

# How the American Disabilities Act Applies to Addiction, Recovery, and Employment with SUD Diagnosis?

Presented by:

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New England ADA Center

A project of the Institute for Human-Centered Design

March 14, 2023

## Acknowledgment

Presented in 2023 by the Addiction Technology Transfer Center (ATTC) Network. National Latino Behavioral Health Association (NLBHA) P.O. Box 1360, Pena Blanca, NM 87041.

[ATTCnetwork.org/hispaniclatino](http://ATTCnetwork.org/hispaniclatino)

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At the time of this publication, Miriam E. Delphin-Rittmon, Ph.D, served as Assistant Secretary for Mental Health and Substance Use in the U.S. Department of Health and Human Services and the Administrator of the Substance Abuse and Mental Health Services Administration.

The opinions expressed herein are the view of TTC Network and do not reflect the official position of the Department of Health and Human Services (DHHS), SAMHSA. No official support or endorsement of DHHS, or SAMHSA, for the opinions described in this document, is intended or should be inferred.

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# HOUSEKEEPING

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The use of affirming language inspires hope and advances recovery.

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**LANGUAGE MATTERS.**

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**Words have power.**

**PEOPLE FIRST.**

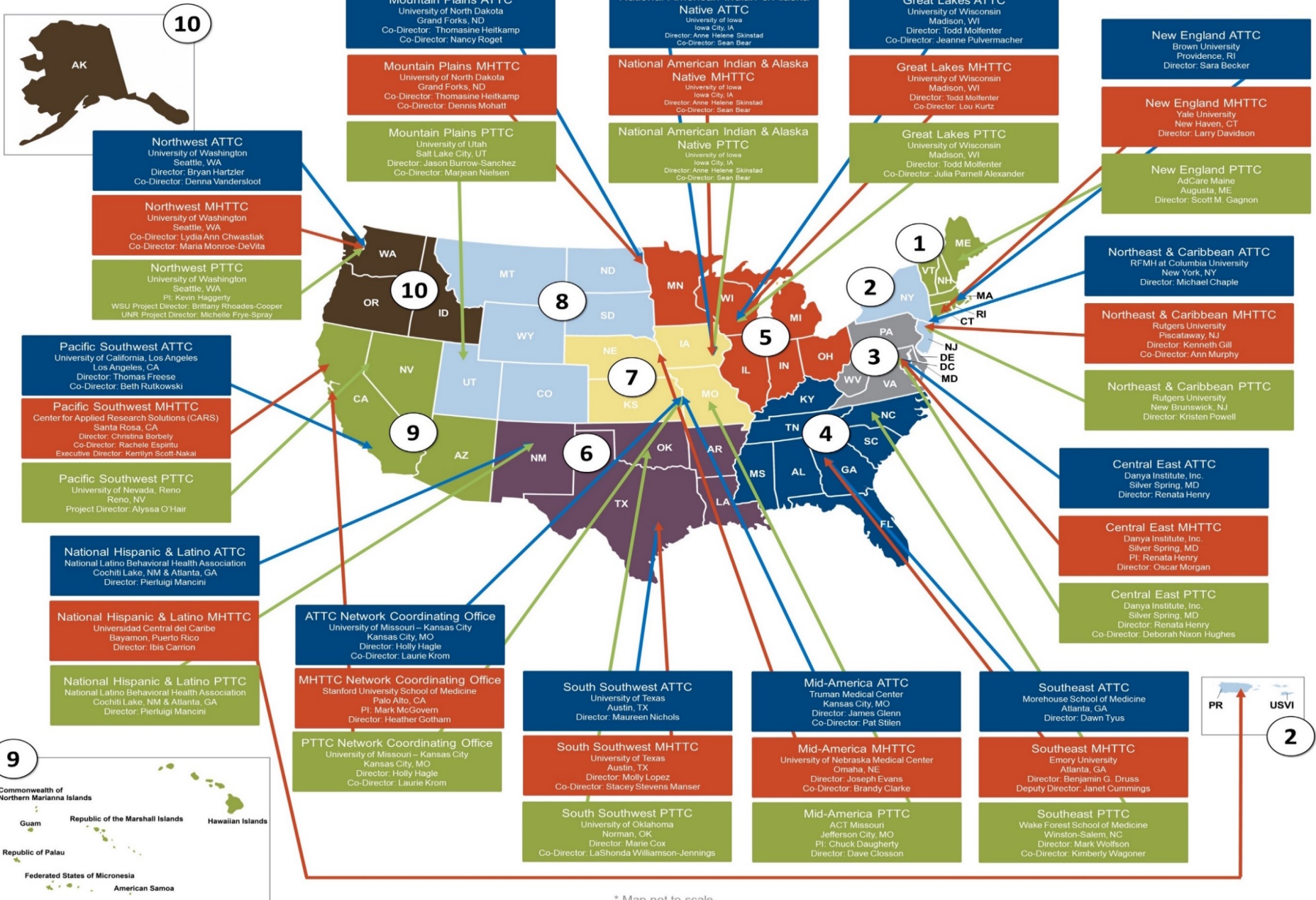
The ATTC Network uses affirming language to promote the promises of recovery by advancing evidence-based and culturally informed practices.



