Welcome to KNOW YOUR RIGHTS:
Housing, Health Care, and Other Forms of Discrimination Against People with Alcohol/Drug Histories

WEBINAR
WELCOME to the Know Your Rights Webinar Series!

Presented by:

Today’s presenters are:

- Sally Friedman, Esq.
- Judy Whiting, Esq.
WELCOME to the Know Your Rights Webinar Series! (cont.)

Funded by:

“Partners for Recovery” initiative of the federal government’s Center for Substance Abuse Treatment

Prepared by the Legal Action Center with support from Partners for Recovery
WELCOME to the Know Your Rights Webinar Series! (cont.)

Who is the Legal Action Center?

- National non-profit law firm
- Policy and legal work on anti-discrimination issues affecting people with
  - Alcohol or drug histories
  - Criminal records or
  - HIV/AIDS

Prepared by the Legal Action Center with support from Partners for Recovery
Have a Question During this Presentation?

- Use the chat feature on the upper right-hand corner of your screens.
- Will answer some questions at end, and will try to answer others on website.
Today’s Materials

- *Know Your Rights: Are You in Recovery from Alcohol or Drug Problems?* brochure

- This **PowerPoint presentation**

WELCOME to the Know Your Rights Webinar Series! (cont.)

Recording of this webinar available at http://www.lac.org

Prepared by the Legal Action Center with support from Partners for Recovery
Who’s today’s audience?

This training is for . . .

- People in treatment or recovery from alcohol or drug problems
- Anyone supporting the rights of people with current/past alcohol or drug problems
- Landlords, health care providers, government officials, and others who want to comply with anti-discrimination laws
- Anyone else interested in the topic.
This training is about . . .

- Federal laws prohibiting discrimination against people with disabilities and

- How these laws protect people with or in recovery from alcohol or drug problems.
This training is about . . .

Laws prohibiting discrimination against people with disabilities in:

- Housing
- Government activities and programs
- Public accommodations –
  - health care, schools, social service programs.
Save the Date!

Upcoming Webinars:

- Medication-Assisted Treatment: Special Anti-Discrimination Issues  August 11
- New Federal “Parity” Legislation for Insurance Coverage of Addiction Treatment  August 26

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Today’s training objectives

1. Understand rights under federal anti-discrimination laws.
2. Understand how to exercise those rights.
3. Know how to help others understand and exercise those rights.
Sounds familiar?

- Parts of this webinar are similar to webinar on employment discrimination
- But pay close attention – there are differences
- Discussion of what constitutes discrimination in housing, government activities & programs, and public accommodations is all **NEW**
What Is Discrimination?
DISCRIMINATION IS . . .

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

... when the law does not permit it.
DISCRIMINATION IS . . .

Examples of status protected by law:

- Race
- Age
- Disability
- Gender
- Religion

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DISCRIMINATION: Examples

- Landlord refuses to rent to someone because that person is in recovery from alcoholism.
- Employer refuses to hire someone because they are over 40 years old.
DISCRIMINATION: CASE-BY-CASE DECISION

- Must look at each person individually.

- May not make generalizations about a person based on status (e.g., based on the mere fact that the person has a disability or is a certain race or religion).
DISCRIMINATION IS NOT . . .

treating a person less favorably/differently because of his/her CONDUCT.
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 started fire while high.
Today’s Presentation/Discussion

Focuses on discrimination in

- Housing
- Gov’t Activities & Programs
- Public Accommodations
Part 2

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

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WHICH LAWS APPLY?

FEDERAL LAWS

Americans with Disabilities Act – “ADA”
(42 U.S.C. § 12101 et seq.)

- Applies to State and local government agencies. They are covered by “Title II” of the ADA.

- Applies to “Places of Public Accommodation” – private places open to the public (e.g. hospitals, doctors’ offices, day care, hotels). They are covered by “Title III” of the ADA.
WHO MUST FOLLOW THESE LAWS?

Rehabilitation Act of 1973 (“Rehab Act”)

- Applies to Federal government,
- Federally funded state/local government activities, and
- Federally funded private programs or activities.
WHICH LAWS APPLY?

Fair Housing Act

- Applies to most housing providers (landlords), whether private or public
- Others who sell or rent housing (brokers)
States and cities also have laws prohibiting discrimination.

How do you find out if your State/locality has applicable laws?
One way: Contact the State agency that oversees alcohol and drug treatment programs. They might know of local resources.

