

**“KNOW YOUR RIGHTS”
Legal Rights of “Arizonans” with Alcohol and Drug
Issues/Histories**

[created March 2008 by Legal Action Center
& updated/modified June 2010 by OHR]

This training is for . . .

- people with or in recovery from alcohol or drug issues
- anyone supporting the rights of people with current/past alcohol or drug issues.

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This training is about . . .

- Laws prohibiting discrimination against people with disabilities in:
 - ▶ Housing
 - ▶ Public benefits and services
 - ▶ Employment

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Training objectives

1. Understand rights to be free from discrimination under federal and state laws.
2. Understand how to exercise those rights
3. Know how to help others understand and exercise those rights.



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Part 1



Introduction: What Is Discrimination?

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DISCRIMINATION IS . . .

treating a person less favorably/differently because of his/her **STATUS**

. . . **when the law does not permit it.**

Examples of status protected by law:

- Race
- Age
- Disability
- Gender

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DISCRIMINATION: Examples

- Doctor's office won't take patients who have a drug addiction.
- Employer fires someone because that person is in recovery from alcoholism.
- Landlord will not rent to anyone with a disability.

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DISCRIMINATION: CASE-BY-CASE DECISION

- Should look at each person individually.
- Should *not* make generalizations about a person based on status (e.g., based on the mere fact that the person has a disability).

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DISCRIMINATION IS NOT . . .

treating a person less favorably/differently because of his/her **CONDUCT**.

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It's *not* discrimination to . . .

- Fire a person who causes an accident at work because she is under the influence of alcohol or drugs.
- Evict a tenant who has been found guilty of selling drugs out of his apartment.



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Today's Presentation/Discussion

Focuses on discrimination due to:

- **Disability**



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Part 2



Which Laws Prohibit Discrimination Against People with Alcohol/Drug Histories?

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THE LAWS – DISABILITY DISCRIMINATION

FEDERAL LAWS



- **Americans with Disabilities Act – “ADA”**
(42 U.S.C. §12101 *et seq.*)
- **Rehabilitation Act of 1973 – “Rehab Act”**
(29 U.S.C. §§701-794)
- **Fair Housing Act – “FHA”**
- **Workforce Investment Act – “WIA”**
- **Family and Medical Leave Act – “FMLA”**

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THE LAWS – DISABILITY DISCRIMINATION

ARIZONA STATE LAW

- **Arizona Civil Rights Act**
 - Housing (A.R.S. 41-1491, *et seq.*)
 - Employment (A.R.S. 41-1461, *et seq.*)
 - Public Benefits



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FEDERAL LAWS

WHO IS PROTECTED BY THESE LAWS?



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FEDERAL LAWS (cont.):
WHO IS PROTECTED?

- a person with a “**DISABILITY**”
- a person with a *history* (“record”) of a disability
- a person *regarded* as having a disability

FEDERAL LAWS (cont.):
WHO IS PROTECTED (cont.)?

What is a “disability”?

- “a physical or mental impairment that substantially limits one or more major life activities”
- a history (“record of”) such an impairment *or*
- being “regarded as” having such an impairment

FEDERAL LAWS (cont.):
WHO IS PROTECTED (cont.)?

What is a “disability”? (cont.)

- Must make an individualized determination. There are no automatic disabilities.
- A person has a “disability” only if she or he has an impairment that affects her or his major life activities, such as caring for self, walking, talking, or working.

FEDERAL LAWS (cont.):
WHO IS PROTECTED (cont.)?

Is alcoholism a “disability”?

- *past* alcohol abuse/alcoholism: often **YES**
- *current* alcohol abuse/alcoholism: often **YES**

The answer depends on whether the alcohol abuse/alcoholism substantially impairs or impaired *that person's* major life activities.

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FEDERAL LAWS (cont.):
WHO IS PROTECTED (cont.)?

Is drug addiction a “disability”?

- *past* addiction: **YES**, if it substantially impaired that person's major life activities. This includes people who:
 - have successfully completed treatment
 - are currently in treatment (including methadone treatment)
 - have achieved recovery without treatment

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FEDERAL LAWS (cont.):
WHO IS PROTECTED (cont.)?

