

WEBINAR & TELELEARNING SERIES



Discrimination on the Job

February 28, 2017

Presented by:



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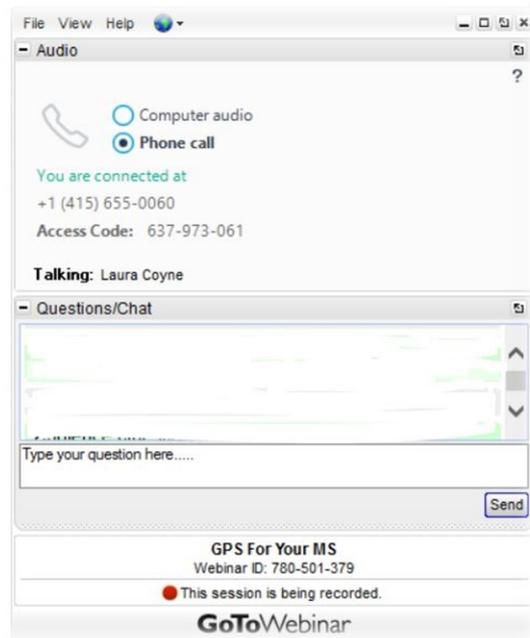


**National
Multiple Sclerosis
Society**



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- Type in your questions using the **Questions/Chat** box
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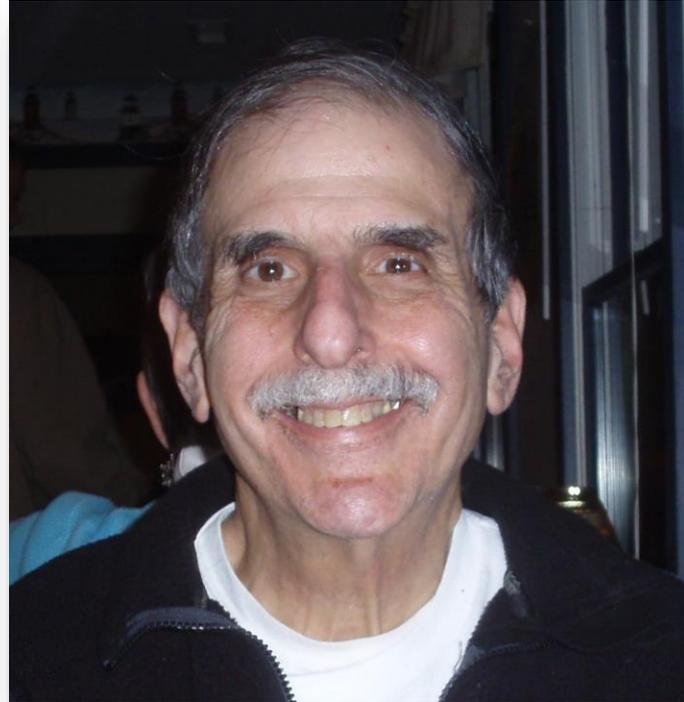
Genentech | Teva Pharmaceuticals | Acorda Therapeutics

Linda Batiste, J.D.



The Job Accommodation Network Location

Charles Goldman, Esq.



**Attorney At Law
Location**

Discrimination on the Job

Discrimination under the Americans with Disabilities Act (ADA):

- Treating an employee differently on the basis of disability
- Failing to provide a reasonable accommodation, absent undue hardship

Other Laws:

- Rehabilitation Act
- Family and Medical Leave Act
- State and Local Laws

Polling Question

What is your biggest concern about discrimination on the job?

- Losing your job and/or insurance
- Being treated differently
- Being denied accommodations
- Going through a legal battle

Discrimination on the Job

Examples and Options

Discrimination on the Job

Different Treatment after Disability Disclosure

You have MS and have had a flare up. You do not need accommodations right now, but decide to disclose in case you need accommodations in the future. After your disclosure, you notice that you are not getting the same assignments as coworkers, which is affecting your pay.

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Options?

- Ask your supervisor about it.
- Point out successful performance record.
- Explain your choice to disclose.
- Appeal to higher ups.



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Different Treatment to Access a Benefit of Employment

Your employer has a telework program allowing employees to telework up to 3 times a week at their supervisor's discretion. You mention to your supervisor that you want to telework because of your MS. Your supervisor gives you ADA paperwork to take to your doctor.

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Options?

- Clarify that you are using the telework program available to all.
- Contact HR.
- If your supervisor would otherwise deny your request, make a formal accommodation request.



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Negative Treatment after an Accommodation Request

As a social worker, you have a large caseload that requires a lot of driving, which is making your fatigue worse. You ask to be reassigned to another caseload with less driving. Your employer puts you on leave, citing safety concerns because you transport children sometimes.

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Options?

- Make a written statement about your ability to perform your job safely.
- Consider attaching a note from your doctor.
- Ask to at least return to work and perform all other functions if your employer still has concerns.



