

CURING THE CANCER PLEDGE: THREE LEGAL REFORMS TO SUPPORT EMPLOYEES WITH CANCER

by

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The 2023 Super Bowl featured a short film about the #WorkingWithCancer Pledge, a business initiative supporting employees with cancer, to over 100 million viewers. This film highlighted the struggles of a disease that affects a shocking 50% of individuals. It also underscored the need for a broader and more impactful approach ensuring that people with cancer have as full and equitable opportunities to work as other employees. While cancer in the workplace is increasingly common, misconceptions and stigma surrounding cancer exacerbate the gaps in legal protections for both employees with cancer and their employers. Employees with cancer need better legal protection against employment discrimination and wrongful termination. To ensure better treatment for workers facing cancer, this Article identifies impactful legal reforms and new models of private sector support. It explores the difficulties of cancer at work, delves into the complexities of nondisclosure, and discusses the challenges of balancing treatment with employment. It then proposes specific legislative changes and private measures for workplaces to better address cancer discrimination and disclosure at work. In doing so, it expands the scholarly dialogue about how legal reforms and private measures can dovetail to provide more comprehensive and much-needed support for employees with cancer.

Cancer represents a multifaceted challenge for employers and employees, extending beyond legal frameworks to encompass societal attitudes and organizational cultures. Cancer itself may limit an employee's ability to work. Beyond cancer itself, stigma and misconceptions about what people with cancer can do often impede fair treatment in professional settings. For example, fear of discrimination prevents many from disclosing their diagnoses, affecting their job security and limiting their treatment choices.

Current business efforts and laws do too little to help those with cancer at work. Existing legislation that might protect sick employees suffers from serious

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shortcomings in the unique context of cancer. Antidiscrimination laws like the Americans with Disabilities Act (ADA) and leave laws like the Family and Medical Leave Act (FMLA) do not give workers with cancer reliable and effective protection because of the episodic, expensive, and highly variable nature of the disease. The #WorkingWithCancer Pledge initiative aims to alleviate job insecurity for employees with cancer, urging larger companies to set an example as signatories. This is an admirable but insufficient means of supplementing legal protections. Business promises of support like the #WorkingWithCancer Pledge are usually not legally binding. Even when promised benefits are enforced, company insolvency may limit workers' ability to receive them. Without substantive legal changes, such commitments fail to provide the protection employees need.

This Article explores the ways in which current federal laws and private initiatives fail to meet the needs of people with cancer and their employers. It proposes three specific improvements to increase their employment opportunities and experience. The proposed reforms include (1) amending the ADA to better align legal protections with the unique challenges of cancer; (2) expanding access and benefits of the FMLA supplemented by a broader adoption of progressive state laws; and (3) enhancing business initiatives in specific ways. The private sector initiatives suggested here include adopting workplace navigators, leveraging artificial intelligence as a resource, and replicating successful cancer awareness programs in other countries like the United Kingdom. These reforms are necessary to provide practical support to employees and mitigate the impact of cancer in the workplace.

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INTRODUCTION

During the 2023 Super Bowl, which over 100 million people watched,¹ Publicis Groupe promoted its #WorkingWithCancer Pledge (the Cancer Pledge) via short film.² This film highlighted the hardships people with cancer face at work and noted that 50% of people will be diagnosed with cancer at some point in their lives.³ Although cancer is common, cancer discrimination remains prevalent in the workplace. In 1979, data revealed that 80% of blue-collar and 50% of white-collar workers with cancer had encountered some form of job discrimination relating to their cancer illness, and this problem persists today.⁴ Case law demonstrates the complexities that litigants with cancer face.⁵ Many elect not to subject themselves to the time, cost, and emotional toll of suing. Others may not understand the legal protections they do have or the benefits and resources available to them.⁶

Fear of employment discrimination compounds a documented stigma surrounding cancer disclosure at work. People refrain from disclosing cancer diagnoses for various reasons. Common considerations include the fear of misconceptions about their ability to do their job that may lead colleagues to view

¹ *Super Bowl LVII Totals More Than 113 Million Viewers, Ranks Second Most-Watched Game Ever*, NIELSEN (Feb. 14, 2023), <https://www.nielsen.com/news-center/2023/super-bowl-lvii-totals-more-than-113-million-viewers-ranks-second-most-watched-game-ever>.

² Alison Weissbrot, *Publicis Takes Working with Cancer Pledge to the Super Bowl*, PR WEEK (Feb. 2, 2023), <https://www.prweek.com/article/1812195/publicis-takes-working-cancer-pledge-super-bowl>; see Publicis Groupe, “Monday” Working with Cancer Pledge, YOUTUBE (Jan. 31, 2023), <https://www.youtube.com/watch?v=w9FHLG5mPb8>; see also WORKING WITH CANCER, <https://workingwithcancerpledge.com> (last visited Sept. 2, 2025) (describing the #WorkingWithCancer Pledge).

³ Publicis Groupe, *supra* note 2; see *Lifetime Risk of Developing or Dying from Cancer*, AM. CANCER SOC’Y, <https://www.cancer.org/cancer/risk-prevention/understanding-cancerrisk/lifetime-probability-of-developing-or-dying-from-cancer.html> (Jan. 30, 2025).

⁴ Sharon Johnson, *Job Discrimination: The Special Case of Cancer Patients*, N.Y. TIMES (Aug. 26, 1979), <https://www.nytimes.com/1979/08/26/archives/job-discrimination-the-special-case-of-cancer-patients-with-laws.html>; Christina Mattina, *Cancer-Based Workplace Discrimination Persists Despite Disability Law, Study Finds*, AJMC (Apr. 19, 2017), <https://www.ajmc.com/view/cancer-based-workplace-discrimination-persists-despite-disability-law-study-finds>.

⁵ See discussion *infra* Section II.B.

⁶ See, e.g., Melissa C. Scardaville, Kathleen M. Murphy, Feng Liu, Steven Boydston, Rhonda Robert et al., *Knowledge of Legal Protections and Employment-Related Resources Among Young Adults with Cancer*, 8 J. ADOLESCENT & YOUNG ADULT ONCOLOGY 312, 312–17 (2019) (finding that 57% of respondents were familiar with the ADA, yet many did not know that cancer could be a covered condition, and other legal protections for people with cancer at work were even less well known).

them as less capable or unreliable.⁷ Myths that cancer is contagious or that it will always result in death persist.⁸ Some value privacy, preferring to keep their health issues confidential.⁹ Many are rightfully concerned it will jeopardize their employment, especially when employment is generally at-will and with limitations to the protections existing laws provide.¹⁰ Coping with a cancer diagnosis is emotionally and psychologically challenging, so some may want to shield themselves from distressing conversations.¹¹ Often, people take vacation days for treatments or schedule procedures very early in the morning and work the same day.¹² And it is not just their own diagnoses that workers refrain from disclosing—some even fear sharing that a child is receiving cancer treatment.¹³

While some laws limit the impact of cancer discrimination in the workplace, the current legal landscape has significant limitations, exacerbating many workers' fears of disclosing their diagnoses. In recognition of this, many businesses are taking steps toward a solution through the Cancer Pledge.¹⁴ Notable signatories include giants such as Meta, Google, Microsoft, Nestlé, PepsiCo, Unilever, L'Oréal, Marriott, McDonald's, Citi, Bank of America, and Walmart—collectively benefitting nearly five million employees.¹⁵ These larger companies may set a

⁷ See Elizabeth O. Akin-Odanye & Anisah J. Husman, *Impact of Stigma and Stigma-Focused Interventions on Screening and Treatment Outcomes in Cancer Patients*, ECANCER MED. SCI., Oct. 25, 2021, at 1, 2 (surveying cancer stigma studies between 2010 and 2020); Mary Stergiou-Kita, Cheryl Pritlove & Bonnie Kirsh, *The "Big C"—Stigma, Cancer, and Workplace Discrimination*, 10 J. CANCER SURVIVORSHIP 1035, 1035 (2016).

⁸ See Karen E. Dyer, *From Cancer to Sexually Transmitted Infection: Explorations of Social Stigma Among Cervical Cancer Survivors*, 69 HUM. ORG. 321, 322, 324 (2010); *Common Cancer Myths and Misconceptions*, NAT'L CANCER INST., <https://www.cancer.gov/about-cancer/causes-prevention/risk/myths> (July 24, 2024) (addressing persistent misconceptions and explaining that “the likelihood of dying from cancer has dropped steadily since the 1990s” with “[f]ive-year survival rates for some cancers . . . now [at] 90 percent or better”).

⁹ See Catherine Pearson, *Why Some People Keep Serious Illnesses Private*, N.Y. TIMES (Jan. 10, 2024), <https://www.nytimes.com/2024/01/10/well/family/hidden-cancer-lloyd-austin.html>.

¹⁰ See discussion *infra* Section II.B; Stergiou-Kita et al., *supra* note 7, at 1035.

¹¹ See Victoria S. Blinder & Francesca M. Gany, *Impact of Cancer on Employment*, 38 J. CLINICAL ONCOLOGY 302, 304–05 (2020); Jeanne Sahadi, *A Lot of People Hide Their Cancer Diagnosis from Their Bosses. These Companies Aim to Change That*, CNN, <https://www.cnn.com/2023/01/17/success/working-with-cancer-pledge-davos/index.html> (Jan. 17, 2023, 10:54 AM); Luke Hughes, Rachel M. Taylor, Angharad E. Beckett, Oana C. Lindner, Adam Martin et al., *The Emotional Impact of a Cancer Diagnosis: A Qualitative Study of Adolescent and Young Adult Experience*, CANCERS, Mar. 29, 2024, at 1, 10.

¹² Sahadi, *supra* note 11.

¹³ See *id.*

¹⁴ See discussion *infra* Section II.A.

¹⁵ *Pledge Supporters*, WORKING WITH CANCER, <https://workingwithcancerpledge.com/impact/supporters> (last visited Sept. 14, 2025); see *Number of Full-Time Employees in the United States from 1990 to 2023*, STATISTA, <https://www.statista.com/statistics/192356/number-of-full-time-employees-in-the-united-states/>.

precedent and inspire smaller businesses to follow suit. By pledging, these companies promise “to abolish the stigma and insecurity that exist for people with cancer in the workplace,” to raise awareness regarding the cancer benefits they already have in place, and to consider ways to do more guided by a provided playbook.¹⁶ But that is the minimum promise they make. A mere commitment, without substantial change, offers publicity without the necessary protection for employees.

Cancer in the workplace gives rise to a pressing public health issue as the law’s limitations struggle to keep pace with the increasing number of individuals impacted by cancer. Hence, it is imperative to confront this issue that affects so many to help ensure workers receive fair protection at work. Existing works address the many burdens of cancer at work;¹⁷ the impact of cancer on employment status and quality of life due to financial hardship;¹⁸ and medical findings regarding the social, health, and economic outcomes facing cancer patients.¹⁹

Despite a growing body of medical literature on cancer discrimination and cancer’s impact on workers, few law-focused articles have examined the best ways in which businesses can support cancer survivors by, for example, setting minimum thresholds and analyzing the legal changes required in making these promises. There is a gap in the scholarly literature, with few employment law scholars addressing this important area of business law, especially in the past decade.²⁰ Other works predate

time-employees-in-the-usa-since-1990 (last visited Sept. 4, 2025) (calculations on file with author).

¹⁶ WORKING WITH CANCER, *supra* note 2; Sahadi, *supra* note 11; see Suzy Bashford, ‘*Stigmatisation of Cancer is Very Real’: More Needs to Be Done to Support Employees With Cancer at Work*, MAKE A DIFFERENCE (May 29, 2024), <https://makeadifference.media/mental-stigmatisation-of-cancer-is-very-real-more-needs-to-be-done-to-support-sufferers-at-work/>.

¹⁷ See Blinder & Gany, *supra* note 11, at 304–05 (discussing financial and emotional distress correlated with cancer diagnoses and work outcome trends among cancer survivors).

¹⁸ See E. Brink, M.S. Pilegaard, T.G. Bonnesen, C.V. Nielsen & P. Pedersen, *Employment Status in Cancer Patients the First Five Years After Diagnosis—A Register-Based Study*, 19 J. OF CANCER SURVIVORSHIP 1598, 1600 (2024) (investigating the impact of cancer diagnoses on employment status); Floortje Mols, Bianca Tomalin, Alison Pearce, Billingsley Kaambwa & Bogda Koczwara, *Financial Toxicity and Employment Status in Cancer Survivors. A Systematic Literature Review*, 28 SUPPORTIVE CARE CANCER 5693, 5693 (2020) (“Financial toxicity has traditionally been attributed to the rising costs of cancer care.”).

¹⁹ See Anja Mehnert, Angela de Boer & Michael Feuerstein, *Employment Challenges for Cancer Survivors*, 119 CANCER 2151, 2153 (2013) (discussing employment challenges for cancer survivors); Danbee Kang, Ka Ryeong Bae, Ho Young Kim, Yeojin Ahn, Nayeon Kim et al., *Changes in Working Status After Cancer Diagnosis and Socio-demographic, Clinical, Work-related, and Psychological Factors Associated with It*, BMC CANCER, Aug. 25, 2022, at 1, 2 (exploring the impact of a cancer diagnosis at work).

²⁰ See Peter Blanck, *Disability-Inclusive Employment, Cancer Survivorship, and the Americans with Disabilities Act*, 16 J. CANCER SURVIVORSHIP 142, 142 (2022) (examining “disability-inclusive employment policy and practice, cancer survivorship, and the Americans with Disabilities Act . . . including new questions arising in light of COVID-19, such as the nature of

the 2008 enactment of the Americans with Disabilities Act Amendments Act (ADAAA) that drastically changed cancer disability legislation by expanding the meaning of “disability.”²¹ Similar works focusing on the law around cancer at work address this issue for nations outside the United States and beyond the scope of U.S. workers.²² Although the medical literature addresses cancer’s impacts on workers, no legal scholars have yet discussed the shortfalls of this newly launched pledge alongside the gaps in existing U.S. law or developed specific suggestions for ways to address the needs of employees with cancer, as well as employers, more effectively.

The two main forms of workplace relief that have been available to cancer survivors in the United States are (1) entitlements to time off and (2) antidiscrimination provisions. The Department of Labor’s resource site on “Workplace Protections for Individuals Impacted by Cancer,” for example, divides its advice between “Taking Time off From Work” and “Protections Against Discrimination.”²³ In each of those two categories, cancer survivors can find more information about state and federal benefits as well as employer-sponsored initiatives that may not be required by law. These two types of resources are necessary but not sufficient to support the full range of potential employment opportunities for people with cancer. Each also has significant limitations. Leave is often unpaid, while antidiscrimination provisions do little to protect people from

disability disclosure, workplace accommodations and remote work, emerging workplace health surveillance technologies, and inclusive employment practices for cancer survivors”); Ann C. Hodges, *Working with Cancer: How the Law Can Help Survivors Maintain Employment*, 90 WASH. L. REV. 1039, 1062–63, 1069–70 (2015) (examining how the law can help people with cancer at work and improvements to the legal system in 2015); Barbara Hoffman, *The Law of Intended Consequences: Did the Americans With Disabilities Act Amendments Act Make It Easier for Cancer Survivors to Prove Disability Status?*, 68 N.Y.U. ANN. SURV. AM. L. 843, 875 (2013) (discussing the Americans with Disabilities Act Amendments Act (ADAAA) and its impact on cancer survivors at work in and whether it is a covered disability).

²¹ See Barbara Hoffman, *Cancer Survivors at Work: A Generation of Progress*, 55 CA: CANCER J. FOR CLINICIANS 271, 274–79 (2005) (discussing legal recourse for cancer discrimination). See generally Susan M. Gibson, Note, *The Americans with Disabilities Act Protects Individuals with a History of Cancer from Employment Discrimination: Myth or Reality?*, 16 HOFSTRA LAB. & EMP. L.J. 167–70 (1998) (discussing federal legislation under the Americans with Disabilities Act (ADA) prior to the 2008 ADAAA enactment).

²² There are limited international works on this topic. See, e.g., Charles Maimela, *Is Discriminating Against Employees Living with Cancer in the Workplace Justified?*, 54 DE JURE L.J. 205, 205 (2021) (exploring discrimination based on cancer and recommendations for cancer at work in South Africa’s legal system); Alain Paraponaris, Luis Sagaon Teyssier & Bruno Ventelou, *Job Tenure and Self-Reported Workplace Discrimination for Cancer Survivors 2 Years After Diagnosis: Does Employment Legislation Matter?*, 98 HEALTH POL’Y 144, 145, 153 (2010) (discussing reported discrimination for French cancer survivors in the labor force).

²³ *Workplace Protections for Individuals Impacted by Cancer*, U.S. DEP’T OF LAB., <https://www.dol.gov/agencies/whd/fmla/workplace-protections-for-individuals-cancer> (last visited Sept. 14, 2025).

workplace stigma and the resulting shame that often leads to a reluctance even to disclose a cancer diagnosis.²⁴

To explore the unique issue of cancer discrimination in the workplace, this Article will first examine the data demonstrating the prevalence of cancer diagnoses at work and the reasons many choose not to disclose. The effects of balancing treatment with employment will be explored. This Article then delves into the clear gaps in the existing legal protections, with particular attention to the new Cancer Pledge and the lack of adequate legal force to practically address cancer on the job. An analysis of existing federal and state laws, alongside business practices, will lead to proposed legislation and/or a required minimum threshold for workplace benefits addressing cancer disclosure and discrimination. This will ensure that employers include provisions in employment agreements that offer a binding commitment rather than an elusive promise.

We propose a new tripartite approach to supporting people with cancer in the workplace. The first element of this approach focuses on reforming existing antidiscrimination legislation and agency guidance to address the specific problems that people with cancer face in the workplace. The second element focuses on revising the laws that provide for leaves of absence for people with cancer. In both elements, legislative amendments should focus on clarifying language, reducing the burden of proof, and expanding protections to encompass various aspects of cancer treatment and recovery.

In addition to reforming the existing provisions for leave and strengthening antidiscrimination laws as applied to people with cancer, we support the development of a third and more proactive type of resource. This third resource would promote healthy working lives for people with cancer by enhancing workplace supports so that more people with cancer can maintain employment as their health allows. While the Americans with Disabilities Act (ADA) already requires employers who fall under its coverage to provide reasonable accommodations to people with cancer, we support a more comprehensive public/private approach to advancing employment opportunities for cancer survivors. This more comprehensive approach to supporting workers with cancer includes the active promotion of cancer navigators in the workplace, exploring the use of artificial intelligence tools to help develop reasonable accommodation plans, and adapting cancer education programs currently in use in the United Kingdom for U.S. workplaces.

