

ADA Audio Conference Series

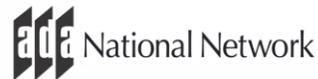
The ADA, Addiction, Recovery and Employment



Oce Harrison, Project Director
Stacy Hart, ADA Information and Training Specialist

New England ADA Center, A project of the Institute for Human Centered Design

Boston, MA



1

Purpose



Americans with Disabilities Act

1. Definition of disability and how it applies to:
 - Alcohol Use Disorder
 - Substance Use and Opioid Use Disorders
2. Scenarios under the ADA:
 - Employment: Title I of the ADA
 - State and Local Governments: Title II of the ADA
 - Public Accommodations: Title III of the ADA



2

Institute for Human Centered Design



An international education and design non-profit dedicated to enhancing the experiences of people of all ages and abilities through excellence in design.



www.HumanCenteredDesign.org

3



ADAta.org
1-800-949-4232 voice/TTY

Funded by
National Institute on Disability, Independent Living and Rehabilitation Research
through the Administration for Community Living and US Health and Human Services

4

4

Americans with Disabilities Act

Ensures that people with disabilities have the same rights and opportunities as everyone else. This includes people with addiction to alcohol, and people in recovery from opioid and substance use disorders.



President G.H. Bush Signing the ADA
July 26, 1990

5

ADA Definition of Disability

1. Has a physical or mental impairment that substantially limits one or more **major life activities**; *or*
2. Has a **history** of a physical or mental impairment that substantially limits one or more major life activities; *or*
3. Is **regarded** as having such an impairment.

6

Major Life Activities

Examples in ADA

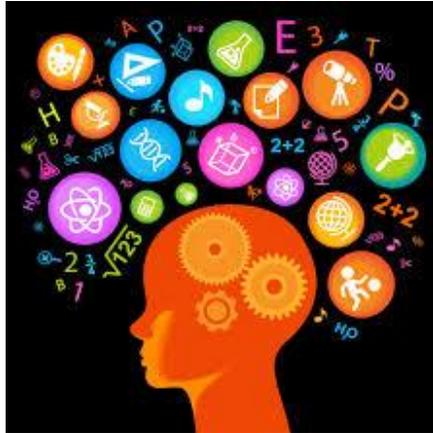
Caring for oneself	Walking	Learning
Performing manual tasks	Standing	Reading
Seeing	Lifting	Concentrating
Hearing	Bending	Thinking
Eating	Speaking	Communicating
Sleeping	Breathing	Working

Major Bodily Functions = Major Life Activities

Examples in ADA

Immune System	Neurological
Normal cell growth	Brain
Digestive	Respiratory, Circulatory
Bowel	Endocrine
Bladder	Reproductive

Addiction affects brain and neurological functions.



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9

The ADA makes a distinction between addiction to alcohol and the illegal use of drugs

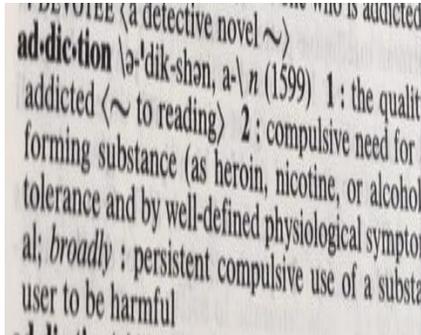


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10

Addiction to Alcohol



Generally is a “disability” regardless of whether it’s in the present or in the past. However, a person still has to meet the definition of disability.

11

Scenario

Michael is often late for work. His supervisor warns him about his lateness.



The third time he’s late, his supervisor gives him a written warning, stating that one more late arrival will result in termination.

Michael tells his supervisor that he is addicted to alcohol. His late arrivals are due to his drinking, and he needs time off for detox and treatment.

Does Michael have protections under the ADA?

12

Yes, Michael is a person with a disability (addiction to alcohol), but it's complicated. The employer does not have to withdraw the warning.