Another way: Every State has an agency charged with enforcing State anti-discrimination laws. Some cities have them as well.

To find your State’s or City’s agency, you can:

- Do an Internet search typing the name of your state or city and the words “human rights agency”
WHICH LAWS APPLY? (cont.)

Another way (cont.):

- Ask your State’s Attorney General’s office

Another way (cont.):

The Legal Action Center has compiled information about anti-discrimination laws in a number of states. If your state is listed on the next slide, you can get a summary of the relevant laws on our website.

Go to http://www.lac.org. Click on “Trainings and Technical Assistance,” “Training Materials” and then “Alcohol/Drugs & Criminal Record.”
WHICH LAWS APPLY? (cont.)

State law information available for:

- Alaska
- California
- Colorado
- Connecticut
- Georgia
- Illinois
- Indiana
- Kentucky
- Maryland
- Massachusetts
- Minnesota
- New Mexico
- New York
- North Carolina
- Oregon
- Pennsylvania
- Texas

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WHO IS PROTECTED BY THESE LAWS?
Who is Protected?

- Proving “disability” under anti-discrimination laws is NOT same as proving “disability” for government benefit programs, like SSI.
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
What is a “disability”? (cont.)

- Court will make an individualized determination. There are no automatic disabilities.

- A person has a “disability” only if she or he has an impairment that substantially limits – or once limited – one or more of her or his major life activities, such as caring for self, walking, talking, or working.
Who is Protected? (cont.)

Alcoholism – Joseph

- Landlord just learned – Joe in alcoholism treatment
- Landlord had problems with former tenant who was alcoholic
- Evicts Joseph because: “I don’t want another alcoholic tenant”

Joseph – has a “disability” under these federal anti-discrimination laws?
Who is Protected? (cont.)

Likely YES. Alcoholism generally is a “disability” regardless of whether it is:

- *Past or Current*

**BUT** Joseph still must prove that his alcohol abuse/alcoholism substantially limits or limited *his* major life activities or that his landlord regarded him as having an impairment.
Who is Protected? (cont.)

2008 Amendments to the ADA

- It’s now easier to prove “disability” as a result of the ADA Amendment Acts of 2008.

- This law – which took effect 1/1/09 – clarifies that Congress meant the term “disability” to be interpreted broadly.
Who is Protected? (cont.)

Drug abuse/addiction – Julie:

- In recovery for cocaine addiction for 5 years
- In apartment for 3 years – excellent tenant
- Landlord just found out she is in recovery
- Started eviction proceedings because of her past drug addiction.

Is Julie protected by anti-discrimination laws?
Likely YES.

- People with a past drug addiction have a “disability” if –
  - It substantially limited that person’s major life activities OR
  - The person is regarded by others as having an impairment.
Who is Protected? (cont.)

This includes people who:

- have successfully completed drug treatment
- are currently in treatment
- have achieved recovery without treatment
Who is Protected? (cont.)

But what about Tammy? She has a cocaine addiction, but her landlord never had any problems with her. Suddenly he learns about her addiction and starts proceedings to evict her.

Do you think Tammy is protected by these federal anti-discrimination laws?
Federal laws do not protect individuals who are “currently engaging in the illegal use of drugs.”
What does “illegal use” mean?

- Use of Illegal drugs (e.g., heroin, cocaine)
- Unlawful use of controlled substances that can be prescribed:
  - no prescription
  - fraudulent prescription
  - misuse of legitimately prescribed medications
What does “illegal use” mean?

- What if became addicted to Percocet while taking the medication in prescribed manner and prescribed amounts?
  - Not “illegal” use, so are protected.
When is illegal use of drugs “current”? 

No black & white definition.

Question: is the use recent enough so that it is reasonable to assume that it is an ongoing problem? 

more…
Who is Protected? (cont.)

When is illegal use of drugs “current”? (cont.)

Many courts have found that it was reasonable to assume that illegal use of drugs was “current” if:

- used within the last few months
- risk of relapse/pattern of relapse may support conclusion that use is ongoing problem.
What about relapse?

- What if relapse after 2 years of recovery? Protected?

  No.
Part 4

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

HOUSING?
What rights do these laws give?

Housing

The 3 Relevant Laws:

- Fair Housing Act
- Rehabilitation Act – if federally funded housing
- ADA (Title II) – when local/state government is providing housing
What rights do these laws give?

HOUSING

Protections

Individuals with disabilities may not be –

● Excluded from or denied equal benefits of housing opportunities offered by private entities or local, state, or federal government because of disability
What rights do these laws give?