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\* Map not to scale.



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**Fredrick Sandoval, MPA**  
Executive Director  
NLBHA

# NLBHA's Mission

The Mission and Goal of The National Latino Behavioral Health Association is to influence national behavioral health policy, eliminate disparities in funding and access to services and improve the quality of services and treatment outcomes for Latino populations.







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# NLBHA's Objectives

NLBHA's Objective is to provide national leadership on mental health and substance abuse concerns of the Latino community. NLBHA's Policy Priorities are:

1. Targeted Capacity Expansion of Mental Health Services for Latinos
2. Latino Behavioral Health Evidenced Based Practices
3. Legislation to increase the number of Counselor/Therapists/Other Behavioral Health Practitioners
4. Funding for Co-Occurring Disorders of Alcohol and Substance Abuse
5. Opioid Crisis in the Latino Community
6. Suicide Prevention



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# Dr. Oce Harrison



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# Objectives

## 1. Learn the ADA's definition of disability and how it protects people with:

Alcohol Use Disorder (AUD)

Opioid Use Disorder (OUD)

## 2. Learn how the ADA protects people with addiction recovery in:

Employment (Title I of the ADA)

State and Local Government: services, programs, and activities (Title II of the ADA)

Businesses (Title III of the ADA)

## 3. Knowing your civil rights can address discrimination identified as a stigma.



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# The Institute for Human-Centered Design Social Equity Design

A 44-year-old international education and design non-profit dedicated to the role of design in social equity across the spectrum of ability, age, culture, gender, and economic status.