The employer must grant Michael's request to take leave to enter a rehab program, unless the employer can prove that Michael's absence would cause a great difficulty or expense (undue hardship).

Substance Use Disorder

The word "recovery" is written in a stylized font where each letter is contained within a different colored rectangular block. The colors are red, green, blue, orange, yellow, purple, and brown.

The ADA protects a person in recovery who is no longer engaging in the current illegal use of drugs.

In Recovery Means:

- 1) In recovery from substance use disorder and is no longer engaging in the illegal use of drugs; *or*
- 2) Is participating in a supervised rehabilitation program, or has completed a program, or has otherwise been rehabilitated successfully.

What Does “Illegal Use of Drugs” Mean?



- Use of illegal drugs such as heroin or cocaine.
- Use of controlled substances such as opioids or morphine:
 - BUT** person has no prescription
 - OR** has a fraudulent prescription
 - OR** is using more than prescribed

What Does “Current” Mean?

Current illegal use of drugs means:

“Illegal use occurred **recently enough to justify a reasonable belief** that a person’s drug use is a **real and ongoing problem.**”

Under the ADA, current drug use is decided on a **case-by-case basis.**

17

Employment: Title I of the ADA

Applies to private employers with 15 or more employees and all state and local government employers.

Applies to all aspects of employment: job application, job training and other terms or conditions and privileges of employment.

18

Scenario

Application for Employment
accommodations for persons with disabilities in the hiring process. If your disability is not listed, please let us know, and we will provide assistance.

First Name	Date of Application	Middle Initial	Date of Birth
City			

18 years of age or over?
 No Yes, Date of Birth

Educational Attainment

Marianna has been heroine-free for 3 years. She applies for a job that she is qualified to do. The employer refuses to hire her because he knows about her past addiction.

Is she protected under the ADA?

Yes, Marianna is protected under the ADA because she:

- Has a history of an impairment (addiction to heroin)
- Has refrained from the use of illegal drugs for three years which is a good indication that there is not an on-going problem.

The potential employer violated the ADA when he refused to hire Marianna because of her recovery status.

Scenario



Julie has been in recovery for 5 yrs. from addiction to Oxycontin. She is in medical assisted treatment (MAT).

She works in the office at a day care center. Her boss learns about her former addiction & tells her to “get off methadone or you’ll be fired.”

Does Julie have protections under the ADA?

Yes, Julie has a history of addiction and is being regarded as a current user of illegal drugs because of her medical treatment.

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21



What if Julie’s employer found out that she recently used cocaine while in medical assisted treatment (MAT)?

Would she have rights under the ADA?

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22



illegal

No, the ADA does not protect individuals who are “currently engaging in the illegal use of drugs.”

Or, what if Julie’s employer found out that she recently used marijuana while in MAT?

Would she have protections under the ADA?

No, Marijuana
in all its forms is illegal under federal law.



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25



Even if it is used with a medical prescription

*** However, check your state law.**

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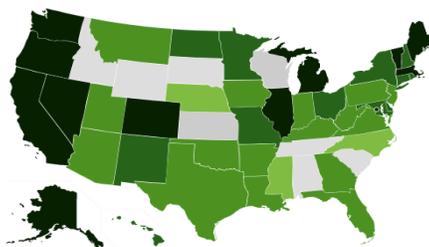
26

Medical Marijuana and State Law

If medical marijuana is legal under state law, then employers may need to consider reasonable accommodations for offsite use of medical marijuana under state law.

*However, an employee who shows up high to work has NO protections under either federal or state law.

Currently, 33 states have legalized medical marijuana. State law may or may not provide employment protections.



Legalized Medical and Decriminalized Medical Decriminalized Fully illegal

Information is current as of May, 2020

Your Question

Medical Marijuana And Ohio State Law

How do the ADA, addiction and recovery intersect with current Ohio laws related to Marijuana?



Legal Use of Prescription Medication

James became addicted to Percocet while taking the medication in a prescribed manner and in prescribed amounts.

