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## Professionally Speaking: Knowing Your Rights in the Workplace

Carolyn Messner, DSW, MSW, LCSW-R, ACSW, BCD

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** I'm Carolyn Messner. I'm doctor of education and training with CancerCare [<http://www.cancercare.org>], and ... I'm delighted to be here today.

I want to start with this bridge, [which represents, to me,] the importance of knowing our rights in the workplace. I believe that bridge [represents] a way for us to navigate; to get through things. That bridge takes you over what looks like a little creek. You can't get across the creek without the bridge. To some extent it's often difficult to actually survive in the workplace without really knowing your rights. [It's] particularly important when you have cancer ... but, actually, it is important for all employees across the board.

Some of you may be employed in a union situation ... Union protection is very important, and I'll talk a little about that. I assume that [others] here are what we call employees-at-will, which means that you don't have union contracts to back you up. You don't have union representatives to speak for you. [The passage of the] ADA [Americans with Disabilities Act; <http://www.ada.gov>] and the FMLA [Family and Medical Leave Act; <http://www.dol.gov/esa/whd/fmla>] gave employees-at-will tremendous protection, which they [hadn't had] previously. [They] probably [provide] the only protection that employees-at-will have in the workplace. Those critically important laws, which were passed in the 1990s, transformed the world of work to some extent. They

give protection in the workplace to anyone who has a significant health problem.

[I'd like to share a quote] by Studs Terkel [Editor's note: Mr. Terkel died in October 2008]. Studs Terkel writes about workplace issues. He's a "people's writer" – he wrote for the people – and [he] became [famous for writing] about the world of work. He says, "Work is about a search for daily meaning as well as daily bread, for recognition as well as cash." The reality is that people work because we need money to live. We live in a society in which we have capitalism, and we require income to pay our bills; to maintain our homes and our apartments. We need that very much. But work is, according to Studs Terkel and to many of us, also a [vehicle by which] some find meaning. [The workplace provides us] a social network and fabric.

There are many other things that work provides. For people who work for United States-based companies, our only form of insurance will come from our workplace. We do have a safety net of sorts with Medicaid and Medicare, and we have some state and regional programs that provide health coverage, but many people are dependent upon [employers to provide insurance], which bumps up the ante – particularly when you have a health problem. In other words, work is important [in terms of receiving] money – but, for many people, it's health insurance that really is the most important commodity [they receive] in the workplace.

I'm a social worker by training. My doctorate is in social work. I'm not a Freudian, but I think this Freud quote is interesting: "Work has a greater effect than any other technique of binding the individual more closely to reality." In many ways, work does ground us. It is a grounding mechanism. It provides us grounding; balance. It [gives us] a place to go. It gives us structure. For many people, work is a great distraction from the realities of personal lives, [including] health issues. It [allows us to focus on] other things.

Should we go over the benefits of work? I have ... [mentioned] income [and] health insurance. Health insurance is critically important. Many employers provide sick time, vacation time, personal days and other days off. [The workplace provides] a social network in the sense that some people's connections at work are very important in their day-to-day lives. It is a network that has to be managed when you have a health problem; many people say, "Too many people are asking me how am I doing today" or, "No one's asking me how I'm doing today." But that social network is there, and we have to manage it like many other things about work.

Work is very complicated. I have been a social worker for over 40 years, and I have to say that the world of work is a very fascinating place. Each workplace has its own culture. Every workplace is like its own family. Even if your workplace has millions of employees or 50 or 25 – whatever the number, each

workplace has a unique feel to it. [Think of your own workplace in regard to the issues we discuss today.] What is your workplace like? How do they treat people? What did they do to Mrs. Jones when she had a health problem? How did they deal with this situation? Employees are very keen observers of their workplaces. How does the workplace treat its employees? Ask an employee.

Also, work does give one a sense of purpose and value. For many people, going back to work provides a sense of normalcy. "I'm not just going for my treatments here; I can go back to work." Many people actually mark their progress by their ability to do certain functions in addition to [receiving] treatment. Some of those functions – returning to work; returning to other activities; seeing friends – give character and meaning to our lives. Each of you has different things that provide those important components to your life. Of course, work [also serves] a distraction; no question about it ... Again, this [is true of people] across the board, but [it's] much more critical when you have cancer.

What do we worry about, [in terms of] work, when we have breast cancer? What are our concerns? Many people worry about [their] appearance. "Do I look different? Will I look different to the people that I'm working with?" [Performance ability is also a concern to many.] "What about my level of energy? Will I be able to concentrate well, [given that] I am thinking about these other things going on in my life?"

I remember working with a woman who was doing work in accounting. She said, "My mind just isn't in it. I can't focus on all these little numbers that I have keep track of. It's really hard for me to do this stuff. I'm doing it, but I almost [believe that I] need someone to look over those numbers; I feel as though, for the first couple of weeks, I really need somebody to help with that." She happened to have had a very good relationship with her supervisor, and they were able to have an open discussion about that. The supervisor was happy to step in and help her for that short period of time. That may not be appropriate in every workplace. In some workplaces that's not what you want to do. You might just want to check those numbers extra carefully. You really have to have a sense of your workplace in terms of that decision.

Will [your] workplace let [you] take those healthcare appointments that [you] have to go to? When you talk about workplace accommodation – what many people really require is some flextime; either coming in a bit later or leaving a bit earlier to make those appointments. But a big concern is, "Will my workplace be accommodating to me? Will [my employer] let me take the time off that I need to take? How do I handle that?"

Many people worry about job loss. Now, for an employee-at-will, job loss is a constant concern. That goes with the territory to some extent, although I don't think it's [a pressing concern] for [all] people all the time. My sense, in working with people in the workplace, is

that [fear of job loss isn't] front and center [in the minds of] everybody in the workplace, [but that it's a big concern] when you have a serious health problem or when something significant happens. Then it becomes much more front and center. [It's] always there in the background, but [it can be a serious concern for someone who is having a health problem and who is worried about losing] the income; the insurance.

Disclosure is a hot topic: Whom do I tell, and how do I tell them? Do I need to tell people? Workload [is another issue of concern]: will I be able to carry the workload? Research shows us that, in the workplace, people with cancer are as productive, if not more productive, than people who don't have cancer. Myths and misperceptions about cancer and the workplace abound. It is not a correct assumption that people with cancer are [automatically] not able to carry their workloads. There could be situations where a physician says, "No. You need to make adaptations in your workplace. You need a workplace accommodation," or, "I don't want you to work right now." But if that isn't said by the healthcare team, then there's no ... because, remember, the average person in the workplace – what makes us think that they are any more productive than we are? That's where you get the misperception on both ends.

I said this before, and I'm going to say it over and over again: the culture of your workplace [plays a significant role]. How does the workplace treat its employees across the board? What have you

noticed [employers and supervisors] doing and not doing? It's very important, if you haven't ever noticed it before, to really start to pay attention to that, in terms of both yourself and [coworkers]. Most workplaces have active grapevines [by which you can] find out all sorts of things. The issue is: is the grapevine accurate or not? Well, that's for each of you to decide. [You may hear something through] the grapevine and think, "Could that actually be happening? Is it actually happening?" It might be. You don't really know. Sometimes stuff is leaked into the grapevine specifically so that it does get around. Sometimes it isn't. You really have to make those assessments; you can't hang your career hat on [what's heard via] the grapevine. On the other hand, you need to keep an ear [open] to the grapevine [in order to hear about] what's going on. That's very important.

