THE AMERICANS WITH DISABILITIES ACT (ADA): KEY EMPLOYMENT RIGHTS

"It is not a question of whether or not you can do the job, but whether or not the job is accessible to you and your co-workers receptive to you."

AN INVISIBLE DISABILITY?
People with dysautonomia face a tremendous economic challenge. Some persons with dysautonomia are forced into the nightmare of red tape seeking financial assistance from the federal government. Others are trying to remain economically independent by seeking new employment, remaining in present positions or attempting to return to work. These persons with dysautonomia may benefit from some accommodation from their employers. But, dysautonomia may be an invisible disability. There may be no readily apparent need for accommodation. This may cause a misunderstanding in the work place. A person with dysautonomia may be perceived as being: lazy, unmotivated or antisocial. This may create a stressful work environment and lower the worker's chance for success.

WHAT IS THE AMERICANS WITH DISABILITIES ACT (ADA)?
Signed into law in 1990, The Americans With Disabilities Act is a federal anti-discrimination statute designed to remove barriers which prevent qualified individuals with disabilities from enjoying the same employment opportunities available to non-disabled people. There are five titles under the ADA. Title I outlaws job discrimination by employers with 15 employees or more, including private, state and local employers, employment agencies and labor unions.

IS DYSAUTONOMIA A DISABILITY?
Persons with dysautonomia may be considered disabled and protected under the ADA. The ADA definition of a "disability" is:
1. A "major physical" or "mental impairment" that "substantially limits" a "major life activity"
Or:
2. Having a "record" of an impairment, such as: educational, medical employment records.
Or:
3. Being "regarded" as having such an impairment.

WHAT DOES "SUBSTANTIALLY LIMITS A MAJOR LIFE ACTIVITY" MEAN?
1. "Substantially limits" is defined as being unable to perform a "major life activity" as an average person would.
2. "Major life activities" may include: breathing, walking, sitting, standing, lifting, reaching, performing manual tasks, caring for oneself, learning, working, etc.

A person with dysautonomia would have to meet one of the "disability" criteria to be considered disabled under the ADA. There is no legislative or official list of specific conditions that would constitute a disability. This determination is based on the disabling effect that dysautonomia has had on your ability to perform "major life activities." For example, a person with dysautonomia may have an ADA physical impairment because it substantially limits his/her ability to stand, walk or even breathe, as an average person is able to. The second and third parts of the definition may assist those persons re-entering the job market.

WHAT IS A "QUALIFIED INDIVIDUAL."
To be covered under the ADA, the individual must meet one of the ADA "disability" criteria. He/she must be qualified to perform the "essential functions" of the job with or without "reasonable accommodation."
1. A "qualified individual with a disability" must satisfy the requirements of the job. These qualifications may include: educational background, job experience, licenses, etc.
2. A "qualified individual with a disability" must be able to perform the "essential functions" of the job with or without "reasonable accommodation."
The “essential functions” are the fundamental duties/tasks of the job. They are not marginal or incidental tasks that are not directly related to the job.

WHAT IS “REASONABLE ACCOMMODATION?”
“Reasonable Accommodation” is any modification, alteration, or change to the work environment or employment practices, that an employer is able to make which allows an “otherwise qualified” applicant/employee to perform the "essential functions" of the job and share the benefits that non-disabled workers have.

Some possible general job accommodations (from JAN) are:
1. Providing or modifying equipment
2. Job restructuring or re-assignment
3. Modification of a work schedule or a part-time schedule
4. Adjusting or modifying exams, materials or policies
5. Allowed use of accrued paid or unpaid leave
6. Making the workplace accessible to/usable by the disabled

Some possible specific job accommodations (from JAN) for fatigue and weakness are:
1. Reduce or eliminate physical exertion and workplace stress
2. Schedule periodic rest breaks away from the workstation
3. Allow a flexible work schedule and flexible use of leave time
4. Allow work from home
5. Implement ergonomic workstation design
6. Provide a scooter or other mobility aid if walking cannot be reduced

Under the ADA, employers are not required to provide accommodations if they are not aware of the need. An employee must request accommodations. Employers do not have to provide accommodations that would pose an “undue hardship” as in: too costly, too extensive, too substantial or too disruptive.

AM I PROTECTED UNDER THE ADA?
To be covered under the ADA, you must be a "qualified individual with a disability" and able to perform the "essential functions" of the job with or without “reasonable accommodation.” This is not an affirmative action hiring program. An employer may hire the best qualified applicant without discriminating against a qualified person with disability. A disabled employee may be fired for being incompetent. This is a broad law that will continue to be shaped by judicial decisions. It is best that the current or prospective employee contact the Job Accommodation Network (JAN) to find how the ADA may apply to his/her particular circumstances and how best to approach an employer.

HOW DO I LEARN MORE ABOUT THE ADA AND JOB ACCOMMODATIONS?
The Job Accommodation Network (JAN) is a service of the President’s Committee on Employment of People with Disabilities. JAN is not a job placement service, but an international (US & Canada) toll-free consulting service that provides information about job accommodations and the employability of people with disabilities. The consultants at JAN can provide callers with answers to questions about the ADA, reasonable accommodations, accessibility guidelines, and available resources. The JAN website has helpful information for employers and employees.

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