A LEGAL PERSPECTIVE ON EMPLOYMENT PROTECTIONS FOR BODY ODOR/BREATH ODOR ILLNESS SUFFERERS IN THE UNITED STATES

This brief treatise is an adjunct to Cheryl Field's April 2011 MEBO Presentation on Social Security and Employment Discrimination. Although created by a licensed U.S. attorney, nothing detailed in this document should be construed as providing legal advice or creating an attorney-client relationship. It was created purely for information purposes and not as an attempt to solicit clients. You should consult with a local attorney with respect to any topic contained herein.

For ease of use, this document is in Question and Answer Format.

Q. I have body odor/breath odor issues. Am I protected by Equal Employment Opportunity Commission (EEOC) employment discrimination laws?
A. You could be if:
(a) You are/were/or would be employed as an employee (not an independent contractor) by a "covered employer or entity" and
(b) Your body odor/breath odor illness qualifies as a disability under the American with Disabilities Act (ADA).

Q. What is a "covered employer or entity" according to the EEOC?
A. A private employer, state employer, or local employer is a covered employer or entity if it has 15 or more employees. 42 USC § 12111(5). All federal agencies are covered employers.

Q. Does my body odor/breath odor constitute a disability under the ADA?
A. Maybe. There are no laws or regulations that specifically address body odor/breath odor as potential qualifying disabilities. However, recent case law indicates such issues could be considered disabilities in certain situations. See Questions below. Disability determinations are generally handled on a case by case basis.

Section 12102 of the ADA defines disability to mean an individual who:
(a) is physically or mentally impaired in such a way it "substantially limits" at least one "major life activity," i.e. cannot walk, speak, hear, stand, bend, see, work. Impairments to "major bodily functions," i.e., neurological issues, digestive issues, bladder, respiratory, etc…. also qualifies as major life activities;
(b) has had the above issues in the past and those issues have been documented; or
(c) is considered to have such an impairment. Under this basis, it does not matter whether the person actually has the mental or physical impairment or not, nor does it matter whether the impairment substantially limits a major life activity. He or she must only be perceived as having a substantially limiting mental or physical impairment. The "perceived disability" however must be of such a nature it lasts or is expected to last longer than 6 months and is not minor. Id. at 12102 (3).
According to the statute, the best basis for a person who has body odor/breath odor issues - where the cause of the odor does not substantially limit major life activities – is under the theory of "perceived disability." Thus, the body odor/breath odor should not be due to simple poor hygiene (for example, infrequent bathing, refusal to wear deodorant or to brush teeth) but preferably based on a medical condition which is expected to or does last more than 6 months.

Courts and the EEOC have long dealt with issues of "perceived disability." In School Board of Nassau County v. Arline, the court found "an impairment might not diminish a person's physical or mental capabilities, but could nevertheless substantially limit that person's ability to work as a result of the negative reaction of others." 480 U.S. 273, 283 (1987). Just recently, in March 2010, the EEOC ordered Valley Isle Motors to pay $32,500 to an applicant it refused to hire due to his urine test showing he took prescription drugs. "Valley Isle Motors to Pay $32,500 for Refusing to Hire Applicant with Perceived Disability," EEOC Press Release, available at http://eeoc.gov/eeoc/newsroom/release/3-3-10a.cfm (last visited Feb. 6, 2012) Also see Dale Larson, Unconsciously Regarded As Disabled: Implicit Bias and the Regarded-As Prong of the American with Disabilities Act , 56 UCLA Law Review 451, 464 (2008) (noting the third prong of disability was intended to apply to individuals such as burn victims who would not be able to prove their condition substantially limited a major life activity but who are often discriminated against due to their appearance.)

Q. Does't having a persistent or frequent body odor/breath odor issue substantially limit the major life activity of working? I get lots of negative responses to the point I don't want to work or even leave the house.

A. It is possible to be disabled on this basis but is harder to prove for body odor/breath odor sufferers. Body odor/breath odor itself does not prevent you from working. It is the reactions of others to your body odor/breath odor. You would need to carefully document incidents and such incidents would need to be severe enough for an arbiter to rule in your favor. If your fear is enough for you to develop depression and/or agoraphobia – as diagnosed by a mental health professional – and take prescription medicines for these issues, that would also tend to prove your odor is sufficiently severe to substantially impair you in the eyes of an uninterested outsider.

