannot exceed 6 months.

Due to your prior medical history it is very important for you to try to avoid having gaps in your medical coverage. This means you should try to have health insurance at all times if at all possible. Gaps in coverage can lead to more difficulties and avoidable exclusions in your new coverage. This is one of the reasons to elect COBRA, if you are eligible, until you get covered under a new plan. In certain circumstances, you cannot even qualify for a new plan until you have exhausted your COBRA coverage.



What is the Health Insurance Portability and Accountability Act?

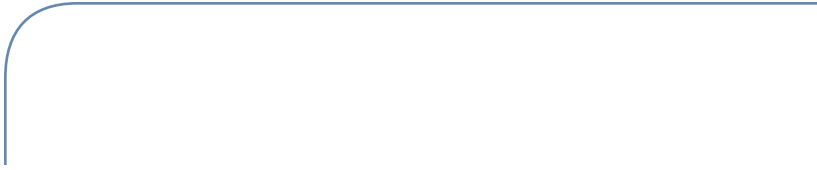
The Health Insurance Portability and Accountability Act (HIPAA) is a federal law that makes it mandatory for insurance companies to offer insurance to you if you have exhausted your COBRA coverage. All companies selling individual policies in the state must offer HIPAA protection, also called a "guaranteed issue" or "federally insured" policy. These policies must be available without regard to your health status and are guaranteed to be renewed. The policies must cover all of your medical needs, even "pre-existing conditions." California law limits the amount of the premium that can be charged, but it may still be expensive.

You are eligible for HIPAA protection if:

- *You have had a total of at least 18 months of health care coverage without more than a 62-day break in coverage;*
- *Your most recent coverage was through a group health plan;*
- *You are currently ineligible for coverage under any group health plan, Medicare or Medicaid/Medi-Cal;*
- *Your most recent coverage was not terminated because of nonpayment of dues or fraud; and*
- *You accepted COBRA or Cal-COBRA coverage and exhausted all of its benefits, or were not eligible for COBRA or Cal-COBRA.*

A note about genetic discrimination:

Under HIPAA, genetic information is one of the factors that may not be used to deny or limit insurance coverage for members of



a group health plan. HIPAA also explicitly says genetic information alone cannot be considered a “preexisting condition.”

It is important to remember that while there are some laws prohibiting genetic discrimination and protecting genetic privacy, the future consequences of having a genetic test done now are still uncertain.

What if I cannot qualify for or afford private health insurance?

There are some government and private options for you if you cannot obtain coverage under HIPAA or group medical insurance.

California Major Risk Medical Insurance Program (“Mr. MIP”)

If you are denied coverage, “Mr. MIP” is available to California residents who:

- *do not have insurance through an employer;*
- *have applied and been denied coverage through an individual plan;*
- *are no longer eligible for coverage through COBRA or Cal-COBRA; and*
- *do not qualify for government assistance.*

“Mr. MIP” coverage is provided through private insurance carriers.

“Mr. MIP” will require you to show that you have been rejected by at least one private health plan. You have been “rejected” if:

-
- *a plan refused to cover you during the past 12 months;*
 - *you used to have insurance but your plan dropped your coverage without your consent within the past 12 months; or*
 - *you were accepted into an individual plan but that plan's premiums would be above "Mr. MIP" rates.*

The premiums for "Mr. MIP" can be relatively expensive, and there can be a waiting list for up to a year. The coverage available through "Mr. MIP" is also limited to \$75,000 per year with a lifetime maximum coverage of \$750,000 and 36 months. There are no deductibles, but depending on the plan you choose, there may be a co-payment provision. If you are unable to find coverage on your own, and you can afford "Mr. MIP," you may want to enroll through "Mr. MIP." This way, you will be insured and prevent gaps in your coverage. Depending on your situation, gaps in excess of certain duration can lead to exclusionary periods.

For individuals who have used the full 36 months of "Mr. MIP" coverage, other guaranteed issue plans are available through the "Mr. MIP" program for up to 10% more than the regular "Mr. MIP" rates at an annual maximum of \$200,000.