To support employees with cancer comprehensively, a multidimensional approach is required. Multidisciplinary interventions can be effective in helping

²⁴ See Stergiou-Kita et al., *supra* note 7, at 1036–37, 1045–46; *Quick Guide to State Paid Family Leave Programs*, TRIAGE CANCER, <https://triagecancer.org/quick-guides/state-paid-family-leave> (Jan. 2024); *Employment State Laws: Taking Time Off*, TRIAGE CANCER, <https://triagecancer.org/state-laws/taking-time-off> (July 2025).

people with cancer return to work sooner than they would have otherwise and in improving their quality of life.²⁵ Reforming existing laws, providing stronger institutional support, and developing better education and awareness campaigns targeted at employers and coworkers are all crucial parts of integrating people with cancer in the workplace.

I. CANCER HAS A CRITICAL IMPACT ON THE WORKFORCE

The potential consequences of cancer on the U.S. workforce are devastating given the prevalence and unpredictability of this disease. Nearly half of the people diagnosed with cancer are old enough to be working full time. Of the people who are diagnosed with cancer in the United States, 45% are between the ages of 20 and 64, the traditional working ages.²⁶ People with cancer can sometimes continue working, but many do not; only 54% of working-age cancer survivors are working full time, according to one study.²⁷ Ceasing to work, even if not permanently, may alter an employee's career prospects.²⁸ The normalcy and security of employment balances with the impact of treatment, creating a complicated environment for those with cancer at work.²⁹ With so many workers impacted, cancer's significance in the workplace is evident, yet the existing business initiatives and legal landscape are inadequate to protect workers.

Cancer is not a homogeneous disease. There is tremendous variety among cancers and the ways in which each affects the body.³⁰ Because cancer encompasses such a wide range of specific variations and outcomes, it is impossible to generalize about the consequences of any individual employee's cancer on their ability to work. Some people with cancer will be able to work without significant limitations. Many others will experience physical limitations on how, when, and how long they are able to work.³¹ Those who remain employed are more likely to miss work, to work

²⁵ See Angela G.E.M. de Boer, Sietske J. Tamminga, Julitta S. Boschman & Jan L. Hoving, *Non-Medical Interventions to Enhance Return to Work for People with Cancer*, COCHRANE DATABASE SYST. REV., Mar. 5, 2024, at 1, 22.

²⁶ See NAT'L CANCER INST., SEER CANCER STATISTICS REVIEW 1975–2016, TABLE 1.10: AGE DISTRIBUTION (%) OF INCIDENCE CASES BY SITE, 2012–2016, https://seer.cancer.gov/archive/csr/1975_2016/results_merged/topic_age_dist.pdf.

²⁷ See Matthew P. Banegas, Gery P. Guy Jr., Janet S. de Moor, Donatus U. Ekwueme, Katherine S. Virgo et al., *For Working-Age Cancer Survivors, Medical Debt and Bankruptcy Create Financial Hardships*, 35 HEALTH AFFS. 54, 56 (2016).

²⁸ Hodges, *supra* note 20, at 1047.

²⁹ See *id.*

³⁰ See Angela G.E.M. de Boer, Astrid de Wind, Pieter Coenen, Fenna van Ommen, Michiel A. Greidanus et al., *Cancer Survivors and Adverse Work Outcomes: Associated Factors and Supportive Interventions*, 145 BRIT. MED. BULL. 60, 62 (2023) (describing disparate adverse work outcomes across different forms of cancer).

³¹ *Id.* at 63–64.

fewer hours, and to describe work limitations than their colleagues without cancer.³² Some will not return to work at all; across a range of cancer types, about 40% of cancer survivors do not return to work after their treatment ends.³³

Cancer can have many negative effects on employees' work outcomes. Some are a result of a physical inability to complete tasks, while others stem from workplace discrimination and stigma fueled by myths and misinformation, all contributing to fear of disclosure and the ineffectiveness of some employers' attempts to provide reasonable accommodations or fulfill employee benefits.³⁴

And cancer impacts not just individuals and employers, but the economy as well. The National Institutes of Health's National Cancer Institute estimates the national cost of cancer at \$208.9 billion in 2020.³⁵ Studies found that productivity loss is an important component of the overall cancer burden and noted both direct and indirect costs associated with cancer.³⁶ For instance, "[b]illions of work days are lost or affected by cancer."³⁷ Loss of income also contributes to medical bankruptcy in the United States.³⁸ While costs vary, studies show a significant impact both on those diagnosed with cancer at work and society at large.³⁹

A. Cancer Can Affect Employees' Physical and Psychosocial Ability to Work

Numerous studies describe the various obstacles encountered by workers with cancer, with working-age survivors often experiencing changes in their employment due to their diagnosis.⁴⁰ These changes may include extended leave from work,

³² Chia Jie Tan, Samantha Yin Ching Yip, Raymond Javan Chan, Lita Chew & Alexandre Chan, *Investigating How Cancer-Related Symptoms Influence Work Outcomes Among Cancer Survivors: A Systematic Review*, 16 J. CANCER SURVIVORSHIP 1065, 1065 (2022).

³³ *Id.*

³⁴ See de Boer et al., *supra* note 30, at 63–64.

³⁵ *Financial Burden of Cancer Care*, NAT'L CANCER INST.: CANCER TRENDS PROGRESS REP., https://progressreport.cancer.gov/after/economic_burden (Apr. 2025).

³⁶ See, e.g., Ze Cong, Oth Tran, James Nelson, Monica Silver & Karen Chung, *Productivity Loss and Indirect Costs for Patients Newly Diagnosed with Early- Versus Late-Stage Cancer in the USA: A Large-Scale Observational Research Study*, 20 APPLIED HEALTH ECON. & HEALTH POL'Y 845, 846 (2022).

³⁷ Hodges, *supra* note 20, at 1045.

³⁸ See David U. Himmelstein, Deborah Thorne, Elizabeth Warren & Steffie Woolhandler, *Medical Bankruptcy in the United States, 2007: Results of a National Study*, 122 AM. J. MED. 741, 743 (2009) (finding that 62% of bankruptcies in 2007 were caused, at least in part, by medical reasons, including medical costs, loss of income, and job loss).

³⁹ Hodges, *supra* note 20, at 1045–46 (listing micro- and macroeconomic costs of cancer found in studies).

⁴⁰ Larissa Neklyudov, Grace B. Campbell, Kathryn H. Schmitz, Gabriel A. Brooks, Anita J. Kumar et al., *Cancer-Related Impairments and Functional Limitations Among Long-Term Cancer Survivors: Gaps and Opportunities for Clinical Practice*, 128 CANCER 222, 222 (2022).

altered work schedule, changing to a less demanding job, and transitioning from full-time to part-time employment.⁴¹ Working cancer survivors frequently have increased absenteeism, reduced work ability, and decreased productivity compared to those without a history of cancer.⁴² Cancer survivors are at an elevated risk of job loss and frequently contend with persistent symptoms and functional limitations that impact their ability to work.⁴³ This employment loss not only poses financial challenges for the individual cancer survivors but also carries societal implications, contributing to healthcare debt in the United States.⁴⁴ This problem is likely to get worse rather than better, as the current population of 18 million cancer survivors is projected to rise in the coming decades.⁴⁵

The impact of cancer on employees varies depending on the type and stage of cancer, treatment methods, and the individual's overall health and support system.⁴⁶ Some cancer treatments, particularly chemotherapy, can lead to cognitive impairments affecting memory, concentration, information processing, and other tasks that require mental acuity.⁴⁷ There are significant adverse work outcomes varying by cancer type. For example, lung and brain tumor, gastrointestinal, and female reproductive cancer survivors have the highest risk of these adverse outcomes, while prostate and testicular cancer survivors have a risk similar to other forms of cancer.⁴⁸

Despite advances in medical treatment that promise to increase survivorship rates, many people continue to experience significant physical, psychological, and social challenges related to cancer and its treatment. Scholars have found that even after remission, cancer survivors are far less likely to be employed full time than

⁴¹ *Id.*

⁴² Mehnert et al., *supra* note 19, at 2153.

⁴³ See Tania Islam, Maznah Dahlui, Hazreen Abd Majid, Azmi Mohamed Nahar, Nur Aishah Mohd Taib et al., *Factors Associated with Return to Work of Breast Cancer Survivors: A Systematic Review*, BMC PUB. HEALTH, Nov. 24, 2014, at 1, 10–11.

⁴⁴ See Adrienne M. Gilligan, David S. Alberts, Denise J. Roe & Grant H. Skrepnek, *Death or Debt? National Estimates of Financial Toxicity in Persons with Newly-Diagnosed Cancer*, 131 AM. J. MED. 1187, 1187–88, 1191 (2018).

⁴⁵ *Cancer Treatment and Survivorship Facts & Figures*, AM. CANCER SOC'Y, <https://www.cancer.org/research/cancer-facts-statistics/survivor-facts-figures.html> (last visited Sept. 4, 2025).

⁴⁶ See de Boer et al., *supra* note 25, at 23 (discussing range of adverse outcomes and associated cancer type and stage).

⁴⁷ See Angela G.E.M. de Boer, Taina Taskila, Anneli Ojajärvi, Frank J.H. van Dijk & Jos H.A.M. Verbeek, *Cancer Survivors and Unemployment: A Meta-Analysis and Meta-Regression*, 301 JAMA 753, 753 (2009).

⁴⁸ de Boer et al., *supra* note 30, at 62; see, e.g., Vanette McLennan, Dominika Ludvik, Suzanne Chambers & Mark Frydenberg, *Work After Prostate Cancer: A Systematic Review*, 13 J. CANCER SURVIVORSHIP 282, 285–86 (2019).

healthier control group members.⁴⁹ Another study revealed that cancer survivors were twice as likely to say that they could not work or could only do limited types of work because of health problems in the first year after their diagnosis.⁵⁰ Even more than 11 years after their diagnoses, cancer survivors had almost twice the number of work absences as a control group.⁵¹

Being unemployed, in turn, correlates with significant physical problems. A comprehensive study found that unemployment among cancer survivors was “significantly associated” with “pain, fatigue, physical weakness . . . sadness, [and] poor concentration.”⁵² People who experienced side effects from pain medications “were four to five times less likely to be currently working than those without side effects.”⁵³

Psychosocial and cognitive challenges add to cancer’s emotional toll—including anxiety, depression, and stress—which can hinder job performance. Additionally, the time commitment required for appointments with healthcare providers, known as absenteeism, and the costs associated with them can further complicate matters.⁵⁴ Because there is a reciprocal effect of absenteeism on anxiety and stress, being at work can support a sense of normalcy and social connection that is helpful for overall well-being.⁵⁵

While side effects such as pain, nausea, and fatigue are common for cancer survivors, they are not necessarily indicative of employability. A survey of studies has linked cognitive impairment, fatigue, and depression to a reduced ability to complete work, rather than to unemployment per se.⁵⁶ In fact, one survey’s authors were surprised to find that only a third of studies purporting to evaluate the relationship between work status and fatigue or depression showed significant associations between them.⁵⁷ The availability of social support networks and therapeutic resources may make it easier for cancer survivors with fatigue and depression to work.⁵⁸

⁴⁹ Blinder & Gany, *supra* note 11, at 302.

⁵⁰ See Brink et al., *supra* note 18, at 1605.

⁵¹ See K. Robin Yabroff, William F. Lawrence, Steven Clauser, William W. Davis & Martin L. Brown, *Burden of Illness in Cancer Survivors: Findings from a Population-Based National Sample*, 96 J. NAT’L CANCER INST. 1322, 1328 (2004).

⁵² Paul A. Glare, Tanya Nikolova, Alberta Alickaj, Sujata Patil & Victoria Blinder, *Work Experiences of Patients Receiving Palliative Care at a Comprehensive Cancer Center: Exploratory Analysis*, 20 J. PALLIATIVE MED. 770, 771–72 (2017).

⁵³ *Id.*

⁵⁴ See Amye J. Tevaarwerk, *Helping Cancer Survivors Return to Work*, 19 J. NAT’L COMPREHENSIVE CANCER NETWORK 662, 663 (2021).

⁵⁵ *Id.* at 662.

⁵⁶ Tan et al., *supra* note 32, at 1074.

⁵⁷ *See id.*

⁵⁸ *See id.*

B. *Cancer Discrimination, Myths, and Stigma Suppress Employee Disclosure*

Symptoms, both physical and mental, directly impact workers. Despite the importance of work stability for people with cancer, the myths, stigma, and reasonable fear of discrimination make it difficult for many people to disclose their cancer diagnosis and treatment at work. Societal misperceptions play a pivotal role in shaping attitudes toward cancer in the workplace.⁵⁹ Approximately half of all people with cancer are afraid to tell their employers that they have cancer.⁶⁰ Misconceptions about the disease often lead to fear, discomfort, and prejudice among colleagues and employers.⁶¹

1. *Cancer Survivors Disproportionately Experience Discrimination at Work*

People who work during treatment or return to work afterward may encounter overt or subtle workplace discrimination. Some coworkers may assume that the person with cancer's productivity will decrease. Discriminatory actions include demotions without legitimate reason, passing over employees for new opportunities, withholding earned promotions, unjustified inflexibility for medical appointments, and leaving employees out of trainings and meetings.⁶² Cancer survivors fear discrimination in hiring as well as bullying, harassment, and an inability to secure the workplace accommodations they need.⁶³

These fears are justified. Approximately a quarter of people with cancer report some kind of discrimination at work, notwithstanding the antidiscrimination protections that the ADA should afford.⁶⁴ When people with cancer experience common side effects of treatment—including nausea and fatigue—that would generally require time off from work duties, they feel both compelled to continue working and hesitant about asking for accommodations.⁶⁵ The fear of an adverse employment action is likely to weigh against disclosing their diagnosis or their current health status.

Employees who have cancer and another concurrent health problem are even more likely to file employment discrimination claims than people who have no such comorbidities.⁶⁶ They have more work-related challenges than other employees do. Moreover, their employment discrimination claims are just as likely to be resolved

⁵⁹ Akin-Odany & Husman, *supra* note 7, at 13.

⁶⁰ WORKING WITH CANCER, *supra* note 2.

⁶¹ See Stergiou-Kita et al., *supra* note 7, at 1036–37.

⁶² See *id.* at 1036–37.

⁶³ See Akin-Odany & Husman, *supra* note 7, at 13.

⁶⁴ Blanck, *supra* note 20, at 145.

⁶⁵ *Id.*

⁶⁶ Amanda K. Gehrke & Michael Feuerstein, *Cancer, Comorbidity and Workplace Discrimination: The US Experience*, EUR. J. CANCER CARE, Aug. 2017, at 1, 4.

in their favor, and against the employer, as employment discrimination claims raised by patients without comorbidities.⁶⁷

2. Cancer Myths and Misinformation Fuel Stigma Against Cancer Survivors

Concerns about stigmatization also disproportionately affect cancer survivors. Stigma has been defined as “a discrediting characteristic that reduces a person ‘from a whole and usual person to a tainted, discounted one.’”⁶⁸ Comprehensive studies show that cancer survivors are more likely than other people to believe that cancer is a highly stigmatized illness in the workplace.⁶⁹ According to one of these studies, two related elements give rise to this stigma. The first is the misconception that cancer is always fatal.⁷⁰ The second is the expectation that cancer will disrupt the work environment, for example, because the cancer survivor will be less productive, less reliable, and more expensive due to accommodations that may be required.⁷¹

People with different kinds of cancer experience stigma at work in different ways. For example, women with breast cancer report being expected to be positive and “fight” their cancer, in some cases feeling obligated to downplay their suffering to present an optimistic front.⁷² Lung and cervical cancer survivors, in contrast, experience higher incidences of shame and blame because of those cancers’ associations with smoking and sexually transmitted diseases, respectively.⁷³

Oncology scholars have been studying the impact of cancer-related stigma for years,⁷⁴ but this stigma’s impact is not yet a common subject among employment law scholars. This may be because legal scholars often view problems in terms of the laws available to remedy them. Employment laws such as the ADAAA tend to focus on objectively identifiable actions of workplace discrimination, rather than the more subjective impact that perceived stigma, embarrassment, and personal discomfort may have on a cancer survivor.⁷⁵

⁶⁷ See *id.* at 5.

⁶⁸ Akin-Odanye & Husman, *supra* note 7, at 1 (quoting ERVING GOFFMAN, STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY 3 (1963)).

⁶⁹ See, e.g., Stergiou-Kita et al., *supra* note 7, at 1035.

⁷⁰ *Id.* at 1041.

⁷¹ *Id.*

⁷² See Diane Trusson & Alison Pilnick, *Between Stigma and Pink Positivity: Women’s Perceptions of Social Interactions During and After Breast Cancer Treatment*, 39 SOCIO. HEALTH & ILLNESS 458, 460 (2017).

⁷³ See Stefano Occhipinti, Jeff Dunn, Dianne L. O’Connell, Gail Garvey, Patricia C. Valery et al., *Lung Cancer Stigma Across the Social Network: Patient and Caregiver Perspectives*, 13 J. THORACIC ONCOLOGY 1443, 1444 (2018); Dyer, *supra* note 8, at 322.

⁷⁴ Akin-Odanye & Husman, *supra* note 7, at 2 (surveying cancer stigma studies between 2010 and 2020).

⁷⁵ See Valarie K. Blake & Mark L. Hatzenbuehler, *Legal Remedies to Address Stigma-Based Health Inequalities in the United States: Challenges and Opportunities*, 97 MILBANK Q. 480, 491–92 (2019).

Stigma has too significant an effect on the visibility of cancer in the workplace, and therefore on the possibility of remedial action after discrimination, for legal scholars to ignore. A 2021 survey reviewing a decade of cancer stigma studies found that stigma associated with cancer and cancer survivors is pervasive across the general public, advertisers, health care providers, policy makers, and the friends and family members of people with cancer.⁷⁶ People who experience this stigma may find themselves socially isolated, neglected and excluded from social events and subject to verbal abuse.⁷⁷ Such experiences have been “copiously described” in studies.⁷⁸ These stigmas can adversely affect the mental health and productivity of employees facing cancer.

Cancer misinformation contributing to these stigmas is widespread, especially online. In one 2023 study, between 30% and 80% of social media posts about cancer were found to contain misinformation in general, with a higher incidence of misinformation in posts relating to cancer treatment than in other kinds of cancer posts.⁷⁹ More than half of the people surveyed saw cancer misinformation online, and over 70% of people with cancer saw that misinformation.⁸⁰ Over 70% of survey participants thought that the cancer misinformation they read online was true at least some of the time.⁸¹ Therefore, a great deal of false information about cancer, seen by a significant portion of the public, may be exacerbating the stigma that cancer survivors face.