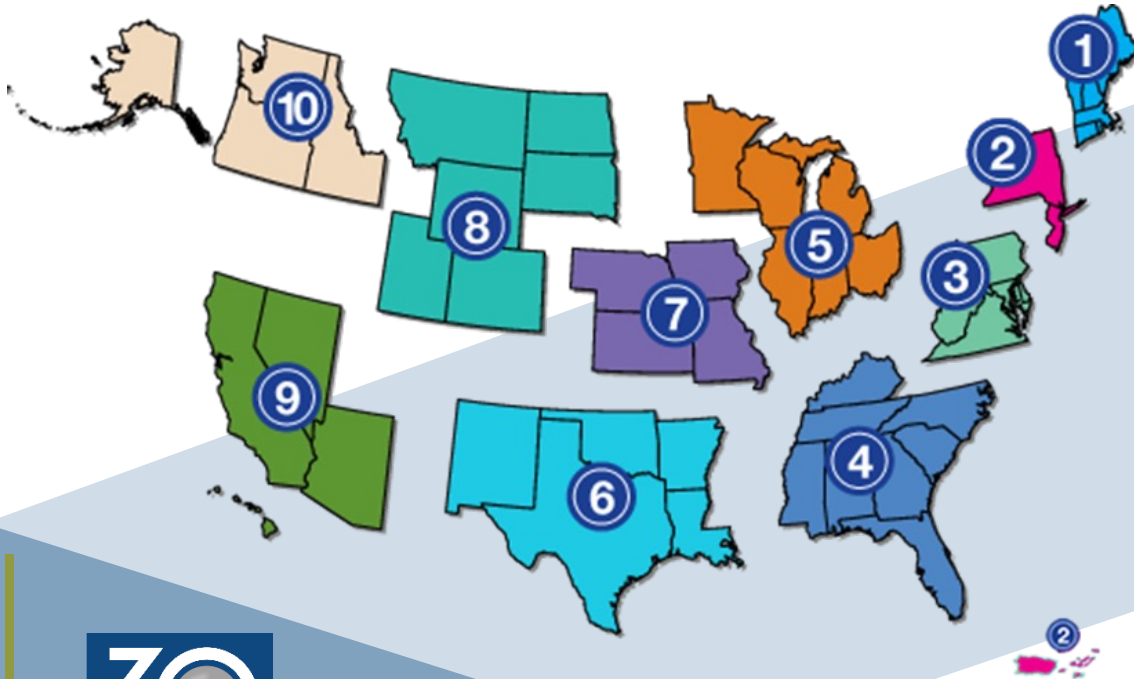


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# National Network

Information, Guidance, and Training on the  
 Americans with Disabilities Act



**1-800-949-4232**

**ADAta.org**

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



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# Americans with Disabilities Act



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

**The ADA is a civil rights law** that insures that people with disabilities have the same rights and opportunities as everyone else, including people with addiction to alcohol, and those in recovery from addiction to opioids and other drugs.







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# ADA Definition of Disability

1. Have a physical or mental impairment that substantially limits one or more **major life activities**, e.g., bipolar disorder, diabetes, alcohol use disorder; or
2. Have a **history** of a physical or mental impairment, e.g., substance use disorder, cancer, heart disease; or
3. Is **regarded as** having such an impairment e.g., perceived as having an impairment, but does not have an impairment.

**\*A person must meet one of the three prongs to qualify as a person with a disability**



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# What are Major Life Activities?

Major life activities include, but are not limited to:

Caring for oneself, thinking, learning, working, breathing, sleeping, seeing, hearing, concentrating, walking, lifting, bending, and major bodily functions such as neurological and brain functions.

\*Not an exhaustive list



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# Addiction is an Impairment that Substantially Limits Major Life Activities



- Working
- Learning
- Sleeping
- Eating
- Concentrating
- Caring for oneself
- Remembering
- **Brain and neurological functioning**





# The ADA Treats AUD and SUD Differently



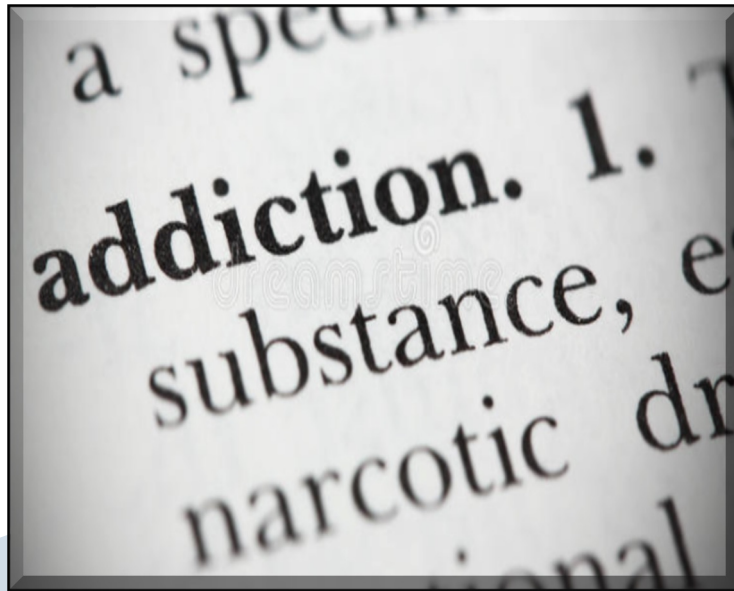
People with **Alcohol Use Disorder (AUD)** have ADA protections in recovery and while using alcohol.