Is drug addiction a “disability”? (cont.)

- *current* illegal use of drugs: **NO**

Federal laws do not protect individuals who are “currently engaging in the illegal use of drugs.”

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FEDERAL LAWS (cont.):
WHO IS PROTECTED (cont.)?

What does current illegal use of drugs mean?

“Illegal use” includes:

- Use of Illegal drugs (e.g., heroin, cocaine)
- Unlawful use of prescription drugs:
 - no prescription
 - fraudulent prescription
 - misuse of prescription medications

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FEDERAL LAWS (cont.):
WHO IS PROTECTED (cont.)?

When is illegal use of drugs “current”?

No definition in the law itself. Focus is on - is the use recent enough so that it is reasonable to assume that it is an ongoing problem?

Courts often consider person who has illegally used drugs in past few months to be a “current” user, and therefore not protected by the law.

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FEDERAL LAWS (cont.):
WHO IS PROTECTED (cont.)?

BUT people who currently use drugs illegally are protected from discrimination by health care providers if “otherwise entitled” to such services.

Examples:

- Cannot be denied surgery just because use drugs illegally.
- Cannot be denied dental care just because use cocaine.

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FEDERAL LAWS (cont.)
WHO MUST FOLLOW THESE LAWS?

TO WHOM DO THESE LAWS APPLY?

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FEDERAL LAWS (cont.)
WHO MUST FOLLOW THESE LAWS?

Who must follow the Rehabilitation Act?

- federal government
- groups/agencies/programs that receive federal funding, either directly or indirectly



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FEDERAL LAWS (cont.)
WHO MUST FOLLOW THESE LAWS?

Who must follow the ADA?

- private **employers** with more than 15 employees. They are covered by "Title I" of the ADA.
- state and local **government** agencies. They are covered by "Title II" of the ADA.
- places of "**public accommodation**," which are private entities open to the public (e.g. hospitals, doctors' offices, day care, hotels). They are covered by "Title III" of the ADA.

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FEDERAL LAWS (cont.)
WHO MUST FOLLOW THESE LAWS?

Who must follow the Fair Housing Act?

- most housing providers (landlords), whether private or public
- others who sell or rent housing (brokers)

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FEDERAL LAWS (cont.)
WHO MUST FOLLOW THESE LAWS?

Example – John

John used to be dependent on heroin but is now in methadone maintenance treatment. Landlord: “no addicts or people on methadone can apply for my apartments.”

Is John protected by federal laws?

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FEDERAL LAWS (cont.)
WHO MUST FOLLOW THESE LAWS?

ANSWER – John

YES, John is protected by federal law.

. . . . But what if he just stopped using heroin last month? Does this matter?

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FEDERAL LAWS (cont.)
WHO MUST FOLLOW THESE LAWS?

ANSWER – John (cont.)

YES, it may matter. If John stopped using heroin within the last month, he may be treated as a person “currently engaging in the illegal use of drugs” and may **NOT** be protected under federal law.

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FEDERAL LAWS (cont.)
WHO MUST FOLLOW THESE LAWS?

Example – Julie

Julie uses cocaine after work, but has no problems on the job. Her boss finds out about her cocaine use and fires her. Is Julie protected by federal laws?

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FEDERAL LAWS (cont.)
WHO MUST FOLLOW THESE LAWS?

ANSWER – Julie

NO, Julie is not protected by federal law because she is “currently engaging in the illegal use of drugs.” This is true even if she has no problems with her work.

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FEDERAL LAWS (cont.)
WHO MUST FOLLOW THESE LAWS?

Example – Jose

Jose has an alcohol problem, but has no problems on the job. After his boss hears that he is attending alcoholism outpatient treatment at night, his boss fires him, saying: “I don’t want any alcoholics working here.”

Is Jose protected by federal laws?

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FEDERAL LAWS (cont.)
WHO MUST FOLLOW THESE LAWS?

ANSWER – Jose

Yes. Individuals with current alcohol problems may have a “disability” and be protected from discrimination – unlike individuals who currently engage in the illegal use of drugs.

