



## **“KNOW YOUR RIGHTS”**

### **Legal Rights of [name of state residents, eg., “Californians”] with Alcohol and Drug Histories [and Criminal Records]**

[created March 2008]

# This training is for . . .

- people with or in recovery from alcohol or drug problems
- [people in treatment or recovery with criminal records]
- anyone supporting the rights of people with current/past alcohol or drug problems [or criminal records].

Prepared by the Legal Action Center with support from Partners for Recovery, an initiative of the Center for Substance Abuse Treatment (CSAT)

# This training is about . . .

- Laws prohibiting discrimination against people with disabilities in:
  - ▶ Employment
  - ▶ Housing
  - ▶ Public accommodations – health care, schools, etc.
  - ▶ Government benefits and services
- [Laws prohibiting discrimination based on a criminal record.]

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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.**

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# DISCRIMINATION IS . . .

Examples of status protected by law:

- Race
- Age
- Disability
- Gender
- [insert “criminal record” – if your state law has anti-discrimination statute]

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## DISCRIMINATION: Examples

- Doctor's office won't treat someone with a drug problem.
- Employer fires someone because that person is in recovery from alcoholism.
- Employer has a policy: we don't hire anyone with a criminal record, no matter what it was for or how old it is.

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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 or has a criminal record).

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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**
- **[Criminal Record]**



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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)

and...

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# THE LAWS – DISABILITY DISCRIMINATION

## FEDERAL LAWS (cont.)

- **Fair Housing Act – “FHA”**
- **Workforce Investment Act – “WIA”**
- **Family and Medical Leave Act – “FMLA”**

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# THE LAWS – DISABILITY DISCRIMINATION

**[Name of state] STATE LAW**  
▪**[title of state law]**



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# THE LAWS – DISABILITY DISCRIMINATION

**[Name of city] Law**  
**▪[title of city law]**



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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

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## 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

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## 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.

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## 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
  - 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.”

## 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. Question is: 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 illegal drug user.
- 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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[Name of State law]



## **WHO IS PROTECTED?**

[Explain if state law is same or different from federal law.]

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[name of state law] (cont.)

## Is Alcohol or Drug Abuse/Addiction a “Disability”?

- [answer]



Are people engaging in **current illegal use of drugs** protected?

- [answer]

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[name of state law] (cont.)

## WHO MUST FOLLOW THIS LAW?

- [public and private employers]
- [public accommodations]
- [housing providers]



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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?**



# **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.”**

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

### What does “**qualified**” mean?

- Meets qualification standards for job
- Able to **perform essential job duties** with or without “**reasonable accommodation.**” (See next slide.)



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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.):

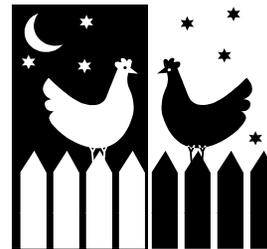
- Employer must maintain the **confidentiality** of health information – including alcohol & drug treatment information.

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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 alcoholism 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 3<sup>rd</sup> 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.

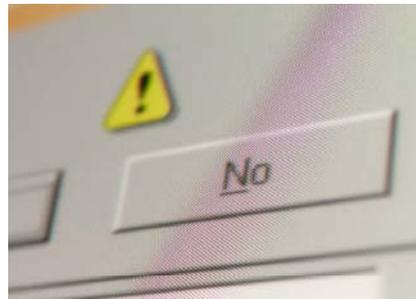
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## EMPLOYMENT:

### 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

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**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?

## 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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**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.)



**[State] law:**

- applies to [insert]
- protects: [insert]

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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 [insert state law]] 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.**

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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.):

Some **drug-related criminal convictions** also disqualify households from public housing.

[These are covered in Part 6.]

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What rights do these laws give?

## HOUSING (cont.)

The [local housing authority name] disqualifies from admission :

- [insert local housing authority rules for people with alcohol/drug use issues. Any criminal record-related restrictions should go in Part 6.]

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**What rights do these laws give?**

---

**GOVERNMENT  
SERVICES &  
PROGRAMS**

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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.



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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.)

