

# CCFA Fact Sheet

NEWS FROM THE IBD HELP CENTER



## EMPLOYMENT AND INFLAMMATORY BOWEL DISEASES

Having Inflammatory Bowel Disease (IBD) and a job can be challenging at times. Most individuals can work; however, some patients find they struggle to manage IBD and their job. Keep in mind there are a few federal and state laws that protect people with IBD, and require employers to implement accommodations to help one manage work and IBD.

### The Americans with Disabilities Act (ADA)

The ADA is a civil rights law that prohibits discrimination against individuals with disabilities. The purpose of the law is to make sure that people with disabilities have the same rights/opportunities as everyone else. A person is disabled under the ADA if he or she is substantially limited in performance of a major life activity, has a record of such an impairment, or is regarded as having such an impairment. The phrase “major life activity” includes, but is not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. The phrase “major life activity” also includes operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

Additionally, an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

### How can the ADA relate to an IBD patient in the workplace?

IBD is a health condition which affects every patient differently, and for some patients their IBD may be considered disabling. The ADA protects *qualified* individuals with disabilities from discrimination with respect to recruitment, hiring, promotion, training, pay, social activities, and other employment related activities. Further, the ADA requires employers to provide equal opportunities to *qualified* individuals with disabilities, and protect these individuals against discrimination and harassment. To be considered “*qualified*”, means you are able to perform the essential functions of your job *with or without* accommodation. Essential functions are the basic duties of the position you hold. If you have a mental or physical disability and you are qualified for employment, the ADA requires your employer make *reasonable* accommodations unless doing so results in an undue hardship for the employer.

### What are workplace accommodations?

A reasonable accommodation is considered any modification or adjustment to a job or work environment that enables a qualified person with a disability to apply for or perform a job. The term also refers to changes made that ensure a qualified individual with a disability has rights and opportunities in employment equal to those employees without disabilities. Most accommodations are low cost but yield considerable direct and indirect benefits to both the employer and employee. Further, information collected by the Job Accommodation Network (JAN) showed that more than half of accommodations cost employers nothing, and those that do entail a cost are a typical one-time spending of \$500.

**What reasonable accommodations can an IBD patient request from their employer?** Accommodations may be as simple as moving an employee's desk so it is near a bathroom, or as complex as restructuring a job, acquiring or modifying equipment, changing a schedule, or reassigning an employee to a vacant position that the employee is qualified for. A reasonable accommodation might also include paid or unpaid leave for hospitalizations for surgery, medical appointments, and medication infusion appointments. Keep in mind; you may not always get the accommodation(s) that you ask for. Additionally, an accommodation is considered reasonable if it does not impose an undue hardship on the employer. An undue hardship is an accommodation that would be extremely costly, would require major changes to the physical environment, nature, or operation of the business, or require a significant difficulty.

**Example: Accommodation - *Approved as Reasonable***

Michelle is a customer services representative at a busy call center and has recently been diagnosed with Crohn's disease. She often needs restroom breaks. She is going to let her employer know about her condition, and ask that her desk be moved closer to the woman's restroom and that they not penalize her for 8+ trips to the bathroom a day. She keeps up with her work, and there are 9 other customer services representatives who work there and cover the phones.

**Reasoning:** These could be considered reasonable accommodations. Since there are nine other employees present to answer the phones, they will not have to go out of their way to cover for her. Additionally, if there is space to move her desk closer to the woman's restroom, her employer should be able to accommodate.

**Example: Accommodation - *Denied as Unreasonable***

Anita is a saleswoman at a local showroom for a car dealership, and has been in an ulcerative colitis flare on and off for the past year. She has used all her paid time off and has gone through her Family Medical Leave Act (FMLA) time. She is still not well enough to get back to work at the dealership. Her attendance is essential for her job and IBD prevents her from getting to work every day. Her employer has been helpful so far, but they are saying that they can no longer accommodate her situation as she would like to try and "sell" from home.