Coworkers and friends at work: you need to have a sensitivity to them in terms of what you tell them. How much do you tell them? How much time do you want to spend talking to coworkers about your cancer? That will affect your ability to do the work. Also, do you have some trusted friends at work that you might want to tell [about your diagnosis] to but you might not want to [discuss it in detail]? You have to make those decisions.

Let's go back to disclosure. [Are there] questions about disclosure that we should put on the table right now, before I [continue]?

**WOMAN:** I was just wondering how to explain a gap on a résumé

when looking for a new job; what do you say? I'm worried that people won't want to hire me if they're, like, "Oh, she has breast cancer. She might be out sick again," and everything.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Excellent question. What's the time frame?

**WOMAN:** I quit my job in November, and I'm on disability now. I'm still in treatment. I'm not going to work through radiation, so November to, probably, June.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Okay, so it's not a lot of time. It's actually a very brief period of time.

**WOMAN:** Really? It seems like a long ... (Laughs)

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** It seems like a lot of time to you. Let me say something about that. We're going to talk about ADA and FMLA. Technically, during an interview an employer is not [allowed] to ask you a question about your health status. Many people [who have] gaps in their résumés will do what we call a functional résumé. You talk about where you've worked; you don't [include] dates. To some extent, even [listing] dates of when you graduated from college – remember, age is an issue, too. Workplaces have no right to know your age or your health status. [Employers] can't ask those questions. If you put [that information] on a résumé, well, then they can see it. But if you don't put it on a résumé, they have no idea of these things. [Speaking] as someone who interviews people

– and many of you are going to be interviewing people someday – what do you think employers actually want?

**WOMAN:** They want someone who's hardworking and dedicated.

**WOMAN:** They want somebody with a knowledge of whatever field it is; somebody that has experience in that field.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Right. They definitely want that.

**MAN:** I review ... résumés. I hire [people]. I look at [a gap in someone's résumé and wonder why] this person didn't work for that period of time. [Employers may not be able to ask you about a gap, and they won't tell you that it's a reason you're not being hired.] but they sit there looking at the gap, and they say [to themselves], "There's something wrong here." They won't ask you [about it] but, based on that, they won't hire you. How can you deal with that?

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** That's a very good point. What we would say is: you don't want to put those dates on your résumé. We're really talking about small periods of time. If you've been out of the work force for 10 or 15 years, that might be different, but if you're only talking about a couple of months or six months – people do do things. I don't know if any of you do this, but people do go away for six months. They decide to take a trip; [things] like that.

The only thing [about] a

nonfunctional résumé [is that], if you really are stuck with chronology and think that's important, you could trip yourself up with that. We recommend that, if you have gaps that make you uncomfortable, you list where you worked; the kinds of [tasks] you [performed, instead of focusing on the chronology.] Your [prospective] employer – the person who is hiring you – needs to know that you can perform the job – that you can perform the essential functions of the job – and that you come with some experience.

Frankly, what they say about interviewing is that, when you first greet somebody – this is well documented – [by the time] the person has come out, greets you and shakes your hand, and you've walked into [his or her] office, sat down and had that little [pleasant chat at the] beginning, [that person has already] made a decision about hiring you. It's a very interesting thing; often [the interviewer is not even aware of that].

The rest of the interview is spent either confirming [or rejecting the interviewer's initial decision. He or she] may get surprised [by something] and decide, "Oh, I really want to hire this person after all," or, somehow, "Now I don't want to hire this person." But really, [for the most part, the interviewer's decision] is based on [things that have little to do with what's on a résumé. The process of hiring someone is] not as scientific as we think it is. We like to have all of our ducks in a row, and that is very important in a résumé. But many people have all their ducks in a

row and still don't get that position, and somebody else does. People skills are critically important.

**WOMAN:** I'm my own boss. But I have [dealt with] gaps in my résumé in the past. I don't have a problem telling an employer, "Well, you know what – I took some time off. I needed a break. My savings ran out, and now I'm back in the workforce. Now I need a job." I think that's an honest answer. I know lots of people who take a break from work – "I'm not going to work for a year"; "I'm not going to work for six months." And it's because they just need a break from working. So I think that, if you do use dates and you feel that you need to say, "I've got five years of experience here, but two years [of being out of the workforce] here," I think that a fair answer is just to say, "I took some time off."

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** What is most important is that you are comfortable with whatever you decide to do. It's your comfort level that will be picked up on by the interviewer. These interviews are serious for you, and you really do have to role play them – get into a support group with others; discuss what you put in your résumé; [get feedback on] how people [view it and you] – so that you're comfortable with [the process. You are comfortable saying that you took time off,] but somebody else might not be.

**WOMAN:** I interview a lot of people, and a lot of women come in with gaps. A lot of time it's due to family issues – kids, parents or other issues. I don't really pay much attention much to gaps

unless there's a gap of over two years ...

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** [Every person is] different; we [each] need to come across in a way that we're comfortable with – so that, no matter who is interviewing us, we have a stance that we feel confident in.

**WOMAN:** I've been working as a part-time college professor all the way through this, and I just recently was told I won't work in that department anymore because I missed so much time. My mom was dying. She died of breast cancer on the 28th. Then I just got a new diagnosis last week, so I missed a lot of time, and my boss is, like, "There's always something with you. You will never work in this department again." My problem is that my dissertation is about breast cancer. I can't go in with my CV and interview and talk to people without it coming up. It's going to come up because my dissertation is on my CV.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** When your mom was ill, were you [covered] under [the laws of] FMLA – the Family Medical Leave Act?

**WOMAN:** Well, I'm a part-time employee. I'm an adjunct professor. I do not have benefits or anything. But I've been there since 2001.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** But, still, the letter of the law ... you're with a large university?

**WOMAN:** Yes.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** This is an excellent example. It's true, you're part-time, but the letter of the law, this is to potentially ... it's not the kind of way that a large university would want to [be perceived]. That kind of language, [directed at] somebody who has had significant ... that is actually quite egregious, when you think about it, isn't that? I mean, these are not life events that you can ... and now you're working on your dissertation at the same university?

**WOMAN:** Yeah, and I [inaudible]

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** So, actually [it's] the ADA [that] does apply ... these laws went into effect because of people that you're describing. We do live in a society in which, before these laws existed, a comment like that could be made; someone could decide to take it to the courts and all that stuff, [but] ... now [that type of] comment is unacceptable; not appropriate; and, if it's a large university, it reflects poor training of middle management; of whoever it is who's saying that to you. I don't know what that person's position is there, but [that] certainly is not something the dean would want to hear was said to one of [the university's] students in an academic setting ... Your dissertation is in a particular area, I would assume, of the helping professions? Or is it on ...

**WOMAN:** I'm in women's studies.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Remember, there are civil and human rights in addition to the ADA and FMLA.

They're just the beginning.

**WOMAN:** The EEOC ...

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** The EEOC. Yeah, it's an Equal Employment Opportunity Commission kind of violation, regardless of whether you're a part-time or a full-time employee. Many people would look at that as a civil rights [or a] gender issue as well. There are a lot of issues that one might attack that on. Then [there's] the issue of how to approach it. [I'm going to continue my talk because] I want you to get the flavor of what we're dealing with and whether or not it applies to you; I want you to understand the complexity of this and how important this is.

**WOMAN:** Just to confirm what you said – so they can or cannot ask you about the gap by law?

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** It's kind of dicey to ask about a gap; it isn't really the best way to approach that [issue. Remember,] you're interviewing [the prospective employer] as much as the [employer is] interviewing you, so you have to decide [how you'll respond] if someone starts to get really ... also, there are certain rules and regulations that kind of dictate [what's] appropriate [when] interviewing of people. When someone comes in for a job interview there's an imbalance of power – one might think. The person doing the interviewing is making a decision about hiring you. On the other hand, you're there as a consumer; as a person with basic human and civil rights; and if, in an interview, someone

begins to ask questions that make you really uncomfortable, you [should be open to realizing that] "this isn't the place I want to work."