For more information and details on how you can apply, you can reach "Mr. MIP" at (800) 289-6574.



PROBLEMS WITH INSURANCE COMPANIES

Having insurance does not necessarily mean that all your medical expenses will be covered or all treatment options will be available to you. It is important to read your policy carefully to understand what is and is not covered. Most insurance companies will not automatically pay for all aspects of treatment. Many will not pay for items or procedures that they believe are not medically necessary or that they believe are experimental, including some clinical trials.

All insurance companies are required to have a grievance procedure and generally will explain to you what you need to do to object to a decision they have made regarding your coverage. Insurance companies are also required to respond to a claim within 30 days. Patient advocates working for insurance companies may be able to help you with the grievance and appeal procedures. Many HMO's now require "binding arbitration" rather than litigation. Binding arbitration means that an individual or group of people designated as unbiased arbitrators will hear the case and both sides must adhere to the decision that they make.

You can also contact the Department of Managed Health Care toll free at (888) HMO-2219 or (877) 688-9891 (TDD).

Information about health insurance companies and complaints are handled by the California Department of Insurance Consumer Services (800) 927-4357.

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iii. GOVERNMENT PROGRAMS:

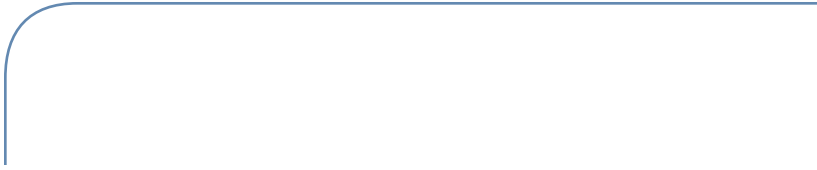
Many state and federal government programs can assist you in obtaining access to low-cost or free health care and financial assistance when you are unable to work. Please see the Resources for a list of organizations that assist clients in obtaining these benefits.

Changes in federal immigration law have made it difficult for certain non-citizens and undocumented immigrants to receive government sponsored aid. If you are not a citizen, you should consult your local legal aid office before you apply for any of the following benefits.

ACCESS TO HEALTHCARE

Medi-Cal

The federal Medicaid program provides funds for states to set up their own health insurance programs for low-income individuals. In California, this program is called Medi-Cal. You may qualify for Medi-Cal if you are low-income and have a dependent child, or if you are aged, blind or meet Medi-Cal's definition of "disabled."



Medi-Cal may provide free health care or you may pay some of your health care costs, depending on your income. If you have high medical expenses, Medi-Cal can be of great help, and may serve as catastrophic health insurance. You can apply for Medi-Cal at your local county welfare department called the Department of Public Social Services, at your local Social Security office, and through some hospitals and providers. You can pick up a form from one of these places and apply by mail if you prefer. If you qualify for Supplemental Security Income (SSI) (see below) you will also receive Medi-Cal. If you don't receive SSI, you may still qualify for Medi-Cal.

Breast & Cervical Cancer Treatment Program

The Breast & Cervical Cancer Treatment Program is a government program that provides free cancer treatment through Medi-Cal to California residents who are:

- *diagnosed with breast or cervical cancer and need cancer treatment;*
- *low-income (at or below 200% of the Federal Poverty Level); and*
- *uninsured or underinsured (underinsured means you have insurance but you would have to pay over \$750 per year in co-payments, premiums or deductibles).*

Only health care providers who are part of two particular programs can submit an application to enroll a patient into this program. These programs are Cancer Detection Programs: Every

Woman Counts (formerly known as BCEDP and BCCCP) and Family PACT. If your provider is not in one of these programs, call the free BCCTP Hotline number below to ask for a list of providers who are.

Once your doctor has submitted your application, an eligibility specialist from the State Department of Health Services will review your request and place you into either the Federal Program or the State Program.