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Part 3

What RIGHTS Do These Laws Give People With Past or Current Alcohol/Drug Problems?



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What rights do these laws give?

HOUSING

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What rights do these laws give?

HOUSING



Federal law – Fair Housing Act:

Prohibits disability-based discrimination in housing and real estate transactions

- applies to: most public and private housing providers and other entities involved in sale or rental of housing (e.g. brokers, listing services)
- protects: people with disabilities and persons or agencies associated with people with disabilities (e.g. alcohol and drug treatment programs)

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What rights do these laws give?

HOUSING (cont.)



Arizona's Fair Housing law (ACRA):

- Protects persons with disabilities (A.R.S. 41-1491)
 - Seller or landlord cannot discriminate in sale or rental based on disability of buyer/renter, person intending to reside in the dwelling, or anyone associated with the buyer/renter.
 - Landlord must make reasonable accommodations in rules, practices, or services.
 - Anti-retaliation clause for persons with disability who seek protection of the law.

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What rights do these laws give?
HOUSING (cont.)

Example – Yvonne & Robert

Yvonne and Robert were recently married and are looking for an apartment. Both are in recovery and attend weekly AA meetings at a local community college. They find an apartment that they love. They apply for the apartment, and the landlord tells them that as long as their credit report checks out, the apartment is theirs. The next night, the landlord, sees them entering the AA meeting. Two days later, the landlord calls Robert and says he has rented the apartment to someone else.

Q1: May the landlord deny Yvonne and Robert the apartment?

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What rights do these laws give?
HOUSING (cont.)

ANSWER – Yvonne & Robert

A1. It depends on the reason. The landlord may *not* deny them the apartment if the reason is – he saw them at the AA meeting and he does not want any alcoholics as tenants. The Federal Fair Housing Act (FHA) and the Arizona Civil Rights Act (ACRA) prohibit most landlords from discriminating against prospective tenants on the basis of disability, including being in recovery from addiction.

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What rights do these laws give?
HOUSING (cont.)

ANSWER – Yvonne & Robert

But the landlord *may* deny them the apartment if the reason is – their credit check was bad.

If the reason was discriminatory, Yvonne & Robert can file a complaint with HUD
<http://www.hud.gov/complaints/housediscrim.cfm>
with the Civil Rights Division of the Arizona Attorney General's Office:
http://www.azag.gov/civil_rights/complaintform.html

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What rights do these laws give?
HOUSING (cont.)

Yvonne and Robert

Q2: What if instead of seeing Yvonne and Robert at the AA meeting, the landlord sees them hanging out on the corner, drinking from a brown paper bag, staggering and shouting rudely at people walking by? Could the landlord legally deny Yvonne and Robert the apartment in those circumstances?

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What rights do these laws give?
HOUSING (cont.)

ANSWER – Yvonne & Robert

A2. Yes. Although the FHA prohibits landlords from discriminating against people because they are alcoholics, it does not require landlords to rent to anyone who would cause a "direct threat to the health or safety" of others or who would harm property.

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What rights do these laws give?
HOUSING (cont.)

What about public housing?



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What rights do these laws give?

HOUSING (cont.)

Public housing: Federal law prohibits housing authorities from leasing to persons if any members of their households:

- currently **USE DRUGS ILLEGALLY** or have a pattern of use that "may threaten the health, safety or right to peaceful enjoyment" by other residents.
- abuse **ALCOHOL** or have a pattern of abuse that may threaten health and/or safety of residents.

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What rights do these laws give?

HOUSING (cont.)

Public housing (cont.):

People **may** live in public housing if they are in recovery and do not pose a threat to the health and/or safety of residents.

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What rights do these laws give?

HOUSING (cont.)

Public housing (cont.):

But some **drug-related criminal convictions** also disqualify households from public housing. In fact, federal law prohibits housing authorities from admitting people if any household member:

- has ever been convicted of manufacture or production of methamphetamine on the premises of federally assisted housing.
- is subject to a lifetime sex offender registration requirement or for 60 months from the date a person is removed from a sex offender list.