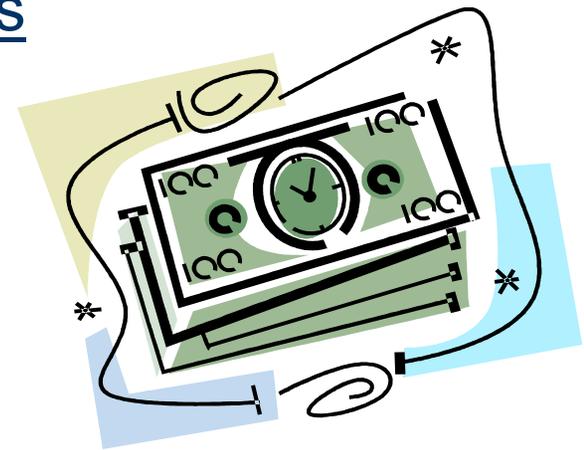
## **ANSWER – Rachel**

**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 [say whether your state has opted out].

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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## 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** that is charged with enforcing the anti-discrimination laws (e.g., federal Department of Justice or state human rights agency). 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.)

**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.

Details are included in the hand-out, *How to Exercise Your Rights Under Anti-Discrimination Laws*.

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## Anti-discrimination Laws: REMEDIES (cont.)

**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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## Part 5



# Medication Assisted Treatment: Special Issues

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# Medication Assisted Treatment

## **Overview of Legal Protections for People in Medication Assisted Treatment**

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# Medication Assisted Treatment

- **What is Medication Assisted Treatment (MAT)?**

“Medication assisted treatment” refers to treatment approaches that utilize prescribed medications as a component of care. While the types of medications prescribed for the treatment of addictive disorders is growing, this presentation focuses only on opioid agonist and partial agonist medications used for treatment of ***opioid addiction***, specifically:

methadone & buprenorphine

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# Medication Assisted Treatment

- This presentation focuses on discrimination related to individuals involved in program- or office-based treatment for opioid dependence that utilizes methadone and/or buprenorphine. It refers exclusively to these approaches to opioid dependence when it uses the term “medication assisted treatment” (MAT).

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# Medication Assisted Treatment

Reasons This Presentation Focuses Exclusively on MAT using Methadone or Buprenorphine for the Treatment of Opioid Dependence

- People being treated with methadone, and to a lesser degree, buprenorphine, often experience discrimination due to other people's perception that they are "substituting one addicting drug with another" and that they are not truly "in recovery."
- Other medications used to treat addictive disorders are typically prescribed for shorter periods of time than methadone and buprenorphine and have lower risk profiles when misused.

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# Medication Assisted Treatment

Reasons This Presentation Focuses Exclusively on MAT using Methadone or Buprenorphine for the Treatment of Opioid Dependence (cont.)

- Individuals taking Naltrexone®, Acamprosate® or other drugs to treat addictions may encounter discrimination, particularly within the treatment and recovery communities.
- But these individuals currently represent a small portion of those participating in MAT and may encounter less virulent and widespread stigma than individuals in MAT for opioid dependence.

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# Medication Assisted Treatment

- **Do federal laws protect individuals in MAT from discrimination?** In other words, do these laws prohibit employers, landlords, etc. from treating people differently just because they are participating in MAT?
  - **YES.** People in MAT generally are considered individuals with a “disability.”

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# Medication Assisted Treatment

## Why? Because –

- People in MAT have a “**record of**” an impairment that substantially limited a major life activity (i.e., the dependence on heroin or other opioids), or
- others **regard them** as currently having an impairment that substantially limits a major life activity (i.e., because others think that people in MAT are just like people currently dependent on illegal drugs).

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# Medication Assisted Treatment

## Example – Mary

**Mary** was in an auto accident two years ago and became dependent on narcotic pain medication. One year ago, she entered an opioid treatment program (also called “OTP” or “methadone program”). She has not used any drugs illegally since she began treatment at the OTP. Is she protected by the ADA and other federal anti-discrimination laws?

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# Medication Assisted Treatment

## ANSWER – Mary

**YES.** Remember, anti-discrimination laws protect people with a record of, current, or perceived disability. Mary is an individual with a disability if:

- Her addiction had substantially limited a major life activity (“record of” a disability) **or . . .**

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# Medication Assisted Treatment

## ANSWER – Mary (cont.)

- Other people treat Mary as if her current methadone treatment substantially limits her major life activities (e.g., assume that she will fall asleep at work or be high because she is in a methadone program). This is being “regarded as” having a disability.