3. Employees with Cancer Fear Disclosure but Need Work Stability

Misinformation, stigma, and fears of discrimination can discourage people with cancer from disclosing their illness and getting the help they need. As one survey’s authors noted, “The notion of cancer as a terrible disease that is linked with death, dread, doubt, distress, shame and blame lead[s] to disease concealment to avoid being judged, delayed treatment and use of traditional healers rather than biomedical treatment.”⁸² Because people are likely to encounter bias when they disclose their cancer diagnoses, it is unsurprising that many cancer survivors hesitate to make that disclosure.

Yet work stability is vital for people with cancer. One of the most important forms of support available to them is the opportunity to continue working or return to work. Working can provide a sense of normalcy and stability during a physically

⁷⁶ See Akin-Odanye & Husman, *supra* note 7, at 13–14 (citations omitted).

⁷⁷ *Id.* at 14.

⁷⁸ *Id.*

⁷⁹ See Allison J. Lazard, Sydney Nicolla, Rhyan N. Vereen, Shanetta Pendleton, Marjory Charlot et al., *Exposure and Reactions to Cancer Treatment Misinformation and Advice: Survey Study*, JMIR CANCER, July 28, 2023, at 1, 2.

⁸⁰ *Id.* at 7–8.

⁸¹ *Id.* at 8.

⁸² Akin-Odanye & Husman, *supra* note 7, at 15 (footnotes omitted).

and emotionally challenging time.⁸³ Conversely, a lack of stable employment has been shown to correlate with both short-term and long-term distress in cancer survivors.⁸⁴ Studies have shown that cancer survivors who go bankrupt were almost twice as likely to die within the study period as other cancer survivors.⁸⁵

The consequences of being able to return to work after a cancer diagnosis can have a reciprocal effect on stigmatization. A person with cancer who can resume work is more likely to be able to dispel the perception, either internalized or externalized, that she is helpless, parasitic, or blameworthy. Conversely, a cancer survivor who cannot return to work, even in a limited capacity, is more likely to feel helpless, even if she was a conscientious and successful worker before her diagnosis.⁸⁶ The fear resulting from myths of contagiousness or inevitable incapacitation due to cancer treatment tend to discourage cancer survivors from disclosing their illness.⁸⁷

While the reasonable fear of discrimination and stigma often lead workers not to disclose, the response to disclosure is often inadequate. In fact, people with cancer are more likely than others with a documented disability to experience a failure of accommodation in the workplace. People with chronic health conditions like cancer have a higher incidence of filing ADA complaints asserting a failure to make reasonable workplace accommodations.⁸⁸ It is difficult then to disclose cancer at work because of this rational fear of discrimination and as the necessary accommodations do not always result. As described in Part II below, the unpredictability with which legal protections apply to people with cancer suggests that the fear of disclosure is reasonable and warranted under the existing legal landscape.⁸⁹

II. EXISTING BUSINESS INITIATIVES AND U.S. LAWS UNDERSERVE WORKERS WITH CANCER

A lack of effective workplace support and impractical legal protections compound the significant challenges employees face in disclosing cancer diagnoses at work. This next Part explores the limitations of lack of contractually binding obligation in business initiatives like the Cancer Pledge. Shortcomings in federal

⁸³ Blinder & Gany, *supra* note 11, at 302.

⁸⁴ See *id.* at 304–05.

⁸⁵ See Scott D. Ramsey, Aasthaa Bansal, Catherine R. Fedorenko, David K. Blough, Karen A. Overstreet et al., *Financial Insolvency as a Risk Factor for Early Mortality Among Patients with Cancer*, 34 J. CLINICAL ONCOLOGY 980, 983 (2016).

⁸⁶ Akin-Odanye & Husman, *supra* note 7, at 15.

⁸⁷ See *id.* at 2, 15.

⁸⁸ Blanck, *supra* note 20, at 145 (“Currently, individuals with chronic health conditions such as cancer assert among the highest rates of ADA complaints regarding the failure to make reasonable accommodations in the workplace.”).

⁸⁹ See *infra* Section II.B.

law, compounded by limited state laws, illustrate the unique needs and challenges faced by employees battling cancer in this business and legislative framework. This analysis will shed light on the critical areas where changes are necessary to ensure that workers with cancer receive the support and protection they deserve.

A. Business Initiatives Like the Cancer Pledge Provide Insufficient Support

Recognizing the gravity of cancer's impact on the workforce, some businesses have started to offer solutions through the Cancer Pledge. This Pledge officially launched at the 2023 World Economic Forum in Davos, Switzerland.⁹⁰ The driving force behind it is Arthur Sadoun, CEO of Publicis Groupe, who, following his own experience with a small cancerous tumor that necessitated surgery, radiation, and chemotherapy, chose to share his condition with employees, clients, and shareholders.⁹¹ Stunned by the number of employees who had concealed their own cancer diagnoses, Sadoun launched the Cancer Pledge with the participation of numerous businesses, signifying a step in the right direction.⁹² For example, Publicis promised its employees worldwide to secure the jobs and salaries of employees with cancer for at least one year so "they can focus on their health treatment."⁹³

In the hope that larger companies will set a precedent in assisting employees with cancer and inspire small businesses to follow suit, there are notable signatories that include industry giants such as Meta, Google, Microsoft, Nestlé, PepsiCo, Unilever, L'Oréal, Marriott, McDonald's, Citi, Bank of America, and Walmart.⁹⁴ These businesses' pledges collectively benefit millions of employees. By pledging, these companies promise at a minimum "to abolish the stigma and insecurity that exist for people with cancer in the workplace," to raise awareness regarding the cancer benefits they already have in place, and to consider ways to do more guided by the Cancer Pledge playbook.⁹⁵

Whether signatories' employees will actually benefit from this Pledge is unclear for at least three reasons. First, the Cancer Pledge itself has few specific benefits to provide to employees with cancer. Second, these pledges are not likely to be legally binding contracts, thus these benefits serve as gifts but not guarantees. It is unlikely that signatories will be required to fulfill promised benefits when budget constraints or other financial changes occur. Without legally binding obligations, signatories may fall short of erasing the cancer-related fears of their employees through this

⁹⁰ Press Release, Publicis Groupe, Working With Cancer: from Davos to the Super Bowl (Jan. 31, 2023), <https://www.publicisgroupe.com/en/news/press-releases/working-with-cancer-from-davos-to-the-super-bowl>.

⁹¹ *Id.*; Sahadi, *supra* note 11.

⁹² Sahadi, *supra* note 11.

⁹³ *Id.*

⁹⁴ See *Pledge Supporters*, *supra* note 15.

⁹⁵ See sources cited *supra* note 16.

Pledge. While legal doctrines such as promissory estoppel might compel compliance, the case history varies such that it is uncertain whether employees will receive these benefits. Finally, a lack of business funds to fulfill costly salary promises and other benefits arising from this program could allow signatories to avoid actual payment.

1. The Cancer Pledge Sets a Low Bar for Participating Firms

The Cancer Pledge dramatizes the private sector's response to workers with cancer. Pledgers benefit from the goodwill of this program, receiving participation credit with minimal requirements.⁹⁶ They promise to support cancer initiatives in the workplace and to "aim to abolish the stigma and insecurity that exist for people with cancer in the workplace."⁹⁷ To qualify as a pledger, a business needs only to identify its name, the title and headshot of the executive taking the Pledge, and "a brief statement of [the] company's commitment" alongside the official company logo.⁹⁸ These minimal requirements to become a signatory result in a wide range of promises, some of which are merely plans to do more that may not have been realized. These signatories unite as partners, regardless of the benefits they promise to workers listed on the website.⁹⁹

The Cancer Pledge sets a low threshold for compliance because there is no minimum threshold for pledge signatories to offer specific employee benefits. To their credit, many partners to the Pledge do offer practical, real benefits to employees.¹⁰⁰ For example, Sanofi agreed to secure the jobs, salaries, and benefits after a diagnosis of cancer and other critical illnesses for at least 12 months, regardless of employees' locations or roles.¹⁰¹ Similarly, a senior officer of S&P Global stated, "As part of our global support, we secure the salary of a colleague unable to work due to a diagnosis of cancer or other chronic disease and serious illness for up to one year, so they can stay focused on their treatment and

⁹⁶ See *About the Pledge*, WORKING WITH CANCER, <https://workingwithcancerpledge.com/about-the-pledge> (last visited Sept. 6, 2025) (listing three pledge commitments: (1) "Evaluate your current culture, policies, and programs"; (2) "Communicate your commitment and existing offerings"; and (3) "Continue to learn and improve.").

⁹⁷ WORKING WITH CANCER, *supra* note 2.

⁹⁸ See *Take the Pledge*, WORKING WITH CANCER, <https://workingwithcancerpledge.com/take-the-pledge> (last visited Sept. 6, 2025).

⁹⁹ See *Pledge Supporters*, *supra* note 15.

¹⁰⁰ See generally *id.* (listing the stated commitments of each company-pledger).

¹⁰¹ *Id.* (Pledge from Paul Hudson, CEO, Sanofi); see *Cancer & Work: Acting Together*, SANOFI (Oct. 10, 2024), <https://www.sanofi.com/en/magazine/your-health/cancer-and-working-together>; Nick Paul Taylor, *Sanofi Guarantees Employees One Year of Salary and Support After Cancer Diagnosis*, FIERCE PHARMA (Feb. 5, 2024, 10:46 AM), <https://www.fiercepharma.com/marketing/sanofi-guarantees-employees-1-year-salary-and-support-after-cancer-diagnosis>.

recovery.”¹⁰² It is helpful to see these businesses claiming and exploring benefits designed to help workers.

In contrast to Sanofi and S&P Global, a senior Salesforce officer simply stated: “I pledge to help raise awareness within our organization.”¹⁰³ Salesforce thus gets the benefit of being a signatory merely by promising to “raise awareness” about cancer.¹⁰⁴ A short email communication announcing the Pledge and Salesforce’s signature would easily meet the threshold obligation the Pledge requires, providing the appearance of support with little sustenance behind it. Even with this arguably low bar, only about 3,000 businesses worldwide have signed the Cancer Pledge thus far.¹⁰⁵

2. *The Pledge Promises Lack the Enforceability of Contract Law*

Employers offering benefits due to the Cancer Pledge, or through employee handbooks, do not make guarantees. Employees without legal training may not understand that the Cancer Pledge is not legally binding. There is no guarantee that workers will receive the promised benefits, due to a potential lack of legal enforceability. The promise of cancer support appears to be just that: a promise. Often viewed as a gift, a benefit of this kind offered to workers is not a guarantee. It is a common understanding in contract law that a promise alone is not legally enforceable.¹⁰⁶ To be a valid, legally binding contract, the promise must be accompanied by something valuable given in exchange—consideration—which is arguably lacking in this Pledge.¹⁰⁷ When employees work for an organization, it is for a contractual salary. Benefits arise as added gifts, and likely would not be consideration for a contractual obligation of this nature.¹⁰⁸

¹⁰² *Pledge Supporters*, *supra* note 15 (Pledge from Dimitra Manis, Executive Vice President, Chief Purpose Officer, S&P Global).

¹⁰³ *Id.* (Pledge from Polly Sumner, Chief Adoption Officer, Salesforce).

¹⁰⁴ *See id.*

¹⁰⁵ *See id.*

¹⁰⁶ *See, e.g.*, RESTATEMENT (SECOND) OF CONTRACTS §§ 17, 71 (AM. L. INST. 1981).

¹⁰⁷ *Id.* § 71.

¹⁰⁸ *See, e.g.*, Hayes v. Plantations Steel Co., 438 A.2d 1091, 1094–95 (R.I. 1982) (holding that a promise of a pension to a retiring employee was an unenforceable gratuity due to a lack of consideration); Webb v. Warren Co., 149 S.E.2d 867, 869 (Ga. Ct. App. 1966) (finding that a promised retirement income was a “gratuitous promise, made without consideration and having no binding effect on the defendant company”); Klein v. HP Pelzer Auto. Sys., Inc., 854 N.W.2d 521, 527–28 (Mich. Ct. App. 2014) (holding that a letter promising severance pay was unenforceable, because it lacked consideration). *But see* Bryce Yoder, Note, *How Reasonable Is “Reasonable”? The Search for a Satisfactory Approach to Employment Handbooks*, 57 DUKE L.J. 1517, 1518–19 (2008) (“Not only do courts differ widely in the effect they grant employment handbooks—some still do not recognize them as legally binding upon the employer at all—they vary greatly in the legal framework within which they analyze the issue.”).

Even if such benefit agreements met the technical requirements of a contract, their enforceability as a part of employment handbooks relies on inconsistent approaches to contract law that produce inequitable and irreconcilable results.¹⁰⁹ There is a longstanding disconnect between employment law and contract law that limits the enforceability of promises like those in the Cancer Pledge.¹¹⁰ The obligatory nature of a promise to pay benefits is often at the whim of the employer and, at the very least, is unreliable if employees pursue litigation to enforce it.¹¹¹

By default, U.S. employment is “at will,” meaning both the employer and the employee are permitted to terminate their relationship at any time for “good reason, bad reason, or no reason at all.”¹¹² This rule often results in harsh impacts for employees such that courts are starting to impose exceptions to this doctrine.¹¹³ When an employer issues a handbook with benefits such as the promise of a *secured* 12-month salary after a cancer diagnosis, it may create an enforceable implied contract, negating the presumption of at-will employment.¹¹⁴ The handbook could then serve as the source of contractual terms.¹¹⁵

¹⁰⁹ See generally *Yoder, supra* note 108 (discussing how courts analyze employee handbooks and suggesting guidelines to produce equitable outcomes in handbook interpretation).

¹¹⁰ See *T. Leigh Anenson & Hannah Weiser, The Government Pension Identity Crisis*, 33 B.U. PUB. INT. L.J. 131, 141–42 (2024); see also *Rachel S. Arnow-Richman & J.H. Verkerke, Deconstructing Employment Contract Law*, 75 FLA. L. REV. 897, 908 (2023) (“The disconnect between employment and mainstream contract law dates nearly to the inception of American employment law.”).

¹¹¹ *Arnow-Richman & Verkerke, supra* note 110, at 935–37.

¹¹² *Yoder, supra* note 108, at 1517–18 n.2 (quoting *Bellum v. PCE Constructors, Inc.*, 407 F.3d 734, 741 (5th Cir. 2005)).

¹¹³ See, e.g., *Fulford v. Burndy Corp.*, 623 F. Supp. 78, 80 (D.N.H. 1985) (holding that “a termination by the employer of a contract of employment at will which is motivated by bad faith or malice or based on retaliation is not in the best interest of the economic system or the public good”); *Frampton v. Cent. Ind. Gas Co.*, 297 N.E.2d 425, 428 (Ind. 1973) (holding that “when an employee is discharged solely for exercising a statutorily conferred right an exception” to the at-will employment rule applies).

¹¹⁴ See *Jason A. Walters, Comment, The Brooklyn Bridge is Falling Down: Unilateral Contract Modification and the Sole Requirement of the Offeree’s Assent*, 32 CUMB. L. REV. 375, 379 (2002) (“[E]ven in the absence of express agreement, in certain circumstances an employer may be bound by the terms of its handbook policy.”). Other prominent exceptions to at-will employment include tort claims based on public policy and an implied duty of good faith. *Id.* at 378–79.

¹¹⁵ See, e.g., *Brown v. Sabre, Inc.*, 173 S.W.3d 581, 588–89 (Tex. App. 2005) (holding that an employee to whom promise of vacation time had been made only in a manual with a disclaimer was not entitled to relief as there had been no breach of contract); *Pine River State Bank v. Mettille*, 333 N.W.2d 622, 626 (Minn. 1983) (recognizing that “[a]n employer’s offer of a unilateral contract may very well appear in a personnel handbook” so “[b]y preparing and distributing its handbook, the employer chooses, in essence, either to implement or modify its existing contracts with all employees covered by the handbook”).

But handbook jurisprudence results in vastly different outcomes as some courts do not recognize them as legally binding upon the employer at all,¹¹⁶ whereas others recognize the possibility that handbooks can impose binding obligations upon the employer for implicit or explicit promises made in the handbook, ensuring some degree of fairness.¹¹⁷ A policy is commonly understood to be a “flexible framework for operational guidance, not a perpetually binding contract obligation.”¹¹⁸ Yet, “[h]andbook promises have been found to be enforceable because of their importance to both employers and employees in governing the workplace, not because they meet the technical definition of contracts.”¹¹⁹ Even retirement benefits that appear more secure, such as public pensions, face a range of unpredictable jurisprudence as to whether an organization can modify these benefits.¹²⁰ Ultimately, the actual binding nature of benefits promised in a handbook or similarly through the Cancer Pledge would be subject to these variable results.

Even if benefits are not contractual, there may be alternative means of compelling them. For example, most U.S. jurisdictions have adopted and apply a doctrine of “promissory estoppel,” defined in section 90 of the Restatement (Second) of Contracts, to enforce employee benefits.¹²¹ Promissory estoppel variably allows employees to enforce promises of employer benefits. This doctrine may be invoked when an employer makes a promise regarding benefits to an employee, and

¹¹⁶ See, e.g., *Johnson v. McDonnell Douglas Corp.*, 745 S.W.2d 661, 662 (Mo. 1988) (en banc) (holding that the “unilateral act of publishing its handbook was not a contractual offer to its employees”).

¹¹⁷ *Yoder, supra* note 108, at 1522 (noting that “almost all courts find” it is possible to create contractual obligations through a manual under certain circumstances). Compare *Johnson*, 745 S.W.2d at 662 (finding that a handbook was “merely an informational statement of . . . self-imposed policies”), with *Thomas v. Ward*, 529 F.2d 916, 919 (4th Cir. 1975) (holding that manuals can give rise to protected property interests in certain circumstances).

¹¹⁸ *In re Certified Question*, 443 N.W.2d 112, 120 (Mich. 1989) (holding that an employer may unilaterally change an employment policy even though the right to make such change was not expressly reserved).

¹¹⁹ *Crawford Rehab. Servs. v. Weissman*, 938 P.2d 540, 554 (Colo. 1997); see also Richard J. Pratt, Comment, *Unilateral Modification of Employment Handbooks: Further Encroachments on the Employment-at-Will Doctrine*, 139 U. PA. L. REV. 197, 208 (1990) (“Although the doctrines of consideration and mutuality prove fatal to any interpretation of handbook manuals as implied contracts under a traditional analysis, such a dogmatic approach is becoming increasingly rare in the United States.”).