There are some very creative ways to handle [gaps in a résumé], but they have to fit you. While one person may be very comfortable saying, "I took some time off," other people [may choose to] say, "I decided to go into business for myself," "I decided to do this" or whatever. Some people are very comfortable saying things like that. Others like everything to be very controlled in that interview, and they prefer to have a [more detailed] story that they really are comfortable with.

Do you want to have those gaps on your CV? Do you need to have them? Again, a functional résumé [focuses not on dates, but on where you've worked,] the type of work you've done and your skills. Your skills sets are what you're describing in a functional résumé. If you go to Barnes & Noble or Borders [you can find] wonderful books on putting together résumés. It's a very interesting thing to do; I know. We do workshops on résumé writing. It's [all about] figuring out how you want to portray yourself. [Depending on your background and on the job, you may want to stress your education, or you may want to focus on your experience. It's about deciding] how you want to portray yourself, [and that may depend upon what] the workplace is like. If you've done your homework and checked out the place – gone online to [research the company and to get a sense of] what the place [and the] people are like – when you go in there, you [can] try to appear "in

sync" with that workplace to some extent. That is a complicated thing to do. In other words, it takes a lot of homework.

Going for job interviews has never, ever been an easy process. You [may] have every "i" and dot dotted, [but that] doesn't guarantee you're going to get the job. And, to some people, not having every "i" and dot dotted might make [you] more interesting, and it might [cause them to think that you're] exactly who they're looking for. [It depends, to some extent, on] the culture of the workplace.

**WOMAN:** So the short answer is that it doesn't sound [as though asking about a gap is] actually out of the question. They can ask.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Well, if you put a gap in there ...

**WOMAN:** I work in a Japanese environment. I've got to do the résumé in a certain format, with chronological ... I have to do that.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** So then ... some people will actually put in something [that explains how they spent that time] ... it can't be something that's traceable. [If you say that] you took some time off [for some non-medical reason, be sure that] they can't trace medical records [for that time period].

**WOMAN:** You wouldn't recommend just saying, "I had breast cancer"?

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** In job

interviews you're not required to disclose medical history. The ADA precludes the employer from asking those questions. So, unless the workplace actually says, "We wish to hire people with specific [health issues,]" or you know by its type of work that [the company prefers to hire] employees with a particular history ... but I would say that, because the ADA precludes it, we tell most people that they don't have to share medical facts. That's not just true for cancer; you're not required, nor is it encouraged, to share [information regarding any kind of] health issue with your employer. But there are people who do it and feel very comfortable doing it, and it works for them.

I guess the perception is that it prevents the employer from asking anyone coming in for an interview ... in the past, employers could ask medical histories. I've worked long enough [to have experienced the days when,] in applying for a job, you had to fill out your entire medical history. You can't [be asked to] do that anymore. That is not allowed in the United States. In international companies that may be different, but any company that is based in the United States is covered by the Americans with Disabilities Act. And ... it's against the law [for a company's job application form to contain questions about a prospective employee's medical history]. That company can be sanctioned.

**WOMAN:** Through my experience, I [know] that having an employee with a very significant problem ... [the company's] health costs skyrocket.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Think about it: any employee that you hire is a potential health cost. We think of cancer as being the most expensive [medical condition] there is. But I have seen us hire people, and I've seen other companies hire people, that they think, "Oh, because you can't ask any questions, the person comes on board, and there are all kinds of [medical conditions they have that cost a lot of money.]" In other words, that's why health insurance exists. You can't play that game. If you're a company that has health insurance, you have health insurance for your employees. That also is against the law to do those sorts of things, [to give health insurance to some and not to others because of that person's specific medical condition].

**WOMAN:** [When] I was between jobs, I'd been a breast cancer survivor for less than five years. I couldn't get insurance ... and COBRA insurance was extremely expensive, so for a gap of time I didn't have insurance. I thought, how can I get insurance? I found an employer that had group insurance, so I was able to get [insurance through the employer during the] the five-year time frame.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** [You] make a very good point: staying in the workforce can be helpful in terms of not letting your [insurance] expire.

[Many of us struggle] with the decisions that have to be made: Do I tell? What do I do with my résumé? How do I handle that job

interview? There are all [kinds of] different pathways that you could possibly take [in your resolution of these issues]. Among this group here – this small and very intimate group – and, to some extent, [among] a group that has many issues that you share, you may hear [about] different approaches because the reality is that every person is unique and needs to do what [he or she believes] is most helpful to [him or her].

These are the different pathways we can take. Let's think about the decisions. The decisions have to do with how and whom to tell. Do I tell my employer? How do I tell my employer? Do I need to tell [him or her]? You certainly are not required to tell [a prospective] employer [about a medical condition] during a job interview. It's very important to be aware of the law so that you don't say something that you don't really need to [disclose]. But if you need a workplace accommodation [and you want to ensure that you are protected] by the ADA and the FMLA, you need to actually inform your employer [of your health condition].

If you just say, "I'm taking time off," and start taking days off [without informing your employer of the medical reason for doing so], it could cause a job jeopardy situation, particularly [if you are working as] an employee-at-will. There needs to be some reason [given] for taking every Friday off, every Wednesday off or every Wednesday and Friday off. If you [disclose the medical] reason, you become protected [under the ADA and the FMLA]. That's a very important thing to be aware of.

It's also important, if you're going to be [away from] work for periods of time, to have a point person to cover for you. What is the bottom line in the workplace? What do they care about?

**WOMAN:** They want your job to get done.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** They want the job to get done. The bottom line is productivity; getting the work done. Even the most caring workplace still has to perform. It has to do its job. It really has to. To some extent that is very important. If you need to take time off and you're organized about that ... we can't always be organized. Sometimes we don't have choices about what happens. But if we can do that – if we know up front [that we] may have to take some time off, we then have a point person; someone ... who knows what has to be done; knows the project. I wouldn't give away the whole store. [Your point person doesn't] have to know everything [about your job or the project. He or she] might have to consult with you when you're not there ... but let [that person] know what needs to [happen] so that the project and the work get done. Because that's what work is all about; it's [about] getting that work done.

[I want to bring up a point] about your career goals and promotion opportunities. Many people have proceeded with their careers [while dealing with] significant life challenges, including cancer, and many people – those with cancer and [those] without cancer – have gotten those great promotions. In other words, it's a misperception

that all opportunities are closed to you once you have a health problem. That has not been borne out by the reality of the world. Nevertheless, each person has [his or her] own perception about that. It's [the way in which] you manage this disease – the way in which we manage any of our life challenges – that's critical. [This is true] even [in terms of] holding on to the position we have.

We talked a little bit about résumés and job interviews. You are not required, nor are you encouraged, to disclose medical conditions during a job interview. When you get the job, [your employer may ask you to undergo] insurance screening and to have a physical exam. [Be aware that an employer] can [require you to have a] physical exam only if all employees [are required to have physical exams]. If they do require it of all employees and you're taking any medication, speak to the physician about the fact that you're having this exam for [the purpose of] employment and [inform him or her of the exact] medicines you're taking. [The physician needs to know this] so that, when you're screened, [if you] test positive for something that really is problematic in the workplace, [the physician knows that it's because of a medication you are on. You don't want to be in a position of having to "justify" a positive test result after the fact.] You want to [disclose your medical condition] up front [once you've been hired], but not in the job interview.