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# Medication Assisted Treatment

## Example – Mary

**Q. What if Mary were using cocaine while in her OTP?**

**A.** Mary would be *not* be protected by anti-discrimination laws if her cocaine use was the basis of the supposed “discrimination.” Her “current” illegal use of drugs would remove her from the protection of these laws.

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# Medication Assisted Treatment

- **How do these protections work?**
  - People in MAT cannot be treated differently than other individuals who are prescribed medication for their disabilities (e.g., diabetics prescribed insulin or people with psychiatric disorders who are treated with psychotropic medications).

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# Medication Assisted Treatment

## Where can you learn more?

- Legal Action Center, [www.lac.org](http://www.lac.org) (more information in later slides)
- National Alliance of Methadone Advocates (NAMA), [www.methadone.org](http://www.methadone.org)
- National Alliance of Advocates for Buprenorphine Treatment, [www.naabt.org](http://www.naabt.org)
- Patient Support & Community Education Project (PSCEP), [www.methadone.net/patient\\_support\\_project.htm](http://www.methadone.net/patient_support_project.htm)

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# Medication Assisted Treatment

## Common Problems Faced by People in Medication Assisted Treatment



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# Medication Assisted Treatment

## Driving Under the Influence (DUI)



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# Medication Assisted Treatment

## DUI

People in OTPs are sometimes arrested for driving under the influence. Is that legal?

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# Medication Assisted Treatment

## **DUI (cont.) – Types of state laws**

It depends on your state's law, and there are three types. The first two, which are similar, are ...

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# Medication Assisted Treatment

## **DUI – Types of state laws (cont.):**

Type #1: No DUI unless the drug renders the driver **“incapable” of driving safely**

Type #2: No DUI unless the drug **impairs driver’s ability** to operate safely or driver is under influence/affected by **“intoxicating”** drug.

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# Medication Assisted Treatment

## DUI (cont.)

Under these laws, **prosecution must show:**

- drug was present *and*
- person's ability to drive was actually impaired or patient was "intoxicated." Fact that methadone (or other medication administered in MAT) was present in body, by itself, is not enough to convict.

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# Medication Assisted Treatment

## DUI (cont.)

- Your conduct would *not* violate the law if you:
  - were taking methadone legally; and
  - the methadone was ***not impairing*** your driving ability.

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# Medication Assisted Treatment

## DUI (cont.) – types of state laws:

But 3rd type of law: ***It is a criminal offense just to have the drug(s) in one's body while driving.***

*Irrelevant* that the treatment is legal & does not impair functioning.

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# Medication Assisted Treatment

## DUI (cont.)

**Driving while in an OTP would be illegal under this third type of law unless –**

through community relations and public education, law enforcement agencies changed:

- their attitudes about patients in MAT; and
- how they apply DUI law to patients in MAT.

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# Medication Assisted Treatment

## **Residential Facilities for People in Recovery: May they Exclude People in MAT?**



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# Medication Assisted Treatment

## Residential recovery facilities

**Residential facilities**, such as half-way houses & recovery homes, **sometimes do not permit residents to be in MAT or use legally prescribed psychotropic medications. Is that legal?**

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# Medication Assisted Treatment

## **Residential recovery facilities (cont.)**

**No.** While opinions vary on whether residential treatment programs may legally exclude individuals in MAT, the law is clearer about half-way houses and recovery homes.

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# Medication Assisted Treatment

## Residential recovery facilities (cont.)

**Singling out people in MAT** from other people in recovery and denying them services because they are in MAT or legally use psychotropic medication **is disability-based discrimination**. It's no different than denying people services based on their race or gender.

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# Medication Assisted Treatment

## **Residential recovery facilities (cont.)**

**These exclusions violate** the Fair Housing Act.

If the program is federally assisted, these exclusions also violate the Rehabilitation Act, and if the program is run by a state or local government, they violate the ADA.

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# Medication Assisted Treatment

## **Residential recovery facilities (cont.)**

**How to allay concerns by housing providers, such as that:**

- it is too difficult to administer medications on site;
- methadone (or other medications prescribed in MAT) might be misused by residents?