Is James protected under the ADA?



Yes, he is protected under the ADA because he is legally using drugs.

*But, if he takes more than prescribed, he may not be covered.



James wants to take a leave of absence from his job to taper off Percocet.

Does James have protections under the ADA?

Yes, he is a person with a disability and may have rights to an accommodation. He needs to discuss the possibility of an accommodation with his boss.



What if James' employer found out that he was using heroin on the job?

Would he have rights under the ADA?

33

Last Chance Agreement



No. However, nothing in the ADA would limit the employer's ability to offer leave or other assistance that may allow James to receive treatment.

34

Three Stages of Employment

The ADA addresses addiction and recovery in each stage of employment:

1. Application and interview process
2. After a job offer, but before starting work
3. On the job

35

First Stage: Application and Interview



- The ADA prohibits all disability-related questions, and medical exams, *even if* they are related to the job.
- These questions can reveal a disability.

36

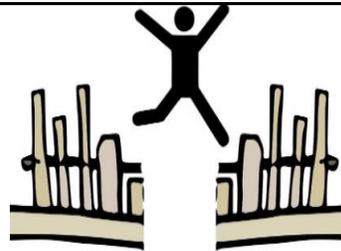
What are Disability Related Questions?



1. Are you taking prescription drugs?
2. Do you have a disability, illness or condition that will prevent you from doing this job?
3. Have you ever been treated for addiction to alcohol, opioids or other drugs?

37

Gaps in Employment



Can an interviewer ask about gaps in employment?

Yes!

An applicant can say that she had an illness, is recovered and excited to get back to work.

38



- If an employer asks a **disability-related question**, then an applicant should tell the truth, even though the question is illegal.
- If the applicant does not tell the truth and is caught lying, then this is cause for not hiring.

Permissible Questions Related to Alcohol/Illegal Drugs

Have you ever used or do you currently use
_____?

A positive or negative answer does not reveal
a disability.

Questions about Extent or Frequency of use are not Permissible

- How much alcohol or illegal drugs do or did you consume?
- How often do or did you drink alcohol or use illegal drugs?

These questions may reveal an addiction.

41

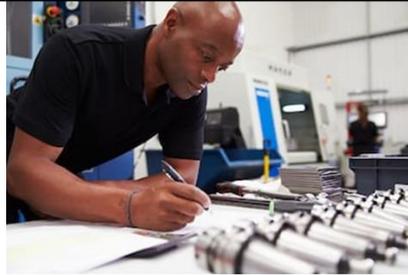
Stage Two: After a Job Offer, but Before Starting



- An employer may make require medical exams and ask disability-related questions provided it does so for all individuals within a job category.
- All questions about use of alcohol/drugs, or extent of use, or diagnosis of alcohol/drug addiction are permissible.

42

Stage Three: On the Job



- Questions about use are permissible (answers can't reveal a disability).
- Questions about extent or frequency are disability-related and reason for asking **must be job-related and consistent with business necessity.**

Alcohol, Drug Tests and the ADA

- Can an employer test for:
 - Alcohol & prescription drugs?
 - Illegal use of drugs?

It Depends.... Sometimes....

**Also, check your state law



Alcohol and the ADA

- Testing is considered a medical exam.
- Results could uncover disability related information.

SO....

Can only test in 2 situations:

- **After a job offer has been made, but before starting** as long as this is done for all individuals who receive job offers.
- **On the job** as long as test is job related and consistent with business necessity.



Testing for Illegal Drug Use and the ADA

- Is **not** a medical exam.
- Current illegal use of drugs is **NOT** covered by ADA.

So...

Can test anytime as part of:

- Application process and post-offer medical exams

For drug testing employees based on:

- Business necessity based on credible evidence (falling asleep and slurring speech, etc.)
- And safety sensitive jobs.

Recap

Alcohol

- **IS** a medical exam
- Can test in 2 situations:
 - After a job offer has been made but before starting for all who receive offer.
 - On the job as long as test is job related and consistent with business necessity.

