

Migraine in the Workplace: Legal Protections for Employees

Stacey L. Worthy, JD

Aimed Alliance

Nonprofit that seeks to protect
and enhance the rights of health
care consumers and providers

Preview

- Migraine in the workplace
- Americans with Disabilities Act (ADA)
- Family and Medical Leave Act (FMLA)
- Short-term and long-term disability
- Social Security Disability Insurance (SSDI)

Migraine in the Workplace



- Most common among adults between ages 25 and 55
- >90% are unable to work or function normally during an attack
- 51% who do attend work or school report productivity level cut in half
- Employer losses
 - \$13+ billion lost from reduced productivity each year
 - 113 million lost workdays due to migraine
- Vital to have benefits and accommodations

ADA



- Legal protection from discrimination
 - Private employers, state and local governments, employment agencies, and labor unions cannot discriminate in hiring or firing process
 - Employers with 15 or more employees
- Disability is determined on case-by-case basis



- Employees must be “qualified individual with a disability”
 - Disability: “impairment that substantially limits one or more major life activities, such as the ability to work or care for oneself”
 - Qualified individual: capable of performing the essential duties of job – with or without accommodation
- Can decide not to hire or to fire if:
 - Not a qualified individual
 - Pose a “direct threat” to health or safety to self or others
 - Unrelated to disability

ADA: Inquiries

- Employer cannot ask about disability in most instances
 - Cannot make disability-related inquiries or require a medical examination unless job-related and consistent with business necessity
 - Can make pre-employment inquiry re: ability to perform job-related functions
 - Inquiries only after job offer is made; offer can be conditional



- Employees can request reasonable accommodation
 - Modification or adjustment to work environment
 - Must be provided unless doing so would cause “undue hardship”
 - Significant difficulty or expense to the business
 - Majority of accommodations cost less than \$500

ADA: Reasonable Accommodations

- May need reasonable accommodation both during migraine and to limit triggers
 - Triggers: light, sound, scent
- Examples of accommodations
 - Alternative lighting
 - Anti-glare filters for fluorescent lights
 - Noise cancelling headphones
 - Anti-fragrance policies
 - Flexible schedule
 - Ability to telecommute
- Employee must request accommodation
 - Can present doc note
 - Document everything

ADA: Migraine as Disability

- Not everyone with migraine disease has a disability
- However, 90% of individuals with a migraine cannot function normally during an episode
- Ranked 6th highest cause of disability worldwide
- Major life functions impacted: sit, stand, or see for hours

ADA Caselaw: Woolf v. Strada (2d Cir. 2020)

- Employee worked as sales rep.; had migraine disease
- Also received poor performance reviews
- Submitted dr's note stating work-related stress was trigger and medical leave alone would not mitigate his stress
- Requested accommodation: a new supervisor
- Company said no; fired him
- Court ruled inability to perform a single, particular job does not constitute a substantial limitation in major life activity of working
- Needed to show migraine precludes him from working in class or broad range of jobs
- Takeaway:
 - Court is not always going to find migraine is disability
 - Also need to be reasonable in requested accommodation

ADA: Denial of Accommodation

- If accommodation is denied, ask why or whether accommodation requested was unreasonable
- If denied for unknown reasons, go up chain of commands
- Be sure to document all of your interactions
- If unsuccessful, file complaint with Equal Employment Opportunity Commission or state's enforcement agency
- If EEOC dismisses charges, file a lawsuit



- Guarantees employees right to take unpaid leave for certain urgent situations
 - Dealing with serious health condition
 - Caring for family member with serious health condition
- Provides 12 weeks of **unpaid** leave in 12-month period
 - Does not need to be consecutive
- Guarantees health insurance coverage will continue during period of absence
- Employers cannot interfere with, restrain, or deny exercise of any right guaranteed by FMLA

FMLA: Qualifications



- Employer has 50 or more employees
- Employee worked 12 months within previous 7 years
- Employee worked 1,250 hours during 12-month period
- Employee worked at a site with 50 employees or where employer has 50 employees within 75-mile radius

