

ARE YOU IN
RECOVERY FROM
ALCOHOL OR
DRUG PROBLEMS?

Know *your* Rights



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Substance Abuse and Mental Health Services Administration
Center for Substance Abuse Treatment
www.samhsa.gov

This brochure provides general guidance on the legal rights of individuals with alcohol and drug problems. It is not intended to serve as legal advice for any particular case involving or potentially involving discrimination. If you believe that you have been or are being subjected to illegal discrimination, you should immediately consult an attorney or seek assistance from the Federal agency responsible for addressing discrimination complaints or administering the program or benefits at issue.

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This brochure will help you:

- KNOW YOUR RIGHTS UNDER FEDERAL LAWS THAT PROTECT YOU FROM DISCRIMINATION IN –
 - Employment and job training
 - Housing
 - Government services and programs
 - Health care and other public accommodations
 - Education.
- KNOW THE LEGAL CONSEQUENCES OF SUBSTANCE USE-RELATED CONDUCT THAT MAY LIMIT YOUR RIGHTS AND OPPORTUNITIES IN AREAS SUCH AS –
 - Public housing and other federally assisted housing
 - Federally funded public assistance and food stamps
 - Federal student loans and aid.
- KNOW WHAT YOU CAN DO TO –
 - Prevent or remedy violations of your rights under Federal non-discrimination laws
 - Overcome legal barriers that other laws may impose due to past or current substance use-related conduct, including convictions for substance use offenses.

THE FEDERAL NON-DISCRIMINATION LAWS THAT PROTECT YOU

Q: I am in recovery from substance abuse, but I still face discrimination because of my addiction history. Does any law protect me?

A: Yes. Federal civil rights laws prohibit discrimination in many areas of life against qualified “individuals with disabilities.” Many people with past and current alcohol problems and past drug use disorders, including those in treatment for these illnesses, are protected from discrimination by:

- The Americans with Disabilities Act (ADA)
- The Rehabilitation Act of 1973
- The Fair Housing Act (FHA) and
- The Workforce Investment Act (WIA).

WHO IS PROTECTED?

The non-discrimination laws discussed in this brochure protect individuals with a “disability.” Under these Federal laws, an individual with a “disability” is someone who –

- has a current “physical or mental impairment” that “substantially limits” one or more of that person’s “major life activities,” such as caring for one’s self, working, etc.
- has a record of such a substantially limiting impairment
or
- is regarded as having such an impairment.
- Whether a particular person has a “disability” is decided on an individualized, case-by-case basis.
- Substance use disorders (addiction) are recognized as impairments that can and do, for many individuals, substantially limit the individual’s major life activities. For this reason, many courts have found that individuals experiencing or who are in recovery from these conditions are individuals with a “disability” protected by Federal law.
- To be protected as an individual with a “disability” under

Federal non-discrimination laws, a person must show that his or her addiction substantially limits (or limited, in the past) major life activities.

- People wrongly believed to have a substance use disorder (in the past or currently) may also be protected as individuals “regarded as” having a disability.

WHO IS NOT PROTECTED?

- People who currently engage in the illegal use of drugs are not protected under these non-discrimination laws, except that individuals may not be denied health services (including drug rehabilitation) based on their current illegal use of drugs if they are otherwise entitled to those services.
- People whose use of alcohol or drugs poses a direct threat—a significant risk of substantial harm—to the health or safety of others are not protected.
- People whose use of alcohol or drugs does not significantly impair a major life activity are not protected (unless they show they have a “record of” or are “regarded as” having a substance use disorder—addiction—that is substantially limiting).

WHAT IS, AND IS NOT, ILLEGAL DISCRIMINATION?

- Discriminating against someone on the basis of his or her disability—for example, just because he has a past drug addiction or she is in an alcohol treatment program—may be illegal discrimination. Discrimination means treating someone less favorably than someone else because he or she has, once had, or is regarded as having a disability.
- Acting against a person for reasons other than having a disability is not generally illegal discrimination, even if the disability is related to the cause of the adverse action.

For instance, it is not likely to be ruled unlawful discrimination if someone in substance abuse treatment or in recovery is denied a job, services, or benefits because he –

- does not meet essential eligibility requirements
- is unable to do the job
- creates a direct threat to health or safety by his behavior, even if the behavior is caused by a substance use disorder
- violates rules or commits a crime, including a drug or alcohol-related one, when that misconduct is cause for excluding or disciplining anyone doing it.