The Federal Program

Eligibility	Scope	Duration
<i>For uninsured women under 65 who are citizens or “qualified immigrants”</i>	<i>Provides full-scope no-cost Medi-Cal benefits including dentist visits, flu shots and other health conditions</i>	<i>Lasts for the entire time you receive necessary cancer treatment and up to 3 months of retroactive coverage if you could have applied and been accepted before</i>

The State Program

Eligibility	Scope	Duration
<i>For women and men who are underinsured regardless of age or immigration status</i>	<i>Provides limited Medi-Cal benefits: only necessary treatment for breast and cervical cancer</i>	<i>Lasts for 18 months for breast cancer treatment and 24 months for cervical cancer treatment</i>



For more information on BCCTP call the free Hotline at (800) 824-0088.

Medicare

If you are 65 or older or have received Social Security Disability Insurance for 2 years, you will be eligible for Medicare. Medicare is a federally-funded medical insurance program. Medicare is not a means-tested program though there are other programs that may be able to help pay for Medicare cost-sharing (including Qualified Medicare Beneficiary and Specified Low-income Medicare Beneficiary). You may apply for Medicare through your local Social Security Administration Office (see Supplemental Resources).

Cancer Detection Programs: Every Woman Counts

(Formerly known as Breast Cancer Early Detection Program (BCEDP) and Breast and Cervical Cancer Control Program (BCCCP))

This program provides free mammograms, diagnostic tests and related breast cancer services for women 40 and older and cervical services for women 25 and older who earn less than 200% of the federal poverty level.

For more information call (800) 511-2300.

California Breast Cancer Treatment Fund (BCTF)

**Free
low cost
screening,
diagnosis
and
treatment**

If you do not have health insurance, and you do not qualify for Medi-Cal or Medicare, you may be able to obtain breast cancer treatment through the California Breast Cancer Treatment Fund. This program pays for certain breast cancer treatments for low-income women without regard to age or immigration status. Information about how to apply for BCTF is available from the regional offices of the statewide Breast Cancer Early Detection Program.

For more information call (800) 511-2300.

Free and Community Clinics and County Health Services

Counties in California are required to provide free and low cost health services to people who do not qualify for any other programs, are uninsured and cannot afford to pay for their care. In addition, there are many free and community clinics throughout the state that provide a range of free and low-cost health services to people with little or no income.



FINANCIAL ASSISTANCE

What if I'm not working and I need financial assistance?

If you cannot work, you may qualify for one or more of the following programs depending on your individual situation.

Disability Insurance

If you are covered through a private or employer-based disability insurance plan, you may be eligible for a percentage of your salary during the time when you are not able to work. Private disability payments are not taxable if you have paid for the benefit, but are taxable if your employer paid for the benefit.

State Disability Insurance (SDI)

For people who are on a medical leave of absence from work, State Disability Insurance (SDI) can be a source of weekly income. SDI is designed to provide income during a temporarily disabling condition. Generally, you can qualify if you cannot do what you normally did as your work. A certification of your disabling condition from your doctor will be required. You will also have to meet other state criteria such as accounting for a certain amount of work prior to your filing and a record of having paid into SDI through your earnings. You can apply for SDI at your local Employment Development Department (EDD).

Also, starting July 1, 2004, employees can take paid family leave under a new program for caregivers. The State Disability Insurance Program has been expanded to include a Family Temporary Disability Insurance Program which provides a portion of the employee's salary for up to six weeks for workers who take time off to care for a temporarily disabled family member.

Unemployment Insurance Benefits (UIB)

If you are not disabled by any definition under Social Security or State Disability, but you lost your job, Unemployment Insurance Benefits (UIB) may be an option for you. If you have worked for a requisite amount of time right before you apply for UIB and you are continuing to search for new

work, you may qualify to receive this weekly

benefit. If you were fired for misconduct,

you may not be able to receive money

from UIB. The amount you receive on a

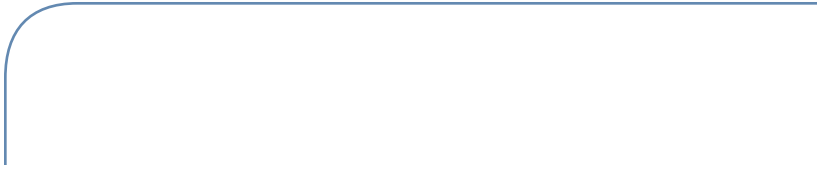
weekly basis is determined by how much you earned in the prior year and is limited in

amount. You should keep in mind that UIB only continues as long as you keep looking for work and lasts for a maximum 26 weeks, unless you qualify for limited extensions.