FMLA: Requesting Leave

- To request leave and protect health benefits, you must provide your employer with adequate notice
 - At least 30 days in advance unless situation is an emergency
 - Must submit medical certification from health care provider if leave is due to serious health condition

FMLA: Complaints

- If employer has retaliated against you, you can
 - File a complaint with the Wage and Hour Division of the Department of Labor (DOL); or
 - Sue employer directly
- Have two years to file lawsuit
 - Not extended to account for time that complaint may be pending with DOL

Other Benefits



- Short-term disability: typically 90 days but can range from 30 days to one year
 - Have elimination period
- Long-term disability: covers 2, 5, or 10 years or until age 65 or 67
 - May have a waiting period of 3 to 26 weeks
 - May require you to sign up for SSDI

Other Benefits



- “Disability” is defined by policy; usually any condition rendering employee unable to do job
- Paid – usually percentage of salary (50-70%) with dollar amount cap
- Paperwork is dependent upon plan - may require medical records, note from doctor, and updates after doctor visits

Other Benefits

- Migraine is not easily diagnosed, which may cause many disability claimants to be denied benefits – cannot provide evidence that migraine limits their ability to work
- Important to record everything in detailed migraine journal – document all symptoms thoroughly
- Gather supporting documentation – the more written evidence to support your disability claim, the better

Other Benefits

- Make sure all your medical records are complete and up-to-date; should include:
 - Physician notes about frequency, intensity, and severity of migraine episodes
 - Results of any tests to rule out other conditions
 - Medications and treatments tried, and their outcomes / side effects
 - Records of any ER visits or hospitalizations related to migraine
- Have clear documentation of how many hours and days of work missed due to migraine

SSDI



- Typically awards around \$15,000 per year
- Several criteria need to be met
 - Show you're unable to work and earn gainful living
 - You or a family must have had a recent job and paid into the program
- Prove you have a medically determinable impairment (MDI)
 - Medical condition that will last at least a year or might result in death, and limits ability to be employed
 - Provide evidence of severity of condition (e.g., test results or medical records)

SSDI



- Demonstrate your level of impairment
 - Must show that condition is equal to a condition that is in the Blue Book (migraine not included in the book)
 - Closest condition is epilepsy
 - Only 15% of individuals with epilepsy who apply for disability are approved
- Those with migraine have harder time getting approved for disability and retaining benefits
 - But getting easier; SSA recently released guidance
- If denied, appeal the findings