I want to make that very clear. [You don't disclose your medical condition to] the person who's

interviewing you for the job. [Once you're hired, the company may require you to have a physical exam only if it requires that all employees undergo physical exams. If that's the case,] you need to be up front if you're taking any meds that might cause some [irregularity] in a urine test or blood test that [might be cause for concern]. So – not in the job interview; no list of meds; [no disclosure of a medical condition.] But if you're having a health exam, speak to [the] physician [conducting the exam] beforehand. Go ahead and schedule it as if you're scheduling that exam just like everybody else does, but talk to your physician and say, "I'm having this exam done." If [the physician doesn't] seem to know what to do, call LBBC or CancerCare; speak to somebody ahead of time so that you know how to go into that situation well prepared. That's the issue: being well prepared.

I feel as though I'm preaching to the converted because you wouldn't be here if you weren't well prepared. You're thinking about these things already. Just by coming through the door to this workshop, [you've already shown me that] you're ahead of most people.

If you've been hired, you cannot then be denied the job based on [a health condition that's revealed] in the medical reports. Breast cancer is a very serious health problem, but we forget that there's a whole world of diseases out there ... As long as you [handle the exam and the disclosure of your condition] properly, [your breast cancer is] not going to

jeopardize your position. Is that clear to everyone? But it must be done with information. Knowledge is very important. That bridge – we don't want that bridge to fall in. We want that bridge to stay stable for you.

[Getting back to] decisions about telling colleagues and friends – you don't want to spend your whole workday telling people about your health issues because you need to be productive. So you need to figure out a way to deal with that. [Some people who] choose to disclose [their health status to coworkers handle questions] by saying, "Gee, thanks for asking. I'm fine today. I'll let you know. I'll keep you posted as needed." So you kind of let people know [that it's not something you want to talk about all the time]. You give them the message. It's a lot of work for you to have that burden; to have to do that. Unfortunately, people don't always know [how to handle the situation or what they should say to you]. They may mean well, but they're taking up a lot of your time, and you're trying to focus [on other] things. Like, "Here I came to work to do this, and then Mary or Bob comes up to me and says, 'Well, how are you doing?' And I'll think, 'God, I don't want to hear that right now.'" Or maybe you do. But you need to decide, each of you, what's best for you.

Managing your colleagues and friends at work is very important. It's also important to let them know [whether or not] you want to hear about all the scuttlebutt that's going on in the office; [whether or not] you want to hear about all the problems. Let them know if you are okay with that, and if you don't

want to hear that [kind of information], say, "I have no patience [to deal with] anything else that's going on right now. Really, just don't bother me with that stuff." Or let them know that you [very much] want to know – a lot of people feel that they need to keep the grapevine open; that they need to know what's going on. That's why they're there; they want to hear this stuff.

Let's talk about [health care, the importance of keeping your insurance with your employer, and workplace rights] in more detail...

The Americans with Disabilities Act was passed in the 1990s ... it's a very important act. It [addresses] the fact that people with significant health problems have the right to request a reasonable accommodation in the workplace [and that] they need to be able to perform the essential functions of their jobs. [If you have] a job right now, think about, say, the two essential functions of that job. Anybody want to [say what those are]? Okay.

**WOMAN:** I'm a teacher, so I have to show up and teach my classes and be available to my students.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Okay, so she has two things. The essential functions of her job are to teach and to be available to her students ... That's a very critical part of the Americans with Disabilities Act; you need to be able to perform the essential functions of your job. Now, [I've seen some employers] suddenly change the essential functions of [a person's] job once [that person] discloses a health

problem ... I've actually been amazed [to see] some large companies try to do that ... they've actually suddenly required somebody to do some physical work that was never required before. Of course, the person then has to say, "Gee, this is not a time to redo the job description."

That's a great time to have a nice little letter from your doctor [, on his or her letterhead stationery,] saying that [you are under that physician's care for a medical condition] ... When you're asking for reasonable accommodation, be sure you have your ducks in a row – which means having a very carefully written letter from your doctor; [a letter] that you've seen. You don't want [the doctor] sending it before you've seen it. That's very important. [The physician can write] a simple letter that says, "Mary Jones is under my care for cancer treatments" – it doesn't have to be specific about the type of cancer [that's involved], and [employers] can't ask [about] those details – "and will require a reasonable workplace accommodation. She will determine, in her judgment, what's required." [You want] something very simple; [there's no need to specify] what the treatment is.

I've seen people send...very long letters. You don't want to do that. [Keep it] simple. Remember, the people reading [the letter] are [likely to be] a supervisor who may know nothing about health care and an HR person, who really doesn't know. Remember, you all have entered a world of knowledge about cancer that your supervisor and your HR person really may not know much about.

Does that make sense to you? Unless [your supervisor or HR person has] walked those paths themselves [or] you work in a medical facility, they don't know all those details. But [a supervisor and HR person] do know [that they are legally required to provide] a person [who] has cancer reasonable accommodation. And they can put [reasonable accommodation] in quotes, [by specifying what they are willing to do to accommodate you]. Under the ADA they can put something like that in there, and sometimes they can be specific: "may require some flextime." Or, if your job has required a lot of travel, [they] might say, "May need to have no ...". There may be some specific things that you would discuss. But keep it simple. Be sure that you and your doctor [go over] it, and then show it to an oncology social worker and an oncology nurse – be sure that everybody is cool with it – and your support group, people that you trust, before you give it to your employer. [Don't let your doctor just fax the letter to your employer, and don't let your employer pressure you to hand over the letter before you've shown it to these people and made sure that it's okay. Your employer] can't say to you, "We need that note right this second."

[It's a good idea to be proactive and have the letter ready to give to your employer before you disclose your health condition.] If you didn't do it that way, it's okay. Not to worry. But, [should you find yourself in this situation in the future, be proactive and get] the letter ahead of time, before you even need it.

The Family Medical Leave Act also does apply to people with cancer. We often think of it as [applying] only to caregivers ... many people don't realize that it [also] applies to the person living with cancer [Editor's note: FMLA applies to anyone "with a health condition that prevents him or her from performing one or more essential functions of his or her job"]. It allows you to take up to 12 weeks of unpaid leave with continued health coverage [per 12-month period]. Some very large companies also pay your income [during that period of time]. They give you your full salary. But very few companies do that. There is an effort afoot to ... because, although it's great to have health insurance, you do need money to pay the rent, the mortgage and all those kinds of things. But, at this point in time, it's 12 weeks of unpaid leave [per year], with health insurance guaranteed during those three months [Editor's Note: continued health insurance assumes your employer already provides health insurance].

You can take [those 12 weeks] in blocks of one hour at a time. [But] the other thing [to consider] if you have sick time [and] ... you have appointments with a doctor [is that] some companies now have said you can't take sick time in blocks of one hour. You have to take a half a day or a full day. So you've got to read the policy and procedure manual of your organization. It used to be [that most employers allowed employees to take as little as] an hour [of sick time to attend to a medical appointment]. Now some of them say [that you can take as little as] an hour [only] if it's an

emergency appointment. If it's not an emergency appointment, you can't. So you have to look at [your company policy] carefully.

Many companies prefer to have people with health problems use [the 12 weeks of unpaid leave that's guaranteed by the] FMLA [before they use any type of paid time off, such as vacation time, to deal with medical issues]. But track your [use of those 12 weeks' worth of coverage under] FMLA. Try not to use it all, [if you need to have income coming in, or you have concerns you may need to take further time under FMLA during the year]. Manage [the time you take off from work]; figure out how much you want to take under FMLA. [Ask yourself,] "Do I have some vacation or personal time that I can use once in a while as well, even though I would rather use my vacation time for fun things? How is this working with the employer? I don't want to use up all of my FMLA at the start of a year." Does that make sense to you? [You] want to kind of balance it out, so you have to be very thoughtful about how you use it. But, [as far as FMLA guidelines go,] you can take it in blocks of one hour at a time. Most HR departments will, as the FMLA does, let you take an hour at a time.