Financial Assistance

Social Security Disability Insurance (SSDI)

SSDI is a cash assistance program administered by the Social Security Administration. In order to qualify, you must be disabled according to Social Security guidelines and you must be



able to show that you have paid into the system for a certain amount of time. If you have been paying into the Social Security system, the Social Security Administration will have a record of your work history for these calculations. You can apply for this benefit at your local Social Security office.

According to the Social Security Administration, you are disabled if your medical records support that your mental or physical impairments will prevent you from working at any job for at least 12 continuous months, or will result in death. If your application is denied, you have the right to appeal.

Supplemental Security Income (SSI)

SSI is also a cash assistance program administered through the Social Security Administration. In order to receive SSI, however, you do not have to have a work history. You will qualify if you meet the low financial limits and you are either disabled or at least 65 years old. Like SSDI, if you are trying to qualify under disability status, you will have to meet the definition of disability according to Social Security's guidelines. You can apply for SSI at your local Social Security office. **If you qualify for SSI, you will automatically have health insurance through Medi-Cal.**

General Assistance/General Relief (GA/GR)

This is a county-administered program that provides very minimal cash benefits to support childless, unemployed adults. You

may apply through your local welfare office.

CalWORKs

CalWORKs is generally known as “welfare” and used to be called AFDC (Aid to Families with Dependent Children). In order to qualify for CalWORKs, you must have a dependent child and meet very low income and asset eligibility standards. Although CalWORKs generally has a work requirement, there are exceptions for people who are too disabled to work, but do not meet the disability standards for SSI. You may apply at your local welfare office.

Food Stamps:

The Food Stamp program is a federal program that provides coupons to purchase food for very low income families. You may apply at your local welfare office.

NOTES

IV. DEBTORS' RIGHTS

Many women with breast cancer eventually experience some financial hardship. Women with breast cancer are often unable to continue working. This means that disability income, government entitlements, or diminished savings may become the only remaining source of support.

If you fall behind in paying your bills, you may find yourself subjected to constant contact by debt collectors. The most harassing tend to be collection agencies that have bought or obtained rights to collect on your creditors' behalf. You

Creditors are prohibited from harassing you

may have outstanding bills from your medical treatment, credit card balances, or other expenses.

Federal and state laws have been enacted to protect consumers from abusive and deceptive practices in debt collection. This does not mean that you cannot be sued for what you owe, but you have the right to be protected from harassment by bill collectors.

What kinds of debt collection practices are illegal?

When an individual business tries to collect money you owe, or if the business turned over the debt to a collection agency, which is a company that specializes in collecting unpaid bills, there are laws that restrict their collection practices and protect your rights.

- *Debt collectors are not allowed to contact you at unusual or inconvenient times or places. For example, debt collectors should not contact you at work if you tell the debt collector that your employer disapproves.*
- *If you have hired an attorney to represent you, debt collectors must communicate with you only through your attorney.*
- *Debt collectors cannot threaten you with violence or threaten to put you in jail for not paying your bills.*
- *Debt collectors may not use obscene or profane language.*
- *Debt collectors should not telephone you repeatedly so as to harass you.*

How can I stop harassing practices?

If you cannot pay, give debt collectors written notice that you cannot pay and ask that they stop contacting you. After such notice has been provided, they can only contact you again to tell you that collection efforts are being terminated or that they are going on to seek the next legal step against you. **If you have been contacted by an attorney's office regarding an outstanding bill, and you want to dispute the debt, you must notify that office in writing within 30 days from when you first received a notice about the**

debt. If you do this, that attorney's office must stop all collection activities until the debt itself has been verified.