People with **Substance Use Disorders (SUD)** have ADA protections in recovery, and **when not engaging in the illegal use of drugs.**





# Alcohol Use Disorder



- Is generally a “disability” regardless of whether the person is in recovery or currently drinking alcohol.
- The addiction must substantially limit a major life activity, like learning, working, sleeping, thinking, etc.





# Scenario



- Michael is often late for work.
- 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 has an addiction to alcohol. His late arrivals are due to his drinking and need time off for detox and treatment.
- **Does Michael have protections under the ADA?**





# Answer to Scenario



- **Yes**, Michael is a person with a disability (alcohol use disorder).
- The employer must grant Michael's request to get treatment unless the employer can prove that his absence would cause great difficulty or expense (an undue hardship).







# Substance Use Disorders



A person has ADA protections when that person is:

- **In recovery**
- **And no longer engaging in the current illegal use of drugs.**





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# What Does “In Recovery” Mean?



Massachusetts Organization for Recovery (MOAR)  
Celebrating Recovery Month September 2022  
on Boston Common

## The ADA’s Definition of Recovery:

1. Is in recovery from substance use disorder
2. Has ceased engaging in the current illegal use of drugs
3. Is participating in a supervised rehabilitation program, *or*
4. Has been successfully rehabilitated.

Americans with Disabilities Act, As Amended Section 12114

**Web:** <https://www.ada.gov/pubs/adastatute08.pdf>





# What Does “Illegal Use of Drugs” Mean?



1. Use of **illegal drugs** such as heroin or cocaine
2. Use of **legal drugs** such as opioids:  
**BUT** the 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.”
- “Current” is not limited to the number of weeks or days but is determined on a case-by-case basis or **an individualized assessment.**





# Scenario

**Application for Employment**

accommodations for persons with disabilities in the hiring process. If your disability please let us know, and we will provide assistance.

Date of Application

First Name

Middle Initial

City

18 years of age or over?

No  Yes If No, Date of Birth

Education

Marianna has been in recovery from heroin use disorder for three years. She applies for a job that she is qualified to do. The employer refuses to hire her because he learns about her past history.

**Is she protected under the ADA?**





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# Answer to Scenario

**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 ongoing problem.
- The potential employer violated the ADA when he refused to hire Marianna based on her recovery status.



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# We Do Recover!



There is evidence that we do recover:

- 1 in 10 adults in the U.S. report having a substance use disorder. **27.5 million.**
- Among those, nearly 75% reported being in recovery. **20.5 million.**

Jones, C.M., Noonan, R.K., Compton, W.M. (2020). Prevalence and correlates of ever having a substance use problem and substance use recovery status among adults in the United States, 2018 [Epub ahead of print]. Drug and Alcohol.