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Accommodation Denied

You are a customer service representative working in a cubicle. You have MS and are having trouble concentrating due the distractions in your work area. You ask to move to a private office. Your supervisor says no because if you get a private office, others will want one.

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Options?

- Make a written request, send a copy to HR.
- But might want to explore other options.
- Call JAN or other resource if needed.



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Accommodation Changed

Years ago your supervisor decided to remove an essential job function as an accommodation for you. Now a new supervisor says you must be able to perform all of your job or you will be terminated.

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Options?

- Make a written accommodation request.
- Ask for a reassignment if needed.



Discrimination on the Job

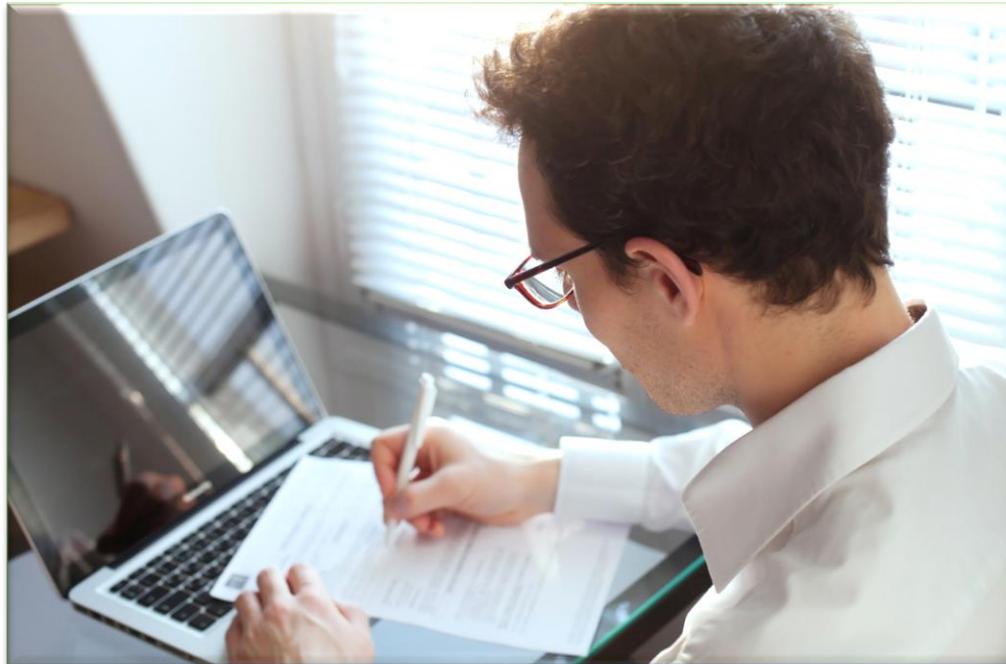
Laid Off or Downsized

You are preparing to return to work after taking leave due to an MS flare up. You were assured that your job would be held, but after you are released to return to work your employer says your job has been eliminated due to downsizing.

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Options?

- Try to find out if you were the only one downsized.
- Try to find out if your position was filled.



Discrimination on the Job

General Tips for Dealing with Potential Discrimination

- Document
- Involve Higher Ups
- Offer Solutions

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Retaliation and Harassment

You ask for an accommodation and turn in supporting medical documentation. In the documentation, your employer sees that your doctor recommended medication that you opted not to take because of its side effects. Your employer says that if you do not try the medication first, he will not consider your accommodation.

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Tips for Dealing with Potential Retaliation or Harassment

- Document
- Report It to Higher Ups
- Take Legal Action

When to Get a Lawyer

• **A bad event at work: Examples**

- Denial of reasonable accommodation
- Termination
- Hostile work environment
- Being treated differently because of your MS
- Retaliation for engaging in legally protected act
- Wrongful disclosure of medical information

Lawyers: How to find one

Referral Sources:

- National Multiple Sclerosis Society
- Friends, family and co-workers
- Bar Associations-state/county/city
- Group Plans
- Previous attorney

Lawyers: What to ask

- **What is your experience with my issue e.g.**
 - Work discrimination/accommodation?
 - Is this experience in the past few years?
 - Is this experience at an administrative agency, e.g. EEOC? In state/Federal court? Both?
- **Have you worked with persons with neurological conditions?**

What to ask (cont.)

- **Do you offer free consultations?**
- **What is your retainer? What is your hourly rate?**
- **Do you do work on a contingent fee basis?**
- **What happens if I am late or need to reschedule?**

What to ask (cont.)

- **Who will be doing the work on my case?**
- **Is there anything else I should have told you or that I should have asked you?**
- **Ask yourself: Do I feel comfortable with the attorney?**

Remedies Under the Laws: One SIZE DOES NOT FIT ALL

- **Not every remedy fits all cases. The perfect solution in your case may be different than what is appropriate for your best friend's case**

- **Think LONG AND SHORT TERM**

Remedies (cont.)