Also, Federal law *permits* local housing authorities to exclude people whose "history of criminal activity" –

- "would adversely affect the health, safety, or welfare of other tenants."

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What rights do these laws give?

HOUSING (cont.)

- Check with your local housing authority if it disqualifies people from admission for any of the above.
- Check with your local housing authority for details on any rules for people with alcohol/drug use issues.

What rights do these laws give?

GOVERNMENT SERVICES & PROGRAMS

What rights do these laws give?

GOVERNMENT SERVICES & PROGRAMS

Government agencies (federal, state and local) may not discriminate against persons with disabilities. This anti-discrimination rule applies to all government programs, services, and activities.



What rights do these laws give?
GOVERNMENT SERVICES & PROGRAMS

Examples of government programs & services that may not discriminate:

- Public assistance, Medicaid & other government benefits
- Occupational licensing
- Zoning
- Job training
- Government health programs

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What rights do these laws give?
GOVERNMENT SERVICES & PROGRAMS (cont.)

Example – Rachel

Rachel has been in methadone maintenance treatment for six years. She recently lost her job and applied for public assistance while she looks for a new job. During the application process, the worker asks her if she has a drug or alcohol problem. Rachel explains that she used to, but now she's in methadone treatment.

Q1: May the public assistance office deny Rachel's application because of her past drug problem?

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What rights do these laws give?
GOVERNMENT SERVICES & PROGRAMS (cont.)

ANSWER -- Rachel

A1. No. The ADA and the Rehabilitation Act prohibit Federal, State and local government programs from discriminating on the basis of disability. Therefore, the welfare office, which is part of a state agency, may not deny Rachel benefits because she is in recovery.

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What rights do these laws give?
GOVERNMENT SERVICES & PROGRAMS (cont.)

Rachel

Q2: May the public assistance office deny her application because she's taking methadone?

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What rights do these laws give?
GOVERNMENT SERVICES & PROGRAMS (cont.)

ANSWER – Rachel

A2. No. Denying benefits because someone is taking a legal medication as directed would be discriminatory, as would denying benefits because someone is in treatment.

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What rights do these laws give?
GOVERNMENT SERVICES & PROGRAMS (cont.)

- **HOWEVER**, some federal laws limit the rights of people with drug-related convictions:
 - Public assistance & food stamps
 - Student loan ban



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What rights do these laws give?
GOVERNMENT SERVICES & PROGRAMS (cont.)

Public assistance & food stamps: 1996 welfare reform law imposed a lifetime ban on federal cash assistance & food stamps for anyone convicted of drug-related felony after 8/22/96.

- States may “opt out,” and many have – but not Arizona.

And...

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What rights do these laws give?
GOVERNMENT SERVICES & PROGRAMS (cont.)

Student loan ban: People convicted of drug felonies *while enrolled in school & while receiving federal financial assistance* become ineligible for federal student loans, grants and work assistance unless they complete a treatment program.

- Before 7/1/06, ban applied regardless of when the conviction occurred – even if it was years before the person received federal financial assistance. But that changed.

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What rights do these laws give?
GOVERNMENT SERVICES & PROGRAMS (cont.)

- Student loan ban (cont.):

- Applies to convictions only; not arrests.
- Length of ban depends on the conviction and evidence of rehabilitation. It *can* be overcome upon completion of treatment.

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What rights do these laws give?

EMPLOYMENT



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What rights do these laws give?
EMPLOYMENT

The basics:

1. Can't deny person a job or fire person just because s/he is in treatment or recovery.
2. Must provide "reasonable accommodation" for the individual with a disability.
3. Must keep health information confidential.
4. Limits on questions about disabilities.

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What rights do these laws give?
EMPLOYMENT

No employer may discriminate against a qualified individual with a disability.

Meaning of "qualified"

- Meets qualification standards for job
- Able to **perform essential job duties** with or without "**reasonable accommodation.**"

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What rights do these laws give?
EMPLOYMENT (cont.)

What is a “reasonable accommodation”?

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What rights do these laws give?
EMPLOYMENT (cont.)