Due to EEOC regulations that went into effect last year, an impairment in remission or an episodic impairment is still regarded as a disability if it substantially limits a major life activity when active. Further, whether the disability is manageable due to devices, medication, diets, etc… cannot be taken into account when determining the severity of the impairment. 42 USC § 12102(4).

Q. Don't I need to be diagnosed with something like TMAU to be considered disabled?

A. Not necessarily. Having your odor associated with Trimethylaminuria, Halitosis, Maple Syrup Urine Disease or other recognized odor conditions would make your case stronger (especially if it goes to court), but for everyday work purposes you don't need proof your odor is caused by a particular medical issue. In fact, some state agencies warn employers against confronting any odiferous employee in a negative way due to potential ADA and
state disability law violations. See "On The Job: Be Careful With Stinky Problem," Oregon Bureau of Labor and Industries for The Register-Guard, Eugene, OR (December 26, 2004). You should let it be known your odor is not due to a lack of hygiene, but is caused by a chronic health condition. "If the employee does have a chronic health problem, it is up to her to inform you of this. If she does not, she will have no protection under the disability laws. If she does disclose that this is a health problem that she cannot resolve on her own, it is time for you to engage in the interactive process required by federal and state disability laws." Id.

Ideally, you should be able to link your body odor/breath odor to some type of medical condition in case an employer does not believe you, requires medical proof (rare), or if you become adversaries (you file a discrimination charge or lawsuit), tries to prove your condition is due to hygiene issues, not a medical condition. The link need not be to commonly known odor causing illnesses. For example, if you noticed odor issues appeared around the same time as being diagnosed with Irritable Bowel Syndrome (IBS), it may be sufficient to say your IBS is the cause of your odor. If you believe you may have an incontinence issue and believe your odor is due to the issue, you could use that link. For those who are not entirely sure what is causing body odor/breath odor but nothing hygiene-wise cures your odor, you should establish a relationship with a physician who is able to prove through your regular visits that you complain of an odor and all attempts at a cure have failed. It would help if you doctor notices your odor or believes you actually have an odor issue, but it is not necessary. The point is to have evidence **your odor is not due to a lack of hygiene.** Further, as explained below, if you are being discriminated against because of your body odor/breath odor and have documented negative responses by supervisors, employees, customers, etc… pertaining to the odor, more likely than not, an employer will not dispute the existence of your odor. Instead, the employer will try to find other non-odor related reasons to justify any adverse action taken against you or try to prove such comments were necessary to alert you of your own odor.

Q. **You just mentioned something about state disability laws. Am I disabled according to my state?**

A. Generally, if you are considered disabled according to the ADA, you are also considered disabled under state or local laws. It is beyond the scope of this document to determine disability eligibility status for all 50 states. However, state and local laws tend to be more inclusive and thus provide its citizens more protection against discriminatory actions. In other words, it may be easier to meet a state or local authority's definition of "disabled" and may be easier to prove certain adverse actions are discriminatory. For example, in the Spiegel v. Schulmann UAK case, Docket No. 06-5914-cv (2d Cir. May 6, 2010), the Second Circuit Court of Appeals reaffirmed the dismissal of an employee's state and federal ADA retaliation claims where he alleged obesity to be a disability but vacated the lower court's judgment dismissing his city claim on the grounds obesity could be a disability under the city's human rights law.

You should definitely pursue federal, state, and local disability statuses.
Q. What about the Genetic Information Nondiscrimination Act (GINA) Cheryl mentioned in her document? Doesn't that give people who have genetic odor diseases another protection against employment discrimination?

A. Not in the same way as the ADA. GINA only protects an employee or applicant whose genetic information is used in an adverse way. Genetic information is defined as:
(a) such individual's genetic tests,
(b) the genetic tests of family members of such individual, and
(c) the manifestation of a disease or disorder in family members of such individual. Section 201(4) of GINA (emphasis mine).

If you or a family member had a genetic test indicating you have TMAU and the employer is in possession of it, the employer cannot use it in his/her employment decisions. If someone at work is aware your family member has TMAU regardless of testing or having access to a genetic test, an employer who receives this information cannot discriminate against you. If you just manifest TMAU odor and suffer adverse action by an employer because of it, there would be no violation of GINA. In fact, an employer who acquires, uses or discloses medical information – not genetic information - about "a manifested disease... of an employee or member, including a manifested disease... that has or may have a genetic basis" is not a violation of GINA. §210.