**Reasoning:** Anita may not be protected by the ADA in this instance. If you are a car salesperson in a showroom, then your job requires your presence in the workplace. Even if you are disabled, you may not be entitled to ADA protections because you are not a "qualified" individual. Even with accommodation, Anita cannot perform the essential function of her job. If available and Anita is qualified, her employer may consider moving Anita to another role within the company, where she can work from home.

**How do I request a reasonable accommodation?**

Reasonable accommodations may be requested via written request, email or oral communication. Consider reaching out to the Human Resources department, or to your manager for company specific guidelines. It will also be necessary to turn in sufficient medical documentation to show that the request for accommodation is supported by medical evidence. Different employers will want different information. Some may be satisfied with a doctor's note and others will require examination by a specific medical facility. If an employer inquires about medical information it must be directly related to the requested accommodation and all health information should be kept confidential. Further, employees are not allowed to insist on certain accommodations because of their personal preference, and the employer may offer alternative suggestions. An employer may suggest some reasonable accommodations and discuss their effectiveness in removing the workplace barrier that is impeding the individual with a disability.

**Do patients *need* to disclose their disease to their employer?**

Not necessarily. Self disclosure of a disease or a disability is a personal choice. Should you choose to disclose information regarding a health condition, only share the information you feel comfortable sharing. However, if you are requesting accommodation under ADA or FMLA you are *required* to disclose your health condition. Do keep in mind that in job interviews employers are allowed to ask some health-related questions to determine if the employee can perform

the essential functions of a job. However, an employer cannot ask whether an employee has a chronic illness, whether the employee has a disability that would prevent them from performing the essential functions of the job even with accommodation, or whether you will need reasonable accommodations after being hired. An employer is allowed to make a job contingent on passing a medical examination but this can only happen after the company has made a legitimate job offer. In addition, these examinations can only be done if they are required by all candidates for a job.

### **What is the Family and Medical Leave Act (FMLA)?**

The Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. Under FMLA an individual can take up to 12 weeks of leave within a given 12 month time period where continued health coverage is provided. A covered employer is a private-sector employer, with 50 or more employees in 20 or more work weeks in the current or preceding calendar year. A covered employer also includes a public agency, including a local, state, or Federal government agency, regardless of the number of employees it employs; or public or private elementary or secondary school regardless of the number of employees it employs. To be eligible, employees must have worked under the covered employer for at least 12 months. The 12 months of employment do not have to be consecutive; however, employees must have provided at least 1,250 hours of service to the employer during the 12 month period immediately before the leave. Additionally three states, California, New Jersey, and Rhode Island, provide paid family medical leave through state disability insurance programs.

### **How does the FMLA specifically relate to IBD?**

Whether it is because of your own “serious health condition” or to care for a family member with IBD, you may be able to take up to 12 weeks leave under FMLA. A “serious health condition” is easier to prove than a “disability” under the ADA. If you have a health condition that requires continuing treatment over a period of time (i.e. a chronic illness) you can be considered to have a serious health condition under the FMLA. A medical certification would be needed (a doctor’s note) indicating you have a serious health condition, that requires ongoing treatment over a significant period of time and, that is likely to involve periods that will cause you to miss work. In certain situations, employees may take FMLA leave on an intermittent or reduced schedule basis, meaning an employee may take leave in separate blocks of time or by reducing the time he/she works each day or week. Keep in mind that it is the employee’s responsibility to give notice of the need for a leave. You can give notice in person or by telephone or other electronic means. This notice should include advising the employer of the anticipated timing and duration of leave. As long as you are able to return to work before exhausting the 12-week period or barring any unforeseen budgetary changes, you must be returned to the same or similar job status. This job protection is intended to reduce the stress that you may otherwise feel if forced to choose between work and family during a serious medical situation.