Answer:

- Change(s) to work setting, hours or workplace rules made so that a person with a disability can perform job duties
- **Must not** cause employer “undue hardship” – e.g., significant cost, need for fundamental change to way company operates

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What rights do these laws give?
EMPLOYMENT (cont.)

Answer (cont.):

- Individual with a disability must **request** the reasonable accommodation unless employer is aware of the disability and the need for an accommodation.

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What rights do these laws give?
EMPLOYMENT (cont.)

Answer (cont.):

- Employer and employee should engage in “**interactive process**,” where employer may –
 - Require reasonable documentation of disability and the need for an accommodation
 - Suggest a different accommodation than the one employee wants, if effective.

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What rights do these laws give?
EMPLOYMENT (cont.)

Answer (cont.):

- Employer must maintain the **confidentiality** of health information – including alcohol & drug treatment information.

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What rights do these laws give?
EMPLOYMENT (cont.)

Examples of reasonable accommodations:

- permitting employee in recovery to move from day shift to night shift so employee can attend day-time treatment



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What rights do these laws give?
EMPLOYMENT (cont.)

More reasonable accommodations:

- Allowing leave of absence for alcohol treatment – especially if employer permits leave for individuals with other disabilities
- Change in job duties, if necessary to enable employee to perform essential job duties

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What rights do these laws give?
EMPLOYMENT (cont.)

Employer has right to monitor recovery:

Example:

- require “fitness for duty” evaluation
- request documentation from treatment provider

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What rights do these laws give?
EMPLOYMENT (cont.)

Example – Paula

Paula, who has been in recovery for three years, is a cashier at a 24-hour parking garage in the city. She attends a group counseling session for people who want support to stay in recovery, which meets from 4:00 to 6:00 p.m. once a week. Before January 1st, the garage changed her to the afternoon shift, so she would have to work from noon to 7:00 p.m. Paula has been with this group for over a year. She is comfortable with the participants and would like to continue attending the weekly session.

Q1: Can Paula continue to attend her weekly group session?

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What rights do these laws give?
EMPLOYMENT (cont.)

ANSWER – Paula

A1. Yes, Paula can ask her employer for a *reasonable accommodation* to allow her to change her shift so she can attend the group counseling session. The employer may need to provide her an accommodation, **but...**

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What rights do these laws give?
EMPLOYMENT (cont.)

ANSWER – Paula (cont.)

A1 (cont.):

- Employer may suggest other accommodations (e.g., the night shift);
- Employer may request documentation regarding her treatment;

more...

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What rights do these laws give?
EMPLOYMENT (cont.)

ANSWER – Paula (cont.)

A1 (cont.):

- Employer does not need to provide Paula with this accommodation if it would cause the employer “undue hardship” (i.e., would be too expensive or difficult for the employer).

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What rights do these laws give?
EMPLOYMENT (cont.)

Paula

Q2: But is there anything else we need to know?

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What rights do these laws give?
EMPLOYMENT (cont.)

ANSWER – Paula

A2. How many employees does Paula’s employer have? To be covered by ADA, the employer must have at least 15 employees. To be covered by [state] law, the employer must have at least [insert # of employees].

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What rights do these laws give?
EMPLOYMENT (cont.)

Remember – employees must be “qualified” – able to perform essential job duties, meet job performance standards, and comply with workplace rules. If job performance or behavior are unacceptable, it *does not matter* that the problems are related to/caused by drug or alcohol dependence.

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What rights do these laws give?
EMPLOYMENT (cont.)

Example – Bob

Bob works at a hardware store. Job policy: must call in if ill. Bob is AWOL for 2 days because he has entered a treatment program for his cocaine addiction. Bob calls on the 3rd day and is fired.

Discrimination?

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What rights do these laws give?
EMPLOYMENT (cont.)

ANSWER – Bob

NO. Current illegal users of drugs are not protected by federal or state law. Even if Bob entered alcohol treatment – instead of treatment for cocaine – there was no illegal discrimination because Bob violated job policy by going AWOL.

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What rights do these laws give?
EMPLOYMENT (cont.)