¹²⁰ See, e.g., *Anenson & Weiser, supra* note 110, at 142–43.

¹²¹ RESTAMENT (SECOND) OF CONTRACTS § 90 (AM. L. INST. 1981). See Eric Mills Holmes, *Restatement of Promissory Estoppel*, 32 WILLAMETTE L. REV. 263, 265 (1996) (claiming “all American jurisdictions” have adopted the theory of promissory estoppel). But see Arthur B. Schwartz, *The Second Circuit “Estopped”: There is No Promissory Estoppel in New York*, 19 CARDOZO L. REV. 1201, 1201 (1997) (distinguishing the New York Court of Appeals as “never embrac[ing] this doctrine” (footnote omitted)).

the employee reasonably relies on that promise to their detriment.¹²² Courts have applied this reasoning in employment contexts, but the results vary in whether promissory estoppel upholds employee benefits.¹²³ Precedent such as *Kuklenski v. Medtronic USA, Inc.* illustrates the complexities in claiming promissory estoppel.¹²⁴ In this case, Kuklenski attempted to enforce the Family and Medical Leave Act (FMLA) benefits through a promissory estoppel claim that was unsuccessful, as the alleged promise was not clear and definite enough.¹²⁵ Moreover, under *Grouse v. Group Health Plan, Inc.*, promissory estoppel damages are recognized, but are ultimately limited to losses suffered by forgoing other opportunities in reliance on those promises.¹²⁶ While the results of these cases set a standard to uphold benefits promised to employees even in the absence of a contract, the application of the promissory estoppel doctrine varies depending on the facts of each case and the jurisdiction, making it hard for employees to predict the likely outcomes of their own cases.

3. Insolvency Could Limit the Enforceability of the Cancer Pledge Promises

Even if cancer-related employee benefit promises are construed as binding, a winning outcome in court still does not mean the employee will be paid the benefits. Company insolvency or budget constraints could still limit the employee's receipt of the benefits.¹²⁷ While outcomes for employees vary, in one notable case, *In re*

¹²² See RESTatement (SECOND) OF CONTRACTS § 90.

¹²³ See, e.g., *Haig v. Dartmouth-Hitchcock Med. Ctr.*, No. 2:19-CV-179, 2023 WL 1325511, at *15, *17 (D. Vt. Jan. 31, 2023) (denying summary judgment because there were disputed issues of material facts as to whether an employer's written and oral statements were specific enough to constitute a "promise" to support a promissory estoppel claim and whether there was reliance induced from those statements); *Lo Bosco v. Kure Eng'g Ltd.*, 891 F. Supp. 1020, 1031 (D.N.J. 1995) ("There is ample case law for the proposition that a promise of at-will employment will be sufficiently definite to constitute reliance under promissory estoppel theory where the promisee has acted to his detriment in taking up the employment." (collecting cases)); *Mers v. Dispatch Printing Co.*, 483 N.E.2d 150, 155 (Ohio 1985) ("[W]here appropriate, the doctrine of promissory estoppel is applicable and binding to oral employment-at-will agreements when a promise which the employer should reasonably expect to induce action or forbearance on the part of the employee does induce such action or forbearance, if injustice can be avoided only by enforcement of the promise.").

¹²⁴ *Kuklenski v. Medtronic USA, Inc.*, 635 F. Supp. 3d 726, 741 (D. Minn. 2022).

¹²⁵ Kuklenski had not "plausibly alleged a promissory estoppel claim" as she had not "plausibly alleged a clear and definite promise" and damages were limited to "losses suffered by foregoing other opportunities in reliance on Medtronic's promise." *See id.*

¹²⁶ See *Grouse v. Grp. Health Plan, Inc.*, 306 N.W.2d 114, 115–16 (Minn. 1981) (holding the doctrine of promissory estoppel entitled the prospective employee to recover, but only damages forgone by not choosing another employment opportunity in reliance on employer's promises).

¹²⁷ See Paul M. Secunda, *An Analysis of the Treatment of Employee Pension and Wage Claims in Insolvency and Under Guarantee Schemes in OECD Countries: Comparative Law Lessons for*

Hostess Brands, Inc., the court allowed the maker of Twinkies and Wonder Bread to stop contributing to pension plans.¹²⁸ There, after Hostess filed for Chapter 11 bankruptcy, it sought to reject its collective bargaining agreements and modify retiree benefits. The court approved the company's request.¹²⁹ As part of its bankruptcy process, the company also imposed cost-cutting measures, including wage and benefit reductions.¹³⁰

Similarly, the parent company for Sears and Kmart retail stores filed for Chapter 11 bankruptcy and, as part of its restructuring efforts, sought to terminate certain employee benefit programs.¹³¹ The bankruptcy court approved various motions allowing the restructuring efforts, impacting these benefits and setting a major precedent for employees and retirees regarding the insecure nature of these benefits.¹³² When a company faces insolvency, these outcomes clearly demonstrate that any promised benefits by a company still may not be realized.

Ultimately, the Cancer Pledge provides businesses the opportunity for excellent public relations with limited costs and risks. While businesses can provide real benefits to their employees with cancer, the Pledge neither guarantees that they will do so nor excludes them from offering stronger support measures if they do not sign up. Because of the enforcement issues described above, a Cancer Pledge signatory can appear to support cancer issues at work without obligating itself to do anything substantial. Employees who believe that the Pledge signifies a substantive commitment to supporting people with cancer may well be mistaken.

B. U.S. Law Provides Insufficient Protection Against Cancer Discrimination

While private initiatives like the Cancer Pledge lack enforceable guarantees, there are also multiple gaps in the legal protections for workers with cancer. Because most employees are at will, employers can take adverse actions against them for any nondiscriminatory reason.¹³³ Employees with cancer, therefore, may need

Detroit and the United States, 41 FORDHAM URB. L.J. 867, 914–15 (discussing various challenges employees face in trying to recover sums from insolvent employers).

¹²⁸ See *In re Hostess Brands, Inc.*, 499 B.R. 406, 408 (Bankr. S.D.N.Y. 2012).

¹²⁹ *Id.*

¹³⁰ Kayla Tausche, *Hostess Floats \$200 Million in Cost Cuts to Exit Bankruptcy*, CNBC, <https://www.cnbc.com/2012/08/22/hostess-floats-200-million-in-cost-cuts-to-exit-bankruptcy.html> (Aug. 22, 2012, 5:39 PM).

¹³¹ See, e.g., Chris Isidore, *Sears' Owner Wants to Get Out of Paying \$43 Million in Severance to Former Employees*, CNN BUS. (May 29, 2019, 5:27 PM), <https://www.cnn.com/2019/05/29/business/sears-severance>.

¹³² See, e.g., Disclosure Statement for Joint Chapter 11 Plan of Sears Holdings Corporation and its Affiliated Debtors, *In re Sears Holding Corp.*, No. 18-23538, at 21–23 (Bankr. S.D.N.Y. Apr. 17, 2019) (discussing the status of Sears' pension plan payments).

¹³³ Chase Mays, Note, *Protecting Protected Characteristics: Statutory Solutions for Employment Discrimination Post-Bostock*, 77 VAND. L. REV. 1303, 1307–08 (2024).

antidiscrimination laws to secure their jobs. Although these laws should help remedy cancer discrimination in the workplace, they can be especially problematic to apply in this context.

This Section demonstrates that the gaps in existing laws leave workers with cancer with limited legal protection to combat discrimination and lack of accommodation in the workplace, while failing to provide minimal paid benefits except in a few states. Legislation such as the ADA, amended by the ADAAA, as well as the FMLA, aim to protect the rights of employees, including those with cancer, but their effectiveness is hampered in various ways.¹³⁴ The ambiguities in the language and definitions within these laws, for example, often leave room for interpretation that allows employers to skirt compliance. Many businesses are not subject to these laws, and most states do not have additional state requirements either. When antidiscrimination laws do apply, the burden of proof usually falls on the employee, requiring extensive documentation to justify legal claims, an especially difficult obstacle for those already dealing with the health challenges common to people with cancer.

Cases involving alleged cancer discrimination reveal the challenges such employees face. Employees with cancer have alleged adverse treatment, including demotions, terminations, or denial of reasonable accommodations. While some cases have resulted in favorable outcomes, many others have highlighted the inadequacies of existing laws in providing comprehensive support.

1. The ADAAA Excludes Many Workers with Cancer from Coverage

The ADA, amended by the ADAAA, prohibits discrimination based on disability,¹³⁵ which may include cancer. Pursuant to this law, a person with a disability is someone who has “a physical or mental impairment that substantially limits one or more major life activities,” has a history or “record of such an impairment” (such as cancer that is in remission), or is perceived by others “as having such an impairment” (for example, a person who has scars from severe burns).¹³⁶ Major life activities could include tasks like working.¹³⁷ The “substantially limits” language is a broad standard, but not all conditions meet it.¹³⁸

¹³⁴ See, e.g., Barry C. Taylor, Rachel M. Weisberg & Paul W. Mollica, *Reasonable Accommodations Under the ADA*, GREAT LAKES ADA CTR.: LEGAL BRIEFINGS, Mar. 2023, at 1, 25–29 (explaining that under the ADA, employers are not required to provide an otherwise necessary accommodation if it “would amount to an undue hardship”).

¹³⁵ Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327, amended by ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (codified as amended at 42 U.S.C. §§ 12101–12213).

¹³⁶ 42 U.S.C. § 12102(1) (2018).

¹³⁷ Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, 29 C.F.R. § 1630.2(i)(1)(i) (2024).

¹³⁸ *Id.* § 1630.2(j)(1)(i).

The ADAAA emphasizes that “disability” should be “construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of the ADA and generally shall not require extensive analysis.”¹³⁹ It rejects prior Supreme Court holdings and portions of the ADA regulations promulgated by the Equal Employment Opportunity Commission (EEOC) to make it “easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA.”¹⁴⁰ The EEOC’s 2013 guidance regarding cancer in the workplace further states that people who currently have cancer, or have cancer that is in remission, should easily be found to have a disability within the meaning of the first part of the ADA’s definition of disability because they are substantially limited in the major life activity of normal cell growth or would be so limited if cancer currently in remission was to recur.¹⁴¹

Though these legislative efforts appear to make cancer a disability under the ADAAA, this classification is still not automatic and leads to varied results in court.¹⁴²

Despite this guidance, it is possible that termination of a worker with cancer could fall outside this threshold. An employer who fires a worker with cancer could justify that decision by claiming poor performance.¹⁴³ In addition, the ADA applies only to employers with 15 or more employees.¹⁴⁴ This means many businesses are not required to follow its guidelines. According to data from the U.S. Census Bureau, almost 5.5 million businesses, approximately 86% of all businesses in the U.S., fall outside this threshold and therefore would not be subject to the ADA’s requirements.¹⁴⁵ As a result, the law’s intention to address cancer at work falls short

¹³⁹ *The Americans with Disabilities Act Amendments Act of 2008*, U.S. EQUAL EMP. OPPORTUNITY COMM’N, <https://www.eeoc.gov/statutes/americans-disabilities-act-amendments-act-2008> (last visited Sept. 7, 2025).

¹⁴⁰ *Id.*

¹⁴¹ U.S. EQUAL EMP. OPPORTUNITY COMM’N, EEOC-NVTA-2013-3, CANCER IN THE WORKPLACE AND THE ADA (2013) [hereinafter EEOC CANCER IN THE WORKPLACE] (citing 29 C.F.R. § 1630.2(j)(1)(vii), (j)(3)(ii) (2024)).

¹⁴² See *infra* Section II.B.1.a.

¹⁴³ See Mays, *supra* note 133, at 1307–08.

¹⁴⁴ See 42 U.S.C. § 12111(5) (defining the term “employer” as “a person engaged in an industry affecting commerce who has 15 or more employees”); § 12111(2) (describing an “employer” as a “covered entity”); § 12112(a) (prohibiting discrimination “against a qualified individual on the basis of a disability” by a “covered entity”).

¹⁴⁵ The latest U.S. Census Bureau’s Statistics of U.S. Businesses (SUSB) reported there were approximately 6.4 million firms in the United States and 6.1 million of these firms (approximately 96%) had fewer than 50 employees. Based on this data, about 35 million employees will not receive the benefits of the FMLA through their employer unless their state adopts more extensive leave benefits. Further, based on this data, the ADAAA will not apply to at least 5.5 million firms with over 18 million employees in the U.S. not being able to use the ADAAA’s benefits. *2022 SUSB Annual Data Tables by Establishment Industry*, U.S. CENSUS BUREAU, <https://>

of helping many Americans since most work for organizations that do not have to offer these benefits under the law or are self-employed.

a. Cancer Is Not Automatically a Disability Under the ADA

Even when the ADA applies, one of the primary enforcement challenges lies in its interpretation and application. Though the ADA *may* recognize cancer as a disability, and the ADAAA was enacted to expand that scope, cancer is not automatically a disability under the law.¹⁴⁶ In fact, the “term ‘cancer’ actually refers to more than 100 distinct diseases, each of which has varying symptoms, treatments and prospects for recovery. No two patients face the same experience—and organizations differ widely in their responses to the condition.”¹⁴⁷ Cancer may not inherently qualify as a disability, potentially leading to worker termination without the protections this law puts in place.¹⁴⁸

People with a history of cancer should be covered under the second part of the definition of disability because they have a record of an impairment that substantially limited a major life activity.¹⁴⁹ For example, in *Adams v. Rice*, the court found that although a candidate was not disabled because her post-surgery inability to work was temporary and her doctor had declared her cancer-free, the candidate’s cancer history created a record of impairment.¹⁵⁰ Such an impairment was recognized by 29 C.F.R. pt. 1630, app. § 1630.2(k), which protects former cancer patients from employment discrimination based on their prior medical history.¹⁵¹ An individual meets the third “regarded as” prong of disability if an employer takes a prohibited action because of cancer or because the employer believes the worker has cancer.¹⁵²

Courts still vary, however, as to whether cancer qualifies as a disability. Not all forms or stages of cancer may be covered by the ADA, leading to uncertainty about

www.census.gov/data/tables/2022/econ/susb/2022-susb-annual.html (Aug. 4, 2025); *see* Family and Medical Leave Act of 1993, 29 U.S.C. § 2611(4)(A) (2018).

¹⁴⁶ The ADA prohibits discrimination against a qualified individual with a disability because of the disability of such individual. 42 U.S.C. § 12112(a).

¹⁴⁷ *See* Steve Bates, *How to Support Employees with Cancer*, SOC’Y FOR HUM. RES. MGMT. (June 1, 2016), <https://www.shrm.org/topics-tools/news/hr-magazine/how-to-support-employees-cancer>.

¹⁴⁸ *See* 29 U.S.C. § 705(20)(B) (2018).

¹⁴⁹ *See* 42 U.S.C. § 12102(1)(B); 29 C.F.R. § 1630.2(k)(1), (k)(2) (2024).

¹⁵⁰ *Adams v. Rice*, 531 F.3d 936, 944–45, 952, 954 (D.C. Cir. 2008).

¹⁵¹ *See id.* at 952, 954; 29 C.F.R. pt. 1630, app. § 1630.2(k) (“For example, the ‘record of provision would protect an individual who was treated for cancer ten years ago but who is now deemed by a doctor to be free of cancer, from discrimination based on that prior medical history.’”).

¹⁵² *See* 42 U.S.C. § 12102(1)(C); 29 C.F.R. § 1630.2(g)(1)(iii); *see, e.g.*, *Eshelman v. Agere Sys., Inc.*, 554 F.3d 426, 430, 434 (3d Cir. 2009) (describing plaintiff’s argument that she was terminated based on defendant’s belief that she was disabled or for her record of impairment).

the extent of the protection. The requirement that a condition must “limit a major life activity” is something that courts have decided with varying outcomes, leaving the qualification unpredictable. For that reason, employees with cancer may find it hard to predict whether they will succeed on their ADA claim.

Rulings on cancer and disability discrimination under the ADA have created an uneven terrain of precedent. For example, in *Marquez v. Glendale Union High School District*, the court held that brain cancer is “capable of qualifying as a disability under the ADA,” but just because it is capable does not automatically constitute it as a disability, and the existence of a disability is determined on a case-by-case basis.¹⁵³ As the plaintiff did not identify what substantial life activities her brain tumor limited, discuss the severity or expected duration of the impairment, or allege that any symptoms impacted her work, the court ruled that she did not prove “that her disability actually played a role” in her termination.¹⁵⁴ This case illustrates the difficulty cancer survivors face in courts first to demonstrate the cancer is a disability, and then to request reasonable accommodations.

While in *Marquez*, a brain tumor did not automatically qualify as disabling, cancer in remission has met the disability threshold in other courts. For example, in *Hoffman v. Carefirst of Fort Wayne, Inc.*, the court held that the plaintiff, who had renal cancer in remission, was disabled under the ADA because Stage III renal cancer, when active, would have substantially limited a major life activity.¹⁵⁵ This unpredictability leaves workers with cancer at the whim of the courts’ interpretations.

The *Burchfiel v. Boeing Corp.* case further demonstrates that not all cancer diagnoses invoke ADA protection.¹⁵⁶ In *Burchfiel*, an employee who had worked for his employer for over 20 years was diagnosed with leukemia.¹⁵⁷ Shortly after telling his employer this, he was demoted and later fired.¹⁵⁸ The trial court ruled in his favor on his disability discrimination and retaliation claims.¹⁵⁹ However, the appellate court reversed and ruled for the employer, noting that whether the employee suffered a qualifying disability was a factual issue for determination by the jury and that the trial court erred in deciding this issue as a matter of law.¹⁶⁰

¹⁵³ *Marquez v. Glendale Union High Sch. Dist.*, No. CV-16-03351, 2018 U.S. Dist. LEXIS 173343, at *43–44 (D. Ariz. Oct. 9, 2018).

¹⁵⁴ The court granted defendant’s motion for summary judgment because plaintiff did not introduce “evidence sufficient to raise a genuine dispute of material fact that Defendant discriminated against her because of a disability.” *Id.* at *45–46, 58.

¹⁵⁵ *Hoffman v. Carefirst of Fort Wayne, Inc.*, 737 F. Supp. 2d 976, 985 (N.D. Ind. 2010).

¹⁵⁶ See generally *Burchfiel v. Boeing Corp.*, 205 P.3d 145 (Wash. Ct. App. 2009).