If you decide to take those three months of FMLA [as a solid block of time], please don't just disappear from the workforce. Keep in touch with your supervisor and [your] HR [department]. It's three months, and then you can come back to your position. However, if you haven't kept in touch it's very easy to forget the exact day [that you

need to be back at work]. The clock starts the day you start that FMLA three-month leave. You don't want to miss [your deadline to be back at work] by a day. Technically the company only has to keep that position for [you for] those three months.

[There are, of course, other reasons] to keep in touch with [your supervisor and the HR department]. You really don't want to disappear from their radar screen. You want to be present with them; [continue to] touch [base] with them. "How are the projects going? Is there anything that I can do to help with things?" You want to be sure that you have your foot in that door even though you're physically not there. Don't be in the situation [that] I've seen many people [find themselves,] where ... many companies, of course, are nice, but some aren't. You don't want that door to suddenly close just because you missed [your deadline to be back at work] by a day [and the company has a legal right to terminate your employment]; [because] you had other things on your mind – because you just weren't, like, "Oh, my God, it's that day."

**WOMAN:** My question is ... about health insurance. Our company [now requires employees to pay] 15 percent [of the cost of] our health insurance. [That wasn't a requirement when I was hired;] they just put it into [effect] – so if you are off, you're [still] responsible for your 15 percent. Does that apply with the FMLA?

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** [You are

entitled to whatever the health insurance [package] is that your company offers [in addition to the three months of unpaid leave. Are you [under] contract or in a union shop, or [are you working as an] employee-at-will?

**WOMAN:** I don't know.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Well, you would know if you are unionized because you ...

**WOMAN:** We're not a union.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Okay, so you're an employee-at-will, and that means that your company – if it has changed [the policy for] everybody ... are you still going there every day, or are you on leave? Are you on medical ...

**WOMAN:** I continue to work, but when I was off they paid for my health insurance totally; I didn't have to pay.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** I see. And was that 15 percent [in effect at the time]?

**WOMAN:** Yes, but they just changed it. A girl had a pregnancy, and when she was off she was made to pay that 15 ...

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** She would also be covered under FMLA [because of her] pregnancy. FMLA covers many different things.

**WOMAN:** I guess I'm confused on ...

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Well, did that policy just go into effect?

**WOMAN:** It was changed ...

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** So, when you [took your time off, that policy regarding employee contributions of 15 percent] wasn't there?

**WOMAN:** Right.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** But now it is there. [The FMLA requires your employer to give] you the health package that it provides [at the time you take leave from work]. You could certainly call the EEOC about [the situation to] see if there's anything else that you can [do to protect yourself.] [If you're under contract or unionized,] I would [recommend that you] definitely check with the EEOC because ... sometimes [a company's change in policy] applies to employees that are [hired after that policy goes into effect], but [not to employees that were at the company before then] ... For employees-at-will – companies do change [policies, including those involving the] health package, regularly. They do it for a number of reasons. [These days, many employers are] increasing the [employee] copay ... and many of you who have the union contracts – you hear about [unions negotiating] health benefits. ... But I would check with the EEOC just to [get clarification on your particular situation].

Also call FMLA. They have a toll-free number [(866) 487-9243].

That's what's great about them – they actually do pick up the phone, and they actually do talk to you. You can all them anonymously. I would [recommend that you] call them any time you have a question – even one about writing your résumé ... it's always nice to get the EEOC's, the FMLA's and the ADA's take on things. Every time you call you'll get somebody different. I call them regularly about questions that people ask me. I always like to get their take on things. [The FMLA is] a federal government agency that actually does help; that actually provides good information ... I'm reluctant to say [that, in your situation, your company has] to go back to what it had offered before because my sense is that, if they have changed it for all employees, [the change] probably applies to you as well. But I don't want to close that door on you before you've checked with FMLA.

**WOMAN:** My thinking is that they did it for me, and then, when this girl became pregnant, it was like, "Oh, we've got to change that real quick."

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** What do you mean they "did it for you"? I'm not sure I understand. I may have misunderstood the question.

**WOMAN:** When this girl became pregnant, the CEO of the company said, "We're no longer going to cover medical leaves"; [something] like that. You didn't have to pay the ...

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** But was that

15 percent in place before?

**WOMAN:** Yes.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Oh, it was? Oh, I see. I would still check. Maybe there is something in FMLA that applies to people with health problems versus [those with] pregnancy. I don't think so, but I would definitely encourage you to check because I don't think I have the perfect answer to your question. I have a logical answer to it, but logic doesn't always rule. So I would definitely call FMLA and EEOC. And, remember, these are confidential calls. You don't have to give your name. The same applies with the EEOC.

**WOMAN:** For FMLA, so it's 12 [work] weeks ...

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Of unpaid leave, three months actually.

**WOMAN:** Now, the treatment could go on for six months. If, say, the caregiver wanted to take off, like, an hour a week, can you look at it as 480 hours? [Or does all the time] have to be taken within a three-month block?

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** It's 12 weeks of unpaid leave, and that's basically it in terms of your job assurance. If you wanted to take additional time, you couldn't do it under FMLA, [but if in] the culture of the company they had [given additional unpaid leave] and have it in their policy and procedure manuals [to do so.] they [could] extend [your unpaid leave]

beyond what [FMLA specifies].

**WOMAN:** So all the time has to be taken within a three-month block?

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Oh, it doesn't have to be taken within three months. You can take it throughout a year an hour at a time, [according to the law of FMLA].

**WOMAN:** So you can take it throughout? Like, treatment might go on for someone for six months, and you might need that caregiver over the course of [those] six months. So you could look at it as 480 hours?

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Well, it's the number of hours [of your work week multiplied by 12]; that's right ... whatever that turns out to be. So you can take it over the whole year. And you don't have to use up all of your FMLA time, either. It's often advisable not to because, remember, the clock is ticking. Remember, you have to be a full-time employee the following year, so just be aware of how you manage your FMLA. I would check with FMLA if you're taking that three months. How does it affect your status the following year? Are you seen as a full-time employee? What does that do? But if you need to take [that time off in increments of] an hour throughout the entire year, it's just ... what is it? A workweek is five days, seven hours a day, times 12.

**WOMAN:** And the health insurance – you said that, whatever your plan is ... let's say you go out for those three months; they have to continue covering

you? It's not like COBRA? You don't have to pay for it?

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** No; they are required to continue covering your health insurance during that three months of unpaid leave. If you're taking it in blocks of an hour at a time, you're a full-time employee, you're really just ... I'm not sure what they'll do with your salary. They may let your salary stay as is. I actually don't know what they do with salary if you're taking an hour off here and there for a year and it ends up being three months [of time off] ... [but] I just want to complete this part, and then I'll come back.

There also are [other] state and local and federal laws. Please be cognizant that, although we're talking about ADA and FLMA, sometimes other state and local and federal laws are stronger. I talked earlier about the human rights and civil rights laws; often those trump the ADA and FMLA. Sometimes there are situations in which, although ADA and FMLA apply, you also need to check with [your state's] human rights commission and civil rights commission. Sometimes employers may do things that do not follow the letter of that law, so you need to understand your civil and human rights in the workplace, as well. It's very important. All employees need to know that. Many people don't understand that there are very strong laws.