The ADA may apply if you fulfill the requirements of having a disability and are discriminated against for a manifested genetic disease. HIPAA may apply with regards to acquiring, using, or disclosing medical information depending on how it was acquired and for what use.

Q. I'm sure I am disabled under the ADA. What employment protections does that give me?

A. Pursuant to Section 12112 of the ADA, a covered employer cannot discriminate against you on the basis of disability as regards:
(a) application procedures (employer can't ask about disability unless necessary for that business, but can ask if you can do job functions; employer can't require medical exam unless all employees are subject to such exam ),
(b) hiring,
(c) advancement,
(d) termination,
(e) compensation,
(f) job training,
(g) any other terms, privileges, and conditions of employment (can't harass employee due to disability or leave them out of activities all other employees enjoy.)

Also, you cannot be terminated, intimidated, coerced, threatened, retaliated against, etc., for making a charge of discrimination or otherwise pursuing your rights under the ADA. §12203.

As a disabled employee or applicant, you can request a reasonable work accommodation (including telework options) from the employer and the employer must grant it if is not
an undue burden. The employer cannot refuse to hire you due to a reasonable accommodation as long as the accommodation is not an undue burden. §12112(b)(5).

Q. I was not hired by a potential covered employer. I think it was due to my body odor/breath odor. Can I do anything about it? If so, what do I need to prove?

A. Yes. If you feel you were rejected for employment due to body odor/breath odor, you should file a charge of discrimination with your state or local civil rights/human rights office and your local EEOC district office. As mentioned above, your charge is more likely to prevail at the state and local level than the federal level. You should take advantage of as many forums for your complaint as possible.

For your discrimination charge, you must prove:
(a) you have a disability,
(b) you applied for the job and were qualified to perform the job,
(c) you weren't offered the job, and
(d) the employer continued to seek applicants with similar qualifications.

Implicit to the charge is that the employer was aware of your body odor/breath odor. Although the law prohibits employers from inquiring into your disability, you may (but are not required to) inform the employer of your disability during the application process. The employer still may not inquire into the extent or nature of the disability. The employer may ask and you may inquire into reasonable accommodations for you to perform the job competently.

If your discrimination charge fails at the federal, state, and local civil rights agency level, you can bring an action in court using the same four criteria.

The employer will most likely maintain you were not the subject of an adverse employment action, i.e., assert you were not hired for a legitimate non-discriminatory reason. If so, the burden of evidence shifts back to you. You would need to present proof your body odor/breath odor was the cause of the refusal. The disability need not be the sole cause but should be the motivating cause for the refusal. See Price Waterhouse v. Hopkins, 490 U.S. 228 (1989). If the employer is able to show it would have made the same decision regardless of the discriminatory portion of its mixed motive decision to decline an offer of employment, your case will not prevail. Id.

It would be rare for an employer to admit you were qualified for the job but were not hired due to body odor/breath odor during the application process. Yet, as recent events have shown, such situations could occur especially if dealing with hiring staff who are unaware body odor/breath odor could be considered a disability and that their actions to refuse employment for that reason could be a violation of the ADA.

Q. I just got hired or am currently employed but I'm wondering if there is anything that can be done to make it easier on me and my co-workers to do my job despite my body odor/breath odor. What can I do?
A. You do not need to wait until you are confronted by co-workers or by your supervisor to diffuse a potentially hostile work environment. If your body odor/breath odor is enough to impact you on a daily basis, you can inquire into reasonable accommodations from your employer. Inform your employer about your odor issue and that it is not due to lack of hygiene. Voice your concern over what may happen or has happened in the past with co-workers. It is possible you and your supervisor can develop creative solutions to make you feel more at ease. Such solutions will vary from industry to industry and from company to company.

For example, if in an office environment, you could ask to sit somewhere away from other co-workers, near a window, or in your own office (if possible). You could request permission to have an automatic scent dispenser at your station if you think it would help. Depending on the cause of your odor, you could ask for periodic breaks to take medication, use oral rinses, reapply absorbing powders, or wash yourself (for excessive sweating conditions).

The most sought after accommodation is the ability to work from home. Some companies have telework options but they are often reserved for either long time employees or severely disabled employees. Larger corporations may allow employees with at least six months employment to join their telework program. You may ask your supervisor to be informed of any telecommuting options. Please be aware even if the option is in place at your company, it does not necessarily mean you can telecommute five days a week. It may be available just one day a week or part of the day every day.