¹⁵⁷ *Id.* at 148.

¹⁵⁸ *Id.* at 149.

¹⁵⁹ *Id.* at 150.

¹⁶⁰ *Id.* at 152.

Likewise, in *Fredricksen v. United Parcel Service, Co.*, the court held that leukemia was “not, *per se*, a ‘disability’” under the ADA.¹⁶¹ It ruled that because an employee with leukemia was not substantially limited in the major life activities of walking and breathing, the employee failed to demonstrate that he had an impairment which substantially limited a major life activity.¹⁶² Because the employee had failed to show that the employer regarded him as substantially limited in his ability to work, the court found that no reasonable factfinder could have concluded that he was disabled for ADA purposes.¹⁶³

It may also be hard for people with cancer to prove that they are disabled under state law equivalents of the ADA. For example, in *Winston v. Ozinga Ready Mix Concrete, Inc.*, Winston, a concrete truck driver, sued his employer, Ozinga, on claims including disability discrimination under Illinois law.¹⁶⁴ Winston provided his cancer diagnosis, as requested.¹⁶⁵ Between September 2019 and September 2020, Ozinga repeatedly requested medical documentation establishing that Winston could not work.¹⁶⁶ His doctor provided a “verification of disability” report in September 2020 noting that Winston had been diagnosed with prostate cancer but stating that his condition was “minor” and “not permanent.”¹⁶⁷ Ozinga fired him.¹⁶⁸ In rejecting Winston’s discrimination claim, the court noted that while “cancer has been considered a disability under the [Illinois Human Rights] Act,” Winston had failed to show that his cancer was substantial and debilitating enough to qualify as a disability.¹⁶⁹

b. “Reasonable Accommodations” May Be Hard to Identify

Under the ADAAA, employers must provide reasonable accommodations to support their disabled workers during and after treatment, unless doing so would cause undue hardship to the employer.¹⁷⁰ Undue hardship results if there is “significant difficulty or expense” to an employer, based on several factors such as:

the nature and cost of the accommodation needed; the overall financial resources of the facility making the reasonable accommodation; the number of people employed at this facility; the effect on expenses and resources of the

¹⁶¹ *Fredricksen v. United Parcel Serv. Co.*, 581 F.3d 516, 521 (7th Cir. 2009).

¹⁶² *Id.* at 522–23.

¹⁶³ *Id.* at 523.

¹⁶⁴ *Winston v. Ozinga Ready Mix Concrete, Inc.*, 2022 IL App (1st) 220369-U, ¶¶ 5–6.

¹⁶⁵ *Id.* ¶ 6.

¹⁶⁶ *Id.* ¶¶ 6–12.

¹⁶⁷ *Id.* ¶ 12.

¹⁶⁸ *Id.* ¶ 10.

¹⁶⁹ *Id.* ¶¶ 28, 38–39.

¹⁷⁰ See EQUAL EMP. OPPORTUNITY COMM’N, EEOC-CVG-2003-1, ENFORCEMENT GUIDANCE ON REASONABLE ACCOMMODATION AND UNDUE HARSHSHIP UNDER THE ADA (2002) [hereinafter EEOC ENFORCEMENT GUIDANCE].

facility; the overall financial resources . . . ; the type of operation . . . ; [and] the impact of the accommodation on the operation of the facility.¹⁷¹

The determination of what constitutes a reasonable accommodation is highly specific and varies from case to case.¹⁷² These requirements are uniquely difficult to establish for people with cancer, compared to other disabilities, given the unpredictable nature of cancer and the episodic effects of common cancer treatments like chemotherapy. This variability makes return-to-work plans more complicated to predict and establish for workers with cancer.

Employers may claim that it is hard for them to figure out what “reasonable accommodations” might look like, which can exacerbate the difficulty employees with cancer face in returning to work. For example, Linda O’Brien was diagnosed with breast cancer, and her oncologist advised that she could continue working.¹⁷³ For several months, O’Brien worked full time while undergoing cancer treatment without any accommodations, even “as she experienced the side effects of her care.”¹⁷⁴ Although her employers were aware of her medical condition, which is both “a disability and a protected class under Washington law,” her employers provided none of O’Brien’s requested accommodations and instead, “told other employees they were going to ‘fire’ her.”¹⁷⁵ O’Brien requested to work remotely after she “contracted shingles due to her compromised immune system from cancer treatments,” because of the danger this contagious illness posed to her pregnant co-workers. Her employer approved her request but fired her the next day.¹⁷⁶ The jury found her employer “liable for discrimination against a disabled employee, failure to accommodate a disabled employee and retaliation.”¹⁷⁷ The jury awarded O’Brien \$188,749 for lost wages and \$247,481 for future wages, along with \$2.8 million for emotional harm damages.¹⁷⁸ While her legal outcome was positive, her experience illustrates the discriminatory practices companies employ despite the legal protections aimed to prevent them.

Scheduling conflicts inherent with cancer treatment such as chemotherapy and doctor visits can lead to multiple absences or remote work accommodations that

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Cancer Survivor Receives \$3M+ Jury Verdict in Discrimination Lawsuit Against Former Employer, SCHROETER GOLDMARK BENDER* (May 17, 2023), <https://sgb-law.com/news/cancer-survivor-receives-3m-jury-verdict>.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*; Verdict and Settlement Summary, O’Brien v. Skountrianos DDS MS & Virk DMD, MS PLLC, No. 2021-2-02851, 2023 WL 11015515 (Wash. Super. Ct. May 12, 2023).

may not be deemed “reasonable” given the job requirements.¹⁷⁹ For example, working remotely when an employer requires in-person work could be a failure to perform a job’s essential functions or pose an undue hardship on the employer. In one recent case, the United Labor Agency (ULA) paid \$32,371 to settle a disability lawsuit filed by the EEOC.¹⁸⁰ The EEOC claimed that the “ULA discriminated against a long-time employee based on her disability, breast cancer,” by denying “her reasonable accommodation request for temporary remote work and subject[ing] her to intolerable work conditions,” ultimately resulting in her resignation.¹⁸¹ The employee requested “to remain on telework for several months while she was undergoing radiation treatments and was immunosuppressed,” which aligned with ULA’s requirement that employees “return to in-person work after a long period of COVID-related telework.”¹⁸² Eventually, the employee returned to the office, as ULA demanded, but she felt forced to resign due to the COVID-19 exposure, given her immunosuppression.¹⁸³ Although the ULA operated successfully for several months with remote workers, they refused her request.¹⁸⁴

Although employers are required to engage in an “interactive process” with the employee to determine what accommodations are reasonable and do not pose an undue hardship on business operations, it can be difficult for those discussions to take place on an uneven playing field and with asymmetric access to the options available.¹⁸⁵ Employers may perceive accommodations for employees with cancer as undue hardships on their businesses, leading to resistance or reluctance to provide them. Employers also may not fully comprehend the range of accommodations necessary for individuals undergoing cancer treatment, which can lead to the denial of requests or the provision of insufficient support.¹⁸⁶ Further, employees facing

¹⁷⁹ U.S. EQUAL EMP. OPPORTUNITY COMM’N, EEOC-NVTA-2008-3, APPLYING PERFORMANCE AND CONDUCT STANDARDS TO EMPLOYEES WITH DISABILITIES (2008) (“Employers generally do not have to accommodate repeated instances of tardiness or absenteeism that occur with some frequency, over an extended period of time and often without advance notice.”); 42 U.S.C. §§ 12111(9), 12112(b)(5), 12112(c).

¹⁸⁰ Press Release, U.S. Equal Emp. Opportunity Comm’n, United Labor Agency Will Pay \$32,371 to Settle EEOC Disability Discrimination Suit (Aug. 29, 2023), <https://www.eeoc.gov/newsroom/united-labor-agency-will-pay-32371-settle-eeoc-disability-discrimination-suit>.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ See *id.*

¹⁸⁵ EEOC ENFORCEMENT GUIDANCE, *supra* note 170; see e.g., *Dalton v. Subaru-Isuzu Auto., Inc.*, 141 F.3d 667, 677 (7th Cir. 1998) (declining defendant-employer’s motion for summary judgment as it pertained to two plaintiffs and noting that the company failed “to engage in the interactive process” when plaintiffs requested workplace accommodations).

¹⁸⁶ Mary Stergiou-Kita, Cheryl Pritlove, Dwayne van Eerd, Linn D. Holness, Bonnie Kirsh et al., *The Provision of Workplace Accommodations Following Cancer: Survivor, Provider, and Employer Perspectives*, 10 J. CANCER SURVIVORSHIP 489, 491 (2016).

cancer often encounter burdensome documentation requirements to prove the need for their accommodations.¹⁸⁷ The process of substantiating the need for accommodations, such as flexible work hours or modifications to job duties, may be overwhelming for individuals facing both physical and mental health challenges. This burden places the onus on the employee to navigate a complex bureaucratic process, leading to delays or denials in receiving necessary accommodations.¹⁸⁸ Technical guidance from the EEOC notes the employer must provide a reasonable accommodation that is needed because of the side effects of medication or treatment related to a disability as limitations resulting from the disability.¹⁸⁹ For example, an employee with cancer undergoing chemotherapy twice a week might request a modified schedule, such as leave for two days per week, for six weeks.¹⁹⁰ Unless the employer “can show undue hardship, the employer must grant the request.”¹⁹¹

The EEOC’s guidance notes that an employer cannot claim undue hardship based on an employee’s (or even a customer’s) “fears or prejudices toward the individual’s disability.”¹⁹² Similarly, undue hardship cannot be based on the fact that an employee’s accommodation may negatively impact other employees’ morale.¹⁹³ However, impact on other employees can be a relevant consideration as employers may be able to show an undue hardship if the proposed accommodation would be “unduly disruptive” to other employees’ ability to work.¹⁹⁴ The illustrative example provided in this guidance speaks to an employee with breast cancer undergoing chemotherapy, which causes fatigue. So that the employee can focus on her essential job functions, she delegates a few of her marginal functions to another employee during her chemotherapy treatment. There is no undue hardship despite the second employee being unhappy about the extra work, as the employer determined the second employee had the bandwidth for the extra work with limited negative impact.¹⁹⁵

Depending on how long an employee is out of the office or if there are no accommodations that enable an employee to remain in their current position, the ADA offers a solution: reassignment to a vacant position for which the employee is

¹⁸⁷ See Elizabeth F. Emens, *Disability Admin: The Invisible Costs of Being Disabled*, 105 MINN. L. REV. 2329, 2332 (2021).

¹⁸⁸ See, e.g., *id.* at 2349–51, 2366–68; Stergiou-Kita et al., *supra* note 186, at 490–91, 498–501.

¹⁸⁹ See EEOC ENFORCEMENT GUIDANCE, *supra* note 170.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ See *id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*; see also *id.* n.118 (“Failure to transfer marginal functions because of its negative impact on morale of other employees could also constitute disparate treatment when similar morale problems do not stop an employer from reassigning tasks in other situations.”).

qualified.¹⁹⁶ The EEOC¹⁹⁷ and the courts¹⁹⁸ characterize reassignment as an accommodation of last resort, to be considered only when accommodation in a current role poses an undue hardship. Employers only need to reassign employees to positions for which they are qualified.¹⁹⁹

Courts generally find that the burden of assisting the employee in identifying a vacant position is on the employer.²⁰⁰ For instance, in *Suvada v. Gordon Flesch Co.*, there was evidence that the employer did nothing to inform the employee about alternative assignments.²⁰¹ The court rejected the employer's argument that the employee should have known about internal job postings based on an orientation training she received before her cancer diagnosis, explaining that employers have "an affirmative duty" to make reasonable accommodations and cannot simply rely on past provision of training materials.²⁰²

Engaging in a dialogue with employees who have cancer is not only required by law, but it is also a sensible strategy to minimize absenteeism, maximize productivity, and avoid the significant lost time and expense of discrimination litigation. Yet, even when an employee identifies an alternative position, an employer may choose to reject her request. For example, in one case applying the California Fair Employment and Housing Act's (FEHA) reasonable accommodations requirement, the court reversed a summary judgment claim against teacher Lauralyn Swanson and ruled that her school's refusal of her request to teach a class that would be easier for her to work with after cancer treatment likely constituted employment discrimination.²⁰³ In that case, the principal insisted on assigning Swanson, who had just completed radiation and chemotherapy treatment for breast cancer, to a kindergarten class over her objections that her weakened immune system could not easily withstand the many illnesses kindergarteners tend

¹⁹⁶ See 42 U.S.C. § 12111(9)(B).

¹⁹⁷ See EEOC ENFORCEMENT GUIDANCE, *supra* note 170 ("Reassignment is the reasonable accommodation of last resort and is required only after it has been determined that: (1) there are no effective accommodations that will enable the employee to perform the essential functions of [their] current position, or (2) all other reasonable accommodations would impose an undue hardship.").

¹⁹⁸ See *LeBlanc v. McDonough*, 39 F.4th 1071, 1076 (8th Cir. 2022) (characterizing reassignment as "accommodation of last resort" (quoting *Minnihan v. Mediacom Commc'n's Corp.*, 779 F.3d 803, 814 (8th Cir. 2015))).

¹⁹⁹ See *Sanchez v. U.S. Dep't of Energy*, 870 F.3d 1185, 1200 (10th Cir. 2017) (explaining that "employers are only required to reassign employees to existing vacant positions," meaning those to which "a similarly situated, non-disabled employee" could apply (quoting *Koessel v. Sublette Cnty. Sheriff's Dep't*, 717 F.3d 736, 745 (10th Cir. 2013))).

²⁰⁰ See *Taylor et al.*, *supra* note 134, at 55.

²⁰¹ *Suvada v. Gordon Flesch Co.*, No. 11 C 07892, 2013 WL 5166213, at *7 (N.D. Ill. Sept. 13, 2013).

²⁰² *Id.* at *8.

²⁰³ See *Swanson v. Morongo Unified Sch. Dist.*, 232 Cal. App. 4th 954, 958, 967 (2014).

to have.²⁰⁴ Swanson also objected that she had not taught kindergarten in nearly 30 years.²⁰⁵ Weeks after the school year began, she was hospitalized with pancreatitis, pneumonia, and liver issues, and could not return until the following December.²⁰⁶ The principal's refusal to give Swanson the position she requested, which was open at the time, was ruled a failure to provide her with a reasonable accommodation as FEHA requires.²⁰⁷

Swanson's case, O'Brien's case, and the ULA case highlight the need for a thorough understanding of legal obligations and a proactive approach to accommodating employees with cancer. It is imperative that employers engage in an interactive process with their employees to determine feasible accommodations. Ultimately, fostering a supportive and flexible work environment not only benefits employees with cancer, but also enhances the overall workplace culture and productivity.

c. State Laws May Not Cure the ADAAA's Shortcomings

Almost all states have laws that address disability discrimination in the workplace, similar to the protections provided by the ADAAA, but may include additional protections.²⁰⁸ State laws can expand access to these antidiscrimination protections by expanding access to employers with fewer than 15 employees and even broader disability definitions.²⁰⁹ For example, Massachusetts prohibits discrimination in employment, including people with disabilities like cancer.²¹⁰ The Massachusetts Employment Discrimination Law is comparable to the ADA in its protections, but provides broader access as it expands covered employers to those with six or more employees.²¹¹ Likewise, in New Jersey, the law applies to employers with as few as one employee,²¹² and the definition of a disability is much broader, as

²⁰⁴ *Id.* at 967.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.* at 970–71.

²⁰⁸ See, e.g., *State Disability Discrimination Laws*, BLOOMBERG L. (Mar. 18, 2024), <https://pro.bloomberglaw.com/insights/labor-employment/state-disability-discrimination-laws/>; Iris Hentze & Rebecca Tyus, *Discrimination and Harassment in the Workplace*, NAT'L CONF. OF STATE LEGISLATURES, <https://www.ncsl.org/labor-and-employment/discrimination-and-harassment-in-the-workplace> (Aug. 12, 2021) (listing federal and state protections for discrimination at work, including state-by-state analysis).

²⁰⁹ EEOC CANCER IN THE WORKPLACE, *supra* note 141, n.2 (“For example, disability laws in California, Pennsylvania, New Jersey, and New York apply to employers with fewer than 15 employees.”).

²¹⁰ See MASS. GEN. LAWS ch. 151B, §§ 1(16)–(17), (19)–(20), 4(1), (16) (2024).

²¹¹ *Id.* § 1(5).

²¹² See N.J. STAT. ANN. § 10:5-5(e) (West 2024).

the federal requirement that the disability cause a substantial limitation of a major life activity is removed.²¹³

State antidiscrimination laws, while often more expansive than the federal counterparts, may not fully remedy the shortcomings of the ADAAA for workers with cancer. Moreover, all states do not share the same protections. These state laws vary significantly in their scope and application.²¹⁴ The patchwork nature of these laws leads to inconsistencies and confusion both for employers seeking to understand their obligations and workers who may not fully understand the legal protections they afford.²¹⁵ Further, state laws may still fall short in addressing the unique challenges faced by cancer patients, such as the need for flexible work arrangements or the stigma still associated with the disease that impacts disclosure in the first place. While state antidiscrimination laws are an important part of the legal landscape, they are not a complete solution to the challenges faced by workers with cancer.²¹⁶

2. *The FMLA Is Impractical and Insufficient for Workers with Cancer*

The FMLA gives eligible employees the right to take up to 12 weeks off of work (without pay) for certain family and medical reasons, including cancer.²¹⁷ The FMLA also provides protection against retaliation for workers who exercise their rights under this law, and job protection upon return from this leave—requiring return to the same or a virtually identical job in terms of pay, benefits, and other employment terms and conditions (including shift and location).²¹⁸ It permits

²¹³ See *Tynan v. Vicinage 13 of the Super. Ct. of N.J.*, 798 A.2d 648, 655 (N.J. Super. Ct. App. Div. 2002) (citing N.J. STAT. ANN. § 10:5-5(q)).

²¹⁴ See, e.g., N.M. STAT. ANN. § 28-1-2(B) (2024) (defining “employer” as “any person employing four or more persons”); CAL. GOV’T CODE § 12926(d) (West 2024) (covering employers “regularly employing five or more persons”); MASS. GEN. LAWS ch. 151B, § 1(5) (applying law to employers with six or more employees); KY. REV. STAT. ANN. § 344.030(2) (West 2024) (covering employers with “eight (8) or more employees within the state”); D.C. Code § 2-1402.11 (2024) (applying anti-discrimination law generally to all employers with limited exemption for religious accommodation for employers with five or fewer employees); cf. 42 U.S.C. § 12111(5)(A) (requiring 15 or more employees for ADA coverage).