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# Medication Assisted Treatment

## **Residential recovery facilities (cont.)**

**Housing providers are required to make “reasonable accommodations”** which could include changes in the program’s operation that do not impose substantial administrative or financial burdens.

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# Medication Assisted Treatment

## Residential recovery facilities (cont.)

**Examples of “reasonable accommodations”** could include –

- training staff & residents about MAT;
- arranging to take medication at your methadone program, physician’s office or another off-site location ...

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# Medication Assisted Treatment

## **Residential recovery facilities (cont.)**

- storing your medication in a lock box in the house & being personally responsible for it, and
- arranging to have the housing facility keep the medications in a locked cabinet.

The approach will need to be consistent with your service and/or treatment plan.

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## **Residential recovery facilities (cont.)**

Residential programs, of course, may require residents to comply with non-discriminatory rules, such as not using illegal drugs and attending NA or AA meetings.

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# Medication Assisted Treatment

## **Child Welfare System: What About Parents in MAT?**



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# Medication Assisted Treatment

## Child Welfare System

Judges, prosecuting attorneys, and others in the child welfare system **sometimes require parents to end their participation in MAT** in order to get their children back or to keep their children. Is this legal?

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# Medication Assisted Treatment

## Child Welfare System

**No.** The court system (and other government agencies) must comply with the ADA. If they are federally assisted, they also must comply with the Rehabilitation Act.

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# Medication Assisted Treatment

## Child Welfare System

Courts and other government agencies may *not* single out people in MAT and require them to stop taking legally prescribed medications.

Such a requirement would be no different than telling an insulin-dependent diabetic parent that she may not have her children back unless she stops taking insulin & addresses her diabetes through nutrition and exercise alone.

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# Medication Assisted Treatment

## Child Welfare System

Courts may, however, require people in MAT to comply with treatment requirements

With proper written consent, treatment programs may report such compliance – or non-compliance – to the court.

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# Medication Assisted Treatment

## Criminal Justice System:

### Is there any right to MAT

- in jails & prisons?
- when a person is on probation or parole?



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# Medication Assisted Treatment

## Criminal Justice System – jails & prisons

Court decisions have **not clearly established the legal right** to receive methadone or other MAT in jails & prisons. Withholding methadone in jail/prison could constitute . . .

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# Medication Assisted Treatment

## Criminal Justice System – jails & prisons (cont.)

- **discrimination**
- **“cruel & unusual punishment”** in violation of the 8<sup>th</sup> Amendment to the U.S. Constitution (jails only) or
- **medical malpractice**

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# Medication Assisted Treatment

**For more information** about the rights of people in MAT, read –

*Educating Courts and Other Government Agencies About Methadone,*

available on the Legal Action Center's website, [www.lac.org/pubs/gratis.html](http://www.lac.org/pubs/gratis.html) (click on "Alcohol & Drugs").

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## Part 6



# Legal Rights of People with Criminal Records

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# Sealing & Expungement

- **Can arrest or conviction records ever be sealed or expunged?**



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## Sealing & Expungement (cont.)

- **Under [state] law:**

***arrests*** not leading to convictions [insert state law]

## Sealing & Expungement (cont.)

- **Under [state] law:**

***convictions*** [insert state law, including any exceptions in which convictions may not be sealed]

## Sealing & Expungement (cont.)

- **If arrests and/or convictions can be sealed, what is the effect?**
  - [insert answer, e.g.,
    - may answer “no” to employment application question about convictions
    - Employer may not get access to or ask about sealed records]

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# Restoration of Civil Rights

After conviction, does [state] have a mechanism to demonstrate rehabilitation or **to restore civil rights?**

- [insert answer]

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# Access to Criminal Records

## Who maintains criminal records in [state]?

- Courts
- State repository and/or FBI
- Credit reporting agencies (they do criminal background checks for employers, landlords, etc.)

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## Access to Criminal Records (cont.)

**Who else has access to criminal records in [state]?**

- [insert answer]

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# Criminal Background Reports

## ***How do employers usually learn about job applicants' criminal records?***

- They ask during the application process *and*
- They get a criminal background report – often through private “credit reporting agencies” that collect criminal record information from publicly available sources.

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## Criminal Background Reports (cont.)