Example – Jane

Jane is in a methadone program under doctor's care. She works as a nurse's aide. Her employer randomly drug tests its employees, and Jane tests positive for methadone. She is fired because of the positive drug test.

Discrimination?

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What rights do these laws give?
EMPLOYMENT (cont.)

ANSWER – Jane

YES, if Jane notified tester or employer that she was in treatment and gave proof that she was taking methadone legally and was a patient in a program.

It is illegal discrimination to fire someone because she is in treatment, if she is no longer using drugs illegally.



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What rights do these laws give?
EMPLOYMENT (cont.)

ANSWER – Jane

NO, if Jane was confronted, and she claimed she had no idea why she tested positive for methadone OR if she was taking methadone that was illegally obtained.

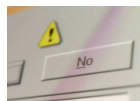
It is *not* illegal to fire someone because of her illegal drug use.

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EMPLOYMENT:
Medical Questions/Exams *Before* Job Offer

In general . . .

- **no** questions about disability (current or past)
- **no** questions about alcohol or drug dependence or treatment (current or past)



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EMPLOYMENT: Drug Tests

Drug test not considered to be a “medical exam.”

What does this mean?



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EMPLOYMENT: Drug Tests (cont.)

ANSWER

Employer may conduct drug tests before hiring and may condition employment on a clean test (i.e., test revealing no illegal use of drugs).

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EMPLOYMENT: Drug Tests (cont.)

- It is very important to disclose methadone and/or other prescribed medication **prior to** drug test.
- Bring letter from physician verifying prescription(s). Letter should attest to participation in methadone treatment if methadone is being taken to treat opiate dependence.
- Have tester document the medications prescribed.

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EMPLOYMENT: Medical
Questions/Exams **Before** Job Offer (cont.)

What if employer asks an illegal question?

Examples of illegal questions:

- Have you ever had an alcohol problem?
- Have you ever been in alcohol or drug treatment?

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EMPLOYMENT: Medical
Questions/Exams **Before** Job Offer (cont.)

No easy answer

- Try to get job application ahead of time and contact a government agency (EEOC, [state agency name]) or lawyer. Ask them to request/require that the employer remove it.
- Do not lie: employer may legally deny you the job for lying.
- Consider whether employer will find out anyway (e.g., through drug test that might reveal methadone, or through drug-related conviction).

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EMPLOYMENT: Medical
Questions/Exams **After** Job Offer – Before Start

What about AFTER the job offer?
May the employer ask more questions then?

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EMPLOYMENT: Medical
Questions/Exams **After** Job Offer – Before Start

In general . . .

- Employer may require medical exam/test if everyone offered that position must take same exam/test
- Employer may condition hiring on satisfactory result

* Remember: drug tests are not considered a “medical exam.” Employers may give them before or after job offer.

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EMPLOYMENT: Medical
Questions/Exams **After** Job Offer – Before Start

Example – Anton

Anton is given a “conditional offer” of a job as a social worker. He must pass a medical exam before he is formally hired and begins work.



Discrimination?

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EMPLOYMENT: Medical
Questions/Exams **After** Job Offer – Before Start

ANSWER – Anton

NO, if the employer requires a medical exam of everyone starting work as a social worker.

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EMPLOYMENT: Medical Questions/Exams

Example – Raul

Raul has been in recovery for just over a year. He is applying to work as a salesman in a store. The job application asks, “Have you ever had a drug or alcohol problem?”

Q1: Is this question legal?

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EMPLOYMENT: Medical Questions/Exams (cont.)

ANSWER – Raul

A1. No, because it is asking Raul if he has a disability before offering him the job. So what to do?

- While lying is never a good idea – employers can legally deny someone a job for falsifying an application – it’s hard to know what to do when you encounter an illegal question. Raul could ask to take the application with him to fill out, and then seek legal counsel who may be able to intervene and advise the employer that the question is illegal.

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EMPLOYMENT: Medical Questions/Exams (cont.)

ANSWER – Raul (cont.)

- **OR** Raul could answer the question truthfully and explain that he is in recovery, knowing that he is protected by the ADA if the employer discriminates against him based on his answer to this question.