If a debt collector starts harassing you or otherwise violates these legal limits, you can sue. Your remedies can include actual monetary losses, attorney fees, and penalties of up to \$1000.

If I owe money and I cannot pay, what are my options?

Depending on your financial situation, you generally have the option of working out a payment schedule, protecting your personal assets, or filing for bankruptcy.

It is very important to communicate with your creditors about how your health and treatment are affecting your income and ability to make payments. Try to work together to negotiate a payment plan if at all possible.

How do I work out a payment plan?

If you have a steady income, and you can make some payments on your debts, you may be able to work out a payment schedule with your creditors, or defer payments during treatment. Many unsecured creditors, such as credit card companies or doctors, are willing to accept a few dollars a month in payment, rather than go through the time and expense of suing

you. Sometimes, they may agree to suspend the interest or penalties during the repayment period. Even the Internal Revenue Service (IRS) and the Franchise Tax Board will consider payment plans. Confirm all such agreements in writing by asking the other party to send you a letter outlining the understanding. If you do not receive a letter from them, send them a letter by certified mail (keeping a copy for yourself) including all terms of the agreement so there will be no misunderstandings later.

Arranging a payment plan

Organizations can help you work out a payment plan. For example, Springboard Nonprofit Consumer Credit Management provides free credit counseling and information at (800) 388-2227.

If working out a payment plan seems to be a realistic option, you should work out a budget, determine a reasonable amount which you can set aside each month, and secure the commitment of creditors in writing to accept it. Ideally, this will permit you to pay off debts over time without causing financial problems and could protect your credit rating.

If you and your creditors agree to change your payment plan in any way, make sure to get the changes confirmed in writing. If your creditors do not send you a written confirmation, send them a letter via certified mail that includes all the changes and new terms. Make sure to keep a copy of this letter for your

records as well.

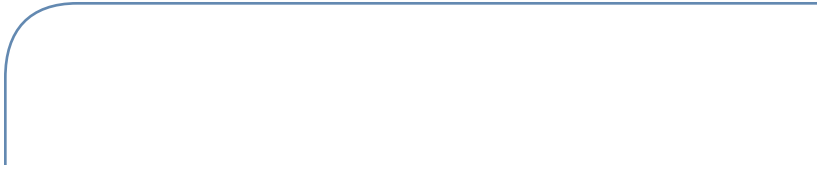
What if paying my debts would make me homeless?

California law allows you to keep creditors away from a certain minimum amount of cash and personal items. If you are very low income or government entitlements are your only source of income, and your personal items are simply the usual household goods, your assets are probably protected. This is often called being “judgment proof” because creditors cannot get a judgment against your basic living expenses and household goods.

Should I file for bankruptcy?

This is a very difficult decision and you should consult with an attorney before you choose this option. While most unsecured consumer debts can be canceled or “discharged” through a bankruptcy action, there are certain debts that bankruptcy will not affect. For instance, recent credit card debts, especially those incurred within 60 days prior to your bankruptcy filing will not be discharged. Only under certain circumstances will bankruptcy discharge what you owe the tax authorities. In addition, student loans, child support obligations and certain types of judgments will also not be discharged by filing for bankruptcy.

You should keep in mind, however, that it is possible to negoti-



ate with creditors, especially at the point of bankruptcy, who hold non-dischargeable debts. Furthermore, there are numerous exemptions to what can be liquidated or distributed to your creditors during your bankruptcy. For example, most household goods and furnishings are exempt, and you can keep a certain amount of equity in your car.

What can happen to me if I can't pay my bills?

You cannot be put in jail for not paying your doctors or credit card bills. There is no criminal liability for failing to make payments on bills. However, if you pay your bills late, or don't make payments at all, and have been unable to work out a payment schedule with your creditors, you may face the following consequences:

Repossession

If you have an item that you bought with a secured loan (like a car) the creditor may take the item back from you if you cannot pay your bill. You must be given written notice regarding the repossession, as well as the opportunity to prevent it.