The federal **Fair Credit Reporting Act** limits what information may go in these reports.

Some state Fair Credit Reporting Acts also place such limits.

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# Criminal Background Reports (cont.)

## Federal Fair Credit Reporting Act:

**What criminal record information** may be included in the background report?

***Criminal convictions*** no matter how old.

***But...***

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# Criminal Background Reports (cont.)

Federal Fair Credit Reporting Act (cont.):

*may NOT include:*

- arrests more than 7 years before the report, *and*
- other “adverse information” more than 7 years before the report. This includes non-criminal convictions, such as infractions or violations.

It is *illegal* to include this information in a criminal background report!!

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## Criminal Background Reports (cont.)

### **[State] Fair Credit Reporting Act:**

**[Insert any additional protections under state law, but check to see if they are preempted by federal law.]**

# Criminal Background Reports (cont.)

## Federal Fair Credit Reporting Act (cont.):

What **other legal protections** are there in the Fair Credit Reporting Act?



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# Criminal Background Reports (cont.)

## Federal Fair Credit Reporting Act (cont.)

**BEFORE** employers deny someone a job based on information in the report, they must give the applicant:

- copy of the report *and*
- name and address of the credit reporting agency that issued it.

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# Criminal Background Reports (cont.)

## Federal Fair Credit Reporting Act (cont.)

**The credit reporting agency** that issued the report also must give the applicant a free copy of the report, *if* applicant requests it within 60 days of getting the notice referenced in the prior slide.

There is no time limit by which the credit reporting agency must provide the report.

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## Criminal Background Reports (cont.)

### Federal Fair Credit Reporting Act (cont.):

If information in report is inaccurate, the applicant has the right to insist that the credit reporting agency –

- correct the report *and*
- send the employer the corrected information.

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# Criminal Background Reports (cont.)

## Federal Fair Credit Reporting Act (cont.):

### Example – Bob

**Bob** was denied a job because of a criminal background report that included 2 misdemeanor convictions. Bob only had 1 misdemeanor. Misdemeanor charges in a 2<sup>nd</sup> case had been dismissed. What should Bob do?

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# Criminal Background Reports (cont.)

**Federal Fair Credit Reporting Act (cont.):**

**Answer – Bob**



**Bob** should get proof from the courts that the second misdemeanor case was dismissed and send the proof to the credit reporting agency with a letter demanding that the agency correct its report and send the corrected copy to the employer.

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## People with Criminal Records: EMPLOYMENT

**Is it legal to discriminate against someone with a criminal record?**

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# People with Criminal Records: EMPLOYMENT (cont.)

## Federal anti-discrimination laws:

**No federal law directly prohibits employment discrimination based on a criminal record, BUT...**



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# People with Criminal Records: EMPLOYMENT (cont.)

## Federal anti-discrimination laws (cont.):

- Discrimination based on a criminal record can be race discrimination in violation of **Title VII** of the Civil Rights Act of 1964.
- The federal Equal Employment Opportunity Commission (EEOC) & courts have issued opinions that this type of discrimination can be illegal race discrimination.

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## People with Criminal Records: EMPLOYMENT (cont.)

### **Federal anti-discrimination laws (cont.):**

**Why?** Because this type of discrimination can have a “disparate impact” on African Americans and Latinos/Latinas. That means that it affects African Americans and Latinos disproportionately because of their higher rates of arrests and convictions.

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## People with Criminal Records: EMPLOYMENT (cont.)

### **Federal anti-discrimination laws (cont.):**

**Example:** Employer has policy: “we don’t hire people with criminal records.” This policy might be more likely to harm African Americans and Latinos because of their higher arrest and conviction rates.

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# People with Criminal Records: EMPLOYMENT (cont.)

## Federal anti-discrimination laws (cont.):

If you think you have suffered “**race discrimination**” because an employer’s policy not to hire people with criminal convictions or arrests, you can file a Title VII complaint with the EEOC.

For contact information, see hand-out, *How to Exercise Your Rights Under Anti-Discrimination Laws*.

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# People with Criminal Records: EMPLOYMENT (cont.)

## [State] anti-discrimination laws:

Employers are permitted to ask job applicants about their convictions. [confirm that this is true under state law]

**BUT** may employers also ask about *arrests* that did not lead to a conviction?

[insert answer under state law]

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# People with Criminal Records: EMPLOYMENT (cont.)