### **Do I qualify for Social Security Disability as an IBD patient if I find that I can no longer work?**

The determination of whether a person has a disability is not necessarily based on the name or diagnosis of the impairment, but rather it is made on a case-by-case basis. Whether a patient with IBD qualifies for disability insurance is based on their inability to work with their disease. In each individual case, the effect of the impairment on the life of the individual is considered. Some impairment’s may be disabling for some but not for others. Many IBD patients find that they may need to go through a few appeals to get a disability claim approved. The best resource there is for information about the SSDI application and decision process is the Social Security Administration [www.ssa.gov](http://www.ssa.gov).

**Additional Employment Resources:**

<a href="#">Job Accommodation Network (JAN)</a>	Provides free, expert and confidential guidance on workplace accommodations and other disability employment issues. Live phone service is available 9 a.m. to 6 p.m. ET by calling (800) 526-7234 or (877) 781-9403 (TTY). Assistance is also available in Spanish, both via phone and the <a href="#">JAN en Español</a> web page <b>Web Link:</b> <a href="http://askjan.org/">http://askjan.org/</a>
<a href="#">U.S. Equal Employment Opportunity Commission</a>	Federal agency (EEOC) that administers and enforces the employment provisions of the ADA. <b>Web Link:</b> <a href="http://www.eeoc.gov/laws/types/disability.cfm">http://www.eeoc.gov/laws/types/disability.cfm</a>
<a href="#">Reasonable Accommodation Guidelines under ADA</a>	EEOC listing of the federal guidelines for workplace accommodations. <b>Web Link:</b> <a href="http://www.eeoc.gov/policy/docs/accommodation.html#requesting">http://www.eeoc.gov/policy/docs/accommodation.html#requesting</a>
<a href="#">U.S. Department of Labor</a>	Provides information on FMLA, disability, labor laws, health plans & benefits, etc. <b>Web Link:</b> <a href="http://www.dol.gov/">http://www.dol.gov/</a>
<a href="#">U.S. Department of Labor- Guide to FMLA</a>	Employee guide to FMLA. <b>Web Link:</b> <a href="http://www.dol.gov/whd/fmla/employeeguide.pdf">http://www.dol.gov/whd/fmla/employeeguide.pdf</a>
<a href="#">ADA National Network</a>	Offer businesses, government agencies and individual's information & guidance on the ADA. <b>Web Link:</b> <a href="http://adata.org/">http://adata.org/</a>
<a href="#">Office of Personnel Management</a>	Government sponsored disability resources and job opportunities. <b>Web Link:</b> <a href="http://www.opm.gov/policy-data-oversight/disability-employment/">http://www.opm.gov/policy-data-oversight/disability-employment/</a>
<a href="#">USA Job Search</a>	Government sponsored job search engine, specifically helpful for those with disabilities. <b>Web Link:</b> <a href="https://www.usajobs.gov/">https://www.usajobs.gov/</a>
<a href="#">National Business &amp; Disability Council</a>	An employer membership organization with information about current jobs for those with disabilities. <b>Web Link:</b> <a href="http://www.viscardicenter.org/services/nbdc/job-">http://www.viscardicenter.org/services/nbdc/job-</a>
<a href="#">Disability Job Exchange</a>	Search engine for individuals with disabilities seeking jobs. <b>Web Link:</b> <a href="http://www.disabilityjobexchange.com/">http://www.disabilityjobexchange.com/</a>
<a href="#">The Jennifer Jaff Center</a>	Valuable information about employment issues and patient advocacy. <b>Web Link:</b> <a href="http://www.thejenniferjaffcenter.org/">http://www.thejenniferjaffcenter.org/</a>
<a href="#">Social Security Disability Digestive System Disability Evaluation</a>	Digestive system disability guidelines pursuant to the social security administration (SSA). <b>Web Link:</b> <a href="http://www.ssa.gov/disability/professionals/bluebook/5.00-Digestive-Adult.htm#top">http://www.ssa.gov/disability/professionals/bluebook/5.00-Digestive-Adult.htm#top</a>

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