HOUSING

Protections

Prohibits disability-based discrimination against –

- Individuals with disabilities and

- Persons or agencies associated with people with disabilities (e.g. alcohol and drug treatment programs)
What rights do these laws give?

HOUSING (cont.)

Example – Yvonne & Robert

- Find great apt. Landlord says “it’s yours” if credit report is good.
- Landlord sees them entering weekly AA meeting.
- Two days later, landlord says he has rented the apartment to someone else.

Discrimination?
What rights do these laws give?

HOUSING (cont.)

**ANSWER – Yvonne & Robert**

Depends on the reason.

- **Illegal** to deny if reason is his belief that they are alcoholics.
- Federal Fair Housing Act prohibits most landlords from discriminating against prospective tenants on the basis of disability, including being in recovery from addiction.
What rights do these laws give?

HOUSING (cont.)

**ANSWER – Yvonne & Robert**

But the landlord *may* deny them the apartment if the reason is their conduct—

- Cannot show they can afford the rent,
- History of non-payment in other apartments, or
- Credit check was bad.
What rights do these laws give?

HOUSING (cont.)

Yvonne and Robert (cont.)

What kind of proof do Yvonne & Robert need?

- Direct evidence is good, but
- May also prove that reasons offered are not the real reasons (“pretext”)

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What rights do these laws give?

**HOUSING (cont.)**

**Yvonne and Robert (cont.)**

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 passersby?

Do you think the landlord may legally deny Yvonne and Robert the apartment in those circumstances?

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Federal anti-discrimination laws do not require landlords to rent to anyone whose behavior indicates they would be a nuisance.
What rights do these laws give?

HOUSING (cont.)

What about refusing to rent to recovery homes?

Green Valley Recovery Houses wants to rent a private house to use as a recovery home. The landlord refuses to rent to Green Valley because neighbors don’t want “addicts” around their children.

Do you think the landlord can legally refuse to rent to Green Valley for that reason?
What rights do these laws give?

**HOUSING** (cont.)

What about refusing to rent to recovery homes? (cont.)

**No.** Green Valley is also protected by the Fair Housing Act because of its association with people with disabilities.
What rights do these laws give?

HOUSING (cont.)

What about refusing to rent to recovery homes? (cont.)

BUT what if Green Valley had a history of not paying rent in its other recovery home? Or if the other home was a nuisance?
What rights do these laws give?

HOUSING (cont.)

What about refusing to rent to recovery homes? (cont.)

Not illegal discrimination to refuse to rent because of tenant’s past conduct.
What rights do these laws give?

HOUSING (cont.)

Stay tuned…..

- When local governments try to keep out alcohol/drug programs and recovery homes. Coming up in “zoning” section.
- Discrimination by recovery home operators – August 11th.
What rights do these laws give?

HOUSING (cont.)

What about public housing?
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
- Abuse **ALCOHOL** or have a pattern of abuse that may threaten health and/or safety of residents.
What rights do these laws give?

**HOUSING (cont.)**

Public housing (cont.):

People *may* live in public housing if

- they are not using drugs illegally OR
- their alcohol abuse/pattern of abuse does not pose a threat to the health and/or safety of residents.
What rights do these laws give?

HOUSING (cont.)

Public housing (cont.):

How can individuals with alcohol/drug histories prove that they are not a “threat to the health/safety of others”?

- Generally may present evidence of rehabilitation

more…
What rights do these laws give?

HOUSING (cont.)

Public housing (cont.):

- Letters from treatment program, employers, schools, vocational training programs, other landlords.

- See “How to Gather Evidence of Rehabilitation” at http://www.lac.org. Click on “Free Publications” and then “Criminal Justice Publications.”
What rights do these laws give?

HOUSING (cont.)

Public housing (cont.):

How do public housing authorities learn about someone’s alcohol or drug history?

Criminal background checks.
These are covered in Webinar on Criminal Record issues.
Part 5

What RIGHTS Do These Laws Give People With Past or Current Alcohol/Drug Problems to be Free of Discrimination by –

GOVERNMENT ACTIVITIES & PROGRAMS?

Prepared by the Legal Action Center with support from Partners for Recovery
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 ACTIVITIES & PROGRAMS (cont.)

Examples of government programs & services that may not discriminate:

- Public assistance, Medicaid & other government benefits
- Zoning
- Occupational/professional licensing
- Job training
- Government health programs
What rights do these laws give?
GOVERNMENT ACTIVITIES & PROGRAMS (cont.)