Since the basis for the negative action in these cases is not (or not solely) the person’s disability, these actions do not violate Federal non-discrimination laws.

EMPLOYMENT

Q: Are people in treatment for or in recovery from substance use disorders protected from job discrimination?

A: The answer in many cases is “yes.” The Americans with Disabilities Act and the Rehabilitation Act prohibit most employers from refusing to hire, firing, or discriminating in the terms and conditions of employment against any qualified job applicant or employee on the basis of a disability.

- The ADA applies to all State and local governmental units, and to private employers with 15 or more employees.
- The Rehabilitation Act applies to Federal employers and other public and private employers who receive Federal grants, contracts, or aid.

Rights In general, these employers –

- May not deny a job to or fire a person because he or she is in treatment or in recovery from a substance use disorder, unless the person’s disorder would prevent safe and competent job performance.
- Must provide “reasonable accommodations,” when needed, to enable those with a disability to perform their job duties. Changing work hours to let an employee attend treatment

is one kind of a reasonable accommodation. (But if an accommodation would cause the employer undue hardship—significant difficulty or expense—it is not required.)

- Must keep confidential any medical-related information they discover about a job applicant or employee, including information about a past or present substance use disorder.

Limits The non-discrimination laws protect only applicants and employees qualified for the job who currently are not engaging in the illegal use of drugs.

- “Qualified” means that a person meets the basic qualification requirements for the job, and is able to perform its essential functions—fundamental duties—with or without a reasonable accommodation.
- Remember: people who pose a direct threat to health or safety, or have committed misconduct warranting job discipline, including termination, are not protected.

Medical Inquiries & Examinations

As a general rule, employers:

- May not use information they learn about an individual’s disability in a discriminatory manner. They may not deny or treat anyone less favorably in the terms and conditions of employment if he or she is qualified to perform the job.
- Must maintain the confidentiality of all information they obtain about applicants’ and employees’ health conditions, including addiction and treatment for substance use disorders.

Before making a job offer, employers may not ask:

- Questions about whether a job applicant has or has had a disability, or about the nature or severity of an applicant’s disability. Pre-offer medical examinations also are illegal.
- Whether a job applicant is or has ever abused or been

addicted to drugs or alcohol, or if the applicant is being treated by a substance abuse rehabilitation program, or has received such treatment in the past.

Employers may ask job applicants:

- Whether the applicant currently is using drugs illegally
- Whether the applicant drinks alcohol
- Whether the applicant can perform the duties of the job.

After making a job offer, employers may:

- Make medical inquiries and require an individual to undergo a medical examination (including ones that reveal a past or current substance use disorder), as long as all those offered the position are given the same exam
- Condition employment on the satisfactory results of such medical inquiries or exams.

After employment begins, employers may make medical inquiries or require an employee to undergo a medical examination, but only when doing this is job-related and justified by business necessity.

Such exams and inquiries may be permitted if the employer has a reasonable belief, based on objective evidence, that an employee has a health (including substance use-related) condition that impairs his or her ability to perform essential job functions, or that poses a direct threat to health or safety.

Workplace Drug Testing

- Employers are permitted to test both job applicants and employees for illegal use of drugs, and may refuse to hire—or may fire or discipline—anyone whose test reveals such illegal use.
- Employers may not fire or refuse to hire any job applicant or employee solely because a drug test reveals the presence

of a lawfully used medication (such as methadone).

- Employers must keep confidential information they discover about an employee’s use of lawfully prescribed medications.

Medical Leave

Q: Do I have the right to take medical leave from my job if I need it for substance abuse treatment?

A: Yes, in many workplaces, you do.

Rights The Family and Medical Leave Act (FMLA) gives many employees the right to take up to 12 weeks of unpaid leave in a 12-month period when needed to receive treatment for a “serious health condition” —which, under the FMLA, may include “substance abuse.” The leave must be for treatment; absence because of the employee’s use of the substance does not qualify for leave.

- The FMLA covers Federal, State and local Government employers, public and private elementary and secondary schools, and private employers with 50 or more employees.
- To be eligible for leave under FMLA, you must have been employed by a covered employer for at least 12 months, worked at least 1,250 hours during the 12 months immediately before the leave, and work at a worksite where there are at least 50 employees or within 75 miles of that site.
- FMLA makes it illegal for employers to deny leave to or take action against an employee for requesting or taking leave.
- In some circumstances, denying an employee leave for substance use treatment may constitute a violation of the ADA or the Rehabilitation Act.