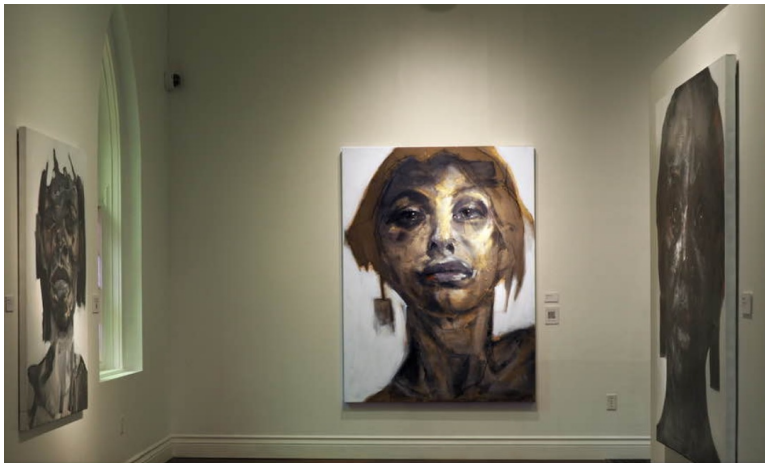




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# Recurrence or Return to Use at Work



William Stoehr, Artist  
Stigma and Survival Exhibit  
University of Colorado & Aroura

Can a professional in recovery such as a social worker, licensed professional counselor, nurse, doctor, addiction treatment specialist, or peer coach be fired because of a recurrence or return to use at work?

**Web:** <https://www.cuanschutz.edu/centers/bioethicshumanities/arts-and-humanities/william-stoehr>



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# The ADA's Answer to Return to Use at Work



Eminem Recovery Album Cover 2010

- If an **employee** is currently engaging in the illegal use of drugs at work, then that person has no protections under the **employment section of the ADA**. And can be terminated without an employer violating the ADA.
- However, the employer is not required to terminate the employee under the ADA.
- It is the employer's choice.



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# The ADA does Not Limit the Employer's Choice to Offer Supportive Mechanisms for Recovery



- Medical leave for the employee to seek treatment
- A modified work schedule to get the necessary support
- A second chance agreement

Faces and Voices of Recovery  
**Web:** <https://facesandvoicesofrecovery.org/>





# A Second Chance Agreement



When an employee can be fired, an employer may choose, but is not required by the ADA, to offer a “second chance agreement.”







# Addiction to the Legal Use of Prescription Medication



- James became addicted to Percocet while taking the doctor-prescribed medication in a prescribed manner and in prescribed amounts.
- He wants to take a leave of absence from his job to taper off Percocet.
- **Is James protected under the ADA?**







Yes, he is protected under the ADA because:

- James is legally using a doctor-prescribed drug
- 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





# Scenario



Julie works in an office at a daycare center:

- She is in recovery from Opioid use disorder (OUD) and is taking prescribed methadone to manage OUD.
- Her boss learns about her history & tells her to “get off methadone or you’ll be fired.”

**Does Julie have protections under the ADA?**

**Yes,** Julie has a history of OUD and is being regarded as a current user due to stigma and misunderstanding about methadone.

Prepared by the Legal Action Center with support from Partners for Recovery





# Scenario Continued



What if Julie's employer found out that she recently used cocaine while taking medication to treat her addiction?

**Would she have rights under the ADA?**

Prepared by the Legal Action Center with support from Partners for Recovery





# Answer to Scenario



**No, she has lost protections because she is “currently engaging in the illegal use of drugs.”**





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# Scenario Continued

What if Julie's employer found out that she recently used cannabis while taking medication for her addiction?

**Would she have protections under the ADA?**

- Yes
- No





# Answer



**No, Julie would not be protected under the ADA because...**







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# Cannabis in all its forms is illegal under federal law



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# Medical Cannabis is Illegal under the ADA