- **Implementation of effective reasonable accommodation in your current job (or as part of a settlement in a new/different job)**
- **Deletion of all derogatory materials in all files**
- **Restoration of all leave (sick, annual, IWOP)**
- **Training if that was denied**

Remedies (cont.)

- **Health insurance and other benefits**
- **Damages -Think Compensatory Not Punitive**
- **Reasonable legal fees**

Discrimination on the Job

Contact

The Job Accommodation Network (JAN)

(800)526-7234 (V)

(877)781-9403 (TTY)

AskJAN.org & jan@askjan.org

(304)216-8189 via Text

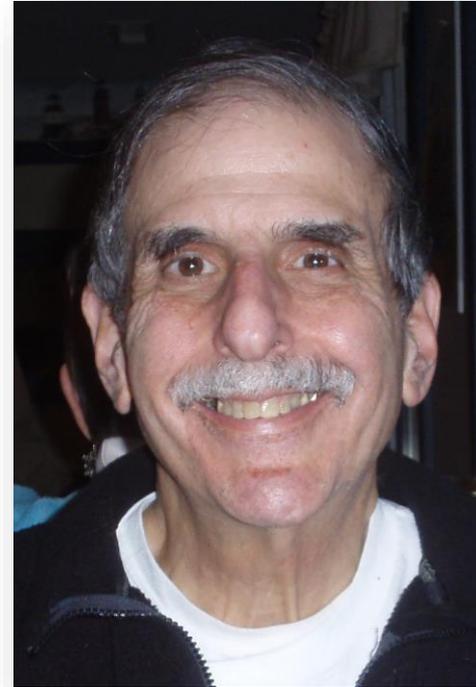
janconsultants via Skype



Questions/Comments



Linda Batiste, J.D.



Charles Goldman, Esq.

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<https://www.mscando.org/get-involved>

Can Do MS Resources

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Find these resources at www.MSCanDo.org.

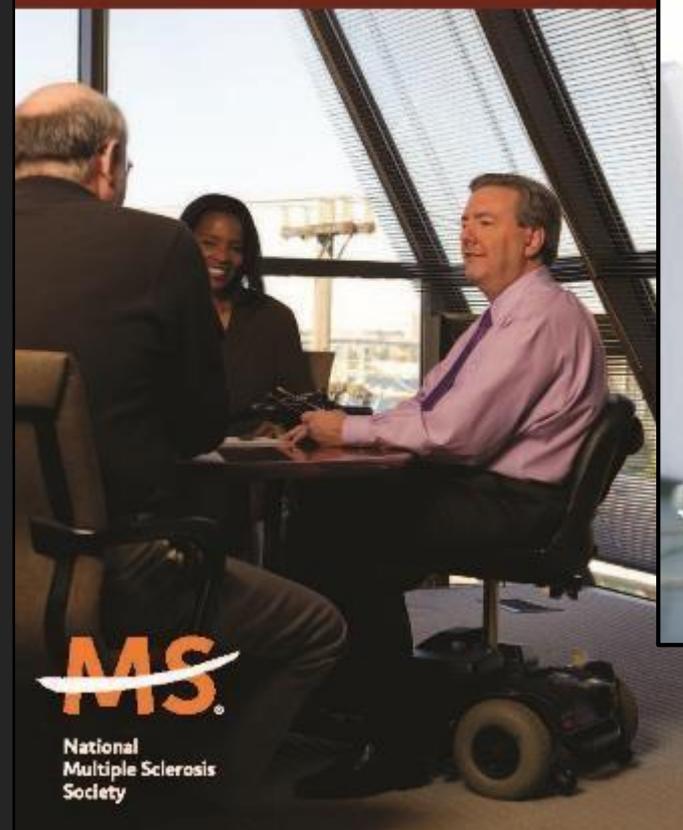
National MS Society Resources

The Win-Win
Approach to Reasonable
Accommodations

Should I Work?
INFORMATION FOR
EMPLOYEES LIVING WITH MS
EMPLOYMENT ISSUES

EMPLOYMENT
MATTERS

MANAGING
MS IN THE WORKPLACE



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FEATURED VIDEO SERIES

Employment Matters: Managing MS in the Workplace

Learn how to navigate the complexities of managing work and MS through this six part video series and companion toolkit.

Part 1- Thinking Proactively About Employment

Part 2- Recent Changes to the Americans with Disabilities Act (ADA)

Part 3- Disclosure in the Workplace

Part 4- Managing Fatigue in the Workplace

Part 5- Managing Cognitive Challenges in the Workplace

Part 6- Assistive Technology and the Workplace

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nationalMSSociety.org/employment

National MS Society Benefits and Employment Services

If you have an employment-related question that was not answered during tonight's webinar, please feel free to email

EmploymentQuestions@nmss.org

or call 1-800-344-4867.

Thank you.

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Weight Management and Nutrition

March 14, 2017

Presented by:



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