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EMPLOYMENT: Medical Questions/Exams (cont.)

Raul

Q2: The application also asks, "Do you currently use drugs or drink alcohol?" Is this question legal? Does Raul have to answer this question?

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EMPLOYMENT: Medical Questions/Exams (cont.)

ANSWER – Raul

A2. Yes. It is permissible for employers to ask applicants if they currently use illegal drugs or drink alcohol because use doesn't mean addiction.

BUT it is not okay to ask how much or how often one drinks alcohol because those questions can elicit information revealing that a person has a disability (e.g., alcohol or drug dependence).

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EMPLOYMENT: Medical Questions/Exams (cont.)

Raul

Q3: Raul is offered the job, but the company tells him he must pass a medical examination and a drug test before being able to start work. Is the company allowed to impose this requirement?

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EMPLOYMENT: Medical Questions/Exams (cont.)

ANSWER – Raul

A3. Yes. Once an employer offers an applicant a job, the employer is allowed to require the applicant to pass a medical examination and drug test *as long as* everyone offered the position is required to pass the same exam.

For example, in this case the employer could not require Raul to undergo the medical exam and drug test just because he disclosed that he is in recovery.

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EMPLOYMENT: Medical Questions/Exams of **Employees**

What about after someone starts working? What may employers find out about **employees'** disabilities?

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EMPLOYMENT: Medical Questions/Exams of **Employees**

Employers may require medical exams and ask **employees** about disabilities only if the exam or question is **“job-related and consistent with business necessity.”**

Ex: Employer has reasonable belief, based on objective evidence, that an employee has a health (including substance-use related) condition that impairs ability to perform job or poses a direct threat to health & safety.

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EMPLOYMENT: Medical
Questions/Exams of *Employees*

When would an employer have such a reasonable belief?

Examples:

- Employee routinely nods off at work, which raises questions about drug use
- Employee smells of alcohol after lunch every day

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Part 4

**Responding to Violations of
Your Rights Under
Anti-Discrimination Laws**

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REMEDIES

It is always worthwhile to try to resolve the issue **informally** – with the assistance of an attorney, if possible, or by yourself if you do not have an attorney.

Employers and others sometimes violate the law because they are not aware of the law's requirements. Educating an employer or landlord, and in some instances indicating your intention to bring legal action if others measures fail, can result in the changes you want.

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REMEDIES

You can challenge the violation of your rights in two formal ways:

- **File a discrimination complaint with the state or federal government agency** (see *Your Rights* booklet for details on federal agency responsible) that is charged with enforcing the anti-discrimination. You do not need a lawyer for this.
- **In most cases, you also can file a discrimination lawsuit in state or federal court** – in addition to or instead of filing an administrative complaint. A lawyer is generally critical to success in a lawsuit.

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Anti-discrimination Laws: REMEDIES (cont.)

State agency responsible for enforcement is

- The Civil Rights Division of the Attorney General's Office
 - On-line complaint form:
http://www.azag.gov/civil_rights/complaintform.html
 - Phone:
 - Phoenix: (602) 542-5263
 - Tucson (520) 628-6500

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Anti-discrimination Laws: REMEDIES (cont.)

Do not sleep on your rights! There are deadlines for filing both complaints with government agencies and for filing lawsuits in court.

Be sure to **check on the time limits** for filing any complaint – with a government agency or in court.

NOTE: To bring an employment discrimination lawsuit under the ADA, **you must first file** with the U.S. Equal Opportunity Employment Commission (EEOC).

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RESOURCES

Questions?

Cheryl Koch-Martinez, Manager ADHS/DBHS Office of Human Rights, 602-364-4573 or main 364-4585

Resources

- Legal Action Center, www.lac.org
- Partners for Recovery (PFR): www.pfr.samhsa.gov
- U.S. Dept. of Housing & Urban Development: www.hud.gov
- Arizona Attorney General's Office: www.azag.gov
- U.S. Equal Employment Opportunity Commission: www.eeoc.gov

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Thank you

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Cheryl Koch-Martinez, ADHS/DBHS Office of Human Rights

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