## [State] anti-discrimination laws:

Once employers have an applicant's criminal record information, may they deny the job because of it?  
Does that violate [state] law?



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## People with Criminal Records: EMPLOYMENT (cont.)

### **[State] anti-discrimination laws:**

- [State] law [has/does NOT have] protections against employment discrimination based on a criminal record.
- [explain state laws, if any, including enforcement mechanism]

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## People with Criminal Records: EMPLOYMENT (cont.)

**May people with criminal records be barred from working in certain jobs?**

**YES.** Both the state and federal government have regulations that –

- limit the employment opportunities for some people with criminal records and
- make it harder (or impossible) to get certain occupational licenses.

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## People with Criminal Records: EMPLOYMENT (cont.)

### **But not all such restrictions are absolute!**

- Sometimes they can be lifted if the applicant shows evidence of rehabilitation.
- Some job and licensure denials can be appealed.

Always check for the exact requirements and for the possibilities to appeal a denial.

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# People with Criminal Records: EMPLOYMENT (cont.)

How can someone with a criminal record get a job?



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## People with Criminal Records: EMPLOYMENT (cont.)

Getting a job with a criminal record can be very hard. **But people can improve their chances if they –**

1. **Find a local organization** that helps job seekers with criminal records.
2. **Find out what is on their rap sheets** so they can –
  1. Explain it when applying for a job
  2. Correct any errors

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# People with Criminal Records: EMPLOYMENT (cont.)



Information about local resources and rap sheets is available on the website of the National H.I.R.E. Network, a project of the Legal Action Center, **[www.hirenetwork.org](http://www.hirenetwork.org)**.

Click on “resources and assistance” and then on the state. Scroll down to “local service providers” or “criminal record repository.”

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# People with Criminal Records: EMPLOYMENT (cont.)

## 3. When applying for a job, people need to –

- **Accurately describe** their convictions:
  - list date(s) and offense(s)
- **Explain the circumstances** underlying the conviction(s)
  - (what happened?) and take responsibility for what happened.
- **Present the best evidence of rehabilitation.** Read *How to Gather Evidence of Rehabilitation* available at [www.lac.org](http://www.lac.org). Click “free publications” and then “criminal justice.”



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# People with Criminal Records: EMPLOYMENT (cont.)

## 4. See if they can **upgrade less-than honorable military discharges.**

- Board for Correction of Naval Records – for navy and marines: 703.614.1402
- Army Review Board Agency: 718.607.1600
- Air Force Military Personnel Center (attn: DPMDOA1, Randolph AFB, TX 78150-6001)



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# People with Criminal Records: EMPLOYMENT (cont.)

5. Find out if their state has a **mechanism permitting people with convictions to demonstrate rehabilitation** or restore their civil rights. Some states offer a “certificate of rehabilitation.”



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# People with Criminal Records: HOUSING

**Is it legal to deny someone  
HOUSING because of a criminal  
record?**



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# People with Criminal Records: HOUSING (cont.)

## **Housing:**

There is NO federal law that prohibits housing discrimination based on a criminal record.

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# People with Criminal Records: HOUSING (cont.)

## 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.

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# People with Criminal Records: HOUSING (cont.)

## Public Housing:

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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# People with Criminal Records: HOUSING (cont.)

## Public Housing:

As permitted by federal law, [local housing authority's own policies] [insert policy. Often it's a disqualification for people who threaten the health & safety of other residents & property.]

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# People with Criminal Records: HOUSING (cont.)

## Public Housing:

Does [city housing authority] have rules that bar people with some convictions from living in public housing?

[insert answer]

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# People with Criminal Records: HOUSING (cont.)

## **Public Housing:**

[if so, describe & describe whether individuals can overcome ban by showing evidence of rehabilitation]

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# HAVE QUESTIONS?

Call: [insert local contact information]

*or*

Visit the websites of:

- Legal Action Center, [www.lac.org](http://www.lac.org)
- *Partners for Recovery* (PFR)  
[www.pfr.samhsa.gov](http://www.pfr.samhsa.gov)

Both websites contain the Know your Rights materials developed under PFR.

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# Thank you

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