Public Assistance, Medicaid & Other Government Benefits
What rights do these laws give?

GOVERNMENT ACTIVITIES & PROGRAMS (cont.)

Example – Rachel

- 6 years in methadone maintenance treatment for heroin addiction
- Applied for public assistance
- Worker asks if has drug or alcohol problem
- Rachel says she used to, but now is in methadone treatment.

Do you think the public assistance office may legally deny Rachel's application because of her past drug addiction?
ANSWER – Rachel

No. The ADA (Title II) and the Rehabilitation Act prohibit Federal, State and local government programs from discriminating on the basis of disability.

The welfare office, which is part of a state agency, may not deny Rachel benefits because of her past addiction to heroin.
What rights do these laws give?

GOVERNMENT ACTIVITIES & PROGRAMS (cont.)

Rachel

But what about the fact that she is taking methadone? May the public assistance office deny her application because she's in an opioid treatment program?
What rights do these laws give?
GOVERNMENT ACTIVITIES & PROGRAMS (cont.)

ANSWER – Rachel

No.

That’s discrimination, just as it would be to deny benefits because someone is in any other form of treatment.
What rights do these laws give?

GOVERNMENT ACTIVITIES & PROGRAMS (cont.)

● HOWEVER, some federal laws limit the rights of people with drug-related convictions:

● Public assistance & food stamps

● Student loan suspension

- States may “opt out,” and many have.

- Individual states’ laws are available on Legal Action Center’s “After Prison: Roadblocks to Re-entry” Report, [http://www.lac.org](http://www.lac.org) (link available at bottom of home page, and go to “What’s the Law”)
What rights do these laws give?
GOVERNMENT ACTIVITIES & PROGRAMS (cont.)

**Student loan suspension**: People convicted of drug sale & possession offenses *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, suspension applied regardless of when the conviction occurred – even if it was years before the student received federal financial assistance. But that changed.
What rights do these laws give?

GOVERNMENT ACTIVITIES & PROGRAMS (cont.)

- Student loan suspension (cont.):
  
  • Applies to convictions for drug sale & possession offenses only; not arrests.
  
  • Length of suspension depends on the conviction and evidence of rehabilitation. *Can* be overcome upon completion of treatment.
  
  • State-funded programs may have different rules.

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What rights do these laws give?

GOVERNMENT ACTIVITIES & PROGRAMS (cont.)

Zoning Discrimination
(“NIMBY”)
What is zoning discrimination?

- Legitimate zoning functions: limit traffic, noise, pollution

- Illegitimate uses of zoning powers: exclude individuals with disabilities or the providers that serve them
What rights do these laws give?

GOVERNMENT ACTIVITIES & PROGRAMS (cont.)

Example – Town of Oakville

- New Life outpatient drug treatment program wants to locate a new site in mixed use district zoned for counseling programs.

- Residents and merchants band together to keep “drug addicts” and “criminals” out of the neighborhood.

- Oakville town council passes law to prohibit drug treatment programs from locating in this type of district.
What rights do these laws give?

GOVERNMENT ACTIVITIES & PROGRAMS (cont.)

Oakville (cont.)

Do YOU think the town of Oakville is legitimately exercising its zoning authority?

Or is it violating federal anti-discrimination laws?
Oakville (cont.)

Illegal discrimination to single out program that serves individuals with disability of alcohol/drug abuse or addiction.
What rights do these laws give?

GOVERNMENT ACTIVITIES & PROGRAMS (cont.)

Other examples of zoning discrimination:

- Distance requirements particular to alcohol/drug programs
- Requiring alcohol/drug programs to apply for special permits not required of others
What rights do these laws give?

GOVERNMENT ACTIVITIES & PROGRAMS (cont.)

Occupational & Professional Licensing and Credentialing
What rights do these laws give?

GOVERNMENT ACTIVITIES & PROGRAMS (cont.)

Same anti-discrimination principals apply:

- Legal to require applicant to meet generally applicable qualifications
- **BUT** qualified individuals may not be denied licensure because of disability
- Requires *individualized* consideration
What rights do these laws give?
GOVERNMENT ACTIVITIES & PROGRAMS (cont.)