²¹⁵ See, e.g., Scardaville et al., *supra* note 6, at 315 (finding a lack of understanding of state-level legal protections and benefits in young adults with cancer).

²¹⁶ See Marcy Karin & Lara Bollinger, *Disability Rights: Past, Present, and Future: A Roadmap for Disability Rights*, 23 UDC/DCLS L. REV. 1, 3–4 (2020) (examining disability law and noting the difficulty in navigating the protections they provide, as well as the need for expanded access). See generally Elizabeth F. Emens, *Disabling Attitudes: U.S. Disability Law and the ADA Amendments Act*, 60 AM. J. COMPAR. L. 205 (2012) (examining disability law in the U.S.).

²¹⁷ See Family and Medical Leave Act, 29 U.S.C. § 2612(a)(1) (2018); U.S. DEP’T OF LAB., NEED TIME? THE EMPLOYEE’S GUIDE TO THE FAMILY AND MEDICAL LEAVE ACT 6 (2012) [hereinafter NEED TIME?], https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/employee_guide.pdf; *Workplace Protections for Individuals Impacted by Cancer*, *supra* note 23.

²¹⁸ 29 U.S.C. § 2614; NEED TIME?, *supra* note 217, at 6.

eligible employees to take up to 12 weeks of unpaid leave per year for cancer but excludes small businesses with fewer than 50 employees within 75 miles of the jobsite, and requires at least 12 months of employment for the workers and at least 1,250 hours of work in the last 12 months.²¹⁹

a. Most Employers Are Not Subject to the FMLA

This law has practical limitations that constrain its protections. First, the law itself only applies to businesses with more than 50 employees, public agencies (e.g., government employers), and local educational agencies (regardless of the number of employees), excluding small businesses.²²⁰ According to data from the U.S. Census Bureau, about 96% of U.S. employers fall beneath this threshold and, therefore, are not subject to the FMLA.²²¹ This means only about 4% of employers must provide these protections to their employees, making many workers unable to access these benefits. Contract or “gig” workers also generally find themselves outside the scope of protection, resulting in a significant gap in coverage.²²² Most U.S. businesses fall outside the scope of these laws, leaving many workers with insufficient protection.²²³ Moreover, there are time-at-work requirements that also put new employees outside the scope of these protections.²²⁴

b. Unpaid Benefits Render the FMLA Impractical for Most Workers

Realistically, unpaid leave renders the law impractical for many Americans, as often individuals live paycheck to paycheck, especially when the costs of cancer treatment will likely add to their existing expenses. The unpaid benefits this law provides also are not practical for the average worker as living expenses in the United States continue to rise and wages struggle to keep up. In fact, a 2023 survey conducted by Payroll.org highlights that “78% of Americans live paycheck to paycheck”—this means more than three out of four Americans would struggle to

²¹⁹ See 29 U.S.C. §§ 2611(2)(A)–(B), 2612(a)(1); *Workplace Protections for Individuals Impacted by Cancer*, *supra* note 23.

²²⁰ 29 U.S.C. § 2611(4)(A); 20 C.F.R. § 825.600 (2025) (noting the special rules for educational agencies).

²²¹ See discussion *supra* note 145.

²²² See Seth C. Oranburg, *Unbundling Employment: Flexible Benefits for the Gig Economy*, 11 DREXEL L. REV. 1, 24, 31, 34–35 (2018) (discussing the lack of benefits for gig workers); *see, e.g.*, Jessica Lee, *Unionize Uber? Legal Fight Over Seattle Drivers Draws National Attention*, SEATTLE TIMES, <https://www.seattletimes.com/seattle-news/transportation/unionize-uber-legal-fight-over-seattle-drivers-draws-national-attention> (Mar. 29, 2017, 10:42 AM) (demonstrating difficulties in distinguishing between protections extended to employees and independent-contractor gig workers).

²²³ See discussion *supra* note 145.

²²⁴ See 29 U.S.C. § 2611(2)(A).

take this unpaid leave.²²⁵ Taking 12 weeks of unpaid leave is not something most can afford to do, as even 29% of respondents in a 2023 Forbes Advisor survey reported their income does not even cover their standard expenses, let alone going without it for 12 weeks.²²⁶

c. Few States Supplement the FMLA's Shortcomings

At the state level, sick leave provisions vary widely across the country, creating a patchwork of protection that workers are not always familiar with. Only 20 states and the District of Columbia require any kind of paid sick leave.²²⁷ And only a handful of states have laws that provide more extensive coverage for individuals with cancer.²²⁸ For instance, the Massachusetts Paid Family and Medical Leave program covers all employers as one of the more extensive programs.²²⁹ Even self-employed individuals may choose coverage under certain conditions.²³⁰ Employees can receive up to 80% of their income, up to 50% of the state average weekly wage and then up to 50% of their wages that exceed the state average weekly wage.²³¹ Benefits last up to 12 weeks for family leave, and up to 20 weeks for personal medical leave.²³² New Jersey's Family Leave Insurance program also covers all employers, providing

²²⁵ See Emily Batdorf, *Living Paycheck to Paycheck Statistics 2024*, FORBES, <https://www.forbes.com/advisor/banking/living-paycheck-to-paycheck-statistics-2024> (Apr. 2, 2024, 10:02 AM) (citing PAYROLL.ORG, *GETTING PAID IN AMERICA* 14 (2023), https://info.payroll.org/pdfs/npw/2023_Getting_Paid_In_America_survey_results.pdf).

²²⁶ *Id.*

²²⁷ See *State Family and Medical Leave Laws*, NAT'L CONF. OF STATE LEGISLATURES, <https://www.ncsl.org/labor-and-employment/state-family-and-medical-leave-laws> (Aug. 28, 2025).

²²⁸ See *Quick Guide to State Paid Family Leave Programs*, *supra* note 24; see also Molly Weston Williamson, *The State of Paid Family and Medical Leave in the U.S. in 2024*, CTR. FOR AM. PROGRESS (Jan. 17, 2024), <https://www.americanprogress.org/article/the-state-of-paid-family-and-medical-leave-in-the-u-s-in-2024/> (explaining that 13 states plus D.C. "have passed paid family and medical leave laws" covering "serious health condition[s]" which "can include acute conditions such as cancer").

²²⁹ See Dep't of Fam. & Med. Leave, *Paid Family and Medical Leave (PFML) Overview and Benefits*, MASS.GOV, <https://www.mass.gov/info-details/paid-family-and-medical-leave-pfml-overview-and-benefits> (last visited Sept. 9, 2025); *Massachusetts PFML and Federal FMLA: What's the Difference?*, GREENE & HAFTER, <https://greeneandhafer.com/massachusetts-pfml-and-federal-fmla-whats-the-difference.html> (last visited Sept. 9, 2025) ("While the federal FMLA applies to employers with 50 or more employees, the PFML law covers all employers with just one or more employees.").

²³⁰ See Dep't of Fam. & Med. Leave, *supra* note 229.

²³¹ Dep't of Fam. & Med. Leave, *How PFML Weekly Benefit Amounts are Calculated and/or Changed*, MASS.GOV, <https://www.mass.gov/info-details/how-pfml-weekly-benefit-amounts-are-calculated-andor-changed> (Oct. 1, 2024).

²³² See Dep't of Fam. & Med. Leave, *supra* note 229.

85% of the average weekly wage up to the maximum amount and benefits lasting up to 12 weeks.²³³

While these programs are supportive for workers facing cancer, qualifying it as an illness and with family support for these benefits, so few states provide these benefits. Even then, the threshold to be eligible may be limited depending on employment status and waiting periods.

d. Cancer Needs Blur the Lines Between the FMLA's and the ADAAA's Protections

Employers covered by the FMLA do not need to provide much protection for workers. Often, an employee is on leave pursuant to the FMLA and then needs an extension of that leave for a disability-related reason.²³⁴ For example, in *Rentz v. William Beaumont Hospital*, a clinical clerk used her FMLA and paid time off for various medical issues, including treatments for breast cancer.²³⁵ After this time expired, the clerk experienced two medical issues, one requiring hospitalization.²³⁶ Because she did not have accrued time or FMLA leave, the employee was terminated for taking time off.²³⁷ The court found that this additional time, which amounted to only a handful of additional days, could have been a reasonable accommodation under the ADA.²³⁸ In letting the employee's claim advance, the court confirmed that "a medical leave of absence can constitute a reasonable accommodation under appropriate circumstances."²³⁹ However, these cases are subject to the court's jurisprudence as was seen in *Jenks v. Naples Community Hospital, Inc.*, where the court held that plaintiff's FMLA paperwork indicating that fatigue was a side effect of cancer did not constitute a request for reasonable accommodation of additional break periods.²⁴⁰ This means the filing of an FMLA leave request is not necessarily deemed a request for an ADA accommodation, complicating matters for cancer-diagnosed workers.²⁴¹

²³³ SARAH A. DONOVAN, CONG. RSCH. SERV., R44835, PAID FAMILY AND MEDICAL LEAVE IN THE UNITED STATES 11 fig.2, app. at 24 (2023); Div. of Temp. Disability & Fam. Leave Ins., *FAQ: Family Leave Insurance*, NJ.GOV, <https://www.nj.gov/labor/myleavebenefits/help/faq/fli.shtml> (last visited Sept. 10, 2025).

²³⁴ See Barry C. Taylor & Rachel M. Weisberg, *The Interplay Between the ADA and the FMLA*, GREAT LAKES ADA CENTER: LEGAL BRIEFINGS, May 2017, at 3–4.

²³⁵ *Rentz v. William Beaumont Hosp.*, 195 F. Supp. 3d 933, 937 (E.D. Mich. 2016).

²³⁶ *Id.* at 937–38.

²³⁷ *Id.* at 938, 940.

²³⁸ *Id.* at 946–47.

²³⁹ *Id.* at 946 (quoting *Walsh v. United Parcel Serv.*, 201 F.3d 718, 726 (6th Cir. 2000)).

²⁴⁰ *Jenks v. Naples Cmty. Hosp., Inc.*, 829 F. Supp. 2d 1235, 1253 (M.D. Fla. 2011).

²⁴¹ Taylor et al., *supra* note 134, at 7 n.21 (collecting cases).

e. Cancer's Inherent Time Lags Undermine Legal Protections

Time also contributes to the impractical nature of these laws. The law requires an employer to communicate with employees on a timely basis.²⁴² For instance, in *Dansie v. Union Pacific Railroad Co.*, the employer was unwilling to accept the employee's proposal of up to five days per month of incapacity for recovery from the effects of cancer treatment and AIDS while awaiting eligibility for the FMLA, but supposedly did not tell him what it would accept.²⁴³ In *Danise*,

Plaintiff produced email correspondence in which he asked for guidance to help formulate an appropriate request. The email shows that Plaintiff struggled to locate a written policy for transportation employees explaining full-time employment. Plaintiff also says Defendant obstructed the process by telling him that it approved his accommodation. Plaintiff testified that when he told his direct supervisor that Defendant approved his accommodation, his supervisor shrugged and walked away. When Plaintiff tried to discuss his medical issues with his supervisor by email, his supervisor responded he only wanted to know what days Plaintiff was unavailable for work, and not the details about his medical treatments.²⁴⁴

This difficulty in getting a response, and a timely one, leaves the legal protections lacking for cancer victims that cannot control the timing of the disease and its symptoms, leaving them susceptible to uncertainty in the benefits these laws are intended to deploy.

Although the FMLA provides critical protections for employees and their families dealing with cancer, including the right to take up to 12 weeks of unpaid leave and job protection, its applicability and practicality are limited by several factors. The exclusion of small businesses from its requirements, minimum employment duration thresholds, and the unpaid nature of this leave renders many employees ineligible or financially unable to utilize these protections. Additionally, the intersection of the FMLA with the ADAAA introduces complexities in seeking extensions or accommodations for disability-related reasons as seen in cases like *Rentz v. William Beaumont Hospital* and *Jenks v. Naples Community Hospital, Inc.*²⁴⁵ The timely communication between employers and employees is also crucial for the effective implementation of these laws, yet it often falls short, as demonstrated in *Dansie v. Union Pacific Railroad Co.*²⁴⁶ While the FMLA is a step in the right

²⁴² U.S. DEP'T OF LAB., WAGE & HOUR DIV., THE EMPLOYER'S GUIDE TO THE FAMILY AND MEDICAL LEAVE ACT 47–48, <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/employerguide.pdf> (last visited Sept. 13, 2025).

²⁴³ *Dansie v. Union Pac. R.R. Co.*, 42 F.4th 1184, 1190–91 (10th Cir. 2022).

²⁴⁴ *Id.* at 1194.

²⁴⁵ *Rentz v. William Beaumont Hosp.*, 195 F. Supp. 3d 933, 946–47 (E.D. Mich. 2016); *Jenks*, 829 F. Supp. 2d at 1253.

²⁴⁶ *Dansie*, 42 F.4th at 1194.

direction, there is a clear need for further legislative and employer efforts to provide more comprehensive and practical support for workers diagnosed with cancer.

III. THREE KINDS OF REFORM WOULD BETTER SUPPORT WORKERS WITH CANCER

Cancer is unique among diseases because of its extensive impact on the workforce, the stigma and elevated risk of discrimination allegations that accompany it, and the reasonable fears employees have of disclosing their diagnoses or treatments to their employers. Given the weaknesses, described in the preceding Part, in the legal protections available to people with cancer, as well as the business initiatives designed to support them, there is an urgent need for reform.

Specific changes to the statutory language of the ADAAA, the FMLA, and regulatory guidance for both laws would make it easier for people with cancer to participate as fully as possible in the workforce. In addition, employers have strong incentives to adopt three private initiatives to provide complementary support for their employees. The Sections below outline proposals for these improvements.

A. ADA/ADAAA Reforms Would Better Align Legal Protections with Cancer Challenges

One way to improve the protections available to people with cancer under the ADA would be to expand its coverage to smaller firms. While the heart of the ADAAA was to expand disability coverage, without expanding coverage to more firms, many workers still will not receive any protection. As noted above, data from the U.S. Census Bureau's Annual Business Survey reports that only 14% of businesses are subject to the ADAAA's regulation because about 5.5 million firms have fewer than 15 employees.²⁴⁷ Even with the expanded coverage, without most firms being subject to it, workers are not receiving the intended purpose of this law.

Following the lead of state laws that expand ADAAA coverage, more firms should provide these benefits to workers by expanding the scope of the law's regulation to more firms. For illustrative purposes, the Massachusetts Employment Discrimination Law is comparable to the ADA in its protections, but provides broader access as it expands covered employers to those with six or more employees.²⁴⁸ If the ADAAA used even a somewhat lower threshold of five rather than 15 employees to warrant its application for firms, coverage would be accessible to over 6 million additional employees, as almost 1.5 million more firms would be

²⁴⁷ See discussion *supra* note 145 and accompanying text. Although, while only 14% of businesses are regulated by the ADAAA, because these 14% of employers have more than 15 employees, only approximately 15% of the workforce will not be protected by the ADAAA. See 2022 SUSB Annual Data Tables by Establishment Industry, *supra* note 145.

²⁴⁸ MASS. GEN. LAWS ch. 151B, § 1(5) (2024).

subject to this law as compared to the approximately 900,000 firms that are currently subject to the ADAAA.²⁴⁹ That expands coverage from just 14% of firms to almost three times as many firms (37%) eligible for these federal protections.²⁵⁰ Coverage could expand even further through reforms similar to New Jersey's state law, which applies to employers with as few as one employee and uses a broader definition of disability than its federal counterpart.²⁵¹ If the ADAAA adopted more flexible standards like New Jersey, it could expand coverage to almost all workers with cancer, with cancer being much more likely to be considered a disability with more flexible standards.

Another potentially beneficial reform would be an expansion of the scope of the ADA so that genetic mutations associated with cancer, in addition to cancer itself, would qualify as disabilities *per se*. This amendment would have been beneficial, for example, in *Darby v. Childvine, Inc.*²⁵² In that case, a woman had a double mastectomy after being diagnosed with the BRCA1 genetic mutation which contributes to abnormal cell growth and an increased likelihood of developing breast cancer.²⁵³ When her employer fired her upon learning of her condition, she alleged discrimination under the ADA.²⁵⁴ The Sixth Circuit ruled that genetic mutations, such as BRCA1, that predispose someone to cancer would not themselves be a disability under the ADA.²⁵⁵ It noted, however, that the "impairment substantially limits her normal cell growth," at least at the motion to dismiss phase, and remanded the case back to the district court for further discovery and to address other claims.²⁵⁶

Expanding the scope of coverage under the ADA would have precedent in the last major set of its amendments. The ADAAA made it easier for a person with cancer to qualify as disabled than it had been under the ADA.²⁵⁷ In describing why congressional action was necessary to ease the burden of proving standing under the

²⁴⁹ See 2022 SUSB Annual Data Tables by Establishment Industry, *supra* note 145.

²⁵⁰ *See id.* If expanded to firms with one or more employees, almost all firms would be subject to the ADA requirements. If expanded to firms with five or more employees, 1,462,724 more firms with 5–14 employees would be subject to the ADA. *See id.*

²⁵¹ N.J. STAT. ANN. § 10:5-5(e) (West 2024). Unlike federal law, New Jersey does not require that the disability cause a substantial limitation of a major life activity. *See Tynan v. Vicinage* 13 of the Super. Ct. of N.J., 798 A.2d 648, 655 (N.J. Super. Ct. App. Div. 2002) (citing N.J. STAT. ANN. § 10:5-5(q)).

²⁵² *See Darby v. Childvine, Inc.*, 964 F.3d 440, 446–47 (6th Cir. 2020) ("By the clear terms of the ADA, a plaintiff must allege more than a genetic mutation capable of interfering with normal cell growth to survive a motion to dismiss.").

²⁵³ *Id.* at 442–43.

²⁵⁴ *Id.* at 443.

²⁵⁵ *Id.* at 446 (holding that genetic predisposition alone is insufficient for ADA coverage).

²⁵⁶ *Id.* at 445–447 ("It is thus at least plausible, at this stage, that Darby's gene mutation and abnormal cell growth, though not cancerous, qualify as a disability under the ADA.").

²⁵⁷ *See H. Rep. No. 110-730*, pt. 1, at 7, 12 (2008).