The EEOC ... is the enforcer of the ADA, the FMLA [and, to an extent, many laws involving human and civil rights]. So it's always nice to check with them to see whether or

not everything is in compliance and the way they should be ... you really need to have that information. I've been an expert witness [in proceedings that have gone] to litigation ... rather than using ADA and FMLA, which could have been used in those situations, [to make their cases, the attorneys] ended up [basing their arguments on] gender issues. They ended up using the civil rights gender issue. It's just important to be very cognizant of these things. I know it probably doesn't sound interesting ... but [this information] will always steer you well throughout your entire career.

This information ... [nobody wants to have breast cancer but, because of it,] you are going to be learning things that are very important in terms of your career management. [Some people have said] that the information they have learned [as a result of] managing their cancer in the workplace has put them in a very different place in their career track, [as compared to] someone else who doesn't manage any of those things. Even though you would rather not have to immerse yourself in labor law, civil rights law and workplace laws because you're so busy trying to figure out what medical treatment to have and all the rest of the stuff, [the information you gain] does place you in a very different position of awareness in the workplace [compared to] someone else who has no awareness of these things. As an employee-at-will, it can only help you in your career path ... just recognize that these are important things to be aware of. Many people work their work lives and do not have this awareness. I know

you'd say, "I'd trade places with them anytime"; nevertheless, this is important [information] for you to know.

**WOMAN:** So each state and local law – they're different? I live in New Jersey, but I work in Pennsylvania. I have to find out what the laws are in the state in which I work; is that correct?

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Well, I would definitely check with the EEOC if there are particular issues that you're concerned about. You work in Pennsylvania?

**WOMAN:** Yes.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Pennsylvania has some very nice workplace ... actually, many states do. I would check about both states because you live in one state; you're paying taxes in one state. I would just call the EEOC and clarify that with them.

**WOMAN:** Okay. Thank you.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** That was an excellent question. Some of our states have stronger laws [than others]. I know that New York State has a stronger ADA law than anywhere else in the country [as a result of a] case ... [involving a] woman with breast cancer who did choose to litigate. The case, [which] was won in appellate court, [involved] perception of disability; the company was really egregious. This is public record. Because of that litigation, [New York State has] a very strong law ...

But each of your states probably has comparable situations – where someone has really taken it to the courts, and then laws become bumped up and enhanced.

**WOMAN:** Would I be covered under the state law ...

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** I don't know the answer to that, so I would [recommend that you] call the EEOC and ask them.

**WOMAN:** The EEOC; okay.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** It would seem that your employer is reportable to its state ... [but remember, the fact that] your employer [does business in one] state does not mean that that's the state [the company] reports to. Some of us work in [national or even] multinational, or global, companies ... you need to clarify [which state or country] your company reports to in terms of that. For others of you here, [it may be a question of whether or not] your global company [is required to comply with U.S. laws] because it's [doing business] on U.S. [soil]. Has it been given some special status? You need to clarify those things. If you live in one state but work in another state, do you have the protection of both states in terms of how you're treated in terms of civil rights? Because you're paying taxes in one state and working in another state, it would seem logical that you should have some dual protection. I think it's worth checking on that.

**WOMAN:** Thank you so much.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** I've noticed this throughout the conference – the questions that you have all asked have been quite outstanding.

**WOMAN:** I thought that would be a stupid question. (Laughter)

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** I have to say – I've sat through this conference. Not one of you has asked a question that is not incredibly well informed and thoughtful. [Not just in] this workshop, but throughout this whole conference, I have been amazed at the clarity and thoughtfulness of your questions. I have been coming to this conference many years, and I have to say that this is probably the finest audience one could ever expect because you are asking very thoughtful questions. So let's applaud all of you. (Applause) I mean, honestly, you've been just amazing. Is there a question back here? Okay, yes?

**WOMAN:** I work for the steel mill in Birmingham, Alabama, and they gave me 26 weeks with pay and are paying my insurance. But they went up sky high on the insurance.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** And what company do you work for?

**WOMAN:** US Steel. I'm wondering – if and when I go back, I know I'll have to go before the medical doctor, and more than likely she's going to send me back. Everybody who has breast cancer that has gone out there ... I know two other girls; she has sent them back.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Back to where?

**WOMAN:** Because of the chemicals that we work with out there ... I've been off since August, but I know that some other ladies have tried to go back to work, and she's sending them back and wouldn't allow all of them ...

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Back home?

**WOMAN:** Back home. She told them, "Go back to your doctor."

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** You need to first clarify with your doctor [whether or not you] can go back to work. If your doctor thinks that you can go back to work – [the company doctor is] not a medical oncologist. Remember, these company doctors are primary care doctors who are working in this type of capacity. They have medical degrees, but they are not experts on your particular type of cancer. You know people with other health problems – they are not experts on any type of disease ... [as we] all say to you, when you have breast cancer, do you go to your primary care doctor for your care?

**WOMEN:** No.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Who do you go to?

**WOMAN:** An oncologist.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** A medical oncologist. A medical oncologist

determines the safety profile [in terms of] going back to work. What kinds of chemicals ... are you working directly in a chemical ...

**WOMAN:** The coils that we do, which you probably see on the highways – there are chemicals that we have to put on them to coat the steel. And I have to go out and physically pick up these samples because I'm a tester. And there are chemicals involved.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** But do you wear gloves when you pick up these ...

**WOMAN:** All day long I have to wear gloves. But there's still a risk. The mist is in the air.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** I see ... do you want to go back?

**WOMAN:** If I don't have to, I don't want to go back.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Oh, okay. Oh, I'm sorry.

**WOMAN:** And I need to find out what steps do I need to follow in order to not go back. I actually believe that's part of [the reason for] my problem of breast cancer – because of the chemicals that I have worked with; because we have some blue oil that we spray [and] some bare coils, I think ...

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** You're wondering if that had some impact on your developing cancer.

**WOMAN:** I actually believe [it did].

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** This is a very good question. It applies to everybody in this room. We've been talking about fighting tooth and nail to stay in the workplace. However, there are situations in which that is not appropriate, and I should have said that earlier. What you're describing is – if you feel that your workplace is not an appropriate place for you to be and you work for a large company that, I believe, has all sorts of benefits ... [then you need to discuss the situation] with your healthcare team. And if you're not sure that your doctor is going to be all warm and fuzzy about this, talk to oncology nurse and the oncology social worker; talk to LBBC; call CancerCare. Get advocates in your court and say, "Look. I cannot go back to this place. I [believe] it caused me to become ill." And, in your instance, say, "I'm spraying all these chemicals; picking up [these things]; wearing gloves – [I'm surrounded by] toxic spray ... I don't need this right now. I can't do this." Then they'll say [whatever they say] to you, and you'll think it through.

If there's no medical basis for [your concern], of course they'll say, "Gee, you have to go back to work." But it sounds like ... we're thinking logically here. I'm a social worker by training; I'm not a physician. You have to consult with the medical experts. But the medical experts might very well say, "Maybe this isn't a good time." Any one of you in this room, when you're making that decision [of whether or not to] go back to work – you really need to sit down and have a heart-and-soul discussion

with your treating team. Before you do that, you have to decide yourself what you really want to do. If you can't decide before you talk to your doctor, who you know gives you about, what? Seven minutes per visit or something like that ... do you get more time than seven minutes?

**WOMEN:** Yes.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Okay, excellent.

**WOMAN:** I get as long as I need.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Well, let's applaud those physicians, then. That's terrific. (Applause) But before you [talk to] your physician about this –again, have an advocate in your court: LBBC; CancerCare; social workers. Have someone to talk to about where you really feel you are. Or [talk to] your support group. "This is where I think I am at this point. This is what I'm beginning to think. I'm not sure. Let's spend time [discussing it]." Because there you have an endless amount of time to talk to somebody about "what do I want to do?" Then you meet with your healthcare team and say, "Look. This is where I am right now; [this is] what I want to do. I need a letter."