Foreclosure

If you are in financial trouble with your home mortgage, your lender may take your home through foreclosure. If you are concerned about keeping your home, you may want to contact your bank or mortgage company to find out if it has a deferred payment program, or if it is appropriate to refinance to lower your monthly payment. Many lending institutions will work

with you while you are undergoing treatment and are experiencing a loss of income.

Most mortgage agreements contain provisions that allow the lender to foreclose on the property without litigation. The lender must comply with the laws regarding notice and default, and must give you the right to make up missed payments to avoid foreclosure. Most lenders will negotiate with you about terms of a deferred payment, foreclosure, and waiving any deficiency in the event of foreclosure. Get help negotiating and make sure to get all of your agreements in writing.

Lawsuits

If you are unable to secure a repayment plan, you may be sued for any outstanding debts. It is important to consult with an attorney as early as possible to protect your property, bank account and earnings.

Garnishment

A creditor may be able to get an order from a court requiring your employer to withhold a portion of your wages for repayment of your debts. Garnishment is available only to a creditor who has a valid judgment against you or your spouse, and is limited to 25% of your wages, and only if you earn more than \$15,960 per year. A court can remove the garnishment if you can show that you need all or most of your income to pay for the necessities of life, such as food, shelter and medical costs. Disability payments are not considered wages and cannot be garnished.

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v. SUPPLEMENTAL RESOURCES

The following is a list of community organizations and government offices that may assist breast cancer patients and survivors in obtaining the legal, financial, and other support services you may need throughout your illness and recovery. It is not intended to be a comprehensive list. Please check the general numbers provided below for additional resources and information.

LEGAL ASSISTANCE

For private attorney referrals, please call your local county bar association:

Alameda County: (510) 893-7160

Kern County: (661) 334-4700

Los Angeles County: (213) 243-1525

Orange County: (949) 440-6700

Sacramento County: (916) 448-1087

San Bernardino County: (909) 885-1986

San Diego County: (619) 231-0781

San Francisco County: (415) 982-1600

Ventura County: (805) 650-7599

Statewide

California Women's Law Center, Breast Cancer Legal Project

6300 Wilshire Blvd., Suite 980, Los Angeles, CA 90048
(323) 951-1041

- **Areas of Practice:** refers breast cancer patients and survivors in areas including employment discrimination, insurance, access to health care, debt collection, housing discrimination, public benefits, family law issues.
- **Geographic Area Served:** State of California
- **Language(s):** English, Spanish, others available by request

Los Angeles

Bet Tzedek Legal Services

Main Office: 145 S. Fairfax Avenue, Suite. 200, Los Angeles, CA 90036
(213) 939-0506

- **Areas of Practice:** Bankruptcy, conservatorships, consumer protection, housing, Medi-Cal rights and Social Security, unemployment insurance appeals and wills.
- **Geographic Area Served:** Los Angeles County
- **Language(s):** English, Spanish, French, German, Russian, Tagalog, Yiddish

Legal Aid Foundation of Los Angeles

(800) 399-4LAW for Client Appointments

- **Areas of Practice:** Consumer law, employment law,

immigration, family law, public benefits, and housing law.

- **Geographic Area Served:** Los Angeles County
- **Language(s):** English, Spanish, Korean

Protection & Advocacy, Inc.

3580 Wilshire Blvd., Ste. 902, Los Angeles, CA 90010

(213) 427-8747

- **Areas of Practice:** Civil rights, disability, education, employment, health, housing, and public benefits
- **Geographic Area Served:** Los Angeles, San Bernardino, Santa Barbara, and Ventura counties
- **Language(s):** English, Spanish, Korean and other languages depending on availability.

Public Counsel

601 S. Ardmore St., Los Angeles, CA 90005

(213) 385-2977

- **Areas of Practice:** Child care, conservatorships, housing law, probate, immigration.
- **Geographic Area Served:** Los Angeles County
- **Language(s):** English, Spanish, Korean

San Fernando Valley Neighborhood Legal Services

13327 Van Nuys Blvd., Pacoima, CA 91331-3099

(800) 896-3203

- **Areas of Practice:** Consumer law, housing, family law, immigration, government benefits, employment law, and health care access.
- **Geographic Area Served:** San Fernando Valley, Antelope Valley, Santa Clarita Valley, other areas of northern Los Angeles County

- **Language(s):** English. Spanish, others on request.