ADA, the House Committee on Education and Labor listed several examples of cases would come out differently under the ADAAA.²⁵⁸ The Committee specifically referred to the case of a cancer survivor who lost her claim under the ADA:

The Committee expects that the bill will affect cases such as . . . *Pimental v. Dartmouth-Hitchcock Clinic*, in which the court concluded that the plaintiff's stage three breast cancer did not substantially limit her ability to care for herself, sleep, or concentrate. The Committee expects that the plaintiffs in each of these cases could establish a material restriction on major bodily functions that would qualify them for protection under the ADA.²⁵⁹

People with cancer benefited from the ADAAA's expansion of the list of "major life activities" covered under the ADA, including "the operation of a major bodily function."²⁶⁰ Most cancers substantially affect the operation of a major bodily function.²⁶¹ The expansion of the list of major life activities made it easier for most, if not all, cancer survivors to identify one or more "major life activities" that their cancer had affected.²⁶²

The ADAAA also made it easier for people whose cancer was in remission or who had episodic disabilities to establish coverage under the ADA. It provided that "[a]n impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active."²⁶³ Soon after its adoption, one scholar anticipated that "[t]his language will benefit the large numbers of cancer survivors whose cancer is chronic, but often managed."²⁶⁴ However, that is not always the case. These coverage expansions have made it easier for employees with cancer, but they do not go far enough. Workers with cancer sometimes still find it challenging to secure protection under the ADA because of uncertainty as to how their case will play out, as well as the financial and personal challenges involved in suing one's employer.

Though cancer is "capable of qualifying as a disability," without the presumptive status, a worker diagnosed with cancer is first subject to the support, or lack thereof, from the employer.²⁶⁵ Then, if unmet, the worker's protections are

²⁵⁸ *Id.* at 12.

²⁵⁹ *Id.* (footnote omitted) (citing *Pimental v. Dartmouth-Hitchcock Clinic*, 236 F. Supp. 2d 177 (D.N.H. 2002)).

²⁶⁰ ADA Amendments Act of 2008, sec. 4, § 3(2), 122 Stat. 3553, 3555 (codified as amended at 42 U.S.C. § 12102(2)(B) (2008)).

²⁶¹ Hoffman, *supra* note 20, at 875 (citing 29 C.F.R. § 1630, app. § 1630.2(i) (2011)).

²⁶² *Id.*

²⁶³ ADA Amendments Act of 2008, sec. 4, § 3(4), 122 Stat. 3553, 3556 (codified as amended at 42 U.S.C. § 12102(4)(D)).

²⁶⁴ Hoffman, *supra* note 20, at 876.

²⁶⁵ See *Marquez v. Glendale Union High Sch. Dist.*, No. CV-16-03351, 2018 U.S. Dist. LEXIS 173343, at *55–59 (D. Ariz. Oct. 9, 2018).

subject to the court's discretion with conflicting results that seem to circumvent the intended purpose of the ADA's 2008 amendment. For example, in *Marquez v. Glendale Union High School District*, the court assumed that brain cancer qualified as a disability under the ADAAA, however Marquez's failure to identify what substantial life activities her brain tumor limited resulted in her not being able to make a disability discrimination claim.²⁶⁶ Similarly, in *Fredricksen v. United Parcel Service, Co.*, the court held that although "undoubtedly a serious medical condition, leukemia is not, *per se*, a 'disability' for purposes of the ADA."²⁶⁷ There, the appellate court found that because the employee was not substantially limited in the major life activities of walking and breathing, the employee "failed to demonstrate that he had an impairment which substantially limited a major life activity."²⁶⁸ The reality of these cases is that Marquez and Frederickson both had to fight their employers while enduring the myriad challenges of cancer during a lengthy and costly litigation process. Guidance stating a presumption that cancer is a disability would help workers combat the unpredictability of leaving their rights to employers that out-power them.

Prior guidance from the EEOC stated that cancer "should easily" qualify as a disability, but that simply has not been the case.²⁶⁹ Accordingly, in order to secure the expanded coverage that Congress intended through the ADAAA, the Department of Justice should revise its guidance to clarify that cancer, whether active or in remission, should be *presumed* a disability under the ADA. This expanded protection for workers is balanced with employer needs, as the ADAAA still requires any accommodations to be reasonable and to not impose undue hardship on employers. Expanding coverage through this guidance, rather than a statutory revision to the ADAAA, and labeling cancer a disability *per se* will be most effective as it will provide more predictability and facilitate the ability to obtain accommodations for workers during a vulnerable time, while remaining balanced with the needs of employers. The ADAAA requires reasonable accommodation that must not impose undue hardship on employers, which does enough to protect employer interests.²⁷⁰ Moreover, the ADAAA does not provide this disability *per se* status for any other disease or condition.²⁷¹ Labeling cancer as an automatic disability may also infuse the stigma that surrounds it. As such, guidance that cancer

²⁶⁶ *Id.* at *44–46.

²⁶⁷ *Fredricksen v. United Parcel Serv., Co.*, 581 F.3d 516, 521 (7th Cir. 2009).

²⁶⁸ *Id.* at 522–23.

²⁶⁹ See EEOC CANCER IN THE WORKPLACE, *supra* note 141; discussion *supra* Section II.B.1.

²⁷⁰ See EEOC ENFORCEMENT GUIDANCE, *supra* note 170.

²⁷¹ *How is Disability Defined in the Americans With Disabilities Act?*, ADA NAT'L NETWORK, <https://adata.org/factsheet/ada-definitions> ("[T]here is not a registry or a list of medical conditions or disabilities that are protected by the ADA.").

is presumptively a disability would help those impacted by it in a more meaningful way.

B. The FMLA Should Be Amended to Better Serve Workers with Cancer

There are several ways in which the FMLA could better serve people with cancer at work. The two most dramatic and impactful changes would be to lower the minimum number of employees a business must have for the FMLA to apply and to ensure that the leave is paid. These changes would not only benefit employees with cancer but also a much broader range of workers who cannot afford to take parental, sick, or family care leave that is not paid.

A first step would be to increase the number of employers covered by the FMLA. Because only about 4% of employers are covered by the FMLA, that law provides no support for the people who work for the other 96%.²⁷² If the minimum number of employees for FMLA coverage were lowered to 15 employees, like the ADAAA, then about 14% of employers would fall within its ambit.²⁷³ If that number were lowered to five employees, close to the six employee requirement under Massachusetts' leave law, then about 37% of employers would be covered—with about 2.3 million firms subject to the law, almost nine times as many firms as are currently covered.²⁷⁴ That vast increase in the potential protections that the FMLA provides would be a significant improvement over the current scope of the law.

A second step would be to make leave paid under the FMLA. As noted above, only 20 states and the District of Columbia have paid leave laws.²⁷⁵ In 2023, only 27% of civilian employees were eligible for paid family leave.²⁷⁶ Yet a significant majority of U.S. residents support the concept of paid maternity leave.²⁷⁷ Data as current as 2022 show four in five Americans support a federal paid family and medical leave program, with bipartisan majorities.²⁷⁸ Making FMLA leave paid

²⁷² See discussion *supra* note 145.

²⁷³ See discussion *supra* note 145 and accompanying text.

²⁷⁴ See *supra* notes 249–50 and accompanying text; 2022 SUSB *Annual Data Tables by Establishment Industry*, *supra* note 145.

²⁷⁵ See *State Family and Medical Leave Laws*, *supra* note 227.

²⁷⁶ *What Data Does the BLS Publish on Family Leave?*, U.S. BUREAU OF LAB. STAT., <https://www.bls.gov/ehs/factsheets/family-leave-benefits-fact-sheet.htm> (Sept. 21, 2023).

²⁷⁷ See Bryan Bennett, *Americans Overwhelmingly Support Paid Family and Medical Leave*, NAVIGATOR RSCH. (Sept. 23, 2022), <https://navigatorresearch.org/americans-overwhelmingly-support-paid-family-and-medical-leave/>; Juliana Menasce Horowitz, Kim Parker, Nikki Graf & Gretchen Livingston, *Americans Widely Support Paid Family Medical Leave, but Differ Over Specific Policies*, PEW RSCH. CTR. (Mar. 23, 2017), <https://www.pewresearch.org/social-trends/2017/03/23/americans-widely-support-paid-family-and-medical-leave-but-differ-over-specific-policies/>.

²⁷⁸ See Bennett, *supra* note 277.

would have tremendous benefits for U.S. workers, including but not limited to those with cancer.

The United States has already taken one step in this direction. In December 2019, Congress enacted a law providing paid leave for federal employees who are new parents.²⁷⁹ Since its passage, observers have noted a number of benefits for covered workers.²⁸⁰ The fact that this law was passed by a bipartisan coalition suggests that there may be support among both Democrats and Republicans for an expansion of paid leave provisions beyond the ranks of federal employees.²⁸¹ Indeed, surveys suggest bipartisan support among voters, with 73% of Republicans and 80% of Democrats in favor of paid family leave.²⁸²

Paid FMLA leave would create many other positive outcomes. It would also bring the United States closer to the standards of virtually every other developed country in the world in providing for some kind of paid parental leave.²⁸³ Many legal scholars have proposed paid family leave programs and outlined their significant benefits. Professor Gillian Lester, for example, before becoming Dean of Columbia Law School, argued that the United States should enact a federal paid family leave policy because doing so would tend to increase women's attachment to the workforce and improve gender equity.²⁸⁴ Others have noted that paid family leave would increase the likelihood that mothers will return to the workforce after childbirth.²⁸⁵

As noted above, some states already offer paid family and medical leave. Using these states as models for financing such leave makes sense. In Massachusetts, family

²⁷⁹ Federal Employee Paid Leave Act, Pub. L. No. 116-92, § 7603, 133 Stat. 1119, 2304 (2019).

²⁸⁰ See Lisa Nagele-Piazza, *Congress Passes Paid Parental Leave for Federal Workers*, SOC'Y FOR HUM. RES. MGMT. (Dec. 18, 2019), <https://www.shrm.org/topics-tools/employment-law-compliance/congress-passes-paid-parental-leave-federal-workers>; U.S. GOV'T ACCOUNTABILITY OFF., GAO-24-106654, PAID PARENTAL LEAVE: OPM SHOULD TAKE STEPS TO FURTHER RAISE AWARENESS OF THE PROGRAM (2024).

²⁸¹ See Deborah A. Widiss, *Equalizing Parental Leave*, 105 MINN. L. REV. 2175, 2208 (2021).

²⁸² Erin E.Y. Jefferson, *Will It Ever Change? Lack of Parental Leave and Its Detrimental Effects on Maternal Well-Being*, LANCET REG'L HEALTH – AMS., Sept. 2023, at 1, 1; see also Bennett, *supra* note 277 (noting 89% of Democrats and 70% of Republicans support paid family leave).

²⁸³ Anne-Marie Slaughter, *America's Lack of Paid Parental Leave Policies Hurt Middle-Class Women the Most*, TIME (Jan. 3, 2018, 11:12 AM), <https://time.com/5085172/america-parental-leave-care-policies>.

²⁸⁴ Gillian Lester, *A Defense of Paid Family Leave*, 28 HARV. J.L. & GENDER 1, 1–2, 48 (2005); *Gillian Lester*, COLUM. L. SCH., <https://www.law.columbia.edu/faculty/gillian-lester> (last visited Sept. 13, 2025).

²⁸⁵ See, e.g., JULIA ISAACS, OLIVIA HEALY & H. ELIZABETH PETERS, URB. INST., PAID FAMILY LEAVE IN THE UNITED STATES: TIME FOR A NEW NATIONAL POLICY 5 (2017), https://www.urban.org/sites/default/files/publication/90201/paid_family_leave_0.pdf.

leave is financed by a payroll tax on employees, while medical leave is financed by a payroll tax on both employees and on employers with more than 25 employees.²⁸⁶ In Washington, D.C., paid medical leave is financed by a payroll tax only on covered employers, while New York's paid leave is financed by a payroll tax only on employees.²⁸⁷ There are, therefore, multiple models based on successful state law experiments to finance a federal paid version of the FMLA.

C. Businesses Should Supplement Legal Protections with Broader Support

Employers have strong incentives to support workers with cancer. Doing so can increase employee loyalty and morale, reducing turnover by helping employees feel valued and supported.²⁸⁸ Providing substantial and visible support may also improve a company's reputation in a manner that may help it attract top talent more effectively and even positively impact customer perceptions.²⁸⁹ Support programs ranging from general cancer awareness campaigns, which might encourage early detection and treatment, to in-house assistance and advocacy programs are likely to be worthwhile investments in the well-being and productivity of their workers.

While there is ample documentation that cancer survivors are more likely to face psychological and physical challenges in the workplace than people without cancer, the mismatch between the abilities of cancer survivors and their work requirements is not inevitable.²⁹⁰ The authors of a survey covering 20 years of scholarship on the impact of cancer in the workplace posited that many such issues could have been remediated by return-to-work (RTW) programs and rehabilitative care, which likely would have reduced early retirement among employees with cancer.²⁹¹ Although rehabilitative care can take many different therapeutic forms, the survey authors emphasized that "survivorship services targeting cancer-related symptoms that strongly impact work outcomes should be prioritized when developing work rehabilitation programs."²⁹²

Employer support for and treatment of employees with cancer can have a substantial impact on the work outcomes for those employees. While RTW programs and protocols have not always been effective, scholars have made significant improvements to RTW programs in recent years. One notable study, for

²⁸⁶ See DONOVAN, *supra* note 233, app. at 27.

²⁸⁷ *Id.* app. at 25, 28.

²⁸⁸ See Lynn Koble & Gina Jacobson, *How Companies Can Support Employees Working with Cancer to Drive Better Business and Health Outcomes*, WORLD ECON. F. (Feb. 5, 2024), <https://www.weforum.org/stories/2024/02/technology-supportive-care-working-people-cancer-healthcare/>.

²⁸⁹ See *id.*

²⁹⁰ Tan et al., *supra* note 32, at 1066.

²⁹¹ *Id.*

²⁹² *Id.*

example, reported the development of a promising approach for RTW programs in the context of breast cancer survivors.²⁹³ The researchers noted that successful RTW programs integrate three considerations: (1) enhancing the quality of life of the cancer survivor; (2) adjusting the work situation including organizational and management practices; and (3) coordinating stakeholders, including managers, health care professionals, and most critically, the cancer survivors themselves.²⁹⁴ They created a multidimensional framework for managing the RTW of breast cancer survivors, consisting of six stages. Its arc extends from an initial phase, just after diagnosis, through contemplation of and preparation for RTW, to an active return to work and maintenance of any accommodations that have been developed.²⁹⁵ This approach could be adapted to provide support for people with other kinds of cancer.

1. Adapt Cancer Navigator Programs for the Workplace

One specific form of support for cancer survivors in the workplace is expanded access to cancer navigators. Cancer navigators, also called patient navigators or oncology patient navigators, help people with cancer overcome barriers to getting the care and help they need, both during and after their diagnosis.²⁹⁶ Cancer navigators may also be able to find support for the families and caregivers of people with cancer as well as the cancer survivors themselves.²⁹⁷ Providing supportive care to people with cancer has been called the “keystone” of modern oncology,²⁹⁸ but it need not be limited to clinical settings.

Most commonly, cancer navigators serve to help people with cancer understand the range of resources available to them, often in hospital or other therapeutic settings.²⁹⁹ In clinical roles, there is ample evidence that cancer navigators offer a wide range of critical forms of support for people with cancer.³⁰⁰ Research has shown that patient navigators can help facilitate communication between patients and health providers, help overcome logistical obstacles, and

²⁹³ See Bertrand Porro, Mario Campone, Philippe Moreau & Yves Roquelaure, *Supporting the Return to Work of Breast Cancer Survivors: From a Theoretical to a Clinical Perspective*, INT'L J. ENV'T RSCH. & PUB. HEALTH, Apr. 22, 2022, at 1, 10.

²⁹⁴ *Id.* at 3.

²⁹⁵ *Id.* at 2.

²⁹⁶ See AM. CANCER SOC'Y, WHAT CAN A CANCER NAVIGATOR DO FOR ME? 2–3 (2023), <https://www.cancer.org/content/dam/CRC/PDF/Public/9607.00.pdf>.

²⁹⁷ See *id.* at 2.

²⁹⁸ See Florian Scotté, Amy Taylor & Andrew Davies, *Supportive Care: The “Keystone” of Modern Oncology Practice*, CANCERS, July 29, 2023, at 1, 4 (discussing various models of supportive care).

²⁹⁹ Arti Patel Varanasi, Linda Burhansstipanov, Carrie Dorn, Sharon Gentry, Michele A. Capossela et al., *Patient Navigation Job Roles by Levels of Experience: Workforce Development Task Group, National Navigation Roundtable*, 130 CANCER 1549, 1550 (2024).

³⁰⁰ See *id.* at 1555 (noting various competencies patient navigators should have).

provide valuable psychosocial support.³⁰¹ People with cancer who receive navigation services are more likely to receive timely cancer screenings, begin treatment for cancer, and get follow-up diagnostic tests.³⁰²

Cancer navigation is such an important aspect of treatment for people with cancer that the American Cancer Society (ACS) has been devoting resources to enhancing its development since at least 2005.³⁰³ In 2017, the ACS created the National Navigation Roundtable (NNRT), which brings together public, private, and nonprofit organizations to work together to “advance navigation efforts that eliminate barriers to quality care, reduce disparities [in health outcomes], and foster ongoing health equity.”³⁰⁴ The ACS NNRT brings together scholars, practitioners, and researchers to address issues in patient navigation such as creating workplace development paths, identifying best practices, and advancing public policy related to patient navigation for people with cancer.³⁰⁵

Despite the evidence that cancer navigators are valuable for patients, there is some ambiguity about their place in traditional fee-for-service health care plans. Patient navigation has had a flexible scope since its inception, with professional organizations defining it in broad terms as “assistance offered to patients as well as families and caregivers tailored to their individual needs.”³⁰⁶ That flexible framework, while beneficial for organizations who can tailor the role to their needs, has worked against standardized funding for patient navigator roles. Rather than being funded by health care plans, patient navigation programs are usually funded by alternative sources such as grants or institutional funding.³⁰⁷ Cancer navigators might be nurses, social workers, or nonclinical navigators, although nonclinical navigators are more likely to face job insecurity.³⁰⁸

Employers could take advantage of the flexibility of patient navigator roles for their employees with, or at elevated risk of, cancer. The ACS NNRT’s Evidence-

³⁰¹ *Id.* at 1550.

³⁰² *Id.*

³⁰³ See *History of Patient Navigation*, AM. CANCER SOC’Y, NAT’L NAVIGATION ROUNDTABLE, <https://navigationroundtable.org/patient-navigation/history-of-patient-navigation> (last visited Sept. 13, 2025).