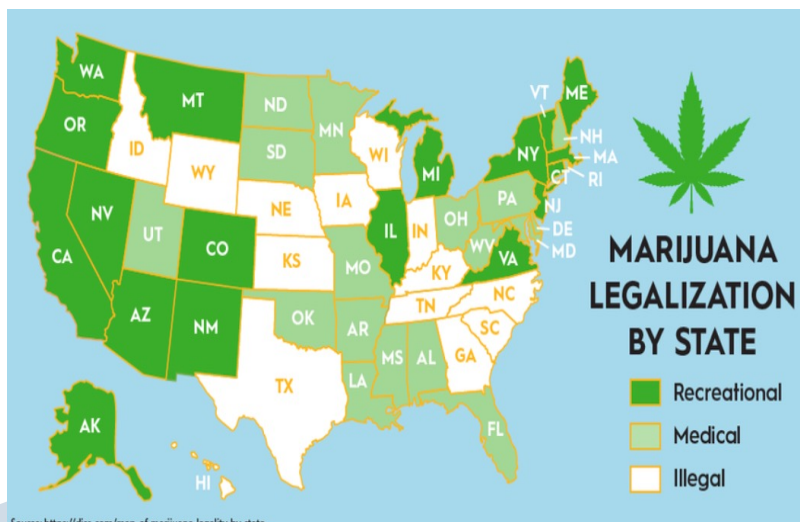
- Even when used to treat a medical condition with a card, certificate, or medical prescription.

**\*However, check your state law**





## State Law May Provide Protections for Medical Use of Cannabis



- If medical cannabis is legal under **state law**, employers may need to consider **reasonable accommodations** for employees with disabilities for the offsite use of medical marijuana.
- However, an employee who uses or is high at work has **NO** protections under either federal or state law.





# The Three Stages of Employment

## How the ADA Addresses Addiction and Recovery in Three Stages of Employment

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





# Stage One: Application and Interview Process



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





# What are Disability-Related Questions?

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Are you taking prescription drugs?

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Do you have a disability, illness, or condition that will prevent you from doing this job?

---

Have you ever been treated for addiction to alcohol, opioids, or other drugs?







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# Scenario



Photo by PJ Moynihan  
Digital Eyes Productions

- **Scenario:** Marc is in recovery from opioid use disorder and is taking prescribed suboxone to manage OUD.
- He applies to the fire-fighter academy and is required to have a medical exam as part of the job application.
- During the medical exam, the Dr. asks, “Are you taking any prescription drugs?” Marc replies “Yes, Suboxone.” Dr. responds, “That will count against you.”

## Does Marc have protections under the ADA?

Yes, Marc is a person with a disability and has the right to take an FDA-prescribed medication for his disability.



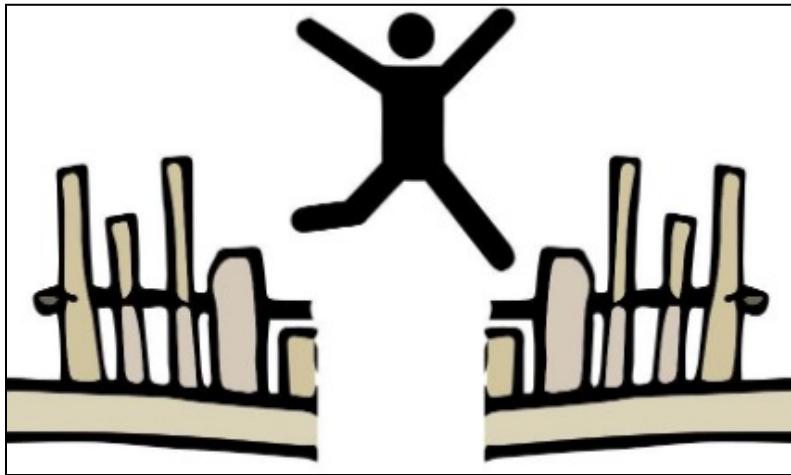
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# Explaining Gaps in Employment



Can a job interviewer ask about gaps in employment?

**Yes!**

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





## What if an employer asks a disability-related question?



- The applicant should tell the truth, even though the question is illegal.
- If the applicant does not tell the truth and is caught lying, this might be cause for not hiring.





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## Questions a Job Interviewer Can Ask About Alcohol and Illegal Drugs During the Job Application Process

An employer may ask questions about the **use of alcohol** or **illegal drugs**:

“Have you ever used, or do you currently use \_\_\_\_?”

A yes or a no answer does not reveal a disability.



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# Questions an Employer Cannot Ask About Alcohol and Illegal Drugs During the Application and Interview Process

- 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.