Limits Neither the FMLA nor Federal non-discrimination laws make it illegal for an employer to fire or discipline an employee for a legitimate non-discriminatory reason, even when the employee is granted or entitled to leave under these laws or under the employer’s personnel policy. This means an employee who violates

workplace rules or who uses drugs illegally still can be fired for those reasons.

Job Training

Q: I need job training and placement services. Can I be denied that help because of my substance use history?

A: No, not in public (governmental) job training and placement programs, nor in private job placement services that receive Federal financial assistance.

The Workforce Investment Act (WIA) provides financial assistance for job training and placement services for many people through the One-Stop Career Center system. Section 188 of WIA and the other non-discrimination laws discussed in this brochure prohibit most job training and placement service providers from denying services to, or discriminating in other ways against, qualified applicants and recipients on the basis of disability—including people with past or current substance use disorders—who otherwise:

- meet the eligibility requirements for these services
- and*
- are currently not using drugs illegally.

HOUSING

Q: Am I also protected from discrimination when it comes to renting or buying housing?

A: The Fair Housing Act (FHA) makes discrimination in housing and real estate transactions illegal when it is based on a disability. The FHA protects people with past and current alcohol addiction and past drug addiction—although other Federal laws sometimes limit their rights. The FHA does not protect people who currently engage in illegal drug use.

Rights Landlords and other housing providers may not refuse to rent or sell housing to people in recovery or who have current alcohol disorders, and may not discriminate in other ways against them in housing transactions solely on the basis of their disability. It is also illegal to discriminate against housing providers (such as

sober or halfway houses for people in recovery) because they associate with individuals with disabilities.

Limits on Public Housing Eligibility Federal law limits some people's eligibility for public and other federally assisted housing because of past or current substance use-related conduct. The Quality Housing and Work Responsibility Act:

- requires public housing agencies, Section 8, and other federally assisted housing providers to exclude:
 - Any person evicted from public, federally assisted, or Section 8 housing because of drug-related criminal activity (including possession or sale). This bar ordinarily lasts for 3 years after the individual's eviction. A public housing agency can lift or shorten that time period if the individual successfully completes a rehabilitation program.
 - Any household with a member who is abusing alcohol or using drugs in a manner that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents. Exceptions can be made if the individual demonstrates that he or she is not currently abusing alcohol or using drugs illegally and has successfully completed a rehabilitation program.
- permits applicants for public housing to be denied admission if a member of the household has engaged in any drug-related criminal activity (or certain other criminal activity) within a "reasonable time" of the application.

GOVERNMENT SERVICES AND PROGRAMS

Q: Government benefits and services are crucial to my getting treatment and staying in recovery. Do Federal laws protect me from discrimination in these areas?

A: Yes. The Americans with Disabilities Act and Rehabilitation Act prohibit disability-based discrimination by Federal, State, or local governmental agencies in any of their "services, programs, or activities." These include Government –

- services (such as health or social services and education and training programs)
- benefit programs (such as welfare or child-care assistance) and other forms of financial assistance (such as student loans)
- other Government activities, such as zoning or occupational licensure.

Rights If you are “qualified”—that is, you meet the essential eligibility requirements of the service, program, or activity—you may not be denied the opportunity to participate in or receive benefits from these and other public services, benefit programs, or governmental activities because of your disability.

Limits on Rights and Opportunities Due to Drug Convictions

1. **Public Assistance and Food Stamps: Drug Felony Ban**
 - The Federal welfare law (the Personal Responsibility and Work Opportunity Act of 1996) imposes a lifetime ban on Federal cash assistance and food stamps for anyone convicted of a drug-related felony (including possession or sale) after August 22, 1996. However, States may “opt out” of or modify this Federal rule:
 - 12 States do not impose this ban.
 - 21 other States have modified the ban, and allow people who get treatment, show they are rehabilitated, or meet other requirements to become eligible again.
2. **Education: Student Loans and Aid** – The Higher Education Act of 1998 makes students convicted of drug offenses (including possession or sale) ineligible for federally funded student loans, grants, or work assistance.
 - Ineligibility lasts for varying lengths of time, depending on the type of drug offense and if it is a repeat offense.
 - This bars students from getting federally funded education loans or aid in college, and in many other educational and training programs.

