

AIDS Legal Referral Panel
Employment Issues Facing Clients with HIV/AIDS
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- You receive a call from Michael, a potential client. Michael is HIV+ and is in the process of looking for a new job for the first time since his diagnosis. He wants to know what questions he can be asked about his health during the application process.
- Several years later, you receive another call from Michael. His job hunt was successful and he was hired as a legal assistant by a large, private law firm. At the firm, Michael provides support to two partners and one associate, as well as helping other legal assistants as needed. Michael has worked at the firm for several years without incident. His performance has consistently been rated as exceeding expectations.

Michael was just diagnosed with pneumonia, which his doctor informed him is an opportunist infection often suffered by people who are HIV+. Michael's doctor told him that he should expect to need several weeks to a few months off work to heal and recuperate. Michael is nervous to discuss his illness with his manager, Mean Manager, the director of support services for the firm, as Michael believes that Mean Manager has been unhappy when other legal assistants have needed to take time off work for medical reasons. He wants to know how to proceed.

- Michael calls you several months later. He tells you that he returned to work from FMLA/CFRA leave after being off work for two months. Michael reports that since his return, Mean Manager and Petulant Partner, one of the two partners he supports, have been giving him more work than he was expected to complete prior to his medical leave. Michael is still experiencing ongoing fatigue and is having a hard time working enough hours to complete the additional tasks being assigned to him. Michael wants to know what his options are.

- Michael requests a reasonable accommodation. The firm's human resources manager, Humane Human Resources, is supportive and helpful. The firm agrees to reassign the marginal function of providing backup to other legal assistants. The firm allows Michael to work from home upon request and to take additional leave as needed. With these accommodations, Michael is able to perform the essential functions of his position, although Michael believes that Mean Manager and Petulant Partner are unhappy whenever he works from home or takes time off work.

A few months later, after Humane Human Resources has been placed by Horrible Human Resources, Michael receives the first performance review he has received since he took FMLA/CFRA leave. He is rated as meeting expectations. In the review, he receives positive comments and ratings from Pleasant Partner and Amiable Associate. However, Petulant Partner criticizes him for not being sufficiently "responsive" to Petulant Partner's requests and Mean Manager criticizes him for his "lack of professionalism" and "lack of dedication to the firm." Shortly thereafter, the firm places Michael on a performance improvement plan, instructing him to improve his responsiveness, professionalism, and dedication. Michael again calls you. He is understandably quite upset. He believes that he was placed on the performance improvement plan because of his disability.

- The firm fires Michael the day the PIP ends, claiming he failed to meet the objectives of the PIP. He calls you, asking you to represent him in a lawsuit against the firm.