## Stage Two: After a Job Offer, but Before Starting



### An employer may:

- Require medical exams
- Ask disability-related questions provided it does so for all individuals within a job category
- Ask about the use of alcohol and drugs
- Ask about the extent of use of alcohol and drugs, and
- Ask about the Diagnosis of AUD and SUD







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# Stage Three: On the Job



Questions about the extent or frequency of alcohol or drugs **must be job-related and consistent with business necessity.**



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# 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 **services, programs & activities.**

- Courts
- Corrections
- Public Education
- Public Transportation
- Recreation
- Health Care
- Social Services
- Voting





# Scenario



- Tom is taking medication to treat his addiction.
- He appeared in family court and requested that he begin to see his kids on the weekends.
- The judge responded to his request by saying, “You’ll see your kids when you get off Suboxone.”
- **Is Tom protected under the ADA?**





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# Answer to Tom's Scenario

- **Yes**, he has a **history** of addiction.
- Family court is **regarding** the use of Suboxone as though it is an illegal drug due to stigma and misunderstanding.
- Suboxone is a legally prescribed medication for a diagnosed disorder.
- Tom's use of Suboxone cannot, by itself, justify a refusal to his kids on weekends.



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# Scenario



- People who enter the correctional system with medications for opioid use disorders are discontinued on their medications.
- **Are people protected under the ADA?**





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# Scenario Answer



**Yes**, correctional systems have an obligation to provide three medications for opioid use disorder (MOUD): Suboxone, Methadone, and Vivitrol to people entering with a prescription when the correctional facility has a medication dispensary.

Massachusetts Franklin County Jail inmates were watched by a nurse and a corrections officer after receiving their daily doses of suboxone, a drug that helps control opioid cravings. *Elise Amendola/AP*







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## A Few Cases

### **The Unified Judicial System of Pennsylvania**

The judge ordered all people to get off their medication for opioid use disorder (MOUD) or to limit their use.

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### **The Parole Board of Massachusetts**

Parole Board required certain parolees with SUD to take a specific form of MOUD as a condition of parole. Parole Board is to comply with the parolee's healthcare provider's recommended treatment.



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## **Businesses and Non-Profits (Title III of the ADA)**

The ADA requires places of business and non-profits to provide goods and services to people with disabilities.

- Social Services
- Health Care
- Hospitals
- Private Schools
- Day Care Centers
- Hotels
- Movie Theaters
- Pharmacies





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# Recovery Homes, Sober Houses, and Half-Way Houses



**Some recovery homes don't allow residents to use MOUD.**

**Do residents have protections under the ADA?**

- Yes, a person with OUD has a right to take their doctor-prescribed medication for OUD.
- To refuse a person entry into a home based on their medical prescription may be a violation of the ADA or the Fair Housing Act.
- If a recovery home disagrees, they must prove that accepting a person with MOUD would drastically alter the nature of their program or be an administrative burden.  
(an undue burden under the ADA).



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# Two More Cases

**Ready to Work Boulder, Colorado Housing Discrimination**  
Is a non-profit program that provides residential, work, and social services for unhoused people in Colorado.

Discriminated against an individual with OUD by denying her admission to its program because she used prescribed MOUD.

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**Selma Medical Associates, Inc. Virginia**

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

Overt blanket institutional policies discriminating against people with opioid use disorders.



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## Health Care and The Massachusetts Office of Civil Rights



Massachusetts (MA) U.S. Attorney's Office of Civil Rights sends a letter to all nursing homes in MA warning them not to refuse applicants with opioid use disorders.



There have been settlement agreements with groups operating physical rehabilitation facilities in Connecticut, Rhode Island, and Massachusetts. Despite this, thousands across the US continue the practice of turning away patients with opioid use disorder.



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# Health Care Continued



The ADA's general rule is that a person engaging in the illegal use of drugs has no rights under the ADA.

