

How the ADA applies to Addiction and Recovery

Slide 1. 4th Thursday ADA Talks

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Hosted by:

University of Kentucky (UK) Human Development Institute, Syracuse University Burton Blatt Institute, Southeast ADA Center.

Slide 2: Presenter

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Slide 3: Purpose

1. **How and Why is Addiction a Disability Under the ADA?**
2. **How the ADA Applies to:**
 - Alcohol Use Disorder (AUD)
 - Substance Use Disorders (SUD)
3. **ADA Protections in:**
 - Employment (Title I of the ADA)
 - State and Local Government: services, programs and activities (Title II of the ADA)
 - Businesses and Non-Profits (Title III of the ADA)

Slide 4: www.HumanCenteredDesign.org

Seven pictures of the Institute for Human Centered Design.

Top Row

1. conference room
2. library
3. stand/sit work stations

Bottom Row

4. waiting and greeting room
5. kitchen
6. conference room
7. meeting room

Slide 5: ADA 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.

Slide 6: How and Why is Addiction a Disability?

Americans with Disabilities Act

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.

Slide 7: ADA Definition of Disability

1. Have a physical or mental impairment that substantially limits one or more **major life activities**, e.g. bi-polar 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.

Slide 8: 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

Slide 9: Addiction is an Impairment that Substantially Limits Major Life Activities

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

Slide 10: The ADA Applies to 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 using drugs.**

Slide 11: 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, or thinking, etc.

Slide 12: Michael’s 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 needs time off for detox and treatment.

Does Michael have protections under the ADA?

Slide 13: 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 a great difficulty or expense (an undue hardship).

Slide 14: Substance Use Disorders

A person has ADA protections:

- In recovery
- No longer engaging in the current illegal use of drugs.

Slide 15: What Does “In Recovery” Mean?

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>

Image: Boston Common 2022, Celebrating Recovery Month September, Massachusetts Organization for Recovery.

Slide 16: 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 person has no prescription
OR has a fraudulent prescription
OR is using more than prescribed

Slide 17: 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**.

Slide 18: Lenore’s Scenario

Lenore 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?

Slide 19: Answer to Lenore’s Scenario

Yes, Lenore is protected under the ADA because she:

- Has a history of an impairment (addiction to heroin)
- Has refrained from the use of illegal drugs for three years which is a good indication that there is not an on-going problem.
- The potential employer violated the ADA when he refused to hire Lenore based on her recovery status.

Slide 20: 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.

Slide 21: Employment (Title I of the ADA)

Who Has Obligations Under the ADA?

- **Employers:** with 15 or more full or part-time employees must comply.
- **State and Local Governments:** Employers with one or more employees must comply with the ADA’s employment standards (full or part-time).

Slide 22: Americans at Work

- Nine percent of all **employed** adults have current alcohol or illicit drug use disorders.
13.6 million workers
- An almost equal number report that they are in recovery or have recovered from a substance use problem.
13.4 million workers

Slide 23: Recurrence or Return to Use at Work

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

Slide 24: The ADA's Answer to Return to Use at Work

- If an **employee** is currently engaging in the illegal use of drugs, 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.

Slide 25: The ADA does Not Limit the Employer's Choice to Offer Support for Recovery

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

Image: Collage from Faces and Voices of Recovery

Web: <https://facesandvoicesofrecovery.org/>

Slide 26: A Second Chance Agreement

- Second Chance Agreement can be considered only for individuals with addiction, and when an employee can be fired.
- An employer may choose, but is not required by the ADA, to offer a "second chance agreement."

Slide 27: The Opportunity for ADA Protections at Work

- ✓ Is when a person in recovery is struggling to stay in recovery, and before engaging in the illegal use of drugs.
- ✓ Getting the support needed must be communicated and taken before the employee illegally uses drugs.

Slide 28: Reasonable Accommodations to Support Recovery

What is a reasonable accommodation?

It is a change in the way work is performed. Here are a few examples:

1. A modified work schedule to get needed support
2. Medical leave for an employee to seek treatment
3. A second chance agreement

Slide 29: Addiction to the Legal Use of Prescription Medication

Scenario

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?