Example – Suzanne

- Applied for nursing license.
- Terminated from home health aide job 10 years ago due to misconduct caused by her former drug addiction
- Graduated from nursing school
- In recovery for 9+ years and solid employment record and other evidence of rehabilitation
- License denied due to lack of “good moral character” based on former addiction

Do YOU think the licensing board’s decision violated federal anti-discrimination laws?
What rights do these laws give?
GOVERNMENT ACTIVITIES & PROGRAMS (cont.)

Suzanne

Yes – if decision was based on past addiction without regard to evidence of recovery and track record since job termination 10 years earlier.

- Licensing agencies must make decisions based on that applicant’s situation and not on generalized assumptions.
What rights do these laws give?

GOVERNMENT ACTIVITIES & PROGRAMS (cont.)

Alcohol/drug counselor credentials

May state require pre-determined amount of time in recovery for alcohol/drug counselor credential or certificate?

- Such flat rules are potentially discriminatory
- No room for individualized evaluation
What RIGHTS Do These Laws Give People With Past or Current Alcohol/Drug Problems in – PLACES OF PUBLIC ACCOMMODATION?

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What rights do these laws give?

PUBLIC ACCOMMODATIONS

“Places of public accommodation” – privately owned/operated places open to the public, such as:

- Schools and universities
- Doctors’ offices & other health care providers and facilities
- Social service facilities (e.g., day care center, homeless shelter)
What rights do these laws give?

PUBLIC ACCOMMODATIONS (cont.)

Example – Jane

- Jane goes to Downtown Medical Group for a stomach problem
- Discloses her current drug problem on the medical history
- Downtown Medical Group will not treat her and refers her (and “people like you”) to City-run clinic

Violates Federal anti-discrimination laws?
What rights do these laws give?
PUBLIC ACCOMMODATIONS (cont.)

Likely YES.

- Clear that the denial of care was because of Jane’s current drug problem.

- This was not a legitimate reason for referral.

BUT doesn’t Jane’s current illegal use of drugs remove her from the protections of these federal laws?
What rights do these laws give?  
PUBLIC ACCOMMODATIONS (cont.)

Not when it comes to health care.

- ADA’s general exclusion for individuals currently engaging in the illegal use of drugs does NOT apply to discrimination in the delivery of health care.
Part 7

Responding to Violations of Your Rights Under Anti-Discrimination Laws

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

Remember when Yvonne and Robert were denied an apartment because their landlord found out they attend AA?

Is there anything they can do to exercise their rights without hiring a lawyer?
Informal resolution

- Always worthwhile to try informal resolution.
- Attorney assistance is valuable, but you can do it on your own too.
Robert & Yvonne can try to EDUCATE the landlord

- Violation of anti-discrimination laws is often due to ignorance.

- Educating a landlord, or place of public accommodation, can sometimes result in the changes you want.
NIMBY problems

- Zoning discrimination resulting from “not-in-my-backyard” sentiment sometimes can be addressed through negotiations, including threat or legal action.

**BUT** if that doesn’t work…
REMEDIES (cont.)

FORMAL CHALLENGE

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

1. **File a discrimination complaint with the federal government agency** that is charged with enforcing the anti-discrimination laws. You do not need a lawyer for this “administrative” complaint.
REMEDIES (cont.)

File a complaint with the federal agency:

**Housing** – U.S. Department of Housing and Urban Development (HUD) [http://www.hud.gov](http://www.hud.gov)

**Public Accommodations** and **Local/State Government Services & Activities** – U.S. Department of Justice (DOJ) [http://www.usdoj.gov](http://www.usdoj.gov)

**Federally-funded programs/activities** – Contact the Federal agency that funds or regulate the program at issue.
2. In most cases, you also can file a discrimination lawsuit in federal court.

A lawyer is generally critical to success in a lawsuit.
Do not sleep on your rights!

- There are **deadlines** for filing complaints with government agencies and for lawsuits in court.

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

- Time limit for housing complaints filed with HUD is 1 year, and for complaints against state/local governments, filed with DOJ, it is 180 days.
There also are deadlines for filing lawsuits ("statute of limitations").

Be sure to check these too!!
Remember!

Your state and city may have additional discrimination laws and procedures to enforce them.

Check with your state/local agency to learn about any time limits.
HAVE QUESTIONS?

Visit our website. We will post answers to questions submitted during today’s webinar.

Go to http://www.lac.org. Click on “Trainings and Technical Assistance” and look for the “training materials” section.
Visit the websites of:

- **Partners for Recovery (PFR)**
  http://www.pfr.samhsa.gov

- Both websites contain the Know your Rights materials developed under PFR and other useful information.
Thank you!

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