Q. Don't I need a doctor's note to ask for an accommodation or to prove my disability?
A. It will depend on your company but in most cases you do not. However, it may also vary according to the accommodation you are seeking. Remember, you can also inquire about reasonable accommodations on the job (if you feel you need any) during the application process. Employers are required to respond to your request with or without a doctor note and with or without proof you are considered disabled by a doctor. Also note, having a significant ailment that is considered to be a disability even if it is not technically a disability is still considered a disability under the ADA. It is, of course, best to have a doctor on standby who can confirm you have an odor problem or who you have discussed your odor problem with (especially treatment for the odor).

Personal example: While working for a firm, I informed HR of my IBS due to a worsening of symptoms. At the time, IBS was not considered a disability for Social Security purposes. I printed out paperwork from WebMD concerning IBS and provided it to the HR supervisor. After contacting her supervisor, we discussed possible accommodations for my illness including a different office closer to the restroom and a couch for my office so I could lie down every now and then with a heating pad if the pain was severe. I never provided a doctor note, my doctor was never contacted, and I never had to give HR my doctor's name and phone number to confirm my statement. [I do have all my medical records regarding IBS in pdf form just in case it is needed for any purpose.] No company wants to inadvertently discriminate against a potentially ADA disabled individual.
Due to the nature of body odor/breath odor, particularly of a persistent or regular nature, few employers would doubt your assertion it is caused by a medical issue.

Q. I am being harassed at my job due to body odor/breath odor. Can I do anything about it? If so, what do I need to prove?

A. Yes. Because you are already employed, the process of bringing a charge of disability harassment may require more steps. If you are being harassed or discriminated against, many employers require an internal process to resolve the issue before legal action may be initiated. The internal process is often resolved quicker than EEOC or state/local civil rights agency charges. Regardless, you should first contact your supervisor about the harassment and, if you have not already done so, inform them of your disability. If the supervisor fails to act or does not take adequate action, file a charge with the federal, state, and local civil rights agencies (provided your employer does not have an internal appeals process you may utilize for faster resolution).

For this type of discrimination (hostile work environment), you must prove:
(a) you have a disability,
(b) you suffered from unwelcome harassment due to the disability,
(c) the harassment was severe or pervasive enough to negatively affect the terms, conditions, or privileges of the work environment (determined with respect to how a reasonable similarly situated person would regard the harassment), and
(e) Management knew or should have known about the harassment but failed to stop it in a prompt manner.

Again, if your charges are unsuccessful, you can file a lawsuit proving each of the above elements.

The one element most difficult to prove is the "severity or pervasiveness of the harassment" requirement. It is not enough you are subject to offhand remarks, teasing, or isolated minor incidents. The harassment must be very frequent or you must suffer from a very severe incident to the point it affects your ability to work. Such harassment is prohibited if it is committed by co-workers, supervisors, customers, independent contractors, or clients. Some examples of harassment are "offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance."

Where the harasser is a supervisor, the employer may not be liable if it reasonably tried to remedy the situation and you unreasonably refused to take part in the corrective measures. See Harassment, EEOC Website, available at http://www.eeoc.gov/laws/practices/harassment.cfm (last visited February 5, 2012).

Another element some body odor/breath odor employees may have trouble proving is the "harassment is unwelcome" requirement. Typically, this statement means you should make it known the behavior is unacceptable. If you ignore the harassment and take no action against it whenever it occurs (or on a very regular basis), a court could consider
your lack of response an indication the harassment was minor and just simple teasing. You do not need to confront the offending employee but you should report incidents to your supervisor and keep reporting them if they continue despite your reports.

Q. I am not being promoted or am missing out on other opportunities the other employees enjoy due to my body odor/breath odor OR I was demoted or fired from my job due to body odor/breath odor. Can I do anything about it? If so, what do I need to prove?

A. Yes, if the actions occurred due to your body odor/breath odor. In general, most employee-employer relationships are at-will. At-will employment allows either the employer or the employee to terminate the relationship for any reason at any time. The only exception is if the employer terminates an employee due to his/her inclusion in a protected class. For body odor/breath odor employees, they are in the protected class of disability. If you signed an employment contract, check the terms of your document to discover how employment may be terminated. If you did not sign a contract, you are an at-will employee.

For this type of discrimination, you must prove:
(a) you have a disability,
(b) you are /were performing your job satisfactorily,
(c) you suffered an adverse employment action, and
(d) the action occurred under a situation that gives rise to an inference of discrimination.