Slide 30: 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

Slide 31: Scenario about Julie

Julie works in an office at a day care 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.

Slide 32: Julie’s 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?

Slide 33: Answer to Julie’s Scenario

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

Slide 34: Julie’s Scenario Continued...What About Cannabis

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 or No

Slide 35: Answer to Julie’s Scenario About Cannabis

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

Slide 36: Cannabis is Illegal under federal law in all it’s forms...

Even with a medical card, certificate or medical prescription.

***However, check your state law**

Slide 37: 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 offsite use of medical marijuana.
- However, an employee who uses or is high at work has **NO** protections under either federal or state law.

Image: Map of USA indicating states where cannabis is legal, medical, and illegal.

Slide 38: 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

Recovery Residences that receive state and local government funds have obligations under the ADA to serve people with disabilities, including those with Medication for Opioid Use Disorder (MOUD).

Slide 39: Scenario About Tom

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 saying, "You'll see your kids when you get off Suboxone."

Is Tom protected under the ADA?

Slide 40: 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

Slide 41: Entering Corrections with a Prescribed MOUD

People who enter the correctional system with medications for opioid use disorder are discontinued on their medications.

Are people protected under the ADA?

Slide 42: Answer to MOUD in Corrections

Yes, correctional system has an obligation to provide medications tied to a person's disability when the correctional facility has a medication dispensary.

This includes all forms of medication for opioid use disorder (Suboxone, Methadone and Vivitrol).

Image: 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.

Slide 43: DEPARTMENT OF JUSTICE JOURNAL OF FEDERAL LAW AND PRACTICE

Journal article title Using the Americans with Disabilities Act to Reduce Overdose Deaths by Gregory Dorchak US Attorney Massachusetts and David Sinkman US Attorney Louisiana

Image: At the DEA Office in Wash. D.C., a permanent memorial displays the faces of lives lost due to fentanyl overdose.

Slide 44: 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.
- The DOJ found that the **UJS** component courts' policies of imposing taper requirements, prohibiting use of specific OUD medications (such as buprenorphine or methadone), restricting treatment to only specific OUD medications (such as Vivitrol), and limitations on the use of MOUD all constituted violations of **Title II of the ADA**.

Slide 45: The Parole Board of Massachusetts

- A complaint filed with the U.S. Attorney's Office in Boston alleged that the drug courts were forcing participants to stop taking their prescribed MOUD without individualized assessments by a medical professional.
- Instead, the courts ordered participants to exclusively take Vivitrol, regardless of their specific healthcare provider's recommendations.

Image: Emblem seal for United States Attorney's Office - District of Massachusetts.

Slide 46: 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

Recovery Residences that are non-profits or private businesses have obligations under the ADA to serve people with disabilities including those with Medication for Opioid Use Disorders (MOUD). \

Slide 47: Disability Rights for People with MOUD in Recovery Residences

Do residents have protections under ADA?

- Yes, a person with OUD is a person with a disability and has a right to take their doctor prescribed medication to treat their OUD.
- To refuse a person with a disability entry into a home based on their medical prescription may be a violation of the ADA, the Fair Housing Act, or Section 504.

Slide 48: Livia's Scenario

- Livia is a person with OUD and is taking doctor prescribed MOUD. She has applied to live in a recovery residence for people in early recovery.
- She is denied admission because the residence has a policy of refusing to admit people with OUD who are taking suboxone to treat their OUD.
- The residence manager asks Livia to change her medication, or maybe go to another house that allows MOUD because there is no staff to dispense the medication.

Does Livia have protections under ADA?

Slide 49: Answer to Livia's Scenario

Yes, Livia is protected under the ADA:

- She is a person with a disability because she has a history of OUD.
- Excluding her because of her doctor prescription is illegal discrimination, assuming that Livia meets the residences other eligibility requirements.
- Turning someone away, asking a person to change their medication, or to go to a house that allows MOUD are all problematic under the ADA and FHA and Section 504.
- Whether the person has a history of OUD, cancer, diabetes, high blood pressure, ADHD, depression, anxiety, and traumatic brain injury etc., it may be illegal to turn that person away based upon their prescription medication.