Western Law Center for Disability Rights

Loyola Law School, 919 S. Albany St., Los Angeles, CA 90015
(213) 736-1455

- **Areas of Practice:** Disability discrimination, health care, access issues, housing law, employment law.
- **Geographic Area Served:** Los Angeles, San Diego, and Orange counties.
- **Language(s):** English, Spanish, other languages depending on availability.

San Diego

Legal Aid Society of San Diego

110 S. Euclid Avenue, San Diego, CA 92114
(619) 262-5557

- **Areas of Practice:** Consumer law, family law, public benefits, housing and immigration law.
- **Geographic Area Served:** San Diego City and County
- **Language(s):** English, Spanish

University of San Diego Law School Legal Clinics

5998 Alcala Park, San Diego, CA 92110
(619) 574-7621

- **Areas of Practice:** Consumer rights, contract disputes, discrimination in employment, public benefits, landlord/tenant issues, immigration law.
- **Geographic Area Served:** San Diego County
- **Language(s):** English, Spanish

San Diego Volunteer Lawyer Program

625 Broadway, Suite 925, San Diego, CA 92101

(619) 235-5656

- **Areas of Practice:** Civil rights, family law, AIDS law, guardianships, special education, domestic violence prevention, immigration law.
- **Geographic Area Served:** San Diego County
- **Language(s):** English, Spanish

San Francisco/Bay Area

Bar Association of San Francisco Volunteer Legal Services Program

465 California St., Suite. 1100, San Francisco, CA 94104;

(415) 989-1616

- **Areas of Practice:** Consumer law, employment discrimination, family law, housing, and other areas of civil laws.
- **Geographic Area Served:** San Francisco County
- **Language(s):** Spanish, Chinese, TDD, other languages depending on availability.

Employment Law Center, Legal Aid Society of San Francisco

1663 Mission Street, Suite. 400, San Francisco, CA 94103

(415) 864-8848

- **Areas of Practice:** Employment law, including discrimination, plant closings, wrongful discharge, occupational health and safety, wage and hour violations and related areas.
- **Geographic Area Served:** San Francisco Bay Area

- **Language(s):** English, Spanish

Neighborhood Legal Assistance

225 Bush St., San Francisco, CA 94104

(415) 982-1300

- **Areas of Practice:** Public benefits, social security, housing, domestic violence, consumer issues.
- **Geographic Area Served:** San Francisco County
- **Language(s):** English, Spanish, Vietnamese, Cantonese, Mandarin, Tagalog

Women's Cancer Resource Center

5741 Telegraph Avenue, Oakland, CA 94609

(510) 420-7900, (888) 421-7900

• **Areas of Practice:** Offers a comprehensive lending library that provides accessible, up-to-date information on cancer treatment and women's health issues. Also offers support groups to specific groups of women with cancer, including women of color and lesbians, as well as groups for grief support and friends and family of cancer patients.

- **Geographic Area Served:** San Francisco Bay Area
- **Language(s):** English, Spanish, Vietnamese, Cantonese, Mandarin, Tagalog

IMMIGRATION

Please see the **“Legal Assistance”** listings above under **“Areas of Practice - Immigration”** for additional help with immigration related matters.

Asian Pacific American Legal Center

1145 Wilshire Blvd., Second Floor
Los Angeles, CA 90017
(213) 977-7500

California Immigrant Welfare Collaborative

926 J Street, Suite 701
Sacramento, CA 95814
(916) 448-6762

Center for Human Rights and Constitutional Law

256 South Occidental Blvd.
Los Angeles, CA 90057
(213) 388-8693

National Immigration Law Center

3435 Wilshire Blvd.
Los Angeles, CA 90010
(213) 639-3900

EMPLOYMENT DISCRIMINATION

Complaints of employment discrimination should be filed with either the federal Equal Employment Opportunity Commission or the state Department of Fair Employment and Housing. Please see the “**Legal Assistance**” listings above under “**Areas of Practice-Employment**” or call your local bar association for attorney referrals, should legal assistance be necessary.