Q. I know what I need to prove, but specifically how do I prove I was discriminated against?

A. Ideally, you should keep notes (or if employed, a diary at your work station) to keep track of any discriminatory actions. Write down names, dates, and the substance of the interaction. If someone leaves notes or objects in your workspace, take pictures, record the incident in your diary, and report the item(s) to your supervisor. Also, keep track of any documents related to your disability and your employment. Always ask for signed copies of investigative reports made with respect to any harassment complaint you have made. Always ask for copies of performance evaluations. Check the evaluations for accuracy and alert your supervisor of any discrepancies. If your evaluation has a space for you to object or clarify a statement, do so and request a signed copy. The most prevalent defense to a discrimination claim is the employee was not competent at his/her job.
From a brief search, there are few court cases concerning body odor/breath odor in disability discrimination cases. Most concern remarks about body odor in a racial context, such as Antonio v. Sygma Network, Inc., 458 F.3d 1177 (10th Cir. 2006), where an African woman suffering from a medical condition which caused increased sweating unsuccessfully sued for racial discrimination/harassment due to one supervisor's isolated remark she had an offensive odor and “believed it had to do with [Antonio's] culture” and Hannoon v. Fawn Engineering Corp., 324 F. 3d 1041 (8th Cir. 2003), where a Kuwaiti Arab failed to prove his supervisor's general remarks about Hannoon's body odor amounted to racial animus. The court noted there was no evidence Hannoon's odor was due to a medical condition. Id. at 1047. See also Gordon Phillips v. Illinois State Police, 2007 U.S. App. LEXIS 21477 (7th Cir. Sep. 4, 2007 (unpublished) (black female who claimed she had no body odor failed to prove retaliatory racial and sexual discrimination based on supervisor's public accusation of her having a foul body odor and his requirement she attend a hygiene meeting.))

However, the California Supreme Court case Roby v. McKesson Corporation, 219 P.3d 749 (2009), provides some helpful guidance on what a court would look for in disability harassment suits where a medical condition causes an odor problem. In Roby, the employee won a multimillion dollar judgment due to the employer's failure to remedy pervasive harassment based upon her medical conditions. Roby suffered from unpredictable panic attacks, body odor due to medication, and a nervous disorder that caused her to dig into her arms and create sores. Roby sued under state civil rights law.

The pervasive hostile work environment in Roby consisted of the following acts:
(a) Roby's supervisor made negative comments about her odor in front of other workers although Roby told the supervisor it was due to her medication.
(b) The supervisor called Roby "disgusting" due to her sores and excessive perspiration.
(c) The supervisor would make gestures and faces at Roby's body odor and arm sores
(d) The supervisor ostracized Roby: she would not return Roby's greetings, she would turn away from Roby when Roby would ask her questions, she would make faces at Roby when taking rest breaks for panic attacks, she would ignore Roby at staff meetings, she would overlook Roby when she would give trinkets and gifts to all the other employees, she would require Roby to answer the phones so she could not join office parties.
(e) The supervisor would reprimand Roby in front of other employees.
(f) The supervisor would speak about Roby in a demeaning manner and belittled Roby's job.
(g) The supervisor would make loud sarcastic remarks about Roby whenever Roby phoned in an absence.
Id. at 752 and 758.

Many of these actions occurred on a daily basis. Id. at 758.

The employer, McKesson, argued that the supervisor's comments about Roby's odor was an appropriate personnel action due to complaints about Roby from co-workers, not harassment. The court agreed with the jury's finding the supervisor's actions as "unnecessarily demeaning, [which] includ[ed] reprimanding Roby in front of coworkers
and telling Roby “to take more showers.” It was the *demeaning manner* in which [the supervisor] addressed this issue that constituted the harassment.” *Id.* at 766 fn 10.

From Roby, you should have a stronger idea of the type of information you would need to pursue a potential body odor/breath odor case, what constitutes a hostile work environment, and under what circumstances do statements about odor rise to the level of harassment. The hostile work environment need not be as pervasive as it was in Roby but it still requires a level of pervasiveness and highly detailed accounts of the discrimination. It is impossible to tell exactly what was plead at the trial court but it does appear body odor alone was one basis of the harassment claim and was determined separately from Roby's other illnesses.