**There is an exception to this rule:**

When a person seeks health care in an ER or medical facility and is intoxicated, they cannot be turned away.

It is a violation of the ADA for ERs and healthcare facilities to refuse services to people who are engaging in illegal drug use.



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# In Summary



Americans with Disabilities Act

1. People with addiction are people with disabilities under the ADA.
2. The ADA applies to addiction to alcohol and addiction to opioids and other drugs differently.
3. The ADA protects people with disabilities from discrimination in employment; social services agencies; child welfare agencies; courts; prisons and jails; medical facilities, including hospitals, doctors' offices, and skilled nursing facilities.
4. The ADA protects people in recovery from OUD who are not engaging in illegal drug use, including those who are taking legally-prescribed medication to treat their opioid use disorder (OUD).
5. Knowing your rights can address discrimination often identified as a stigma.



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# Resources

## 1. Questions About the Americans with Disabilities Act

**Phone:** 1-800-949-4232 or **Email:** [ADAinfo@IHCDesign.org](mailto:ADAinfo@IHCDesign.org)

**Web:** <https://www.newenglandada.org/>

## 2. ADA, Addiction, and Recovery Fact Sheets and Frequently Asked Questions

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

## 3. National Association for Addiction Professionals

Harrison, O. (Spring, 2020) *How the ADA Addresses Addiction and Recovery* Advances in Addiction and Recovery Magazine, Spring 2020, V8 No.2 (p. 24-27).

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

## 4. Big Ideas: Advancing Solutions to Reduce Fatal Overdoses in the US

*The ADA And Substance Use Disorders: Rights, Responsibilities and Looking*

**Web:** [https://oneill.law.georgetown.edu/wpcontent/uploads/2022/09/ONL\\_BI20\\_ADA\\_SUD\\_P10.pdf](https://oneill.law.georgetown.edu/wpcontent/uploads/2022/09/ONL_BI20_ADA_SUD_P10.pdf)



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# More Resources

## 1. STAT Reporting From the Frontiers of Health and Medicine

**Web:** [To Protect People with Addiction from Discrimination, the Justice Dept. Turns to a Long-Overlooked Tool: The ADA](#)

## 2. Equal Employment Opportunity Commission Releases Technical Assistance Documents on Opioid Addiction and Employment

**Web:** [Q&As Provide Helpful Guidance to Employees and Health Care Providers](#)

## 3. Department of Justice Civil Rights Division

**Web:** [The Americans with Disabilities Act and the Opioid Crisis: Combating Discrimination Against People in Treatment or Recovery](#)



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# How to File an ADA Complaint

## US Equal Employment Opportunity Commission (EEOC)

**Web:** <https://www.eeoc.gov/employees/howtofile.cfm>

**Phone:** 1-800-669-4000 or **Email:** [info@eeoc.gov](mailto:info@eeoc.gov)

## US Attorney's Office of Civil Rights

**Web:** <https://www.justice.gov/usao>

**Civil Rights Complaint Portal:** <https://civilrights.justice.gov/>

## Department of Justice

**Web:** [https://www.ada.gov/filing\\_complaint.htm](https://www.ada.gov/filing_complaint.htm)

**Phone:** 1-800-514-0301



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# Have an ADA Question?

## 1-800-949-4232

New England **ada** Center



Member of the



National Network



A project of the  
Institute for Human Centered Design

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



National Latino Behavioral Health Association **NLBHA**





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# Presenter's Contact Information



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**SAMHSA**  
Substance Abuse and Mental Health  
Services Administration



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# GPRA Evaluation Link



<https://link-bai-eval.com/TTA-GPRA-Post-Event-2371>



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*For more information about the National Hispanic and Latino ATTC and to request training and technical assistance you can reach us at:*

[www.nlbha.org](http://www.nlbha.org)

[ATTCnetwork.org/hispaniclatino](http://ATTCnetwork.org/hispaniclatino)



*Or directly at:*

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# Thank you. ¡Gracias!



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