Department of Fair Employment and Housing

(800) 884-1684

Equal Employment Opportunity Commission

Los Angeles area (213) 894-1000

San Francisco area (415) 356-5100

San Diego area (619) 557-7235

Please consult the government listings of your telephone directory for other local offices.

U.S. Department of Labor/ Office of Federal Contract Compliance Programs (OFCCP)

(888) 376-3227

INSURANCE

California Department of Insurance Consumer Services

(800) 927-4357

Provides information about health insurance companies and investigates consumer complaints.

Department of Managed Health Care

(888) 460-2219

Investigates consumer complaint about HMOs.

Patient Advocate Foundation

(800) 532-5274

Serves as an active liaison between patients and their insurer, employer and/or creditors to resolve insurance, job discrimination, and/or debt crisis matters.

GOVERNMENT PROGRAMS

There are several government programs that can assist you in obtaining access to food and low cost or free health care. You may apply for most of these programs at your local welfare office.

Please see the “**Legal Assistance**” listings above under “**Areas of Practice-Public Benefits**” for additional help with obtaining these and other public benefits.

California Breast Cancer Treatment Fund Program

(213) 549-0800

Provides free breast cancer treatment on a case-by-case basis for women who are diagnosed with primary breast disease. Applications are processed through the local BCEDP programs.

California Major Risk Medical Insurance Program (“Mr. MIP”)

(800) 289-6574

County Health Departments

California counties are required to provide free and low cost health care services to the impoverished and uninsured. See your local telephone book for county health services in your area.

Employment Development Department, State of California

(800) 480-6574



Social Security Administration

(800) 772-1213

DEBT COLLECTION

Please see the Legal Assistance listings above under **“Areas of Practice-Consumer”** for help with debt collection matters.

Springboard Nonprofit Consumer Credit Management (800) 947-3752

L.A. Free Clinic

8405 Beverly Blvd., Los Angeles, CA 90048
(323) 655-2697

BREAST CANCER ORGANIZATIONS

There are a number of breast cancer support groups and organizations operating throughout California.

For more information on locating breast cancer support groups or other assistance in your community, please call the a local community organization, religious institution or hospital, or any of the following:

American Cancer Society

(800) 227-2345

For information about cancer treatments, mammograms,

support groups and other issues related to cancer.

California Breast Cancer Organizations (CABCO)

254 East Grand Avenue, Suite 205, Escondido, CA 92025

(760) 839-1491

Website: www.cabco.org

Cancer Detection Programs: Every Woman Counts

Provides breast and cervical cancer screening and diagnostic services to underserved women. A network of partnerships collaborate with local groups to provide outreach and support for women, client support services (including counseling, language interpretation, childcare, and transportation), social marketing campaigns, and support for physicians and health professionals.

Call (800) 511-2300 for local information.

National Alliance of Breast Cancer Organizations (NABCO)

9 E. 37th St., 10th Floor, New York, NY 10016

(888) 80-NABCO

Website: www.nabco.org

National Asian Women's Health Organization (NAWHO)

250 Montgomery St., Suite 900, San Francisco, CA 94104

(415) 989-9747

Website: www.nawho.org



National Cancer Institute

Suite 3036A, 6116 Executive Blvd., MSC 8322

Bethesda, MD 20892-8322

(800) 4-CANCER

Website: www.nci.nih.gov

National Coalition for Cancer Survivorship

1010 Wayne Ave., Suite 770, Silver Spring, MD 20910

(301) 650-9127

Website: www.cansearch.org

National Health Information Center

Post Office Box 1133, Washington, DC 20013-1133

(800) 336-4797

Website: www.health.gov/nhic/

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CWLC

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Website: www.cwlc.org