Chronic Migraines and Social Security Disability

Applying for Social Security Disability Benefits with Migraines

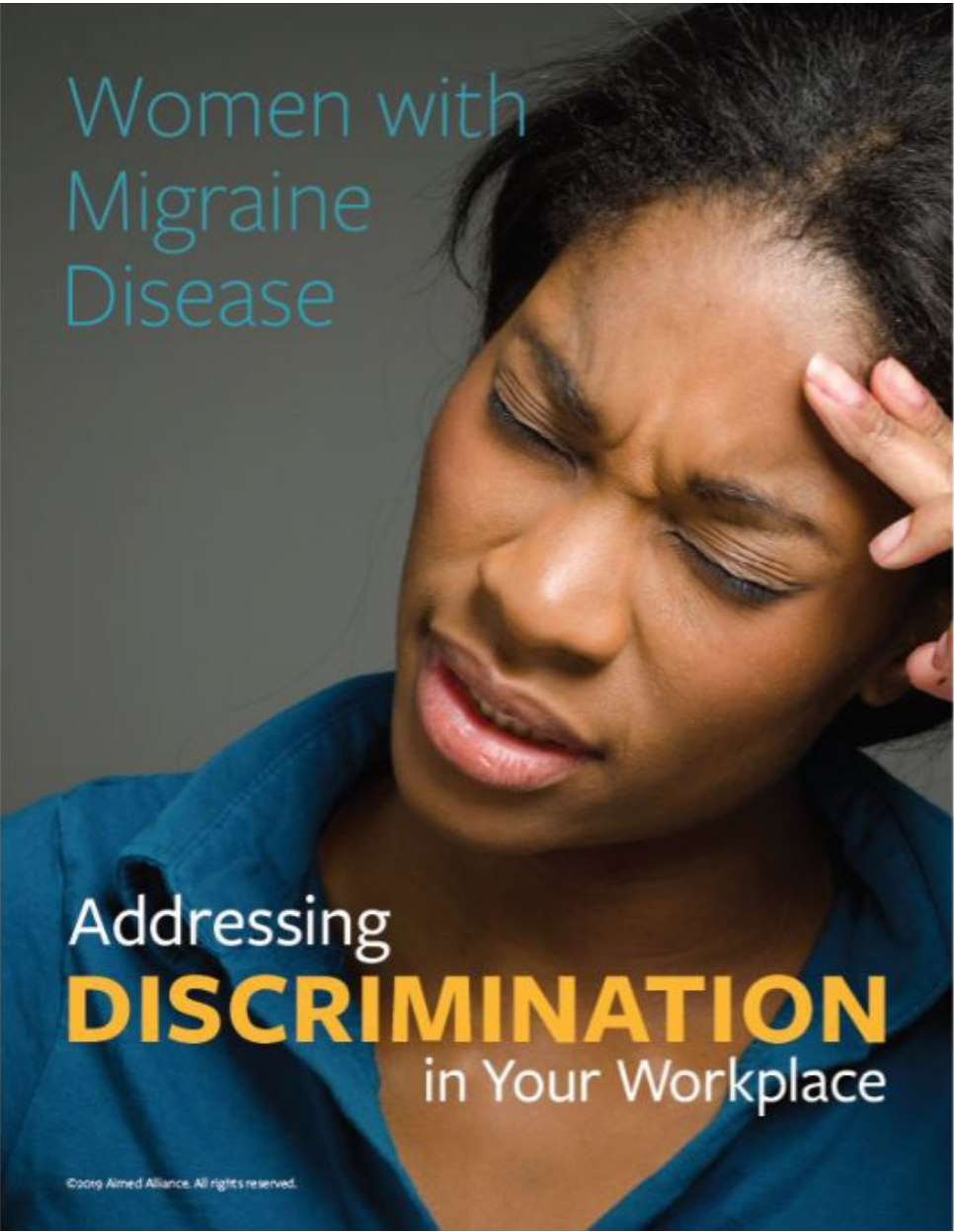


Disability Benefits Help

To determine your eligibility, the SSA will:

- Look at your daily limitations
- Consider the frequency and severity of your headaches
- Examine your employment options
- And review your medical evidence


If after taking all of these factors into account, the SSA finds you're unable to perform the essential job duties of any job for which you're otherwise qualified, then you'll be deemed medically eligible for SSDI and/or SSI benefits.



Women with
Migraine
Disease

Addressing
DISCRIMINATION
in Your Workplace

©2016 Aimed Alliance. All rights reserved.



Migraine
Patients

**KNOW
YOUR
RIGHTS**

Do you get frequent migraines?

Today, 37 million Americans suffer from debilitating migraine headaches, including about 5 million who get at least one migraine a month. Besides the throbbing pain, migraines are often accompanied by nausea, vomiting, and extreme sensitivity to light and sound. There can also be warning symptoms before or during the headache, such as flashes of light, blind spots, or tingling on one side of the face or in your arm or leg. What is worse, each migraine can last for many hours or even days.

If you get migraines, you know how miserable you can feel. But did you know that when left untreated, more than 91 percent of migraine sufferers have to miss work or are not able to perform their normal daily functions?

Effective medications are available to relieve pain and help prevent some migraines from occurring. Therefore, if your health care provider prescribed a migraine treatment and your insurer denies coverage, read on. There are steps you can take to get the care you need.

What can I do if my insurer will not pay for my migraine treatment or delays my care?

Health insurers use various approaches to cut costs for migraine medications. This can mean your health plan may not cover the medication your health care provider prescribed to you or having to prove your migraines have gotten worse before you can access your medication, for example. Luckily, state or federal laws may protect you from these practices.



©2016. Alliance for the Adoption of Innovations
in Medicine. All rights reserved.

Thank You



policy@aimedalliance.org



(202) 349-4089



@AimedAlliance