- States cannot “opt out” of or otherwise modify this Federal rule.
3. Driver’s Licenses – The Department of Transportation (DOT) Appropriation Amendment offers Federal financial incentives to States that agree to revoke or suspend, for at least 6 months, the driver’s license of anyone convicted of a drug offense (including not only drug-related driving offenses, but also those involving drug possession or sale).
- Many States choose not to opt out of this law.

PRIVATE EDUCATIONAL, HEALTH CARE, AND OTHER FACILITIES

Q: Do private educational institutions, service providers, and other facilities also have to comply with Federal non-discrimination laws protecting people with disabilities?

A: A large number do.

- The Americans with Disabilities Act requires “public accommodations” as well as Government agencies to comply with its non-discrimination requirements. Public accommodations are private facilities that provide goods or services to the public. They include:
 - schools and universities
 - hospitals, clinics, and health care providers
 - social service agencies such as homeless shelters, day care centers, and senior centers.
- Private service providers that receive Federal grants, contracts, or aid must comply with the same non-discrimination requirements under the Rehabilitation Act and the Workforce Investment Act, when it applies.

Rights In offering or providing their goods or services, public accommodations (and other private entities covered by the Rehabilitation Act or WIA) must not discriminate against individuals on the basis of their past, current, or perceived disability. This means

they must ensure that individuals with disabilities:

- enjoy the equal opportunity to participate in or benefit from the facility's goods and services
- receive goods or services in the most integrated setting possible. Segregating or providing different services to people with disabilities generally is not allowed.

HOW YOU CAN PROTECT YOUR RIGHTS

Q: Is there anything I can do to protect my rights under these Federal non-discrimination laws?

A: Yes. If you believe you are being or have been discriminated against because of your past or current alcohol disorder or past drug use disorder, you can challenge the violation of your rights in two ways:

- You may file a complaint with the Office of Civil Rights, or similar office, of the Federal agency(s) with power to investigate and remedy violations of the disability discrimination laws. Key ones are listed below. You do not need a lawyer to do this. Filing with the Government can be faster and easier than a lawsuit and get you the same remedies. However, the deadline for filing these complaints can be as soon as 180 days after the discriminatory act – or even sooner, with Federal employers – so always check. The Federal agencies listed can tell you the deadlines and other requirements for filing discrimination complaints.
- In most (but not all) cases, you also may file a lawsuit in Federal or State court, in addition to or instead of filing an administrative complaint. Deadlines for lawsuits vary from 1 to 3 years following the discriminatory act.
- You must file employment discrimination claims under the ADA with the U.S. Equal Opportunity Employment Commission (EEOC). You may not file a lawsuit first or instead of filing with the EEOC.

If your complaint is upheld, the persons or organizations that discriminated against you may be required to correct their actions and policies, compensate you, or give you other relief.

Here is contact information for the key Federal agencies that accept complaints alleging disability-based discrimination:

Employment: U.S. Equal Employment Opportunity Commission: (EEOC). Call (800) 669-4000 (voice) or (800) 669-6820 (TTY) or visit <http://eeoc.gov/facts/howtofil.html>.

Medical leave rights (FMLA): Wage and Hour Division of the U.S. Department of Labor. Call (866) 487-9243 (voice) or (877) 889-5627 (TTY) or visit <http://www.dol.gov/esa/whd/fmla/>.

Job training and related services provided through the One-Stop Career Center system (WIA): either the State or local Equal Opportunity Officer (contact information should be available through the program or service involved), or the Civil Rights Center (CRC) of the U.S. Department of Labor. To reach CRC, call (202) 693-6500 (voice) or the toll-free Federal Information Relay Service at (800) 877-8339 (TTY) or visit <http://www.dol.gov/oasam/programs/crc/complaint.htm>.

Housing: U. S. Department of Housing and Urban Development (HUD), Office of Fair Housing and Equal Opportunity. Call (800) 669-9777 (or local office for TTY service) or visit <http://www.hud.gov/complaints/housediscrim.cfm>.

Public accommodations: U.S. Department of Justice (DOJ). Call (800) 514-0301 (voice) or (800) 514-0383 (TTY) or visit www.usdoj.gov/crt/ada/t3compfm.htm.

Government services, programs, and activities: Contact the Federal agency that gives financial assistance to, provides, or regulates the program or activity. You can look up how to contact the agency in your local phone book or public library, or look for the agency's Web site online.

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