Further, Roby teaches potential body odor/breath odor litigants:
(a) State disability discrimination laws may provide more remedies and more protections than federal law;
(b) At least under state disability, even body odor caused by medication can still be considered a disability;
(c) Co-workers are valuable in confirming acts of discrimination, especially when you are not present or cannot determine if discriminatory/harassing statements are being made against you; and
(d) You should sue under as many bases of disability discrimination as possible. If your odor issues are caused by a particular illness or creates anxiety, depression, nervous conditions then plead every type of illness or medical condition resulting in or which resulted from your body odor/breath odor issue. Make sure you can substantiate the illnesses and conditions.

Q. I don't have money for an attorney. Do I really need one to bring a charge with my federal, state, or local civil rights office?
A. To file a charge with any civil rights agency, you do not need an attorney. However, an attorney is helpful in navigating through the charge process.

Q. I want to sue my employer now! Do I have to file an EEOC charge?
A. Yes. You must exhaust all administrative remedies before suing your employer. This is the purpose of the Right to Sue letter. Until you receive such a letter, you cannot bring an action in federal court. A similar requirement often exists with state and local laws. As discrimination due to body odor/breath odor has not really been addressed in the courts, it is best to pursue remedies from all available forums to increase the likelihood of prevailing with your claim.

Q. What is the process for filing a charge at my federal, state, or local civil rights office?
A. The EEOC charge handling process is explained in detail at their website located at http://www.eeoc.gov/employers/process.cfm.

Generally, you have 180 days after the adverse employment action occurred to file your charge. If your state or locality has its own agency handling disability employment
discrimination charges, you have 300 days to file the charge with the EEOC. The EEOC will automatically send a copy of the charge you make with them to the state or local agency. The state or local agency will then contact you to determine whether you want to file a charge with its own office. You will need to update them on the final status of the EEOC charge.

You charge should contain as much information as possible about the events, witnesses (and their contact info), and any documents related to the charge.

If you do not have an attorney, you may wish to enter into mediation with your employer. Nothing said or provided during mediation will be kept on record. After mediation (if you choose to go through that process), the EEOC will investigate your charge and make a ruling either for or against you. It can take at least six months to a year for the EEOC to complete its investigation. During this time, the EEOC will contact your witnesses, review your documents, and review the employer's position statement and documents. Regardless of the decision, neither you nor your employer may have access to the EEOC's investigatory file.

If the EEOC dismisses your charge, you will be informed of your right to sue the employer in federal court. You have 90 days from the day you receive the Right to Sue letter to file a lawsuit.

Call or go to your state and/or local civil rights agency website for information on their charge handling process.

Q. What else do I need to know? Do you have any suggestions?
A. Be diligent and vigilant in recording any acts of discrimination being committed against you. Always think one step ahead. Collect witnesses such as friendly co-workers and doctors to supplement your case. [Don't let them know their purpose to you is for evidence collection in a potential charge or suit.] If the employer successfully resolves your complaint without the need to file an EEOC charge or lawsuit, do not stop documenting. It is possible adverse employment actions or situations may continue, albeit more covertly, despite initially positive corrective action from the employer.

Many people do not believe body odor/breath odor could be considered a disability which could potentially subject them to stern consequences due to their discriminatory actions. Take advantage of their ignorance. If you are not hired for a job, ask the potential employer why. If they do not mention body odor, don't be afraid to bring it up yourself innocently. In harassment situations, you may also confront some of your harassers (in a neutral manner) to confirm the cause of the harassment. In situations where you have been fired, many companies give you the option to attend an exit interview with your supervisor or human resources manager. Ask innocently whether the decision was due to your body odor/breath odor. In each of these scenarios, the purpose is to confirm the actions are discriminatory against your disability. You should not give anyone the impression you are acquiring proof for a charge or lawsuit. Do not be argumentative and do not inform them their actions are illegal.
Although difficult for body odor/breath odor employees, try not to self segregate at work. Engage in whatever activities interest you. Participate in meetings if you have something you want to contribute. Ask questions when you need help. Don't "grin and bear" insults and jokes and assume those actions are acceptable to your supervisor (or employer) so you fail to report anything. You do not need to be an extrovert but do not give you employer, supervisor, or co-workers a reason to "freeze" you out in a non-discriminatory way. It is normal for people to assume due to attitude alone a person does not want to participate in office parties, training, business trips, etc… If they choose not to ask you for certain projects or events, it may not be due to your body odor/breath odor.

Most importantly, be the best employee you can be. Do quality work. Don't engage in habitual lateness. Be helpful and courteous to others even if they do not respond in kind to you. If discrimination is occurring on the job, you do not want to give the employer a valid, legal reason to demote or fire you.