Illegal Drugs

- **Not** a medical exam
- Can test anytime:
 - Application process, post-offer, and medical exam.
 - For employees suggest:
 - Business necessity based on credible evidence and safety sensitive positions.

Your Question

What happens when a person with ADHD fails a pre-employment drug test due to the amphetamines in their prescription medication?



State and Local Governments: Title II of the ADA

People with disabilities must be able to participate in or benefit from all state and local government, **programs, services & activities.**

- Courts
- Law enforcement
- Public education
- Public Transportation
- Recreation
- Health care
- Social Services
- Voting

State and Local Government: Title II of the ADA



Tom is in medical assisted treatment. He appeared in family court and requested that he begin to see his kids on the weekends. The judge responded to his request saying, “You’ll see your kids when you get off Suboxone.”

Is Tom protected under the ADA?

Tom Hits the ADA Jackpot

1. Yes, Tom has a **history** of addiction.
2. Family court is **regarding** the use of Suboxone as though it is an illegal drug.
3. Tom's use of Suboxone cannot, by itself, justify a refusal to let Tom see his kids on weekends.

Scenario



People who enter the correctional system in MAT are discontinued on their medication.

Are prisoners protected under the ADA?

- **Yes**, generally correctional systems have an obligation to provide legally prescribed medications to people entering with a prescription when the correctional facility has a medication dispensary program.
- Then, MAT should be treated like medication for diabetes or cancer.

Public Accommodations: Title III of the ADA

ADA requires places of public accommodations to provide goods and services to people with disabilities.

- Pharmacies
- Insurance offices
- Health care providers
- Restaurants
- Movie theaters
- Private schools
- Hospitals
- Health care
- Social Services center
- Establishments
- Day care centers
- Hotels

Recovery Homes and Sober Houses



Many recovery homes won't let residents use medicine to quit opioids.

Do residents have protections under the ADA?

55

- Yes, it's a violation of either the ADA or the Fair Housing Act (FHA) to turn people away from sober and halfway houses for MAT although this is a frequent practice.
- Both the ADA and FHA requires public entities to grant "reasonable modifications" so that individuals with disabilities can access equal housing opportunities.

56

Two Legal Cases



Selma Medical in Virginia refused to accept a new patient into their family practice after learning that he had a prescription for Suboxone.

Did Selma Medical violate the ADA?

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Yes, Selma violated the ADA by denying a person with a disability equal access to goods and services.

They have an obligation to modify existing policy that excludes people with OUD considered a disability.

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58

Athena Rehabilitation and Skilled Nursing



Athena Health Care refused to accept patients with OUD. These individuals were seeking admissions to their facilities for health issues unrelated to their addiction.

Obligations of Health Care An Exception



Whether state or privately funded, health care providers may not deny health services to individuals because of their current illegal use of drugs or alcohol intoxication if they are entitled to such services.

In Summary



Americans with Disabilities Act

1. People with addiction are people with disabilities under the ADA.
2. The ADA provides civil rights protections for people with addiction.
3. The ADA addresses addiction to alcohol and the illegal use of drugs differently.

Resources

The ADA, Addiction and Recovery Fact Sheet

<https://ADAta.org/factsheet/ada-addiction-and-recovery>

The ADA, Addiction, Recovery & Employment Fact Sheet

<https://ADAta.org/factsheet/ada-addiction-recovery-and-employment>

This Power Point is available

<https://www.newenglandada.org/addiction-and-recovery>

Thank You!

Questions About the ADA?
1-800-949-4232
adata.org/find-your-region

Oce Harrison, Ed.D.
oharrison@IHCDesign.org
1-617-695-1225 x227

Stacy Hart
shart@IHCDesign.org
1-617-695-0085



63



Next Session:

ADA Anniversary Update: 30 Years, Where do We go Now?

July 14, 2020, 2-3:30 ET.

Register online at <http://www.ada-audio.org>
or Call (877) 232-1990

64

64