Again – you need a letter [from your doctor], on letterhead [stationery], that says you're not able to return to work due to your medical status. [The letter] would probably say that you do have cancer and that the state of your cancer precludes your returning to work at this point. You [might be] a candidate for Social Security

Disability benefits ... but before you [seek that letter from your doctor,] sit down with a social worker and ask, "What am I entitled to? How does it work? What is my benefits package?" Read your manual. How does that work at US Steel? Do you get long-term disability; short-term disability? How does all that work? You need to be clear.

**WOMAN:** But I've been turned down by Social Security already. Before the 26 weeks was up I had to apply with Social Security, and I have been turned down by Social Security. So now I've got to go back and appeal it.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Did you see the letter your doctor wrote? When you apply for Social Security Disability benefits – [this is] something you can fix if you didn't do it this way – you need to make sure that every "t" is crossed. Have you ever sent in an insurance claim that [was] denied? You always have to appeal it. With Social Security everything has to be dotted and crossed. The letter from your physician is critical. You need to see what he or she wrote. If you didn't see the letter and you were denied, you have to go back and see what was submitted, because what was submitted is critical. Again, the people making those decisions are often clerks ... the physicians you see [for your regular care] are not medical oncologists. They're not experts in your particular type of health problem.

It's very important that you work very closely with your team if you're applying for Social Security Disability benefits ... You need to be sure that all those ducks are in a

row. It's very important ... you can call Social Security Disability; it's a toll-free number [(800) 772-1213]. The agency has a Web site [<http://www.ssa.gov/disability>]. Get a very clear understanding of what is required to qualify for [those benefits]. It means that you're permanently and totally disabled.

Many of your employers will give you short-term disability, then long-term disability [benefits]. You can get state disability benefits ... It's hard to get Social Security Disability [benefits]. Once you get it, it's for x number of years, and you then get Medicare, so it's got a lot hooked into it. [You get two] years of Social Security Disability benefits, and then you're an applicant for Medicare at any age, whether you're an adult or a child. In other words, once you get SSD you don't have to be 65 [years old] to get Medicare. Anybody who gets Social Security Disability [benefits] for two years is an absolute applicant for Medicare. [The one exception is] people who have renal failure; once a person who has renal failure is on dialysis, [he or she has] immediate tracking into Medicare. That [is due to] very strong advocacy [that occurred] back in the seventies. Just be aware of that.

Time is also important here. In terms of exercising your rights, time is critical. There are some decisions that you need to make [within a certain time frame].

We've talked about learning about ADA, FMLA and EEOC. You've got to know [about] those things.

You need to think about the art of

disclosure. Do I tell? Whom do I tell? How do I do this? What's the timing of that? [Before you disclose] anything in the workplace – to your boss; to HR; even to a friend or trusted colleague – if you have the luxury of role playing it first, try it out. Some of you may not have done that, and that's fine. But, moving forward, [in dealing with] any wrinkle along the way, it's always good to rehearse [what you're going to say or do]. It's very important information that you're sharing about yourself, so think about how you do that.

I recommend that you work very closely with an oncology social worker, a nurse, or your physician. Do not [disclose] without really careful orchestration. It's a very important orchestration, I would say.

It's very important, if you're in a union shop, to be sure you're working with the union rep. Even though you may not be in a union situation now, you could be at some future time.

If you feel that your rights have been violated in some way in the workplace – that something egregious has been done – you need to call the EEOC to discuss that [before you do anything else]. Many nonprofit organizations work with lawyers and legal firms that offer consultation to people who believe that their rights have been abridged. Litigation is often the last approach that one takes because, indeed, it takes time. Some lawyers do some of that pro bono, but it does take time. We do these types of workshops to be sure that you know your rights and that you're empowered. [As a result,] you

might have less of a need to litigate. That's not a guarantee here, but we do believe that if you know more you're in a much better place in the workplace in general.

The concept of being proactive – I can't say enough about that. Working with your healthcare team is really important. Let's say that working is very important to you. Whatever is important to you – your healthcare team needs to know that. If work is a critical component of your life, when you see your physician you need to say, "My work is critical in my life. It provides me with income and insurance. I need you to manage my side effects really well. I need you to really deal with this stuff. I can't miss a step here. My workplace is hyperdiligent about these things. So what can you do? Because I can't see you, frankly, if I don't have health insurance." I would be that direct with your treating healthcare team.

Although all of your treating healthcare teams are diligent, I hope, about your treatment and side effects management ... in the nineties, when the ADA and the FMLA [were enacted] – that's actually when some of the antiemetics; the drugs to deal with nausea and vomiting; came out, too. Even though [side-effect management] not a perfect science – it's been developed, but it's not perfect, as you all well know ... you really need to have your doctor not wait until you have a symptom. He or she needs to work with you [in an] aboveboard, upfront [manner]. If you don't feel you can continue working[, even with antiemetics,], you can just say, "It's too much. I can't continue

working. I need a break. What do you think?" You might schedule some special time to have this discussion with your healthcare team.

Some people recreate their work spaces ... they modify their work spaces, adapting them to make them more cancer friendly and to allow for better ability to work in that space. If you need an accommodation – if you need a different chair; a pillow; a water supply – whatever you need, [you might be able to set up] your work space in a different way so that it's more friendly to you; so that it allows you to have what you need at your fingertips.

If you are expecting to take some time off – again, every company always appreciates employees who actually let people know if something is going to happen; [who make provisions to have] that point person. If you're working on a big project and you expect to be out, [perhaps you'd want to] let [your employer] know that you may not be able to be there, but [that] you are available [to discuss the project – whatever you're comfortable with]. You each have to determine your own personal workplace culture and what you want to do for that workplace.

And, of course, if you choose to disclose, disclose [a limited amount of information in a limited amount of time] with your supervisor. Don't spend an hour talking to your supervisor about this thing ... just share what you need to share. But the things that you really need to talk to your friends or support group about? That goes there. Is that clear? Because work is still work.

[If you want] to create a plan to continue working, know your workplace's policies [in regard to] flextime and working from home. Some of you work in workplaces that do allow you to work from home. If they do, that's terrific. Not every workplace does that. And job sharing – some companies allow that; some don't. Know up front what your company allows. That's very important. How many of you work in companies that let you work from home? That makes a tremendous difference when you have a health problem, doesn't it? It allows you to be productive [even though] you're not physically there all the time.

You know that now you're going to learn more about your legal protections ... Look at that work space. Be sure you have made that work space work for you. [Think about your] workload. You may want to reprioritize how you handle your workload. There's someone I've worked with for many, many years who has moved along in [her] career path; [she] had a very unusual course with the cancer, and [she] said that the way [in which she] had to manage the cancer allowed [her] to move along in [her] career because [she] had to make decisions that many employees don't have to make – what can I do? What can I delegate? How do I handle things? How do I organize my work space? – in a way that was very different than [the way] other people [did]. [As a result, she] became more managerial in [her] approach to [her] work, and [that] allowed [her] to progress on her] career track. [She] could have done without the cancer but ... be aware of that.

Coworkers and friends will take their cues from you, as you well know. It's a burden for you to have to do, but you need to let them know what you do and don't want to hear from them; what you want them to ask you and to not ask you. That's very important. Also, stay in touch, if you're taking ADA and FMLA, with your supervisor and human resources department.