Slide 50: Other Signs of Discrimination

Residence:

- Limit the number of people in the facility who can take MOUD, e.g. having designated "MAT beds"
- Requires people to taper their dose of methadone or suboxone
- Only admits people who take under a certain dose of methadone or suboxone.

Slide 51: Dominic's Scenario

- Dominic has a legally prescribed medication to treat his OUD. He applies to a certified recovery residence near his home town.
- The residence operator responds that his application is rejected due to their medication policies to not accept certain FDA-approved medications that may be "mind and mood altering" including doctor prescribed suboxone.

Does Dominic have ADA protections?

Slide 52: Responding to Dominic's Request

- Yes, Dominic has protections, a policy to not accept certain FDA-approved medications tied to a disability is in violation of the federal disability laws.
- Dominic has a right to file a complaint with DOJ or HUD if the residence rejects his application based solely on his doctor prescribed medication.
- The residence needs to change their discriminatory policy to a non-discriminatory policy to be compliant with the law.

A Non-Discriminatory POLICY IS NEEDED

Slide 53: Non-discrimination policy is

a prerequisite for compliance with the ADA and for making reasonable accommodations and modifications.

Slide 54: Reasonable Modifications to a Non-Discrimination Policy for People with MOUD

- A resident with "take home" methadone or suboxone doses may take their doses to the residence.
- The residence stores MOUD on site the same way they store other controlled substances.
- A resident can go to their opioid treatment program (OTP) for methadone or their qualified practitioner for suboxone.

Slide 55: Housing Discrimination: Ready to Work in Boulder, Colorado

- 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.

Settlement Agreement: Train staff on MOUD and the ADA's requirements, report on compliance with the Settlement Agreement, and pay the

Slide 56: Health Care and The Civil Right to FDA Approved Medications

The Massachusetts (MA) U.S. Attorney's Office of Civil Rights sent letters 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.

Slide 57: 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 ER's and health care facilities to refuse services to people who are engaging in illegal drug use.

Slide 58: Summary

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; justice system; health care and skilled nursing facilities and recovery residences.
4. The ADA protects people in recovery from OUD who are taking legally-prescribed medication to treat their opioid use disorder (MOUD).
5. The ADA can provide guidance on how to care for one another, and address stigma and the addiction crisis.

Slide 59: Have an ADA Question?

1-800-949-4232

Contact Your Nearest ADA Center

<https://adata.org>

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

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oharrison@IHCDesign.org

1-800-949-4232 x 227

Slide 60: Resources

- **Questions About the Americans with Disabilities Act**
 - **Phone:** 1-800-949-4232 or **Email:** ADAinfo@IHCDesign.org
 - **Web:** <https://www.newenglandada.org/>
- **ADA, Addiction and Recovery Fact Sheets and Frequently Asked Questions**
 - **Web:** <https://www.newenglandada.org/addiction-and-recovery>
- **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>
- Dorchak, G. and Sinkman, D. (2022). Using the Americans with Disabilities Act to Reduce Overdose Deaths. *Journal of Federal Law and Practice* (Vol 1) p.113.
 - **Web:** <https://www.justice.gov/file/1467861/download>

Slide 61: 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](#)
4. **Big Ideas: Advancing Solutions to Reduce Fatal Overdoses in the US**
The ADA And Substance Use Disorders: Rights and Responsibilities
Web: https://oneill.law.georgetown.edu/wp-content/uploads/2022/09/ONL_BI20_ADA_SUD_P10.pdf

Slide 62: How to File an ADA Complaint

U.S. Equal Employment Opportunity Commission (EEOC)

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

Phone: 1-800-669-4000 or **Email:** info@eeoc.gov

U.S. 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

Phone: 1-800-514-0301

Slide 63: Southeast ADA Center

Phone: 404-541-9001 or 1-800-949-4232

E-mail: adasoutheast@syr.edu

Web: adasoutheast.org

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Slide 64: University of Kentucky (UK) Human Development Institute

Web: www.hdi.uky.edu

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