³⁰⁴ See *About Us*, AM. CANCER SOC’Y, NAT’L NAVIGATION ROUNDTABLE, <https://navigationroundtable.org/who-we-are/about> (last visited Sept. 13, 2025).

³⁰⁵ See *Resource Center*, AM. CANCER SOC’Y, NAT’L NAVIGATION ROUNDTABLE, <https://navigationroundtable.org/resource-center/> (last visited Sept. 13, 2025).

³⁰⁶ Kathryn M. Garfield, Elizabeth F. Franklin, Tracy A. Battaglia, Andrea J. Dwyer, Karen M. Freund et al., *Evaluating the Sustainability of Patient Navigation Programs in Oncology by Length of Existence, Funding, and Payment Model Participation*, 128 CANCER 2578, 2578 (2022).

³⁰⁷ *Id.* at 2579.

³⁰⁸ See Kristen J. Wells, Patrick Wightman, Rosa Cobian Aguilar, Andrea J. Dwyer, Cristian Garcia-Alcaraz et al., *Comparing Clinical and Nonclinical Cancer Patient Navigators: A National Study in the United States*, 128 CANCER 2601, 2601, 2606 (2022).

Based Promising Practices Task Group is funding studies to determine the optimal framework for cancer navigator programs, focusing in part on what makes such programs sustainable.³⁰⁹ One recent study found that dedicated operational funding may be associated with more sustainable patient navigation services than in places where such services might be reimbursed by Medicaid or Medicare.³¹⁰ A second study found that there is a significant number of cancer navigators already being funded by their employers' operational budgets in nonclinical and nonacademic institutions.³¹¹ We do not yet know what would contribute to the long-term effectiveness of such in-house cancer navigator programs, but research in this field is both ongoing and promising.

Larger institutions are more likely than smaller ones to have the resources necessary to sustain offering in-house navigators for people with cancer. Although bigger employers might have dedicated cancer navigators for their employees, smaller institutions might provide part-time patient navigators who might have similar roles elsewhere. Alternatively, employers might provide their workers with access to a supportive care app such as Day by Day, a patient-facing app that allows people with cancer to explore supportive care services and receive personalized resources.³¹²

One function of an in-house cancer navigator could be to help employees understand the various kinds of documentation that their employers require in the context of the ADAAA or the FMLA requirements. That function might have been helpful in the *Ozinga* case, discussed in Part II.³¹³ From the court's recitation of the facts in that case, it appears that Winston was fired for failure to come to work, or "insubordination," as well as his failure to provide documentation from a medical professional that he could not work.³¹⁴ *Ozinga*'s human resources manager had "phoned [Winston's] wife multiple times in August and September 2019 to explain that he had to provide medical documentation that he could not work."³¹⁵ Winston "believed [the human resources manager] was harassing him 'with a constant bombardment of hostile letters.'"³¹⁶ The opinion does not address the underlying question of why a man with prostate cancer would suffer a "bombardment" of letters and phone calls asking him for "medical documentation" at a time when he appears

³⁰⁹ Garfield et al., *supra* note 306, at 2579.

³¹⁰ See *id.* at 2585–86 (noting Medicaid and Medicare funded services face different funding pressures than patient navigation services that receive more sustainable funds).

³¹¹ See Cristian Garcia-Alcaraz, Scott C. Roesch, Elizabeth Calhoun, Patrick Wightman, Prashanthinie Mohan et al., *Exploring Classes of Cancer Patient Navigators and Determinants of Navigator Role Retention*, 128 CANCER 2590, 2594–95 (2022).

³¹² See Koble & Jacobson, *supra* note 288.

³¹³ See *supra* notes 164–69 and accompanying text.

³¹⁴ Winston v. Ozinga Ready Mix Concrete, Inc., 2022 IL App (1st) 220369-U, ¶¶ 6–14.

³¹⁵ *Id.* ¶ 6.

³¹⁶ *Id.* ¶ 12.

to be unable to work, having disclosed his cancer diagnosis. It is clear, however, that Winston would have benefited from a cancer navigator who might have served as an intermediary between him and the human resources manager in this case. In that role, a navigator could have worked with Winston and his family so that the employer received the documentation it needed without overwhelming him in the wake of his treatment.

There are proven financial benefits and improved outcomes associated with cancer navigators in clinical programs.³¹⁷ Whether workplace cancer navigators would be successful in helping people with cancer to maximize their opportunities to work has not been demonstrated conclusively—at least, not yet. Reports from cancer navigators affirm that the people they serve with cancer face a “complex interplay of employment challenges that threaten the financial and overall wellbeing of patients.”³¹⁸ The cancer navigators, however, felt that they did not have the requisite training to provide guidance on all aspects of those challenges.³¹⁹

Ideally, cancer navigators in the workplace should be trained in the legal, governmental, financial, clinical and employer-specific resources available to employees with cancer.³²⁰ Specifically, training in state and federal laws and public policies, including the terms of the FMLA, the ADA, and related state laws as well as Medicaid and Medicare would be vital to support cancer navigators in this sphere.³²¹ If workplace cancer navigators can provide significant support to people with cancer, then establishing incentives to help encourage their adoption would be a sensible public policy.

2. *Engage Artificial Intelligence in Communicating Benefits and in Developing Reasonable Accommodations*

Expanding on the role of navigators, artificial intelligence (AI) can be a useful tool to help employers and employees in understanding federal and state benefits available to them where currently a majority of individuals lack this knowledge.³²²

³¹⁷ See generally Ronald M. Kline, Gabrielle B. Rocque, Elizabeth A. Rohan, Kris A. Blackley, Cynthia A. Cantril et al., *Patient Navigation in Cancer: The Business Case to Support Clinical Needs*, 15 J. ONCOLOGY PRAC. 585 (2019) (exploring the improved patient outcomes and satisfaction of patient navigator programs).

³¹⁸ Robin C. Vanderpool, Helen Nichols, Elizabeth F. Hoffler & Jennifer E. Swanberg, *Cancer and Employment Issues: Perspectives from Cancer Patient Navigators*, 32 J. CANCER EDUC. 460, 464 (2015).

³¹⁹ *Id.* at 464–65.

³²⁰ *Id.* at 464–65 (“[I]t is evident that training, education, and resources are needed to help navigators understand the work, legal, governmental, financial, and insurance matters commonly faced by employed cancer patients and to assist patients in successfully co-managing cancer care and employment.”).

³²¹ *Id.* at 465.

³²² See, e.g., Scardaville et al., *supra* note 6, at 317. See generally AM. CANCER SOC’Y: CANCER ACTION NETWORK, THE COSTS OF CANCER FOR PEOPLE WITH LIMITED INCOMES (2022),

This type of resource is possible as demonstrated by PaidLeave.ai—a paid leave solution that is a first of its kind by OpenAI and Reshma Saujani, founder of Girls Who Code and Moms First.³²³ This AI tool attempts to bridge the gap for moms. PaidLeave.ai is a chatbot designed to tell New Yorkers (with plans to expand to other paid leave states) exactly how much time off with pay they are entitled to, and to help them navigate the application process for it.³²⁴ Expanding this tool and others can help more workers understand their rights under the law to help enable transparency and provide more awareness and access to existing resources.

One of the difficulties inherent in applying the ADAAA is figuring out what constitutes a reasonable accommodation without causing undue hardship for the employer.³²⁵ An employee with cancer may be unable to predict how much of their role they will be able to do, given the uncertainty surrounding many cancer diagnoses. Employees have far less access to information about what might constitute a reasonable accommodation than employers, in large part because they usually have no way of knowing what alternatives are available in practice or what the financial impact of any given accommodation might be on the employer.

Engaging AI to help develop suggestions for reasonable accommodations could be helpful in this regard. An AI tool could draw on a vast number of examples of what constituted reasonable accommodations in other companies with comparable resources for comparable roles. It could relieve employees and employers of the need to reinvent the wheel in developing alternative work arrangements, allowing them to focus instead on which of many options would be most suitable for each individual employee. Using an AI tool for this purpose might be part of the role of a cancer navigator, but this function could be housed elsewhere in the firm as well.

If employers adopt AI to help develop reasonable accommodations, it is important to ensure that AI provides suggestions without making decisions on behalf of the employer. AI should be a resource, not an arbiter. With the unique complexities of cancer for the worker, and the varying obligations between the essential functions of the job (for example, a remote work job versus a construction job that requires in-person manual labor) and the employers, individual consideration of the circumstances and an interactive discussion will still be vital for all parties. Automated systems also still have their challenges, such as biases that

https://www.fightcancer.org/sites/default/files/coc_limited_incomes_final2_0.pdf (“[P]atient navigation is still absent or limited in many cancer programs and hospital settings due to cost concerns and a lack of long-term funding to pay for these services.”).

³²³ See Gemma Allen, *Reshma Saujani and OpenAI Bridge Gap for Moms with New Paid Leave Tool*, FORBES, <https://www.forbes.com/sites/gemmaallen/2024/01/15/reshma-saujani-and-openai-bridge-gap-for-moms-with-new-paid-leave-tool> (Jan. 16, 2024, 3:48 PM).

³²⁴ *Id.*

³²⁵ See discussion *supra* Section II.B.1.b.

could impact this process.³²⁶ For illustrative purposes, in 2021, New York City enacted a law prohibiting “employers . . . from using an automated employment decision tool” in the city “unless they ensure a bias audit was done and provide required notices.”³²⁷

The risks that AI will reinforce disability discrimination rather than helping to mitigate it are significant. The Department of Justice has cautioned against using AI and algorithms to make hiring decisions because “they may also result in unlawful discrimination against certain groups of applicants, including people with disabilities.”³²⁸ Similarly, the EEOC has warned that using AI and algorithmic decision-making tools may lead to ADA discrimination.³²⁹ The focus of both of those warnings, however, is on the risk that AI will be used to screen out people who deserve reasonable accommodations, unfairly and illegally excluding people from the workforce.³³⁰ Our suggestion, in contrast, is that AI might be used to help generate reasonable accommodations, thus enabling more people with cancer to continue working and provide a resource that further supports the interactive discussion process, rather than a decision-making tool.

AI can be a powerful tool to augment professional industries without replacing human interaction.³³¹ Developing a data set of prior reasonable accommodations from which an AI tool might develop suggestions could present health data privacy challenges as well.³³² Information about what comparable companies have instituted

³²⁶ See Alonzo Martinez, *Balancing Innovation and Compliance: Navigating the Legal Landscape of AI in Employment Decisions*, FORBES (Oct. 31, 2023, 6:51 PM), <https://www.forbes.com/sites/alonzomartinez/2023/10/31/balancing-innovation-and-compliance-navigating-the-legal-landscape-of-ai-in-employment-decisions>.

³²⁷ N.Y.C. DEP’T OF CONSUMER & WORKER PROT., AUTOMATED EMPLOYMENT DECISION TOOLS: FREQUENTLY ASKED QUESTIONS 1 (June 29, 2023), <https://www.nyc.gov/assets/dca/downloads/pdf/about/DCWP-AEDT-FAQ.pdf>.

³²⁸ See U.S. DEP’T OF JUST. C.R. DIV., ALGORITHMS, ARTIFICIAL INTELLIGENCE, AND DISABILITY DISCRIMINATION IN HIRING 1 (May 12, 2022), <https://www.ada.gov/assets/pdfs/ai-guidance.pdf>.

³²⁹ See U.S. EQUAL EMP. OPPORTUNITY COMM’N, EEOC-NVTA-2022-2, THE AMERICANS WITH DISABILITIES ACT AND THE USE OF SOFTWARE, ALGORITHMS AND ARTIFICIAL INTELLIGENCE TO ASSESS JOB APPLICANTS AND EMPLOYEES (2022).

³³⁰ See *id.*; U.S. DEP’T OF JUST. C.R. DIV. *supra* note 328, at 3.

³³¹ See Aditi U. Joshi & Brandon M. Welch, *AI and Telehealth: Rewards Come with Patient Privacy Risks*, FORBES (Mar. 6, 2024, 6:06 PM), <https://www.forbes.com/sites/forbesbooksauthors/2024/03/06/ai-and-telehealth-rewards-come-with-patient-privacy-risks> (“While concerns about AI replacing human interaction exist across many industries, we prefer to see it as a powerful tool to augment our medical expertise, improve efficiency, and help us deliver quality care in healthcare.”).

³³² See generally Blake Murdoch, *Privacy and Artificial Intelligence: Challenges for Protecting Health Information in a New Era*, BMC MED. ETHICS, Sept. 21, 2021 (discussing AI technology and privacy in healthcare).

in similar situations is likely to include sensitive, personally identifiable information about the health of other employees. This information can lead to issues with Health Insurance Portability and Accountability Act (HIPAA)³³³ compliance as well, although ensuring anonymity and encryption by training the AI model on de-identified patient information can combat privacy risks.³³⁴ Despite these recommended solutions, some scholars go as far as to posit that chatbots cannot comply with HIPAA.³³⁵ Moreover, there are examples of corporate abuse of patient health information for potential profit.³³⁶ Still, healthcare data breaches have also risen in a manner that could impact the safety and privacy of information.³³⁷ For example, a 2019 study successfully used a “linkage attack framework” (an algorithm aimed at reidentifying anonymous health information that can link online health data to real-world people) demonstrating the vulnerability of existing online health data.³³⁸ These risks and the potential for abuse must be considered in the development of this AI technology.

3. Replicate U.K. Cancer Awareness Programs for U.S. Companies

A less expensive and more episodic form of workplace support would be to adopt something akin to the Cancer Awareness in the Workplace program offered to employers in the United Kingdom. Cancer Awareness in the Workplace is a flexible program created by Cancer Research UK, which describes itself as “the world’s leading cancer charity dedicated to saving lives through research, influence

³³³ Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936 (codified as amended in scattered sections of the U.S. Code).

³³⁴ See Shashank Agarwal, *How to Navigate the Privacy Crossroads Between AI and HIPAA*, FORBES (Dec. 22, 2023, 12:28 AM), <https://www.forbes.com/sites/shashankagarwal/2023/12/22/ai-and-hipaa-navigating-the-privacy-crossroads>.

³³⁵ See, e.g., Mason Marks & Claudia E. Haupt, *AI Chatbots, Health Privacy, and Challenges to HIPAA Compliance*, 330 JAMA 309, 309 (2023) (“We conclude that chatbots cannot comply with the Health Insurance Portability and Accountability Act (HIPAA) in any meaningful way despite industry assurances. Even if they could, it would not matter because HIPAA is outdated and inadequate to address AI-related privacy concerns.”).

³³⁶ See, e.g., Ahiza Garcia, *Google’s ‘Project Nightingale’ Center of Federal Inquiry*, CNN BUS., <https://www.cnn.com/2019/11/12/tech/google-project-nightingale-federal-inquiry> (Nov. 15, 2019, 9:56 AM); Clare Duffy, *23andMe is Looking to Sell Customers’ Genetic Data. Here’s How to Delete It*, CNN BUS., <https://www.cnn.com/2025/03/25/tech/23andme-bankruptcy-how-to-delete-data> (Mar. 25, 2025, 1:28 PM).

³³⁷ See Steve Alder, *Healthcare Data Breach Statistics*, HIPAA J. (Aug. 27, 2025), <https://www.hipaajournal.com/healthcare-data-breach-statistics/>.

³³⁸ See SHOULING JI, QINCHEN GU, HAIQIN WENG, QIANJUN LIU, QINMING HE ET AL., DE-HEALTH: ALL YOUR ONLINE HEALTH INFORMATION ARE BELONG TO US 3 (2019), <https://arxiv.org/pdf/1902.00717.pdf>; see also Boris Lubarsky, *Re-Identification of “Anonymized Data,”* 1 GEO. L. TECH. REV. 202, 203 (2017) (suggesting that today’s techniques of re-identification compromise privacy).

and information.”³³⁹ The program, priced depending on the size of the employer and whether it is in the public or private sector, is tailored to each employer’s needs.³⁴⁰

Benefits of the program, according to its developers, can include helping workers to reduce their risk of cancer, learning how to spot cancer in its earliest and most treatable forms, distinguishing between cancer myths and facts, and having reliable and up-to-date resources for additional information.³⁴¹ Employers can choose from options including talks, webinars, surveys, trainings, and other tools that can be deployed in-person or online.³⁴²

In the United States, a similar program might be offered by the ACS, our national analogue to Cancer Research UK, by a legal services network such as the National Cancer Legal Services Network,³⁴³ or by a for-profit workplace wellness program vendor, either as a standalone service or as part of an Employee Assistance Program.

CONCLUSION

Cancer discrimination in the workplace persists as a significant challenge that affects so many individuals. Cancer discrimination in the workplace elucidates a complex interplay between legal inadequacies, societal stigma, and organizational cultures that fail to adequately support employees battling cancer. By examining these issues, this Article sheds light on the challenges faced by individuals with cancer at work and proposes several specific measures to enhance legal protections and diminish discriminatory practices, substantiating the promise of the Cancer Pledge to provide meaningful support for workers with cancer. While the Cancer Pledge serves as a commendable initiative to raise awareness and encourage corporate social responsibility, it falls short of providing real substantive protection necessary to address the complex challenges faced by individuals with cancer in professional environments. The existing legal framework, including the ADAAA and the FMLA, offers limited recourse that is unpredictable for affected employees, often leaving them vulnerable to discrimination and job insecurity. Protections are often impractical, like the unpaid leave benefits inherent in the FMLA, or uncertain, as cancer is not automatically a disability under the ADAAA and even if it meets

³³⁹ *About Cancer Research UK*, CANCER RSCH. UK, <https://www.cancerresearchuk.org/get-involved/volunteer/about-cancer-research-uk> (last visited Sept. 14, 2025).

³⁴⁰ See *Cancer Awareness in the Workplace*, CANCER RSCH. UK, <https://www.cancerresearchuk.org/health-professional/awareness-and-prevention/cancer-awareness-in-the-workplace> (last visited Sept. 14, 2025).

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ See *National Cancer Legal Services Network (NCLSN)*, LEGALHEALTH, <https://legalhealth.org/nclsn/> (last visited Sept. 14, 2025).

this threshold, reasonable accommodations are not certain. By amending these federal laws to provide more inclusive benefits and to regulate more businesses, and by encouraging businesses to offer more benefits in support of workers with cancer, cancer's large impact on personal and professional lives can be improved for a more inclusive and supportive work environment that truly accommodates the needs of employees with cancer. These changes will ultimately foster a culture of understanding and empathy that benefits both workers and employers.