Last is just this slide of all the [artist] Christo's "Gates" [installations] that appeared in New York City – oh, gosh, a number of years ago, in the winter; in February, actually. I understand there's a lot of snow in New York right now, so actually this is kind of a bleak thought. (Laughter) In any case, [these art pieces lined] 26 miles of paths. In our lifetimes we're going to go through many more than 26 miles of paths ... Your whole life is going to be [about] all these pathways and choices to take. Many choices [involve] career management, [and there are] many different pathways that you may take. Some are foisted upon you based on health issues. Some are foisted upon you by your own particular interests. Careers are incredibly complex things. We often think of [it's difficult to manage relationships with] our families and children and friends; [we think of] that kind of stuff as being complicated. But our careers are [also] a very complicated aspect of our lives – much more complicated than most people realize. The institutions we work for [are complicated] ... even those who are self-employed [are faced with] complexity [in terms of] the world of work. When you leave here, think about all those gates that are in front of you. You have

lots of years ahead of you in your career and in the workforce. You have a little bit more knowledge now.

Let's see if we can fit in a few questions.

**WOMAN:** How do you deal with your legal rights if you work for a company with less than 50 employees?

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** The ADA applies across the board ... [it's] a federal mandate. In terms of requesting a workplace accommodation, it can't cause an undue hardship for the employer. The smaller the employer, the greater the hardship could be – although the requests that we're hearing about in the cancer field are not things that are really costly to employers.

FMLA does [apply only to] companies that have] 50 or more employees. [If you worked for a company that had fewer than 50 employees and] you needed to take time off, [you would not be covered under FMLA. But] ... there are small companies out there that are amazingly accommodating to employees. We do a lot of consulting with small companies, and some are amazing [about accommodating employees' medical conditions. I wouldn't assume that [a small company that is not subject to FMLA rules won't accommodate me;] sometimes small companies have a very different philosophy toward their employees. Not that large companies don't [care about their employees] as well.

It really [boils down to] the culture of the workplace. I would try to assess the culture of your workplace before I ask for anything. I would check with the EEOC [to determine whether or not that agency can give] you any guidance in terms of the state that you're in, any precedents that involved other companies – anything that you can garner about that. And [think about how much time] you actually need to take [off]. What are your requirements? If [you can have] flextime, and if you use your vacation days, can you manage with that? ... but it is true that a small company – one that has fewer than 50 employees – is not mandated to provide [accommodation under the] Family Medical Leave Act. ADA applies across the board; that's kind of a national mandate. [The ADA addresses discrimination, which is] a major civil rights issue.

**WOMAN:** As a part-time contract employee, I've always assumed that I don't really have any rights. [Is that true?] And if I, say, look for another job, is there any limitation on what my boss can tell [a prospective employer]? Say that I go through the whole interview process; then [the prospective employer] calls my boss, who says, "Oh, she's a single mom with cancer. She's been diagnosed three times. You don't want to work with her." Is there anything that I can do to stop that?

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Well, first of all, you always have rights. You have rights in our society, and you have rights in every workplace ... Whether you're a part-time or a

full-time employee, you have a right to be treated with dignity [and] respect, and [a company must have] respect for the law. Things cannot be said to you by insensitive managers. That's a very risky thing to do.

In terms of going for another job somewhere, you have to choose [the people who will write] your references. It's your choice [as to] who you want to write [those]. Also, if someone writes a terrible reference for you, that's potentially [grounds for a lawsuit]. You have to give permission [for someone to serve as your reference]. When someone applies for a job somewhere, they [usually] indicate [that] references will be provided upon request.

**WOMAN:** If you fill out an application, you [are asked to provide contact information for] your [current] supervisor. That's asked for on every application.

**WOMAN:** [By law, an employer] can say what day you started working; what made you stop working ...

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** The HR department would handle that, actually. That [question] wouldn't go to [the person's supervisor]. When you're going for an interview, bring along your list of people you'd like [the prospective employer] to contact for references. There isn't anybody out there who hasn't been in a position [of not wanting some] person to write a reference for [him or her]... Because, also, you have the right to ask, "Why didn't I get the job?" If [you're told that you

weren't hired because of a] reference that you didn't give permission [to contact on your behalf]... [just because you] say where you worked, that doesn't mean you're giving them permission to ask [for a reference] ... that's not one of your references [unless you give express permission]. So I would be very thoughtful about [your references]. And be very thoughtful about how you fill out [that application] as well, in terms of what you disclose.

Everybody's had some [negative] experience in the work force; I would wonder about anyone who tells you that [he or she] hasn't, actually. (Laughter) I know that everybody has had something. I think you need to do damage control. I would definitely recommend that, before you start to fill out all those applications and stuff like that, you have someone work with you on your résumé and all of this stuff ... I would definitely call the EEOC about this.

**WOMAN:** My employer offers two health insurance plans, and open enrollment is in May. I have the option of changing over to the other plan. Is cancer a preexisting condition? Can they deny me if I choose to enroll in the other plan?

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** You're currently covered by your insurance in your workplace – is that right?

**WOMAN:** Right. But the other plan is a better plan, and I have the option to change. Every employee gets the option to change in May.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Is there anything about a preexisting condition? Usually there isn't, but I would definitely look into that in much more detail before you switch.

**WOMAN:** As long as you have insurance ...

**WOMAN:** As long as you had insurance you're fine?

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** It shouldn't matter, but call your state insurance commission. I think that what everyone is saying sounds accurate. Nevertheless, since you're going to have to make that decision, you need to call your state insurance commission, and you need to be well informed [about] what you're doing. Any change in your insurance is very important to be aware of. We now have portability of insurance, so that actually is in place.

**WOMAN:** I run a cancer services program, and one of the things that I hear from time to time from clients that I see is that, in particular with people who are self-employed – clearly, a lot of the stuff that you're talking about today doesn't apply to people who are self-employed. I just wondered if there are any protections that you're aware of that pertain to self-employed people, and if there are any resources for people with cancer that have to do with [revamping a] career plan, or retraining or things like that.

**CAROLYN MESSNER, DSW, MSW, LCSW-R, ACSW, BCD:** Just in terms

of people who are self-employed – a lot of what we talked about still does apply to you, because the letter of all those laws still applies to you in some way. In terms of career management, you still need to manage your career. If you choose to stay in the world of self-employment throughout your career ... if you're self-employed and running your own company and have employees, then you're the person in charge, and you have to decide about disclosure issues. "Whom do I tell? Do I tell my clients? Do I need to tell my clients? As long as they get what they need from me, why do I have to tell my clients?" So it's very similar [to being an employee,] in terms of containing the information that you share; [in terms of] what it is that's really very important to you in terms of your work. We would probably recommend that, if there's not a need to share [that information] with your clients, you probably [shouldn't] share it with your clients. They just want whatever you're providing for them; [you just] need to continue [to provide it].

And in terms of career management, you actually are self-employed, so [if, in the future, you seek employment with a company,] you [would include that on] your résumé; if you need references, you probably have clients who can speak to what you've done for them.

The CancerCare Web site includes a feature called ... "Ask CancerCare." If you go to the home page, [you'll see a link to that feature] on the right-hand side. A different topic is covered each month. If you go to the

[archives section, you'll see that] we did [something on] the topic of cancer in workplace; I did that topic. There's a lot of additional information there that you can actually ... it [also features] links to the [Web sites of the] EEOC; the ADA. It goes through a lot of the things that we've talked about today. I believe there's something in there about self-employment.

I guess we should end ... Thank you. (Applause) You've been an exceptional audience, I have to say, with just wonderful questions. Keep asking those questions.

[END OF TRANSCRIPT]