



Employment Rights Helpline at Equip for Equality

SELF-ADVOCACY ASSISTANCE ★ LEGAL ADVICE ABOUT EMPLOYMENT RIGHTS ★ SAMPLE LETTERS & FORMS ★ REFERRALS

FACT SHEET: Planning for a Medical or Mental Health Emergency

Why should I plan for a medical or mental health emergency?

The following scenario is unfortunately too common:

- Max has a sudden mental health crisis. He goes to the hospital for help. During his hospitalization, Max is not allowed to make any phone calls, so he has no way to tell his employer that he will not be at work and needs to take medical leave. After he is released from the hospital, Max goes back to work only to find out that he has been fired.
- Max is in a difficult position because he did not notify his employer that he would be absent from work.

This Fact Sheet helps you prepare so that if you ever experience an emergency, you will have a plan in place to try to protect your job.

I don't understand how Max can be fired. I thought there were laws that protected the rights of employees with disabilities?

There are laws that protect the rights of people with disabilities, including the Americans with Disabilities Act (ADA) and the Illinois Human Rights Act (IHRA). However, even under these laws, your employer generally has a right to know if you will be absent from work and the reason why.

I don't expect to have an emergency so why would this apply to me?

Most people do not expect to have an emergency. Developing a plan is simple to do and still makes good sense since no one can predict the future.

How should I prepare for a medical or mental health emergency?

Follow this three-step process:

- **Step 1:** Select a friend, family member or colleague who will be responsible for communicating with your employer, in the event that you cannot during an emergency.
- **Step 2:** Create a Worksheet for your spokesperson, so they will know how to contact your employer and what information to share. Use the sample at the end of this Fact Sheet.
- **Step 3:** Prepare your spokesperson about how to respond to your employer's requests for medical documentation.

Who should I select to act as my spokesperson (Step 1)?

The best spokesperson is someone who will know that you are having a crisis and are unable to communicate with your employer even without you having to separately contact them. Often times, this is an employee's immediate family member or roommate who interacts with the employee on a daily basis.

Who should my spokesperson contact (Step 2)?

Your spokesperson should contact either your supervisor(s) or human resources department. You may initially contact whomever you are most comfortable with.

- *Tip:* Make sure that your spokesperson has correct contact information.
- *Tip:* Use the Worksheet at the end of this Fact Sheet.

What should my spokesperson tell my employer (Step 2)?

Your spokesperson should:

- Explain that you are unable to be at work due to a medical/mental health issue.
- Advise that they are reaching out to provide the employer with immediate notice, but that you will be in contact shortly (and provide a time frame, if known).
- Ask your employer to consider this immediate time as sick leave under any relevant employer policies or legal requirements, like FMLA or ADA.

How should my spokesperson communicate this information to my employer (Step 2)?

Your spokesperson should notify your employer in writing. This helps create a clear record of your request and helps your employer know that your request should be taken seriously.

If your spokesperson prefers to have a conversation in person or by phone first, that is perfectly fine. Your spokesperson should just be sure to follow-up in writing confirming the conversation.

What should your spokesperson expect as a response from your employer (Step 3)?

If you are potentially eligible for FMLA leave, they should expect to receive various FMLA forms for your doctor to complete.

If you are potentially eligible for ADA leave, they should expect to receive a request for medical documentation to confirm that you have a disability and that you need leave. Either way, your spokesperson should make clear to your employer that they will work to get you and/or your medical team the required forms.

Do I have a right to take leave under the Family Medical Leave Act (FMLA) or Americans with Disabilities Act (ADA)?

Maybe. To learn more your rights and responsibilities for leave under the ADA and FMLA, see our Fact Sheet comparing the [ADA and FMLA](#).

What if I have not previously told my employer that I have a disability – can I still make this request?

Yes. The general rule is that you do not need to tell your employer about your disability *unless* and *until* you need a reasonable accommodation (such as medical leave).

For more information, please see our Fact Sheet about [Disclosing Your Disability](#).

What happens if I get fired during or after the emergency?

If you have been wrongfully fired because of your disability and/or the medical or mental health emergency, you can pursue a case of employment discrimination against your employer. Unlike other types of cases, you cannot go directly to court. Your first step is to file a charge of discrimination against your employer.

You can file a charge with the Equal Employment Opportunity Commission (EEOC) or with the Illinois Department of Human Rights (IDHR). You have 300 days from the date of the adverse action to file with the EEOC and the IDHR.

For more information about this process, please see our Fact Sheet [How to File a Charge of Discrimination](#).



DO YOU HAVE A QUESTION? CONTACT THE HELPLINE FOR FREE LEGAL ADVICE

Contact Equip for Equality's Employment Rights Helpline

1-844-RIGHTS-9 (1-844-744-4879) (toll free - voice)

800-610-2779 (tty)

employment@equipforequality.org

www.equipforequality.org

This resource material is intended as a guide for people with disabilities. Nothing written here shall be understood to be legal advice. For specific legal advice, an attorney should be consulted.

Equip for Equality, an independent nonprofit organization, is the Illinois state Protection & Advocacy System whose mission is to advance the human and civil rights of children and adults with disabilities. The Employment Rights Helpline seeks to empower individuals with disabilities to advocate effectively. This publication is made possible by funding support from The Chicago Community Trust, the U.S. Department of Health and Human Services, the Administration on Intellectual and Developmental Disabilities and the Center for Mental Health Services of the Substance Abuse and Mental Health Services Administration; the U.S. Department of Education, Rehabilitation Services Administration; and the Social Security Administration. The contents of this publication are solely the responsibility of Equip for Equality and do not necessarily represent the official views of any of these agencies.

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EMPLOYEE WORKSHEET

Planning for a Medical or Mental Health Emergency

Use this worksheet to plan for a possible medical/mental health emergency and to document communications during your emergency.

Complete <u>before</u> your emergency (For you to complete)	
<p>My spokesperson is:</p> <ul style="list-style-type: none"> - Name - Phone - Email - Relationship 	
<p>My spokesperson should contact the following person from my job:</p> <ul style="list-style-type: none"> - Name - Phone - Email - Role (Supervisor or HR) 	
<p>My spokesperson can use the following language: (Change template as appropriate)</p> <p>Dear Supervisor/HR:</p> <p>I am reaching out on behalf of (employee name) to let you know that (employee name) is unable to come to work due to (general description of medical/mental health emergency).</p> <p>I am reaching out to give you immediate notice, but (name of employee) will be in contact shortly (add time frame, if known).</p> <p>I am also requesting that this immediate time period be treated as sick leave under your employer policies or any other legally required leave, like FMLA or the ADA.</p> <p>Please let me know if you need any additional information at this time.</p> <p>Name (spokesperson's contact information)</p>	

My spokesperson has permission to explain	
My spokesperson does not have permission to explain	
If my employer needs medical documentation, my spokesperson should try to work with my doctor <i>(yes/no/how)</i>	
Complete <u>during</u> your emergency (For your spokesperson to complete)	
Date of contact with employer	
Name/contact information of work contact	
Method of communication (phone/email) <i>Remember, you should always follow-up with the request in writing.</i>	
Summary of initial communication <i>Save any written documentation, including emails.</i>	
Summary of employer's response <i>Save any written documentation, including emails.</i>	
Did employer ask for medical information? If yes, summary of response <i>Save any written documentation, including emails.</i>	